

(1997) 12 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No"s. 13890 to 13893 of 1997

Khatib, Irshad Ahmed, Mohammed Hussain and others

APPELLANT

Vs

The Returning Officer for Election to the Shishuvinahal Grama
Panchayat

RESPONDENT

Date of Decision : 12-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 243, 243O

Karnataka Panchayat Raj (Conduct of Election) Rules, 1993 — Rule 14 (1), 15, 17 (5),
19, 20

Citation : (1998) ILR (Kar) 1813 : (2000) 3 KarLJ 455

Hon'ble Judges : B.N. Mallikarjuna, J

Bench : Single Bench

Advocate : Sri R.H. Chandangoudar, for the Appellant; Sri A. Nagarajappa, High
Court Government Advocate, for the Respondent

Judgement

1. In these 4 writ petitions, petitioners who had delivered their nominations for election to the Shishuvinahal Grama Panchayat in the District of Dharwad against four reserved constituencies have sought for a writ of certiorari quashing the order of the respondent at Annexure-F, dated May 28, 1997 rejecting their nominations on the ground that they did not produce the certificates within time and also for a direction to the Returning Officer to accept their nominations and to declare them as duly elected against those constituencies and for such other reliefs the Court deems fit to grant in the circumstances of the case.

2. Facts emerging both from the records and the pleadings are as follows:

Election to Shishuvinahal Grama Panchayat Constituency-I, II, III were proposed to be held on June 8, 1997 and accordingly calendar of events Annexure-A was published by the respondent as required under Rule 12 of the Karnataka Panchayat Raj (Conduct of Elections) Rules, 1993 (hereinafter referred to as "The Rules"). Fourteen candidates including these four petitioners delivered their nominations as required under Rule 14(1) of the Rules. Eight out of 14 submitted

their nominations to contest against three general seats, one each in three divisions. First petitioner and another filed their nominations to contest against the seat reserved for OBC-A from Constituency-I, petitioner 2 filed nomination to contest against the seat reserved for OBC-Woman, no other nomination was filed for that seat.

3. Petitioner 3 and another lady filed their nominations as against the seat reserved for Scheduled Tribe-Woman from Constituency-II. Petitioner 4 filed her nomination to contest against the seat reserved for Scheduled Caste-Woman in Constituency-III division.

4. Three candidates submitted their nominations for election from general constituency in Shishuna-II, three candidates filed their nominations for one general seat in Shishuvinalhal -II and three candidates filed their nominations for one general constituency in Shishunal-II. Nominations of candidates filed for general constituency were accepted. Five out of eight withdrawn and there is no dispute in regard to the general constituency. Thus, in respect of four reserved constituencies, six remained in the field which includes four petitioners.

5. Last date for receiving the nomination was on May 24, 1997 between 11 a.m. and 3 p.m. The date fixed for scrutiny is on May 26, 1997 upto 3 p.m. Petitioners' contention is that along with their nominations they filed the school leaving certificates in support of their claim that they belong to the particular reserved category and filed the certificates issued by the Tahsildar before the Returning Officer on May 26, 1997 at 3-05 p.m. The Returning Officer rejected the nominations of these four petitioners and two others on the ground that the caste certificates issued by the Tahsildar were not produced before time on May 26, 1997, the time fixed for scrutiny. Therefore, petitioners have sought for quashing this order.

6. In the statement of objections filed on behalf of the Returning Officer, it is contended that the caste certificates issued by the Tahsildar, Shiggon were produced by the candidates before the Returning Officer on May 26, 1997 at 4.30 p.m., since the certificates were produced beyond time, Returning Officer had no alternative but to reject the nominations as they were not in compliance with the relevant provisions of the Act and Rules. It is also contended that the only remedy available to the petitioners is by way of election petition u/s 15 of the Karnataka Panchayat Raj Act, 1993 and therefore these writ petitions filed under Article 226 of the Constitution of India are not maintainable.

7. Heard the learned Counsel for the petitioners and the learned High Court Government Advocate for respondent. Perused the records made available by the learned High Court Government Advocate.

8. Learned Government Advocate contends that in view of Section 15 read with Sections 19 and 20 of the Karnataka Panchayat Raj Act, 1993 (hereinafter referred to as "The Act") read with Article 243(o) of the Constitution of India, these writ petitions are not maintainable. Rejection of nominations of petitioners

in the circumstances is proper and calls for no interference. He further submitted that the relief sought for viz., to declare the petitioners as duly elected cannot be granted in writ proceedings and more particularly in view of the fact that two more candidates are in the field and their nominations being rejected on the same ground.

9. Learned Counsel for the petitioners contend that in the given situation, these writ petitions under Article 226 of the Constitution of India are maintainable. Petitioners are without remedy there being no declaration of results and therefore in these extraordinary circumstances they have no other alternative but to approach this Court under Article 226 of the Constitution of India. Even otherwise, there being statutory violation by the Returning Officer on whom the power of conducting election is conferred, these writ petitions are maintainable. He further contends that rejection of nomination papers is improper for the reason that nominations can be rejected only when the objections are of substantial character. The omission having been supplied well within time and at any rate within a day from the date fixed for scrutiny, Returning Officer ought to have granted them a day's time in view of sub-rule (5) of Rule 17 of the Rules, 1993 before rejecting the nominations. Therefore, in the circumstances, these writ petitions are maintainable.

10. In view of the rival contentions, points that would arise for consideration in these writ petitions are:

- (1) Whether the writ petitions are maintainable?
- (2) Whether the only remedy to the petitioners is by way of election petition u/s 15 of the Act?
- (3) Whether the rejection of nominations of the petitioners is improper?
- (4) What order?

11. Points (1) and 2:--

In view of the rival contentions, I have gone through carefully the relevant provisions of the Act and the Rules. More important sections are Sections 15, 19 and 20 of the Act. On a close reading of these three sections and after giving anxious thought to the points at issue, I am not persuaded to accept the arguments advanced on behalf of the respondent. In order to appreciate, it would be useful to refer to Section 15 of the Act which reads thus:

"15- Election petition.--(1) No election to fill a seat or seats in a Grama Panchayat shall be called in question except by an election petition presented on one or more of the grounds specified in subsection (1) of Section 19 and Section 20 to the Munsiff within whose territorial jurisdiction the Panchayat area concerned or the major portion of the Panchayat area concerned is situated by any candidate at such election or by any voter qualified to vote at such election together with a deposit of five hundred rupees as security for costs, within thirty

days from, but not earlier than, the date of declaration of the result of the election of the returned candidate at the election, and if the dates of declaration of the results of their election are different, the last of those dates.

(2).....

(3).....

Explanation.--The expression "returned candidate" means a candidate who has been declared as duly elected".

(emphasis supplied)

A plain reading of sub-section (1) of Section 15 together with the explanation of the phrase "returned candidate" makes it clear that an election petition would lie when there is declaration of results and there is a "returned candidate". In the instant case, undisputably, nominations of six persons for election to four seats reserved for certain categories have been rejected and as such there is no declaration of results nor the Returning Officer has declared any one of the six as candidate duly elected in the election. In the circumstances, I fail to find any reason in the arguments that the only remedy available is an election petition and nothing else.

12. Main grievance of the petitioners is that the rejection of their nominations is improper. They have no doubt sought for a relief of declaring them as duly elected in the election after accepting their nominations. Learned Government Advocate referring to the ground urged on behalf of the petitioners for quashing the order and the relief sought for contended that in view of Sections 19 and 20 of the Act remedy available is only an election petition. Here again I am not persuaded to accept this argument for the simple reason that a close examination of both the sections would make it clear that an election petition would lie only when there is declaration of result and a "returned candidate". In the instant case, there is neither declaration of result nor there is a returned candidate, and therefore there is no merit in the argument that these petitions are not maintainable.

13. The Legislature while making law did not perhaps anticipate a situation of this type and as such no provision is made in the Act to meet such contingency; that should not deny the aggrieved party, an opportunity to approach this Court under Article 226 of the Constitution of India, especially when there is allegation of statutory violation.

14. Learned Government Advocate inviting my attention to sub-clause (b) of Article 243-O of the Constitution of India urged that no election to any Panchayat shall be called in question except by an election petition. Article 243-O(b) reads thus:

"243-O. Bar to Interference by Courts in electoral matters.-- Notwithstanding anything in this Constitution:--

(a).....

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State".

A plain reading of sub-clause would make it clear that an election can be challenged by an election petition presented to such authority and in such manner as provided for by or under any law made by the Legislature of a State. Section 15 of the Act provides for an election petition, but I have said above that in the given situation of this particular case, election petition would not lie. In support of his argument he relied on the decision of the Division Bench of this Court in *Smt. Raniyamma Vs. M. Hemala Nayaka and Others*, . There the election of Adhyaksha of Zilla Panchayat was in question and the Division Bench has held that though Article 243-O of the Constitution of India was no bar to the maintainability of the writ petition, there was alternative efficacious remedy under Rule 7 of the Rules and therefore dismissed the writ petitions. But here in the instant case, I have held above that there is no alternative remedy and in fact the petitioners in the facts and circumstances of the case have no other remedy other than approaching this Court under Article 226 of the Constitution of India.

15. Learned Counsel for the petitioners in support of his arguments contended that the writ petitions in the facts and circumstances are maintainable and relied on the decisions of the Supreme Court in *Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others*, and another decision of the Division Bench of this Court in *M.G. Achappa Vs. The Prescribed Officer, Gonikoppal Grama Panchayat and Others*, . In *Boddula Krishnaiah's* case, *supra*, controversy related to the election to the Grama Panchayat. Apex Court referring to an earlier decision in *Lakshmi Charan Sen v A.K.M. Hassan Uzzaman*, holds that though the writ petition is maintainable certain directions by way of interim orders cannot be granted by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. It does not say that a writ petition in a given situation challenging certain action of an authority acting under the statute even in the matter of election is not maintainable. In *M.G. Achappa's* case, *supra*, Division Bench of this Court has held that power to issue writs under Article 226 of the Constitution is available only when fundamental or statutory rights violated and not when right to elective post modified under statutory power.

16. In the instant case, there being no alternative remedy to the petitioners and the grievance of the petitioners is that exercise of statutory power by the respondent is unfair and arbitrary, these writ petitions challenging the said action are maintainable.

17. Point No. (3).--This takes me to consider as to whether the rejection of the nomination in the facts and circumstances of the case is proper or not. The

relevant rules that require to be considered in appreciating the arguments advanced at the Bar are Rules 14, 16 and 17 of the Rules. Sub-clause (1) of Rule 14 provides for presentation of nomination papers. In the case of seats reserved for backward class, scheduled caste or scheduled tribe or for woman, sub-rule (2) of Rule 14 requires the candidates to file a declaration along with the nomination. Rule 17 provides for scrutiny of nominations by the Returning Officer. Sub-rule (2) of Rule 17 requires the Returning Officer to examine the nomination papers and decide all objections which may be made to any nomination and may either on such objection or on his own motion after such summary enquiry reject any nomination. But such rejection shall be on the grounds (a) that on the date fixed for scrutiny of nomination, candidate either is not qualified or is disqualified for being chosen to fill the seat under the provisions of the Act; (b) that there has been a failure to comply with any of the provisions of the Act or Rules; (c) that the signature of the candidate or proposer on the nomination paper is not genuine.

18. Sub-rule (4) of Rule 17 prohibits the Returning Officer from rejecting any nomination on the ground of any defect which is not of substantial character. Sub-rule (5) prohibits the Returning Officer from adjourning the proceedings of scrutinising the nominations except under certain circumstances. Proviso to sub-rule (5) enjoins on the Returning Officer to grant a day's time to such of those concerned candidates against whom objections are raised, to rebut it not later than the next date. Sub-rule (6) of Rule 17 empowers the Returning Officer to take a decision in the matter of accepting or rejecting the nomination and in rejecting to record in writing the brief statement of his reasons for such rejection.

19. It is undisputed that petitioners and two others in all six have filed the nominations in the prescribed form. They were required to file nominations in Form 5. Column (c) of Form 5 required the petitioners to file a certificate certifying the caste or tribe or backward class to which they belong. Returning Officer contends that they failed to produce the certificates issued by the Tahsildar. It is undisputed that petitioners did not file the certificates issued by the Tahsildar along with their nominations. Petitioners contend that they have produced the school leaving certificates and the certificates issued by the Tahsildar at the time of scrutiny. There is dispute as to the time at which it is filed and that being a disputed question of fact, this Court will not probe into the matter further. But the fact remains that petitioners have filed the certificates issued by the Tahsildar certifying the caste or the tribe or the class to which they belong on the date fixed for scrutiny.

20. Learned Counsel for the petitioners inviting my attention particularly to sub-rules (4) and (5) argued that there being declaration by petitioners in the nominations as required under sub-rule (2) of Rule 14 and as the nominations accompanied the school leaving certificates, objections raised by the Returning Officer is not of substantial character and even if it is of a substantial character Rule 5 required the Returning Officer to provide petitioners a day's time to

supply the omission, Returning Officer ought to have considered the certificate and taken a decision in the matter. On a close look at the relevant rules and considering the whole scheme and the object of the Act and the law on the point, I find considerable merit in the arguments. Petitioners have declared in the nominations as required under the rule and that is not disputed. They have also produced certain certificates but there is a delay in producing the certificates but having regard to sub-rule (5) of Rule 17, Returning Officer was required to consider those certificates and determine as to whether the claim made by each of the four petitioners regarding reservation is justified and eligible to contest against those seats reserved for particular category. Returning Officer without complying with the mandatory requirement of Rule 5 proceeds to reject the nominations summarily and that is not in accordance with the rules. Rule 17(2) (b) no doubt confers power on the Returning Officer to reject nominations if there is a failure to comply with any of the provisions of the Act or Rules. Here, there is compliance in the sense petitioners have declared to which category they belong, in addition to producing school leaving certificate and supplies the omission within time permitted under sub-rule (5). Therefore, in the circumstances, rejection appears to be improper. Rule 14(2)(a) of the Rules reads similar to Section 33(2) of the Representation of the People Act, 1951. Supreme Court while considering the scope, object and purport of Section 33(2) in the case of *Ganu Ram Vs. Rikhi Ram Kaundal and Others*, , has declared that if a declaration is filed in a separate paper enclosed to the nomination that is sufficient compliance and in such circumstances and more particularly when no objection whatever was raised against the nomination filed by the appellant at the time of scrutiny by any other person, rejection is improper. In a recent case in *Bhogendra Jha v Manoj Kumar Jha*, Apex Court while considering the scope and object of Sections 33(4), 36(4) and 101(c) of the Representation of the People Act have declared that in a situation like this, Returning Officer is required to adjourn the case to the next date and consider the objections. Section 36(4) of the Act reads similar to Rule 16(4) of the Rules. The relevant declaration of law reads thus:

"6. u/s 36(4) of the Act, the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. u/s 36(2), the Returning Officer has the power to conduct an enquiry. It is settled law that it is a summary enquiry. When the Returning Officer scrutinises the nomination paper, the parties or the nominees are required to be present and if they seek liberty to place the necessary material, the Returning Officer is enjoined to adjourn the case to the next day. In case they are able to place the necessary material and satisfy the Returning Officer of the correctness of the enrollment as a candidate or the address of the nominee, the Returning Officer would consider the same. But he is not expected to sift the evidence and find the placement in the electoral roll, the name and particulars of the nominee".

(emphasis supplied)

21. In the instant case, there was declaration as required under Rule 14(2)(a) by every one of the four petitioners and in addition to it they had also produced the school leaving certificates indicating the caste or the class to which they belong. They have also produced the required certificates issued by the Tahsildar on the date fixed for scrutiny, may be after the appointed time viz., 3 p.m. There was no other person who raised any objection in the matter, none of the candidates including these four petitioners raised any objection. In these circumstances and in view of Rule 17(5) of the Rules the Returning Officer was required to receive the certificates, consider them and then take a decision in the matter. Therefore, in the circumstances, rejection of nominations is clearly improper and in violation of the relevant rules and therefore the endorsement Annexure-F is liable to be quashed.

22. The next point for consideration would be as to whether there could be a declaration declaring the petitioners as duly elected. This relief cannot be granted both in law and on facts. Even assuming that the rejection is improper, they cannot be declared as duly elected for the simple reason that there remain two more candidates whose nominations are also rejected on the same ground. Six nominations against four seats would be in the order of two against the seat reserved for backward class-A from Shishuvinahal-I, only one nomination as against the seat reserved for woman from Shishuvinahal-I, two nominations as against one seat reserved for scheduled tribe in Shishuvinahal-II and there would be only one nomination as against the seat reserved for scheduled caste woman for Shishuvinahal-III. Nominations of other two are also rejected on the same ground. Therefore, if those nominations are accepted, there should be election at least for, two seats. Whatever, that may be, that is within the jurisdiction of the Returning Officer. A direction is required to be issued to the Returning Officer to receive the certificates if they are not already received, consider them, take appropriate decision in the matter and to declare the results if no election is required or to conduct the election as the case may be as per the calender of events at Annexure-A from the stage at which the interruption has occurred.

23. In the result and for the reasons stated hereinabove, rule issued. Endorsement at Annexure-F, dated May 28, 1997 is hereby quashed. Respondent-Returning Officer is directed to receive the caste certificates if they are not already received from the petitioners and the two other candidates after notice to them, consider them and take appropriate decision in the matter in accordance with law and in the light of the observations made above, hold the election if necessary commencing from the stage at which interruption has occurred and declare the results within 45 days from today. No costs.