



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



DATED THIS THE 7TH DAY OF JANUARY, 2025

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

WRIT PETITION NO.100030 OF 2025 (LB-ELE)

BETWEEN:

KUDLEPPA S/O. VEERASANGAPPA CHITTARAGI,
AGE: 50 YEARS, OCC: AGRICULTURE,
R/O. AMINAGAD, TQ: HUNGUND,
DIST: BAGALKOT-587112.

...PETITIONER

(BY SRI. GIRISH A. YADAWAD, ADVOCATE)

AND:

1. MAHANTESH S/O. NANDAYYA HIEMATH,
AGE: 49 YEARS, OCC: AGRICULTURE,
R/O. AMINAGAD, TQ: HUNGUND,
DIST: BAGALKOT-587112.
2. VIJAYAKUMAR S/O. SIDDAPPA KANNUR,
AGE: 46 YEARS, OCC: AGRICULTURE & BUSINESS,
R/O. AMINAGAD, TQ: HUNGUND
DIST: BAGALKOT-587112.
3. ELECTION RETURNING OFFICER,
PATTAN PANCHAYAT AMINAGAD,
WARD NO.9 TO 16,
ASST. EXECUTIVE ENGINEER,
P.W.D. DEPARTMENT, BAGALKOT,
DIST: BAGALKOT-587101.
4. THE TAHASILDAR,
HUNGUND, DIST: BAGALKOT-587112.
5. THE DEPUTY COMMISSIONER,
BAGALKOT, DIST: BAGALKOT-587101.

...RESPONDENTS

(BY SRI. K.L. PATIL AND
SRI. S.S. BETURMATH, ADVOCATES FOR R2
SRI. V.S. KALASURMATH, HCGP FOR R3-R5;
R1-DISPENSED WITH)





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 16.12.2024 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC, HUNAGUND ON IA NO.15 IN ELECTION PETITION NO.01/2022 VIDE ANNEXURE-K, AND ALLOW IA NO.15 FILED BY THE PETITIONER IN ELECTION PETITION NO.01/2022 AND ALSO TO PERMIT THE PETITIONER TO LEAD ADDITIONAL EVIDENCE ON THE ADDITIONAL ISSUE FRAMED, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

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

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. Sri K.L.Patil and Sri S.S.Beturmath, learned counsels who have filed caveat for respondent No.2 accept notice for respondent No.2. Learned AGA accepts notice for respondents No.3, 4 and 5. Notice to respondent No.1 is dispensed with in view of the proposed order to be passed.
2. The petitioner is before this Court seeking the following reliefs:
 - a) *Issue a writ of certiorari to quash the impugned order dated 16.12.2024 passed by the Senior Civil Judge and JMFC, Hunagund on IA No.15 in Election Petition No.01/2022 vide Annexure-K, and allow IA no.15 filed by the petitioner in election petition no.01/2022 and also to permit the petitioner to lead additional evidence on the additional issue framed, in the interest of justice and equity.*



b) Pass such order or orders which this Hon'ble court deems fit and necessary under the facts and circumstances of the case, in the interest of justice and equity.

3. Respondent No.1 had filed an election petition in EP No.1/2022 against respondents No.2 to 5 and the petitioner under Section 21 of the Karnataka Municipalities Act, 1964 (for short 'the Act') seeking the relief of declaration to the effect that election of respondent No.2 to Amingad Pattan Panchayat from Ward No.16, is void and illegal and for declaration that he is the successful candidate.
4. Alleging that there is collusion between respondents No.1 and 2, the petitioner had filed an application for being transposed as a petitioner in the aforesaid election petition, which came to be dismissed vide order dated 16.12.2024 passed by learned Senior Civil Judge and JMFC, Hungund. It is challenging the same, the petitioner is before this Court.
5. Sri Girish Yadwad, learned counsel for the petitioner would submit that there being an apparent collusion



between respondents No.1 and 2 that is the election petitioner and the successful candidate, the petitioner has a vested right to ensure that the challenge to the election of the successful candidate reaches its logical conclusion. There being a collusion between the election petitioner and the successful candidate, the petitioner, who is one other candidate wanted to transpose himself as an election petitioner to prosecute the matter, which could not have been negated by the trial Court in the manner so done and as such, he submits that the impugned order passed is required to be set-aside and the application filed in I.A.No.15 under Order 1 Rule 10 of Code of Civil Procedure (for short 'CPC') is required to be allowed.

6. Sri S.S.Beturmath, learned counsel appearing for respondent No.2 would submit that election petition is a statutory remedy and any claim would have to be made in terms of the applicable statute. The petitioner not having challenged the election of



respondent No.2, same cannot be sought to be challenged by seeking for transposition in the pending election petition and as such, he submit that the Court has properly dismissed the application filed in the election petition.

7. Sri V.S.Kalasurmath, learned AGA appearing for respondents No.3 to 5 would support the impugned order and submit that no fault can be found therewith.
8. Having heard the learned counsel for the petitioner and respondents, the short but important question that would arise for consideration is;

"Whether the respondent in the election petition can seek for transposition as a petitioner on the ground that the election petitioner and the successful candidate have colluded with each other"?

9. Section 21 of the Act is reproduced hereunder for easy reference.



21. **Election petitions.**—(1) No election of a councillor shall be called in question except by an election petition presented to the Election Tribunal within fifteen days from the date of the declaration of the result of the election.

(2) An election petition calling in question any such election may be presented on one or more of the grounds specified in section 23,—

(a) by any candidate at such election, or

(b) by any voter of the division concerned.

(3) A petitioner shall join as respondents to his petition all the candidates at the election.

(4) An election petition,—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall with sufficient particulars, set forth the ground or grounds on which the election is called in question; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

10. A perusal of sub-Section (1) of Section 21 of the Act would make it clear that no election of a councillor shall be called in question except by an election petition presented to the election tribunal within 15 days from the date of declaration of the result of the



election. Sub-section (2) of Section 21 of the Act provides for the petition to be presented on any of the grounds specified in Section 23 of the Act by any candidate at such election or by any voter of the ward concern. The petitioner would also be required to join as respondent to his petition, all the candidates at the election in terms of Subsection (3) of Section 21 of the Act.

11. Section 23 of the Act is reproduced hereunder for easy reference.

23. Grounds for declaring elections to be void.—(1) Subject to the provisions of sub-section (2), if the Election Tribunal is of opinion,—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen as a councillor under this Act, or

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent, or

(c) that any nomination paper has been improperly rejected, or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected,—



(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent or by any other person acting with the consent of such candidate or agent, or

(iii) by the improper acceptance or refusal of any vote or reception of any vote which is void, or

(iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder, the Election Tribunal shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Election Tribunal, any agent of a returned candidate has been guilty of any corrupt practice, but the Tribunal is satisfied,—

(a) that no such corrupt practice was committed at the election by the candidate, and every such corrupt practice was committed contrary to the orders and without the consent of the candidate;

(b) that the candidate took all reasonable means for preventing the commission of corrupt practices at the election; and

(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the Tribunal may decide that the election of the returned candidate is not void.

12. An election petition could be filed only in terms of the grounds mentioned under sub-Section (1) of Section 23 of the Act and orders passed thereon. Reading of



Sections 21 and 23 of the Act would indicate that any petition challenging an election would have to be filed by a candidate or a voter within 15 days from the date of declaration of the result of the election.

13. In the present case, such a petition had been filed on 13.01.2022 by respondent No.1 in EP No.1/2022 and it is only on 22.02.2024 that the petitioner filed an application in I.A.No.15 under Order 1 Rule 10 of CPC to transpose him as a petitioner i.e., from the time of filing of the election petition on 13.01.2022 till 22.02.2024, the petitioner had no grievance as regards the election of respondent No.2 and it is only alleging that there is collusion between the election petitioner and the successful candidate that the aforesaid application was filed. A challenge to an election, is a serious matter and any such challenge can be made only in terms of the applicable statute and not otherwise. Section 21 of the Act clearly mandating that a challenge has to be made within 15



days, any person aggrieved by the election is required to file the said election petition within 15 days of the declaration of election and not otherwise. There is no vested right created in the respondent to the election petition as regards the relief, which has been sought for in election petition. Whether a respondent supports the claim of the petitioner or not is immaterial, it is for the election petitioner to establish his case.

14. If at all the petitioner was aggrieved by the election of the successful candidate, he could have always filed a separate election petition, challenging said election which could have been tried along with EP No.1/2022 or independently, that not having been done after a period of 2 years after the election, the question of respondent in a election petition seeking for transposition as a petitioner to continue the petition and therefore challenge the election of the successful candidate would not arise there being no vested right



in favour of such a respondent, the same being barred under Section 21 of the Act.

15. The transposition of a party in a proceeding as a petitioner/plaintiff can only arise if there is a vested right or interest in such person to seek for the relief sought for by the petitioner/plaintiff and where the right could be decided by the Court.
16. In the present case, the petitioner not having filed election petition cannot seek for transposition after more than two years of the filing of the election petition by respondent No.1, such a relief being time barred cannot be granted in favour of the petitioner, even if allowed to be transposed.
17. I answer the point raised by holding that respondent in a election petition cannot seek for transposition as a petitioner in the election petition on the ground of collusion between the election petitioner and the successful candidate or any other ground. If at all, a candidate in an election is aggrieved, such candidate



would be required to file necessary election petition in terms of the applicable law within the applicable time frame fixed thereto.

18. In view of my answer to the aforesaid point formulated, the petitioner in the present case being a respondent and not having independently challenged the election of respondent No.2 could not have filed an application for transposition under Order 1 Rule 10 of CPC. I do not find any infirmity in the order passed by trial Court. The petition not making out any grounds stands ***dismissed***.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

AM
CT-MCK
List No.: 1 Sl No.: 50