

(2008) 07 KAR CK 0042

In the Karnataka High Court

Case No : Writ Petition No's. 12864 and 13444 of 2007

Mohammed Nawaz and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 11 (2), 11 (3), 11 (4)

Citation : (2009) 1 KarLJ 406 : (2009) 5 KCCR 3477

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

Bench : Single Bench

Advocate : Jayakumar S. Patil, for the Appellant; H.M. Manjunath, High Court Government Pleader for Respondent-1 and M. Narayanappa and K.N. Phanindra for Respondent-2 in W.P. No. 12864 of 2007, K.N. Phanindra, for Respondent-2 in W.P. No. 13444 of 2007 and S. Vishwajith Shetty, for Respondent-3 in W.P. No. 12864 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In these two writ petitions, common questions are raised regarding the validity of the notification issued by the State Government reserving some wards coming within the limits of the urban local bodies for various categories for the purpose of election. Hence, both the writ petitions are clubbed together and are heard and disposed of by this common judgment.

2. In W.P. No. 12864 of 2007, there are seven petitioners. They are residents of the local limits of Mangalore City Corporation. They have approached this Court contending that they were the intending candidates to the elections to be held to the 3rd respondent-Mangalore City Corporation.

3. The Mangalore City Corporation consists of 60 wards. As per 2001 census, delimitation of wards was done. No change in the number of wards were made although certain addition of population in respect of these wards was done. As regards reservation in favour of different categories by way of rotation, guidelines were issued by the State Government on 7-5-2007 vide Annexure-A.

Pursuant to the same, the 1st respondent (Government of Karnataka) issued a draft notification inviting objections to the proposed reservation. Petitioner 5-K. Ashraf filed his objections to the draft notification. Copies of the objections filed are produced as Annexure-B and B1.

4. The grievance of the petitioners is that the 3rd respondent without considering the objections and without giving any opportunity to the general public has issued the notification dated 30-7-2007 finalising the reservation in respect of all the 60 wards as per Annexure-C. It is this notification that is assailed in the writ petition.

5. In W.P. No. 13444 of 2007, the facts are almost similar. The four petitioners in the said writ petition have also claimed that they were the intending candidates for the elections to be held to the 3rd respondent-City Municipal Council, Kolar. They contend that the Municipality consisted of 31 wards prior to the delimitation. As per 2001 census, the wards were increased to 35. They have also raised similar contentions that the objections filed to draft notification proposing reservation of seats in respondent 3-City Municipal Council for Ward Nos. 3, 15, 22, 27 and 25 were not considered and without giving them any opportunity of hearing, the notification dated 30-7-2007 finalising the reservation to all the 35 wards was published as per Annexure-C.

6. The grievance in both the writ petitions is that the allotment of seats by way of reservation to various wards in respect of the local bodies has been done without following the rotation system in violation of Article 243-T of the Constitution of India. The grievance of the petitioners in W.P. No. 12864 of 2007 is that opportunity to the General category is not given to Ward Nos. 55, 28, 57, etc., while preferring other wards for providing representation to the General category in all the three terms in the past during 1997, 2002 and 2007.

7. The grievance of the petitioners in W.P. No. 13444 of 2007 is that for Ward No. 3, BCM (A) category has been repeated for 1995 and 2007 and for Ward No. 22 representation to General category has been given for all the three terms. It is also stated that in respect of new Ward No. 27, BCM (A) (Woman) has been allotted though there were no voters of that category. Likewise, in respect of Ward No. 23 (previous Ward No. 21) and Ward No. 25 (previous Ward No. 23), reservation is made for women though the same category was given during 1995.

8. Drawing the attention of the Court to Annexure-A guidelines issued by the State Government wherein it is stated that as per the Government order dated 7-5-2007 the seats in urban local bodies shall be reserved for different categories following the guidelines for rotation and that a seat reserved for women category in the previous term shall not be reserved for women in any category in the succeeding term, it is contended that this guideline is violated.

9. Sri Jayakumar S. Patil, learned Senior Counsel appearing for the petitioners referring to the reservation made in Mangalore City Corporation, insofar as W.P. No. 12864 of 2007 is concerned, submits that as per Annexure-F as many as 18

wards have remained unreserved for the elections held in 2002 and 2007. He contends that no ward can escape reservation in the second term if the rotation system is strictly followed in accordance with law.

10. In the statement of objections filed in W.P. No. 12864 of 2007, the State Government has contended that the objections received from the general public to the draft notification were considered and only thereafter final notification came to be issued on 30-7-2007. It is also contended that the Government has followed the guidelines dated 7-5-2007 and 14-5-2007 and only in terms of the said guidelines, seats were allotted to various wards in Mangalore City Corporation. They assert that in the guidelines dated 7-5-2007 itself the Government has made it clear that General category shall not be treated as a separate category for the purpose of seats and therefore even if for a ward there was repetition of General category, the same will not violate the rotation systems as it was a non reserved category. Similar objections are filed in W.P. No. 13444 of 2007 by the State Government asserting that before issuing the final notification the Government did consider the objections received from the general public and only thereafter final notification was issued on 30-7-2007. They have also stated that the Government has followed only 2001 rotation, as in the guidelines dated 7-5-2007 it was stated at Clause (16) that in case it was not possible to adopt 1995 and 2001 rotation for any category, 2001 reservation cycle only could be taken for consideration for adopting the rotation.

11. The learned Government Advocate and the learned Counsel appearing for the Election Commission have placed reliance on the decisions rendered by the Apex Court in the following cases. -

- (1) N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, ;
- (2) Meghraj Kothari Vs. Delimitation Commission and Others, ;
- (3) Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others, ;
- (4) P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, ; and
- (5) State of Punjab Vs. Tehal Singh and Others, .

They have contended that the writ petitions are not maintainable to test the correctness of the notification published under the provisions pertaining to delimitation as there is a bar enacted by the Constitution under Article 243-ZG. Particular emphasis was laid on the decision in the case of Pradhan Sangh Kshettra Samiti, to contend that challenge to delimitation and allotment of seats cannot be entertained under Article 226 of the Constitution of India, except where no objections were called for or considered, that too before the election notification was issued. Reliance was also placed on the decision in the case of Anugrah Narain Singh and Another Vs. State of U.P. and Others, .

12. Sub-sections (2), (3) and (4) of Section 11 of the Karnataka Municipalities Act, 1964 provide for reservation of seats in Municipal Council in favour of (a) Scheduled Castes and Scheduled Tribes; (b) Backward Class; (c) Women, respectively. The proviso to Sub-section (4) states that the seats reserved in favour of the Scheduled Castes, Backward Classes and Women shall be allotted by rotation to different wards in a municipal area. As per Section 13(1)(d), for the purpose of election of Councillors, the State Government has power to determine, by issuing a notification, the number of seats to be reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and for Women in each ward. Section 13(1) also entitles the State Government to issue notification determining the number of territorial wards into which the municipal area shall be divided and the extent of each territorial ward, etc. Section 13(1-A) enacts that no notification issued under Sub-section (1) of Section 13 shall be called in question in any Court of law. Similar provisions are found in the Karnataka Municipal Corporations Act, 1976.

13. The Karnataka Municipalities Act provides for filing election petitions u/s 21, which states that no election of a Councillor shall be called in question except by an election petition presented to the Election Tribunal within 15 days from the date of the declaration of the result of the election. Section 23 provides for the grounds for declaring elections to be void. Section 23(1)(d)(iv) provides that if the Election Tribunal is of the opinion that the result of the election insofar as it concerns a returned candidate, has been materially affected by the non-compliance with the provisions of the Karnataka Municipalities Act, 1964 or of any rules or orders made thereunder, the Election Tribunal shall declare the election of the returned candidate to be void.

14. In the decision in the case of Pradhan Sangh Kshetra Samiti, it is held that in view of Article 243-O of the Constitution of India which enacts a bar on the interference by the Court in electoral matters including questioning the validity of any law relating to the delimitation of the constituencies or allotment of seats in such constituencies made or purported to be made under Article 243-K of the Constitution, no challenge can be entertained except on the ground that before the delimitation no objections were invited and no hearing was given. The Court further observed that even the said ground of challenge cannot be entertained after the notification for holding the elections was issued. In the said case, the High Court had not only entertained the challenge but had also gone into the merits of the grievances though the challenge was made after the notification for election was issued. Therefore, the Apex Court allowed the appeal by setting aside the impugned judgment of the High Court.

15. In the case of Anugrah Narain Singh, the decision in Pradhan Sangh Kshetra Samiti was referred. The bar enacted under Article 243-ZG, its scope and effect directly came up for consideration in the said case. The question raised was whether High Court had jurisdiction to entertain writ petitions in the background that no municipal elections had taken place in the State of Uttar Pradesh for the

last 10 years. The Division Bench of the Allahabad High Court in its judgment impugned before the Apex Court had interfered in the matter which had the effect of postponing elections. At paragraph 11, the Apex Court referred to the question that came up before the Allahabad High Court for consideration as under:

11. The question that came up for decision before the Allahabad High Court has been stated in the judgment in the following words:

... the common question raised in all these petitions is as to whether in terms of Article 243-ZG of the Constitution there is complete and absolute bar in considering any matter relating to municipal election on any ground whatsoever after the publication of notification for holding municipal election.

In paragraph 12, the Apex Court begins the answer to the question, as under:

12. The answer must be emphatically in the affirmative. The bar imposed by Article 243-ZG is two-fold. Validity of laws relating to delimitation and allotment of seats made under Article 243-ZA cannot be questioned in any Court. No election to a Municipality can be questioned except by an election petition. Moreover, it is well-settled by now that if the election is imminent or well under way, the Court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the Court and stall the elections....

The facts involved in the said case also disclose that basically the challenge was regarding the reservation of seats in favour of Scheduled Castes and Scheduled Tribes and Backward Classes in the municipal area. It was argued before the High Court and also before the Apex Court that important safeguards in the Constitution were overlooked.

16. In paragraph 25 of the said judgment, the Apex Court dealing with the provisions of the Uttar Pradesh Act of 1959 and referring to the case of Meghraj Kothari, observes as under:

The Uttar Pradesh Act of 1959, however merely provides that the draft order of delimitation of municipal areas shall be published in the Official Gazette for objections for a period of not less than seven days. The draft order may be altered or modified after hearing the objections filed, if any. Thereupon, it shall become final. It does not lay down that such an order upon reaching finality will have the force of law and shall not be questioned in any Court of law. For this reason, it may not be possible to say that such an order made u/s 32 of the Uttar Pradesh Act has the force of law and is beyond challenge by virtue of Article 243-ZG. But any such challenge should be made soon after the final order is published. The Election Court constituted u/s 61 of the Uttar Pradesh Act will not be competent to entertain such an objection. In other words, this ground cannot be said to be comprised in Sub-clause (iv) of Clause (d) of Section 71 of the Uttar Pradesh Act. In the very nature of things, the Election Court cannot

entertain or give any relief on this score. The validity of a final order published u/s 33 of the Uttar Pradesh Act is beyond the ken of Election Court constituted u/s 61 of the said Act.

Thus what emerges from the above is that no election petition can be filed raising objections to the allotment of seats and that once the objections to the draft order notifying the reservation were filed and a final order is passed after considering the objections, it shall become final. In the absence of any declaration in the provisions stating that such an order upon reaching finality will have the force of law and shall not be questioned in any Court of law, it might not be possible to say that such an order made u/s 32 of the Uttar Pradesh Act had the force of law and was beyond challenge by virtue of Article 243-ZG of the Constitution of India.

17. In the instant case also, if the provisions contained under Sections 11 and 13 of the Karnataka Municipalities Act are carefully perused it will be clear that the notification issued under the Act reserving seats for different categories is not declared to have the force of law though under Sub-section (1-A) of Section 13 it is mentioned that no notification under Sub-section (1) of Section 13 can be called in question in any Court of law. The definition of the term Notification in Section 2(16) of the Act only states that "Notification" means "a notification published in the Official Gazette". It is also necessary to note here that even the grounds for filing an election petition challenging the elections, as enumerated u/s 23(1)(d)(iv) of the Act are similar to the provision of Section 71 of the Uttar Pradesh Act. Sub-clause (iv) of Clause (d) of Sub-section (1) of Section 23 of the Karnataka Municipalities Act also cannot come to the aid of the aggrieved party to maintain a challenge before the Election Tribunal raising the question of reservation. Therefore, the natural and logical corollary of this should be that if there is any violation of the provisions contained u/s 11 of the Act regarding reservation and the requirement to ensure rotation or for that matter of the requirement spelt out under Article 243-T of the Constitution of India, the aggrieved persons will be entitled to maintain a writ petition before this Court as otherwise the illegality committed in issuing the notification violating the statutory requirement of rotation and the need to avoid repetition in respect of the same categories would be perpetuated. In the above mentioned decision, the Apex Court explained the position of law and has ruled that if allotment of seats of constituencies is done by virtue of a law made or by issue of a notification having the force of law then the validity of the same cannot be challenged because of the protection given under Article 243-ZG, if not, the bar enacted under Article 243-ZG is not applicable.

18. In the instant case, there is nothing to show that the impugned notification issued allotting the seats to different wards as per reservation has the effect of a law made in this connection. If that is so, a challenge to the notification under Article 226 of the Constitution on the ground that it is in violation of Section 11 of the Municipalities Act or it has violated the Constitutional mandate contained

under Article 243-T is maintainable. Therefore, it has to be held, in the instant case, that the challenge made to the impugned notification cannot be rejected on the ground that there is a bar enacted under Article 243-ZG to entertain the writ petition.

19. The next question that would arise for consideration is whether the notification issued is contrary to the provisions contained u/s 11 of the Municipalities Act and/or the guidelines issued as per the Government order dated 7-5-2007. The provisions contained in the proviso to Section 11(4) make it clear that seats should be reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and for Women and the same shall be allotted by rotation to different wards in the municipal area. The Government order dated 7-5-2007 is issued referring to Article 243-T of the Constitution and Sub-sections (2), (3) and (4) of Section 11 of the Karnataka Municipalities Act, 1964 and as also Section 7 of the Karnataka Municipal Corporations Act, 1976.

20. Clause (x) of the Government order makes it clear that in the case of urban local bodies where elections have been previously held, the principle of rotation of seats shall be made applicable. Clause (xi) of the Government order states that in the case of rotation of seats in respect of SC/ST categories, the principle of rotation shall follow the principle of declining population in the wards being considered for such reservation by rotation. Clause (xii) of the Government order states that the principle of rotation of seats of other categories shall ensure that there is no repetition of reservation of seats with reference to the reservation in the previous terms. A seat allotted to the Scheduled Caste, Scheduled Tribe, Backward Classes A or B or Women in the previous terms shall not be allotted to the same categories in the succeeding term. In Clause (xiv), it is stated that in case of unreserved seats (General category) repetition of seats shall not be considered as repetition, since the General category is an unreserved category. Clause (xv) states that in the case where delimitation exercise has created new wards, the reservation of seats for such wards shall be done after seats have been reserved after following the above rotations to the older wards and from the categories available. For this purpose, the "older ward" shall be one where at least 60% of the old population has been retained in the newly delimited ward. Clause (xvi) states that in case it is not possible to adopt the 1995 and 2001 rotation for any category, 2001 reservation cycle only be taken into consideration for adopting rotation.

21. The Government order further states that the Deputy Commissioner of the District shall publish the draft seats reservation notification of the urban local bodies for the benefit of general public in the daily newspapers, of which at least one should be in Kannada language, inviting objections from the general public. Wide publicity is also to be given by the Deputy Commissioners of the District through local radio, television and newspapers. 15 days time should be provided for calling of objections/suggestions from the date of such publication. The objections/suggestions given shall be entered in a register to be maintained for

the purpose and the Deputy Commissioners shall consider such objections/suggestions received and consider/analyses the objections with a view to benefit the urban local bodies and submit his report to the Government for finalisation of ward reservation. The Government order issued on 7-5-2007 referred to supra makes it clear that the reservation of seats in favour of different categories has to be made by scrupulously following the procedure prescribed therein and by adopting the system of rotation.

22. In the objections filed to the draft notification in W.P. No. 13444 of 2007, Annexure-B1, B2 and B3 nothing is pointed out regarding the violation of the rotation system. The grievance made is general in nature. However, as per Annexure-B4 objections were filed by the residents of Ward No. 25 objecting to reservations made in favour of BCM(B) (Women) category. It is stated that not even a single voter belonging to the said community was residing in the area and therefore the reservation made was in violation of the provisions of the Act and the Constitution. In their reply, this assertion is denied. As already referred to above, while dealing with the Government order dated 7-5-2007 regarding the norms and guidelines to be adopted for rotation of reservation of seats, wherever it was not possible to adopt 1995 and 2001 rotations for any category, 2001 reservation cycle only can be taken into consideration for adopting rotation. Admittedly, there is a change in the wards and increase of wards in the 3rd respondent-City Municipal Council. Therefore, the authorities have proceeded by taking the 2001 reservations as basis for the rotation and in the year 2001 as per the petitioners' own showing the ward was not reserved for woman, but was allotted for Backward Class A. Therefore, there is no violation of the reservation insofar as Ward No. 25 is concerned.

23. The other allegations made in the writ petition with regard to Backward Class category in Ward No. 3 which is allegedly repeated for the years 1995 and 2007, there is no objection filed by any of the affected parties before the Competent Authorities pursuant to the draft notification. Therefore, the said grievance cannot be gone into unless any aggrieved party has made a grievance of the same in this regard. The grievance made at Annexure-B is too general in nature. At any rate, even in respect of Ward No. 3 the grievance made is regarding repetition in favour of BCM(A) category. The guidelines enumerated at Clause (xvi) of the Government order dated 7-5-2007, having been observed, no infirmity can be found in the reservation made. Insofar as Ward No. 15 is concerned, where reservation is made in favour of BCM(A) (Woman), the grievance made is that there was no voter of this category. Similar is the grievance in respect of Ward No. 27. No such objection is raised in the objections to the draft notification published. On the other hand, the grievance made therein is that the reservation would result in injustice to the "Scheduled Caste" people who were large in number. Therefore, there is absolutely no merit in the grounds urged in the writ petition and the contentions raised stating that the rotation system is violated. Unless a proper foundation is laid by raising objections to the proposed reservation published by way of draft notification

stating inter alia the reasons for such objections, the petitioners cannot be permitted to request this Court to embark upon an enquiry under Article 226 to examine the vague and baseless assertions that the rotation system has not been followed in respect of different wards in the Municipalities/urban local bodies. Such general exercise cannot be undertaken at the instance of few residents or few voters, as it will have a serious implication on the reservation in respect of different wards of the Municipal Council.

24. It has to be however made clear, if a proper foundation is laid and if necessary objections are filed disclosing that the proposed reservation would violate the rotation system contemplated under the provisions of the Act, it would be incumbent upon the authorities concerned to consider the said objections and correct the mistakes and if the Competent Authorities fail to correct such mistakes, the aggrieved parties can approach this Court immediately and seek appropriate direction of correcting the mistakes well before the commencement of the election process. In such a situation, this Court may have to interfere in the matter and take serious note of the omission of the concerned authorities in not examining the objections and correcting their mistakes. Such mistakes, though pointed out by the aggrieved party, if not corrected, would result in violation of the principles on which the reservation by rotation is envisaged and the authority who allows such perpetuation of violations will have to be proceeded against and this Court in appropriate cases will be obliged to issue such directions as would be deemed fit to prevent such misuse and abuse of powers.

25. Coming to the grievance made in W.P. No. 12864 of 2007, it is seen that the allegations are that General category has been allotted to more than 2 terms for several wards without following the rotation system and that in several wards for all the 3 terms, allotment was made in favour of reserved category overlooking the General category. Government order dated 7-5-2007, issued vide Annexure-A laying down norms and guidelines for rotation of reserved seats in different wards of the City Corporation, City/Town Municipal Councils and Town Panchayat, makes it clear in Clause (xiv) that in case of unreserved seats (General category), repetition of seats shall not be considered as a repetition since the General category is an unreserved category. Whatever be the rationale behind such a clause being incorporated in the Government order, the fact remains, reservation is effected and rotation is followed by observing the norms and guidelines laid down in the Government order dated 7-5-2007. As per this Government order, even if there is a repetition of unreserved seats, i.e., General category in respect of a particular ward, it will not be regarded as violating the rotation system. The petitioners have not chosen to challenge the said guidelines issued regarding rotation of reserved seats. The entire exercise is done by the urban local bodies in the State based on these norms. Therefore, as long as uniform approach is adopted following these norms, the petitioners cannot have any grievance even though in a particular ward or some of the wards representation to General category is repeated. Though the ideal position is to

ensure that even General category is also rotated so that the principle of rotation of reservation will have an effective meaning, however, this Court does not wish to pronounce on this aspect of the matter as there is no challenge to the Government order.

26. In the result and for the foregoing, these two writ petitions, being devoid of merits, are dismissed.