

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 1ST DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.23811 OF 2021(LB-ELE)

BETWEEN:

SMT. PRABHAMANI,

...PETITIONER

(BY SRI. SATHISH S P, ADVOCATE)

AND:

1. SMT. HEMALATHA,

2. RETURNING OFFICER/ ELECTION OFFICER,
KARLE GRAMA PANCHAYATH,
DR SHIVARAJU, ASSISTANT PROFESSOR
GOVERNMENT COLLEGE,
HASSAN TALUK,
HASSAN – 573 201.

3. PRESIDING OFFICER,
KARLE GRAMA PANCHAYATH,
HASSAN TALUK, MALLIKARJUNAIAH K S,
SECONDARY SCHOOL ASSISTANT,
GOVERNMENT BOYS PU COLLEGE,
R C ROAD, HASSAN – 573 201.

4. DISTRICT ELECTION OFFICER/
DEPUTY COMMISSIONER,
HASSAN DISTRICT, HASSAN – 573 201.
... RESPONDENTS

(BY SRI. BASAVARAJU H T, ADVOCATE FOR R1;
SMT. PRATHIMA HONNAPURA, AGA FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE JUDGMENT/ORDER DATED 10.11.2021 MADE BY THE HONBLE SENIOR CIVIL JUDGE AT HASSAN IN ELEC.C.2.2021 VIDE ANNEXURE – A AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY THROUGH PHYSICAL HEARING, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner, a Returned Candidate of Karle Grama Panchayat whose election having been set at naught, the first respondent has been declared as having been duly elected in her stead by the Election Tribunal, is knocking at the doors of Writ Court for assailing the order dated 10.11.2021 entered in ELEC. C 2/2021 a copy whereof is at Annexure-A.

2. The Election petitioner in the Court/tribunal below who happens to be the first respondent herein is represented by her counsel and the learned AGA on request appears for the fourth respondent. Both they resist the writ petition making submission in justification

of the impugned order and the reasons on which it has been constructed and thereby seek dismissal of the writ petition.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines indulgence in the matter for the following reasons:

a) The order in challenge relates to jettisoning the election of petitioner herein and installation of the first respondent in her stead as the duly elected candidate of the Grama Panchayat. This order is made by the statutory Tribunal namely, the Additional Sr. Civil Judge, Hassan in exercise of adjudicatory power vested u/S 20 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993. The jurisdiction of the Tribunal is not in dispute although the manner of its exercise is. The case does not involve infraction of any of the Fundamental Rights. It relates to only statutory rights namely, right to continue in office till the expiry of elected tenure. Matters relating to election, be it to the grass root electoral bodies such as Grama Panchayats or to the Parliament, do fall within the realm of law of elections, as

legislated. It is relevant to recall the observation of the Apex Court in Apex Court in **JYOTHI BASU vs. DEBI GHOSHAL** 1982 (3) SCR 318, at paragraph 8:

"...A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An Election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the Common Law nor the principles of Equity apply but only those rules which the statute makes and applies..".

In view of the above, the indulgence of this Court is only under the limited supervisory jurisdiction constitutionally vested under Article 227, Article 226 having been insignificantly quoted in the petition. Therefore, a concrete case of "error apparent on the face of the record" has to be made out by the petitioner who seeks indulgence. However, no such case is made out as discussed below.

b) The jugular vein of the election petition was the validity of four ballot papers namely, Ex. P.11 to P.14, which were excluded from the Court in favour of

the first respondent – Election Petitioner on the ground that they belonged to a different constituency. Learned judge of the Court below at paragraph 31 has given cogent reasons as to why they should be counted, by observing as under:

"The materials on record clearly indicates that the 4 votes rejected as not genuine appears to be not proper for the reason that the said Ballot papers have been handed over by the officials themselves to the voters. The intention of the voter in making the mark on the symbol under which petitioner contested the election go to show that the said vote was casted in favour of the petitioner. Further, the Ballot papers which were admittedly handed over by the respondent No.3 to the voters have been treated as not genuine, which cannot be accepted because admittedly the same are issued by respondent No.3. Further, it is to be noted that by declaring the said 4 votes as not genuine, the result of the election has been materially affected resulting injustice to the petitioner. Another aspect to be noted is that as per Ex.p1, respondent No.1 obtained 232 votes and the petitioner obtained 231 votes. There is a difference of only one vote tot eh Returned Candidate. When there are materials on record to show that the said rejected votes were casted in favoru of the petitioner, 4 votes have to be added to the total number of votes obtained by the petitioner. Thereby, the total numbers of votes obtained by the petitioner amounts to 235. Therefore, petitioner is entitled for the relief sought for."

c) Psychologically, symbols have deep rooted emotive content being descriptively used since antiquity

and before. To elucidate upon this aspect, it would be profitable to refer to the words of **CARL G. YUNG** in his book '**Man and his Symbols**' (1961) at page 232:

"...The history of symbolism shows that everything can assume symbolic significance: natural objects (like stones, plants, animals, men, mountains and valleys, sun and moon, wind, water, and fire), or man-made things (like houses, boats, or cars), or even abstract forms (like numbers, or the triangle, the square, and the circle). In fact, the whole cosmos is a potential symbol. Man, with his symbol-making propensity, unconsciously transforms objects or forms into symbols (thereby endowing them with great psychological importance) and expresses them in both his religion and his visual art. The intertwined history of religion and art, reaching back to prehistoric times, is the record that our ancestors have left of the symbols that were meaningful and moving to them. Even today, as modern painting and sculpture show, the interplay of religion and art is still alive.

It is relevant to mention what Felix Frankfurter, J. of U.S. Supreme Court quoting Justice Oliver Wendell Holmes in **MINERSVILLE SCHOOL DISTRICT v. GOBITIS**, 310 US 586 (1940) had said 'we live by symbols'

d) In this backdrop, the election symbols of the candidates or their political parties through which they are put in the fray assume a lot of significance. These

symbols are normatively by the jurisdictional authorities constituted under law. The election symbols play a vital role inasmuch as, ordinarily, the electors identify their candidates on the basis of symbols with which they contest in the elections, and vote. It is more so in the case of election to 'grass-root' level local bodies like the one in this case. The Apex Court while considering the importance & value of election symbols in

SUBRAMANIAN SWAMY vs. ELECTION COMMISSION OF INDIA, (2008) 14 SCC 318 at paragraph 34 observed as under:

"...A symbol is not a tangible thing nor does it generate any wealth, it is only the insignia which is associated with the particular political party so as to help the millions of illiterate voters to properly exercise their right to franchise in favour of the candidate of their choice belonging to a particular party. In the election process it is not merely the individual candidate's personality or his identity that weighs with the voters. It is undoubtedly a very relevant factor but along with it the voter also can and does vote in favour of the party. It is under such circumstances that the symbol becomes relevant and important..."

e) When the margin of votes for electoral victory is very small, as is the case at hands, the scrutiny of the ballot papers assumes greater significance, may be a realistic view. In the election in question, though

the ballot papers belonged to other constituency, there is irrefutable evidence on record that they were utilized for the election in this constituency; they had the same electoral symbol; they were taken & used for the constituency in question after scrutiny by the jurisdictional authorities; the voters acted upon the same accordingly. The electors made mark upon the same. It is nobody's case that the mark found on these ballot papers were fake, forged or otherwise illegal. Some insignificant lapses do happen in election process, more particularly in rural areas, cannot be disputed. Added, there is admission of the petitioner that these ballot papers did not come from the '*farthest land*', as to be called '*alien*' to the election in question. Therefore, the Election Tribunal rightly faltered their exclusion from counting and thereby, reckoned them to the account of Respondent-Election Petitioner, who eventually has been declared as duly elected, after invalidating the election of Returned Candidate as provided under Section 16(3) of the 1993 Act which reads as under:

"A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidate is void, claim a further

declaration that he himself or any other candidate has been duly elected."

f) The last vehement submission of learned counsel appearing for the Returned Candidate that by a very small margin the election of his client has been set aside and therefore, an eminent case arises for indulgence of the Writ Court, for restoring his position, is bit difficult to countenance. Precedentially, the Vajpayee led NDA-Government was toppled for want of one vote, failing to secure a confidence vote on 17th April 1999. That is the value our system attaches to every vote. As an epilogue, it is pertinent to reproduce the following stanza by **BENJAMIN FRANKLIN** (1706 – 1790):

*"For want of a nail, the shoe was lost.
For want of a shoe, the horse was lost.
For want of a horse, the rider was lost.
For want of a rider, the battle was lost.
For want of a battle, the kingdom was lost,
And all for the want of a horseshoe nail."*

In the above circumstances, this writ petition being devoid of merits, is liable to be rejected and accordingly it is, costs having been made easy.

This Court places on record its appreciation for the assistance rendered by arguing counsel nameiy, Shri. Sathish S.P. & Shri Basavaraja H.T. & Smt. Prathima Honnapura, learned AGA appearing for the parties and Official Law Clerk cum Research Assistant of the High Court, Mr. Faiz Afsar Sait.

**Sd/-
JUDGE**

Bsv