

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE MR.JUSTICE G.NARENDAR

W.P.NO.15530/2017 (LB ELE) DATED: 02-07-2019

SMT. B H KOMALA VS. STATE OF KARNATAKA  
REP BY ITS PRINCIPAL SECRETARY, BANGALORE AND OTHERS

ORDER

1. Heard the learned Counsel for the petitioner, learned Counsel for respondent No.2, learned AGA for respondents 1, 3, 4 & 5 and the learned Counsel for respondent No.7.
2. Petitioner is before this Court being aggrieved by the election of respondent No.7 as member of respondent No.6-Taluk Panchayat and as Adhyaksha of the same.
3. It is contended by the learned Counsel for the petitioner that respondent No.7 belongs to Nayaka community which is categorized as a Scheduled Tribe and notwithstanding the same, she has misrepresented herself that as belonging to the Besthar caste, which is categorized as OBC-A category and has been elected to the seat reserved in favour of OBC-A category.
4. The petitioner has relied upon several materials and claims that the same incriminates and demonstrates the allegation against respondent No.7 and hence, the instant writ petition

praying for issuance of quo warranto to remove respondent No.7 from the office is maintainable. Learned Counsel for the petitioner would also place reliance on the decision in the case of SRI YAMANAPPA SATYAPPA BANDIWADAR & OTHERS VS AMINGAD GRAMA PANCHAYAT & OTHERS - ILR 2008 KAR 3854, to contend that the writ petition seeking for issuance of quo warranto is maintainable and that this Court in paragraphs 12 & 13 of the aforesaid decision has held as under:

“12. Section 5 of the Karnataka Panchayat Raj Act, 1993 provides for constitution of Gram Panchayat and empowers the state election commission to reserve seats for SC and ST and persons belonging to backward class falling under category “A” and “B”. It is in the exercise of the said power that Ward No.1 in the first respondent Gram panchayat was reserved for BCM ‘B’ category in the elections held in the year 2005. Reservation, therefore is a part of constitutional scheme with the object of betterment of backward classes. Therefore, if a person does not belong to a particular backward class for which the elective office is reserved, and masquerades as a person belonging to said category and gets elected to the reserved office, it cannot but be said that such an act not only constitutes violation of statutory provisions of the Panchayat Raj Act but also a fraud on the constitution.

13. The petitioners have established beyond doubt that the second respondent who belongs to BCM 'A' category played a fraud by making a false claim that he belongs to BCM 'B' category and got elected as a member of the first respondent-Gram Panchayat from Ward No.1 which was reserved for BCM 'B' category."

5. Per contra, learned Counsel for respondents 2 & 3 would place reliance on the ruling of the Hon'ble Apex Court in the case of KURAPATI MARIA DAS VS DR. AMBEDKAR SEVA SAMAJAN & OTHERS - (2009)7 SCC 387 and invites the attention of the Court to paragraphs 23 & 24, which reads as under:

"23. Even when we see the affidavit in support of the petition in Para 8, it specifically suggested that Ward No.8 was reserved for the persons belonging to the Scheduled Castes from where the appellant contested the election representing himself to be a person belonging to the Scheduled Caste. Para 9 speaks about the election of the appellant as the Chairperson. Para 30 also suggests that the complaint has been made against the appellant that he had usurped the public office by falsely claiming himself to be a person belonging to the Scheduled Caste. In Para 33, it is contended that the first petitioner had no remedy to question the election of the ninth respondent by way of an election petition. Therefore, though

apparently it is suggested in the writ petition was only for the writ of quo warranto, what is prayed for is the setting aside of the election of the appellant therein on the ground that he did not belong to the Scheduled Caste.

24. It is further clear from the writ petition that the writ petitioners were themselves aware of the situation that the writ of quo warranto could have been prayed for only an invalidation or quashing of the election of the appellant, firstly as a Councillor and secondly, as a Chairman and that was possible only by an election petition. The two decisions quoted above, in our opinion, are sufficient to hold that a writ petition of the nature was not tenable though apparently the writ petition has been couched in a safe language and it has been represented as if it is for the purpose of a writ of quo warranto.”

6. Learned AGA would submit that no findings have been rendered by the competent authority with regard to the caste of respondent No.7 and that no complaints or petitions have been lodged seeking to disqualify respondent No.7.

7. After hearing the learned Counsel for the parties and after adverting to the facts, the short question that arises for consideration is, whether the writ petition is maintainable?

8. Section 127 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, provides for qualifications of a candidate. Sub-section (2) mandates that a person shall not be qualified to be chosen from a territorial constituency to fill a seat in a Taluk Panchayat unless in the case of a seat reserved for Scheduled Castes or Scheduled Tribes or Backward Classes or Women, such person is a member of those castes or classes or is a woman. Section 128 details the disqualification of members or a person from holding the office and sub-section (2) of Section 129 provides for affording a reasonable opportunity of being heard to the concerned member.

9. On a conjoint reading of the aforesaid provisions, it is apparent that disqualification is not automatic, but is the result of proceedings consciously conducted in accordance with law. The provisions of sub-section (2) of Section 129 obviates any discussion on this point, as it mandates the authority to arrive at a decision after affording a reasonable opportunity of being heard to the concerned member and jurisdiction vests in the State Election Commission only on receipt of a report. Thus, in the absence of a report, even the State Election Commission would not be in a position to invoke the provisions of sub-

section (2) to declare that seat of the member as having fallen vacant.

10. In the instant case, admittedly petitioner has not lodged any complaint either before the authorities or before the State Election Commission and has rushed to this Court. That apart, reliance on the ruling in ILR 2008 KAR 3854 is misplaced. On a reading of paragraph 3 of the said ruling, it is apparent that the filing of the writ petition was preceded by a finding by the Tahsildar who after conducting proceedings in accordance with law was pleased to cancel the caste certificate. In that view of the matter, this Court being a court of records in exercise of its jurisdiction under Article 226 of the Constitution of India, would normally not venture to adjudicate factual issues and the adjudication of the allegation made by the petitioner would involve a like exercise.

11. In the instant case, there is no finding by any of the authorities with regard to the allegation set out in the writ petition. That apart, in view of the statutory provisions, the instant writ petition, in the considered opinion of this Court, is premature and not maintainable.

12. Accordingly, writ petition fails and the same is dismissed. There shall be no order as to costs. Dismissal of the

writ petition will not preclude the petitioner from availing all remedies as available to him under law.