

(2009) 03 KAR CK 0082
In the Karnataka High Court
Case No : Writ Appeal No. 632 of 2009

P. Raghu and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 32 (2) (b), 35 (1) (a)

Citation : AIR 2009 Kar 1244 : (2009) 4 KarLJ 339

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : V.B. Siddaramaiah, for the Appellant; Niloufer Akbar, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is filed by the petitioners in W.P. No. 10955 of 2008 being aggrieved by the order dated 29-1-2009, wherein the learned Single Judge has dismissed the writ petition on the ground that the writ of quo warranto is not maintainable and the writ petitioners have got an alternate and efficacious remedy to question the election of the sixth respondent.

2. The appellants herein filed W.P. No. 10955 of 2008 seeking for a writ of quo warranto to declare that the 6th respondent is not entitled to hold the post/office of the Corporator of Mysore Mahanagara Palike from Ward No. 41 as per the certificates of the Returning Officer vide Annexure-H and to restrain him from acting as a Corporator and for a writ of mandamus directing the respondent-Tahsildar, Mysore Taluk, Mysore, to initiate criminal proceedings against the 6th respondent for obtaining false Caste Certificate by furnishing wrong information to enjoy the public office illegally.

3. It is contended in the writ petition that the 6th respondent was elected to the post of Corporator in the Corporation of Mysore Mahanagara Palike on contesting the election by filing nomination. He contested the election from Ward No. 50 of

the Mysore Mahanagara Palike held during the year 2001, which was reserved for Backward Class-A candidate by filing Caste Certificate stating that he belongs to Hoovadiga caste and the 6th respondent won the Corporation election from the said Ward No. 50 in the election held during the year 2001 and enjoyed the post for the entire tenure. In the election held during the year 2007, the Wards were bifurcated and some of the areas were coming under Ward No. 41. Ward No. 41 for the election held during 2007 is reserved for Scheduled Tribe. The sixth respondent who has enjoyed the post in Ward No. 50 as Backward Class-A candidate, has filed nomination for the post reserved for Scheduled Tribe. When the first petitioner came to know that the sixth respondent has obtained false Caste Certificate to contest for the election for Ward No. 41 of Mysore Mahanagara Palike, he filed objections on behalf of the contesting candidate. After filing of the objections, the Returning Officer issued a letter stating that since the sixth respondent has furnished the Caste Certificate in Form D his nomination had been accepted.

4. Being aggrieved by the said action of the authorities, one of the contesting candidates filed writ petition, W.P. No. 14959 of 2007 disposed of on 21-9-2007. In the said writ petition, this Court issued notice to the respondents in the said writ petition and has taken serious note of the fact that the respondent had furnished a false Caste Certificate. Since the election was not stayed by this Court in the said writ petition, election for Ward No. 41 was held and the sixth respondent got highest votes in the said election. Consequently, the Returning Officer declared the sixth respondent as winning candidate of Ward No. 41 of Mysore Mahanagara Palike.

5. It is further averred that the said Writ Petition No. 1499 of 2007 was disposed of on 24-10-2007 directing the Deputy Commissioner, Mysore, to hold an enquiry regarding the category to which the sixth respondent belongs. Immediately after passing of the order, one of the defeated candidates has given representation to the Deputy Commissioner, Mysore, to hold enquiry as per the direction of this Court with necessary documents. The Taluk Social Welfare Officer, Mysore, has furnished report dated 23-2-2008 stating that the sixth respondent has changed his name from time to time and he originally belonged to Veeranagere and as per the School Certificate, his caste is shown as Hoovadiga and his sons were admitted to the schools by showing different castes. It is further averred that the Caste Verification Committee after holding an enquiry by giving opportunity to the sixth respondent, by order dated 26-3-2008, held that the sixth respondent has obtained a false Caste Certificate and decided to cancel the Caste Certificate issued to the sixth respondent stating that he belongs to the Scheduled Tribe. The sixth respondent has contested to the post of Corporator from Ward No. 41 and was declared as elected and he is not entitled to hold the said post and wherefore, the writ petition for the above said reliefs.

6. Learned Single Judge after hearing the learned Counsel appearing for the petitioners and the learned Additional Government Advocate appearing for the

respondents 1 to 6, by order dated 29-1-2009, held that writ of quo warranto would not lie in respect of a person, who is "elected" to the post i.e., sixth respondent in the present case and the petitioners have got an alternate and an efficacious remedy to question the same by means of an election petition and accordingly, rejected the petition. Being aggrieved by the said order of the learned Single Judge rejecting the writ petition, this appeal is filed by the writ petitioners.

7. We have heard the learned Counsel appearing for the appellants and the learned Additional Government Advocate appearing for respondents 1 to 5.

8. Learned Counsel appearing for the appellants submitted that the writ of quo warranto would lie even in respect of persons occupying the post by virtue of election and the learned Single Judge was not justified in holding that the writ petition seeking for quo warranto was not maintainable in respect of the post held by the sixth respondent as it is an elected post and the learned Single Judge was not justified in dismissing the writ petition.

9. Learned Additional Government Advocate appearing for respondents 1 to 6 submitted that the appellants have got an alternate and efficacious remedy of filing the election petition under the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as "the Act") and wherefore, the order passed by the learned Single Judge is justified and does not call for interference in this appeal.

10. We have given careful consideration to the contentions of the learned Counsel appearing for the parties and scrutinised the material on record.

11. The material on record would clearly show that the 6th respondent has been duly declared elected to the post of "Corporator" from Ward No. 41 of Mysore Mahanagara Palike. The question as to whether the sixth respondent belongs to Scheduled Tribe, for which, the said Ward No. 41 of Mysore Mahanagara Palike is reserved and the question as to whether the sixth respondent was not qualified or was disqualified to be chosen to the post of "Corporator", can be considered effectively and efficaciously in an election petition in view of the provisions of Section 35(1)(a) of the Act.

12. Learned Counsel appearing for the appellant submitted that the election petition can be filed only by candidates, who have contested the election. There is no merit in this contention as it is clear from the provisions of Section 33(2)(b) of the Act that any voter of the division concerned can present an election petition. The appellants, who have described themselves as "voters" of Mysore Mahanagara Palike can challenge the election of the sixth respondent to the post of "Corporator" of Ward No. 41. When the appellants have got an alternate and efficacious remedy to challenge the election of the sixth respondent and no ground whatever is made out for bypassing the said alternate and efficacious remedy in exercise of writ jurisdiction of this Court and hence, the learned Single Judge was justified in dismissing the writ petition. It is open to the appellants to work out their remedy by filing the election petition in accordance with law and

wherefore, it is unnecessary to consider the contention as to whether writ of quo warranto would lie to challenge the post held by a person by virtue of election. Accordingly, we hold that there is no merit in this appeal and pass the following order:

The writ appeal is dismissed with liberty to the appellants to work out their remedy in accordance with law.