

THE COURT OF SENIOR CIVIL JUDGE AND JMFC,
SAKALESHPUR

Present : **Smt. Poornima N. Pai, B.Com., LL.B.,
Senior Civil Judge and J.M.F.C.,
Sakaleshpur.**

ELECTION PETITION No.1/2018

Dated this 18th day of July 2019

Petitioner: Arun Sathpal S/o Govindaraju,
Aged about 29 years,
Nidigere Village and Post,
Hetturu Hobli, Sakaleshpura Taluk,
Hassan District.

(By Sri.B.P.V., - Advocate)

// Vs. //

Respondents: 1. Roopa W/o Nagesh Nayaka H.C.,
Hennali Village, Nidigere Post,
Sakaleshpura Taluk, Hassan District.

2. Electoral Officer
Kurubatturu Grama Panchayat
Kurubatturu(Sukravarasanthe),
Sakaleshpura Taluk,
Hassan District.

3. Tahasildar, Sakaleshpura Taluk,
Sakaleshpura.

(Resp.No.1 Exparte)

(Resp.No.2 and 3 by Sri.A.G.P.,)

J U D G M E N T

The present election petition was filed before Senior Civil Judge and JMFC court, Sakaleshpura by the petitioner Arun Sathpal on 26.11.2015 and numbered as E.P.No.4/2015. The main case of petitioner is that he was filed present petition to counsel the election of respondent No.1 and to declare it has null and void.

2. The brief facts of the petitioner's case are as follows: -

There was a election of grampanchayath in 2015 at Kurubhatturu Gramapanchayath, Sakaleshpura. The respondent filed her application on 18.5.2015 before 2nd respondent. She has contended that her nomination application that, she belongs to Nayaka community she also given one caste certificate stating that she belongs to schedule tribe, Nayaka community. The said place was reserved to woman category of schedule tribe. Without examining her nomination papers, the 2nd respondent approved it as proper. There after the election was conducted and 1st respondent was elected for their being no competitors. She was declared as winning candidate by the 2nd respondent. It is his case that she has filed false nomination paper by presenting her caste. Said place was reserved to schedule caste women and she has got prepared false caste certificate against the law and got selected by fraud. Hence he prayed to declare that the respondent has basically Vakkaliga caste in her school certificate and in

the school documents her caste is shown as Vakkaliga. But she has filed false certificate to show her as Nayaka. Due to her act any of the women belonging to schedule tribe has been deprive of her right and there was injustice. The 2nd respondent without verifying this fact have declared as winning candidate. Hence he filed the present application of election petition before the Junior Division court. In the application it is stated that there is 6 months delay in filing the petition and separate application has been filed to condone the delay. Hence he prayed to allow the application and declare the election dated 21.5.2015 as invalid and void and cancel the certificate given by respondent No.2 to respondent No.1 as winning candidate.

3. The petition was admitted by Junior Division court. Notice was issued to respondent No.1 to 3, served personally by KPK. The vakallath for respondent No.1 to 3 served. Respondent No1 was absent and placed exparte. AGP filed memo of appearance of respondent No2, respondent No.1 filed detail objection. The objection was not filed on 13.4.2016 and case was posted for evidence. In the objection of respondent No.1 she has totally denied the allegations made by petitioner in his petition and contended that it was filed only with vengeance. The present petition is filed by present applicant, she was selected as Grama Panchayath member unanimously as without being their any opposition. After she was selected she has done several developmental work in the village. Since the petitioner could not bare this developmental work, he has filed the present petition against them. She had contended that as there is no provision to entertain this

petition under law. It is filed after six months itself as against the law as per Sec 15 of Karnataka Panchayath Raj Act 1993. Any such election petition has to be filed within 30 days of declaring the candidate and there is no other way of questioning the election except election petition. Hence the application filed for condoning the delay needs to be rejected at this stage itself. The application to reject with condone the delay and the suit itself is wrong and the petition itself is not maintainable. She has prayed to follow rule 17 of Panchayath Raj Act which says that if any application has been filed without following the procedure laid down U/Sec.154 then such application may be rejected.

4. For these reasons she prayed to reject the application. She has clearly contended that she belongs to Nayaka community and said caste certificate was issued by Thahashildar himself. There is no provision to create any caste certificate. The certificate produced by her is valid and it was issued by Thahasildar. Hence, present application itself as not maintainable. The applicant has not questioned the caste certificate at any other forum. She also stated that The Hindu woman after her marriage goes to the caste of her husband. Hence the caste certificate is valid. The seat was reserved to schedule tribe women and the respondent also belongs to schedule tribe women. Hence she was selected and there is no irregularity. She was selected as lawful candidate. In the cause title itself her name is shows as Roopa W/o Nagesha Nayaka H.C. Hence she belongs to Nayaka community and present application has been filed only to harass her and prays to dismiss the petition.

5. On perusal of order sheet of the lower court. The application for condoning the delay was never taken for hearing. Case was posted for evidence. The petitioner got examined as P.W.1 and got marked Ex.P1 to 10. Respondent No.1 submitted no cross. Respondent No.2 has not filed objection, respondent No.3 was placed exparte and hence cross of respondent No.2 and 3 taken as nil. Petitioner has sought for amendment. The lower court has permitted him to carry out the amendment. Tahasildar, Sakaleshpura was added as defendant No.3. Notice was served to him. AGP filed memo of appearance of defendant No.3. The written of statement taken as not filed. The case was posted for arguments. At this stage the respondent No.2 filed application U/Sec.151 of CPC stating that there was a amendment to Karnataka Panchayath Raj Act in the year 2015 with effect from 20.5.2016 and the word Civil Judge (Junior Division) was removed and a authorized court as Civil Judge (Senior Division) if any pending matters were also ordered to be transfer to Senior Civil Judge court. Hence, AGP filed application for transfer all the case to Senior Division. This was strongly objected by petitioner. After hearing both the parties the Prl.Civil Judge passed order on 20.7.2018 by transferring the said election petition to Senior Division. This court received the file on 25.9.2018 and this notice was issued to both the parties. They appeared and at this stage AGP for respondent No.3 filed objection to main petition and prays to keep the case for respondent evidence. It was allowed and several dates given for respondents evidence. But no evidence led by

respondent. Hence evidence of respondent No.2 and 3 taken as nil. Case posted for arguments.

6. Heard arguments of AGP for Respondent No.2 and 3. Case kept for arguments for BPV advocate for petitioner. He did not appear for arguments inspite of sufficient opportunities. Hence, the case was posted for order.

7. The points that arise for my consideration are:

POINTS

- 1. Whether the present petition filed by the petitioner after the delay of 6 months is maintainable?*
- 2. Whether the petitioner had no Locas Standy localstndy file the present petition as he was not the contesting candidate?*
- 3. Whether the petitioner is entitled for relief of declaration prayed by him against the respondent No.1 and 2?*
- 4. What order or award?*

8. In order to prove the case of the petitioner, he got examined himself as P.W.1 and got marked Ex.P.1 to P.10 in his favour. The defendants have not led any oral or documentary evidence.

9. Heard both sides.

10. Taking into consideration the oral and documentary evidence placed before this Court, I answer the above point as follows:

Point No.1: In the Negative.

Point No.2: In the Negative.

Issue No.3: In the Negative.

Issue No.4: As per final order, for the following:

REASONS

11. **POINT NO.1 TO 3:** As these points are interrelated with each other, they are taken up together for consideration.

12. The petitioner is practicing advocate before this court by name Arun Sathpal who had filed the present petition before JMFC Court, Sakaleshpura on 26.11.2015 seeking for declaring that the elected candidate on 25.1.2015 has to be declared as invalid and to set aside the order of respondent No.2 who declare respondent No.1 as winning candidate. To prove this aspect got examined himself as P.W.1 and got marked Ex.P1 to 10 in his favour. There is no cross examination to this petitioner either by any of the respondent. But the fact that remains to be decided before this court is whether the election petition brought by the non-contested candidate after a period of six months questing the election against the winning candidate is maintainable or not. Before admitting the objection itself the Junior

Division court should have heard on maintainability to the petition as there was delay of six months. I.A.No.1 was filed to condone the delay of six months in filing the petition. I.A.No.1 was not decided even till today. I.A.No.1 accepted with evidence of petitioner, stated that he came to know about false caste certificate of respondent after six months of the election and he collected the documents. Therefore there is a delay of six months in filing the petition. This is itself case to show that when the respondent filed nomination and the same was allowed by respondent No.2 and even after the election the petitioner had no objection for her contesting or selection. Only after six months he came to know that there is some discrepancy in the caste certificate of respondent No.1. Then there is no cause of action to file election petition after period of six months as per Sec.15 of Karnataka Panchyath Raj Act which mandates any election petition to be filed within 30 days from the date of election.

13. On all these grounds, the present petition is not maintainable and the delay of six months can not be condoned at this stage as there is procedur irregularity conducted by the petitioner. More over the petitioner is not contesting candidate nor filed any nomination to that post. Secondly, the post was reserved for schedule tribe women and there is no other nomination by any women in that category. Even if any women had contested the said election under the said category and if she was deprived all her right to be elected just because this respondent No.1 filed nomination. Then that women could have preferred election petition before the court challenging the election

stating that she has been deprived of her right to contest in the said category because of this respondent No.2. But in the present case this is not the scenario. The present petitioner is the practicing advocate who has got nothing to do with the reserved post nor with an election of Gramapanchayath and he was not qualified for such reserved post to challenge the election itself he has got not locus standy. Hence I am of the clear opinion that present petition filed by the petitioner with a delay of 6 months, after the election was conducted itself is not maintainable for the reason that it is not filed within 30 days. The present petition is not maintainable on the ground that the petitioner is not competent to question, the election itself as he was not a contesting candidate nor the seat was reserved to any men from reserved category. Hence for these reasons I am of the clear opinion that the present petition itself is not maintainable and deserved to be dismissed. He is not entitled for any relief, claim against respondent for the reason that the petition itself is not maintainable. For these reasons I have answer points No.1 to 3 in the Negative Hence, I am of the clear opinion that, petitioner is not entitled any relief claimed in the petition. Hence, I have answered points No.1 to 3 in "**Negative**".

14. **POINT.4:** Upon the discussions made above, I proceed to pass the following:

ORDER

The election petition filed by the petitioner u/Sec.15 of Karnataka Panchayat Raj Act, against the respondents is here by dismissed with costs.

Draw decree accordingly.

(Dictated to the stenographer, transcription revised, typed by her on computer, corrected by me and then pronounced in the Open Court on this 18th day of July, 2019)

(Smt.Poornima N. Pai,)
Senior Civil Judge & JMFC.,
Sakaleshpur.

ANNEXURE

Witnesses examined for the petitioner :-

P.W.1: Arul Sathpal

Witnesses examined for the respondents :-

NONE

Documents marked for the petitioner :-

- | | | |
|------------|---|--|
| Ex.P.1 | : | Report by Headmaster |
| Ex.P.2 | : | Study certificate of respondent No.1 |
| Ex.P.3 | : | Information from Tahasildar |
| Ex.P.4 | : | Gramapanchayath nomination letter |
| Ex.P.5 | : | Declaration form |
| Ex.P.6 | : | Certified copy of C/o of Kurubatthuru
Gramapanchayath |
| Ex.P.7 | : | Certified copy of existence of toilet |
| Ex.P.8 & 9 | : | Caste and income certificate of respondent No.1. |

Ex.P.10 : Copy of form No.17.

Documents marked for the respondents :-

NIL

Senior Civil Judge & JMFC.,
Sakaleshpur.