

The State of Karnataka and Others

Vs

Gunjahalli Nagappa and Others

Civil Appeal No. 561 of 1975

(P. K. Goswami, A. Alagiriswami, P. K. Goswami JJ)

21.07.1975

JUDGMENT

BHAGWATI, J. -

1. There is a town called Gangawati in the State of Karnataka. It had a Town Municipal Council constituted under the Karnataka Municipalities Act, 1964. The term of office of the municipal councilors elected at the last general elections expired by efflux of time in 1962, but instead of holding a general election to constitute a new Town Municipal Council, the State Government appointed an Administrator to exercise the powers and perform and discharge the functions and duties of the Town Municipal Council and also constituted an Advisory Council to advise and assist the Administrator. The appointment of the Administrator and the constitution of the Advisory Council were challenged by one of the residents of Gangawati in the High Court of Karnataka by Writ Petition No. 2405 of 1972. The writ petition was, however, settled as the State Government gave an undertaking that it would take the necessary steps for holding a general election within a reasonable time. This happened on February 6, 1974. The State Government thereafter, in accordance with the undertaking given by it, appointed the Returning Officer on February 25, 1974 and it looked as if the general election was at least going to be held. But this hope was belied. Before the Returning Officer could issue a notice fixing the calendar of events for the election, the State Government rescinded the notification which had been issued by it earlier under Section 13 of the Act determining inter alia the territorial divisions into which the municipality shall be divided. The result was that no further steps could be taken by the Returning Officer in the matter of holding the election. Angered and frustrated by this second attempt on the part of the State Government to baulk the holding of the election, the same individual, who had filed the earlier writ petition, preferred another writ petition, namely, Writ Petition No. 2715 of 1974, for a mandamus to the State Government to hold the election. The High Court made an order on this writ petition on August 7, 1974 directing the State Government to hold the election within four months. This time was later extended to March 8, 1975.

2. Pursuant to the direction of the High Court, the State Government issued a notification dated December 3, 1974 under Section 13 of the Act determining the territorial divisions into which the Gangawati municipality shall be divided for the purpose of holding the election and allotting number of seats to each territorial division. The Gangawati municipality was divided into six territorial divisions and each territorial division was defined and demarcated by reference to census block numbers, wards and also boundaries. The Returning Officer thereafter on December 7, 1974 issued a notice fixing the calendar of events for holding the election. The Tehsildar, who was the designated officer under Section 14, sub-section (2), in the meanwhile, prepared the list of voters for each division from the Mysore Legislative Assembly Electoral Roll (hereinafter referred to as the

Electoral Roll) by including in the list parts of the electoral roll referable to the census block numbers comprised within the division. The list of voters for each division so prepared was authenticated by the designated officer and kept open for inspection in the office of the Municipal Council. A large number of nominations were filed on or before the last date fixed for it in the calendar of events and after scrutiny and withdrawal, a list of the contesting candidates was published by the Returning Officer on December 21, 1974. The only step which remained to be taken to complete the process of election was poll which fixed on January 10, 1975.

3. However, on December 21, 1974, when the question of finalisation of polling stations was taken up by the Returning Officer, the Secretary of the Congress party raised an objection that the division-wise lists of voters prepared and authenticated by the designated officer were defective "inasmuch as voters who reside in one division are being made to vote in a different division" and that these lists of voters should, therefore, be rectified before fixing up the polling stations. The Returning Officer considered his objection and by an order made on the same date rejected it. This order is very material and we will, therefore, reproduce it in full. It reads inter alia as follows :

"It is seen from the list maintained that the population in the parts of voters list tallies with the proposal made to Government for the delimitation of the constituencies. Further it is seen that the various parts included in the division-wise voters list conform to the census block numbers which are mentioned in the notification published in regard to the declaration of delimitation of territorial divisions. It also fits into the ward-wise description of constituencies as declared by Government.

However, it is too late in the day to prefer objections about voters list. The voters list was open for inspection all along. Many interested parties have obtained copies of the same. Nominations have been filed by respective parties on the basis of the same voters list and the scrutiny has been completed and valid nominations have been declared and today at 3.00 p.m. Last date for withdrawal is also over and the list of polling stations is finalised.

At this juncture, it is regretted to declare that parties cannot be allowed to go back to the period prior to scrutiny of the nomination papers, especially so when there was not one word of objection or protest over the voters list at the appropriate time. As per Section 23 (3) of the Representation of the People Act, 1950 no amendment or deletion of any entry in the electoral roll should be made or given effect after the last date for making nominations in that constituency or division. Any change in the parts of the Division of Voters will amount to an amendment of electoral roll of that division."

It appears that three of the contesting candidates and a member of the Legislative Assembly belonging to the Congress party were dissatisfied with this order and they, therefore, made an application to the Deputy Commissioner pointing out what they thought were defects in the division-wise lists of voters. The Deputy Commissioner instructed the Returning Officer to make physical verification of these defects and the Returning Officer accordingly went to the respective places where the mistakes were alleged to have occurred and after verification, made a report dated December 27, 1974. In this report, the Returning Officer stated that :

"It was found during my random inspection of the various houses on the borders of the different divisions that some voters residing adjacent to one division have been

included in another adjoining division and the voters list in respect of each division has been formed accordingly."

The Returning Officer observed that as a result of this physical verification it was found that "the number of voters in the respective divisions would undergo considerable change" and gave figures showing that the change in the number of voters in each division would be in the neighbourhood of twenty-five per cent. Basing itself on this report, the State Government, by an order dated December 30, 1974, cancelling the calendar of events published by the Returning Officer and directed him to issue fresh calendar of events "after getting the voters lists completed strictly as per the division notified". Though this order did not refer to the provision of law under which it was purported to be made, the State Government claimed that the source of its power to make this order lay in Rule 75 of the Mysore Municipalities (Election of Councillors) Rules, 1965 (hereinafter referred to as the Rules) made under Section 38 of the Act. The petitioners, who are residents of Gangawati, finding that the State Government had again tried to fish out some excuse for putting off the general election, preferred the present writ petition questioning the validity of this order made by the State Government. The High Court, by a judgment and order dated February 6, 1975 held that the State Government had no power under Rule 75 to cancel the calendar of events validly fixed by the Returning Officer and set at naught the election process which had already commenced and in this view, quashed and set aside the order of the State Government and directed the Returning Officer to hold the elections :

"from the Stage at which it was interrupted by the impugned Government Order after fixing convenient dates for the remaining events so that the election may be completed before March 8, 1975."

The State Government challenges the correctness of this view in the present appeal brought with special leave obtained from this Court.

4. The hearing of this appeal concluded on May 2, 1975 which was the last working day for the Court before the commencement of the summer vacation. Since the appeal involves the question as to the holding of the election and delay in the pronouncement of the order might defeat the object of filing the appeal, we pronounced our order immediately after the conclusion of the hearing, dismissing the appeal with costs and directing the Returning Officer to complete the election before June 10, 1975. We now proceed to give our reasons.

5. The question which arises for determination in the appeal is as to whether the State Government had power under Rule 75 to make the impugned order cancelling the calendar of events and thereby in effect setting at naught the entire election process which had proceeded upto the stage of poll. Rule 75, which is the last amongst the Rules, is in the following terms.

"Notwithstanding anything contained in these rules, the State Government and subject to the general or special orders of the Government, the Commissioner shall have the power of superintendence, direction and control of the conduct of elections under these rules, and may make such orders as it or he deems fit for ensuring that the elections are held in accordance with the provisions of the Act."

It is not necessary for the purpose of the present appeal to embark on a discussion on the wider question as to what are the different circumstances in which the power conferred under Rule 75 can be exercised by the State Government and what kind of order can be made by the State Government

in exercise of such power. It would indeed be inexpedient and unwise to draw the precise lines within which the power under Rule 75 should be exercisable, for there may be infinite valid circumstances which may call for exercise of such power. What we need consider here is only the limited question whether on the facts and circumstances of the present case, the State Government had power under Rule 75 to make the impugned order cancelling the calendar of events fixed by the Returning Officer. If such power could not be found in Rule 75, it was common ground that there was no other provision in the Act or the Rules which would justify the making of the impugned order and it would plainly be invalid.

6. Now, the only justification pleaded by the State Government in support of the exercise of the power under Rule 75 was that the division-wise lists of voters prepared and authenticated by the designated officer were defective and if the election were held on the basis of such defective lists of voters, it would not be in accordance with the provisions of the Act and hence the impugned order had to be made by the State Government for ensuring that the election was held in accordance with the provisions of the Act as contemplated under Rule 75. This justification, plausible though it may seem, is in our opinion, without merit. To test its validity it is necessary to understand the nature of the defect from which, according to the finding of the Returning Officer, the divisional lists of voters suffered and see whether that defect brings the case within the scope and ambit of Rule 75.

7. We may first refer to a few relevant sections of the Act. Section 13 provides that for the purposes of election of councillors at a general election, the State Government shall, after previous publication, by notification, determine (a) the number of territorial divisions into which the municipality shall be divided, (b) the extent of each territorial division, (c) the number of seats allotted to each territorial division which shall be not less than three and nor more than five, and (d) the number of seats, if any, reserved for the Scheduled Castes and for women in each territorial division. It was in obedience to the requirement of this section that the State Government issued the notification dated December 3, 1974 determining inter alia the divisions in which the Gangawati municipality shall be divided for the purpose of holding the election. The extent of each division was defined and demarcated in the notification with great precision by reference to the census block numbers which had been given to the different areas at the time of the census. These areas were clearly and definitely identifiable by their census block numbers, particularly as the extent of each census block number was well defined and it was known with definiteness and certitude as to which houses were comprised in it. There was, therefore, plainly and manifestly no doubt or uncertainty about extent of each of the divisions in which the Gangawati municipality was divided by the notification.

8. Section 14 is the next important section which deals with the subject of list of voters. It has four sub-sections of which the first three are material. They read as follows :

(1) The electoral roll of the Mysore Legislative Assembly for the time being in force for such part of the constituency of the Assembly as is included in a division of a municipality shall, for the purpose of this Act, be deemed to be the list voters for such division.

(2) The officer designated by the Deputy Commissioner in this behalf in respect of a municipality shall maintain a list of voters for each division of such municipality.

(3) Every person whose name is in the list of voters referred to in sub-section (1) shall, unless disqualified under any law for the time being in force, be qualified to

vote, at the election of a member for the division to which such list pertains.

What shall be the qualification of a person to stand as a candidate at an election is laid down in Section 15 sub-section (1). That sub-section provides that every person whose name is in the list of voters for any of the divisions of the municipality shall, unless disqualified under this Act or any other law for the time being in force, be qualified to be elected at the election for that division or any other division of the municipality and every person whose name is not in such list shall not be qualified to be elected, at the election for any division of the municipality. Then follows sub-section (2) which is of some importance. We quote it :

"Subject to any disqualification incurred by a person the list of voters shall be conclusive evidence for the purpose of determining under this section whether the person is qualified or is not qualified to vote or is qualified or is not qualified to be elected as the case may be, at an election."

Section 38 confers power on the State Government to make rules to provide for or regulate all or any of the matters set out in the section for the purpose of holding election of councillors under the Act. It was pursuance of this section that the Rules were made by the State Government.

9. It will be seen on a plain reading of sub-section (1) of Section 14 that the electoral roll for the territorial area comprised in a division is to be the list of voters for such division. The designated officer is merely to perform the operation of 'scissors and paste' - cut out those portions of the electoral roll which relate to the territorial area included in the division and paste them together so as to form the list of voters for the division. There is no separate qualification laid down in the Act for being placed in the list of voters for a division as was the case in Chief Commissioner, Ajmer v. Radhey Shyam Dani (1957) SCR 68 : AIR 1957 SC 304 : 12 ELR 443). In that case, Section 30, sub-section (2) of Ajmer-Merwara Municipalities Regulation, 1925 laid down two conditions which must be fulfilled in order to entitle a person to be enrolled as an elector of the Ajmer municipalities, namely, (1) that he should be entitled under Representation of the People Act, 1950 to be registered in the electoral roll for a parliamentary constituency, if that constituency had been co-extensive with the municipality, and (2) that his name should be registered in the electoral roll for a parliamentary constituency comprised in the municipality. It was for this reason that it was held by this Court that it was not enough that the name of a person should be registered in the electoral roll of a parliamentary constituency. That did not entitle him straightaway to be included in the electoral roll of the municipality. It was further required to be seen whether he was entitled to be registered in the electoral roll of the parliamentary constituency. That enquiry was necessary to be made before the electoral roll of the municipality could be prepared. But, here no other qualification is required : the mere fact of a person being in the electoral roll for the territorial areas comprised in a division is sufficient to include him in the list of voters for such division. Vide sub-section (1) of Section 14. What is required by this sub-section is that the list of voters of a division should correspond *ipsisssima verba* with the electoral roll for the territorial area included in the division. If there is any mistake in the electoral roll, in that some voters residing in one area or house number are shown as residing in another, it cannot be corrected by the Returning Officer while preparing the list of voters for each division. The Returning Officer has to take the electoral roll for the territorial area of the division as it is, with whatever mistakes there may be in it, and that would be the list of voters for the division. The only way in which the mistakes, if any, either in the names of the voters or in their addresses, including house numbers in which they reside, can be corrected is by applying for rectification of electoral roll under Section 22 of the Representation of the People Act, 1950. So long as such rectification is not made, the entries in the electoral roll would stand and they would

necessarily be reflected in the list of voters for the division. But they would not constitute mistakes, so far as the preparation of the list of voters for the division is concerned. It is only if the list of voters for the division does not correspond with the electoral roll for territorial area comprised in the division, in the sense that voters shown in the electoral roll as residing in the territorial area of the division are omitted to be included in the list of voters, or voters shown in the electoral roll as residing in the territorial area of another division are included in the list of voters, that it can be said that the list of voters is defective and not in accordance with the provisions of the Act.

10. Now in the present case, it is clear from the order of the Returning Officer dated December 21, 1974 that the list of voters for each division corresponded fully and completely with the electoral roll for the territorial area comprised in such division. The finding of the Returning Officer was that the various parts of the electoral roll included in the list of voters for each division conformed to the census block numbers of the respective division mentioned in the notification dated December 3, 1974. Each division was defined and demarcated by reference to census block numbers and the parts of the electoral roll were also made out on the basis of census block numbers. There could, therefore, be no doubt or confusion as to which parts of the electoral roll related to the territorial area comprised in a particular division. The corresponding parts of the electoral roll could be easily ascertained and identified by reference to census block numbers for preparing the list of voters for each division. That was admittedly done in the present case and there was no complaint about it. No defect was also alleged or found in this respect. The only defect - If at all it can be called a defect - which the Returning Officer noticed on physical verification was that the voters shown in the electoral roll as residing in the territorial area of one division were in fact residing in another. But, as already pointed out above, that cannot be regarded as a defect in the division-wise lists of voters and it would not stamp them with the vice of not being in conformity with the requirements of the Act. The State Government was, therefore, in any view of the matter, not entitled to make the impugned order under Rule 75 on the ground that the divisional lists of voters were defective and the election held on the basis of such lists of voters would not be in accordance with the provisions of the Act. What the State Government did by making the impugned order was to interfere with the election process which was going on in accordance with law and that was clearly not permissible on any interpretation of Rule 75.

11. That takes us to the alternative argument advanced by the learned Solicitor General on behalf of the State Government. He contended that in any event even if the impugned order was bad and the election process was liable to be continued from the stage at which it was interrupted, the poll could be taken only on the basis of the revised electoral roll which had come into being, in the meanwhile, in February 1975 and, therefore, it was necessary for the designated officer to correct the divisional lists of voters so as to bring them in accord with the revised electoral roll. This contention is also without force. It is true that there is no provision in the Act similar to Section 23, sub-section (3) of the Representation of the People Act, 1950 providing that no amendment, transposition or deletion of any entry in the list of voters for a division shall be made and no direction for the inclusion of any name in such list of voters shall be given after the last date for making nominations for an election in the division. But the scheme of the Act and particularly Sections 14 and 15 make it clear that it is one list of voters for each division that is contemplated to be in force during the entire process of election. The list of voters is to be prepared for the election and 'election' means the entire process constituting of several stages and embracing several steps by which an elected member is returned, whether or not it is found necessary to take a poll. Vide *N. P. Ponnuswami v. Returning Officer, Namakkal Constituency* (1952 SCR 218 : AIR 1952 SC 64 : 1 ELR 133). The list of voters must, therefore, a fortiori remain the same throughout the process of election. There cannot be one list of voters for determining the eligibility to stand as a candidate and another for

determining the eligibility to vote, at the same election. That would not only be irrational, but would also introduce confusion and uncertainty in the election process. Candidates would not know at the time when they file their nominations as to what is the strength and composition of the electorate in the division in which they are contesting the election. They would also be handicapped in canvassing for votes. It would indeed be a strange and anomalous position if there were two or more different lists of voters at different stages of the same election. Sub-section (1) of Section 14 does not contemplate a list of voters which keeps on changing from time to time during the election process. It deems the electoral roll for the territorial area of the division in force at the relevant time to be the list of voters for the division "for the purpose of the Act", that is for the purpose of election which is the whole process culminating in a candidate being declared elected and not merely polling. The same list of voters is, therefore, to prevail for all stages in the election. This we find emphasised also in sub-section (3) of Section 14 which enacts that every person whose name is in the list of voters referred to in sub-section (1) shall be qualified to vote at the election of a member for the division to which such list pertains. Sub-section (2) of Section 15 also points in the same direction. It says that the list of voters shall be conclusive evidence for the purpose of determining under this section whether the person is qualified or is not qualified to vote or is qualified or is not qualified to be elected as the case may be, at an election.

The reference here, as a matter of plain grammar, is indisputably to the same list of voters which is to be conclusive evidence for both purposes. It is, therefore, clear, on a proper interpretation of the provisions of the Act, that the Legislature did not intend that the list of voters should change from time to time during the process of election and the relevant electoral roll for the purpose of preparation of the list of voters must consequently be taken to be the electoral roll in force at the date when the election process commenced, that is, the date when the calendar of events was published. The same view was taken by a Division Bench of the Mysore High Court in *Sivappa Chanamallappa Jogendra v. Basavannappa Gadlappa Sankar* ((1965) 2 Mys LJ 289). We are in agreement with that view. The poll in the present case must, therefore, be taken on the basis of the list of voters for each division prepared with reference to the electoral roll in force on December 7, 1974, that being the date on which the calendar of events was published by the Returning Officer.

12. One other question was also raised before us, namely, whether the designated officer can be required to rectify the list of voters for a division, if it can be shown that the list of voters does not correspond exactly with the electoral roll for the territorial area of the division, as for example, some voters in a particular house in a census block number falling in the division, though shown in the electoral roll as such, are, through inadvertence, omitted to be included in the list of voters for the division. It is not necessary for the purpose of the present appeal to decide this question, but we may point out that till the election process has commenced by the issue of notice fixing the calendar of events, there is no reason why the designated officer should not be entitled to rectify such defect in the list of voters and bring the list of voters in conformity with the electoral roll. But once the calendar of events is published and the election process has begun, it is extremely doubtful whether any changes can be made in the list of voters for the purpose of setting right any such defect. We, however, do not wish to express any final opinion on this point.

13. These were the reasons which weighed with us in making the order dated May 2, 1975 dismissing the appeal with costs and directing the Returning Officer to complete the election before June 10, 1975 on the basis of the electoral roll in force on December 7, 1974.

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