

(1999) 02 KAR CK 0061

In the Karnataka High Court

Case No : Writ Petition No's. 1098 and 1241 of 1999

Smt. Cheluvamma And Another

APPELLANT

Vs

The Secretary, Karnataka State Election Commission,
Bangalore And Others

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka Municipalities (President and Vice-President) (Election) Rules, 1995 — Rule 13

Karnataka Municipalities Act, 1964 — Section 42 (2-A)

Citation : AIR 1999 Kar 258 : (1999) ILR (Kar) 1206 : (1999) 3 KarLJ 426

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri B. Pape Gowda, for the Appellant; Sri Nagarajappa, Sri S. Mahesh, A.G.A., Sri Jayakumar S. Patil and Sri D.L. Jagadish, for the Respondent

Judgement

1. The petitioners, in these petitions, are the Councillors of the 4th respondent-Dasarahalli Municipal Council.

2. In these petitions, they have prayed for quashing the notification dated 20th of December, 1995, a copy of which has been produced as Annexure-F, insofar as it relates to reservation of five seats to the Scheduled Castes in the State of Karnataka under Rule 13 of the Karnataka Municipalities (President and Vice-President) (Election) Rules, 1995 (hereinafter referred to as "the Rules"); and for quashing the notification dated 14th of August, 1998, a copy of which has been produced as Annexure-C; and also for a further direction to the second respondent to reserve the office of the President and Vice-President in the 4th respondent-Municipal Council to the reserved category as provided under subsection (2-A) of Section 42 of the Karnataka Municipalities Act, 1964 (hereinafter referred to as "the Act").

3. A few facts that may be relevant for the disposal of these petitions, which are

not in serious dispute, may be stated as hereunder.--

(a) The 4th respondent is a City Municipal Council. In all, there are 40 City Municipal Councils in the State. The 4th respondent-Municipal Council came to be constituted with effect from 17th of July, 1996. The second respondent, by means of notification Annexure-E, dated 20th of December, 1995, initially allotted four seats each to the office of Adhyaksha and Upadhyaksha in the City Municipal Council when the total number of municipalities as on that day being 33 to the member of Scheduled Castes; and thereafter, by means of notification dated 18th of May, 1996, it was enhanced to 5 each to the office of the President and Vice-President from four as, by then, the total number of City Municipalities in the State came to be enhanced to 40 as against 33.

4. It is the case of the petitioners that at the time of the constitution of the Municipal Council, by means of notification Annexure-B, the office of the President and Vice-President having been reserved in the 4th respondent-Municipal Council in respect of persons belonging to general and general (woman) respectively, again it was not permissible to reserve the office of President and Vice-President to the persons belonging to general and general (woman) respectively.

5. The prayer of the petitioners has been seriously resisted by respondents 1 to 3, and also 6 to 9, who came to be impleaded in these petitions on the application filed by them for the said purpose.

6. I have elaborately heard Sri Pape Gowda, learned Counsel appearing for the petitioners; Sri Nagarajappa, learned Additional Government Advocate appearing for the first respondent; Sri S. Mahesh, learned Additional Government Advocate appearing for respondents 2 and 3; Sri Jayakumar Patil, learned Counsel appearing for respondents 6 and 7; and Sri D.L. Jagadish, learned Counsel appearing for respondents 8 and 9.

7. Sri Pape Gowda, in support of the prayer of the petitioners, made three submissions. Firstly, he submitted that since the total population of Scheduled Castes in the State being admittedly 16.38%, the reservation of only 5 seats as per notification Annexure-C as amended, is totally illegal as it runs counter to clause (a) of sub-section (2-A) of Section 42 of the Act. Secondly, he submitted that since, admittedly, in Annexure-B, the office of the President and the Vice-President having been allotted to the persons belonging to general and general (woman) respectively, it was not permissible again to allot the office of the President and Vice-President to the same category in view of the proviso given to sub-section (2-A) of Section 42 of the Act. Finally he submitted that the office of the President and Vice-President has again been allotted to general and general (woman) totally on account of extraneous and irrelevant consideration and it has been done at the instance of the 5th respondent.

8. However, learned Counsel appearing for the contesting respondents strongly countering the submissions of Sri Pape Gowda, made three submissions in

support of the contention that these petitions are liable to be rejected. Firstly, they submitted that these petitions are liable to be rejected on the ground of delay and laches on the part of the petitioners in approaching this Court. Secondly, they submitted that there is no infirmity in notification Annexure-E as amended, wherein five posts are reserved for the persons belonging to Scheduled Castes, for the office of President and Vice-President. They submitted that the said reservation has been made taking into account the total population of Scheduled Castes comprised within the Municipal limits. In this connection, Sri Mahesh, learned Government Advocate, drew my attention to the statements made at paragraph 2 in the statement of objections, wherein it is asserted that the population of the Scheduled Castes within the City Municipal limits, is only 13.82%. According to them, if 13.82% is the total population of Scheduled Castes within the City Municipal limits, the reservation of five posts to the Scheduled Castes is perfectly valid in law. They further submitted that even assuming that there should have been reservation of six posts for President and Vice-President for persons belonging to Scheduled Castes, since the population in the case of Dasarahalli Municipal Council is much less than the other Municipal Councils, Dasarahalli Municipal Council is not entitled for the reservation insofar as Scheduled Caste are concerned for the office of President or Vice-President. Therefore, they submitted that it is not permissible for the Court even if this Court comes to the conclusion that one more post should have been reserved for a Scheduled Caste candidate to give a direction to the respondents to allot that post to the 4th respondent-Municipal Council. Thirdly, they submitted that since admittedly there are 40 City Municipal Councils in the State of Karnataka and out of them, reservation has been made as per Annexure-E only in respect of 19 Municipal Councils as provided under sub-section (2-A) of Section 42 of the Act, 21 Municipal Councils being available to the persons belonging to the general category, if the two terms are taken into account, at all times in respect of two Municipal Councils, the office of the President and Vice-President will have to be filled up only from persons belonging to the general category. Therefore, they submitted that if the second respondent, in exercise of its discretion, taking into consideration the relevant circumstances in Annexure-C, has notified that in respect of Dasarahalli Town Municipal Council, the office of the President and Vice-President shall be filled up by persons belonging to general and general (women), that is not a ground for this Court to interfere in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India.

9. Having heard the rival submissions made by the learned Counsel appearing for the parties, now let me proceed to consider each of the submissions made by them. However, before I do that it would be useful to refer to sub-section (2-A) of Section 42 of the Act and also Rule 13 of the Rules, as amended by means of notification dated 18th of May, 1996.

10. Sub-section (2-A) of Section 42 of the Act reads thus.--"

42. President and Vice-President.--

(1) For every Municipal Council, there shall be a President and a Vice-President;

.....

(2-A) There shall be reserved by the Government in the prescribed manner.--

(a) 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;

(b) 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:

Provided that out of the offices reserved under this clause, eighty per cent of the total number of such offices shall be reserved for the persons falling under Category "A" and the remaining twenty per cent of the offices shall be reserved for the persons falling under Category "B":

Provided further that if no person falling under Category "A" is available, offices reserved for that category shall also be filled by the persons falling under Category "B" and vice versa",

(c) not less than one-third of the total number of offices of the President and Vice-President in the State from each of the categories, reserved for persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes and those which are non-reserved, for women:

Provided that the offices reserved under this sub-section shall be allotted by rotation in the prescribed manner to different municipal councils.

Explanation.--.....".

Rule 13 of the Rules.--

"Amendment of Rule 13(1).--(1) For the table in sub-rule (1) of Rule 13 of the Karnataka Municipalities (President and Vice-President) (Election) Rules, 1965, the following shall be substituted, namely.--

Sl. No.

Category

President

Vice-President

Total

Women

Total

Women

1

2

3

4

5

6

1.

SCHEDULED CASTES:

(i) City Municipal Councils

5

1

5

1

(ii) Town Municipal Councils

11

4

11

4

(iii) Town Panchayats

11

4

11

4

2.

SCHEDULED TRIBES:

(i) City Municipal Councils

1

1

1

1

(ii) Town Municipal Councils

2

1

2

1

(iii) Town Panchayats

3

1

3

1

3.

BACKWARD CLASSES (A&B):

(i) City Municipal Councils

13

4

13

4

(ii) Town Municipal Councils

27

9

27

10

(iii) Town Panchayats

29

10

29

10

4.

GENERAL:

(i) City Municipal Councils

21

7

21

7

(ii) Town Municipal Councils

41

13

41

13

(iii) Town Panchayats

44

15

44

15

Total

208

70

208

70

(2) The offices of President reserved for Scheduled Tribes shall be allotted by the Government to the Municipal Councils, or as the case may be, Town Panchayats having the highest percentage of population belonging to the Scheduled Tribes with reference to the total population of the municipal area. The same procedure shall be followed by the Government for allotting to the Municipal Councils, or as the case may be, Town Panchayats the same number of offices of Vice-President for members belonging to the Scheduled Tribes but excluding the Municipal Councils, or as the case may be, Town Panchayats in which the office of President have been already allotted to them.

(3) The offices of President and Vice-President of Municipal Councils or as the case may be, Town Panchayats in the State shall be allotted by the Government

for members belonging to the Scheduled Castes in the same manner as specified in sub-rule (1):

Provided that both the offices of President and Vice-President in any Municipal Council, or as the case may be, Town Panchayats shall not be allotted in favour of the category of Scheduled Castes and Scheduled Tribes only:

Provided further that if the reservation worked out to any category is less than 0.5%, no offices of President and Vice-President be reserved to such category.

(4) The offices of President and Vice-President of the Municipal Council, or as the case may be, Town Panchayats, reserved for Backward Classes and those of unreserved category, shall be allotted by the Government taking into consideration such factors as the Government may deem fit.

(5) The offices of President and Vice-President reserved for women in each category referred in sub-rule (1) shall be allotted by the Government to the Municipal Councils, or as the case may be, Town Panchayats taking the consideration such factors as the Government may deem fit:

Provided that both the offices of President and Vice- President of the Municipal Council, or as the case may be, Town Panchayats shall not be reserved for women.

(6) The offices of President and Vice-President of Municipal Councils and Town Panchayats of the State to Scheduled Castes/Scheduled Tribes/Women and Backward Classes for the subsequent terms be determined by the Government from time to time by taking into consideration such factors as deem fit".

11. Though I am of the view that the petitioners should be denied of the reliefs sought for by them in these petitions on the short ground of delay and laches on their part in approaching this Court, since the learned Counsel appearing for the parties have elaborately advanced their arguments on merits, I am of the view that it is desirable to consider the contention of the learned Counsel appearing for the parties on merits also.

12. Insofar as the first contention of Sri Pape Gowda that six posts for the offices of the President and Vice-President should be reserved for persons belonging to Scheduled Castes is concerned, I find considerable force in the said submission. It is not in dispute that the total population of Scheduled Castes in the State is 16.38%. However, it is the case of the contesting respondents that since the total population of Scheduled Castes within the City Municipal limits is only 13.82%, reservation of five posts to the office of President and Vice-President has been made taking into account the said population within the City Municipal limits. Therefore, now the question is whether the State, while reserving the offices of President and Vice-President for the persons belonging to Scheduled Castes as provided under clause (a) of sub-section (2-A) of Section 42 of the Act, are required to take into consideration the total population of Scheduled Castes in the State or the total population of Scheduled Castes within the Municipal

limits as has been done in the instant case. In my view, the language employed in clause (a) of sub-section (2-A) of Section 42 of the Act makes it clear that while making reservation to the office of President and Vice-President in the State, for the persons belonging to Scheduled Castes, the State is required to take into account the total population of Scheduled Castes in the State. I am unable to accept the submission of the learned Counsel for the contesting respondents that from the language of clause (a) of sub-section (2-A) of Section 42 of the Act, the State is required to take into account the population of Scheduled Castes within the City Municipal limits if the reservation is to be made to the office of the President and Vice-President of the City Municipalities; and the population within the area of Town Municipalities if the reservation is to be made to the office of the President and Vice-President in the case of Town Municipalities and so on. There is absolutely no scope to interpret the said provision as contended by the learned Counsel appearing for the contesting respondents. Therefore, since it is admitted by the learned Government Advocate and also by the contesting respondents, that the reservation has been made for Scheduled Castes to the office of the President and Vice-President, on the basis of the population within the City Municipal limits, I am of the view that the notification Annexure-E limiting the office of the President and Vice-President to 5 as against 6 is illegal. However, still the question that remains to be considered is whether, at this stage, this Court could proceed to give a direction to the Authorities to reserve the posts of the President and the Vice-President or any one of them for Scheduled Castes insofar as the 4th respondent-Municipal Council is concerned? Admittedly, notification Annexure-E was initially issued on 20-12-1995 when the total City Municipalities in the State were 33 and thereafter, it was modified by notification dated 18th of May, 1996 notifying the reservation of five posts to the office of the President and Vice-President of the City Municipal Councils in the State when the total number of City Municipal Councils in the State was issued to 40. The election to the office of the President and Vice-President to the 4th respondent-Municipal Council was held on 17th of July, 1996. The petitioners are the Councillors of the 4th respondent-Municipal Council. Therefore, it is difficult to believe the statement of the petitioners that they were not aware of the notification Annexure-E at any time earlier than filing of these petitions. Under these circumstances, if the petitioners have accepted the reservation of posts made for Scheduled Castes as per notification Annexure-E as amended by means of notification dated 18th of May, 1996 till the date of filing of these petitions, in my view, it would be inappropriate for this Court at this belated stage to give a direction to the State to reserve one more post either to the office of the President or to the office of the Vice-President for Scheduled Castes. It is necessary to point out that it is the case of the State that out of 40 Municipal Councils, elections to the office of the President and Vice-President in respect of 26 Municipal Councils had already taken place. Further, Rule 13 of the Rules provides that the office of the President and Vice-President of Municipal Councils in the State shall be allotted by the Government for the members belonging to Scheduled Castes in the same manner as specified in sub-rule (2) of

Rule 13 of the Rules. Sub-rule (2) of Rule 13 of the Rules which provides for reservation to the office of the President for Scheduled Tribes states that allotment by the Government to the office of the President shall be made having regard to the highest percentage of population belonging to Scheduled Tribes with reference to the Municipal area. Sub-rule (3) of Rule 13 makes the provision contained in sub-rule (2) of Rule 13 applicable when the allotment of seats to the office of the President and Vice-President is required to be made to the member of Scheduled Castes. Therefore, when the reservation to the office of the President and Vice-President is made to the members of Scheduled Castes, the said offices are to be allotted among various City Municipal Councils keeping in mind the total population of the City Municipal Councils. If that is the basis for reservation to the office of the President and Vice-President, even assuming for two terms, 12 posts are required to be reserved for the office of President and Vice-President, the 4th respondent-Municipal Council will not get a chance for reservation to the office of either President or Vice-President, as the 4th respondent-Municipal Council on the strength of total population would be only at Serial No. 28. Under these circumstances, as rightly pointed out by the learned Counsel appearing for the respondents, it is not permissible for this Court to reserve the post of President or Vice-President for a Scheduled Caste candidate in the 4th respondent-Municipal Council.

13. The only other question that now remains to be considered is whether the allotment of office of President and Vice-President to the persons belonging to general and general (women) as has been done by notification Annexure-E is illegal as contended by the learned Counsel for the petitioners?

14. No doubt, the third proviso given to sub-section (2-A) of Section 42 of the Act provides that the office reserved under that sub-section should be allotted by rotation in the prescribed manner to different Municipal Councils. From the proviso, it is clear that the offices reserved under clauses (a), (b) and (c) of sub-section (2-A) of Section 42 of the Act should be allotted by rotation in the prescribed manner to different Municipal Councils. Therefore, when the reservations are made as provided under clauses (a), (b) and (c) of sub-section (2-A) of Section 42 of the Act, the same is required to be allotted by rotation. However, in the instant case, as noticed by me earlier, the total reservation made out of 40 Municipal Councils, is only for 19 Municipal Councils. The term of office of the President and Vice-President is for a period of 30 months and the term of the Municipal Council is for a period of five years. In that event, there could be only two terms insofar as the office of the President and Vice-President is concerned. Under those circumstances, the rotation in respect of reserved category could be made only in respect of 38 Municipal Councils. Therefore, still insofar as two Municipal Councils are concerned, the persons belonging to general category are entitled to be elected either as President or Vice-President. In this background, in the light of the provision contained in sub-rule (4) of Rule 13 of the Rules, which states that the office of the President and Vice-President of the Municipal Council reserved for Backward Classes and those of unreserved

category shall be allotted by the Government taking into consideration such factors as the Government may deem fit. I am of the view that it is not permissible for this Court to interfere with the said discretion exercised by the State Government. In the matter of allotment of reservation to the office of President and Vice-President among various Municipal Councils, if the State has taken relevant factors into consideration and in a situation where in respect of two Municipal Councils the office of the President or Vice-President has to be filled up among the persons belonging to general category, this Court in exercise of its writ jurisdiction, should be very slow to interfere with the said discretion unless the discretion exercised is totally arbitrary, unreasonable or perverse or is motivated by other extraneous and irrelevant considerations. No doubt, in this petition, the allegations of mala fides are made. It is the case of the petitioners that even for the second term, the office of the President and Vice-President is continued to be filled up by among the persons belonging to general and general (women) at the behest of the 5th respondent. Though the 5th respondent has been served, he has remained unrepresented. It is the case of the contesting respondents that as a matter of fact, the 5th respondent has set up the petitioners to file these petitions. Having regard to the facts and circumstances of the case, I find it unnecessary to go into the question whether the petitioners have been set up by the 5th respondent or not, as the allegations in these petitions, in my view, are not sufficient to lay the foundation in support of the plea of the petitioners that even for the second term, the office of the President and Vice-President is notified to be filled up from among the persons belonging to general and general (women) at the behest of the 5th respondent. Except stating that the 5th respondent is responsible for the same, it is not stated as to who is the person responsible for issue of the notification in question at the behest of the 5th respondent. The allegations regarding mala fides are very vague and ambiguous. It is not sufficient to quash the impugned allotment made on that ground. Further, there is also no material placed in support of the said plea. Therefore, in the facts and circumstances of the case, I am unable to accept the submission of Sri Pape Gowda that notification Annexure-C came to be issued on account of extraneous and irrelevant considerations insofar as Dasarahalli Municipal Council is concerned. Further, as rightly pointed out by the learned Counsel for the contesting respondents, these petitions are liable to be dismissed on the short ground of delay and laches on the part of the petitioners in approaching this Court. The term of office of the President and Vice-President has expired on 16th of January, 1998. This petition was filed on 11-1-1999. As observed by me earlier, it is not possible to believe the claim made by the petitioners that they were not aware of either notification Annexure-C or notification Annexure-E till just a few days before filing of these petitions. The petitioners are the members of the 4th respondent-Municipal Council and it is reasonable to think that they are politically conscious and all these matters would have been discussed by the members of the Council or at least it would have come to their notice immediately after issuing of the impugned notifications. Therefore, it is not possible to believe that they have come to know

of the notification issued in the month of August, only a few days prior to the filing of these petitions as stated by them in paragraph 9 of the petitions. Therefore, I am of the view that the conduct of the petitioners also disentitles them for any relief at the hands of this Court.

15. In the light of the discussion made above, I make the following.--

ORDER

(i) It is declared that the State Government is required to make reservation to the office of the President and Vice-President on the basis of the total population of Scheduled Castes in the State. However, it is made clear that this declaration is only prospective in operation and it is binding on the State when they make reservation under clause (a) of sub-section (2-A) of Section 42 of the Act in future.

16. Subject to the declaration made above, these petitions are rejected. Rule issued is discharged.

17. However, no order is made as to costs.

18. Sri S. Mahesh, learned Additional Government Advocate is permitted to file his memo of appearance within four weeks.