

(1999) 03 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No. 2562 of 1999

Doddanarsimha Reddy

APPELLANT

Vs

The Secretary, Karnataka State Election Commission,
Bangalore and others

RESPONDENT

Date of Decision : 25-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Karnataka Panchayat Raj Act, 1993 — Section 138 (2)

Citation : (1999) ILR (Kar) 2831 : (2000) 1 KarLJ 487

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri A. Shivaram, for the Appellant; Sri Nagarajappa and Sri S. Mahesh, A.G.A., for the Respondent

Judgement

1. The petitioner, in this petition, is a member of Gudibande Taluk Panchayat elected under the reserved category Backward Class "B".

2. In this petition, the petitioner has prayed for quashing the notification dated 28th of December, 1998, a copy of which has been produced as Annexure-G, insofar as it relates to reservation of a post of the office of Adhyaksha for a person belonging to General (Woman).

3. Sri A. Shivaram, learned Counsel appearing for the petitioner, in support of the prayer of the petitioner that the impugned notification to the extent it is challenged, is illegal and liable to be quashed, made three submissions. Firstly, he submitted that in none of the Taluk Panchayats in the District of Kolar, a seat has been reserved for a person belonging to Backward Class "B" to the office of Adhyaksha of the Taluk Panchayat (hereinafter referred to as "the Panchayat") and, therefore, the reservation made to the office of Adhyaksha for a person belonging to General (woman) is totally illegal. In this connection, he preferred to me sub-section (2) of Section 138 of the Karnataka Panchayat Raj Act, 1993 (hereinafter referred to as "the Act"), which provides for reservation of the office

of Adhyaksha and Upadhyaksha for various categories of persons and also Rule 3 of the Karnataka Panchayat Raj (Reservation of Offices of Adhyaksha and Upadhyaksha of Taluk Panchayats) Rules, 1995 (hereinafter referred to as "the Rules"), and particularly, he drew my attention to notification dated 12th of November, 1998, which is issued under sub-section (2) of Section 138 of the Act read with Rule 3 of the Rules. It is useful to extract the relevant portion of the said notification, which has a bearing to the present case.

BC

Sl. No.

District

No. of Offices (Taluku)

SC

ST

A

B

Others

1.

XXX

XXX

XXX

2.

XXX

XXX

XXX

3.

XXX

XXX

XXX

4.

Kolar

11(4)

2(1)

1

3(1)

1

4(2)

Therefore, he submits that since one seat is reserved in the District of Kolar for persons belonging to Backward Class "B", it was not permissible in law for the first respondent to reserve the post of Adhyaksha for General (woman) in the impugned notification as the said reservation would run counter to the provisions contained in sub-section (2) of Section 138 of the Act and Rule 3 of the Rules. Secondly, he submitted that since, during the first term, reservation has already been made to the office of Adhyaksha for General (woman) insofar as Gudibande Taluk Panchayat is concerned, in terms of the third proviso given to sub-section (2) of Section 138 of the Act read with Rule 4 of the rules, it is not permissible for the respondents to over and again reserve a seat to the office of Adhyaksha for General (woman). Thirdly, he submitted that once the reservation having already been made to General (woman), in the absence of any reservation made for persons belonging to Backward Class "B" in the entire District of Kolar, the reservation made again to General (woman) must be held to be highly arbitrary, unreasonable and violative of the rights guaranteed to the petitioner under Article 14 of the Constitution of India. Elaborating this submission, Sri A. Shivaram pointed out that out of 9 members in Gudibande Taluk Panchayat, there is only one lady member belonging to General (woman) category and the reservation in question has been made with the sole object of favouring the said lady.

4. However, Sri Nagarajappa, learned Counsel for the first respondent, and Sri S. Mahesh, learned Government Advocate for respondents 2 and 3, made a serious attempt to support the impugned notification, but in vain. Sri Nagarajappa drawing my attention to clause (b) of sub-section (2) of Section 138 of the Act, submitted that while making the reservation to the office of Adhyaksha and Upadhyaksha of Taluk Panchayats, as nearly as one-third of the total number of offices of Adhyaksha and Upadhyaksha in the State is required to be reserved for persons belonging to Backward Classes and out of the said reservation, 80 per cent of the total number of such offices shall be reserved for persons falling under Category "A" and the remaining 20 per cent of the offices shall be reserved for the persons belonging to Category "B"; and if no person falling under Category A is available, the offices reserved for Category "A" should also be filled up by person falling under Category "B" and vice versa; and therefore, he submits that it is permissible for the Election Commission to change the reservation made to Category "A" to Category "B". He further submitted that in the impugned notification, the office of Upadhyaksha has been reserved for Backward Class "B"; and therefore the petitioner cannot have any grievance. Sri Nagarajappa also submitted that the third proviso given to sub-section (2) of

Section 138 of the Act and Rule 4 of the Rules, only provide that for the succeeding term, the reservation should not be made for the person belonging to the same category or group; and in the instant case, since the reservation to the office of Adhyaksha made in the impugned notification is not for the succeeding term, the reservation so made for the term cannot be treated as in violation of the third proviso given to sub-section (2) of Section 138 of the Act read with Rule 4 of the rules.

5. In the light of the rival contentions advanced by the learned Counsels appearing for the parties, the question that would arise for my consideration is, whether the reservation made for General (woman) in the impugned notification to the office of Adhyaksha is valid in law?

6. Having bestowed my considerable thought to the contentions advanced by the learned Counsel appearing for the parties, while I find considerable force in the submission of Sri A. Shivaram, I am unable to accede to the submission made by Sri Nagarajappa. sub-section (1) of Section 138 of the Act provides that elected members of the Taluk Panchayat within one month from the date of the publication of their names, after every general election of the members of the Taluk Panchayat, or on its reconstitution before the expiry of the term of the office of Adhyaksha and Upadhyaksha, choose two members amongst them to be respectively Adhyaksha and Upadhyaksha of the Panchayat. sub-section (2) of Section 138 of the Act confers power on the State Election Commission (hereinafter referred to as "the Commission") to make reservation to various categories of persons in the prescribed manner. Clauses (b) and (c) of sub-section (2) of Section 138, which is relevant for our purpose, read as hereunder:

"138. Election of Adhyaksha and Upadhyaksha and term of office.-

(1).....

(2) There shall be reserved by the State Election Commission, in the prescribed manner.-

(a).....

(b) such number of offices of Adhyaksha and Upadhyaksha of Taluk Panchayat which shall as nearly as may be one-third of the total number of offices of the Adhyaksha and Upadhyaksha in the State, for the persons belonging to the Backward Classes:

Provided that out of the offices reserved under this clause, eighty per cent of the total number of such offices shall be reserved for the persons falling under Category "A" and the remaining twenty per cent of the offices shall be reserved for the persons falling under Category "B":

Provided further that if no person falling under Category "A" is available, the offices reserved for that category shall also be filled by the persons falling under Category "B" and vice versa".

(c) not less than one-third of the total number of offices of Adhyaksha and Upadhyaksha of the Taluk Panchayats in the State from each of the categories reserved for persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes and those which are non-reserved, for women:

Provided that the offices reserved under this sub-section shall be allotted by rotation to different Taluk Panchayats.

Explanation.--For the removal of doubts it is hereby declared that the principle of rotation for the purposes of reservation of offices under this sub-section shall commence from the first election to be held after the commencement of the Karnataka Panchayat Raj Act, 1993".

7. Clause (b) of sub-section (2) of Section 138 of the Act, extracted above, makes it clear that the Election Commission shall reserve such number of offices of Adhyaksha and Upadhyaksha of Taluk Panchayat, which shall be as nearly as may be one-third of the total number of offices of Adhyaksha and Upadhyaksha in the State, for persons belonging to Backward Classes. In terms of clause (b) of sub-section (2), by means of notification dated 17th of February, 1995, one post of Adhyaksha and Upadhyaksha has been reserved for persons belonging to Backward Class "B", while three posts have been reserved for Backward Class "A". Out of the said three posts reserved for Backward Class "A", one post is reserved for Backward Class (Woman). In Annexure-R1 produced by the respondents, the same position continued, namely, one post is reserved for Backward Class "B" and three posts for Backward Class "A". It is admitted that there are 11 Taluks in Kolar District and for the 11 Taluks, one post is reserved for a person belonging to Backward Class "B" to the office of Adhyaksha as well as Upadhyaksha, Though the petitioner has asserted in the writ petition that in none of the Taluks in Kolar District, the office of Adhyaksha has been reserved for a person belonging to Backward Class "B", the said assertion has not been disputed by the respondents in the statement of objections. Further, in the course of the hearing of this petition, Sri Nagarajappa and Sri S. Mahesh were unable to show to me that the reservation to the office of Adhyaksha has been made in any one of the Taluks in Kolar District for persons belonging to Backward Class "B". However, it is their submission that in the impugned notification, since the office of Upadhyaksha has been reserved for persons belonging to Backward Class "B", the petitioner cannot have any grievance. I am unable to accept the said submission. The notification dated 17th of February, 1995 and also notification at Annexure-R1 issued in terms of clause (b) of sub-section (2) of Section 138 of the Act read with Rule 3 of the Rules, make it clear that one post each is reserved to the offices of Adhyaksha and Upadhyaksha for persons belonging to Backward Class "B". The object of reservation provided under sub-section (2) of Section 138 read with the Rules, is to empower the persons belonging to reserved categories who were denied of an opportunity to occupy the offices of Adhyaksha and Upadhyaksha in the Institution providing for governance at the village, taluk and district levels all these years on account of

various factors, like, cultural, educational and social backwardness, so that social, economic and political justice ensured to all the citizens of this country in the preamble to the Constitution, is achieved. Therefore, in my view, the Commission while issuing the notification providing for reservation, is required to strictly comply with the provisions contained in sub-section (2) of Section 138 of the Act read with the rules framed thereunder. In the instant case, since one post each to the office of Adhyaksha and Upadhyaksha has been reserved for persons belonging to Backward Class "B" in Kolar District, it was incumbent upon the Commission to have reserved one post to the office of Adhyaksha in any one of the Taluk Panchayats in Kolar District in terms of the reservation made as per Annexure-R1. Therefore, the action of the first respondent-Commission in not complying with the mandate of the law by reserving one post for the persons belonging to Backward Class "B" in any one of the Taluk Panchayats in Kolar District, requires to be declared as illegal.

8. Now, with regard to the second contention urged by Sri A. Shivaram that in terms of the proviso given to sub-section (2) of Section 138 of the Act and Rule 4 of the rules, it was not permissible for the Commission to reserve the office of Adhyaksha for the second time for persons belonging to General (woman), the language employed in the proviso given to sub-section (2) of Section 138 of the Act and Rule 4 of the Rules, makes it clear that the reservation made to a woman or other categories set out in sub-section (2) of Section 138 is required to be made by rotation among different Taluk Panchayats. In this connection, it is useful to refer to Rule 4 of the Rules relied upon by Sri A. Shivaram, which reads as hereunder:

Now, the question is that when the words "by rotation to different Taluk Panchayats" referred to in the proviso given to sub-section (2) of Section 138 of the Act, would mean that once a reservation as provided under clause (c) of sub-section (2) of Section 138 of the Act is made to a Panchayat, whether it is not permissible to make reservation in respect of the very Panchayat even for the third term to the office of the said Panchayat? There cannot be any doubt that a reading of Rule 4 of the Rules and as fairly admitted by Sri Nagarajappa, that for the succeeding term, the reservation in a Panchayat cannot be made for the same category. But, as noticed by me earlier, the question is whether, immediately after the succeeding term i.e., for the third term, the reservation to the same category is prohibited under law? No doubt, the language employed either in the third proviso given to sub-section (2) of Section 138 of the Act or in Rule 4 of the Rules, does not expressly state that for the third term, i.e., immediately after the succeeding term, the reservation cannot be made for the same category of persons. The proviso given to sub-section (2) of Section 138 of the Act, is in the nature of mandate given, wherein it is stated that offices reserved under clauses (a), (b) and (c) of sub-section (2) of Section 138 should be allotted by rotation to different Taluk Panchayats. In terms of Rule 3 of the rules, by means of notifications dated 17th of February, 1995 and 12th of November, 1998, the posts of Adhyaksha and Upadhyaksha in Kolar District have

been reserved for different categories of persons, who are entitled for reservation under clauses (a), (b) and (c) of sub-section (2) of Section 138 of the Act. The same position is continued in notification at Annexure-R1. The explanation given to sub-section (2) of Section 138 makes it further clear that the principle of rotation for the purposes of reservation of offices under sub-section (2) of Section 138 should commence from the first election to be held after the commencement of the Act. Therefore, reading of the third proviso given to sub-section (2) of Section 138 makes it clear that the offices reserved under sub-section (2) of Section 138 should be allotted by rotation to different Taluk Panchayats. Reading of Rule 4 of the Rules, in my view, makes it more explicit that if any reservation has been made to the office of Adhyaksha and Upadhyaksha, for the next term, the reservation should not be made to the same category of persons. The words "next term" Sri Nagarajappa wants me to read it as the succeeding term. It is true that there is a total prohibition under Rule 4 of the rules for reserving the post of Adhyaksha and Upadhyaksha to the same category of reserved classes for the succeeding term. From that alone, it cannot be held that even for the third term, as contended by Sri Nagarajappa, the reservation can be made in respect of the category of persons, in whose favour the reservation has been made during the first term. As noticed by me earlier, the object of reservation is to provide an opportunity to a section of the society who had no occasion to share the power in local self Government. Therefore, in my view, the provisions contained in Rule 4 of the Rules cannot be understood to control the mandate of the third proviso given to sub-section (2) of Section 138 of the Act. A plain reading of the third proviso given to sub-section (2) of Section 138, in my view, makes it clear that if the district is taken as an unit, the reservations made under sub-section (2) of Section 138 of the Act should be rotated to different Taluk Panchayats of the District even for the third term i.e., immediately after the succeeding term, the reservation cannot be made in favour of the same category of persons in whose favour the reservation had already been made either in the first term or in the second term. In my view, the provision contained in Rule 4 of the Rules has to be understood in the backdrop of the language employed in the third proviso given to sub-section (2) of Section 138 of the Act. However, once the rotation is made in all the Taluk Panchayats, if the district is taken as an unit, then it would be permissible for the Commission to make reservation in respect of the same category of persons in whose favour reservation had been earlier made. But, as noticed by me earlier, there should be a rotation of reserved categories at least once amongst all the Taluk Panchayats of the district if the district is taken as an unit. In the instant case, it is not the case of the respondents that the reservation made in favour of General (woman) has been rotated amongst all the Taluk Panchayats in Kolar District and after exhausting, the reservation made for General (woman) is made in Gudibande Taluk. Therefore, I find considerable merit in the second submission of Sri Shivaram.

9. Further, even otherwise, as rightly contended by Sri A. Shivaram, when a

reservation has already been made to General (woman) in Gudibande Taluk Panchayat and no reservation has been made for Backward Class "B" category, I am of the view that the reservation made in favour of General (woman) to the office of Adhyaksha in whose favour reservation has already been made once, would be highly arbitrary and unreasonable and violative of the rights guaranteed to the other members of the Panchayat who are entitled for reservation. When a power is conferred on the authority like the State Election Commission, to make reservation as provided under sub-section (2) of Section 138 of the Act, the Commission must exercise the power in a fair and reasonable manner and keeping in view the object of the legislation. Under these circumstances, even if the third proviso given to Section 138 of the Act read with Rule 4 of the rules is to be held as not specifically laying down the guidelines as to how the reservation has to be made, when sub-section (2) of Section 13S of the Act provides for reservation to different categories of persons to the office of Adhyaksha and Upadhyaksha, it is the prime duty of the Commission to see to the extent possible that all sections of the persons belonging to the reserved class in each Taluk Panchayat, would get an opportunity to get themselves elected to the office of Adhyaksha and Upadhyaksha. In the instant case, it is not in dispute that there is only one lady belonging to General (woman). She had already been elected as the Adhyaksha of the Panchayat during the first term. The reservation to persons belonging to Backward Class "B" had not been made. Under these circumstances, I am unable to understand the basis for reserving the office of Adhyaksha for General (woman) for the second time. Merely because the office of Upadhyaksha is reserved for Backward Class "B", does not in any way militate against the view being taken that the reservation made in favour of General (woman) for the second time, is not arbitrary and unreasonable. Therefore, I find considerable force even in the third submission of Sri Shivaram.

10. Now, the question is whether this Court, in the facts and circumstances of the case, can, on that ground, quash the impugned notification wherein the office of Adhyaksha is reserved for a person belonging to General (woman) and in its place, direct the reservation of the office of Adhyaksha to Backward Class "B". In my view, having regard to the facts and circumstances of this case, it is permissible for this Court to do so. It is because no other Taluk Panchayat or a member of any other Taluk Panchayat in Kolar District, has made a grievance that their Taluk Panchayat was entitled for reservation to be made to the office of Adhyaksha for persons belonging to Backward Class "B". It is only the petitioner who belongs to Backward Class "B" and who is the member of Gudibande Taluk Panchayat, has made a grievance that the rights of persons belonging to Backward Class "B" to get the post of Adhyaksha reserved in their Panchayat for persons belonging to Backward Classes, has been infringed. In the light of the discussion made above, I am of the view that no prejudice or injustice will be caused to any one if, in exercise of the power of this Court under Article 226 of the Constitution, a direction is given to the first respondent-Commission to

reserve the post of Adhyaksha in Gudibande Taluk Panchayat for a person belonging to Backward Class "B" while quashing the impugned notification to the extent it reserves the said post for a person belonging to General (woman). I am of the view that when serious illegality committed by the Commission is brought to the notice of this Court, it is the prime duty of this Court wherever it is possible to set right the injustice, to give effective relief to the parties who are hurt on account of the action of the authorities.

11. In the light of the discussion made above, the notification at Annexure-G insofar as it relates to reservation for General (woman) to Gudibande Taluk Panchayat is concerned, is hereby quashed.

12. The first respondent is directed to notify that the office of Adhyaksha is reserved for persons belonging to Backward Class "B" in Gudibande Taluk Panchayat. The first respondent shall comply with the direction within four weeks from today. It is needless to mention that since the office of Adhyaksha has not yet been filled up, respondents 2 and 3 shall take immediate steps on the issuance of the notification by the first respondent reserving the office of Adhyaksha to persons belonging to Backward Class "B" and hold the election in accordance with law.

13. In terms stated above, this petition is allowed and disposed of. Rule is issued and made absolute. However, no order is made as to costs.

14. Sri Nagarajappa and Sri S. Mahesh, learned Government Advocates, are permitted to file their memo of appearance within four weeks from today.