

(1999) 10 KAR CK 0036
In the Karnataka High Court
Case No : Writ Petition No. 17205 of 1999

Hanumanthaiah S.R.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-10-1999

Acts Referred:

General Clauses Act, 1897 — Section 28 (2)
Karnataka Grama Panchayat Raj (Conduct of Elections) Rules, 1993 — Rule 15, 24 (b) (2), 74 (15) (b)
Karnataka Municipal Corporations (Elections) Rules, 1979 — Rule 12 (4), 68 (b)

Citation : (2000) ILR (Kar) 143 : (2000) 4 KarLJ 480 : (2000) 4 KCCR 151 SN

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Sri S. Hanumanthaiah, for the Appellant; Sri M.N. Ramanjaneyagowda, A.G.A., Sri N. Ramchandra, Sri S.V. Krishnaswamy and Sri Jayakumar S. Patil, for the Respondent

Judgement

1. The petitioner herein had filed the instant writ petition with main prayer to issue a writ of certiorari or any other appropriate writ to quash the publication of the list of successful candidates in the election held on 15-5-1999 in pursuance of the Election Notification issued by the respondent 2-Returning Officer, copy as at Annexure-D to writ petition and to declare that the petitioner and the respondents 4 to 15 were duly elected to the Committee of Management of the respondent 3-Bank.

2. I feel it necessary to advert to the facts of the case in brief, they are as hereunder.

3. That the respondent 2 had held election to the committee of management of the respondent 3-Bank on 15-5-1999 and as per the election notification dated 23-4-1999 issued by the respondent 2, copy at Annexure-A to writ petition, 11 Directors from among the general members and one each from among the women and SC/ST members, in all 13 Directors had to be elected to the

respondent 3-Bank. That the petitioner herein had applied for a seat reserved for the SC/ST category and he had secured 1,107 votes. The other 3 candidates who filed nomination papers for the said SC/ST category were the respondent 4, who having secured the highest number of votes of 1,434 declared elected, non-parties Prakash S.M. who secured 293 votes and Ravi kumar S.M. who secured 347 votes.

4. The complaint of the petitioner in filing the instant writ petition was that, since he had secured 1,107 votes, he had to be taken to and categorised in the general seats to be declared as elected as he had secured more number of votes than the respondents 14, 15 and 16 who secured 1,009, 998 and 963 votes respectively as the candidates contested from the general seats.

5. It is the argument of Sri Hanumanthaiah that, though his party had applied for and contested the seat reserved for SC/ST category, since he had secured a total number of 1,107 votes vis-a-vis 1,009 votes secured by respondent 14, 998 votes secured by the respondent 15 and 963 votes by the respondent 16, the Returning Officer would have declared his party as a successful in the election. According to him, the Returning Officer would have declared his party as duly elected from among the general seat by strictly interpreting sub-rule (34)(ii) of Rule 14 of the Co-operative Societies Rules (as amended), wherein it is provided that the candidates who had secured the maximum number of votes shall be declared as elected. To substantiate his argument, Sri Hanumanthaiah had also relied upon Rules 12(4) and 68(b) of Karnataka Municipal Corporations (Elections) Rules, 1979 and further Rules 15, 24(b)(2) and 74(15)(b) of Karnataka Grama Panchayat raj (Conduct of Election) Rules, 1993. He further relied upon sub-section (2) of Section 28 of the General Clauses Act. All that he did to interpret sub-rule (34)(ii) of Rule 14 of the Co-operative Societies Rules in the matter of counting of votes and declaration of the result of the election.

6. Therefore, he submitted that the publication of the list of candidates successful in the election, copy of Annexure-D to writ petition be quashed and the petitioner herein be declared as duly elected as the 9th successful candidate from the general seat.

7. The learned Counsel appearing for the contesting respondents 11 to 14 Sri Patil on the other side submitted that the instant writ petition had been filed on a total misconception. According to him, the constituencies were clearly earmarked not only in the bye-law, but also in the election notification, copy as at Annexure, Rule 2 to the objection statement by him and that the petitioner having filed his nomination for the post earmarked for the SC/ST category, it was not at all available for him to say that he be declared as one of the successful candidates in the general seats just because he had secured higher number of votes than the respondents 14 to 16. While adverting to sub-rule (34)(ii) of Rule 14, it was argued by Sri Patil that the said provision of the Rule comes into play only when the counting is done and further when the declaration of the result has to be made by the Returning Officer and that the declaration of the election in the

instant case in hand had to be done by the Returning Officer with reference to the 3 different categories or constituencies i.e., the general, the SC/ST and the women. Therefore, he submitted that the instant writ petition does not merit any consideration in the hands of this Court.

8. It is not in dispute before me that the petitioner herein had filed his nomination for the seat earmarked for SC/ST category. That in fact he did by paying a lesser sum of deposit required to be made by that social group or reserved category. On going through the calendar of events published by the respondent 2-Returning Officer as at Annexure Rule 2 to the objection statement filed by the respondents 14 to 16, it is clear therefrom that 11 seats were earmarked for the general members whereas one seat each was earmarked for SC/ST category and the women category. Furthermore, as per the special instructions set out at Sl. No. 10 in the calendar of events or the election notification, the members of the Society were called upon to elect 11 members from among the candidates contested for the general seats, one each from SC/ST category and the women category in order to elect 13 members for the committee of management of the respondent 3-Bank.

9. At the threshold, I have to point out here that the petitioner having filed his nomination for a seat earmarked for SC/ST category, the declaration of the result by the Returning Officer obviously should be with reference to the seat earmarked for the SC/ST category. The learned Counsel for the petitioner Sri Hanumanthaiah was at pains to convince me that, since the petitioner, had secured 1,107 votes and that he had secured that number of votes more than what votes the respondents 14 to 16 in the general category had secured, the Returning Officer would have declared him as duly elected from among the general category. This argument of Sri Hanumanthaiah did not appeal me at all for the simple reason that the petitioner herein had filed his nomination paper as against the seat reserved for SC/ST category and that he did in pursuance of the election notification issued by the respondent 2-Returning Officer, copy at Annexure, Rule 2 to the objection statement filed by the respondents 14 to 16. If the petitioner had contested for the seat earmarked for that special group, I do not think it is available for him to transgress beyond the seat earmarked for that category to say that he be declared as duly elected from among the general seats as he had secured more number of votes than the respondents 14 to 16.

10. Yet another aspect of the case is that the petitioner's right to contest for the election had emanated from Section 28-A(3), wherein the statute had provided for reservation of a seat in favour of the persons belonging to the SCs/STs. I would have appreciated the argument of Sri Hanumanthaiah had his party filed his nomination for general category and secured 1,107 votes in that category. As it is, one cannot think of a right to contest under the Rules for Rules are framed only to aid and to give effect to the provisions in the Act; of course under Rule 14(34)(ii) of the Co-operative Societies Rules it is provided therein that the Returning Officer shall declare the candidate who had secured the highest

number of votes as duly elected, but that in my view is referable to, in the facts and circumstances of the case, to three different categories of the constituencies i.e., the seats earmarked for the general candidates, the seat reserved for the SC/ST category and the seat reserved for the women category. In this connection, I have to mention here that, when large number of 24 candidates, who contested 11 general seats and shared the votes cast by the members of the Society, a small number of 4 candidates, who had contested the seat reserved for SC/ST category (including the petitioner herein), had shared the votes cast by the very same number of members in that common election; the very process foretold such a situation that the candidates contested for the general seat might secure less number of votes than the candidates contested for the seat reserved for SC/ST category. That being so, no wonder that the petitioner had secured the second highest number of votes i.e., 1,101 votes in the SC/ST category, far more than the respondents 14 to 16 in the general category. But there could not be comparison between the two categories differently and differentially placed, both under the bye-law and election notification.

11. In that view of the matter, I do not think it is available for the petitioner to recourse to the writ petition before this Court to say that he be declared as one of the successful candidates from among the general members. It looks as if the petitioner wanted an apple from mango tree totally forgetting what he had initially sown. Apple from apple tree and mango from mango tree, one can definitely and naturally expect but one cannot expect cross-way; apple from mango tree and mango from apple tree; not at all. It is a simple logic. Therefore, I should reject that logic of his to stop him from upsetting the "Apple Cart", I mean the election result in Annexure-D to writ petition, which I hereby do. All that I say, not to offend the petitioner even remotely, but in lighter vein. I know he was a serious aspirant and contender for an elected office in the Committee of Management of the respondent 3-Town Co-operative Bank.

12. Yet, I should not miss to make a reference to the reported decision of the Supreme Court in *Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput and Others*, upon which Sri Hanumanthaiah had relied in support of his argument. Sri Hanumanthaiah had placed his reliance on the observation of the Supreme Court in the said decision. In the decision, the Supreme Court had observed that it was a fundamental principle of democratic election that a person who is more popular is elected, popularity being measured by the number of votes which the person gets. I have carefully gone through the decision Sri Hanumanthaiah had relied upon. Having done that exercise, I do not think the said observation is of any assistance to his party for, that was a case wherein the SC candidate had contested for a seat from a general constituency and thereafter there arose the question whether the office of the President of a Municipality earmarked by roster for the SC category be restricted only to the candidates who were successful in the reserved seats or whether a SC candidate elected from the general seat also could contest for the same. It is in that contest the Supreme

Court held that, the idea of providing reservation for the benefit of the weaker sections of the society is not only to ensure their participation in the conduct of the affairs of the municipality but it is also an effort to improve their lot and that, when the idea is to promote the weaker sections of the Society, and to improve their lot, it would be a contradiction in terms if members belonging to that section are debarred from standing to the office of the President because such a candidate is popular enough to get elected from a general constituency. I do not think that is the issue now before me in the instant case. Hence, I am of the view that the above decision is of no relevance to the case in hand.

13. Yet another point the learned Counsel for the petitioner Sri Hanumanthaiah canvassed before me was that in printing the ballot paper, the Returning Officer had printed a common ballot paper setting out 30 names of all the candidates including the names of candidates in one row contesting for the reserved Groups i.e., SC/ST and women category, as if the election was held for a single constituency. This argument of Sri Hanumanthaiah is also not acceptable to me for the simple reason that in the very ballot-paper, copy produced at R. 1 to the objection statement filed by the respondents 14 to 16 as against the names of the petitioner at Sl. No. 29 and three others at Sl. Nos. 12, 13 and 18 were clearly shown as the persons representing the SC/ST category and furthermore, in printing out the Election Notification, the Returning Officer had clearly set out by special instructions at Sl. No. 10 that 11 persons from the general category, one each from the SC/ST and women category, in all 13 candidates, had to be elected by the members of the Society.

14. For the aforesaid reasons, I for one do not find any merit in the instant writ petition. The writ petition therefore fails and accordingly stands dismissed.

15. In view of the above order passed by me in the above writ petition, it is now open to the respondent 3 to hold the election for the post of office-bearers of the Society. Let him do that as expeditiously as possible.