

(1987) 08 KAR CK 0029
In the Karnataka High Court
Case No : W.P. No. 6511-1987

Patel Basawegowda and Another

APPELLANT

Vs

Prescribed Officer, Singarajapura Mandal Panchayat and
Others

RESPONDENT

Date of Decision : 07-08-1987

Acts Referred:

Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats (Conduct of Elections) (Amendment) Rules, 1987 — Rule 2(2)

Citation : (1987) 3 KarLJ 229

Hon'ble Judges : R. G. Desai, J

Judgement

Desai, J.-This petition heard finally by consent of all Counsels.

2. The petitioners are elected members of the Singarajapura Mandal Panchayat. They have challenged the nominations of respondents-4 and 5 belonging to Balija and Maratha community respectively on the ground that the population of the said communities is more than one percent in Bangalore District. They have also stated that respondents-4 and 5 are neither artisans nor landless agricultural labourers and that their income is more than Rs. 6,400/- per annum and therefore they are not entitled to be nominated under Section 5(3) of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 ("the Act" for short). As the said nominated persons have participated in the election of Pradhan held on 24.4.1987 the election is vitiated and therefore election of Pradhan may be declared as void.

3. Mr. M.S. Subbrayappa, learned Counsel for the respondents 3 to 5 contended that the grounds urged for challenging the nominations of respondents-4 and 5 are not true and that after election of Pradhan the only remedy open to the petitioners was to file a petition challenging the election of Pradhan under Rule 8 of the Karnataka Mandal Panchayats (Election of Pradhan and Upapradhan) Rules, 1987 and as they have not done so the election of Pradhan cannot be set aside by this Court in exercise of powers under Articles 226 and 227 of the

Constitution of India.

3A. So the first point that arises for determination in this petition is whether the nomination of Respondents-4 and 5 is legal. According to Section 5(3) of the Act, where no person belonging to Backward Classes is elected to a Mandal Panchayat, the Zilla Parishad shall nominate two persons belonging to the said classes to the Mandal Panchayat. According to the petitioners two persons belonging to Backward Classes have been elected to the Mandal Panchayat but that ground need not be gone into now as the petition can be disposed of on other grounds.

4. According to Rule 2(2) of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats (Conduct of Elections) (Amendment) Rules, 1987 "Backward Classes" means; rural artisans and landless agricultural labourers whose gross annual income from all sources (including his share of income of the joint family, if any, of which he is member) does not exceed rupees six thousand four hundred, proviso to that rule states that no person shall be deemed to belong to a backward class unless the population of the caste or tribe to which he belongs is less than one per cent of the total population of the district. Thus it is clear that a person to be eligible for nomination should satisfy the following conditions:

- (i) that he must be a rural artisan or a landless agricultural labourer;
- (ii) that his income from all sources should not exceed Rs. 6,400/- per annum;
- (iii) that the population of his caste or tribe is less than one per cent of the total population of the district.

In this case it is not disputed that respondents-4 and 5 belong to Balija and Maratha community respectively.

5. According to Rule 2(2) of the Rules, for the purpose of the said rule, the population shall be the population as estimated by the Karnataka Backward Classes Commission from 1975. Volume-2 page 3 it is clear that the total population of Bangalore District in the year 1971 was 33,65,515. From page 9 it is clear that the population of Balija Community in Bangalore District in the year 1971 was 1,26,544. From page 63 of the said report it is clear that the population of Maratha Community in Bangalore District in the year 1971 was 46,264. Therefore, the percentage of Balija Community in the district will be 3.76% and the percentage of Maratha community will be 1.37%. Hence, it is clear that the percentage of communities of respondents-4 and 5 is more than 1% of their population in the district and therefore they are not qualified to be nominated as members belonging to backward classes.

6. According to the petitioners, 4th respondent is a wholesale merchant at Dyavapatna village and that he is running a wholesale and retail shop. They have stated that he is assessed to Karnataka Sales Tax and K.S.T. number is 15119208 and that he had declared his turn over at Rs.50,620/- for the year

1985-86, while the Assistant Commercial Tax Officer, Channapatna has determined his turn over at Rs. 95,000/-. The 4th respondent has no doubt denied that he is running a shop and his turn over for the year 1985-86 was Rs. 95,000/-. It is significant to note that the 4th respondent has not denied that he is given the said sales tax number. Therefore the allegation of the petitioners, that he is running a wholesale shop appears to be true. If that is so, he cannot be a rural artisan or a landless agricultural labourer.

7. From exhibits E1 to E10 it is clear that the 5th respondent is owning lands bearing survey Nos. 29/1, 36/4, 36/5, 36/2, 36/3, 36/8, 60/1, 61/1, 36/1, and 145 of Boohalli village along with his two other brothers Shankar Rao and Rama Rao. Excepting the statement that the petitioners are put to strict proof of the said allegation and denying the said allegation respondent-5 has not stated anything about Annexures E. 1 to E.10. In view of the extract of record of rights Annexures E. 1 to E. 10, it is clear that the respondent-5 owns lands along with his brothers. According to his brothers and his sons there has been a partition in the family and nothing is given to the share of respondent-5 in that partition. They have not produced any record to that effect. Hence, their interested testimony without being supported by any document cannot be accepted as true. So, from Annexures E.1 to E. 10, I hold that respondent-5 owns lands. It is not his case that he is a rural artisan, when he owns lands he cannot be a landless agricultural labourer. Therefore, I hold that the nomination of respondents-4 and 5 is not in accordance with law and their nomination has to be quashed.

8. This brings us to the next question as to whether the participation of these two nominated members has materially affected the election of the Pradhan of the said Mandal Panchayat. It is not disputed that there are 29 elected members to the said Mandal Panchayat apart from respondents-4 and 5 who are the nominated members. So the total membership of the Mandal Panchayat is 31. From Annexure-A it is clear that 30 members attended the meeting of the Mandal Panchayat held on 24-4-1987 to elect the Pradhan; that petitioner No. 2 and respondent No. 3 contested the election of Pradhan and that each of them got 15 votes. It also shows that after taking lots, respondent-3 was declared elected as Pradhan. From Annexure-A it is clear that the two nominated members respondent-4 and 5 supported the motion proposing the name of respondent-3. Therefore it is clear that participation of respondents 4 and 5 has materially affected the result of the election of Pradhan. Therefore, the election of the Pradhan is vitiated by the participation of respondents-4 and 5, who were not entitled to be nominated.

9. Mr. M.S. Subbrayappa, learned Counsel for respondents 3 to 5, urged that the election of the Pradhan cannot be questioned in this writ petition and the petitioners ought to have filed, the election petition as per Rule 8 of rules and Section 43 of the Act. In support of his contention he relied upon the decision in NANHOO MAL AND OTHERS v HIRAMAL AND OTHERS (AIR 1976 SC 2140). The pronouncement of the Supreme Court in Nanhoo Mal's case as to the jurisdiction

under Article 226 of the Constitution of India to decide the validity of the election after it is over is not an unqualified pronouncement as can be seen from the following passage in the judgment of the Supreme Court:

".....whether there can be any extra-ordinary circumstances in which the High Court can exercise power under Article 226 of the Constitution in relation to elections it is not now necessary to consider."

In this case the nomination of respondents-4 and 5 could not have been challenged by the petitioners in the election petition challenging the election of Pradhan. It is found that the nominations of respondents-4 and 5 is bad and their participation has materially affected the election of the Pradhan.

Under these circumstances I think it proper to quash the election of Pradhan.

10. In the result, the petition is allowed and the rule is made absolute by issuing a writ of certiorari quashing the Annexure-B in so far as it relates to respondents-4 and 5 and quashing the election of respondent-3 as Pradhan of the said Mandal Panchayat as declared in Annexure-A. Respondent-1 is directed to hold fresh election to the office of the Pradhan of the said Mandal Panchayat. No costs.

Writ Petition Allowed.