

(1990) 09 KAR CK 0036
In the Karnataka High Court
Case No : W.A. No. 1409/1987

Basappa Siddanahadli

APPELLANT

Vs

Kotramma and Another

RESPONDENT

Date of Decision : 06-09-1990

Acts Referred:

Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats (Conduct of Election) Rules, 1985 — Rule 71(Ii)(B)

Citation : (1990) 2 KarLJ 490

Hon'ble Judges : M. M. Mirdhe, J;M. Rama Jois, J

Judgement

Rama Jois, J.-In this Writ Appeal, an interesting question of law relating to the manner in which the results of an election to a Mandal Panchayat should be declared in respect of a triple member constituency in which one seat is reserved for Scheduled Caste and Scheduled Tribe and one seat is reserved for women belonging to Scheduled Caste and Scheduled Tribe and the third is the general seat.

2. The Mandal Panchayat is a local Government constituted under the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 ("the Act" for short). Section 4 of the Act provides for declaration of Mandal and establishment of Mandal Panchayats. Section 5 provides constitution of Mandal Panchayat. The relevant portion of sub-sections (1), (2) and (4) of Section 5 reads thus:

"(1) The Mandal Panchayat shall consist of such number of elected members as may be notified from time to time by the Government, at the rate of one member for every four hundred population or part thereof of the Mandal as ascertained at the last preceding census of which the relevant figures are published;

(2) Such number of seats, which shall as nearly as may be twenty-five per cent of the total number of the members of the Mandal Panchayats shall be reserved for women in every Mandal Panchayat;

Provided that out of the seats so reserved one seat shall be reserved for a woman belonging to the Scheduled Caste or the Scheduled Tribes.

xxx xxx xxx (4) Seats shall be reserved in a Mandal Panchayat for Scheduled Castes and Scheduled Tribes the number of such seats bearing as nearly as may be the same proportion to the total number of seats in the Mandal Panchayat as the population of Scheduled Castes and Scheduled Tribes in the mandal bears to the total population of the mandal:

Provided that such reservation shall not be less than eighteen per cent of the total number of seats in the Mandal Panchayat:

Provided further that nothing contained in this section shall be deemed to prevent a woman or a member of the Scheduled Castes and Scheduled Tribes for whom seats have been reserved in a Mandal Panchayat from standing for election to any non-reserved seat in such Mandal Panchayat."

According to sub-section (2), 25 per cent of the seats are required to be reserved for women and out of this according to proviso to subsection (2) one seat is required to be reserved for women belonging to Scheduled Castes and Scheduled Tribes. Sub-section (4) requires that seats should be reserved in favour of persons belonging to Scheduled Castes and Scheduled Tribes in proportion to their population.

3. In accordance with the provisions of the Act, the Mandal Panchayat for Toolahalli Group Village in Kudligi taluk, Bellary district was constituted. There is no dispute that in respect of constituency No. 1 of Mandal Panchayat one seat was reserved for persons belonging to S.C. & S.T. and one seat was reserved for women and the third seat was a general seat. At the election, two persons filed nominations for the general seat and four persons belonging to Scheduled Castes and Scheduled Tribes filed nominations and out of them two were women. After the election was held, and the votes were counted, it was found that the six candidates had secured votes as follows:

Name of the Contestant Category Votes secured

B2. Erappa SC & ST 248

A1. Basappa Siddanahalli, appellant-Respondent-4. SC & ST 412

B4. Kotramma, Petitioner-Respondent-1. SC & ST 250

A3. H. Basamma SC & ST 413

A5. Kuberagowda General

(non-reserved) 413

B6. Uttangi Channabasappa General 253

4. The Returning Officer declared Basappa Siddanahalli who had secured 412

votes for the seat reserved for S.C. & S.T. and H. Basamma for the seat reserved for women and Kubera Gowda for the general seat. The legality of the declaration was questioned by Kotramma and another voter before this Court in the writ petition.

5. The contention of the writ petitioners" was that in declaring the result there was violation of Rule 71(ii)(b) of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayat and Nyaya Panchayats (Conduct of Election) Rules, 1985 ("the Rules" for short) which prescribes the procedure for declaring the results. The contention was that according to the said Rule H. Basamma who belonged to SC & ST should have been declared elected for the seat reserved for Scheduled Castes and on doing so Kotramma would have been entitled to be declared elected against the seat reserved for women and that the declaration of the result made by the Returning Officer was not according to the rules. This contention was accepted by the learned Judge and accordingly the writ petition was allowed and a direction was issued to declare Kotramma the 2nd petitioner in the writ petition as elected for the seat reserved for women and the declaration of the result in favour of Basappa Siddanahalli was set aside. Aggrieved by the said decision, this appeal has been presented by Basappa Siddanahalli.

6. Answer to the question arising for consideration in this appeal depends upon construction of Rule 71(ii)(b) of the Rules which reads thus:

"Declaration of result of election and return of election:

(ii) in the case of election from a Mandal Panchayat Constituency, (b) where the seats to be filled include one or more seats reserved for the Scheduled Castes, the Scheduled Tribes or the women, first declare in that order in Form 34 or 35 as may be appropriate such candidate or candidates qualified to be chosen to fill the reserved seat or seats who have secured the largest number of votes, to be duly elected to the reserved seat or seats, as the case may be, and thereafter declare in Form 34 or 35 as may be appropriate from among the remaining candidates (including those who, are qualified to be chosen for the reserved seat or seats) such of the candidates as have secured the highest number of votes in the descending order to be duly elected to non-reserved seats."

7. The language of the above rule is very clear. According to the above rule in respect of a Constituency where there is reservation of seats both in favour of Scheduled Castes and Scheduled Tribes and Women the declaration of the result has to be made in the same order. Therefore the result of the election in respect of the seat reserved for the SC & ST has to be made first and the declaration of the result for the seat reserved for the women has to be made next, and the declaration of the result for the general seat has to be made last. As regards this sequence there is no controversy at all.

8. Now as can be seen from the statement extracted earlier there were in all four candidates belonging to SC & ST category Out of them Basamma had secured

the highest vote i.e. 413. From this it follows that she had to be declared elected for the seat reserved for the Scheduled Castes and Scheduled Tribes. Next coming to the seat reserved for women, after declaring Basamma elected only one candidate namely K. Kotramma remains and she being the only candidate available for being elected against the seat reserved for women she was also entitled to be declared as elected. Then coming to the general seat among the rest of the candidates Kuberagowda got the highest number of 413 votes. He was therefore entitled to be declared elected against the general seat. The mistake committed by the Returning Officer was he thought that Basamma being a lady was not entitled to be declared elected for the seat reserved for SC & ST and that she was entitled to be elected for the women's seat only. The contention of Sri Gangadhara Gurumath, learned Counsel for the appellant, however, is that no mistake was committed by the Returning Officer and that what he had done was correct.

9. The action of the Returning Officer and the contention urged by the learned Counsel for the appellant in support of it would be unexceptionable if Basamma was a candidate only for the seat reserved for women and she was not eligible to be declared elected as against the seat reserved for Scheduled Castes and Scheduled Tribes. Sri Gangadhara Gurumath strenuously contended that as Basamma had made a declaration in the nomination form that she was a woman and she was contesting a seat reserved for women, she could not be regarded as a candidate eligible to be elected against the seat reserved for SC & ST. We are unable to agree. It is a settled principle of election law that every candidate contesting for a reserved seat is also a candidate for the general seat. As held by a Division Bench of this Court in *Shimoga Purge Bavl v The Returning Officer* (1961 Mys.L.J. 331), the effect of filling up the prescribed column in the nomination form, to indicate that a candidate is contesting for a seat reserved for S.C./S.T. is, that he is also a candidate for a reserved seat besides the general seat. On the same principle, every candidate belonging to S.C. & S.T. whether man or woman is a candidate eligible to be elected against a seat reserved for the S.C. & S.T. and if in a given case the candidate happens to be a woman and a seat is also reserved for a woman, any declaration made in the nomination form that she is contesting for a seat reserved for women is, that she is in addition to being a candidate for the general seat and also for the seat reserved for S.C. & S.T., she is also a candidate for the seat reserved for women. When a seat is reserved for the S.C. & S.T. it means a man or woman belonging to S.C. or S.T. is eligible to contest for that seat and get elected. Therefore, notwithstanding the fact that Basamma was a woman because she belongs to S.C., she was not only a candidate for the seat reserved for woman but was also a candidate for the seat reserved for Scheduled Castes & Scheduled Tribes, besides being a candidate for the general seat also. Once this principle is settled, there is no difficulty at all in finding out as to what is the correct declaration to be made.

10. Now coming to the facts of this case, as according to Rule 71, the result for the seat reserved for S.C. & S.T. had to be declared first and as Basamma

belonging to S.C. had secured highest number of votes, she was entitled to be declared elected as against the seat reserved for the S.C. & S.T. After such declaration, the question of making a declaration against the one seat reserved for women had to be taken up. As the only woman candidate who remained in the field after declaring Basamma elected was Kotramma, She was entitled to be declared elected against the seat reserved for women though she had secured only 250 votes. Among the rest of the candidates, any one who had secured the highest votes is entitled to be declared elected to the general seat. In the present case, it was Kuberagowda who had secured 413 votes who was entitled to be declared elected against the general seat.

11. To sum up, our conclusions are as follows:

(1) In respect of triple member Constituency in which a seat is reserved for the S.C./S.T. and a seat is reserved for women and one seat is a general seat in view of Rule 71(ii)(b) of the Rules, declaration of result should be made in the following manner:

(i) In the first instance the result in respect of the seats reserved for Scheduled Castes & Scheduled Tribes should be declared. In doing so, among the candidates who have contested the election and who belong to SC/ST candidate; whether man or woman; who has secured the highest number of votes should be declared elected for the seat reserved for the S.C./S.T.

(ii) After making declaration as against the seat reserved for S.C./S.T. the Returning Officer should next take up the question of making declaration as against the seat reserved for women. In doing so, among the women candidates contesting in the election excluding the woman candidate, if any, in a case in which she is already declared elected against the seat reserved for S.C./S.T., the woman candidate who has secured the highest number of votes should be declared for the women seat.

(2) After excluding the candidates declared against seat reserved for Scheduled Caste and Scheduled Tribe and against the seat reserved for women, the candidate who has secured the highest votes from among the remaining candidates should be declared to the general seat.

12. In the result, We make the following order:

The Writ Appeal is dismissed.

Writ Appeal dismissed.