

(2016) 01 KAR CK 0278

In the Karnataka High Court

Case No : Writ Petition Nos. 58852/2015, 59341/2015, 59745/2015, 114497/2015, 100076/2016, 100262/2016, 100278/2016, 114376/2015, 114455-114463/2015, 114464-114471/2015, 114729/2015, 114761/2015, 100009/2016, 100075/2016, 100077/2016, 100082/2016, 100090/2016, 1000

Veerayya and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227, Article 243, Article 243-D, Article 243-D(6), Article 324, Article 329 (b), Article 329(b), Article 40
Karnataka Panchayat Raj Act, 1993 — Section 123, Section 124(c), Section 162, Section 163

Citation : (2016) 01 KAR CK 0278

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : N.R. Naik, Advocate, for the Appellant; K.S. Patil, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—1. Though all these matters are posted for orders and preliminary hearing, with the consent of the learned Counsel for the parties, they are taken up for final hearing. Since common questions of law and fact are involved in all these writ petitions, they are clubbed together, heard and disposed of by this common order.

2. The contention of the petitioners in all these writ petitions are that they are the voters residing in different villages in different parts of Belagavi, Dharwad, Haven, Koppal, Gadag, U.K. Karwar, Bagalkot and Ballan districts of the Karnataka State, within the jurisdiction of this Court. Some of them are aspiring candidates to contest the ensuing Zilla Panchayat and Taluk Panchayat Elections. The main grievance of the petitioners is in relation to reservation of seats by the State Election Commission. It is their specific case that the reservation made by

the State Election Commission is in an arbitrary manner, without taking into consideration the factual aspects and without adhering to the provisions of roster rules made by the State Government. It is further contention of the petitioners that the Election Commission ought to have granted an opportunity of hearing to the voters before publishing the draft notifications. This is the substance of the case of the petitioners in the present petitions.

3. The State Election Commission has filed objections to the writ petitions in W.P. Nos. 59745/2015, 100076/2016, 114729/2015, 100009/2016, 100082/2016 and 100141/2016 and the said objections have been adopted in all other cases, where objections have not been filed specifically. In the statement of objections, it is contended by the Election Commission that Section 162(1) of Karnataka Panchayat Raj Act, 1993 (hereinafter referred to as "the Act", for short) provides for reservation of seats in favour of the Scheduled Caste and Scheduled Tribes. It also provides for the proportion of the said reservations and also reservation of seats in favour of the backward classes. It is further contended that, by exercising the powers conferred by sub-section (1) and (3) of Section 123 and Section 162 of the Act read with Section 311 of the said Act, the State Government framed the Rules called Karnataka Panchayat Raj (Reservation of seats in Taluk Panchayats and Zilla Panchayats by Rotation) Rule, 1998 (hereinafter referred to as "the Rules", for short). The Election Commission contended that, it has followed the provisions of Sections 173 and 168 of the Act and the Rules made thereunder, by fixing the total number of seats reserved for Scheduled Caste, Scheduled Tribe and Backward classes. The seats remaining after allotting the aforesaid reservations have been classified as General seats. The Election Commission has also provided 50% horizontal reservation for women in all categories. The total population of every District including the total population of Scheduled caste and Scheduled Tribe has been taken into consideration by the Election Commission while fixing the reservations and allotment has been made strictly in accordance with law. Therefore, they sought for dismissal of the writ petitions.

4. I have heard Sriyuths Naik K.R., S.C. Bheemaraddi, Shivakumar S. Badavadagi, Gururaj M. Somakkalavar, Nitm R. Bolabandi, Shivaraj P. Mudhol, J.K. Puranik, D.J. Naik, Hemant R. Chandangoudar, B.V. Somapur, Ahamed Ali J Rahimansha, K.L. Patil, Raviraj C. Patil, Rajashekar Gunjalli, D.L. Ladkhan, S.C. Hiremath, P.G. Chikkanaragund, A.R. Patil and Raghvendra A. Purohit, learned Advocates appearing for the petitioners in all these petitions, Smt. K. Vidyavathi, learned Counsel appearing for the respondent-Election Commission and Sri K.S. Patil, learned AGA for the respondents-State.

5. The learned Counsel for the petitioners strenuously contended that, in some of the writ petitions, while granting reservation under Section 162 of the Act, the Election Commission ought to have adhered to roster system and should have made an effort to avoid repetition of the categories in the impugned notification. The Election Commissioner failed to follow the provisions of roster rules

mandated under the Act, which has resulted in some of the cases, deriving the benefit for the second term and the Election Commission has not applied its mind while making the reservation. The learned Counsel for the petitioners further contended that under Article 243-D of the Constitution of India, it was incumbent upon the Election Commission to follow the rotation policy and each of the reserved categories requires to be allotted by rotation in a circular order among the Constituencies of a particular kind till the said category is represented in all the Constituencies of that kind and allotment to the said category cannot be repeated in any Constituency till a cycle of rotation is completed.

6. Sri. Raviraj C. Patil, learned Counsel for one of the petitioners, relied upon the dictum of this Court in W.P. No. 38337/2010 and connected matters decided on 25.11.2010 to contend that it is the duty of the Election Commission to follow the rotation and the same has not been done in the present cases.

7. Some of the learned Counsel for the petitioners have relied upon the dictum of the Division Bench of this Court in the case of H.C. Yatheesh Kumar and Others v. The Karnataka Election Commission and Others reported in , ILR 2005 KAR 3323, and sought for allowing of the writ petitions.

8. Per contra, Smt. K. Vidyavathi, learned Counsel appearing for the State Election Commission and Sri. K.S. Patil, learned HCGP appearing for the State Government, submits that the Election Commission has followed the reservation of the constituencies, which are the subject matter of the present writ petitions, strictly after following the provisions of the Act and Rules made therein. While fixing the total number of seats reserved for Scheduled Caste, Scheduled Tribe and Backward classes and allotment thereto, the Election Commission has also provided 50% horizontal reservation for women in all categories. The total population of every district including the total population of the Scheduled Caste and Scheduled Tribe has been taken into consideration while fixing the reservations. At the very first stage, the population of the entire District and the number of seats fixed for the entire district is taken into consideration, and after calculating the proportion, the number of Scheduled Caste and Scheduled Tribe, BC-A, BC-B and General seats and also the number of seats reserved in each category for women is fixed for the entire District. The population of every Taluk within each respective District is taken into consideration for allotting the reservations of the seats falling within each Taluk. The Election Commission therefore, has prepared a chart of the entire District showing the names of all Taluks falling within a District and also the Scheduled Caste and Scheduled Tribe population of each Taluk. After preparation of the chart of the population of each Constituency in each Taluk, the Election Commission depending on the number of Scheduled Tribe seats available in the District has allotted the same to the Taluk having the highest Scheduled Tribe population. The same procedure has been followed for allotting the Scheduled Caste seats within the District. In case, a Constituency within a Taluk has the highest Scheduled Tribe population but had been allotted a Scheduled Tribe seat in the previous term, the said Constituency

is eliminated and the next Constituency having the highest Scheduled Tribe population is allotted the Scheduled Tribe seats. The same procedure has been followed while allotting Scheduled Caste seats thereafter.

9. It is further contended that the law declared by the Division Bench of this Court in the case of H.C. Yatheesh Kumar (supra), is the subject matter of Civil Appeal No. 4523/2005 and the Hon''ble Supreme Court has stayed the appeal and suspended the decision of the Division Bench of this Court in the case of H.C. Yateesh Kumar (supra).

10. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties to the lis and perused the entire material on record, including the judgment relied upon by the learned Counsel for the parties.

11. In view of the rival contentions urged by the parties to the lis, the points that arise for consideration in these petitions are:

"i. Whether the reservation of seats in respect of different Taluk Panchayats and Zilla Panchayats, by the Election Commission are valid in law?

ii. Whether the State Election Commission is justified in reserving the seats in accordance with the Rotation Rules having regard to the interim order passed by the Hon''ble Supreme Court in Civil Appeal No. 4523/2005?

iii. Whether the Election Commission was justified in issuing the notifications impugned herein without its prior publication?"

12. Before considering the above points, it is relevant to consider the objects and reasons for passing the Constitution 73rd and 74th Amendment Acts, 1992, which inserted Parts IX and IXA of the Constitution. In the Government of India Act, 1935, the power to enact legislation was specifically given to the Provincial Legislature by Entry 12 in the Provincial Legislative List. By virtue of this power, new Acts were enacted by many States vesting powers of administration, including criminal justice, in the hands of the Panchayats. Notwithstanding such existing legislation, the framers of the Constitution of Independent India were not satisfied with the working of those local bodies as institutions of popular Government. Therefore, Article 40 was included in the Constitution of India, which reads as under:

"40. The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."

13. In view of these constitutional amendments, a hierarchical structure of elected local bodies was introduced at Part IX of the Constitution of India, which envisages a three tier system of Panchayats, namely, (a) The village level; (b) The District Panchayat at the district level; and (c) the Intermediate Panchayat between the village and district Panchayats in the State.

14. In order to effectuate the purpose of the Act, the State Government has

framed the Karnataka Panchayat Raj (Reservation of seats in Taluk Panchayats and Zilla Panchayats by rotation) Rules, 1998 ("Rotation Rules" for short).

15. Section 162 of the Act provides for the reservation of seats for Scheduled Caste and Scheduled Tribes in Zilla Panchayats to be undertaken by the State Commission. The said Section also provides for preparation of the said reservation. Section 162(2) provides for reservation of seats in favour of backward classes. The Rotation Rules framed by the State Government in exercise of power under Sections 123, 162 and 311 of the Act lay down the procedure for reservation of the seats.

16. Section 124(c) of the Act determines the territorial constitution and the constituencies in which seats are reserved for Scheduled Caste, Scheduled Tribe, Backward classes and women read with Section 163 providing for delimitation of territorial constituencies as amended by Act No. 8/2000. The notifications issued by the State Government in the year 2000 identifying the reservation of constituencies to Scheduled Castes, Scheduled Tribes, Backward Classes and for Women to Taluk Panchayats was challenged before this Court in several writ petitions. This Court in the case of H.C. Yatheesh Kumar (supra) held that the allotment of seats on the basis of population by Talukwise is contrary to Article 243-D of the Constitution and Section 162 of the Act and accordingly, the Rule was struck down. Against the said judgment of the Division Bench of this Court, the State Election Commission filed Civil Appeal No. 4523/2005 before the Hon"ble Supreme Court and the Hon"ble Supreme Court at the first instance has stayed the judgment of the Division Bench of this Court and observed that the election be held, subject to the result of the appeal.

17. Subsequently, an application was filed for vacation of the interim order before the Hon"ble Supreme Court. The Hon"ble Supreme Court rejected the said application by a detailed order, holding that after passing the order dated 3.10.2015, the preparations of elections have been done by spending huge amounts and the calendar of events published on 14.10.2005; and there were no grounds to vacate the order dated 3.10.2015 which, if vacated, would result in staying the elections which have already been directed to be held subject to the result of the appeal. The said decision is reported in (2006) 9 SCC 181 in Karnataka State Election Commission v. H.C. Yatheesh Kumar and Others. The said appeal filed against the Division Bench judgment of this Court in the case of H.C. Yateesh Kumar (supra) is still pending for adjudication between the parties before the Hon"ble Supreme Court.

18. Article 243-D of the Constitution of India provides for reservation of seats. The said article states that the seats shall be reserved for the Scheduled Castes and 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. Article 243-D(6) contemplates the power of the State Legislatures to reserve seats as well as Chairperson positions in favour of a backward class of citizens. The striking feature of the new provisions inserted in the Constitution under Articles 243 to 243ZG is that they are in the nature of basic provisions which are to be supplemented by laws made by the respective State Legislature, which will define the details as to the powers and functions of the various organs such as State Election Commission, State Government, etc. Article 243-D is only a basic provision in relation to reservation of seats. It stipulates allocation of seats by rotation to different constituencies. Therefore, it is open to the State Legislature to prescribe the procedure and the term of rotation.

19. The Karnataka Panchayat Raj Act, 1993 has been enacted by the legislature with an intention to establish a three tier Panchayat Raj system in the State with elected bodies at the Grama Panchayat, Taluka Panchayat and District level Panchayat (G.P., T.P., Z.P.), in keeping with the aforesaid Constitution Amendment. Section 162 of the Act provides for reservation of seats in the Zilla Panchayat. Section 311 of the Act authorizes the State Government to make Rules to effectuate the purpose of the Act and it is in exercise of this power, the Rotation Rules have been enacted by the State for Scheduled Caste, Scheduled Tribe and Backward classes and the remaining seats after allocation of the aforesaid reservation have been classified as General seats. The State Election Commission has also provided for 50% of horizontal reservation for Women in all categories.

20. The State Election Commission has contended that while allotting the reservation to Zilla Panchayat, at the very first step, the population of the entire District and the number of seats fixed for the entire District is taken into consideration and after calculating the proportion, the number of Scheduled Caste and Scheduled Tribe, BC-A, BC-B and General seats and also the number of seats reserved in each category for women is fixed for the entire District. Thereafter, the population of every Taluk within each respective District is taken into consideration for allotting the reservations to the seats falling within each Taluk. Therefore, the reservation made by the Election Commission by issuing the impugned notifications is strictly in accordance with the provisions of Karnataka Panchayat Raj Act & Rules.

21. It is also relevant to state that in all these writ petitions, the petitioners have not questioned the constitutional validity of Section 162 (3) of the Act, which provides for reservation of seats or the Rules. The only grievance made in the writ petitions is that the Election Commissioner has not followed the reservation under the roster Rules. The petitioners have not made out any ground or the contravention of any of the provisions of the Act & Rules deviating the reservation in respect of the categories, which are the subject matter of the present writ petitions.

22. Admittedly, in the present case, the State Election Commission has issued

the calendar of events on 18.01.2016 to conduct the elections in two phases, i.e., on 13.02.2016 and 20.02.2016. Once the calendar of events are issued, this Court cannot interfere with the electoral process, in view of the dictum of the Hon"ble Supreme Court in the case of Boddula Krishnaiah and Another v. State Election Commissioner. A.P. and Others reported in , (1996) 3 SCC 416. Paragraphs 11 and 12 are relevant to this case and are extracted hereunder:

"11. Thus, it would be clear that once an election process has been set in motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh, in particular when election has already been held in which the voters were allegedly prevented from exercising their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for redressal

12. Under these circumstances, we hold that the order passed by the High Court is not correct in law in giving direction not to declare the result of the election or to conduct fresh poll for 20 persons, though the writ petition is maintainable. The High Court, pending writ petition, would not be justified in issuing direction to stall the election process. It is made clear that though we have held that the respondents are not entitled to the relief by interim order, this order does not preclude any candidate including defeated candidate from canvassing the correctness of the election. They are free as held earlier, to seek remedy by way of an election petition as provided in the Act and the Rules."

23. The Hon"ble Supreme Court, while considering the provisions of Article 329(b) of the Constitution of India, which was existing in 1952, in the case of N.P. Ponnuswami v. Returning Officer, Namakkal Constituency and Ors. reported in , AIR 1952 SC 64, has held that, once the election process is commenced, the Court should not interfere with the electoral process. The relevant paragraphs are extracted hereunder:

"7. These arguments appear at first sight to be quite impressive, but in my opinion. there are weightier and basically more important arguments in support of the view taken by the High Court. As we have seen, the most important question for determination is the meaning to be given to the word "election" in article 329 (b). That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. In Srinivasalu v. Kuppuswami (, AIR (15) 1928 MAD 253 at p. 255), the learned Judges of the Madras High Court after examining the question, expressed the opinion that the term "election" may be taken to embrace the whole procedure whereby an "elected member" is

returned, whether or not it be found necessary to take a poll. With this view, my brother, Mahajan J. expressed his agreement in *Sat Narain v. Hanuman Prasad* (AIR (33) 1946 LAH 85); and I also find myself in agreement with it. It seems to me that the word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression "conduct of elections" in article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including article 329 (b). That the word "election" bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in Halsbury's Laws of England in the following passage (see p.237 of Halsbury's Laws of England, edn.2, vol.12) under the heading "Commencement of the Election":-

"Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is "reasonably imminent". Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when "the conduct and management of an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case."

The discussion in this passage makes it clear that the word "election" can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.

.....

9. The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before

any court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like article 329(b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it."

24. In view of the aforesaid reasons, the issues raised in the present writ petitions are to be held in the affirmative, holding that the Election Commission is justified in issuing the impugned notifications exercising the powers under the provisions of Section 162 of the Act, in view of the interim order granted by the Hon"ble Supreme Court in the case of H.C. Yatheesh Kumar (supra) in Civil appeal No. 4523/2005.

25. Some of the learned Counsel for the petitioners urged that the writ petitions were filed much before the issuance of calendar of events. Since some of the writ petitions were filed before the issue of calendar of events, the fact remains that no interim order was passed in any of the writ petitions. Merely because the writ petitions are pending, this Court is not justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh.

26. It is also relevant to state at this stage, that some of the aggrieved voters also filed writ petitions before the Principal Bench of this Court at Bangalore questioning the reservations made in pursuance of the impugned notifications made therein and also questioning the validity of the amended Section 162 of the Act, by amendment Act No. 17/2005 and the challenge has also been made to the Amendment Act No. 37/2003 dated 01.10.2003. The Principal Bench of this Court, after considering the entire matters, has passed a detailed order taking pains and dismissed all the writ petitions on 18.01.2016, holding that the petitioners cannot stall the election process.

27. Admittedly, in the present cases, except challenging the reservation of the impugned orders, none of the petitioners have questioned the constitutional validity of either Section 162 of the Act and Rule 3 of the Rules or the amended Act. Therefore, the petitioners have not made out any prima facie ground to interface with the impugned notification in exercise of the powers of this Court under Articles 226 and 227 of the Constitution of India to stall the election

process, which is already commenced.

In view of the same, all the writ petitions are dismissed.

Ordered accordingly.