

IN THE COURT OF THE SENIOR CIVIL JUDGE, YELLAPUR
SITTING AT MUNDGOD

DATED THIS 22nd DAY OF JULY 2019

**PRESENT: SRI.VITHAL V. JOSHI, B.Com.,LL.B.,Spl.,
SENIOR CIVIL JUDGE., YELLAPUR.**

Elec.Pet. No.1/2018

Petitioner :

Smt. Srilaxmi W/o Srinivas Daivajna,
A/a: 34 years, Occ: Household,
R/o: Nandeeshwar Nagar, Mundgod Town,
Tq: Mundgod, U.K.

(By Sri.N.R.Bhat Kodlagadde, Advocate)

V/s

Respondents :

1. Smt. Rajeshwari Shantaram Andagi,
Age: 40 years, Occ: Guest Lecturer,
GFGC College, Mundgod, U.K.,
R/o: Nandeeshwar Nagar,
Mundgod Town, Tq: Mundgod, U.K.

2. The Returning Officer
Sri. Manjunath Salunke
Mundgod Pattan Panchayat,
Ward No.18, Tq: Mundgod, U.K.

**(By Shri. G.S.Katur, Advocate for R-1.
AGP for Respondents No.2)**

J U D G M E N T

This is a election petition challenging the election of
respondent No.1 to the post of councilor of Ward No.18 of

Mundgod Town Municipality held on 31-8-2018 U/Sec.21 of Karnataka Municipalities Act, 1964.

2. Brief facts relating to the case are as follows:

It is contended that petitioner and respondent were only two candidates who contested the election to the post of councilor of Ward No.18 of Mundgod Town Municipality held on 31-8-2018. Petitioner was representing the Congress party and respondent was representing the Bharathiya Janatha Party. The name of petitioner appearing in the voters list at Sl.No.28 on page No.10 of Ward No.18 as mentioned in the cause title of the petition. The name of the respondent at Sl.No.243 at Page No.21 of voters list of Ward No.18 and her name was mentioned as Rajeshwari Gunda, husband Madhukar. An affidavit was filed by the respondent before Returning officer at the time of filing of nomination. In the said affidavit respondent name has been mentioned as Rajeshwari Shantaram Andagi. Respondent also filed her nomination papers in the said name and not mention the name as mentioned in the voters list.

3. It was further contended that results were declared on 3-9-2018 and respondent was declared elected from the said Ward. Returning officer issued a certificate declaring the result, declaring the name of respondent as Rajeshwari Shantaram Andagi and not as mentioned in the voters list. A

gazette notification issued by the Government of Karnataka, Urban Development Secretariat, bearing No.:UDD 82 MLR 2018(3), Bangalore dated: 3-9-2018 allotting the offices of President and Vice President to various categories in the respective Town Panchayaths. Mundgod Town Panchayath was mentioned in Sl.No.64 and president shall be from General Woman Category and Vice President from General Category.

4. It was further alleged that respondent has been working as a lecturer in Government first grade college Mundgod, UttaraKannada District as on date of filing her nomination as evident from letter dated: 20-8-2018 issued by principal, Government first grade college, Mundgod. This letter contains the details of the salary paid during the period for which respondent worked as a lecturer. She was receiving monthly salary of Rs.11,000/- from the Government. This fact has not been mentioned in the affidavit filed by the respondent.

5. It is further contended that petitioner filed objections before the Returning officer about fact that the name of respondent as mentioned in the nomination paper and the voters list are different. The respondent is employed in the Government first grade college. The copy of the said objections is produced for reference. Returning officer not taken any action on these objections and ought to have rejected the

nomination paper of respondent No.1, instead Returning officer has accepted the same which is illegal.

6. The petitioner being aggrieved by election of the respondent challenged the said election on the following grounds:

Respondent is liable to be disqualified as her name mentioned in voters list as Sl.No.243 as different from that of the name mentioned by her in her nomination papers and the affidavit accompanying the same. Hence her election is liable to be declared void. The respondent is also liable to be disqualified and her election to be declared void on the ground that she had held the office of profit in the Government first grade college Mundgod, wherein she was working as a lecturer. The election of the respondent liable to be declared as void as the respondent not disclosed correct details in her affidavit and she has filed a false affidavit accompanying the nomination papers. Returning officer ought to have considered these aspects and should have rejected the nomination paper of respondent. On the contrary Returning officer proceeded to accept her nomination papers in spite of complaint and objections filed by the petitioner. The respondent's election required to be declared as void and petitioner needs to be declared as duly elected, as petitioner and respondent were only two candidates in the fray for election. If Returning officer had rejected the nomination of respondent on the basis of

objections raised the petitioner would have been the only candidate in the election.

7. It is further contended that petitioner has been unjustly denied the opportunity of being elected unopposed as the Councilor of Ward No18 of Mundgod Town Panchayath as a result of the illegal and fraudulent action of the respondent, which was overlooked by Returning officer. There is a chance of respondent being elected as the President of said Panchayath, by virtue of Government Notification dated: 3-9-2018. As the Returning officer has not acted in accordance with law, petitioner was constrained to file the this Election Petition.

8. Petitioner has not filed any other application, petition or suit before this court or any other court for the same relief based on same cause of action. Therefore prays to declare the election of respondent No.1 to Ward No.18 Mundgod Town Panchayath (Mundgod Pattan Pachayath) null and void (2) declared that the petitioner is duly elected candidate to the Ward No.18 of Mundgod Town Panchayath (Mundgod Pattan Panchayath) as the councilor to the said Ward with such other directions from the court.

9. On service of summons respondent No.1 appeared through Shri.G.S.Katur Advocate and filed her objections. The

facts pleaded in the petition are against law and fact and they are not sustainable. It is false to say the name of respondent is distinct in voters list and nomination papers filed by her. This respondent along with nomination papers filed affidavit explaining that her name prior to marriage was Rajeshwari Shantaram Andagi and after the marriage her name is Rajeshwari Madhukar Gunda. Therefore Returning officer accepted her nomination. This respondent prior to election was work as a guest lecturer in Government first grade college which cannot be considered as a office of profit. Therefore petition deserves to be dismissed. Petitioner not filed any objections before the Returning office in this regard. This respondent is elected representative held as per law. Present petition is filed is the outcome of revenge since petitioner was defeated in the election. Therefore petitioner has no right to challenge the election. Under Rule 19(4) of Karnataka Municipal Corporation Act 1977 Returning officer cannot reject the nomination paper. This respondent was elected from Ward No.18 of Mundgod Pattan Panchayath from BJP party and petitioner suffered defeat in the election, petitioner cannot sustain her defeat and therefore present petition is filed. Therefore prays to dismiss the election petition.

10. Respondent No.2 Returning officer appeared through AGP and filed objections to the petition. It was contended that

present petition filed in present form is totally denied contents are false. The contents of Para No.2 and 3 are not denied.

11. It was further contended that name of first respondent is shown in the voters list as Rajeshwari Gunda and the name of her husband is Madhukar is true. It is also true that respondent No.1 name is shown as Rajeshwari Shantaram Andagi in the nomination paper and affidavit filed by her. Respondent filed one affidavit explaining, that prior to her marriage her name was Rajeshwari Shanataram Andagi and after the marriage her name is Rajeshwari Madhukar Gunda. The Returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character as per Rule 19(4) of Karnataka Municipal Corporation (Election) Rules 1977. Contents of para No.5 of petition are not denied. It is true that this respondent declared the result of election and respondent No.1 is elected as she secured more votes than petitioner. This respondent issued the certificate declaring that respondent No.1 is elected. The contents of Para No.6 of petition are not known to this respondent. These facts are brought to the notice of this respondent, at the time of scrutiny of nomination papers. It is not known that this respondent was working in Government first grade college Mundgod and getting salary of Rs.11,000/- per month from Government. Contents of para No.7 are not completely denied. It is true that petitioner has submitted

objections to the acceptance of nomination paper of respondent No.1, regarding her change in the name. But. There is no mentioning of fact that respondent was working as lecturer in Government first grade college Mundgod. In view of the affidavit of respondent No.1 was filed explaining under what circumstance her name was changed in the voters list and in the nomination papers, Returning officer shall not reject nomination paper on the ground of any defect which is not substantial character as per Rule 19(4) of Karnataka Municipal Corporation (Election) Rules 1977. Therefore objections raised the petitioner were not considered by this respondent and accepted the nomination filed by the respondent No.1. Therefore this respondent has not committed any error in accepting the nomination of respondent No.1.

12. The grounds urged by the petitioner are not fair and reasonable. There is no cause of action to petitioner to file this petition. The reasons shown in the petition are all concocted story and therefore prays to dismiss the election petition.

13. In support of petition averment petitioner herself examined as PW1 and examined one witness as PW2 and Ex.P1 to P10 were marked. In spite of sufficient opportunity respondent No.1 not appeared and adduced oral evidence or documentary evidence. Therefore evidence of respondent No.1 taken as no evidence.

14. Heard the arguments of Shri. N.R.Bhat Kodlagadde Advocate for petitioner and AGP for respondent No.2, respondent No.1 and her counsel Shri.G.S.Katur remained absent not argued.

15. The following points that would arise for consideration;

P O I N T S

1. Whether petitioner prove that declaration of election of respondent No.1 as councilor to Ward No.18 of Mundgod Pattan Panchayath is void on the ground that her name was mentioned as Rajeshwari Shantaram Andagi in nomination paper whereas in voters list her name is mentioned as Rajeshwari Gunda wife of Madhukar?
2. Whether petitioner prove that respondent No.1 is liable to be disqualified from the membership of Mundgod Pattan Panchayath Ward No.18, on the ground that as on date of filing of nomination papers she was holding an office of profit, and as such election declared is null and void?
3. What Order?

16 My findings to the above points are as under

Point No.1 : In the Negative.

Point No.2 : In the Negative.

Point No.3 : As per final Order For the following;

R E A S O N S

17. **Point No.1** : Basically petitioner filed this election petition on two grounds (1) the name of the respondent No.1 appearing in voters list is distinct from names appearing in the nomination papers. Therefore respondent No.2 ought to have rejected nomination paper of respondent No.1. In this connection PW1 adduced her oral evidence stating that name of respondent No.1 appearing in the voters list is as Rajeshwari Madhukar Gunda at Sl.No.243 of voters list as evident from Ex.P2. Whereas in the nomination papers her name was mentioned as Rajeshwari Shantaram Andagi as evident from Ex.P4. It is stated that along with nomination papers respondent No.1 filed affidavit that her name prior to marriage was Rajeshwari Shanataram Andagi and after her marriage, her name was Rajeshwari Gunda wife of Madhukar. Therefore both the names belong to respondent No.1. and this fact is admitted by PW1 in her cross-examination. It is relevant to point out that it is not the case of petitioner that nomination paper was filed by some persons and candidate declared elected is some other. PW1 clearly admitted in the cross-examination that prior to marriage of respondent No.1 her name was Rajeshwari Shantaram Andagi and after the marriage her name was Rajeshwari Madhukar Gunda. Accordingly the name is mentioned in the voters list. When

these are the facts admitted by the PW1 that both the name mentioned in the voters list as well as nomination papers belong to same person, they shall not be any objections by the petitioner to accept the nomination papers. Sec.23 of Karnataka Municipality Act gives the ground on which election be declared to be void. In the instant case first ground raised by the petitioner was the name of the petitioner in the voters list and in the nomination papers are distinct therefore nomination ought not to have been accepted by the Returning office and it is improper acceptance. But PW1 in the cross-examination admit even in her school records her name was mentioned as Geeta Ningappa Kuratti and after marriage her name was Lakshmi Shrinivas Daivajna. Therefore, every woman folk the name of women prior to marriage would be separate and after the marriage name of husband and surname will be prefixed against her name. Therefore this alone cannot be the ground to reject the nomination. And also it is fact that respondent No.1 filed an affidavit before the Retuning officer explaining how her name is mentioned in the voter list as well as in the nomination papers. It is also contended that respondent No.1 filed affidavit, without marriage certificate to establish contention of the respondent No.1. It is relevant to point out petitioner not denied factum of marriage of respondent No.1 nor there any evidence given by the petition that respondent No.1 was not married to Madhukar Gunda. Therefore this ground is not a ground with

substance to reject the nomination papers. Under Rule 19(4) of Karnataka Municipal councils (Councilor Election Rule 1997. Returning officer is prohibited from rejecting nomination papers in case where deformities are not serious in nature. In the instant case admittedly the name mentioned in the voters list as well as in the nomination papers belong to same persons i.e., respondent No.1 is admitted fact and therefore there shall not be any serious dispute on this aspect of the matter. Therefore acceptance of the nomination paper by respondent No.2 in respect of respondent No.1 is proper and correct and petitioner failed to prove that acceptance of the nomination is improper and hence point No.1 is answered in the **Negative**.

18. Point No.2 : The second ground urged on behalf of petitioner is that respondent No.1 as on date of filing of nomination paper was working as guest lecturer in the Government first grade college Mundgod on a monthly salary of Rs.11,000/- per month. And this fact was not disclosed in the affidavit filed before the Returning officer. In support of this oral evidence petitioner produced the letter issued by PW2 and also examined PW2 in support of said letter that she was working as a guest lecturer in the Government first grade college Mundgod and she has received salary for a particular period. Therefore she has to be disqualified and election to be post of councilor of Ward No.18 be declared void. It is relevant

to point out challenging the election U/Sec.21 of the Karnataka Municipality Act. Sec.23 gives on what grounds election petition can be filed. Disqualification is the ground to declare election is void. Already respondent No.1 was declared elected and certificate was already issued. Therefore if respondent No.1 had suppressed any material fact before the Returning officer and filed the nomination papers and she was declared elected and subsequently if it come to the notice of contesting candidate that respondent No.1 is or was holding an office of profit no doubt it is a ground for disqualification U/Sec.16 of the Karnataka Municipality Act but such case of disqualification, petitioner has to seek the remedy before the competent authority not U/Sec. 21 of the Karnataka Municipality Act. But U/Sec.16 of the Karnataka Municipality Act before the competent authority. Apart from this PW1 clearly admitted that though she filed objections before the Returning officer as per Ex.P7 on 20-8-2018, the fact that respondent No.1 was holding office of profit was not raised before the Returning Officer in Ex.P7. Therefore petitioner cannot make any allegation against respondent No.2 that he has improperly accepted the nomination, on the ground that respondent No.1 was holding an office of profit. Unless it is brought to the notice of respondent No.2, one cannot expect that Returning officer shall act on his own in rejecting the nomination of respondent No.1. Therefore, if respondent No.1 contested the election and filed nomination by suppressing the

material fact, the remedy open for the petitioner is to move the competent authority U/Sec.16 of the Act and not to remedy U/Sec.21 of the Act. Only after disqualification, it may be a ground to declare declaration of result is void U/Sec.21 of the Act. And this court has no jurisdiction to disqualified the candidature of respondent No.1 and it is the only state Government which can pass Orders causing the disqualification of respondent No.1. therefore the second ground is not available for the petitioner to declare the election void U/Sec.21 of the Act. Therefore even second ground is also not sustainable in the eye of Law, since petitioner has to exhaust a remedy U/Sec.16 of the Act. Accordingly point No.2 is answered in the **Negative**. Hence, I proceed to pass the following;

ORDER

**The Election Petition is filed by the
petitioner is dismissed.**

(Dictated to Stenographer, transcribed and typed by him, corrected and then pronounced by me in the open court on this 22nd day of July 2019).

Sd/-

(V.V.Joshi)

Senior Civil Judge, Yellapur,
Sitting at Mundgod.

ANNEXURES

WITNESS EXAMINED ON BEHALF OF PLAINTIFF

PW-1 : Smt. Srilaxmi W/o Srinivas Daivajna,

PW-2 : Manjula Holeyappa Poojar

DOCUMENTS EXHIBITED ON BEHALF OF PLAINTIFF

- Ex.P1 : Acceptance of nomination and verification notice.
Ex.P2 : Voters list pertaining to Ward No.18 of Pattan Panchayat, Mundgod, U.K.
Ex.P3 : Certified copy of the nomination submitted by the petitioner
Ex.P4 : Certified copy of the nomination submitted by the respondent.
Ex.P5 : Certified copy of the affidavit submitted by the respondent.
Ex.P6 : Karnataka Stage Gazette dated: 03-09-2018
Ex.P7 : Office copy objection submitted to the Returning officer
Ex.P8 : Office copy of the application given to the Principal, GFG College, Mundgod. U.K.
Ex.P9 : Certificate given by the Principal, GFG College, Mundgod. U.K.
Ex.P10 : Guest lecturer list of GFG College, Mundgod. U.K. for the year 2017-18

WITNESS EXAMINED ON BEHALF OF DEFENDANTS

-Nil-

DOCUMENTS EXHIBITED ON BEHALF OF DEFENDANTS

-Nil-

Sd/-
Senior Civil Judge, Yellapur.