

(2004) 02 KAR CK 0050
In the Karnataka High Court
Case No : Writ Petition No. 49992 of 2003

Smt. Saraswati

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 134, 138, 138 (3)

Citation : (2004) ILR (Kar) 3111 : (2004) 2 KarLJ 247 : (2004) 2 KCCR 150 SN

Hon'ble Judges : K. Bhakthavatsala, J

Bench : Single Bench

Advocate : A.K. Subbaiah, for the Appellant; H.B. Narayan, High Court Government Pleader for Respondents-1 and 2, B.C. Seetharam Rao, for Respondent-3 and T. Seshagiri Rao, for Respondent-4, for the Respondent

Final Decision : Dismissed

Judgement

K. Bhakthavatsala, J.—The petitioner is Before this Court praying for quashing the notification dated 17-11-2003 (Annexure-H) on the file of the 2nd respondent holding election to the post of Adhyaksha on 28-11-2003 and also declare that the term of office of the Adhyaksha and Upadhyaksha of the 3rd respondent-Panchayat shall be for a period of 20 months from 2-8-2003.

2. The case of the petitioner is that since she was elected to the office of Adhyaksha of 3rd respondent-Panchayat on 2-8-2003, her term of office comes to an end on 1-4-2005. But, the 1st respondent has now issued a reservation notification dated 29-10-2003 for the 3rd term tenure reserving the Office of Adhyaksha for Ladies General category and Upadhyaksha to BCA (Annexure-E). The petitioner objected for holding election to the post of Adhyaksha as it is premature and her term of 20 months expire on 1-4-2005. Therefore, the petitioner is before this Court.

3. The respondents 1 and 2 are represented by Sri H.B. Narayan, learned Government Pleader. The respondent 3 is represented by Sri B.C. Seetharam

Rao. The respondent 4, who has got impleaded as co-respondent is represented by Sri T. Seshagiri Rao.

4. The respondents 1 and 2 have filed joint statement of objections, contending that the writ petition is not maintainable either in law or on facts.

Further, the 2nd respondent-Assistant Commissioner, on the basis of the notification issued by the Government dated 14-11-2003 (Annexure-R1) has issued the calendar of events fixing the date of election on 28-11-2003 to the Office of Adhyaksha and Upadhyaksha of the 3rd respondent, and there is no illegality or irregularity in the impugned notification issued by the 2nd respondent. It is contended in para 4 of the statement of objections of respondents 1 and 2 that the general election to the respondent 3-Taluk Panchayat was held during the year 2000. Subsequently, on 13-7-2000, election to the posts of Adhyaksha and Upadhyaksha was held. The 1st term tenure of Adhyaksha and Upadhyaksha came to an end on 12-3-2002. For the 2nd term tenure, the post of Adhyaksha and Upadhyaksha was reserved for SC category and for BCM category, respectively, and accordingly calendar of events was issued in the month of March 2002 fixing the date of election on 12-3-2002. Thereafter, one Harish, member of the Panchayat, challenged the calendar of events issued by the 2nd respondent in W.P. No. 8687 of 2002, Subsequently, he died and therefore the writ petition was dismissed on 12-6-2003 as infructuous. On 2-8-2003, election for the 2nd term tenure of the posts of Adhyaksha and Upadhyaksha was held. The petitioner was elected to the post of Adhyaksha as against SC category and the 2nd term has come to an end on 12-11-2003. Hence, steps were initiated for holding election to the said office, for the 3rd term from 12-11-2003 to 12-7-2005. Therefore, the contention of the petitioner that she is entitled to remain in the Office of Adhyaksha for a period of 20 months from the date of her election on 2-8-2003 is contrary to Section 138 of the Karnataka Panchayat Raj Act, 1993 (in short, "the Act").

5. The respondent 4 has filed statement of objections contending like that of respondents 1 and 2. It is averred that the 4th respondent is an elected member of the Panchayat from General category-Women. Now, the post of Adhyaksha, by notification dated 14-1-2003, has been reserved for General category-Women, and she has got support of more than about 15 elected members of the Taluk Panchayat and she is intending to contest the election for the post of Adhyaksha of respondent 3-Taluk Panchayat Hence, she has prayed for dismissal of the petition.

6. Heard arguments of the learned Counsels for the parties.

7. During the course of argument, Sri A.K. Subbaiah, learned Counsel appearing for the petitioner cited a decision in H.N. Srinivasa Babu Vs. State of Karnataka,

8. On the other hand, Sri T. Seshagiri Rao, appearing for the respondent 4, cited a decision in Sayeed Akbar Vs. State of Karnataka and Others,

9. It is pertinent to refer to Sections 134 and 138 of the Act. According to Section 134 of the Act, members of a Taluk Panchayat elected at a general election shall hold office for a term of five years. The term of office of the members elected at a general election shall commence on the date appointed for the first meeting of the Taluk Panchayat. Section 138 of the Act is in relation to election of Adhyaksha and Upadhyaksha and term of office, Sub-section (3) of Section 138 of the Act specifically provides that the term of office of every Adhyaksha and every Upadhyaksha of Taluk Panchayat shall be 20 months from the date of his election or till he ceases to be a member of the Taluk Panchayat, whichever is earlier. Proviso to the above said section says that the member, who is elected as Adhyaksha or Upadhyaksha to fill the casual vacancy in the office of Adhyaksha or Upadhyaksha shall hold office for the remainder of the period for which the Adhyaksha or Upadhyaksha in whose place he has been elected would have held office if the vacancy had not occurred.

10. In the instant case, election was held in accordance with Section 134 of the Act and the first meeting of the Taluk Panchayat was convened on 13-7-2000. Therefore, the term of five years of the 3rd respondent-Taluk Panchayat commenced on 13-7-2000. According to Sub-section (3) of Section 138, the term of Office of Adhyaksha and Upadhyaksha of Taluk Panchayat viz., 1st, 2nd and 3rd terms begin on 13-7-2000, 13-3-2002 and 13-1-2004, respectively.

11. Admittedly, when the 2nd term election process commenced after reservation was made, one of the members of the Panchayat challenged the reservation made in favour of Scheduled Caste category and later on, the writ petition was dismissed as infructuous. Therefore, the 2nd respondent issued calendar of events for holding election for the 2nd term of the office from 13-3-2002 and in that election, the petitioner was elected from SC category on 2-8-2003. Annexure-C, the calendar of events dated 18-7-2003 clearly indicates that the election was for the 2nd term of the office of the President of Taluk Panchayat, but the petitioner did not challenge the calendar of events containing a statement that the election was for the 2nd term period. Once the term of office commences, it shall run without any limitation. The decision viz., Sayeed Akbar's case cited by the learned Counsel for respondent 4, is with reference to the Karnataka Municipalities Act, 1964 on the point that in the event, during the currency of the term of the President and Vice-President, vacancy is caused on the happening of certain events as provided u/s 42(12) of the Act, the said casual vacancy is to be filled by election, which decision supports the case of the petitioner. The decision cited by the learned Counsel for the petitioner is of no avail. Therefore, the contention of the petitioner that the respondent 2-Authority has no right to hold election as per Annexure-H is devoid of merits.

12. For the reasons said supra, I pass the following order:

The writ petition fails and the same is hereby dismissed. No costs.

The learned High Court Government Pleader is permitted to file memo of

appearance within three weeks.