IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 20TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

WRIT PETITION NO.203434 OF 2024 (LB-ELE)

BETWEEN:

DEVENDRAPPA S/O BASAPPA,
AGED ABOUT 41 YEARS,
R/O NAGARHAL TQ. LINGASUGUR,
DIST. RAICHUR-584125.

...PETITIONER

(BY SRI. MAHANTESH PATIL, ADVOCATE)

AND:

1. HULEGAMMA W/O SHIDDAPPA,
AGED ABOUT 26 YEARS,
R/O NAGARAL, TQ. LINGASUGUR,
DIST. RAICHUR-584125.

2. ALIYA BEGUM W/O ANWAR PEERA,
AGED ABOUT 53 YEARS,
R/O NAGARAL, TQ. LINGASUGUR,
DIST. RAICHUR-584125.

...RESPONDENTS

(BY SRI. A. M. NAGRAL, ADVOCATE FOR R1;
R-2 SERVED)

Digitally signed by RENUKA
Location: High Court Of Karnataka

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI TO QUASH THE IMPUGNED REVIEW PROCEEDINGS IN REVIEW PETITION NO.02/2024 PENDING ON THE FILE OF LEARNED ELECTION

TRIBUNAL / SENIOR CIVIL JUDGE AND JMFC AT LINGASUGUR VIDE ANNEXURE-D.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R.NATARAJ

ORAL ORDER

The petitioner has challenged the validity of proceedings in Review Petition No.2/2024 pending consideration before the election Tribunal/Senior Civil Judge and JMFC, Lingasugur.

2. The facts in brief are that the respondent No.1 filed an election petition under Section 15 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 to recount the votes secured by him, petitioner and respondent No.2 and consequently to declare the results of the election. The petitioner appeared and filed statement of objections and claimed that he had secured 281 votes which was more than the votes secured by respondent No.1. The Tribunal after considering the election petition on merits, dismissed the election petition in terms of the order dated

16.11.2024. Being aggrieved by the said order, respondent No.1 filed a review petition contending that the Court did not take into consideration the votes that was recounted by the Commissioner appointed by the Court which disclosed that the respondent No.1 had secured more votes than the petitioner. The petitioner filed objection to the review petition. The petitioner is therefore before this Court challenging the jurisdiction of the Election Tribunal to entertain the review petition.

3. Learned counsel for the petitioner reiterated the above contentions and contended that the election Tribunal has no power of review under the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 and therefore, it cannot entertain such a petition. He contends that the order of the Election Tribunal is final and if the respondent No.1 is desirous of challenging the order of election Tribunal she has to approach the appropriate court.

4. *Per contra*, learned counsel for respondent No.1 contends that the petitioner has already subjected himself

to the jurisdiction of the Court by filing objections to the review petition. He contends that a Commissioner was appointed by the Election Tribunal for counting of the votes and it was found by the Commissioner that the respondent No.1 had secured more votes than the petitioner. However, this report of the Commissioner was not considered by the Election Tribunal while passing an order disposing off the election petition. He thus contends that this is a mistake on the part of the election Tribunal and therefore it was bound to reconsider the decision in the light of the contentions urged in the review petition.

5. I have considered the submission of the learned counsel for the petitioner and the learned counsel for respondent No.1.

6. The Election Tribunal had disposed off the election petition after recording evidence of the parties on 16.11.2024 vide Annexure-C. If the respondent No.1 was aggrieved by the said order, he was bound to challenge it in the manner known to law. He could invoke the review

powers of the election Tribunal only if the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 provided or invested in the Tribunal such power. A perusal of the provisions of the Act does not show that the election Tribunal was conferred with the powers of review of its order. It is now well settled that powers of review cannot be exercised unless, the statute confers such power. The power of review should be expressly provided and cannot be construed as inherent in a Court as held by the Hon'ble Apex Court in the case of ***Naresh Kumar and others*** vs. ***Government (NCT of Delhi)***[1]. The Hon'ble Apex Court while considering the said question held as follows :-

> ***13.*** *It is settled law that the power of review can be exercised only when the statute provides for the same. In the absence of any such provision in the concerned, such power of review cannot be exercised by the authority concerned. This Court in the case of Kalabharati Advertising vs. Hemant Vimalnath Narichania (2010) 9 SCC 437, has held as under: (SCC pp. 445-46, paras 12-14)*
>
> > *"……12. It is settled legal proposition that unless the statute/rules so permit, the review application is not*

[1] (2019) 9 SCC 416

maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar [AIR 1965 SC 1457] and Harbhajan Singh v. Karam Singh [AIR 1966 SC 641].)

13. In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji [(1971) 3 SCC 844 : AIR 1970 SC 1273], Major Chandra Bhan Singh v. Latafat Ullah Khan [(1979) 1 SCC 321], Kuntesh Gupta v. Hindu Kanya Mahavidyalaya [(1987) 4 SCC 525 : 1987 SCC (L&S) 491 : AIR 1987 SC 2186], State of Orissa v. Commr. of Land Records and Settlement [(1998) 7 SCC 162] and Sunita Jain v. Pawan Kumar Jain [(2008) 2 SCC 705 : (2008) 1 SCC (Cri) 537] this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an

> *application for review or under the garb of clarification/modification/correction is not permissible."*
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> *(emphasis supplied)"*

7. In view of the above, the proceedings before the election Tribunal initiated by respondent No.1 to review the order dated 16.11.2024 in E.P.No.5/2021 was not justified. Since, the Election Tribunal has no power of review, it cannot proceed further. Consequently, this writ petition deserves to be allowed and the review petition initiated by respondent No.1 deserves to be terminated.

8. Consequently, this writ petition is ***allowed*** and the proceedings initiated by respondent No.1 in Review Petition No.2/2024 before the Election Tribunal/Senior Civil Judge and JMFC, Lingasugur is quashed.

9. It is however open for the respondent No.1 to challenge the order of the Election Tribunal in the manner known to law.

10. The time consumed in pursuing the review petition shall be deducted while calculating limitation, if applicable.

In view of the disposal of the writ petition, I.A.No.1/2025 stands disposed.

Sd/-
(R.NATARAJ)
JUDGE

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