
(2003) 03 KAR CK 0014
In the Karnataka High Court
Case No : W.A. No. 7398 of 1999 (CS)

S.R. Hanumanthaiah

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Karnataka Grama Panchayat Raj (Conduct of Elections) Rules, 1993 — Rule 74 (15) (b)
Representation of the Peoples Act, 1951 — Section 54 (4)

Citation : AIR 2003 Kar 364 : (2003) 3 KCCR 1622

Hon'ble Judges : M.S. Rajendra Prasad, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : S. Hanumanthaiah, for the Appellant; N. Ramachandra, for No. 3 and Jayakumar S. Patil, for No. 16, for the Respondent

Final Decision : Dismissed

Judgement

Saldanha, J.—We have heard the appellant's learned Counsel as also the learned Counsel who represents the bank, the contesting respondents and the learned GA on merits .

2. An interesting submission has been canvassed by the appellant's learned Counsel whereby he has assailed the decision of the learned single Judge which has gone against him. The appellant contested to the post of Director of the Board of the Town Co-operative Bank Ltd. Sira Town. There was a provision that out of the 13 Directors, there was an effective reservation for one Director to come from the category of ladies and secondly that one Director was required to be from the reserved category. Admittedly, the present appellant had filed his nomination from the reserved category because he belonged to the ST category. In the polling that ensued, appellant secured 1107 votes but it so happened that respondent No. 4, Prabhu who also contested on the reserved category secured 1234 votes. Accordingly, the respondent No. 4 was declared elected from the reserved category. The grievance of the appellant is that respondents 14, 15 and 16 who belong to the general category have in fact secured less than 1107 votes

which is the number of votes secured by the appellant. According to him, the correct methodology which the Returning Officer ought to have followed was to have first declared the candidates elected in the two special categories mentioned by us and to have thereafter evaluated the votes secured by all the remaining candidates which would include those who have contested on the reserved categories and have not been elected. What the appellant submits is that had such a procedure been followed that he would certainly have been elected and since this was not done, that he has wrongly been excluded from the Board of Directors. The learned single Judge after construing the relevant provisions upheld the action of the Bank and the Returning Officer on the ground that Sub-rule (2) of Rule 14 of the Co-operative Rules, as amended, does not make provision for any such procedure. It is against this decision that the present appeal has been filed. The appellant's learned Counsel submitted that if one were to look at Rules 12(4) and 68(b) of the Karnataka Municipal Corporations (Elections) Rules, 1979 and Rules 15, 24(b), (2) and 74(15)(b) of the Karnataka Grama Panchayat Raj (Conduct of Elections) Rules, 1993, as also Sub-section (2) of Section 28 of the General Clauses Act and Section 54(4) of the Representation of the People Act, 1951, that distinct provisions are made for declaring the results on a two state basis under all these laws and the submission canvassed is that the same principle should have been applied under the Co-operative Societies Act. The simple answer to this argument is that different bodies and different institutions have prescribed different legal provisions and procedures in relation to the elections that are to be conducted and in the absence of any such specific provision under the Co-operative Societies Act, it would not be permissible for a court, to import a provision from any other statute and give effect to it here. It is not the case of the appellant that the law has been wrongly interpreted. There is in fact no such provision under the Co-operative Societies Act or the Rules which supports the contention raised by the appellant. The learned Counsel has also sought to place reliance on a decision of the Supreme Court reported in *Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput and Others*, wherein he has contended that the ratio of that case heavily supports the contention raised before us. We have carefully perused the judgment in question and in our considered view, both on facts and in law that decision would not be of any assistance to the present appellant because that case deals with an entirely different set of facts relating to the election of President of a Municipality.

3. We need to amplify that where the law makes special provision for reservations that it is because the law envisages a situation whereby persons who qualify for those reservations are entitled to file nominations in respect of those seats and for all intents and purposes, in situations such as the present one those will be treated as separate constituencies. Where a person opts to contest for one of those seats and if for any reason that candidate is unsuccessful and it is then not permissible to seek to shift or change over to the general category because if the law were to permit such a procedure it would

mean that a candidate is getting a dual advantage, once for the reserved seat or reserved constituency and secondly, by then switching over to the general category. The end result of this would be that through such an unfair procedure after having opted to contest in a particular capacity for a particular seat if the candidate seeks to switch over to the general category, that would possibly deprive another candidate from the general category. In order to prevent this from happening, as far as the Co-operative Societies Act is concerned no such provision has been made and it would not be open to a Court to graft on the provisions from some other statute while deciding a case under the Co-operative Societies Act. Moreover, the Co-operative Societies Act is a self contained Code and such a procedure would not have any legal sanction. On the contrary, it would be doing violence to the provisions of this statute and the rules by seeking to import provisions from other branches of the law.

4. Another submission that was canvassed by the appellant's learned Counsel was that Sections 28(2) of the General Clauses Act does make provision for parallel provisions in different laws to be construed, particularly in a situation where there is no express prohibition in the statute in question. His strongest argument is that, as far as the present rules are concerned that there is no express provision whereby the Returning Officer is required to exclude the candidates belonging to the special category while upholding the overall results merely because they had contested in an other capacity. On the basis of the parallel provisions in other statutes referred to by us, his submission is that where the rules are silent that the provisions of those statutes which prescribe that the general evaluation of candidates has to be done, must apply. What we need to take careful note of is the fact that the Parliament and the Legislatures have enacted tailor made and special differing provisions in order to suit different situations and in a given instance where the rules are silent, it is not to be construed as being accidental but the Court will have to take it that the legislature did not intend that any such procedure should be followed as far as the elections under the Co-operative Societies Act are concerned. Having regard to this position in law, we are unable to uphold the argument in question.

5. Having reconsidered the legal position we have no ground on which interference is called for as far as the decision of the learned single Judge is concerned. The appeal accordingly fails on merits and stands dismissed. No order as costs.