

(1995) 02 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No. 8768 of 1994

Katagihalli Anandappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 45

Citation : (1995) 2 KarLJ 512

Hon'ble Judges : R. V. Raveendran, J;K. S. Bakthavatsalam, J

Judgement

K.S. Bakthavatsalam, J.-The petitioner has come up to this Court praying for issuance of a writ of mandamus to direct the third respondent to declare the petitioner as duly elected as Adhyaksha of fourth respondent-Panchayat.

2. The short facts are: the fourth respondent is a Gram Panchayat established under the provisions of the Karnataka Panchayat Raj Act, 1993. The petitioner is one of the elected member of the panchayat in question and the panchayat consists of 13 elected members. Out of the 13 elected members, 3 members belong to Scheduled Tribe, out of which, the petitioner is one. The second respondent in pursuance of Section 44 of the Act, issued a notification on 17-2-1994 reserving a seat for the post of Adhyaksha and Upadhyaksha and name of the fourth respondent-Gram Panchayat is shown at Sl. No. 31 and the post of Adhyaksha is reserved for men belonging to Scheduled Tribe. It seems the second respondent appointed the third respondent-prescribed officer to conduct the election of Adhyaksha and Upadhyaksha and the date of election was fixed on 22-3-1994. The petitioner who belongs to Scheduled Tribe, alone filed a nomination for the post of Adhyaksha and it seems no other nomination was filed by any member of the tribe for the post of Adhyaksha. The meeting was called on 22-3-1994 and three members including the petitioner supported the candidature of the petitioner and remaining ten members opposed the candidature of the petitioner. Therefore, the third respondent-prescribed officer refused to declare the result of the election for the post of Adhyaksha though he declared the result of the election for the post of Upadhyaksha. A true copy of

the proceedings is enclosed herewith by the petitioner at Annexure-C under which, he has stated that result of the election for the post of Adhyaksha is dropped and the matter is referred to the Government for further action. At this stage, the petitioner has approached this Court with the above said prayer on 25-3-1994. Subsequent to the filing of this petition, action has been taken by the third respondent by issuing a notice dated 28-6-1994 for conducting another election for the post of Adhyaksha and at that time, the petitioner seems to have filed I.A.I for staying the operation of the said notice. Accordingly, further proceedings are stayed by this Court in pursuance of the notice dated 28-6-1994.

3. Learned counsel for the petitioner, Sri Rayareddi, contends that in view of the provisions of the Karnataka Panchayat Raj Act, 1993, especially Section 44 of the Act, when the post of Adhyaksha has been reserved for a candidate belonging to Scheduled Tribe and the petitioner being the only candidate who filed nomination, he ought to have been elected and the third respondent has failed in his duty in not doing so. The learned counsel further contends that the third respondent has no jurisdiction to refer the matter to the Government for opinion by stating that the proceedings are dropped. The learned counsel referred to Section 44 of the Karnataka Panchayat Raj Act, 1993 and Section 45 of the Act, which provides the procedure for conducting election of Adhyaksha and Upadhyaksha. The learned counsel referred to the rules regarding the election for Adhyaksha i.e., rules framed under the earlier Act which is called the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983. He drew our attention to Rule 4 of the Rules called the Karnataka Mandal Panchayats (Election of Pradhan and Upapradhan) Rules, 1987 and argued that since the petitioner is the only candidate, he ought to have been elected especially when the present Act provides for reservation for the post of Adhyaksha, for the member from Scheduled Tribe. The learned counsel states that when there is only one motion, no question of putting the motion to vote arises and the returning Officer ought to have declared the petitioner as elected and the procedure followed by the third respondent is not in accordance with the rules. He points out that the third respondent has erred in referring the matter to the Government for opinion and more so, he issued another notice in June 1994 when the matter is subjudiced by this Court as if no election had taken place in March 1994. The learned counsel points out that the third respondent ought to have waited or ought to have duly declared the petitioner as elected since he has been the only candidate for the post of Adhyaksha which has been reserved for a candidate from Scheduled Tribe.

4. The learned counsel for the State Sri Somayaji, contends that interpretation given by the counsel for the petitioner to the construction of rules is wrong and it is against the principles laid down by this Court in *M.C. Basappa Setty v Marle Mandal Panchayat and Others*, 1987(3) Kar. L.J. 183, and in *Mudde Gowda v Deputy Commissioner, Mandya and Others*, 1989(2) Kar. L.J. 124, which have followed the earlier decision in the case of *Kalaiah v Arasaiah*, 1969(1) Mys. L.J. 383. According to the learned counsel, even if there is a single motion, it has to

be put on vote as provided in Section 53 of the Karnataka Panchayat Raj Act, 1993. According to the learned counsel, even though the rules are silent, if the principles laid down in the decisions cited supra is followed, Section 53 of the Karnataka Panchayat Raj Act, 1993 has got to be looked into and if so, since the majority of members have not voted for the petitioner, action taken by the third respondent cannot be said to be illegal. Learned counsel specifically referred to sub-section (3) of Section 53 wherein it is stated all questions shall, unless otherwise specifically provided, be decided by a majority of votes of the members present and voting. The learned counsel further points out that the election process has not come to an end and refers to Article 243-O of the Constitution of India which bars the interference of the Court in electoral matters even to the election of Panchayat. According to the learned counsel, this Court sitting under Article 226 of the Constitution of India, should not interfere at this stage when the election process has not come to an end and following the principles laid down by the Supreme Court right from *N.P. Ponnuswami v Returning Officer, Namakkal Constituency, Namakkal Salem Dist., and Others*, AIR 1952 SC 64, this Court should not interfere with the election of Adhyaksha at this stage. He relied upon the Division Bench Judgment in *Kalaiah's case, supra*, and points out that the Division Bench has applied similar provision like Section 53(3) of the present Act to the very same situation which arose in that case construing certain rules of election for the post of Chairman of the village panchayat.

5. We have gone through the judgments placed before us. We are not able to accept the contention of the learned counsel for the State that the principles laid down in *Kalaiah's case, supra*, will apply to the facts of this case as the rules interpreted by the Division Bench are entirely different. However, there are two judgments of the learned single Judges which have been reported in *M.C. Basappa Setty's case, supra*, and *Mudde Gowda's case, supra*, which seems to support the contentions raised by learned counsel for the State. We do not think it is necessary to go into the correctness of these judgments for deciding the issue before us. We are of the opinion that the facts of this case are peculiar. The election officer i.e., prescribed officer refers the matter to the Government, after dropping the proceedings. No doubt, this Court sitting under Article 226 of the Constitution of India may not interfere with election process, even in the election of panchayat, in view of Article 243-O of the Constitution of India. However, in this case, the procedure adopted by the prescribed authority, third respondent, compels us to interfere in this matter at this stage. The third respondent though declared the election of Upadhyaksha, has not stated any word about the election of Adhyaksha. He has not stated whether he has declared the petitioner as elected for the post of Adhyaksha or refused to declare him as elected. He has just said the matter is dropped. Apart from that, the third respondent thought fit to refer the matter to the Government for its opinion. Probably, in view of the reservation made in the new Act in favour of the Scheduled Tribe candidate, the returning Officer is not able to arrive at the correct conclusion and he thought it

fit to refer the matter to the Government. In our view, he has no jurisdiction to refer the matter to the Government and the Government cannot have any say at this stage. The third respondent ought to have decided one way or the other whether the petitioner has been elected or not to the post of Adhyaksha insofar as it has not been done. We do not think the principle laid down by the Apex Court in Ponnuswami's case will apply to the facts of this case.

6. We are not for a moment interfering with the election process or we are not inclined to issue a writ as prayed for by the petitioner. But, instead, taking the peculiar facts and circumstances of the case, we feel suffice to direct the third respondent to declare whether the petitioner has been elected to the post of Adhyaksha or not. If it is done, the petitioner may have some other remedy to sort out his grievance. In view of the prayer asked for a direction to third respondent to declare the result of the election held on 22-3-1994 pointing out specifically whether the petitioner has been elected or not, the third respondent has to pass an order according to law within a period of four weeks.

7. The counsel for the petitioner rightly pointed out that though reservation has been made under the enactment which has been passed by the legislature in favour of Scheduled Tribe as Karnataka Panchayat Raj Act, 1993, proper rules are yet to be framed for giving effect to the intention of the legislature. We do hope that the State will take up the matter expeditiously to give effect to the intention of the legislature by framing rules to enforce the provisions of the Act effectively by the officers concerned.

Writ petition is disposed of. In view of the disposal of main petition itself, it is not necessary to pass any order on I.A. for amendment.