

(2012) 12 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No. 47231 of 2012 (LB-ELE)

Sri. Raju Chavan

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Constitution of India, 1950 — Article 15 (4), 16 (4), 243D, 243T
Karnataka Panchayat Raj Act, 1993 — Section 123

Citation : (2013) 1 AKR 342

Hon'ble Judges : B. Manohar, J;Anand Byrareddy, J

Bench : Division Bench

Advocate : Ashok Haranahalli, for Shri. Hemanth Raj, for the Appellant; S. Vijayashankar, Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—These petitions are filed in the nature of public interest litigation. The petitioner in the first of these petitions, namely W.P. 47231/2012, claims that he belongs to a Banjara/Lambani community, which is a Scheduled Caste, and he is said to be a social worker engaged in the upliftment of the weaker sections of the society. It is stated that the term of office of the Urban Local Bodies, namely the Town Panchayaths, the City Municipal Councils, the Town Municipal Councils and the City Municipal Corporations, in the State of Karnataka comes to an end in February-March 2013. The earlier elections to these bodies in the year 2007, was on the basis of the 2001 census figures. It is the case of the petitioner that the proposed elections for the said Urban Local Bodies, is decided to be conducted well before February-March 2013, as apparent from the letter dated 31.10.2012 at Annexure-"C" to the petition, by the State Election Commission.

It is the case of the petitioner that the third respondent, namely the Principal Secretary, Municipal Administration and Urban Development Authority, had sought for the wardwise population information, by a letter dated 10.10.2012, in

order to prepare the reservation list. The fifth respondent, namely the Directorate of Census Operations-Karnataka, had indicated that the 2011 census population figures are likely to be published in March 2013. The petitioner claims that a comparative study of the 2001 census figures and the provisional census figures of 2011, indicates a drastic change in the growth rate of both rural and urban populations in the State. This would require the second and third respondents to upgrade several local bodies falling under the Department of Rural Development and Panchayath Raj, on the basis of the growth in population. Therefore, with the expected publication of the final census figures of 2011 being round the corner, the preparation of the reservation list and the conduct of the elections on the basis of the 2001 census figures, results in a grave failure of adherence to the democratic principle of representation to a large section of the population in the State. Further, having regard to the mandate in law, with the publication of the 2011 census figures and the need for upgradation of several local bodies, which is inevitable, in the light of the overall increase in population, and the need for elections thereafter, the election process being duplicated by the proposed elections being held during December-January 2013, and being repeated a few months thereafter, is an avoidable exercise which would not only save money to the exchequer, but the hardship and inconvenience caused to all concerned can also be avoided.

2. The petitioner in the second of these petitions, namely in W.P. No. 46347/2012, is a registered organization which claims to espouse the cause of weaker sections of society, and is said to have been engaged in various social welfare activities, has also filed the petition on identical grounds as in the first of these petitions.

3. The learned Senior Advocate Shri Ashok Haranahalli appearing for the counsel for the petitioners, would elaborate on the above circumstances and would seek to canvass the contention that the provisional census figures of 2011 are available. The percentage of increase in population is glaring and the notable feature being that there is hardly any negative growth. On the other hand, there are instances of a 46.68% growth during the period 2001-2011 in Bangalore Urban District and 16.02% in Bangalore Rural District, apart from other areas such as Bellary, recording a 24.92% increase, Bijapur at 20.38% and, Yadgir at 22.67% and so on. The said provisional census figures are sufficiently comprehensive to be adopted for the purpose of upgradation of the Urban-Local bodies and would place reliance on a decision of the Apex Court in *The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others*, to assert that the requirement for upgradation of the local body is, the population crossing a benchmark. When that can be assessed without any scope for debate, by publishing the population total, the law does not mandate the publication of a final population total. In the absence of any indication that there would be a marked difference between the provisional population figures and the final population figures and any difference if at all, when would only be insignificant and marginal, if reservations of seats to the respective local bodies is not made

on the basis of such increased population, a large section of the population would go unrepresented, which cannot be ignored. The publication of the 2011 census figures has been delayed and the publication even according to the concerned authorities, would certainly be made by March 2013. Therefore, even if it is to be deemed that the final census figures are indeed relevant and that the provisional census figures cannot be acted upon, there is no injustice caused if the election process is postponed, to coincide with the upgradation of the local bodies, which is inevitable on the publication of the final census figures. If that however is not done, there is serious prejudice and a denial of a fundamental right of representation to a large section of people of the State, defeating a first principle of democracy.

Shri Ashok Haranahalli would also draw attention to the case of Dr. K. Krishna Murthy and Others Vs. Union of India (UOI) and Another, , wherein the Apex Court, while dealing with the issue of reservation of seats under Article 243D and 243T of the Constitution of India, and while dealing with the process of reservation in Panchayath elections, has expounded as follows:

82. In view of the above, our conclusions are:

(i) The nature and purpose of reservations in the context of local self-government is considerably different from that of higher education and public employment. In this sense Article 243D and Article 243T form distinct and independent Constitutional basis for affirmative action and principles that have been evolved in relation to the reservation policies enabled by Articles 15(4) and 16(4) cannot be readily applied in the context of local self Government Even when made, they need not be for a period corresponding to the period of reservation for the purposes of Articles 15(4) and 16(4), but cannot be much shorter.

(ii) Article 243D(6) and 243T(6) are constitutionally valid, since they are in the nature of provisions which merely enable the State Legislatures to reserve seats and Chairperson posts in favour of backward classes, concerns about disproportionate reservations should be raised by way of specific challenges against the State Legislations.

(iii) We are not in a position to examine the claims about over breadth in the quantum of reservations provided for OBCs under impugned State legislations, since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which are indeed quite different from the patterns of disadvantages in the matter access to education and employment. As we have considered undecided only the constitutional validity of Article 243D(6) and 243T(6), it will be open to the petitioners or any aggrieved party to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court. We are of the view that the identification of the "backward classes" under Article 243D(6) and Article 243T(6) should be distinct

from the identification of SEBCs for the purpose of Article 15(4) and that of backward classes for the purposes of Article 16(4).

(iv) The upper ceiling of 50% vertical reservations in favour of SCs/STs/OBCs should not be breached in the context of self-Government. Exceptions can only be made in order to safeguard the interests of the Scheduled Tribes in the matter of their representations in panchayats located in the Scheduled Areas.

(v) The reservation of Chairperson Posts in the matter contemplated by Articles 243D(4) and 243-T(4) is constitutionally valid. These Chairperson Posts cannot be equated with solitary posts in the context of public employment.

4. Following the said decision, a Division Bench of this Court in W.A. Nos. 4353-57/2010 and W.A. 4358/2010, by its judgment dated 25.11.2010, has observed that, in order to give effect to the conclusion at Sl. No. 4 of the above judgment in Krishna Murthy's case, the State Government had issued an Ordinance dated 4.10.2010, whereby Section 123 of the Karnataka Panchayath Raj Act was amended. The said section providing for reservation of seats was thus amended, to include a requirement that the number of seats reserved for the backward classes shall be so determined that the total number of seats reserved for the Scheduled Castes and Scheduled Tribes and the Backward Classes, shall not exceed 50% of the total number of seats in the Taluk Panchayath. Likewise, Section 162 of the Panchayath Raj Act which provides for reservation of seats, a similar amendment was made providing for reservations in the process of elections. But, in the process, the State Government had left out the other significant part of the direction relating to the issue of reservation, unattended, by choosing not to determine reservation on the basis of "political backwardness" and it was observed that the State Government had overlooked the fact that the election process would be rendered invalid also in respect of the candidates who were elected on reserved seats, but did not belong to politically backward classes. Therefore, this Court had observed that, it was legitimate for the State Government to exclude all the known, accepted and acclaimed politically advanced classes from the list of backward classes, for the purpose of reservation in the ensuing Panchayath elections, but left it to the conscience of the State to take the call, and to give effect to the decision of the Supreme Court in Krishna Murthy's case.

Shri Haranahalli would therefore submit that, in spite of the judgment dated 25.11.2010, the State Government has not taken any steps in this direction and therefore, a dual purpose can be achieved at this point of time, if the next elections are conducted not only on the basis of the 2011 census figures, but also after identifying the politically backward, for the purpose of reservation of seats.

5. Incidentally, these petitions were heard in the wake of applications seeking extension of time for compliance with the time schedule pertaining to the ensuing elections to the very Urban Local bodies. Notwithstanding the attractive

arguments put forth on behalf of the petitioners in the case on hand, this Court having already considered a petition by the State Election Commission in W.P. No. 45231/2012, wherein the above primary aspect as to the census figures of 2011 being significant in the conduct of the elections, had been raised, but not pursued by the State Government and the petition having been disposed of without contest, while accepting a time schedule for the reservation of seats to all the wards of 209 Urban local bodies, and having set in motion the preparation for the electoral process, it would be inconsistent with the said decision to now entertain the present petitions, and consider the granting of any interim relief. It is on the above observation of this Bench that Shri Haranahalli expressed that the petitions itself be considered for final disposal, as no purpose would be served if the interim prayer is not granted.

6. It is to be seen that the State Government is required to perform its statutory duties in accordance with the letter of the law. It would not be prudent to postpone the election process till after the publication of the Final Census Figures of 2011. The question whether the provisional census figures can be acted upon for purposes of upgradation of the Urban Local Bodies is not an issue that would arise for consideration, as the State Government itself has not asserted any such possibility in the above referred petition.

Insofar as the contention that the State Government had not complied with the direction of this Court as regards political backwardness, does not require a further direction being used by this Bench, over again.

Accordingly, in the light of the above circumstance that the order of this Court dated 29-11-2012 in W.P. No. 45231/2012 having attained finality, the present petitions cannot be considered on the grounds now put forward and are accordingly, rejected.