



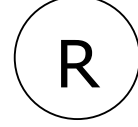
**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 10<sup>TH</sup> DAY OF JANUARY, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**WRIT PETITION NO.107291 OF 2023 (LB-ELE)**



**BETWEEN:**

MUDIYAPPA S/O. AYYAPPA BHAGAVATI  
AGE: 43 YEARS, OCC: AGRICULTURE,  
R/O. CHOUDAPUR,  
TQ: & DIST: BAGALKOTE-587115.

...PETITIONER

(BY SRI. SHIVRAJ S. BALLOLI, ADVOCATE)

**AND:**

1. BASAVARAJ @ BASAPPA  
S/O. SHIVAPPA BHAGAVATI,  
AGE: 52 YEARS, OCC: AGRICULTURE,  
R/O. BHAGAVATI,  
TQ: & DIST: BAGALKOTE-587103.
2. IRAWWA W/O. GIRIMALLAYYA HIREMATH,  
AGE: 24 YEARS, OCC: HOUSEHOLD WORK,  
R/O. CHOUDAPUR,  
TQ: & DIST: BAGALKOTE-587115.
3. MANJULA W/O. RUDRAYYA SARANGMATH,  
AGE: 37 YEARS, OCC: HOUSEHOLD WORK,  
R/O. CHOUDAPUR,  
TQ: & DIST: BAGALKOTE-587115.
4. GEETA W/O. GANGAPPA HOLEDASAR,  
AGE: 27 YEARS, OCC: HOUSEHOLD WORK,  
R/O. CHOUDAPUR,  
TQ: & DIST: BAGALKOTE-587115.
5. YALLAWWA D/O. FAKIRAPPA MADAR,  
AGE: 45 YEARS OCC: HOUSEHOLD WORK,  
R/O. CHOUDAPUR,  
TQ: & DIST: BAGALKOTE-587115.





6. BORAWWA D/O. KUDLAPPA KOTAGI,  
AGE: 23 YEARS, OCC: HOUSEHOLD WORK,  
R/O. CHOUDAPUR,  
TQ: & DIST: BAGALKOTE-587115.
7. HEMAVATI W/O. YALLAPPA KALERI,  
AGE: 37 YEARS, OCC: HOUSEHOLD WORK,  
R/O. CHOUDAPUR,  
TQ: & DIST: BAGALKOTE-587115.
8. BEERAPPA S/O. SANGAPPA BAIRMATTI,  
AGE: 40 YEARS, OCC: HOUSEHOLD WORK,  
R/O. CHOUDAPUR,  
TQ: & DIST: BAGALKOTE-587115.
9. SIDDAPPA S/O. GANGADHAR BAIRMATTI,  
AGE: 34 YEARS, OCC: HOUSEHOLD WORK,  
R/O. CHOUDAPUR,  
TQ: & DIST: BAGALKOTE-587115.
10. THE RETURNING OFFICER,  
(S.S. BELAGALI),  
FOR THE ELECTION OF  
GRAM PANCHAYAT MEMBERS  
CONSTITUENCY NO.7,  
CHOUDAPUR VILLAGE OF GRAM PANCHAYAT,  
BEVOOR, G.P. BEVOOR,  
TQ: & DIST: BAGALKOTE-587115.

...RESPONDENTS

(BY SRI. PRAVEEN UPPAR, AGA FOR R2 & R10;  
SRI. VIDYASHANKAR G. DALWAI, ADV. FOR CAVEATOR/R1;  
NOTICE TO R2 TO R9 DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE IMPUGNED JUDGMENT DATED 10/11/2023 PASSED BY THE LEARNED PRINCIPAL SENIOR CIVIL JUDGE AND CJM, BAGALAKOTE, IN ELEC. P. NO.1/2021, VIDE ANNEXURE-A, IN THE INTEREST OF JUSTICE AND EQUITY.



THIS PETITION IS COMING ON FOR PRELIMINARY HEARING  
THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

1. The petitioner is before this Court seeking the following reliefs:
  - i. Issue a Writ of Certiorari quashing the impugned judgment dated 10/11/2023 passed by the learned Principal Senior Civil Judge and CJM, Bagalkote, in Elec. P.No.1/2021, vide **Annexure-A;***
  - ii. Pass any other order(s) as this Hon'ble Court may deem fit in the interests of justice and equity.*
2. Respondent No.1 had filed an election petition against the petitioner as also respondent Nos.2 to 10 in E.P.No.1/2021, on the file of learned Prl. Senior Civil Judge and CJM, Bagalkote challenging election of petitioner to the Bevoor Gram Panchayath, Dist: Bagalkote held on 27.12.2020.
3. The said Election Petition having been allowed and the election of respondent No.1 having been declared void the petitioner was respondent No.1 therein is before this Court seeking for the aforesaid reliefs.



4. The contention of Sri. Shivaraj S.Balloli is that, the Trial Court completely misapplied itself inasmuch as the allegation made against the petitioner was only that he had not disclosed an acquittal in a criminal proceedings. The submission in this regard is that it is only if there is a conviction and or the said criminal proceedings being pending that disclosure is required to be made and not when the petitioner has been acquitted since such acquittal absolves the petitioner of all the liability. Secondly, he submits that the objection filed by respondent No.1 to the nomination form submitted by the petitioner was beyond 6:30 PM. The time having been fixed for receipt of such objection being within 6:30 PM. Such objections not having been received at nonest and the same could not have been considered in the E.P.No.1/2021. Thirdly, he submits that there were no issues and points for consideration which was formulated by the said Court prior to recordal of evidence. The points for consideration were formulated by the Court only in



the judgment dated 10.11.2023 and as such, there is no opportunity which is available to the petitioner to contest the said proceedings in a proper way. Lastly, he submits that in terms of Section 19 of the Act 1993, it is only if results of the election be materially effected that an election could be declared as void, the non disclosure of the acquittal of the petitioner could not have any such material impact and therefore, the same would not constitute a ground that declaration of the petitioner's election to be void. On all these grounds, he submits that the above petition is required to be allowed and the order passed in E.P.No.1/2021 is required to be set-aside.

5. Learned counsel for respondent No.1 would submit that it is not the objections which were filed to the nomination paper submitted by the petitioner which was considered but it was the election petition filed under Section 15 of the Karnataka Gram Swaraj and Panchayath Raj Act which was considered and orders



passed. The grievances raised by respondent No.1 in an election petition have been properly considered and there can be no fault found thereto. His further submission is that whether there is acquittal or otherwise would make no difference inasmuch as criminal proceedings having been filed ought to have been disclosed in the nomination papers which would have a material impact on the election to be conducted. The parties being aware of the issues and/or the grounds on which the election petition had been filed, there is no further requirement of formulating the issues and points for consideration, the parties were aware of *lis* which has been raised and as such, there is no prejudice which has been caused to the petitioner by not framing issues/points for consideration prior to evidence being led. On these grounds, he submits that the petition is liable to be dismissed.



6. Heard learned counsel for both the parties and perused the papers.

7. The points that would arise for consideration are:

**1) Whether in the nomination form filed by a candidate, the candidate would have to disclose criminal proceedings in which the candidate has been acquitted or not?**

**2) Whether it is only when a finding of the election being materially effected could a declaration of the election being void be issued?**

**3) Whether in the present facts non formulation of issues or points for consideration has caused prejudice to the petitioner?**

**4) What order?**

8. I answer the above points as under:

9. **ANSWER TO POINT NO.1**:-Whether in the nomination form filed by a candidate, the candidate would have to disclose criminal proceedings in which the candidate has been acquitted or not ?

9.1. The Hon'ble Apex Court in the case of  
***Democratic Union of India v. Association for***



***Democratic Reforms and another with Peoples Union for Civil Liberties and another v. Union of India and another***<sup>1</sup> has categorically held that all details of the candidate include those relating to criminal proceedings would have to be disclosed by a candidate in his nomination papers.

9.2. Though there was no particular requirement under law at that point of time for disclosure of criminal proceedings, it is by way of an order of the Hon'ble Apex Court that it was mandated for a candidate to disclose the details of the criminal proceedings. The distinction that is now sought to be drawn by Sri. Shivaraj S.Balloli, learned counsel for the petitioner that what is required to be disclosed is only where there was a conviction and or the proceedings were pending is a distinction in futility in as much as what the Hon'ble Apex Court has directed is for disclosure

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<sup>1</sup> AIR 2002 SC 2112.





of all criminal proceedings filed against the candidate which in my considered opinion also includes criminal proceedings where the candidate has been acquitted since what is important is that disclosure of information by a candidate is to be made and for the electorate to be aware of all relevant information as relating to the candidate contesting in the election. The aspect of conviction or otherwise and the period of sentence may be relevant for disqualification of the candidate, in so far as filing of nomination forms what is required is full disclosure of all aspects relating the candidate and his/her immediate family. Thus, the distinction now sought to be drawn between conviction and acquittal or pendency and acquittal is a distinction without any difference when the aspect of disclosure being required to be made is considered.



9.3. I answer point No.1 by holding that whenever any nomination forms are filed by any candidate, the candidate would have to disclose all criminal proceedings filed against the said candidate irrespective of whether the candidate had been acquitted or not, whether it is been quashed or not.

9.4. The mere fact of filing of complaint and criminal proceedings would suffice for such candidate to disclose the same in his nomination form. If there is no particular row or column in the said application to enable disclosure or if the space available is less than what is required, such candidate could always make use of additional sheets to disclose of particulars like crime number, provisions under which allegations have been made, who are all other co-accused, who is de-facto complainant, the stage of the case if pending, nature of disposal, date of disposal, if



an appeal is filed and the details as regards appeal, if proceedings have been quashed, set aside etc.,

10. **ANSWER TO POINT NO.2:- *Whether it is only when a finding of the election being materially effected could a declaration of the election being void be issued ?***

10.1. When election is challenged to Gram Panchayat, election petition is required to be filed under Section 15 of the Act of 1993. The grounds of such challenges are to be mentioned in the Act and it is in terms of Section 19 thereof that a declaration of election to be void is to be made.

10.2. In the present case, in the election petition filed, the contention which has been taken by respondent No.1 was that the petitioner has not disclosed the criminal proceedings and antecedents, which amounts to suppression since electorate had right to know all criminal antecedents. In the said petition, it was clearly



stated in paragraph 8 about certain criminal proceedings have been filed and in paragraph 9 about acquittal of the petitioner. The petitioner in his objection had categorically taken a stand that there was no need to disclose the acquittal of the petitioner and only in the event there being conviction that the disclosure was required. Thus, it is clear that the petitioner has admitted to criminal proceedings filed against him where he has been acquitted.

10.3. Such being the case, the election petition having been filed on the same ground, the petitioner knowing the said ground, I do not find any infirmity in the Trial Court not framing the issues and or formulating the points for consideration at the time of judgement. The parties went to the trial knowing fully well the lis between them and the conspectus of the proceedings as also the consequences with



regard non-disclosure of the criminal proceedings.

10.4. One other fact that is to be considered is that the petitioner led his evidence without objecting to the nonframing of issues, thus there was no impediment for the petitioner to lead evidence, which has been so done, hence this issue cannot be not raised having suffered an order.

10.5. Hence, I answer point No.2 by holding that in the present case, non-framing of issues and or non-formulating points for consideration before evidence did not vitiate the proceedings.

**11. ANSWER TO POINT NO.3:- *Whether in the present facts non formulation of issues or points for consideration has caused prejudice to the petitioner ?***

11.1. The contention of Sri.Shivaraj Ballolli, learned counsel for petitioner, it is only when the election results would get materially affected



that there is a duty of disclosure on the candidate. On that premise, he submits that the non-disclosure of the acquittal of the petitioner in a criminal proceedings would not have any material bearing on the election inasmuch as the petitioner is being acquitted in the proceedings, it is only if there is a conviction, that Section 19 (i)(d) of the Act would come into play materially affecting the result. This argument is no longer available in view of the decision of the Hon'ble Apex Court in ***Democratic Union of India*** (*supra*), wherein the Hon'ble Apex Court has imposed duty of disclosure on each and every candidate along with nomination form filed. The concept of election being materially affected, cannot be construed in a narrow sense but should be construed in a broader sense inasmuch as all details relating to particular candidate should be made available to the Electorate to make its own decision on the



material available. Non-disclosure could also be said to be suppression. Whether it is material or not is for the electorate to decide. What the petitioner was required to do was to disclose all material facts including the fact of the petitioner having been acquitted in criminal proceedings filed.

11.2. Thus, I answer point No.3 by holding that the duty cast on the candidate to disclose all material facts cannot be read narrowly nor can it be circumscribed by application of the concept of election being materially affected in terms of clause (d) sub-section (i) of Section 19 of the Act of 1993.

12. In view of my answer to the above points, I am of the considered opinion that there is non-disclosure by the petitioner of the criminal proceedings which have been filed against the petitioner, which has been taken into consideration by the Trial Court in a proper



perspective and as such, the said judgment of the Trial Court cannot be found fault with.

13. The writ petition being devoid of any merits stands dismissed.

14. In view of disposal of the petition, pending interlocutory applications, if any, do not survive for consideration and are disposed of accordingly.

**Sd/-**  
**JUDGE**

AM, YAN  
List No.: 1 Sl No.: 75