

(2016) 03 KAR CK 0236

In the Karnataka High Court

Case No : Writ Petition Nos. 102383, 102396-102399 and 102400-102403/2016
(LB-RES)

Ravi and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Citation : (2016) 03 KAR CK 0236

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Patil M.H. and V.S. Gadade, Advocates, for the Appellant; Ravi V. Hosamani, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

B. Manohar, J.—1. The petitioners in these writ petitions have sought for quashing the notification dated 01.03.2016 issued by the first respondent partially modifying the notification dated 24.02.2016 and reserving office of the President for General Woman Category and also the notification dated 04.03.2016 wherein once again modifying the notification dated 01.03.2016 reserving office of the President of Hirekerur Town Panchayat for BCA (Woman) category and also sought for direction to the respondents to hold election to the post of President in accordance with the notification dated 24.02.2016.

2. Though the petitioners have challenged the reservation made to the office of the President and Vice President of Hirekerur Town Panchayat, now they confine their prayer only with regard to the office of the President.

3. Petitioners are the elected members of Hirekerur Town Panchayat. The main grievance of the petitioner is that the State Government after following the procedure prescribed under 42(2A) of the Karnataka Municipalities Act and also amending the Karnataka Municipalities President and Vice President (Election) (amendment) Rules 2015 (hereinafter referred to as "Rules") issued Table No. 3

in terms of Rule 13 to reserve the office of the President and Vice President of various categories in the State. Table No. 3 reads as under:

4. As per the said rules and also the guideline dated 05.02.2016 issued by the State Government, reserved the office of President and Vice President of Hirekerur Town Panchayat as per Notification dated 24.02.2016. Petitioners have no grievance with the notification dated 24.02.2016, however, utter surprise to the petitioners the State Government by its notification dated 01.03.2016 modified reservation of the post of President for Hirekerur from General Category to General Woman category. Subsequently, one more notification dated 04.03.2016 was issued partially modifying the notification dated 01.03.2016, i.e., reserving the office of President for BCA (Woman) category. Being aggrieved by the said notification, these writ petitions are filed.

5. Sri M.H. Patil, Advocate for petitioners contended that the amended notifications dated 01.03.2016 and 04.03.2016 are contrary to law. So far as the office of President of Hirekerur Town Panchayat is concerned, it was already reserved for BCA (Woman) category in the first turn. Unless the rotation completes the same category cannot be repeated. Further, the persons belonging to BCA (Woman) category can also contest to the post of President if it is reserved in General Category. As per the law laid down by this Court reported in , 2014 (1) KLJ 353 (Abdul Azeez v. State of Karnataka) reservation of the seat to BCA (Woman) vide notifications dated 01.03.2016 and 04.03.2016 is contrary to law.

6. Sri Ravi V. Hosamani learned Govt. Advocate argued in support of the reservation made and also contended that, as per amended Rule 13, totally 9 BCA (Woman) candidates have to be filled up in alphabetical order and hence those seats have been filled up. By mistake, in the earlier notification the office of the President of Hirekerur Town Panchayat was reserved for the general category. Subsequently, after noticing the mistake, the first notification was issued on 01.03.2016 and thereafter it was corrected as per notification dated 04.03.2016. There is no infirmity or irregularity in the notification dated 04.03.2016. In order to give full effect to the reservation policy, the State Government amended the earlier Notifications and sought for dismissal of the writ petitions.

7. I have carefully considered the arguments addressed by the parties and perused the notification impugned and other relevant records.

8. The allocation of seats have to be made as per Section 42(2A) of the Karnataka Municipalities Act and also in terms of Rule 13 of Karnataka Municipalities (President and Vice President) (Election) (Amendment) Rules 2015 and also the guidelines dated 05.02.2016. As per the guidelines issued by the State Government, rotation in respect of other categories shall ensure that there is no repetition of reservation of seat with reference to the reservation in the previous seven turns except general and general woman category.

9. Further, the allotment of the seats in respect of backward categories has to be made as per the sequences shown in the guidelines dated 05.02.2016. The cycle of rotation shall commence from the first term, after first ordinary election held after 01.06.1994 and would be completed, when all categories are represented. Thereafter, fresh cycle of rotation shall be operated. In the instant case, as per the sequences as mentioned in the guideline the BCA (Woman) has been reserved for the first term unless the representation is given to the other categories. There cannot be any repetition and all other categories are not represented. Hence, reservation of the seat in respect of BCA (Woman) category as per notification dated 04.03.2016 is contrary to law. As per guideline No. 7 of the guidelines dated 05.02.2016, a woman candidate shall be eligible to contest a seat which is not reserved for the woman category, either for President or Vice President in case of an election to such post. Hence, election to the office of the President is to be held as per the notification dated 24.02.2016 as could be seen from Annexure-C issued by the Government with regard to reservation of President and Vice President of Town Panchayat.

10. It is very clear that the seat for the office of the Vice President has to be reserved for the general category. The notification dated 24.02.2016 is in accordance with Section 42(2A) and also Rules and the guidelines framed. Accordingly, the notification dated 01.03.2016 and 04.03.2016 cannot be sustained. Hence, the following order is passed.

ORDER

Writ Petitions are allowed. Notifications dated 01.03.2016 and 04.03.2016 issued by the State Government modifying the notification dated 24.02.2016 are hereby quashed. Election to the office of the President of Hirekerur Town Panchayat shall be held as per the notification dated 24.02.2016.

Registry is directed to communicate the operative portion of the order to the learned counsel appearing for the petitioners and the learned Additional Government Advocate, forthwith.