

(2006) 08 KAR CK 0089

In the Karnataka High Court

Case No : Writ Petition No. 12108 of 2005

Chandrashekharappa Madivalar

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-08-2006

Acts Referred:

Karnataka Panchayat Raj (Conduct of Election) Rules, 1993 — Rule 74 (ii) (b)

Citation : (2009) 2 KCCR 53 SN

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Manjula R. Kamadolli, for the Appellant; M.G. Anjana Murthy, HCGP for R.1 and 3, K.N. Phanindra, for R.2 and Basavaraj Kareddy, for R.4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In this Writ Petition, the petitioner has challenged the validity of Rule 74(ii)(b) of the Karnataka Panchayat Raj (Conduct of Election) Rules 1993, (for short "the Rules"),

2. Petitioner is a contestant in the elections held for electing the members of the Grama Panchayat, Hiremoraba. The Grama Panchayat, consists of three Wards for which reservations were made in favor of General Category, Backward Class "B" Group and Scheduled Caste-Woman. Petitioner, claiming to belong to Madiwala Community, filed nomination on 11.2.2005 under General Category.

3. The 5th respondent - Shanthamma Naduvinamani who had contested as a reserved candidate for Scheduled Caste - Woman, got 375 votes and was declared elected. The 6th Respondent - Parwatagouda Paul got 497 votes and was declared elected from Backward Class "B" Group, whereas from the General Category, the petitioner got 404 votes and another candidate by name Bhimappa Talawar got 383 votes. Petitioner asserts that as he had secured more votes than Bhimappa Talawar, he ought to have been declared elected. Instead, the

Returning Officer declared the fourth respondent Sadashivappa Hullatti as elected from General Category as he had secured 425 votes contesting as a reserved candidate from Backward Class "B" Group.

4. The 4th respondent was declared elected in accordance with the guidelines issued by the Election Commissioner pursuant to the relevant Rules viz., 74(ii)(b) of the Rules, which inter alia provides that if a candidate contesting against a reserved seat secures more votes than the candidate contesting against the General Category, he/she shall be declared elected. In these circumstances, aggrieved by the ion of the Returning Officer in declaring the 4th respondent as duly elected from the General Category the petitioner is before this Court challenging the vires of Rule 74(ii)(b) of the Rules.

5. Learned Counsel for the petitioner submits that Rule 74(ii)(b) of the Rules is illegal, unjust and unconstitutional. Elaborating her submission she contends that when a contest is made by a candidate for a reserved seat and if he/she loses in respect of that reserved seat, even though he/she secures more votes compared to a candidate contesting for General Category seat, he/she cannot be declared elected for the General Category seats, as it cannot have any relevance. The contest for the General Category revolves only amongst and between the persons who have chosen to contest for the seat earmarked for the General Category is the submission.

6. Learned Counsel appearing for the Election Commission, strongly supports the provisions of Rule 74(ii)(b) of the Rules and contends that having due regard to the object sought to be achieved and keeping in mind the democratic principles, there is no infirmity in the order impugned and in the relevant rule.

7. In view of the respective contentions urged by the learned Counsel and in the light of the challenge made to the validity of the Rules, it is necessary to extract the relevant Rule.

Rule 74(ii)(b) of the Rules reads as under:

Rule 74. Declaration of result of election and return of election:

xxx xxx xxx xxx

Rule 74(ii): in the case of election from a Grama Panchayat constituency;

(a) xxx xxx xxx xxx (b): where the seats to be filled include one or more seats reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Classes or the women, first declare in that order in the 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 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.

8. The purpose of the Rule is that, if a candidate contesting for reserved seat is unsuccessful in securing highest votes in his category but has secured larger number of votes in the area as compared to a candidate who has contested from General Category while declaring the results of the election, the criteria to be adopted is the number of votes secured by the candidates, regardless of whether he/she has contested against the General Category or the Reserved Category.

9. The rule making authority has thought it fit to take into consideration the votes secured by the person who has contested against the Reserved Category for the purpose of declaring the results of the General Category candidates. If he/she has secured more votes than the General Category, then, he/she gets elected. As long as the requirement that the reserved category candidate has to secure more votes than the candidate contesting from General Category is not dispensed with, the democratic process is not sacrificed. The Rule making authority has kept in mind the requirement of giving representation to the Reserved Category candidate who could muster greater popular support than a General Category candidate because of the need to respect the greater popular will expressed by the voters in favour of such a person. As the common pool of voters elect these candidates, while selecting the representative of the General Category, the votes secured are made determinative regardless of the category to which they belong when the contest pertains to General Category. It has to be remembered here that even a person belonging to a reserved category or a woman can contest for the General Category but not the other way. The General Category is an unreserved category. Therefore, the provision made in the rule does not suffer from any unconstitutionality.

10. In view of the object and purpose behind the enactment of the Rule, it cannot be said that the impugned Rule suffers from any vice of unconstitutionality. Therefore, there is no merit in this Writ Petition. Hence, the same is dismissed.