

(2004) 08 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 27856 of 2004

Chowdappa and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Constitution of India, 1950 — Article 243D
Karnataka Panchayat Raj Act, 1993 — Section 44, 48, 48 (4)

Citation : (2005) ILR (Kar) 1453 : (2005) 1 KCCR 42 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.M. Chandrashekar, for the Appellant; H.B. Narayana, HCGP for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

Shylendra Kumar, J.—Learned counsel for the petitioner has filed a memo praying for permission to delete petitioners 2 to 14 from the array of the petitioners. Permitted. Counsel to carry out corrections deleting petitioner 2 to 14.

2. The grievance of the petitioner who claims to be a member of Kaidale Gram Panchayat is that the 6th respondent who was a President of Adhyaksha of this Panchayat earlier had been removed by passing a no confidence motion and in the subsequent elections notified for electing a President, the post is yet again reserved in favour of a person belonging to Scheduled Tribe woman in which event the 6th respondent notwithstanding loss of confidence of the members of the Panchayat earlier, is again tipped to return to the post of Adhyaksha.

3. Sri Chandrashekar, learned Counsel for the petitioner submits that if it is allowed, it only amounts to a mockery of the democratic system, that the will of the members is negated and an unwilling Adhyaksha is imposed on them. Learned Counsel submits that under the circumstances, it should either be held that the post is not reserved during this election or that the 6th respondent

having once been removed by motion of no confidence incurs a disqualification which attaches to a person in terms of Section 48 of the Karnataka Panchayatraj Act, 1993.

4. However, learned Counsel concedes that as of now, 6th respondent has not suffered any statutory disqualification but the principle imbedded in Sub-section 4 of Section 48 may be extended to a situation where an Adhyaksha is removed by a motion of no confidence also and if so, the person may be disqualified from contesting to the post of Adhyaksha by seeking re-election.

5. So far as the reservation aspect is concerned, reservation is provided for to give effect to constitutional mandate as in Section 243-D of the Constitution of India. The provisions of Section 44 of the Panchayatraj Act are to give effect to this constitutional provision and it will have to be given effect to in the manner so provided and not in any other manner. If the reservation is in favour of a particular category for a term that should be provided and not reduced or curtailed only because the person occupying the post is removed by loss of confidence of the members. Till the expiry of the period, the post will have to be earmarked for the person belonging to particular reserved category. Other situations cannot be worked into this position.

6. In so far as the analogy to the provisions of Sub-section 4 of Section 48 is concerned, a disqualification is one which is a serious matter and can be attached to a person only in the manner provided for by law and not by a process of interpretation and analogy. A person who has not suffered any such disqualification under the statutory provisions cannot be held to be a person who has incurred a disqualification by resort to a process of interpretation or by extending analogy. If the situation appears to be either incongruous or can lead to stalemates and dead locks it is for the legislature to take note of the same and provide a way out by ushering in new laws to remedy the situation.

7. Neither contention on behalf of the petitioner is acceptable. In the result, this Writ Petition is rejected.