

**IN THE COURT OF THE PrI.DISTRICT JUDGE,
UTTARA KANNADA, KARWAR.**

DATED THIS THE 14th DAY OF MARCH, 2019

ELECTION PETITION No: 01 & 02 of 2018

PRESENT:SRI.T.G.SHIVASHANKARE GOWDA, M.Sc., L.L.B,
Principal District and Sessions Judge,
Uttara Kannada, Karwar.

PETITIONER:

In Ele.P.NO.01/2018 Sri.Mahesh Baburao Nayak,
Age : 52years, Agriculturist,
R/o: Dandebag, Aversa, Tal.Ankola.

In Ele.P.NO.02/2018 Sri.Narayan Jivaji Goankar,
Age : 66years, Agriculturist,
R/o: Ulga, Karwar.
(By Sri.K.R.Desai,Advocate)

Vs.

RESPONDENTS:

In Ele.P.No.01/2018 1. The Returning Officer and Tahasildar,
for the post of Vice President for
Karwar A.P.M.C. at and post Karwar.
2. Sri.Vidyadhar Puttu Goankar,
Age : about 55years, Agriculturist,
R/o: Chendiya in Karwar.
(R1-Ld.DGP & R2-Sri.N.S.Bhat, Adv.)

In Ele.P.No.02/2018 1. The Returning Officer and Tahasildar,
for the post of President for
Karwar A.P.M.C. at and post Karwar.
2. Sri.Ganapati Bommayya Naik,
Age :65years, Agriculturist,
R/o: Shilya, Baskod, Ankola.
(R1-Ld.DGP& R2-Sri.R.S.Hegde(G), Adv.)

COMMON ORDER

These petitions are filed U/Sn.41(4) of Karnataka
Agricultural Produce Marketing (Regulation) Act, 1966

challenging the election of the respondent No.2 in both the cases as Vice-President and President of A.P.M.C. Karwar respectively by an election dated 24.9.2018.

2. As the both cases arising out of the same event and in the same proceedings in order to avoid conflicting decisions taken up together for common disposal.

3. The petitioner in Election Petition No.1/2018 and 2/2018 were contested for the post of Vice-President and President of A.P.M.C., Karwar respectively against the 2nd respondent in both the cases. The 1st respondent is the Returning Officer for the said election. The election was held on 24.9.2018, during the said election the 2nd respondent in both the cases are declared as winning candidates for the post of Vice-President and President of A.P.M.C., Karwar. The petitioners being the unsuccessful candidates for the post of Vice-President and President have presented these election petitions separately for and amongst the grounds.

Common Grounds:

- i) The petitioners and the respondent No.2 are the elected members of A.P.M.C., Karwar, they have filed nomination for the post of Vice-President and President respectively wherein the 1st respondent being the Returning Officer legally bound to conduct the election by using the Ballots.

- ii) The 1st respondent has declared the election of 2nd respondent in both the cases as Vice-President and President without following the Ballots and adopted the procedure of raising hands which is not provided under the provisions of A.P.M.C. election.
- iii) The declaration of 2nd respondent in both the cases as Vice-President and President is perse illegal, as the mandatory provisions of Ballot was not followed by the 1st respondent.
- iv) The 1st respondent has wrongly recorded that the members of A.P.M.C., Karwar who being the voters have called upon the 1st respondent to conduct the election by raising hands which is contrary to the actual facts.
- v) Nobody has submitted for conducting of election by raising of the hands as everybody knows that same was not allowed under law.
- vi) The 1st respondent has not obtained the signature of the members in the said proceedings and therefore, the declaration of the respondent No.2 in both the cases as Vice-President and President of A.P.M.C., Karwar by adopting the election in that format of raising the hand is illegal, void and ab-initio.

4. Both the petitions have been opposed by the respondents No.1and2 by filing identical objection statements, wherein it is admitted that the petitioner and the 2nd respondent are elected members of A.P.M.C., Karwar. It is also admitted that on 24.9.2018 in the office of A.P.M.C., Karwar election was held to elect Vice-President and President of A.P.M.C., wherein the petitioners have contested for the post of Vice-President and President. In the election they have not obtained the required member of votes to be declared, elected as Vice-President and President of A.P.M.C., Karwar. The petitioner in Election Petition No.1/2018 on 31.1.2017 was elected as Vice-President wherein

the same procedure was adopted and he has completed his term and now he is questioning the election now conducted by the 1st respondent. All the members were present in the election, they have agreed to conduct the election by raising their hand, accordingly election was held, the 2nd respondent in Election Petition No.1/2018 was declared as winning candidate for the post of Vice-President and 2nd respondent in Election Petition No.2/2018 was declared as winning candidate for the post of President. There is no illegality committed by the 1st respondent, the procedure is followed properly and conducting of such election is in a democratic manner and following the natural justice and it is nowhere affected the election in any manner.

5. The 2nd respondent in both the cases have reiterated the objections raised by the 1st respondent and they have raised the issue that the petitioner in Election Petition No.1/2018 was earlier contested for the post of Vice-President of A.P.M.C., Karwar in the year 2017 and same procedure was adopted and he was elected as Vice-President and completed his term. When he has accepted the procedure and he was elected as Vice-President at the earlier point of time, he cannot now question the election for which he has defeated for winning of sufficient majority. Hence, there is no illegality committed which is only the political vengeance. It is further contended that in the election there is no illegality committed, no corrupt practices were

alleged, the passing of election was very fair and by consent of all the members present in the election and therefore, the petitions are liable to be dismissed.

6. Both the parties have duly represented by their learned counsels and they have submitted that since the issue raised in both the petitions is purely on the point of law, the matter may be heard and disposed off having regard to the time less. Hence, the arguments of both the sides were heard at length.

7. Now the point that arises for consideration is:

1. Whether the election dated 24.9.2018 conducted by the 1st respondent electing the 2nd respondent in both the cases as Vice-President and President respectively is against to the legal principles and it has materially affected the election?

2. Whether the election dated 24.9.2018 conducted by the 1st respondent to elect the Vice-President and President of A.P.M.C., Karwar is illegal and liable to be set aside?

3. What order?

8. My answer to the above said points are as under:

Point No.1&2 : In the negative.

Point No.3 : As per final order for the following:

REASONS

Point No.1:

9. It has been argued by the learned counsel for the petitioner that U/Sn.41(2) of Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 contemplates the election of Vice-President and President of A.P.M.C., shall be by a Ballot and herein this case no ballot is followed, but raising of hands has been followed, it is not at all contemplated in the rules. That when the election is conducted by non-compliance of rules it is liable to be set aside.

10. In support of it, the learned counsel for the petitioner has relied upon the Judgment of the Hon'ble High Court of Karnataka in **ILR 1987 Karnataka 287** between **"Shivaram Vs. Kashiraya Devanagouda Patil"** wherein referring to the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 that Returning Officer to resort to procedure of manual of election and rejected the nominees is illegal. It is further held that **"one should steer clear of principles which are contrary or not warranted by the Act" before adopting justice, good conscience or equity.**

11. The learned counsel for the petitioner has also relied upon the Judgment of the Hon'ble Apex court reported in **2017 SAR (Civil) 800** between **"Tahsildar, Taluk Office, Tanjore**

and Ors. Vs. G. Thambidurai And Anr.,” to the effect that “... it is the fundamental principles of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all and all other methods of performance are necessarily forbidden.”

12. It is vehemently contended that when the Act provides the Ballot, so the action of 1st respondent in adopting the procedure which is not recognised is illegal and therefore, the 1st respondent is to be directed to conduct the election as contemplated by the rules.

13. On contrary, the learned D.G.P. has contended that the petitioner cannot blow hot and cold at the same time as in previous election the petitioner in Election Petition No.1/2018 has been declared as Vice-President of A.P.M.C. Karwar, he has enjoyed his terms fully without any obstruction. Wherein he has been elected as Vice-President only by raising of the hands.

14. In support of the same, the learned DGP has produced the records proceedings of the earlier election where the petitioner in Election Petition No.1/2018 was declared as Vice-President of A.P.M.C., Karwar in the election dated 30.1.2017 by following the procedure of raising of the hands and the same principles has been adopted and much apart in order to

follow this procedure prior intimation was given to all the elected members in the election notice. In this regard, the notice was issued to all the elected members has been produced and these are the facts which are acknowledge by each of the elected members of A.P.M.C. Karwar. Wherein it is very specifically stated that if there is a contest the election will be conducted either by rising of the hands or by the Ballot.

15. Now the copy of the proceedings is made available before the Court wherein in the proceedings, out of 1 member was absent and remaining members were present in the election. Wherein the proceedings recorded by the 1st respondent clearly goes to indicate that the members who are all present are agreed for conducting election by method of raising of the hands. Accordingly the procedure being put into action, wherein for the post of Vice-President, the petitioner and the 2nd respondent in Election Petition No.1/2018 and the petitioner and 2nd respondent in Election Petition No.2/2018 filed for the post of President of A.P.M.C., Karwar, wherein the petitioner in Election Petition No.1/2018 has secured 7 votes wherein the 2nd respondent secured 8 votes, the petitioner in Election Petition No.2/2018 secured 7 votes and 2nd respondent has secured 8 votes and thereupon the 2nd respondent in both the cases are declared to be winning candidates for the post of Vice-President and President of A.P.M.C., Karwar.

16. Now as laid down by the Hon'ble High Court of Karnataka in the above referred Judgment while referring the case of "**Kalliah Vs. Basappa**" reported in **1978(2) KLJ 378** it was held that "**where the conduct of election is disobedience or non-compliance with, any statutory provisions governing such election, has materially affected the results of such election.**" Now in view of the law being settled, the Court has to examine whether election so conducted by the 1st respondent has materially affected the election process. No where in the petition any allegation is made by either of the petitioner that the election so conducted by the 1st respondent was materially affected their members. There is no allegation of mal-practice or corrupt practice is alleged.

17. It is pertinent to note that both the petitioners were given prior notice of election, they were duly served with the notice that the procedure which is going to take for the election of Vice-President and President will be either by raising of the hands or by ballot. No where in the pleadings it is found that the petitioners have raised any objections to the 1st respondent for procedure of adopting raising of the hands and insisting the 1st respondent to follow the procedure of ballot. The petitioners kept quite till the election is over and for the reason of they being defeated in the election for the reason of technical issue.

18. As found from the records, there is absolutely no pleading that in what way election of 2nd respondent in both the cases by procedure of raising of hands was materially affected their chances. As rightly argued by the learned DGP that the petitioner in Election Pet.No.1/2018 has been elected as Vice President of A.P.M.C., Karwar on the previous occasions in the same manner and thereby he has accepted the procedure by raising of the hands and therefore, the procedure adopted by the 1st respondent was the procedure which was adopted, accepted and followed in the previous election and therefore, the grounds urged by the petitioner that the ballot only the procedure to be adopted cannot be supported with. Rules though contemplates that the ballot is the procedure, when all the elected members are consented for the raising of the hands, the said procedure being regularly followed and accepted which is not affected in any manner the election procedure.

19. Hence, I do not found any grounds in the contention of the petitioners that the procedure of rising of the hands adopted by the 1st respondent has materially affected the election of the petitioners in both the cases. Hence, I do not found any justifiable reason to interfere with the election. As both the respondent No.2 are already elected, they are almost completed their half of their term. Hence, the court must be very cautious in interfering with any election fairly conducted which

has not materially affected in any manner. In the result, Point No.1 is answered in **negative**.

Point No.2:

20. The contention of the petitioners that the procedure was not followed and rising of the hands was not prescribed in the rules. The election conducted by the 1st respondent is with prior intimation of the elected members that this procedure is also going to be adopted in this election. None of the elected members objected for such procedure or insisted for the ballot. Even after filing of the nomination there is no material placed before the Court that the petitioners requesting the 1st respondent to go for ballot and they are not agree for the rising of the hands. There is no allegation against the 1st respondent that she has colluded with the elected members, there is election mal-practice or corrupt practice being followed. Even there is no allegation that procedure of raising of the hands was materially affected the election. Such being so, when the accepted procedure is followed I do not found any reason to interfere with the procedure adopted by consent and therefore, the elected conducted by the 1st respondent is democratic, very fair and no prejudice can be attributed. Hence, the election cannot be interfered with. In the result, point No.2 is answered in **negative**.

Point No.3:

21. In view of my findings on Point No.1and2, I pass the following:

O R D E R

The petitions filed by the petitioners U/Sn.41(4) Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 is hereby dismissed.

Keep the original Order in Election Petition No.1/2018 and the copy in another case.

(Dictated to the Stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the 14th day of March, 2019)

(T.G.Shivashankare Gowda)
Prl.District & Sessions Judge,
Uttara Kannada, Karwar.

(SSG)