

**NON-REPORTABLE****IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 15018-15019 OF 2024
[@ SPECIAL LEAVE PETITION (C) NOS.22056-22057 OF 2023]

SYEDA NOOR FATIMA ZAIDI

...APPELLANT

VERSUS

HEENA UROOZ & ORS.

...RESPONDENTS

R1: HEENA UROOZ

R2: PRIYANKA

R3: ALIYA SHIREEN

R4: MADHURI

R5: GOUSIYA BEGUM

**R6: THE ELECTION RETURNING OFFICE WARD NO.24 AND
MUNICIPAL CORPORATION KALABURAGI (MAHANAGARA
PALIKE KALABURAGI) AND DEPUTY DIRECTOR**

JUDGMENT

SUDHANSU DHULIA & AHSANUDDIN AMANULLAH, JJ.

Heard learned counsel for the appellant.

2. Leave granted.

3. These appeals arise against the Final Judgment and Order passed by a learned Single Judge of the Karnataka High Court, Kalaburagi Bench (hereinafter referred to as the 'High Court') on 28.07.2023 (hereinafter referred to as the 'Impugned Order'¹), whereby the High Court partly allowed appeal bearing MFA² No.201854 of 2022 filed by Respondent No.1 and dismissed the appeal bearing MFA No.202002 of 2022 filed by Respondent No.2.

FACTS:

4. Notification dated 11.08.2021 was issued by the Karnataka State Election Commission notifying elections to the posts of Councillors of the Municipal Corporation, Kalaburagi (hereinafter referred to as the 'Corporation'). There were six candidates who had filed their nominations and were found to be eligible to contest in respect of Ward No.24.

5. Elections were held on 03.09.2021 and the results were declared on 06.09.2021. R2 had secured 1587 votes; the Appellant had secured 1027 votes; R3 had secured 594 votes; R4 had

¹ **2023:KHC-K:6083.**

² Abbreviation for *Miscellaneous First Appeal*.

secured 271 votes; R1 had secured 47 votes, and; R5 had secured 36 votes. R2 was declared as the returned candidate in terms of the Notification published in the Karnataka Gazette dated 23.09.2021.

6. The Appellant filed an Election Petition *viz.* E.P. No.1/2021 under Section 33³ of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as the 'Act') before the Election Tribunal being the learned III Additional District and Sessions Judge at Kalaburagi (hereinafter referred to as the 'Trial Court') for the following reliefs:

³ '33. *Election petition.*—(1) No election of a councillor shall be called in question except by an election petition presented for adjudication to the District Court having jurisdiction, within thirty days from the date of the publication of the result of election under Section 32.

(2) An election petition may be presented on one or more of the grounds specified in Section 35,—

(a) by any candidate at such election; or
 (b) by any voter of the ward concerned.

(3) A petitioner shall join as respondents to his petition all the candidates at the election.

(4) An election petition,—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908) for the verification of pleadings.

(5) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of presentation of the election petition under sub-section (1).

Provided that where the petitioner alleges any corrupt practice the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(6) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.'

'1) Set aside the election of respondent No.1 from Ward No.24 of Karnataka Municipality Corporation, Kalaburagi;
2) Declare the election of Mrs. Priyanka as Councillor from Ward No.24 of Karnataka Municipality Corporation, Kalaburagi as void;
3) Further, it be declared that the petitioner is duly elected from Ward No.24 of Municipal Corporation, Kalaburagi being secured second highest votes.'

(sic)

7. It was alleged by the Appellant in the Election Petition that R2, had declared her age as 20 years at Page No.3 of her nomination papers. However, in the affidavit, which accompanied the nomination, when it was submitted on 24.08.2021, R2 had declared her age as 21 years. It was stated that although an objection was raised before the Returning Officer during scrutiny, it was not considered and R2's nomination was accepted.

8. E.P. No.1/2021 went to trial. The Trial Court finally, on 16.08.2022, held that R2 had furnished a bogus birth certificate showing her date of birth as 21.01.2000, though her actual date of birth was 21.10.2000. The Trial Court declared the election of R2 as void and set aside her election and proceeded to declare the

Appellant, who had secured the second highest number of votes, as having been duly elected from Ward No.24.

9. Aggrieved by the verdict *supra* in E.P. No.1/2021, R2 filed MFA No.202002/2022 before the High Court. Another candidate i.e., R1, who had been defeated in the election, challenged the same verdict before the High Court in MFA No.201854/2022.

10. The High Court, on consideration, partly allowed MFA No.201854 of 2022, thereby setting aside the declaration of the Appellant as the returned candidate and dismissed MFA No.202002 of 2022. The concerned authorities were directed to take steps for holding a re-election.

SUBMISSIONS BY THE APPELLANT:

11. Learned counsel for the Appellant contended that the votes secured by R2 had to be thrown away and the candidate who had secured highest number of votes (the Appellant herself) had to be declared as the returned candidate.

12. Learned counsel submitted that the Act itself provides, under Section 37(2)(b)⁴, that the person who has filed an Election Petition if, in addition, also claims a declaration to the effect that he himself or any other candidate has been duly elected and the court is of the opinion '*that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes*', the court '*shall, after declaring the election of returned candidate to be void, declare the petitioner or such other candidate as the case may be, to have been duly elected.*'

⁴ '37. *Decision of the court.*—(1) At the conclusion of the trial of an election petition, the court shall make an order,—

(a) dismissing the election petition; or
 (b) declaring the election of all or any of the returned candidates to be void; or
 (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

(2) If any person who has filed an election petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the court is of opinion,—

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or
 (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the court shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate as the case may be, to have been duly elected.

(3) 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 court shall decide between them by lot and proceed as if the one on whom the lot falls had received an additional vote.'

(sic)

From what we gather, 'trial' has wrongly been spelt as '*trail*', at least even in the official English version of the Act. Be that as it is.

13. It was submitted that the law being clear, the only test which has to be gone into is whether out of the remaining valid votes, the Election Petitioner or any other candidate got the majority of the valid votes or not.

14. Thus, it was contended by learned counsel that even if the votes of the other four candidates are added up, the Appellant would still have more votes; meaning thereby that she had obtained majority of the votes excluding that of the candidate(s) whose election has been declared to be void, and should be declared as duly elected, in terms of Section 37(2)(b) of the Act.

RESPONDENTS IN ABSENTIA:

15. Despite valid service, no one has entered appearance on behalf of R1, R4 and R5. R2, R3 and R6 have refused to accept notice.

ANALYSIS, REASONING AND CONCLUSION:

16. We are of the opinion that the Impugned Order needs interference. Insofar as MFA No.202002/2022 is concerned, the

Impugned Order has, on detailed examination, found that R2's real date of birth was 21.10.2000 and not 21.01.2000 after perusing her 'marks card' (exhibited in the Trial Court) and the original record available with the Registrar of Births and Deaths. The dismissal of MFA No.202002/2022 by the High Court, being perfectly justified, is upheld. However, we find that the High Court erred in not seeing through the conduct of R1 who had filed MFA No.201854/2022 against the verdict of the Trial Court. We say so in light of the fact that R1 was a candidate who had secured only 47 votes as against the Appellant (1027 votes), R2 (1587 votes), R3 (594 votes), R4 (271 votes), and R5 (36 votes). Evidently, as things stood, once the Trial Court reached the conclusion it did, R1 was nowhere in the picture.

17. We are further surprised upon going through the pleadings in the MFA No.201854/2022 preferred by R1, as the entirety thereof except for one solitary ground (Paragraph 15 therein), all other grounds relate to offering a justification for the election of the returned candidate/R2. Moreover, the prayer made in MFA No.201854/2022 is as under:

'WHEREFORE, the Appellant humbly prays this Hon'ble Court be pleased to;

a) Call for the records in Election Petition No. 1/2021 on the file of Election Tribunal being the III Addl. District and Sessions Judge at Kalaburagi.

b) To set aside the judgment in Election Petition No. 1/2021 dated 16.08.2022 passed by the Election Tribunal being the III. Addl. District and Sessions Judge at Kalaburagi, in the interest of justice.

(c) Pass an order as to costs of this Appeal, and any other order as this Hon'ble Court deems fit in the circumstances of the case, in the interest of justice and equity.'

(sic)

18. The above clearly shows that MFA No.201854/2022 filed by R1 was restricted to calling for interference with the Trial Court's judgment in the Election Petition, such that R2 would stand restored as the returned candidate. A reading of the pleadings leaves no doubt in our minds that the only purpose of R1's appeal was to attempt to overturn the disqualification of the originally returned candidate, namely R2.

19. After the verdict passed by the Trial Court, the Appellant had taken charge as a Councillor for Ward No.24. This Court also passed an interim direction *vide* Order dated 13.12.2023⁵.

⁵ 'None appears for the respondents.

Let no step be taken in pursuance of the Notification No.REV/ELC/CLI/51/2022-23 dated 08.12.2023 passed by the Dy.Commissioner & Election Officer, Dist.Administration

20. It is obvious that MFA No.201854/2022 was preferred by a candidate/R1 with only 47 votes to justify the election of the originally returned candidate, R2, who later filed MFA No.202002/2022 in her own right. In the peculiar facts and circumstances of the instant case, there was no compelling justification for the High Court to have interdicted the declaration in favour of the Appellant.

21. Section 37(2)(b) of the Act does provide for declaring the person having the second highest number of votes, if the same be a majority of the valid votes without counting the votes secured by the originally returned candidate. The position in law holding the field thus far, seems to be to declare a candidate elected on the disqualification of another, only if there were two candidates in fray and not where candidates are more than two. Reference can be made to the 5-Judge Bench decision in ***Vishwanatha Reddy v Konappa Rudrappa Nadgouda, AIR 1969 SC 604***⁶. As is vivid

Bhavan, Kalaburagi, Karnataka, until the next date of hearing.

List these matters on 08.01.2024.

⁶ **12.** ...We are again unable to see any logic in the assumption that votes cast in favour of a person who is regarded by the returning officer as validly nominated but who is in truth disqualified, could still be treated as valid votes, for the purposes of determining whether a fresh election should be held. **When there are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who**

from the paragraph cited *infra*, the Court did not lay down a blanket principle that one candidate could be declared returned on the other's disqualification only if there were two candidates in total, and in no other scenario. The Court clearly suggested that in an election with more than two candidates in the fray, notice to the voters 'may assume significance', and the candidate with the next highest number of votes would not be declared elected as a *sequitur* to the disqualification of the original returned candidate. It is apparent from the exposition of the law that the course of action in elections with more than two candidates and the returned candidate being disqualified, would turn on the phrase 'may'. In ***Prakash Khandre v Dr Vijay Kumar Khandre, (2002) 5 SCC 568***, a 3-Judge Bench, while following the *dicta* in ***Vishwanatha Reddy (supra)***, cautioned that '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

voted for him were aware of the disqualification. This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case, question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification have voted for the disqualified candidate.

(emphasis supplied)

the election by rejecting his nomination paper on the ground of disqualification to contest the election and what would have been the voting pattern.⁷ This was reiterated recently by 3 learned Judges in ***Muniraju Gowda P M v Munirathna, (2020) 10 SCC 192.***

22. It is not to be lost sight of that MFA No.201854/2022 was nothing more than a proxy petition filed by R1 to aid R2. The High Court ought to have dismissed MFA No.201854/2022 *in limine*. In this view, apropos the instant case, we do not propose to examine as to if and when the 'may' from ***Vishwanatha Reddy (supra)***, could operate when the returned candidate is declared disqualified in an election with more than two candidates. *Ex abundanti cautela*, we clarify that the present judgment shall not constitute precedent. As a sequel thereto, the issue as to whether or not the Trial Court's verdict ought to be disturbed on this score, purely on the anvil of law, is expressly left open.

⁷ Para 24 of ***Prakash Khandre (supra)***.

23. The Impugned Order, inasmuch as it partly allows MFA No.201854/2022, is set aside; MFA No.201854/2022 is itself dismissed.

24. Accordingly, the appeals are disposed of in the above terms. Steps taken pursuant to the Impugned Order stand quashed. Judgment dated 16.08.2022 of the Trial Court is revived and restored.

25. No order as to costs.

.....J.
[SUDHANSU DHULIA]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
DECEMBER 09, 2024