Muniraju Gowda P. M. vs Munirathna on 13 October, 2020

Equivalent citations: AIR 2021 SUPREME COURT 432, AIRONLINE 2020 SC 885

Author: V. Ramasubramanian

Bench: V. Ramasubramanian, A.S. Bopanna, S.A. Bobde

1

NON-REPORTABLE

IN THE SUPEME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NOS.6787-6788 OF 2020

SRI MUNIRAJU GOWDA P.M. … PETITIONER(S)

VERSUS

SRI MUNIRATHNA & ORS. …RESPONDENT(S)

ORDER

V. RAMASUBRAMANIAN, J.

1. Challenging the interim orders passed in two interlocutory applications, one seeking amendment of pleadings and the other for striking out prayer (c) in the main election petition, the election petitioner has come up with these Special Leave Petitions.

2. We have heard learned counsel appearing for the parties.

3. In the elections held to the Karnataka State Legislative Assembly on 28.05.2018, the first respondent was declared elected from Constituency No.154, namely Rajarajeshwari Nagar.

4. The petitioner herein challenged the election of the first respondent by way of an election petition in E.P.No.11 of 2018 before the High Court of Karnataka. The election petition was filed on 13.07.2018. After service of notice, the returned candidate who is the first respondent herein filed three interlocutory applications in I.A. Nos. 2, 3 and 4 of 2019, praying respectively for:□

(i) Striking out the pleadings in paragraphs 8□30;

(ii) Rejection of the election petition on the ground of lack of substratum; and

(iii) Striking out prayer (c) in the election petition.

5. The petitioner herein (the election petitioner) also filed two interlocutory applications in I.A. Nos. 1 & 4 of 2020, praying for:□

(i) Amendment of the election petition by incorporating additional pleadings; and

(ii) Leave to produce copies of 8 documents.

6. By a common order passed on 20.03.2020, the High Court

(i) partly allowed I.A.No.1 of 2020 filed by the election Petitioner;

(ii) fully allowed I.A. No.4 of 2020 filed by the election petitioner ;

(iii) rejected I.A. Nos. 2 and 3 of 2019 filed by the first respondent; and

(iv) allowed I.A. No.4 of 2019 filed by the first respondent for striking out prayer (c) in the election petition.

7. Aggrieved by that portion of the order of the High Court:□

(i) Allowing I.A. No.4 of 2019 filed by the returned candidate namely the first respondent and striking out prayer (c) in the election petition; and

(ii) Partially disallowing I.A. No.1 of 2020 filed by himself for introducing additional pleadings with reference to the substratum contemplated in section 101(b) of the Act, the election petitioner has come up with the above Special Leave Petitions.

8. The order impugned in the Special Leave Petitions is dated 20.03.2020 but certain events that happened during the pendency of the election petition, have now changed the entire complexion of the game. These events are as follows:□

(i) The first respondent herein along with 12 other elected members submitted their resignations from the membership of the house during the period from 01.07.2019 to 11.07.2019;

(ii) On the ground that the Speaker failed to take any decision on the resignation of those legislators including the first respondent herein, a few of them filed a writ petition in W.P.(C) No.872 of 2019 in this Court. This Court passed an order on 11.07.2019 in the said writ petition directing the Speaker to take a decision qua the resignations and to place the decision before this Court;

(iii) In the meantime, petitions for disqualification were moved before the Speaker of the Assembly against those 13 legislators including the first respondent herein;

(iv) In view of the said development, this Court passed a couple of interim orders on 12.07.2019 and 17.07.2019;

(v) On 23.07.2019 a trust vote was taken up for consideration and the resigned members including the first respondent did not attend. Thereafter, the Speaker passed 5 independent orders on 25.07.2019 and 28.07.2019 on the various petitions for disqualification. By these orders, the Speaker rejected the resignation of the members and disqualified all of them till the end of the term of the 15th State legislative Assembly;

(vi) Challenging the said orders of the Speaker, 9 writ petitions came to be filed on the file of this Court, one of them being W.P.(C) No.998 of 2019. In the said writ petition, there were 6 petitioners, one among them being the first respondent herein. All the 9 writ petitions were disposed of by this Court by a judgment dated 13.11.2019. By the said judgment, this Court upheld the order of the Speaker on the disqualification petitions but with a slight modification. The modification was to the effect that a member disqualified under the 10th Schedule shall be subjected to sanctions provided under Articles 75(1B), 164(1B) and 361B of the Constitution which bars the disqualified member from being appointed as a Minister or from holding any remunerative political post from the date of disqualification till the date on which the term of his office would expire or if he is re□elected, whichever is earlier.

9. As a result of the above judgment of this Court, the first respondent ceased to be a member of the 15 th Karnataka State Assembly. In the judgment dated 13.11.2019, this Court made it clear that the disqualification would relate back to the date when the act of defection took place. This Court also held that a pending or impending disqualification action does not become infructuous by the submission of a letter of resignation, if the act of disqualification had arisen prior to the letter of resignation.

10. In the light of the events that happened as aforesaid, during the pendency of the election petition, let us now see the reliefs sought by the election petitioner before the High Court of Karnataka in E.P. No.11 of 2018. The reliefs sought were as follows:□"Wherefore, the petitioner most respectfully pray that this Hon'ble Court be pleased to –

a) Set aside Election of Respondent No. 1 to the 15 th Karnataka Legislative Assembly from Constituency No. 154, Rajarajeshwarinagar;

b) To declare the return candidate Respondent No. 1 as void of corrupt electoral practice U/Sec. 123 of R.P Act 1950;

c) To declare the petitioner as duly elected to the seat of Karnataka Legislative Assembly Rajarajeshwarinagar Constituency No. 154;

d) Pass such other order/s as this Hon'ble Court deems fit to grant, in the interest of justice and equity;

e) Cost of the proceedings"

11. There can be no quarrel about the fact that as on date, the grant of relief to the petitioner herein in terms of prayer (a) is only academic. This is for the reason that instead of the High Court setting aside the election of the first respondent, the Speaker himself has disqualified the first respondent, albeit on a different ground and the disqualification has been upheld by this Court during the pendency of the election petition.

12. However, the contention of Mr. Shekhar Naphade, learned senior counsel for the petitioner is that the petitioner can still pursue prayer (b) and in the event of his success, he may be entitled to press for the grant of relief in terms of prayer (c). Technically, the learned Senior Counsel is right, since the involvement of a person in corrupt practices, in an election, does not get washed away, by his subsequent resignation.

13. But there is something that stares at the face. It appears that when the results were announced, the petitioner was declared to have secured 82,572 votes, while the first respondent was declared to have secured 1,08,064 votes. Therefore, in terms of Section 101 of the Representation of the People Act, 1951 (for short the 'Act') the election petitioner should satisfy:□

(i) that he received a majority of the valid votes; or

(ii) that but for the votes obtained by the returned candidate by corrupt practices, he would have obtained a majority of the valid votes.

14. As observed by the High Court, pleadings necessary for the High Court to form an opinion in terms of Clause (a) or Clause (b) of Section 101 of the Act were not there in the election petition. Under Section 83(1)(a) of the Act, an election petition should contain a concise statement of material facts. What constitutes "material facts" would depend upon the ground on which the election of a returned candidate is challenged. Several grounds are enumerated in Section 100(1) of the Act and pleading of material facts co□relatable to the grounds set out in Section 100(1), forms the bedrock of an election petition.

15. In the election petition, as it was originally filed, there was no averment of material facts traceable to the ingredients incorporated in Clauses (a) and (b) of Section 101. This is why the first respondent herein made the first strike by moving an application in I.A.No.4 of 2019 for striking out

prayer (c). Actually, I.A.No.4 of 2019 was filed by the first respondent herein on 11.10.2019, pointing out that there are no necessary pleadings with reference to Section 101.

16. It is only after two months of the first respondent filing I.A. No.4 of 2019 that the petitioner herein moved an application in I.A.No.1 of 2020 for amendment of the pleadings by incorporating one paragraph, after the existing para 30 of the election petition. To be precise I.A. No.1 of 2020 was filed on 11.02.2020 seeking to incorporate one paragaraph as para 30(a) in the original election petition. This proposed additional paragraph comprised of two parts, one relating the alleged corrupt practices and the other relating to the requirements of section 101 (b) of the Act. By the order impugned herein, the High Court allowed the amendment to the extent of first part of para 30(a), but rejected the amendment as regards the second part which relates to the ingredients of section 101 (b). As rightly pointed out by the High Court, the election petitioner cannot be allowed to suddenly wake up to the reality of lack of pleading of material facts, relating to his rights in terms of section 101 after more than 18 months of the filing of the election petition. The same is also barred by limitation. Therefore, the High Court did the right thing in disallowing the second part of the proposed para 30 (a) and in striking off prayer (c).

17. In any case, the second part of paragraph 30 (a) sought to be incorporated by way of amendment, does not satisfy the requirement of pleading of material facts, necessary for the High Court to form an opinion in terms of Clause (a) or (b) of Section

101.

18. Once it is found that neither the original election petition nor the amended election petition contains any pleading of material facts which would enable the High Court to form an opinion in terms of Section 101, there was no alternative for the High Court but to strike off prayer (c).

19. There is one more reason why the petitioner cannot succeed. In the elections in question, there were 14 candidates in the fray, including the petitioner herein and the first respondent. In Viswanath Reddy vs. Konappa Rudrappa Nadgouda1, the Constitution Bench of this Court treated the votes polled in favour of the returned candidate as thrown away votes, on the 1AIR 1969 SC 604 ground that he was disqualified from contesting and that the election petitioner was entitled to be declared elected, in view of the fact that there was no other contesting candidate. But the Constitution Bench cautioned that the rule for the exclusion of the votes secured by corrupt practices by the returned candidate in the computation of the total votes and the consequential declaration of the candidate who secured the next highest number of votes as duly elected, can be applied only when there are just two candidates at an election.

20. The ratio in Viswanath Reddy (supra) was followed in Thiru John vs. Returning Officer & Others.2. Though this case concerned election to the Rajya Sabha through single transferable votes, this Court observed in this case that it would be extremely difficult if not impossible, to predicate what the voting pattern would have been, if the electors knew at the time of election that one was disqualified. The Court pointed out that the question as to how many of the voters would have cast their votes in favour of other continuing candidates and in what 2(1977) 3 SCC 540 preferential

order, remained a question in the realm of speculation and unpredictability.

21. In D.K. Sharma vs. Ram Sharan Yadav and Others3, this Court followed the dictum in Vishwanatha Reddy (supra) to the effect that where there are more than two candidates in the field, it is not possible to apply the same ratio as could be applied when there are only two candidates. This principle was also reiterated in Prakash Khandre vs. Dr. Vijay Kumar Khandre and Others4, where this Court pointed out "in the present case, for one seat, there were five candidates and it would be impossible to predict or guess in whose favour the voters would have voted if they were aware that the elected candidate was disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualification to contest the election and what would have been the voting pattern." 3(1993) Supp. (2) SCC 117 4(2002) 5 SCC 568

22. Therefore, apart from the fact that in the election petition, there were no pleadings of material facts co□relatable to the ingredients of clause (a) or (b) of Section 101 of the Act, to sustain prayer (c), even legally the High Court could not have granted prayer (c) in view of the fact that there were 14 candidates in the fray.

23. In view of the above, the Order of the High Court does not call for any interference. Hence these Special Leave Petitions are dismissed. No costs.

……..CJI (S.A. Bobde) ……J. (A.S. Bopanna) .....J. (V. Ramasubramanian) New Delhi October 13, 2020