

Basanagouda and Another Vs. State of Karnataka and Others

Basanagouda and Another Vs. State of Karnataka and Others

SooperKanoon Citation : sooperkanoon.com/384745

Court : Karnataka

Decided On : Feb-21-2000

Reported in : ILR2001KAR95; 2000(6)KarLJ526

Judge : Tirath S. Thakur, J.

Acts : [Karnataka Panchayat Raj Act, 1993](#) - Sections 9, 10(2) and 165; [Representation of the People Act, 1950](#); Registration of Electors Rules, 1950 - Sections 21, 22 and 23; Registration of Electors Rules, 1960 - Rules 10, 11, 12, 13, 14, 20, 21, 22 and 23

Appeal No. : Writ Petition Nos. 5450, 5524, 5927, 5930 to 5934, 5992, 5643 and 6381 of 2000

Appellant : Basanagouda and Another

Respondent : State of Karnataka and Others

Advocate for Def. : Sri K.N. Putte Gowda, Govt. Adv. and ;Sri Bharama Gowda, High Court Govt. Pleader

Advocate for Pet/Ap. : Sri Ashok B. Hinchigeri, ;Sri Balaraj A.C., ;Sri Gopal Krishna, ;Sri S.P. Kulkarni, ;Sri C.R. Gopalaswamy, ;Sri Praveen Kumar Raikote and ;Sri S.A. Khadri, Advs.

Judgement :

ORDER

1. The common grievance of the petitioners in all these petitions relates to the alleged improper preparation of the electoral rolls for their respective constituencies. Petitioners in W.P. Nos. 5450 and 5524 of 2000 are aggrieved by the inclusion of 29 voters in the voters list of the two Grama Panchayat constituencies for which they have filed their nomination papers. Besides a certiorari for quashing the list, they have prayed for a mandamus directing the respondent to prepare a fresh list in accordance with law. Petitioner in W.P. No. 5927 of 2000 is also a candidate, who is similarly aggrieved of the preparation of the electoral roll for his constituency. Petitioners in W.P. Nos. 5930 to 5934 of 2000 are aggrieved of the exclusion of their names from the voters list for the Hunashikatti Grama Panchayat. Preparation of the voters list for Suryanakanahalli of Hassan District is assailed in W.P. No. 5992 of 2000 on the ground that respondents 3 to 15 in the said petition are minors and therefore not entitled to be registered as voters. In W.P. No. 6381 of 2000, the grievance is against the inclusion of 92 voters registered for the Village Lekkondahally of Hoskote Taluk. Similarly W.P. No. 5643 of 2000 makes a grievance against the voters list for the Gunjalli Grama Panchayat of Raichur District.

2. The immediate provocation for the challenge to the impugned electoral rolls is provided by the declaration of the Grama Panchayat elections in the State by a notification dated 2nd of February, 2000. These elections are regulated by [Karnataka Panchayat Raj Act, 1993](#), Section 9 whereof entitles every person whose name appears in the voters list relating to a constituency to vote at any election that takes place in that constituency. It further provides that no person whose name does not appear in such list shall vote at any such election. Sub-section (2) declares that no person shall vote at an election under the Act in more than one constituency or more than once in the same constituency and if he does so, all his votes shall be invalid. Section 10 of the Act provides that electoral rolls of the Zilla Panchayat for the time being in force shall be deemed to be the list of voters for the Grama Panchayat constituencies also. Sub-section (2) of Section 10 is for our purposes relevant and may therefore be extracted. It reads.-

'(2) No amendment, transposition or deletion of any entry in the electoral roll of the Zilla Panchayat made after the last date of making nominations for an election in

any Grama Panchayat constituency and before the completion of such election shall form part of the list of voters for such election for the purpose of this section'.

3. Section 165 of the Act regulates preparation of electoral rolls for the Zilla Panchayats under the superintendence and control of the State Election Commission provided however that the electoral roll of the Karnataka Legislative Assembly for the time being in force for such part of the District as is included in any constituency of the Zilla Panchayat may be adopted for the purpose of preparation of electoral roll of the Zilla Panchayat for such constituency. The second proviso to Section 165 makes a provision analogous to Section 10(2) extracted earlier.

4. It is evident from a plain reading of the provisions referred to above that the statutory right to vote in an election, is subject to the condition that the name of the person claiming that right appears in the electoral roll for the constituency, in which he wishes to exercise the same. It is also evident that while amendments, transposition or deletions of entries in any such electoral rolls are permissible, yet no such amendment, transposition or deletion made after the last date for making nominations for any election to the Grama or Zilla Panchayat and before completion of such election shall form a part of the list of voters for such elections. It must a priori follow that even when the grievance made against the exclusion from or inclusion of any voter in the electoral rolls may justify an amendment, transposition or deletion of any such entry, yet no such amendment, transposition or deletion will have any relevance for an election, which is already in progress. The validity of the provisions of Sections 9 and 10, which exclude from consideration the amendments, transpositions or deletions made in an electoral roll after the date of making of nominations and before the completion of the election has not been questioned by the petitioners. In that view, even if there are any errors or omissions in the preparation of the electoral rolls, the same would not entitle the petitioners to any relief in connection with and for purposes of the current elections.

5. There is another angle from which the controversy may be viewed. The preparation of the electoral rolls for Parliamentary and Assembly Elections is

regulated by the provisions of the [Representation of the People Act, 1950](#) and the Registration of Electors Rules, 1950 framed thereunder. While Section 21 of the said Act envisages preparation of electoral rolls for each constituency so as to come into force immediately upon their publication, Section 22 provides for correction of entries in such rolls. It inter alia prescribes that if the Registration Officer for a constituency is on an application made to him or on his own motion satisfied after such enquiry as he may think fit, that any entry in the electoral roll of the constituency (a) is erroneous or defective in any particular, (b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or (c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll shall, subject to general or special directions, transpose or delete the entry after giving the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him. Section 23 on the other hand deals with inclusion of the names in electoral rolls and entitles any person whose name is not included to apply for such inclusion. Sub-section (3) of Section 23 provides that no amendment, transposition or deletion of any entry shall be made under Section 22 nor any inclusion of a name in the electoral roll of a constituency be given under Section 23 after the last date for making nominations for an election in that constituency and before the completion of that election.

6. The scheme underlying the modification of the electoral rolls whether by way of inclusion, transposition or deletion of the entries made in the same is therefore common to the provisions of the two Acts referred to earlier. Both the enactments make modifications, in the rolls inapplicable, where the same are introduced after the date of filing of the nomination papers and before the completion of the election. There is considerable good sense in those provisions for without such a provision, it would have been difficult, if not impossible to complete the election process within a time frame on account of the objections that may have been raised against the electoral rolls at any stage. The process of preparation of the electoral rolls, inclusion and/or deletion of names from the same is itself a comprehensive process regulated by the Registration of Electors Rules, 1960.

Rules 10 and 11 provide for publication of the roll in draft and their publicity in the prescribed manner. Rule 12 envisages lodging of claims and objections to the draft roll in the manner and the forms prescribed under Rules 13 and 14. Rule 20 envisages an enquiry into claims and objections while Rules 21 and 21-A govern inclusion and deletion of names from the electoral rolls. Rule 22 requires publication of the roll, whereupon the same together with the list of amendments becomes the electoral roll for the constituency. Any person aggrieved of any order deciding a claim or objection can in terms of Rule 23 file an appeal before the prescribed officer. Suffice it to say that the provisions of the Act and the rules provide a self-contained machinery for determination of all questions relating to preparation of rolls and inclusion or exclusion of entries from the same. Once the rolls are published after complying with the procedural requirements and safeguards, the same attains finality insofar as elections ensuing immediately thereafter are concerned. Those included in the rolls acquire a right to cast a vote in the constituency, in which they are registered while others, who do not find place in the list of voters for the constituency may have a right to have the names added in accordance with the procedure prescribed, but any such addition will not have any effect if the same is made after the filing of the nomination papers and before the completion of the election. Such additions would therefore be relevant only for purposes of the future elections.

7. It is not the case of the petitioners in these petitions that they had filed objections to the inclusion or exclusion of any voter at the time of the preparation of the rolls or their revision. It is not therefore possible for them to question the validity of any such inclusion or exclusion in these proceedings. That is especially so when the entitlement of a voter to be registered in any constituency depends largely on facts, which entitle or disentitle him to any such inclusion. These facts may require verification before a direction for making any entry can be issued. Such an enquiry is neither necessary nor feasible in the present extraordinary writ proceedings. In cases, where the petitioner-candidates have found fault with the inclusion of certain voters in their constituency or exclusion of such voters from their respective constituencies a hearing to those included or excluded is also necessary not only on the principles of natural justice, but in terms of the provisions of the Act and the Rules referred to earlier. None of the voters, who

have, according to the petitioners, been improperly included or excluded from the electoral rolls of the constituencies have been added as party respondents to these proceedings. No finding can therefore be recorded in regard to the validity of their inclusion or exclusion. The challenge to the electoral rolls and consequential relief, which the petitioners have prayed for is, in the circumstances, unsustainable. This would not however prevent the petitioners or anyone aggrieved of the preparation of the rolls to raise objections to the inclusion or exclusion of any voter from any constituency at the appropriate stage, in which event the authorities are expected and indeed duty-bound to look into the objections on their merits and determine the same in accordance with law.

8. With the above observations, these writ petitions fail and are hereby dismissed, but in the circumstances without any orders as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com