



**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 15TH DAY OF SEPTEMBER 2022

BEFORE

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

WRIT PETITION No.200133 OF 2022 (LB-ELE)

BETWEEN:

Devandrappa, S/o.Basappa,
Age: 38 years, Occ: Agriculture,
R/o.Village Nagarhal, Tq.Lingasugur,
Dist: Raichur – 584 122. ... Petitioner

(By Sri Ameet Kumar Deshpande, Senior Advocate for
Sri Ganesh Subhashchandra Kalaburagi, Advocate)

AND:

1. Huligemma, W/o.Siddappa,
Age: 23 years, Occ: Agriculture,
R/o.Village Nagarhal, Tq.Lingasugur,
Dist: Raichur – 584 122.
2. Returning Officer,
Gram Panchayat Office,
Nagarhal-3 Constituency
Nagarhal.
Present address:

Vijaykumar, S/o.Huliyappa,
Professor, GPT College,
Karadkalli Road,
Tq.Lingasugur,
Dist: Raichur – 584 122.

3. Alliya Begum, W/o.Anwar Peera,
Age: 50 years, Occ: Agriculture,
R/o.Village Nagarhal,
Tq.Lingasugur,
Dist: Raichur – 584 122. ... Respondents

(By Sri A.M.Nagaral, Advocate for R1:
Notice to R2 and R3 dispensed with)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the order dated 03.01.2022 passed on IA No.6 in Election Petition No.05/2021 on the file of Senior Civil Judge and JMFC at Lingasugur vide Annexure-E and etc.

This petition, coming on for preliminary hearing 'B' Group, this day, the Court made the following:

ORDER

In this writ petition, the petitioner has called into question the order dated 03.01.2022 (Annexure-E) passed by the Senior Civil Judge and JMFC, Lingasugur on IA No.6 in E.P.No.5/2021 whereby IA filed under Order 7 Rule 11 r/w. Section 151 of CPC

and Section 17(1) of the Karnataka Panchayatraj Act, 1993 (for short, '1993 Act') is dismissed.

2. The brief facts of the case are that the petitioner and respondent No.1 herein have contested for Grama Panchayat election from Nagarhal-3 Constituency which comes under Nagarhal Grama Panchayat, Lingasugur Taluk, Raichur District.

3. The further case of the petitioner is that in the election the petitioner has been declared as a winning candidate for Nagarhala-3 Constituency. The respondent No.1 was defeated in the election. Hence, he has filed Election Petition under Section 15 of the 1993 Act before the Court of Senior Civil Judge and JMFC, Lingasugur on the ground that counting of votes were not held properly and there was dereliction of

duty on the part of respondent No.2 – returning officer and sought for recounting of the votes.

4. After service of notice, the petitioner herein appeared through the counsel and has filed objection to the main petition and filed IA No.6 under Order 7 Rule 11 r/w. Section 151 of CPC and Section 17(1) of the 1993 Act for dismissal of the Election Petition on the ground that the Election Petition is not presented by the first respondent himself and second ground they have raised is mis-joinder of parties. Pursuant to the application, respondent No.1 herein has filed objections. After considering the contention of both the parties, by impugned order dated 03.01.2022, vide Annexure-E, the application filed by the petitioner has been dismissed. Being aggrieved, petitioner is before this Court.

5. Sri Ameet Kumar Deshpande, learned Senior Counsel appearing for Sri Ganesh Subhashchander Kalaburagi for the petitioner herein contended that as per Section 15 of the 1993 Act the Election Petition should be presented by the respondent No.1 herself. In this case, Election Petition is presented by the first respondent's counsel. The Election Petition itself is contrary to Section 15 of the 1993 Act. Hence, the election petition is not maintainable. In support of his contention, he relied on the judgment of the Hon'ble Apex Court in the case of **G.V.SREERAMA REDDY & ANOTHER vs. RETURNING OFFICER & OTHERS** reported in **AIR 2010 SC 133**.

6. Secondly, under Section 15 of the 1993 Act, it is prescribed that the petitioner can join only the candidates other than the petitioner and any other candidate against whom allegation of any corrupt practice are made in the petition as a respondent to

Election Petition. In this case, respondent No.1 has impleaded the 'returning officer' as a party - respondent and the same is contrary to Section 15(2) of the 1993 Act. If any Election petition is filed before the designated Court not complying with the provisions of Section 15, the same has to be dismissed. In support of his contention, he has relied on the judgment of this Court in the case of **B.S.YEDIYURAPPA vs. MAHALINGAPPA** reported in **AIR 2001 Kar.61**. Therefore, he contended that the impugned order passed by the designated court is contrary to the provisions of Sections 15 and 17 of the 1993 Act. Hence, he sought for allowing the petition.

7. Per contra, Sri A.M.Nagral, learned counsel appearing for the respondent No.1 has contended that the Election Petition has been presented by the first respondent's counsel. At the time of presentation before the designated court, the first respondent was

present. He contended that even in the objection filed by the first respondent to the IA filed by the petitioner, he has specifically stated that at the time of presenting the Election Petition, the first respondent was present before the designated court.

8. He further contended that it is very clear from the order sheet that on the very same day, when the Election Petition has been presented on 27.01.2021, there was reference in the order sheet that the first respondent was present before the Court. Therefore, he contended that the first respondent has complied the procedure prescribed under Section 15(1) of the 1993 Act.

9. He further contended that the main allegation made by the petitioner is that the counting was not done properly. Hence, the returning officer is a necessary party in this case. Even if this Court holds that he is not a necessary party, he can be deleted

but, Election petition cannot be dismissed on that ground.

10. He further contended that the judgment of this Court in the case of **B.S.YEDIYURAPPA (supra)** has been reversed by the Hon'ble Apex Court in Civil Appeal No.734/2001 disposed of on 10.10.2001 reported in **(2002) 1 SCC 301** holding that the Election Petition cannot be dismissed for mis-joinder of the parties. At the most the Court can delete the unnecessary party. Therefore, he sought for dismissal of the petition.

11. Heard the learned counsel appearing for the parties and perused the writ papers.

12. It is not in dispute that the petitioner and respondent No.1 herein have contested for Grama Pandhayat election from Nagarhale-3 Constituency which is coming under the Nagarhale Grama

Panchayat. The returning officer has declared the petitioner as winning candidate from the said Constituency. The respondent No.1, who is unsuccessful in the election filed Election Petition before the designated court under Section 15 of the 1993 Act on 27.01.2021. The Election petition has been produced as Annexure-A. It is relevant to extract the provisions of Section 15, which reads as follows:

"15. Election petition.- (1) No election to fill a seat or seats in a Grama Panchayat shall be called in question except by an election petition presented on one or more of the grounds specified in sub-section (1) of section 19 and section 20 to the [Civil Judge (Junior Division)] within whose territorial jurisdiction the panchayat area concerned or the major portion of the panchayat area concerned is situate by any candidate at such election or by any voter qualified to vote at such election together with a deposit of five hundred rupees

as security for costs, within thirty days from , but not earlier than, the date of declaration of the result of the election of the returned candidate or if there are more than one returned candidate at the election, and if the dates of declaration of the results of their election are different, the last of those dates.

(2) A petitioner shall join as respondent to his petition,-

(a) where the petitioner, in addition to claiming a declaration that the election of all or of any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegation of any corrupt practice are made in the petition;

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested

by the petitioner under his own signature to be true copy of the petition.

Explanation.- The expression "returned candidate" means a candidate who has been declared as duly elected."

13. By a plain reading of the above provision, it is clear that the Election Petition has to be presented by any candidate at such election or by any voter qualified to vote at such election together with deposit of Rs.500/- as security deposit for the cost. There is an identical provision, i.e., Section 81 of the Representation of the Peoples Act, 1951 (for short, 'R.P. Act'), which is extracted hereinafter:

"81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in [sub-section (1)] of section 100 and section 101 to the [High Court] by any candidate at such election or any elector [within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one

returned candidate at the election and the dates of their election are different, the later of those two dates].

Explanation.— In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

2.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.]"

14. The Hon'ble Apex Court in the case of **G.V.SREERAMA REDDY (supra)** has held that the Election Petition is to be presented by any candidate or elector relating to the election, personally to the authorized officer of the High Court. The relevant portion of the judgment is extracted hereinbelow:

"15) While interpreting a special statute, which is a self-contained code, the Court must consider the intention of the Legislature. The reason for this fidelity towards the Legislative intent is that the statute has been enacted with a specific purpose which must be measured from the wording of the statute strictly construed. The preamble of the Representation of the People Act makes it clear that for the conduct of elections of the Houses of Parliament or the Legislature of each State, the qualification and dis-qualification for membership of those Houses, the corrupt practice and other offences in connection with such allegations the Act was enacted by the Parliament. In spite of existence of adequate provisions in the Code of Civil Procedure relating to institution of a suit, the present Act contains elaborate provisions as to disputes regarding elections. It not only prescribes how election petitions are to be presented but it also mandates what are the materials to be accompanied with the election petition, details regarding parties, contents of the same, relief that may be claimed in the petition. How trial of election petitions are to be conducted has

been specifically provided in Chapter III of Part VI. In such circumstances, we are of the view that the provisions have to be interpreted as mentioned by the Legislature.

16) One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a variety of consequences. Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the Legislature has provided that the petition must be presented "by" the petitioner himself, so that at the time of presentation, the High Court may make preliminary verification which ensure that the petition is neither frivolous nor vexatious.

17) In this context, earlier decisions of this Court regarding the interpretation of Section 81(1) must be understood. In Sheo Sadan Singh vs. Mohan Lal Gautam, 1969 (1) SCC 408, in paragraph 4, this court held that:

"The High Court has found as a fact that the election petition was presented to the

registry by an advocate's clerk in the immediate presence of the petitioner. Therefore, in substance though not in form, it was presented by the petitioner himself.

Hence the requirement of the law was fully satisfied."

Learned counsel for the appellant submitted that even though the "form" of the provision was not followed, i.e. the petition was not presented "by" the petitioner "personally", in "substance", it was followed. It is to be noted that in Sadan Singh's case, it is not in dispute that the petition was presented to the Registry in the immediate presence of the petitioner. In other words, the officer authorized by the High Court had an opportunity to verify him but in the case on hand, admittedly, it was presented only by the advocate and the petitioners were not present before the Registrar (Judicial). In view of the same, the said decision is not helpful to the appellant's case. This is because the petitioner therein had, in substance, complied with the provision as strictly construed.

18) *Learned counsel appearing for the appellants relied on a decision of the High Court of Rajasthan (Jaipur Bench) in Bhanwar Singh vs. Navrang Singh, AIR 1987 Raj 63. In the case before the learned Single Judge, the election petition had been presented by one Rajendra Prasad, Advocate and not by the petitioner himself. It was argued by learned counsel for the petitioner therein that election petition had been validly presented under Section 81 (1) of the Act because Section 81 (1) of the Act only makes a provision as to who can file an election petition and does not deal with as to who should actually present it before the Registry. It is further submitted that Section 81 of the Act nowhere provides that the petitioner should be physically present at the time of presentation of the election petition. The learned Single Judge, after adverting to the words - "by", "presented" concluded that these words used in Section 81(1) of the Act have to be given wide meaning and found that election petition filed through an advocate without the presence of candidate or elector is valid. We are unable to accept the said conclusion.*

19) We have already pointed out that in spite of provisions in CPC and Evidence Act relating to institution of suit and recording of evidence etc. this Act provides all the details starting from the presentation of the election petition ending with the decision of the High Court. In such circumstances, it is but proper to interpret the language used by the Legislature and implement the same accordingly. The challenge to an election is a serious matter. The object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail vexatious litigations. If we consider sub-section (1) along with the other provisions in Chapter II and III, the object and intent of the Legislature is that this provision i.e. Section 81(1) is to be strictly adhered to and complied with.

20) In view of the endorsement by the Registrar (Judicial) on 07.07.2008 that the election petition was presented only by an advocate and not by the election petitioners, we accept the reasoning of the High Court in dismissing the election petition. We further hold that as per sub-section (1) of Section 81, election petition is to be presented by any

candidate or elector relating to the election personally to the authorized officer of the High Court and failure to adhere such course would be contrary to the said provision and in that event the election petition is liable to be dismissed on the ground of improper presentation. Since, the High Court has correctly dismissed the election petition, the civil appeal fails and the same is dismissed with no order as to costs."

In view of the above, it is clear that under Section 15(1) of the 1993 Act, the Election Petition has to be presented by the petitioner to a Designated Court. Even the advocate of the petitioner presented the petition to the Designated Court in the immediate presence of the petitioner, that fulfils the requirement of law.

15. In the case on hand, as can be seen from the Election Petition produced at Annexure-A, as per the notings of the officer Election petition has been presented by the advocate for respondent No.1

herein. The order sheet of 27.01.2021 speaks that respondent No.1 herein was present before the Court. In the impugned order there is no reference or finding of the Court that when the Election Petition has been presented, whether respondent No.1 was present or not. In view of the above, the matter requires to be remitted back to the Senior Civil Judge and JMFC, Lingasugur for reconsideration of the matter as to whether the respondent No.1 herein was present when the Election Petition was presented by the advocate for respondent No.1?

16. In respect of second contention is concerned, as per Section 15(2) of the 1993 Act, the petitioner has to join all the candidates other than the petitioner as a respondent to his petition. There is an identical provision in Representation of Peoples Act i.e., Section 82, which is extracted hereinbelow:

"82. Parties to the petition.—A petitioner shall join as respondents to his petition--

(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition."

17. This Court in the case of **B.S.YEDIYURAPPA (supra)** has dismissed the Election Petition for mis-joinder of parties, i.e., the returning officer. The Hon'ble Apex Court in Civil appeal has held that if the returning officer is not a necessary party, the Court can delete but it cannot be dismissed on that ground. The relevant portion is extracted hereinbelow:

"4. Our attention has been drawn to the judgment of this Court in *Muraka Radhey Shyam Ram Kumar v. Roop Singh Rathore & Ors.*, [1964] 3 SCR 573. A Constitution Bench considered the very situation with which we are now concerned. It noted that the foundation of the argument before it was that there had been non-compliance with the provisions of Section 82. What had happened there, as here, was this : All the parties whom it was necessary to join under the provisions of Section 82 were joined as respondents to the petition, but other respondents, in excess of the requirements of Section 82, were also joined. The question, therefore, was did this amount to non-compliance with, or contravention of, the provisions of Section 82. Learned counsel for the appellant in that case wanted the Court to read Section 82 as though it said that the persons named therein and no others should be joined as respondents to the petition. He wanted the Court to add "and no others" to the Section. The Court found no warrant for such a reading of Section 82. It held that if all the necessary parties had been joined to the election petition, the

circumstance that a person who was not a necessary party had also been impleaded did not amount to a breach of provisions of Section 82 and no question of dismissing the election petition arose. It was open to the Tribunal (or, here, the Court) to strike out the name of the party who was not a necessary party within the meaning of Section 82. The position, it was noted, would be different if a person who was required to be joined as a necessary party under Section 82 was not impleaded as a party to the petition.

5. This judgment in Muraka Radhey Shyam Ram Kumar was not noticed by the learned Single Judge in the judgment under challenge but was distinguished on the ground that it was confined to its own facts. We find it difficult to agree. This is not a judgment that is confined to its own facts but is an elucidation of the law set out in Section 82 of the said Act.

6. In Mohan Raj v. Surendra Kumar Taparia & Ors., [1969] 1 SCR 630 the same position was reiterated. It was held that in an election petition the court can strike out a party who is not necessary but, by reason of

the provisions of the said Act, the power of impleadment, cannot be used if a necessary party has not been joined.

7. In Jyoti Basu & Ors. v. Debi Ghosal & Ors., [1982] 1 SCC 691, this Court dealt with Section 82 of the said Act, and it is this judgment which the High Court principally relied upon. The ratio of this judgment, is that a person who is not a candidate cannot be joined as a respondent to an election petition. The High Court, however, failed to notice that, having so held, this Court ordered the deletion of the superfluous party from the array of parties.

8. It is, therefore, clear, on the authorities of this Court, that those who are mentioned in Section 82 of the said Act must be made parties to an election petition and, if they are not, the election petition is one which does not comply with the provisions of Section 82 and must, therefore, be dismissed by reason of the terms of Section 86(1). It does not, however, follow that if to an election petition parties other than those who are necessary parties under Section 82 have been

impleaded, the election petition is one that does not comply with the provisions of Section 82 and must be dismissed. Such a petition can be amended by striking out from the array of parties those additionally impleaded.

9. The appeal is, accordingly, allowed. The judgment and order under appeal is set aside. The names of respondent Nos. 4 and 5 are deleted from the array of parties to the election petition. The election petition (No. 16 of 1999) is restored to the file of the High Court of Karnataka to be heard and disposed of on merits. Having regard to the time that has elapsed, this shall be done very expeditiously."

Therefore, it is clear that those who are mentioned in Section 15(2) of the said Act must be made parties to an election petition and if they are not made a party, the election petition does not comply with the provisions of Section 15 of the Act. The Election Petition has to be dismissed under Section 17(1) of the 1993 Act. If other than the parties mentioned in

Section 15(2) were made as parties, the Election Petition cannot be dismissed on that ground. Such a petition can be amended by striking out the names from array of parties.

18. In view of the above, the matter requires to be remitted back to the trial Court to consider these two grounds which have been urged by the petitioner herein and pass a fresh order in accordance with law.

19. Accordingly, writ petition is allowed. The order dated 03.01.2022 (Annexure-E) passed on IA No.6 in Election Petition No.5/2021 on the file of Senior Civil Judge & JMFC, Lingasugur is set aside and the matter is remitted back to the designating Court, i.e., Senior Civil Judge, Lingasugur to reconsider the application filed by the petitioner on IA No.6 keeping in view the above observations made in the order and also the judgments referred in this case.

It is also made clear that since it is an Election petition, the designated Court is directed to dispose of the matter as expeditiously as possible.

**Sd/-
JUDGE**

Cm/-