
(2016) 03 KAR CK 0227

In the Karnataka High Court

Case No : Writ Petition No. 102319/2016 (LB-RES)

Manjunath Yamanappa Elemmi

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Citation : (2016) 3 KantLJ 71

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : G.K. Hiregoudar for B.B. Bajantri and Gangadhar J.M., Advocates, for the Appellant; Ravi V. Hosamani, AGA, for the Respondent

Final Decision : Allowed

Judgement

B. Manohar, J.—1. The petitioner in this writ petition has sought for quashing the Notification dated 04.03.2016 issued by the 1st respondent insofar as reservation made to the post of President of City Municipal Council, Bagalkote, in favour of BCA-Women category is concerned.

2. In the writ petition, the petitioner has contended that he was elected as a member of the Bagalkote City Municipal Council to the 10th ward which was reserved for the BCA category during the election held in the year 2013. He was an aspirant to the post of President of the City Municipal Council, Bagalkote. The State Government following Section 42 (2-A) (a) of the Karnataka Municipalities Act, 1964, provided reservation for the office of President and Vice-President to Backward Class, Scheduled Caste and Scheduled Tribe. Section 42 (2-A) (a) contemplates that such number of offices of President and Vice-President in the State for the persons belonging to the Scheduled Castes and Scheduled Tribes and the number of such offices bearing as nearly as may be the same proportion to the total number of offices in the State as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State. Further, such number of offices of President and Vice-President in the State which shall as nearly as may be one-third of the total

number of offices of President and Vice-President in the State for the persons belonging to the Backward Classes. Among the backward classes, 80% of total number of such offices shall be reserved for BCA category and remaining 20% of the offices shall be reserved for the persons belonging to the BCB category. Further, 50% of the seats shall be reserved for the Women category in all categories. Further, reservation of the offices shall not exceed 50% of the total number of offices of the President and Vice-President of the Municipal Councils in the State. The State Government amended the Karnataka Municipalities (President and Vice-President) (Election) Rules, 1965 (Amendment) Rules 2007 and (Amendment) Rules, 2013. As per the amended Rule 13 of the Karnataka Municipalities (President and Vice-President) (Election) (Amendment) Rules, 2015, the seats are reserved for the various categories as per Schedule I which reads as under:

3. For enforcement of the above reservation, the State Government has issued the guidelines dated 05.02.2016. As per the guidelines, the reservation of the offices of President and Vice-President of the City Municipal Councils as specified by the Government as per Amendment to sub-section (2A) of Section 42, the offices of Presidents and Vice-Presidents of the City Municipal Councils in the State shall be rotated to different categories viz., Scheduled Caste, Scheduled Caste (Women), Scheduled Tribe, Scheduled Tribe (Women), Backward Class-A, Backward Class-A(Women), Backward Class-B, Backward Class-B(Women), General, General(Women). As per the guideline, the cycle of rotation shall commence from the first term, after first ordinary election held after 01.06.1994 and the said rotation would complete when all categories are represented. Thereafter, a fresh cycle of rotation shall be operated. The office of the President and Vice-President of City Municipal Councils reserved in the previous seven categories, shall as far as possible not to be allotted to the same category until the cycle of rotation is completed in respect of the such category.

4. As per the Rules framed by the State Government and the guidelines issued, the State Government issued Notification for allotment of the office of the President and Vice-President to the various categories for the 8th term in respect of City Municipal Council in the State in terms of Rule 13 of the Karnataka Municipalities (President and Vice-President) (Election) (Amendment) Rules, 2015.

5. Insofar as Bagalkote City Municipal Council is concerned, the office of the President was reserved for BCA category as per the Notification dated 24.02.2016. However, without any reason the State Government by modifying the Notification dated 24.02.2016 has issued one more Notification on 04.03.2016 interchanging the reservation category between Bagalkote and Sira City Municipal Councils. As per the amended Notification, BCA-Women category is allotted to Bagalkote and for Sira, it was modified to BCA category for BCA(Women). Being aggrieved by the partial modification in the Notification dated 24.02.2016, the petitioner has filed this writ petition.

6. The case of the petitioner is that the modification made is in violation of the Karnataka Municipalities (President and Vice-President) (Election) (Amendment) Rules, 2015 and Notification dated 05.02.2016 and for an extraneous consideration.

7. Sri Ravi V. Hosamani, learned Additional Government Advocate appearing for respondents 1 to 3 argued in support of the amended notification dated 04.03.2016 and contended that there is some error in fixing the reservation for the office of the President is concerned in the Notification dated 24.02.2016. Subsequently, that mistake has been rectified in the Notification dated 04.03.2016. Hence, he submits that no irregularity has been committed and that the reservation of the office of the President has been made in accordance with the Karnataka Municipalities Act and Rules made thereunder and also the guidelines issued by the State Government. He has made available the chart Annexure-R3 wherein reservation of the President and Vice-President of the City Municipal Councils are made available.

8. So far as the Bagalkote City Municipal Council is concerned, in the first term it was reserved for the General-Women, second term was reserved for General, third term was reserved for BCA-Women, fourth term was reserved for General, fifth term was reserved for BCB-Women, sixth term was reserved for Scheduled Caste-Women, seventh term was reserved for General. Now, for the eighth term, the seat was reserved for BCA. However, it was subsequently modified without assigning any reason. In the Notification dated 04.03.2016, no reasons have been assigned for modifying the earlier Notification dated 24.02.2016. As per the guidelines issued by the State Government, the rotation in respect of other categories shall ensure that there is no repetition of reservation of seats with reference to the reservation in the previous seventh term as far as possible except General and General-Women category.

9. So far as Bagalkote City Municipal Council is concerned, the office of the President has not been reserved to the BCA category. So far as the BCA(Women) category is concerned, it was already given in third term. By amendment of the Notification dated 24.02.2016, once again the office of the President was reserved for the BCA(Women) for the eighth term. That amounts to repetition.

10. This Court in the case of M. Abdul Azeez v. The State of Karnataka, by its Secretary, Urban Development Department and Others (, 2014 (1) KLJ 353) has clearly held that only after completion of one cycle of rotation for that category, the fresh cycle of rotation for that category shall commence.

11. Insofar as Bagalkote City Municipal Council is concerned, the office of President has not been reserved to BCA category. However, as per modified Notification dated 04.03.2016, it was reserved for the BCA(Women) which is contrary to law. Unless all categories are represented in rotation, repetition cannot be made. As per the guidelines dated 05.02.2016, a woman shall be eligible to contest for the seat which is not reserved for Women category either

for President or Vice-President in case of election to such post. Even though, the seat is reserved for BCA category, BCA (Women) can contest to the said post. Hence, the amended Notification issued by the State Government insofar as Bagalkote City Municipal Council is concerned cannot be sustained. The election to the office of the President has to be held as per the Notification dated 24.02.2016.

12. Accordingly, I pass the following order:

"The writ petition is allowed. The Notification dated 04.03.2016 insofar as Bagalkot City Municipal Council is concerned is quashed and election to the office of President has to be held as per the Notification dated 24.02.2016.

Learned Additional Government Advocate is directed to inform the same to the Returning Officer, Bagalkote."