

(2010) 11 KAR CK 0062

In the Karnataka High Court

Case No : Writ Petition No"s. 36337 and 36548-36549 of 2010

Sri G. Sangappa

APPELLANT

Vs

State of Karnataka and Karnataka State Election Commission

 N.G. Natraj and N.D. Gurumurthy Vs The State
Election Commission and Rural Development Department

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 162 (1), 162 (2), 162 (3)

Citation : (2010) 11 KAR CK 0062

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Ravivarma Kumar for D. Nagaraj, for W.P. No. 36337/2010 and S.S. Koti, for W.P. No. 36548-49/2010, for the Appellant; H.T. Narendra Prasad, H.C.G.P. for Respondent Nos. 1 and 2 and K.N. Phanindra, for the Respondent

Final Decision : Allowed

Judgement

Ashok B. Hinchigeri, J.—W.P. No. 36337/2010 and W.P. Nos. 36548-36549/2010 are clubbed, heard together and are being disposed of by this common order, as the subject matter of both the petitions is the grievance over reserving the Anagodu constituency in Davanagere Zilla Panchayat for Scheduled Tribe-Woman [ST(W)].

2. Sri Ravivarma Kumar, the learned Senior Counsel appearing for Sri D. Nagaraj for the Petitioner in W.P. No. 36337/2010 submits that the constituency in question is always reserved either for Scheduled Caste (SC) or Scheduled Tribe (ST) for the last 20 years (4 terms). The particulars of the reservation in the said constituency are put in the tabular form hereinbelow :

Year Reservation

1995 Scheduled Caste

2000 Scheduled Tribes

2005 Scheduled Caste

2010 Scheduled Tribe (Women)

3. It is the grievance of the Petitioners that the reservation is being interchanged only between SC and ST categories to the exclusion of the other categories - Backward Class-A (BCA), Backward Class-A-Woman [BCA(W)], Backward Class-B (BCB), Backward Class-B-Woman [BCB(W)], General (G) and General Woman [G(W)]. The Petitioners' side would therefore complain of the violation of the rotation principle.

4. Sri Ravivarma Kumar brings to my notice the provisions contained in Article 243D(1) of the Constitution of India. The said provision is extracted hereinbelow :

243-D. Reservation of seats.-(1) Seats shall be reserved for -

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat

5. The learned Senior Counsel submits that, thus the constitutional scheme for the Panchayat Raj institutions is that the reserved seats are to be allotted by rotation to different constituencies in a Panchayat. He requests that the word "may" used in the last part of the afore-extracted Article be treated as "shall".

6. Nextly, he brings to my notice the provisions contained in Section 162(1), (2) and (3) of the Karnataka Panchayat Raj Act, 1993 (the said Act" for short). The said provisions are extracted hereinbelow :

162. Reservation of Seats.-(1) Seats shall be reserved by the State Election Commission in the Zilla Panchayat,-

(a) for Scheduled Castes; and

(b) for the Scheduled Tribes;

and number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the Zilla Panchayat as the population of the Scheduled Castes in the district or of the Scheduled Tribes in the district bears to the total population of the district:

Provided that at least one seat each shall be reserved in a Zilla Panchayat for the persons belonging to the Scheduled Castes and the Scheduled tribes.

(2) Such number of seats which shall, as nearly as may be one third of the total

number of seats in a Zilla Panchayat shall be reserved by the State Election Commission for persons belonging to the Backward Classes.

Provided that out of the seats reserved under this Sub-section, eighty per cent of the total number of such seats shall be reserved by the State Election Commission for the persons falling under category "A" and the remaining twenty per cent of the seats shall be reserved by the State Election commission for the persons falling under category "B".

(3) Not less than one third of the seats reserved for each category of persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes and those of the non-reserved seats in the Zilla Panchayat shall be reserved by the State Election Commission for women:

Provided that the seats reserved under Sub-sections (1), (2) and (3) shall be allotted by rotation to different constituencies in the district:

Provided further that nothing contained in this section shall be deemed to prevent the persons belonging to the Scheduled Castes or Scheduled Tribes or Backward Classes or women for whom seats have been reserved in a Zilla Panchayat from standing for election to the non-reserved seats in such Zilla Panchayat

7. The learned Senior Counsel submits that the reservation provided for SC, ST, BCA, BCB and the unreserved (general category) and for the woman belonging to the said categories are to be allotted by rotation to different constituencies in a district.

8. Nextly, he brings to my notice Rule 3 of the Karnataka Panchayat Raj (Reservation of seats in Taluk Panchayats and Zilla Panchayats by Rotation) Rules, 1998 ("the said Rules" for short).

3. Reservation of seats in Taluk Panchayats and Zilla Panchayats by rotation.- (1) (a) Out of the seats reserved for the persons belonging to the Scheduled Tribes in a Zilla Panchayat the State Government shall allot by rotation one seat each to the Taluks to the District giving precedence to the taluks having larger population of Scheduled Tribes :

Provided that where the number of seats reserved for the persons belonging to the Scheduled Tribes exceeds the number of taluks in the district, the seats remaining after allocation under this clause shall again be allotted to taluks giving precedence to those having larger population of Scheduled Tribes :

Provided further that while allotting such seats to the constituencies within a taluk precedence shall be given to the constituencies having larger population of Scheduled Tribes.

(b) The seats reserved for persons belonging to the Scheduled Tribes in a Taluk Panchayat shall be allotted by the Deputy Commissioner by rotation to the constituencies having the highest percentage of population with reference to the

population of the taluk, in which seats have not been allotted to them in the previous term.

(2) The seats reserved for Scheduled Castes in Taluk Panchayats and Zilla Panchayats shall be allotted by rotation to the members belonging to the Scheduled Castes in the same manner as specified in Sub-rule (1) above:

(3) The seats in Taluk Panchayats and Zilla Panchayats reserved for Backward Classes shall be allotted by rotation by the Deputy Commissioner in the case of Taluk Panchayats and the Government in the case of Zilla Panchayats taking into consideration such factors as the Deputy Commissioner in the case of Taluk Panchayats and the Government in case of Zilla Panchayats may deem fit.

(4) The seats reserved for women in each category referred to in Sub-rules (1), (2) and (3) shall be allotted by rotation by the Deputy Commissioner in the case of Taluk Panchayats and the Government in the case of Zilla Panchayats to the constituencies taking into consideration such factors as the Deputy Commissioner in the case of Taluk Panchayats and the Government in the case of Zilla Panchayats may deem fit

Provided that where a seat in a constituency of the Taluk Panchayat or Zilla Panchayat was allotted to a category referred, to in Sub-rules (1), (2) and (3) or for a women during the previous term, the Deputy Commissioner in the case of Taluk Panchayats and the Government in the case of Zilla Panchayats shall not as far as possible allot a seat in that constituency to the same category or for a woman in the succeeding term.

9. These Rules also mandate that the Respondent No. 3 allots the reserved seats by rotation, so submits Sri Ravivarma Kumar.

10. Sri S.S. Koti, the learned Counsel for the Petitioners in W.P. Nos. 36548-36549/2010 submits that the repetition of the categories is the very antithesis of the principle of rotation. To demonstrate that the State Election Commission has not been adhering to the rotational principle, he gives an example of Hadadi constituency in Davanagere Taluk, He submits that the said constituency was reserved for G(W) both in 2005 and now in 2010. He submits that unless the cycle of 10 categories is exhausted, there is no justification for the repetition of any category prematurely.

11. He further submits that SC/ST population is more in Bilichodu constituency and that therefore the said constituency is required to be allotted for SC/ST reservation category.

12. Sri K.N. Phanindra, the learned Counsel for the State Election Commission submits that as per Rule 3(1)(b) and the proviso to Rule 3(4) of the said Rules, the reservation given to a particular category in the previous term should not be repeated in the succeeding term. He submits that out of the 34 constituencies in Davanagere Zilla Panchayat, 7 are reserved for SC and 5 for ST. He submits that the allotment of the reservation seats has been done strictly in accordance with

law only.

13. He submits that while fixing the category in 2005, the State Election Commission has ensured that there is no repetition of the category, which had the benefit of reservation in 2000. Similarly, while allotting the seats in 2010, care is taken to see that the categories to which the seats were allotted in 2005 are not repeated in 2010.

14. The learned Counsel appearing for the State Election Commission in W.P. Nos. 35648-35649/2010 submits that the Bilichodu constituency is in a different Taluk. It is in Jagalur Taluk.

15. He brings to my notice the Division Bench order of this Court in the case of H.C. Yatheesh Kumar and Others Vs. The Karnataka Election Commission and Others, , in which case the same arguments, which are now advanced by Sri Ravivarma Kumar were made. The Division Bench passed the order giving acceptability to the similar submissions. The Division Bench set aside the Karnataka Panchayat Raj (Reservation of Seats in Taluk Panchayats and Zilla Panchayats by Rotation) Rules, 1998 as ultra vires and void. However, the State Election Commission has gone in appeal to the Hon''ble Supreme Court (Civil Appeal No. 4523/05). The Supreme Court has granted the leave and has stayed the Division Bench''s order.

16. Sri Phanindra further brings to my notice that the Hon''ble Supreme Court has also dismissed the I.A. for vacating the interim order of stay.

17. In the course of his rejoinder, Sri Ravivarma Kumar submits that Rule 3(1)(b) of the said Rules has no application whatsoever. It is only for Taluk Panchayat and not for Zilla Panchayat. He submits that the higher court''s granting of the stay is only for the operation of an order and not for the interpretation of the statutory provision as such. He submits that the repetition or reversion goes against the principle of rotation.

18. The submissions of the learned Counsel have received my anxious consideration. Whether the Karnataka Panchayat Raj (Reservation of Seats in Taluk Panchayats and Zilla Panchayats by Rotation) Rules, 1998 are valid or not, whether the word "may" used in the last part of the Article 243D(1) of the Constitution of India has to be taken as mandatory or directory are the subject matter of the Civil Appeal No. 4523/05 pending consideration before the Hon''ble Supreme Court. I would therefore desist from deciding these cases with reference to the said Article and the Rules.

19. I propose to decide these cases by confining only to the provisions contained in Section 162 of the Panchayat Raj Act. The first proviso to Section 162(3) of the said Act states that the seat reserved under Sub-section (1) for (SC/ST), (2) (for backward classes) and (3) (for woman belonging to the said categories) shall be allotted by rotation to different constituencies in the district.

20. At this stage, it is necessary to know the meaning of the term "rotation".

This term has not been defined anywhere in the Panchayat Act or the Rules framed thereunder. When a familiar word is used by a legislative drafter or draftsman, it is usually intended to be given its unadorned, normal meaning. The golden rule is that the words of a statute must *prima facie* be given their ordinary or natural meaning.

21. The Bloomsbury English Dictionary (New Edition) gives the meaning of "rotation" as "turning motion like that of a wheel around an axis or a fixed point, or the act or process of turning in such a way."

22. Collins English Dictionary (Harper Collins Publishers, Third Edition) gives the meaning of "rotation" as 1) the act of rotating; rotary motion. 2) a regular cycle of events in a set order or sequence.

23. Random House Webster's College Dictionary gives the meaning of "rotation" as 1) the act of rotating; a turning around as on an axis. 2.a) the movement or path of the earth or a heavenly body turning on its axis. b) one complete turn of such a body. 3) regularly recurring succession, as of people performing a job.

24. The perusal of the meaning of the term "rotation" from the above-referred neutral sources reveals that it is a process where a regular cycle of events in a set order or a sequence takes place. It is a planned sequence in which the complete turn of a body takes place. It is a regular recurrent sequence of events or change of positions. Keeping this neutral meaning of the term "rotation" in view, what it means in the context of the allotment of reservation and general seats to different constituencies in a Zilla Panchayath is required to be examined. When an enactment includes a word, which in itself is neutral or colourless, the context supplies colouring agent. The Courts can neither add words to the statute nor read words into it, which are not there. The words used in a statute are to be trustingly read.

25. It is not in dispute that vertically and horizontally there are 9 reservational categories - SC, ST, BCA, BCB, SC(W), ST(W), BCA(W), BCB(W) and G(W) In addition thereto, the 10th category is the non-reserved seats belonging to the General category. The first proviso to Section 162(3) of the said Act prescribes that the reserved seats be allotted by rotation to the different constituencies in a district. The proviso is certainly reflective of the distributive strategy of the legislators. This cannot be defeated by making a constituency alternate between SC and ST. If a constituency is perpetually reserved for SC and ST, it would entail in two avoidable deprivations :

a) The people belonging to other categories (other than SC/ST category) are perpetually deprived of the representational opportunity.

b) The people belonging to SC/ST in other Zilla Panchayat constituency of the same Taluka would be deprived of the reservation.

26. The State Election Commission's decision of repeatedly and alternatively reserving the constituency in question for SC, ST and the woman belonging to

the said categories is unsupportable and hence unsustainable. The said arrangement is not in keeping with the rotational principle enshrined in the proviso to Section 162(3) of the said Act.

27. For the aforesaid reasons, I hold that the impugned notification reserving the Anagodu constituency for ST(W) is not sustainable. That part of the impugned notification pertaining to Anagodu constituency is therefore quashed. It is made clear that the impugned notification, insofar as the allotment of seats to other constituencies in Davanagere Zilla Panchayat is concerned, is not quashed. However, the State Election Commission is directed to issue a modified notification reserving the constituency in question for any of the following categories: BCA, BCB, BCA(W), BCB(W) and G(W); it may also throw open the seat to General category. It is also open to the State Election Commission to bring about the consequential changes in other constituencies in Davanagere Taluk.

28. The Petitioner's prayer (in W.P. No. 36337/2010) that the constituency in question be reserved in favour of General category is not grantable. Therefore, prayer (b) is rejected. It is for the State Election Commission to decide to which category the Anagodu constituency has to be allotted taking into account the relevant factors.

29. At this juncture Sri D. Nagaraj submits that he is not pressing prayer (b) in W.P. No. 36337/2010. The said prayer is therefore rejected as not pressed.

30. Both the petitions are allowed to the extent indicated hereinabove. No order as to costs.