

Venkataramaiah Vs. Chief Election Commissioner

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Court : Karnataka

Decided On : Mar-24-1995

Reported in : ILR1995KAR1821; 1995(3)KarLJ433

Judge : Eswara Prasad, J.

Acts : Karnataka Panchayath Raj Act, 1993 - Sections 19

Appeal No. : W.P. No. 9758 of 1995

Appellant : Venkataramaiah

Respondent : Chief Election Commissioner

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : P. Krishnappa, Adv.

Disposition : Petition dismissed

Judgement :

Eswara Prasad, J.

1. The petitioner is one of the candidates seeking election as a member of the Zilla Panchayath, Bangalore Urban District from Constituency bearing No. 6 Hesaraghatta. He prays issuance of Mandamus directing the respondents not to hold re-poll or fresh elections on 26.3.95 for No. 6 Hesaraghatta Constituency and

to declare that he is the duly elected candidate from the said Constituency.

2. The calender of dates for election was announced on 18.2.1995 for all the polling stations of No. 6 Hesaraghatta Zilla Panchayath Constituency. The polling was held and the counting of votes was completed on 19.3.1995. The petitioner obtained 18 votes more than the rival candidate. Recount was ordered on 19.3.95 and was done on 20.3.95 and it was found that the petitioner polled 18 votes more than the nearest rival candidate. The result of the elections was not announced and on the request of the Returning Officer, the first respondent felt that there was a discrepancy, which in the opinion of the Commissioner, would vitiate the result of the poll and it was felt that an opportunity should be given to the candidates affected to make their representations, if any, with reference to the report of the Returning Officer on 22,3.95. The Commissioner considered the reports of the Returning Officer and representations and directed that a fresh poll should be held in all the polling stations in the said Constituency which is under challenge.

3. The learned Counsel for the petitioner submits that by virtue of the Notification dated 22nd March 1995 issued by the First Respondent - State Election Commissioner, a fresh poll was ordered in all the polling stations of No. 6 Hesaraghatta Zilla Panchayath Constituency, Bangalore Urban District on 26.3.95 between 8.00 A.M. and 5.00 P.M. and that the said order is illegal.

4. The learned Counsel for the petitioner further contends that once the polling was completed and counting of votes was over, there could be only one recounting and that recounting was done on 20.3.95 and the petitioner was found to have secured 18 votes over and above the nearest rival candidate and that there was no warrant for further recounting of votes and the result of the Elections should have been declared under the Karnataka Panchayath Raj (Conduct of Elections) Rules of 1993. (The 'Rules' for Short). Rules 69, 69(7), 71 (6) are relied on by the learned Counsel, contending that the order for fresh poll is not contemplated under the Rules, and that the impugned order is illegal. He further contends that under Rule 12, the Deputy Commissioner alone could order for fresh poll and not the first respondent.

5. The learned Government Pleader who appeared on notice, submits that Articles 243(k) and 243(o) bar the jurisdiction of Courts, under Article 226 of the Constitution of India. He contends that in view of the provisions under Section 19(1)(d) IV of the Panchayath Raj Act, 1993, and Election Petition can be filed before the Munsiff who is the proper forum. He contends that under Clause 4 of the said Rule, if there is non-compliance, with the provisions of the Act or Rules the petitioner has a right to file an Election Petition under Section 19 of the Act. He relies on the Decision of Supreme Court in MOHINDER SINGH GILL v. CHIEF ELECTION COMMISSIONER : [1978]2SCR272 , in support of his contention.

6. Section 19 of the Panchayath Raj Act lays down the grounds for declaring election to be void and constitutes the Munsiff as the proper forum for challenging the election. Clause (4) of the sub-Section (1)(d) is as follows:-

'By any non-compliance with the provisions of this Act or of any rules or orders made thereunder, the Munsiff shall declare the election of the returned candidate to be void'.

It is therefore to be held that the petitioner has a right to challenge the Election before the Munsiff concerned by filing an Election Petition under Section 19 on the ground that there is non-compliance of the provisions of the Act or of any Rules or orders made thereunder.

7. In Mohinder Singh Gill (Supra), the amplitude and width of functions to be exercised by the Election Commission under Article 324 of the Constitution of India, relating to the elections to Parliament and Legislatures under 'Representation of People Act' was considered. It was held that the Commissioner is entitled to order re-poll wherever necessary, either in exercise of the power under Article 324 or under the provisions of Representation of People Act, 1951 or under the Rules made thereunder. It was further held that a Writ Application under Article 226 challenging the cancellation of election coupled with re-poll, amounts to calling in question a step in 'Election' and is therefore barred by Article 329(b).

8. The Election of the members of the Zilla Panchayath are held under the Karnataka Panchayath Raj Act, 1993. Section 19 of the Act provides the grounds

for declaring the election void. A petition questioning the election can be filed before the Munsiff having jurisdiction. If there is any non-compliance with the provisions of the Act or any Rules or orders made thereunder, the Munsiff shall declare the election of the returned candidate to be void. It is therefore clear that the forum is constituted for questioning the election of the candidate under the Panchayath Raj Act.

9. Article 243(o) of the Constitution of India bars interference by the Courts in Electoral matters. The superintendence, directions and control of the preparation of the electoral rolls for the conduct of elections is entrusted to the State Election Commission for conducting election to the Panchayaths, under Article 243(k) of the Constitution of India. Article 243(k) is the corresponding provision to Article 324 of the Constitution dealing with election to the Parliament and to the Legislature. Article 243(o) corresponds to the Article 329(b). It is therefore clear that the Decision of the Supreme Court in Mohinder Singh Gill (Supra) rendered with reference to Articles 324 and 329(b) is applicable mutatis mutandis to the present case.

10. After the Notification has been issued setting forth the electoral process in motion, the entire electoral process is in charge of the Election Commission and the Commission is exclusively responsible for the conduct of the election without interference by any outside agency, including all Courts, including the High Court. The Election Commission is competent in an appropriate case, to order re-poll or fresh poll where necessary and it will be an exercise of power within the ambit under Article 243(k). Election covers the entire process from the issue of Notification to the declaration of the result. When a poll that has already taken place has been cancelled and a fresh poll has been ordered, the order therefore, with the amended date, is passed as an integral part of the election process. Even if it is a wrong order it does not cease to be an order passed by the competent authority. The election cannot be questioned except by an Election Petition under Section 19 of the Panchayath Raj Act.

For all the aforesaid reasons, I see no ground for interference and this Writ Petition is accordingly dismissed.

