
(2005) 03 KL CK 0037

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21568 of 2004

Chandra Naik

APPELLANT

Vs

Paivalikke Grama Panchayat

RESPONDENT

Date of Decision : 17-03-2005

Acts Referred:

Constitution of India, 1950 — Article 243D, 243E, 243E(1), 243E(2), 342(2)
Kerala Panchayat Raj (Election of President and Vice President) Rules, 1995 — Rule 9, 9(8)
Kerala Panchayat Raj Act, 1994 — Section 10, 149, 153, 153(14), 153(3)

Citation : (2005) 2 ILR (Ker) 612 : (2005) 2 KLT 843

Hon'ble Judges : K.R. Udayabhanu, J

Bench : Single Bench

Advocate : Kodoth Sreedharan, Adv, for the Appellant; Murali Purushothaman, M. Sasindran, K.T. Shyamkumar and Sreelatha Parameswaran, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.R. Udayabhanu, J.—The writ petitioner is the President of Paivalikke Grama Panchayat, under orders to be unseated vide, the decision of the Munsiff in O.P. (Election) No. 13/2003 on the ground that he is disqualified to contest the election to the office of the President of the Panchayat which is reserved to the Scheduled Tribe community. He ceased to belong to Scheduled Tribe as per the notification dated 8.1.2003 of the Scheduled Castes & Scheduled Tribes Orders (Amendment) Act, 2002. The "Maratti" community to which the writ petitioner belonged was removed from the list of Scheduled Tribes. He was an elected member of the Panchayat from the reserved constituency for the Scheduled Tribes i.e., Ward No. 9 prior to the above said law. All the same, despite the deletion of the Maratti community from the category of Scheduled Tribes, the post of the President still stood reserved for the Scheduled Tribes vide notification No. 315/2000 dated 28.7.2000. The then President of the Panchayat who belonged to the same Scheduled Tribe was ousted from Presidentship on

account of a no confidence motion which was put to vote and passed on 4.9.2000. It is the above episode that snowballed into the present impasse. Of the rest of the 15 members of the Panchayat, three belonged to the Scheduled Tribe Maratti community and there is no other Scheduled Tribe member either. In the vacancy that ensued to the office of the President, writ petitioner filed nomination which was objected to by the respondent. He aspired to get elected to the post of the President of the Panchayat in case it is dereserved. The objection was overruled by the Returning Officer. He also filed a Writ Petition before this Court. The Writ Petition was dismissed with the observation that the same is prematurely instituted and that his grievance can be raised before the appropriate authorities, and if turned down, can be taken up before the empowered Court after election. As already noted, the case of the respondent before the Court below is that the writ petitioner ceased to be a member of the Scheduled Tribe by virtue of the notification dated 8.1.2003 and hence he is disqualified to be a candidate for the post of President, the election to which was conducted on 7.10.2003. The writ petitioner won the election but the Court below upheld the contention of the respondent that the petitioner is disentitled to contest as he no longer belonged to the Scheduled Tribe. The writ petitioner has denounced the decision in this regard alleging that the same is vitiated by erroneous interpretation of the provisions concerned and based on imbecilic logic.

2. According to the writ petitioner, once the election to the Panchayat is over, the statutory term of five years would have to be completed and that no amendment of law would result in affecting the status of the body as well as that of the members which is clearly inferrable from the constitutional provision in this regard, i.e. Article 243E, Clause (2). The dereservation so far as the Maratti community is concerned, is not intended to have retrospective effect and every privilege available to the particular member cannot be taken away during the above span of 5 years. It was also contended that reservation to the Scheduled Castes and Scheduled Tribes envisaged under the Constitution vide Article 243D and Section 153(3)(a) of the Kerala Panchayat Raj Act, 1994 conceived and implemented at the inception of the commencement of election, i.e., at the time of delimitation of the constituencies, is based on the percentage of the population of the Scheduled Castes and Scheduled Tribes in the State and in the different levels of the Panchayat institutions and hence any alteration or reduction in the number of the offices of the President reserved for the particular depressed sections of the community would overturn, upset and destabilise the entire scheme. Section 149 of the Panchayat Raj Act specifically provides that the term of the members is for five years from the date fixed for convening the first meeting of the Panchayat; and as already noted, Article 243E(2) interdicts that amendment of any law shall not have the effect of dissolution of the Panchayat at any level till the expiration of the duration stipulated in Clause (1), i.e. 5 years. Hence, according to the writ petitioner, deleting Maratti community subsequent to his election to the Panchayat is not intended to render him disqualified as otherwise the same would delink the chain midway which is not

the intended consequence, vide Article 243E (1) and (2) of the Constitution and Sections 149 and 153 of the Kerala Panchayat Raj Act. He has also relied on Rule 9(8) of the Kerala Panchayat Raj (Election of President and Vice President) Rules, 1995 to fortify his contention laying stress on the words of the above clause, that the election to fill up casual vacancy of the President and Vice President shall be held "as if in the case of first election". The counsel for the writ petitioner has also argued relying on the decision reported in *Sukumarakurup v. District Judge* (1998 (2) KLT 548) that the dispute as to disqualification is a matter within the exclusive province of the State Election Commission vide Sections 34(2) and 36 of the Act and that the designated Court is precluded from probing into the same issue of disqualification and redecide the same.

3. I find that the last mentioned contention of the writ petitioner relying on *Sukumarakurup's* case (op.cit) appears to be beside the point and rather misplaced as Sections 34 and 36 deal with disqualification of the candidate at the time of election as a member which is not the case herein. So far as Sections 34, 35 and 36 are concerned, disqualifications envisaged and the jurisdiction conferred on the Election Commission, i.e. regarding disqualification of members are with respect to the disqualifications incurred on account of certain acts of commission on the part of the concerned member whereas in the instant case, the disqualification got imposed upon the member, literally as a bolt from the blue, in which he had no role and hence, is distinct in nature and absolutely unforeseen by the law makers and leaves a grey area in the statute. Moreover, Section 153(14) specifically provides that where a dispute arises as to the validity of an election of the President or Vice President of a Panchayat, the decision making power is with the Munsiff having jurisdiction over the area in which the headquarters of the village Panchayat is situated; and as per Section 153(14)(b) a decision of the above Court shall be final. It was on the above finality clause that the District Judge turned down the C.M.A. (C.M.A.No. 27/2004) filed by the writ petitioner challenging the order of the Munsiff. Hence, I find that the above argument based on *Sukumarakurup's* case (op.cit) is a totally decontextualised contention.

4. The argument on the basis of Rule 9, Clause 8 of the Kerala Panchayat Raj (Election of President and Vice President) Rules, 1995 that election to the office of the President and Vice President in casual vacancies should be held "as if in the case of first election" also appears to be too pedestrian and hypertechnical as the marginal heading of Rule 9 i.e. "the manner of recording of votes, conducting of votes and declaration of result", unmistakably hints at the intention that the clause is meant only to regulate the procedure and not relating to the substantive prerequisites like eligibility to contest.

5. But I find that the contention of Shri Kodoth Sreedharan, the counsel for the writ petitioner that the law makers did not intent to deprive, disqualify or unseat a candidate elected on the basis of the proportional constitutional reservation due to a subsequent removal of a particular community from the Scheduled

Caste or Scheduled Tribe list on account of the exercise of power under Article 342(2) of the Constitution, appears based on firmer foundations and rooted on the underlying constitutional prescription intended for societal transformation. It so happened in the instant case that the Maratti community was taken away from the list of Scheduled Tribes vide the Scheduled Castes and Schedule Tribes (Amendment) Act, 2002. By the amendment of the second schedule of the Act, the original Entry 28 in part 7 of the schedule which related to Maratti community was eliminated from the above category. The finding of the court below that the status of the member elected by virtue of the reservation of the particular ward, the delimitation of which is done u/s 10 of the Act would not be affected by a subsequently imposed constitutional disqualification but he will still be disqualified to contest for the Presidentship of the Panchayat which is also reserved for the Scheduled Tribe community, appears somewhat facile. In fact, the cutting edge of the contention of the counsel for the writ petitioner is that the acceptance of the above logic would result in totally upsetting the chain of events and defeating the concept envisaged and the pattern devised in the Constitution and the statute with respect to the percentage of reservation of Scheduled Castes and Scheduled Tribes on the basis of population, in the structural edifice of the Panchayat Raj institutions. The inevitable consequence would be to dereserve the Presidentship of the Panchayath as the body is not having any other Scheduled Tribe member, other than from the Maratti community.

6. The fact that disqualification on account of the change in law is not contemplated u/s 35 or 83A of the Act, is indisputable. The privilege conferred on the basis of the constitutional provision and the enactment cannot be expected to be taken away midstream during the period for which the benefit has been conferred. It is all the more pronounced in the situation like the instant one where reservation antecedent to the election of the President, i.e. the reservation of the particular constituencies being earmarked for the Scheduled Tribe and the reservation to the post of the President is depended on the election from the particular constituencies so reserved for the Scheduled Tribe. It is particularly so as once the member is elected on the basis that he belonged to the Scheduled Tribe, the same is not intended to result in depriving him of the membership on the ground that he has subsequently ceased to be a member of the Scheduled Tribe, that too, not on account of his volition. Sensible option in the circumstances in contradistinction to dereservation of the post of President, appears to be that the member elected from the Scheduled Tribe constituency is still entitled to contest for the post of the President of the Panchayat, even if by resorting to a legal fiction. The contention of the respondent that the consequent removal of the member from the Scheduled Tribe community disentitled him to contest to the post of Presidentship if carried to the logical extremity ought to unseat the person from the membership itself. The scheme, as envisaged by the Constitution and the statute vide Article 243D and Section 153(3) of the Act that has virtually xeroxed the constitutional provision is that the reservation of the

Presidentship of the Panchayat and with respect to the number of the constituencies are concerned, the delimitation which is done as per Section 10 of the Act is based on the percentage of population of the S.C. and S.T, communities. The purpose, intent and the Measure to provide the required representation to the Scheduled Caste and Scheduled Tribe groups is a constitutional mandate and stands on a higher plane than the attempt sought to be made to dereserve the post of President on the basis of an extremely literal and unrealistic if not whimsical interpretation of the provisions concerned. I find that the decision of the court below that would result in dereservation of the post of President of the particular Panchayat would result in reducing the representation of Scheduled Tribe community among the posts of Presidents of the Panchayat, a grievous impropriety that would defeat the core brief of the constitutional provisions and the well crafted institutionalised scheme of reservation inbuilt in the statute. Hence, the decision of the Munsiff is liable to be quashed; and I do so. It is made clear that the writ petitioner would be entitled to continue as the President of the Panchayat for the remaining period. The Writ Petition is thus allowed.