

(2013) 02 KAR CK 0075

In the Karnataka High Court

Case No : Writ Petition No. 6817 of 2013 (LB-ELE-PIL) C/W W.P. No's.
7716-7717 of 2013 (LB-ELE-PIL)

Dalitha Hindulida Alpasankyatha Samithi (Womens" Wing) **APPELLANT**

Vs

The State of Karnataka and The State Election Commission **RESPONDENT**

 Puttappa Guddappa Mariyammanavar and Girija Marad
Vs Karnataka State Election Commission, The State of
Karnataka Department of Urban Development and The
Deputy Commissioner

Date of Decision : 12-02-2013

Acts Referred:

Constitution of India, 1950 — Article 243K, 243ZA
Karnataka Municipal Corporations Act, 1976 — Section 11(4), 17

Citation : (2013) 02 KAR CK 0075

Hon'ble Judges : K. Sreedhar Rao, Acting C.J.;S. Abdul Nazeer, J

Bench : Division Bench

Advocate : Ashok Haranahalli and Sri. R. Subramanya, for M/s. Ashok Haranahalli Assts., in W.P. No. 6817/2013, Sri. Ravi varma kumar, for Smt. Sumana Baliga M, in W.P. Nos. 7716-7717/2013, for the Appellant; R. Devdas, AGA for R-1 to 3; Sri. K.N. Phanindra, for R-4 in W.P. No. 6817/2013 in Sri. K.N. Phanindra, for R-1; Sri. R. Devdas, AGA for R-2 and 3 in W.P. Nos. 7716-7717/2013, for the Respondent

Judgement

K. Sreedhar Rao, Actg. C.J.

1. In WP No. 6817/2013, Sri. R. Devdas, AGA is directed to take notice for respondent nos. 1 to 3. Sri. K.N. Phanindra, Advocate takes notice for respondent no. 4.

In WP Nos. 7716-7717/2013, Sri. K.N. Phanindra, Advocate takes notice for respondent no. 1. Sri. R. Devdas, AGA is directed to take notice for respondent nos. 2 and 3.

At the request of all the parties, the matter is heard and decided on merits at the stage even before admission.

2. The tenure of 7 Municipal Corporations, 43 City Municipal Councils, 93 Town Municipal Councils and 64 Town Panchayats expire between February 2013 and 2nd April 2013. But the majority of the tenure of the local bodies expire by the end of February 2013.

3. WP No. 44639/2009 was filed as a Public Interest Litigation by a public spirited person for a direction to conduct Election to the Municipal Bodies before the expiry of the tenure.

4. WP No. 45231/2013. was filed by the State Election Commission for a direction to the State Government to furnish a Final Notification of Reservation of seats to all the wards of 209 Urban Local Bodies/Municipal Bodies etc. This Court in the said Writ. Petitions gave an order prescribing the Time Table to be followed for conducting the Election which is as follows;-

1) Publication of guidelines has been made on 9.11.2012.

2) Draft Ward-wise reservation list of all the Municipalities will be published in the Gazette by 4.12.2012.

3) The last date for receipt of objections to the draft Ward-wise reservation by 12.12.2012.

4) Time for consideration of objections and preparation of final Ward-wise reservation by 18.12.2012. It is clarified that the final Ward-wise reservation shall be published on or before 17.12.2012.

5) Reservations for the posts of Chairpersons of Municipal Bodies or the Mayor and Deputy Mayor of the Corporations, as the case may be, shall be declared on or before 31.1.2013.

The Provisional List of reservation was published. Seven days" time was granted calling for objections from the public. The Government did not publish the Final List. The Government sought for extension of time for publishing of the Final List on the ground that about 2500 objections have been received in respect of the Provisional List published in respect of the Municipal Bodies. The Government made an application seeking extension of time. This Court extended the time for publication of Final List by 21.12.2012. The Government did not publish the Final List but made an application for further extension of time. The said application is pending.

5. The Government however in respect of the extension of time granted by the three orders of this Court filed a SLP before the Supreme Court. The Supreme Court vide order at Annexure-F disposed of the SLP making the following observation in paragraphs 4 and 5 as follows;

4. As far as the rotation of the constituencies for the reserved categories is concerned, the High Court did give time to the State Government on two earlier occasions to inform the State Commission about the manner in which it proposed to effect the rotation. Ultimately, in its order passed on 20th December, 2012,

the High Court gave two days for that purpose. None of these orders have been complied with by the State Government and the State Election Commission has moved a contempt application before the Karnataka High Court which is pending.

5. In view of these circumstances., we are clearly of the view that the State Election Commission is within its right to proceed with the Elections within the time frame as required by the Constitution and the State enactments. It will have to proceed on the basis of the existing electoral rolls. As far as the rotation of the seats meant for the reserved categories is concerned, the State Government should furnish its proposal to the State Election Commission on or before the 4th February, 2013. In the event, the State Government does not furnish the information by that date, it would be open to the State Election Commission to proceed on the basis of the reservation of seats as are presently existing.

6. The Election Commission pursuant to the order of the Supreme Court vide Annexure-F issued directions to the Deputy Commissioners vide Annexure-A. The operative portion of Annexure-A is extracted hereunder;

THEREFORE, in exercise of the powers conferred under Article 243K read with 243ZA of the Constitution of India, the Karnataka State Election Commission hereby declares the conduct of elections to all the wards of 208 Urban Local Bodies comprising of 7 Corporation, 43 City Municipal Councils, 93 Town Municipal Councils & 65 Town Panchayats, as per the final list of reservation of seats that had been fixed and published in the official Gazette by the State Government in the year 2007. All the Deputy Commissioners of the State and other polling staff shall adopt and follow the very same reservations that had, been fixed by the State Government under the Gazette Notification published in the year 2007 to all the wards of 208 Urban local bodies comprising of 7 Corporation, 43 City Municipal Councils, 93 Town Municipal Councils & 65 Town Panchayats and no changes, additions, modifications or alterations in this regard shall be effected by any of the authorities. Reservation shall be notified by public notice and also in their website by the concerned Deputy Commissioners and also issue the same to the recognized political parties. Deputy Commissioners have to intimate the complete readiness by 7th of this month.

7. The petitioners in the Writ Petitions have challenged the order of the Election Commission vide Annexure-A on the following grounds;

a) The provisions of Article 243T of the Constitution of India and Sections 11(4) and 17 of the Karnataka Municipalities Act have been flagrantly violated by respondent no. 4 in its order at Annexure-A dated 05.02.2013 in directing the Deputy Commissioners to submit Ward-wise Reservation List as per the Government Notification of the year 2007.

b) Article 243T(6) empowers the legislature to make a provision for reservation of seats in the Municipalities in favour of Backward Class citizens. The Supreme Court in Dr. K. Krishna Murthy and Others Vs. Union of India (UOI) and Another, has held that the maximum outer limit for reservation of SCs, STs and Backward

Classes is 50%. Therefore, the Karnataka State Legislature by "Karnataka Municipalities Act and certain other Laws (Amendment Act 2012)" provided reservation up to 50% for the SCs, STs and Backward Classes and further an internal reservation to women horizontally at 50% in the reserved and unreserved seats. In other words, 50% of the total seats are reserved for Women. The Government has issued a Provisional Notification regarding reservation of seats to SCs, STs and Backward Classes and also to Women. Further, in the Notification the rotation formula for the reserved seats is also provided. The State for the reasons best known has not published the Final List despite seeking extension of time before this Court as well as before the Supreme Court. However, the lapse on the part of the State does not entitle the Election Commission to ignore the provisions regarding the reservation of seats as per the mandate of the Constitution and the Karnataka Municipalities Act.

8. The amendment of Karnataka Municipalities Act in giving 50% reservation to SCs, STs and Backward Classes and horizontal reservation to Women at 50% in the reserved and unreserved seats would richly benefit women in getting more number of reserved seats in the Municipalities and the Local Bodies, whereby the women will have a greater say in the administration of the Municipalities. When the legislation favours higher reservation for women, it would be untenable and impermissible for the Election Commission to hold Elections on the basis of reservations as prescribed in the Notification of the year 2007, whereunder less number of women will get representation in the Municipalities and the Local bodies.

9. The order of the Supreme Court in para-5 makes a clear observation that the ""State Election Commission is within its right to proceed with the Elections within the time frame as required by the Constitution and the State enactments." When the State enactments are amended in consonance with the Constitution, it is untenable for the Election Commission to ignore the provisions of the Municipalities Act and hold Elections on the basis of the extinct Notification of the year 2007.

10. The provision of Section 17 of the Karnataka Municipalities Act provides for Constitution of council by a maiden elected body. Further, the provision enables to appoint an Administrator on expiry of the tenure of the elected body. The provision provides for holding of Election before the tenure of the Administrator expires. In the present context, majority of the term of the Municipal elected bodies would expire in February 2013 and for some Municipal bodies Administrators are already appointed. The Election Commission should seek the Final List of reservation from the State and should hold Elections in accordance with the Final List which will be in consonance with the amended provisions of the Municipalities Act with regard to reservations.

11. The Election Commission has totally misunderstood the order of the Supreme Court. There is no time frame fixed by the Supreme Court in respect of the Election Commission for holding Elections. The direction was issued only to the

Government to furnish the Final List on or before 4th February 2013.

12. The direction of the Supreme Court in the order that "the State Election Commission should proceed on the basis of reservation of seats as are presently existing" cannot be understood to mean that the reservation is provided in the Notification of the year 2007 ignoring the amended provisions of the Municipalities Act and the Provisional List published by the State Government.

13. When the State has failed to provide the Final List, it is permissible for this Court to issue mandamus to the State to publish the Final Reservation List and thereafter the Election Commission can hold Elections in accordance with the Constitution and the provisions of the Municipalities Act.

14. Sri. Ashok Haranahalli, Sr. Counsel relied upon the observations made by the Supreme Court in Election Commission of India Through Secretary Vs. Ashok Kumar and Others, In paragraph 28, the following observations are made;

Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of overenthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

He submitted that the said observations would squarely apply to the facts of the case and would serve as caveat on the Election Commission not to ignore the Constitutional mandate and the statutory provisions of the Municipalities Act in conducting Elections without affecting the full benefit of the reservation given to Women.

15. Sri. K.N. Phanindra, Advocate for the Election Commission submitted that all the contentions raised in these Writ Petitions have been submitted in the earlier Writ Petitions before this Court and also in the SLP before the Supreme Court. The State failed in its duty and repeatedly sought extension of time for publishing Final List time and again. Therefore, the Supreme Court has directed the Election Commission to conduct Elections on the basis of reservation of seats "as are presently existing" The Provisional List has no legal basis. The Final Reservation List is not published. Therefore, the order of the Supreme Court by implication suggests that Elections have to be held on the basis of the reservations provided in the Notification of the year 2007. In that regard, the counsel also placed reliance on the decision of the Supreme Court in Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and Others, wherein, it lays down the constitutional obligation on the Election Commission to hold Elections as per the time frame fixed under Article 243(4).

16. The Government Advocate states that the State has filed a Review of the order at Annexure-F before the Supreme Court and the said application is pending consideration.

17. Sri. Ravivarma Kumar, Sr. Counsel submits that this Court has jurisdiction to issue mandamus against the Government for issuance of Final Notification and thereafter the Election Commission can proceed to hold Elections on the basis of the Final Notification, since there is no specific direction issued against the Election Commission regarding the time frame in which they have to hold Elections.

18. On stern and thoughtful consideration of the submissions made at the Bar, it appears that the contentions raised by the parties are virtually oriented towards the interpretation of the order of the Supreme Court in particular that " it would be open to the State Election Commission to proceed on the basis of reservation of seats as are existing" and what exactly the said observation would mean. This Court will have jurisdiction to decide the question which is res integra. If the said question or proposition is already dealt with and decided by the Supreme Court, it would not be open for this Court to embark upon the exercise of explaining what the said observation would mean. This Court will have no jurisdiction to give clarification on the orders passed by the Supreme Court. The parties if they so feel that they require any clarification, it is open to them to approach the Supreme Court. In view of the above observations, the Writ Petitions are disposed of.