

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 09<sup>TH</sup> DAY OF MAY 2023**

**PRESENT**

**THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR**

**AND**

**THE HON'BLE MR. JUSTICE VENKATESH NAIK T**

**WRIT APPEAL NO. 537/2023 [LB-BMP]**

**BETWEEN:**

1. THE CHIEF COMMISSIONER AND DISTRICT ELECTION OFFICER,  
BRUHAT BENGALURU MAHANAGARA PALIKE,  
N.R.SQUARE, BANGALORE – 560 002.
2. THE ASSISTANT COMMISSIONER (ELECTION),  
BRUHAT BENGALURU MAHANAGARA PALIKE,  
N.R.SQUARE, BANGALORE – 560 002.

..APPELLANTS

(SRI. B.L.SANJEEV/B.S.SRINIVAS,  
ADVOCATE FOR APPELLANTS)

**AND:**

1. BRUHAT BANGALORE HOTELS ASSOCIATION ®  
REPRESENTED BY ITS SECRETARY,  
SRI VEERENDRA N.KAMAT,  
S/O LATE N.D.KAMAT,  
AGED ABOUT 45 YEARS  
NO.87, SHRESTA BHOOMI,  
UNIT NO.307, 3<sup>RD</sup> FLOOR,  
K.R.ROAD, V.V.PURAM,  
BANGALORE – 560 004.

2. SRI KRISHNA RAJ S.P.,  
S/O LATE SRIRAM,  
AGED ABOUT 43 YEARS,  
PROPRIETOR OF HOTEL NISARGA GRAND,  
YMCA COMPOUND, NRUPATUNGA ROAD,  
BANGALORE – 560 001.
  
3. THE RETURNING OFFICER,  
SHIVAJINAGAR VIDHANASABHA  
CONSTITUENCY – 162,  
BBMP OFFICE, QUEENS ROAD,  
BENGALURU – 560 052.
  
4. INSPECTOR OF POLICE,  
ULSOOR GATE POLICE STATION,  
HUDSON CIRCLE, BANGALORE – 560 002.

...RESPONDENTS

**(Sri Satish, Advocate for M/s. Bhagwat Associates for Respondent No.1 and 2)**

THIS WRIT APPEAL FILED BY UNDER SECTION 4 OF THE HIGH COURT OF KARNATAKA ACT PRAYING TO SET ASIDE THE ORDER DATED 09.05.2023 PASSED BY THE LEARNED SINGLE JUDGE IN W.P.NO.10089/2023 AND CONSEQUENTLY DISMISS THE WRIT PETITION.

THIS WRIT APPEAL COMING ON FOR ORDERS THIS DAY, THE **HON'BLE SRKKJ** DELIVERED THE FOLLOWING:

### **JUDGMENT**

This appeal by the respondent No.1 and 2 in W.P.No.10089/2023 is directed against the impugned order

dated 09.05.2023 whereby the public notice dated 09.05.2023 issued by the Appellant No.2 - Assistant Commissioner (Election) was stayed by the learned Single Judge.

2. Heard the learned Counsel Sri B.L.Sanjeev who has appeared along with Senior Counsel Sri Jaikumar S Patil for the appellants and also the learned counsel for respondent Nos.1 and 2 and perused the materials on record.

3. In addition to re-iterating the various contentions urged in the appeal and referring to the materials on record, the learned Senior Counsel for the appellant submits that despite having submitted the representation dated 29.04.2023 vide Annexure-B the Chief Electoral Officer requesting for permission to provide free food etc. to all the persons who cast their votes in the ensuing Karnataka State Election scheduled to be conducted on 10.05.2023, the Chief Electoral Officer has issued an endorsement dated 30.04.2023 directing the respondent No.1 - Writ Petitioner No.1 - Association to approach the concerned Returning Officer. It is submitted that in the mean while the respondent

No.2, the Proprietor of Hotel Nisarga Grand sought for and obtained permission to distribute food etc. in its Restaurant at Nrupatunga Road vide permission at Annexure-E dated 07.05.2023. It is the grievance of the appellants that though specific permission was granted only in favour of respondent No.2 – Nisarga Grand, other hotels have also attempting to follow suit and distribute free food, coffee etc. and have put up boards outside their respective Restaurants which led to appellant No.2 issuing the impugned public notice dated 09.05.2023 specifically informing the said Restaurants that the same would be considered as an inducement within the meaning of Section 171B of Indian Penal Code and also violation of Moral Code of Conduct. It is therefore submitted that despite the aforesaid facts and circumstances, the learned Single Judge erred in passing the impugned order staying Annexure-F and as such, the appellants are before this Court with the present appeal.

4. Per contra, the learned counsel for respondent Nos.1 and 2 i.e. the Writ Petitioners submit that putting up of boards by the members of Respondent No.1 – Association is neither inducement under Section 171B of Indian Penal Code



nor does the same violate the model code of conduct particularly when the model code of conduct was not applicable to either Respondent No.1 – Association or its members who were entitled to put up such boards. It is therefore submitted that the impugned order passed by the learned Single Judge being just and proper does not warrant interference by this Court in the present appeal.

5. We have given our anxious consideration to the rival submissions and perused the material on record. A perusal of the impugned order passed by the learned Single Judge would indicate that apart from the same being a well reasoned and proper order, liberty has been reserved in favour of the appellants to take action against the concerned Hoteliers in case of such violation. In addition thereto the learned Single Judge have also imposed several terms and conditions upon the respondent Nos.1 and 2 and as such the impugned order cannot be termed as illegal or arbitrary warranting interference by this Court in the present appeal.

6. A perusal of the impugned order will also indicate that the learned Single Judge has taken into account the

specific permission granted in favour of Respondent No.2, Proprietor of Hotel Nisarga Grand and in view of the fact that the impugned order does not purport to withdraw the said permission, we are of the view that Anneuxre-F would not be applicable in so far as Hotel Nisarga Grand is concerned in the light of the specific permission granted by the appellants in favour of Hotel Nisarga Grand on 07.05.2023.

7. In so far as the impugned order containing the allegations regarding inducement and violation of model code of conduct against hotels other than Hotel Nisarga Grand is concerned, it is necessary to state that neither the impugned order nor our order will come in the way of the appellant taking recourse to such remedies as available in law against the members of respondent No.1 – Association or any of the other Hotels in accordance with law.

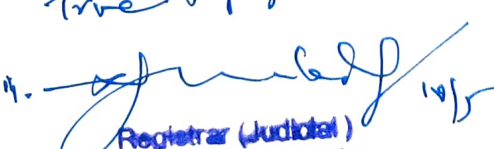
8. It is needless to state that in the event appellants take action against the respondent No.1 – Association and/or other Hotels, the said persons against whom the appellants take legal action would also be entitled to defend, contest and oppose the same in accordance with law.

9. In the result, we pass the following:

**ORDER**

- i) Appeal is hereby disposed of.
- ii) The impugned order dated 09.05.2023 passed in W.P.No.10089/2023 is hereby modified.
- iii) Liberty is reserved in favour of the appellants to take such remedies as available in law against the members of the respondent No.1 - Association and/or any of the other Hotels in accordance with law.
- iv) Liberty is also reserved in favour of respondent Nos.1 and 2 and other hotels to defend/contest such actions taken by the appellants in accordance with law.
- v) Except for the aforesaid modifications, the remaining portion of the impugned order shall remain unaltered and the same is hereby confirmed.

**Sd/-  
JUDGE**

'True Copy'  
11.   
Registrar (Judicial)  
High Court of Karnataka  
Bangalore-560001

**Sd/-  
JUDGE**