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Court : Karnataka Dharwad

Decided On : Feb-13-2012

Judge : B.S. Patil

Appeal No. : Writ Petition No. 66135 of 2011

Appellant : Nagappa

Respondent : Gangappa

Advocate for Pet/Ap. : For the Petitioner: S.S. Yadrami, Advocate. For the Respondent: G.A. Holeyannavar, S.C. Koppad, Advocates.

Judgement :

B.S. Patil, J

1. In this writ petition, petitioner is challenging the order dated 30.08.201 passed by the learned Civil Judge (Jr. Dn), Hungund in Election Petition No. 1/2010. By the impugned order, the court below has allowed the election petition filed by the respondent herein and has declared him as elected candidate by setting aside the election of the petitioner.

2. Election to the members or the Grama Panchayat, Hiremagi was held on 12.05.2010. The votes were counted or 17.05.2010. It was noticed that the petitioner and the respondent had obtained equal votes i.e. 200 each. Therefore, the method of declaring the candidate elected by lot was adopted as per the

Rules. The petitioner emerged successful in the lot and was declared elected. The respondent herein, aggrieved by the decision, filed the election petition challenging the said election.

The court below appointed a court commissioner on 2.7.2011 to recount the votes. The court commissioner reported that the respondent had secured 203 votes whereas the petitioner got only 202 votes out of the total of 405 votes. As the petitioner objected for the recounting done by the Court commissioner, on the direction of the court, the court commissioner again recounted the votes and reported that both petitioner and respondent had secured 201 votes each. Thereafter, with the consent of both parties, the court has proceeded to decide the election by lot, the court below has made use of ten chits. Out of them, eight were blank chits and in two chits the names of the petitioner and the respondent were written. All the ten chits were mixed and the parties were asked to pick up one each among the lot. Petitioner picked up a chit. When the same was opened the name of the respondent was written in it. Accordingly, the court declared the respondent as having been duly elected.

3. Aggrieved by this order, the present writ petition is filed.

4. I have heard the learned counsel for the petitioner.

5. Learned counsel for the petitioner submits that use of blank chits and mixing the same with other chits by the court below while permitting the parties to pick up the chits, is itself contrary to the procedure and therefore, the method adopted by the court is illegal.

6. Section 21 of the Karnataka Panchayat Raj Act, 1993, which provides the procedure to be adopted in case of equality of votes, reads as under. -

“21. Procedure in case of equality of votes - If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates to be declared elected, then the Civil Judge (Junior Division) shall decide between them by lot and proceed as if the one on whom the lot falls had received an additional vote.”

In the instant case, learned Judge has decided by conducting the lot and has proceeded to declare the person who has picked up the chit wherein his name is written, as duly elected. Merely because some blank chits were also included in the lot the procedure cannot be held to be vitiated. There is nothing in the Rule which shows that the procedure adopted by the court below in the instant case is one that is not provided for or alien to the recognized principle. The petitioner himself has agreed for declaring the result by adopting the system of lot. This is evident from the impugned order. The petitioner cannot now be permitted to turn around and question the very procedure and method adopted in declaring the result by adopting the lot system. The contention urged by the petitioner that the recounting ought to have been done with the help of an expert and the appointment of court commissioner itself was not in accordance with law, cannot be accepted as the commissioner has been appointed and the recounting has been done with the consent of both parties.

7. In fact, the petitioner had opposed the report of the Court Commissioner who had earlier counted the votes and found that the respondent herein had secured one vote more than the petitioner. Accepting the objection raised by the petitioner the court commissioner was again asked to recount the votes for the second time. When the votes were recounted for the second time, it transpired that both petitioner and the respondent had secured equal number of votes. Therefore, with the consent of the parties the lot system was adopted in which the respondent has emerged successful and accordingly court below has declared him as elected. Therefore, I do not find any illegality in the order passed.

Hence, the writ petition is dismissed.

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