

(1996) 06 KAR CK 0066
In the Karnataka High Court
Case No : WA No. 624 of 1996

Bapu Dada Patil

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 13-06-1996

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 44, 49

Citation : (1996) ILR (Kar) 3290 : (1996) 7 KarLJ 215

Hon'ble Judges : S. Rajendra Babu, Acting C.J.;Chidananda Ullal, J

Bench : Division Bench

Advocate : G.S. Kannur, for the Appellant; Nagarajappa, HCGP for R-1 to 5 and Ravi S. Balekai, for R-5, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajendra Babu, Ag. CJ.

1. This appeal is directed against an order made by the learned Single Judge refusing to interfere with the election process being commenced for electing an Adhyaksha to a gramapanchayat.

2. The contention advanced on behalf of the appellant is that one Smt. Prabhavathi had been elected as the Adhyaksha of the gramapanchayat. She belongs to Scheduled Tribe. The post of Adhyaksha is reserved for woman S.T. candidates in terms of Section 44 of the Karnataka Panchayatraj Act, 1993. The only ground urged in support of the challenge to the validity of the said provision is that it renders Section 49 otiose.

3. The 6th respondent had been elected as the Adhyaksha of the said Panchayat she being the only woman ST. candidate. A no-confidence motion was brought against her on 24.11.1995. It is also stated that she submitted her resignation on 21.11.1995 and requested the second respondent to postpone the meeting to be hold on 24.11.1995. Separate proceedings have been initiated before this Court challenging the validity of the resolution passed expressing no-confidence

in the 6th respondent and to accept her resignation.

4. Now the Learned Counsel for the appellant submits that the intention of the Karnataka Panchayatraj Act is to take democracy to grass roots level. The Panchayat has to function according to the democratic principles and thus there is rule by majority and consequently when the majority had expressed want of confidence in the 6th respondent by setting the process of election into motion on the same terms as provided u/s 44 would lead to nullification of such a process. Thereby it will reduce the whole process to mockery of democracy. He emphasised that it is not the intention of the legislature at all. He also points out in such circumstances when a motion of no-confidence is carried against an office bearer, to allow such candidate to contest again will be stultification of democracy. He therefore contends that to allow Section 44 to work in the face of a resolution passed u/s 49 would render Section 49 useless and therefore seeks the remedy as stated earlier.

5. The learned Counsel appearing for the respondent submitted that the steps taken by the respondent are in terms of the statute. As long as provisions thereof are valid the question of modifying the same by an order of the Court would not arise and such a process cannot be favoured at all. He therefore submitted that this Court should not interfere with the process of election initiated by the respondents.

6. We pointedly asked the learned Counsel for the appellants as to whether there is any provision in the statute barring a person against whom no - confidence is expressed by a resolution to contest for the same office at a later stage, in the normal circumstance when there is no reservation. The learned Counsel is not in a position to point out any such prohibition. If in the normal circumstance there is no bar against whom no confidence is expressed to contest to that post later and if he is very confident of winning the election thereto, why such a person cannot contest the election is beyond our understanding and such a stand hardly stands to logic. Therefore we think we should allow the process commenced by the respondent to reach its logical end.

7. At the same time we should also notice the very difficult and impractical results which would lead to if the provisions of the enactments are given full effect to. u/s 44 certain reservations are given to persons belonging to certain castes or community and such reservations are considered to be proper, bearing in mind that such posts were never held by such persons belonging to such castes. History cannot be forgotten in that regard. Reservations made to protect such persons must further provide that the no confidence motion could be moved only in certain circumstances such as disability arising on account of serious misconduct of the incumbent in office. Otherwise as provisions stand, the enactment leads to piquant situations such as in the present case, as if a person in whom no confidence is expressed and is elected again to such office and such person is not in a position to command majority in the Panchayath, there will be dead-lock and stalemate in the Panchayath. The legislature will have to bestow

its attention to this aspect and suitably provide for such contingencies.

8. In this case Sri Balekai, learned Counsel for the 6th respondent submits that the 6th respondent is confident of carrying the majority in the Panchayath in the event she is elected now. It is very difficult and hazardous to guess anything in the political field. Therefore we express no view with regard to that matter bearing in mind the vagaries of the political field. All the same this appeal fails and is dismissed.