



THE DEPUTY COMMISSIONER
SHIVAMOGGA DISTRICT,
SHIVAMOGGA - 577 201

5. THE TAHASILDAR
HOSANAGARA TALUK - 577 418
SHIVAMOGGA DISTRICT

...RESPONDENTS

(BY SRI.KAMALAKARA S.M., ADVOCATE FOR C/R-1;
SMT.NILOUFER AKBAR, AGA FOR R-4 & R-5)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 31/08/2023 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HONBLE COURT IN WP NO.22652/2021 BY ALLOWING THIS WRIT APPEAL IN THE ENDS OF JUSTICE AND CONSEQUENTLY ALLOW THE WRIT PETITION FILED BY THE PETITIONER IN WP NO.22652/2021 BY SETTING ASIDE THE ORDER DATED 29/11/2021 PASSED BY THE LEARNED SENIOR CIVIL JUDGE AND JMFC, HOSANAGARA IN ELECTION MISC. NO.2/2021 AND CONSEQUENTLY DISMISS THE ELECTION PETITION.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, **CHIEF JUSTICE .,** DELIVERED THE FOLLOWING:

JUDGEMENT

This intra court appeal seeks to lay a challenge to a learned Single Judge's order dated 31.08.2023 whereby W.P.No.22652/2021 (LB-ELE) filed by the appellant having been dismissed, the order dated 29.11.2021 annulling his election has been upheld.



2. Learned counsel for the appellant vehemently argues that the Election Tribunal which decided Election Misc. No.2/2021 could not have been allowed inasmuch as appellant had declared his 'criminal antecedents' in the Affidavit/Nomination Papers; he further argues that this aspect of the matter has been lost sight of by the learned Single Judge but for which the writ petition would not have been dismissed. So arguing he seeks invalidation of the impugned order and allowing of the writ petition.

3. Learned counsel appearing for the 1st Respondent herein who was the Election Petitioner and the learned Additional Government Advocate appearing for Respondent Nos. 3 & 4 resist the appeal both on maintainability and on merits. They contend in support of the impugned order of the learned Single Judge and also the order of the Election Tribunal, and the reasons on which these orders have been structured.

4. Having heard the learned counsel for the parties and having perused the appeal papers, we decline indulgence in the matter firstly on the ground of very maintainability of the intra



court appeal inasmuch as the challenge to the order of the Election Tribunal was by invoking Article 227 of the Constitution of India, which vests a limited supervisory jurisdiction in the High Court, the other provision namely Article 226 having been ornamentally mentioned in the pleadings of the appellant herein who was the writ petitioner. Admittedly, the order annulling the election of the appellant was made by the statutory Tribunal that has been constituted, may be *ex officio* under the provisions of the Karnataka Panchayat Raj Act, 1993. Such challenges are essentially treated under Article 227 and not Article 226. If that be so, an intra court appeal does not lie. This view gains support from a Seven Judge Bench decision of this court in **TAMMANNA vs. RENUKA, 2009 SCC Online KAR 123.**

5. Even on merits, learned Single Judge after examining the matter has recorded a finding that the appellant herein had criminal antecedents and the same have not been disclosed in the affidavit accompanying the nomination papers. In the process of ensuring purity of elections, the Apex Court in a catena of decisions has declared that the disclosure of such antecedents is a matter of right of the electors who can form an



informed decision about the candidates in the electoral fray and that non-disclosure therefore is a ground for setting aside the election of Returned Candidates. The learned Single Judge has rightly framed the impugned order keeping in view the Apex Court decision in **PEOPLES UNION FOR CIVIL LIBERTIES vs. UNION OF INDIA, (2003) 4 SCC 399**. Therefore the contra argument of learned counsel for the appellant does not merit acceptance.

6. It is pertinent to note that the law relating to disclosure of criminal antecedents of the candidates in the Electoral fray has further marched from April to May and now to the June of life. The Constitution Bench of the Apex Court in **PUBLIC INTEREST FOUNDATION vs UNION OF INDIA, AIR 2018 SC 4550** at Paragraph Nos. 116 to 118 has *inter alia* said as under:

"116. Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court :-

(i) Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.

(ii) It shall state, in bold letters, with regard to the criminal cases pending against the candidate.



(iii) If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

(iv) The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

(v) The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers.

117. These directions ought to be implemented in true spirit and right earnestness in a bid to strengthen the democratic set-up. There may be certain gaps or lacunae in a law or legislative enactment which can definitely be addressed by the legislature if it is backed by the proper intent, strong resolve and determined will of right-thinking minds to ameliorate the situation. It must also be borne in mind that the law cannot always be found fault with for the lack of its stringent implementation by the concerned authorities. Therefore, it is the solemn responsibility of all concerned to enforce the law as well as the directions laid down by this Court from time to time in order to infuse the culture of purity in politics and in democracy and foster and nurture an informed citizenry, for ultimately it is the citizenry which decides the fate and course of politics in a nation and thereby ensures that —we shall be governed no better than we deserve, and thus, complete information about the criminal antecedents of the candidates forms the bedrock of wise decision-making and informed choice by the citizenry. Be it clearly stated that informed choice is the cornerstone to have a pure and strong democracy.

118. We have issued the aforesaid directions with immense anguish, for the Election Commission cannot deny a candidate to contest on the symbol of a party. A time has come that the Parliament must make law to ensure that persons facing serious criminal cases do not enter into the political stream...”



The State Election Commission and other Agencies associated with it the election process should implement the directions of the Apex Court by issuing or incorporating requisite forms in the matter of elections to all Local Bodies in the State. This direction we are issuing so that purity in politics in general and purity in election process in particular is achieved.

In the above circumstances, this appeal being devoid of merits is liable to be and accordingly dismissed, costs having been reluctantly made easy.

The Registry is directed to send a copy of this order to the State Election Commission, Bengaluru and to the Chief Secretary, Government of Karnataka, Vidhana Soudha, Bengaluru – 560 001, by Speed Post immediately.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Snb/AHB
List No.: 1 Sl No.: 15