

(2009) 06 KAR CK 0099

In the Karnataka High Court

Case No : Writ Petition No's. 81767, 81769-71 of 2009

Kamalabai

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-06-2009

Acts Referred:

Karnataka Panchayatraj (Taluka Panchayat President and Vice President Reservation) Rules, 2005 — Rule 5, 5A

Citation : (2009) ILR (Kar) 3456 : (2011) 2 KCCR 145 SN : (2010) 8 RCR(Civil) 2111

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Harshavardhan R. Malipatil and Prashanthkumar S. Gotur, for the Appellant; M. Kumar, AGA for R1 to R3, B.K. Patil, for R4 to R8 and Sivayogimath Associates for Impleading Resp. No. 9, for the Respondent

Judgement

B.S. Patil, J.—In this writ petition petitioners are challenging the Notification dated 15.05.2009 issued by the first respondent-State Government in so far as it relates to reservation of the post of President of Bijapur Taluka Panchayat in favour of Scheduled Tribe category. Challenge is also made to the Notifications dated 20.05.2009 issued by the Assistant Commissioner and the Election Officer for the Taluka Panchayat Bijapur vide Annexures-"E" and "F" publishing the calendar of events for election to be held for the post of Adhyaksha and Upadhyaksha of Bijapur and Basavana Bagewadi Taluka Panchayats respectively.

2. The main contention of the petitioners is that there is violation of Rule 5(A) of the Karnataka Panchayatraj (Taluka Panchayat President and Vice President Reservation) Rules 2005 in as much as due to the percentage of Scheduled Tribe population in different talukas of the district, it is the Taluka Panchayat Basavana Bagewadi which will get its turn for reservation of the post of Adhyaksha in favour of Scheduled Tribe category but the respondent-State has illegally overlooked this and has proceeded to issue the impugned Notification reserving the post of Adhyaksha in favour of Scheduled Tribe in respect of the Taluka

Panchayat Bijapur. Drawing the attention of the Court to Annexure-"D" he submits that the percentage of Scheduled Tribe population in Bijapur district is highest in Muddebihal followed by Basavana Bagewadi then Indi, Sindagi and Bijapur. He therefore contends that as Muddebihal and Indi Taluka Panchayats had been already received reservation for the post of Adhyaksha in the past for Scheduled Tribe category, for the current term the reservation for Scheduled Tribe category should have been given to Basavana Bagewadi Taluka Panchayat for the post of Adhyaksha. He therefore contends that this illegality vitiated Annexure-"C" Notification in so far as it pertains to Bijapur District and consequently the Notification issued publishing the calendar of events for Bijapur and Basavana Bagewadi Taluka Panchayats to elect the President and Vice President of the Taluka Panchayat also gets vitiated.

3. Learned Government Advocate, on instructions submits that if Taluka Panchayat Basavana Bagewadi were to be given reservation for Scheduled Tribe category, reservation for Scheduled Caste (W) category could not be given to other talukas like Indi, Sindagi and Muddebihal because in these talukas reservation has been already given to backward class A(W), Scheduled Caste (W) and Scheduled Tribe in the previous round i.e. the 8th round. He submits that in these circumstances in order to accommodate Scheduled Caste (W) candidate in Basavana Bagewadi Taluka, Scheduled Tribe reservation is shifted to Bijapur Taluka. Learned Government Advocate has filed a memo dated 10.06.2009 mentioning these aspects. He further submits that if Rule 5 has to be given full effect to, the exercise done by the respondent-State was inevitable. He has also contended that as per the decision of the Apex Court in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, ", interference with the election process after the publication of the calendar of events is not permissible. He has also relied upon the decision of the Division Bench of this Court in the case of K.M. Venkatesh and Anr. v. The Secretary Urban Development Department, Government of Karnataka and Ors. to contend that interference with the election process is not permissible particularly keeping in mind the provisions of Article 243-Z(G).

4. Having heard the Learned Counsel for the parties and considering the materials on record, I find that the process of reservation of seats of the posts of Adhyaksha and Upadhyaksha of various Taluka Panchayats has to be undertaken by the State well before the election process commences. This will enable the aggrieved parties to avail the alternative remedy and challenge such Notification in accordance with law and get it corrected, if there is any illegality. The action of the State Government in publishing the Notification reserving the posts to various Taluka Panchayats almost contemporaneously with the election process will affect the rights of the citizens and other aggrieved parties. No doubt, Courts must be slow in exercising their powers which will result in stalling or postponing the election process but that should not result in the State acting in an arbitrary manner by resorting to the issue of Notifications both for reservation of posts and for holding the elections almost simultaneously.

5. In the instant case the Notification reserving the posts of Adhyaksha and Upadhyaksha is issued on 15.05.2009 vide Annexure-"C" and the calendar of events for holding election is published on 20.05.2009 hardly within a period of 5 days. In such circumstances it is hard to digest the contention taken up by the State that whatever be the illegality in the Notification Annexure-"C" since the election process has commenced it cannot at all be rectified.

6. But, the fact remains that this Court will not be justified in stalling or postponing the election process once the calendar of events is published particularly in the present case where the election to the posts of Adhyaksha and Upadhyaksha in other two talukas of Indi and Sindagi of Bijapur District has been already held as per the impugned Notification. It has to be however made clear that in future the State shall have to issue the Notification reserving the posts well in advance and must avoid issuing both the Notification pertaining to reservation and the Notification relating to the announcement of election containing the calendar of events almost simultaneously or without much gap between the two dates. This observation needs to be made as this Court is coming across number of cases where the aggrieved party though approaches this Court challenging the Notification immediately after the issue of Notification reserving the posts for different categories is denied the relief only because the election process is started soon thereafter by publishing the calendar of events.

It is made clear that petitioner shall be at liberty to challenge the election once it is conducted by taking up all contentions that are available to him in law, if he so desires. Petition is accordingly disposed of.