

(R)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 22ND DAY OF JULY 2004

BEFORE

THE HON'BLE MR.JUSTICE K.L.MANJUNATH

ELECTION PETITION NO.1 OF 2003

Between:

Sri.Bashiruddin Halhipparga, s/o  
M.Yusuf Hal Hipparga,  
Age: 50 years, Occ: Agril., r/o  
H.No.4-2-47/1, Noor Khan Taleem,  
Bidar Taluk & District.

Petitioner

(By Sri.V.T.Rayaraddi, Smt.Akkamahadevi  
Hiremath & Sri.N.B.Patil, Advs.)

And:

1. Rajashekhar Basavaraj Patil,  
age: 36, Occ: Agril., r/o  
Near Bus Stand, Humnabad,  
Humnabad Taluk,  
Bidar District.
2. Mirajuddin N. Patel, s/o  
Nizamuddin Patel,  
Age: 45, Occ: Agril &  
Ex-Minister, r/o  
Huchakanahalli Village,  
Bidar Taluk & District.
3. Subhash Gurulingappa  
Kallur, age: 45 years,  
Occ: Agril, r/o  
Shanti Nivas, H.No.22-1478,  
Near Bus Stand, Humnabad,  
Humnabad Taluk,  
Bidar District.





**ORDER ON THE MAINTAINABILITY OF THE  
ELECTION PETITION**

In the general election held in the month of September 1999 to No.5, Humnabad Assembly Constituency, the 3<sup>rd</sup> respondent Subhash Gurulingappa Kallur, was declared as an elected candidate. The first respondent - Rajashekar Basavaraj Patil filed an election dispute in E.P. No. 13/99 before this Court. The said petition came to be dismissed on merits. Being aggrieved by the dismissal of the election petition, the 1<sup>st</sup> respondent filed a civil appeal before the Hon. Supreme Court of India in Civil Appeal No.5667/01 which appeal came to be allowed and the election of the 3<sup>rd</sup> respondent was set aside, on the ground that he had incurred disqualification to contest the election under section 9A of the Representation of the People Act, 1951. Thereafter a notification was issued on 22-1-2003 by the Government of Karnataka, notifying the calender of events for By-Election to

R



filed nominations in the said election. The Returning officer rejected the nomination of one Ashok S/o Masoodappa as a substitute candidate for Bharatiya Janatha Party. The Returning Officer also accepted the nomination of one Ashfoddin who is the 5th respondent in the present Petition.

3. Being aggrieved by the election results, declaring the 1<sup>st</sup> respondent as an elected candidate, the petitioner filed the present election petition under section 81 of the Representation of the People Act 1951 on three grounds.

4. According to the petitioner, the Returning Officer has committed an error in rejecting the nomination of Ashok S/o Masoodappa as a substitute candidate for the Bharatiya Janatha Party. According to him, it is a case of improper rejection of nomination. It is also his case that the Returning Officer has committed an error in accepting the nomination of the 5<sup>th</sup> respondent. According

2/

to him, it is a case of improper acceptance of the nomination. It is also pleaded in the petition that contrary to the Model code of conduct for the guidance of political parties and the candidates, the then Chief Minister and several Ministers during the period of election campaign in the Humnabad Constituency held several public meetings and assured several reliefs to the valuable voters to make the voters to exercise their franchise in favour of the 1<sup>st</sup> respondent. Therefore on these grounds, the election petition has been filed by the petitioner.

5. The 1<sup>st</sup> respondent who is the contesting respondent has filed the detailed reply to the election petition. According to him, the Returning Officer has not committed any error either in rejecting the nomination of Ashok S/o Masoodappa or in accepting the nomination of the 5<sup>th</sup> respondent. It is also the case of the 1<sup>st</sup> respondent that with his knowledge or consent either the Chief Minister

R



6. The 1<sup>st</sup> respondent also filed an application to dismiss the election petition on the ground that the petition filed by the petitioner was not maintainable as it does not attract any of the provisions of Section 100 of the Representation of the People Act, 1951.

7. This Court after hearing the learned counsel for the petitioner and respondents and based on the Memo filed by the learned counsel appearing for the petitioner that the petitioner has not filed the election petition on the ground of corrupt practices dismissed the application of the 1<sup>st</sup> respondent and held that the election petition filed by the petitioner is maintainable and has to be adjudicated on the allegations made in the election petition.

8. Based on the pleadings of the parties, the Court also framed issues. Thereafter the petitioner was examined as P.W.1 and he also examined two more witnesses, namely,

12













{the High Court} shall declare  
the election of the returned  
candidate to be void. }

(2) " " " " " "

14. From the provisions of section 100 of the Act, it is clear to me that even if there are violation of code of conduct either by the political party or by its candidate such violations can only be brought to the notice of the Election Commission of India to initiate appropriate action against such party or candidate. But the same cannot be a ground to set aside the election of a Returning candidate as void, since such a question cannot be adjudicated by the Court in view of the provisions of Section 100 of the Representation of People Act.

15. In the instant case, there are no allegations of violation of model code of conduct against the 1<sup>st</sup> respondent. It is the specific case of the petitioner that the then

13/

Hon. Chief Minister and few Hon. Ministers had assured to convert the Chitaguppa town as a Taluk Headquarters and to give certain reliefs to the employees of Mahatma Gandhi Sahakara Sakhare Karkhane, Bhalki Taluk and to provide the status of Schedule Tribes to two communities by name, Gonda and Rajgonda. Therefore, it is clear that the 1<sup>st</sup> respondent, the Returned <sup>s</sup> candidate has not violated the model code of conduct issued by the Election Commission of India. Even otherwise, this Court cannot consider the effect of the violation of model code of conduct by any political party, in view of section 100 of the Representation of People Act, 1951. Therefore, this Court is of the opinion that even if the Returning Officer has improperly rejected the nomination of Ashok s/o Masoodappa and that the nomination of 5<sup>th</sup> respondent was improperly accepted 1<sup>th</sup> respondent, this Court at best can hold that the said two aspect will have no bearing on

*2*

