

(2004) 09 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 30137, 30326 and 30327 of 2004

H.R. Shiva Kumar and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 44

Citation : (2004) 7 KarLJ 572 : (2004) 4 KCCR 2874

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

Bench : Single Bench

Advocate : A.V. Gangadharappa, for the Appellant; H.B. Narayana, High Court Government Pleader for Respondents-1, 3 and 4 and K.N. Phanindra, for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Petitioners claim to be the members of the Grama Panchayat. Petitioners have approached this Court praying for issue of the following writs.--

(a) a writ in the nature of mandamus directing the respondents to permit a Scheduled Tribe woman or BCM-A or BCM-B to contest for the post of Adhyaksha of the Grama Panchayat;

(b) any other appropriate writ or order or direction as this Hon''ble Court may deem fit to grant in the circumstances of the case.

Circumstances under which these petitioners have approached this Court are that the post of President in this Grama Panchayat has been reserved in favour of a person belonging to the Scheduled Caste woman in terms of the Government notification issued in exercise of the power u/s 44 of the Karnataka Panchayat Raj Act, 1993.

2. It appears the members of the Panchayat had expressed their lack of

confidence in such a person who had been elected against the post of President having been reserved to such a category and it also appears there was only one such person and who had been automatically elected to the post and a resolution expressing lack of confidence in that person was, in fact, carried in terms of the resolution dated 9-7-2004. The post of Adhyaksha having become vacant thereafter, the Assistant Commissioner has taken action by directing the Tahsildar to take further steps in the matter and it appears the Tahsildar, Belur, has now issued the meeting notice dated 7-9-2004, copy at Annexure-G, convening the meeting of the members of the Panchayat to elect a new Adhyaksha.

3. It is at this stage this writ petition is presented inter alia contending that there is only one person who is available who is a lady belonging to the Scheduled Caste Community amongst the elected members in this Panchayat and the post of Adhyaksha having again been reserved in favour of only such a person, it is inevitable that the very person who has been removed by moving the motion of no confidence will again contest the post and inevitably be elected and occupy the post of Adhyaksha in spite of all other members of the Panchayat having expressed lack of confidence against this person. It is in such circumstance the present writ petition is filed, praying for the relief referred to above.

4. Learned Counsel for the petitioner submits that the situation is rather incongruous with the statutory provision and a right given to the members of the Panchayat is virtually defeated when a person who has been removed from the post of Adhyaksha by the members expressing lack of confidence, is again allowed to return to the post immediately in the vicinity of such removal; that the provisions enabling holding of election particularly with the reservation as had been provided should be so understood, interpreted or read down so as to enable the reservation being in favour of any other alternative category in whose favour reservation is provided and not for the same category in whose favour reservation had been done earlier particularly in a situation where there is only one candidate belonging to that category and the candidate happens to be the one against whom a motion of no confidence had been passed by the Members of the Panchayat and notwithstanding the person can again become the Adhyaksha of the Panchayat.

5. Learned Counsel for the petitioner further submits that in a situation where either a person belonging to the reserved category is not available or even if available, such a person is not willing to contest the election, a situation of this nature can be brought to the notice of the Government so that the Government can take suitable steps for remedying the situation particularly for resolving the stalemate that can occur as the post will remain without being filled up for want of a candidate belonging to the reserved category either being not available or not contesting the election, by issue of a further notification providing for reserving the post to any other category in whose favour reservation is permitted.

6. Learned Counsel submits that the present situation should be treated as one

such and directions issued to the Government to cause a proper notification. Sri Gangadharappa, learned Counsel for the petitioner in this regard brings to the notice of this Court an earlier Division Bench decision of this Court in the case of Bapu Dada Patil Vs. State of Karnataka, , wherein this Court had an occasion to discuss the possibilities and the situation may develop that a deadlock or a stalemate occurs by a candidate against whom the Members of the Panchayat had moved a "No Confidence Motion" is again elected to the very post and the proceedings of the Panchayat did not progress at all and in this context had observed that this is for the legislature to take note of such possibilities and to take remedial steps by bringing in suitable legislations etc., and submits that notwithstanding such observation having been made by Division Bench of this Court about eight years ago, no such steps having been taken, it is appropriate that a writ of mandamus should be issued, for this purpose.

7. Notices had been issued to the respondents. I have heard Sri Narayan, learned Government Pleader appearing on behalf of respondents 1, 3 and 4 and Sri Phanindra, learned Counsel for respondent 2.

8. In a situation where a person who had been elected to the post of Adhyaksha, loses the post by the Members passing a resolution expressing lack of confidence in such a person, the act does not provide for any disqualification for the person to contest the post, yet again whether it is in the case of a post reserved for a Scheduled Caste, Scheduled Tribe or Backward Class category or women in general. The provision is the same. The mere fact that the post had been reserved in favour of a person belonging to a particular category cannot by itself constitute a ground for disqualifying such a person if a motion of no confidence is carried against a person, if in respect of persons elected to that post belonging to other categories passing a motion of no confidence does not attack a disqualification to such persons for re-election on being removed from the post through a resolution of the members expressing lack of confidence in such person.

9. However, Sri Gangadharappa, learned Counsel for the petitioner submits that whenever a post is reserved for a particular category and elections are held, reservation in favour of such a category is exhausted and if a person who had been elected subsequently loses the post for any reason including for reasons that the Members of the Panchayat had moved a lack of confidence motion against the person, it cannot be said that the post should be again reserved for the same category as it had worked out by a person belonging to such category having been elected once and for one reason or the other having lost the post.

10. This argument unfortunately cannot be accepted for the reason that reservation provided u/s 44 is in favour of a category and for the term of a particular post. The reservation is also sought to be rotated amongst the available Panchayats in the State and term wise in different Panchayats in the State. Therefore, if the reservation as provided for u/s 44 is to be implemented in its true spirit, the reservation should be for particular category for the term of

the posts for which the original reservation is notified and not taking steps for re-notification because the person who had been elected loses the post either immediately thereafter or after some time of holding the post. An interpretation as is sought to be urged by learned Counsel for the petitioner will have the effect of defeating the legislative intent of providing reservation to a particular category to the extent indicated in the statute itself but will have the effect of watering it down to a lesser period and reservation will be made contingent for different periods depending upon the elected person having been removed for one reason or the other. Such an interpretation cannot possibly be accepted. The reservation is for the period of term and it should be given effect to for that period.

11. Though learned Counsel for the petitioner has urged that there being only another three to four months for the remaining period of term of the President and an elected Vice-President who is now acting as a President has been effectively carrying on the function of the President and as such the notice fixing a meeting for electing an Adhyaksha by the Members should be quashed, I am of the view that there is no occasion for this Court to issue a writ of certiorari to quash the same, as no illegality is attributed to the notice.

12. A writ of mandamus to direct the legislature to enact any law in any manner cannot be issued. It is precisely for this reason that this Court also made only an observation in the case of Bapu Dada Patil, *supra*. It is for the Legislature to take note of such observations and bring about suitable legislation to meet the situation.

13. The instant case is not a situation wherein it is necessary to bring to the notice of the Government for reissue of the notification as a situation of deadlock or stalemate has not in fact arisen, question of any one calling upon the Government to issue a fresh notification for shifting the reservation in favour of any other reserved category also does not arise.

14. As none of the contentions urged on behalf of the petitioner either are not acceptable on legal principles or are not made out factually, and the situation being one such, no writ can be issued.

15. Writ petition is dismissed.