

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH 2017

BEFORE

THE HON'BLE MR.JUSTICE RAGHVENDRA S. CHAUHAN

Writ Petition No. 12419/2017 (LB-ELE)

B. N. Srinivas

v/s.

State of Karnataka

ORDER

The petitioner, Mr. B.N. Srinivas, has challenged the legality of the Notification, dated 13.03.2017, issued by the respondent No.1, State of Karnataka, represented by its Secretary, Urban Development Department, and the Election Notice dated 15.03.2017, issued by the respondent No.3, Assistant Commissioner, Chikkaballapura. The petitioner has also prayed that a direction should be issued to the respondents to first issue a fresh provisional notification, and only after hearing the public at large, to issue a final notification for reserving the post of President and Vice-President for a particular reserved category.

2. The case revolves around the election of President and Vice-President of Town Municipal Council, Bagepalli.

The election to the said post has a rather checkered history, which is as under:

After having won the election on 11.03.2013 from Ward No.19, the petitioner is a Councilor of the said TMC. In order to hold election to the post of President and Vice-President, the State Government had issued a Notification on 24.04.2016. According to the said Notification, while the post of President was reserved for General Category, the post of Vice-President was reserved for the category of BCB-Woman (henceforth to be referred to as 66 BCB ( W ) "). However, the said Notification was challenged by one Smt. V. Vanaja before this Court by filing W.P.No.41101/2016.

During the pendency of the said writ petition, a fresh Notification was issued on 04.03.2016, whereby the post of President was declared to be for the category of General Woman ( " GMW ", for short). Since the present petitioner, before this Court, was aggrieved by the change of category for the post of President from ' General ' to ' General Woman ', he filed a writ petition, namely W.P.No.47135/2016 before this Court.

Meanwhile, the petition filed by Smt. V. Vanaja, was decided by a learned Single Judge of this Court by order dated 29.08.2016. The learned Single Judge had quashed the Notification dated 24.02.2016, qua, Bagepalli, and had directed the respondents to reserve the seat of President, or Vice President in favour of Scheduled Caste Woman ( " SCW ", for short), and to re-issue the Notification.

Since the said direction was given by the learned Single Judge, on 15.09.2016 the present petitioner withdrew his writ petition, challenging the Notification dated 04.03.2016. Since the present petitioner, Mr. B.N. Srinivas, was a respondent in the case filed by Smt. Vanaja, he filed a Writ Appeal, namely W.A.No.3699/2016 against the order dated 29.08.2016.

3. During the pendency of writ appeal, and in consonance with the directions issued by the learned Single Judge, on 27.10.2016, the State Government issued a fresh Notification, qua, Bagepalli Town Municipal

Council. According to the said Notification, while the post of President continued to be kept for GMW, the post of Vice-President was now reserved for the category of Scheduled Caste Woman ( ' SCW ', for short).

4. By judgment dated 13.01.2017, the learned Division Bench allowed the writ appeal filed by the present petitioner, and held that the direction issued by the learned Single Judge for reserving the seat of President and Vice-President in favour of the SCW candidate could not have been issued. It further directed the concerned authority " to take a decision in the matter and to issue a Notification in accordance with law ".

5. Since the petitioner was also aggrieved by the new Notification dated 27.10.2016, which was issued during the pendency of the writ appeal, he challenged the same by filing a writ petition, namely W.P.No.56091/2016. The said writ petition was listed before this Court on 13.02.2017. By order dated 13.02.2017, this Court directed the respondents to carry out the directions issued by the learned Division Bench, namely " to issue a fresh Notification in accordance with law ". Consequently, the respondents have issued a Notification dated 13.03.2017, whereby the post of President is still kept for the category of GMW, but the post of Vice-President has now been reserved for Backward Classes- ' A ' ( " BCA ", for short). Hence, the present petition filed by the petitioner challenging the Notification dated 13.03.2017.

6. Mr. Sreenidhi, the learned AGA, has raised a preliminary objection with regard to the maintainability of the writ petition. According to him, since the Notification, has been issued on 13.03.2017, and the Calendar of Events on 15.03.2017, respectively, the election process has commenced. Therefore, the writ petition challenging the holding of election is not maintainable. The only remedy which is available to the petitioner is to file an Election Petition challenging the outcome of the Election. Most importantly, according to the learned counsel, the election is scheduled to take place on 24.03.2017. Therefore, according to the learned counsel, the present writ petition has been filed only with a view to retard, interrupt, obstruct, and delay the process of election proceedings. According to him, Article 243ZG of the Constitution of India, debar the calling into question the election to any Municipality except by an election petition presented to such Authority, and in such a manner as is provided under the law made by the Legislature of the State.

Furthermore, Sections 21 to 26 of the Karnataka Municipalities Act ( ' the Act', for short) deal with filing of the election petition, relief that may be claimed by the petitioner, grounds for declaring elections to be void, procedure to be followed by the Election Tribunal, and decision of the Election Tribunal. Thus, in light of the bar contained in Article 243 ZG of the Constitution of India, the present writ petition is not maintainable. Relying on the case of Election Commission of India through Secretary v. Ashok Kumar and Others [ (2000) 8 SCC 216], the learned counsel has pleaded that this Court should be reluctant to interfere with the election process, once the said process is set in motion.

7. On the other hand, the Mr. V. Lakshminarayana, the learned Senior Counsel for the petitioner, has vociferously argued that the petitioner has been fighting a running battle against the respondents for having changed the category for the post of President from ' General ', to ' General-Women '. Even on an earlier occasion, he had challenged the Notification dated 04.03.2016, and has also challenged the Notification dated 27.10.2016. While the first writ petition filed by him against the Notification dated 04.03.2016, may have been withdrawn, but his writ petition challenging the Notification dated 27.10.2016, is still pending before this Court. Therefore, the petitioner cannot be deprived of his right to challenge the Notification, merely because the election process has been started. Secondly, since the provisions of Section 42 of the Act, and the provisions of Rules 13 and 13- A of the Karnataka Municipalities (President and Vice-President) Election Rules, 1965 ( " the Rules ", for short), are being violated by the respondents, while keeping the post of President for GMW, the petitioner has ample right to challenge the Notification dated 13.03.2017, and the order dated 15.03.2017, passed by the respondents. Therefore, the writ petition is clearly maintainable before this Court.

8. Heard the learned counsel for parties.

9. Article 243-ZG of the Constitution of India, is similar in its scope and ambit as Article 329 of the Constitution of India; both prevent a challenge to an election, except through an election petition. In the case of *N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist., and Others* [AIR 1952 SC 64], the Constitutional Bench of the Apex Court dealt with the scope and ambit of the bar contained in Article 329 ( b) of the Constitution of India. While interpreting the words " election " as used in Part XV of the Constitution of India, the Hon'ble Supreme Court has opined that, " the word " election " has been used in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. Therefore, the word "election" used in Article 329 ( b) may be taken to embrace the whole procedure which consists of several stages and embraces many steps, whereby an " elected member " is returned. "" Hence, the word " election " has not been used in a narrow sense.

10. Further, while dealing with the bar contained in Section 80 of the Representation of the People Act, 1951, and the power of the High Court under Article 226 of the Constitution of India, the Hon'ble Supreme Court opined as under:

The law of elections in India does not contemplate 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. 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. 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. 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.

The Representation of the People Act is a self-contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the rules made there under. Section 80, which is drafted in almost the same language as Article 329 ( b), provides that " no election shall be called in question except by an election petition presented in accordance with the provisions of this Part ".

Section 80, along with Sections.100, 105 and 170 are the main provisions regarding election matters being judicially dealt with, and there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage.

Similar is the co-relation between Article 243-ZG of the Constitution of India, and the remedy of filing an election petition contained in Section 21 of the Act. Therefore, same principles as quoted above would apply to the present writ petition.

11. In the case of Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others [AIR 1978 SC 851], the Hon'ble Supreme Court has opined that " Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of over-enthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes. "

12. In the case of Ashok Kumar and Others (supra) the Apex Court has opined that " the Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329 ( b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material. " Therefore, before this Court concludes that the writ petition is not maintainable, it is equally imperative to consider the contentions raised by the learned counsel for both the parties and adjudge whether the petitioner has made out a clear and strong case for intervention, or not?

13. Mr. V. Lakshminarayana, the learned Senior Counsel, has woven an elaborate web of arguments to convince this Court to stall the election process just one day short of holding the election. Relying on Section 42 of the Act, the learned Senior Counsel has pleaded that every Municipal Council is required to have a President, and Vice-President. According to Section 42 ( 2- A) of the Act, number of offices of President and Vice-President in the State need to be reserved for persons belonging to Scheduled Castes and Scheduled Tribes, and for Backward Classes. According to fourth proviso to sub-section 2A, of Section 43 of the Act, the offices reserved under the sub-section shall be allotted by rotation in the prescribed manner to different Municipal Councils. Moreover, according to Explanation appended to Section 2- A, of Section 43 of the Act, the principal of rotation for the purpose of reservation of offices under this sub-section shall commence from the first ordinary election to be held after the first day of June, 1994.

Taking the cue from the words "prescribed in the prescribed manner", the learned Senior Counsel has brought the provisions of the Rules to the notice of this Court. Relying on the Government Order dated 05.02.2016, which covers the present election for the office of President and Vice-President, the learned Senior Counsel has pleaded that allotment of seats in respect of Scheduled Caste and Scheduled Tribes shall be in accordance with sequence, namely SCW > ST > SC > STW > BAW > G > BCBW > B > BCA > GW > BCB. Moreover, in the sequence of allotment of seats in respect of other categories, would be BAW > G > BCBW > G > BCA > GW > BCB.

14. Most importantly, the learned Senior Counsel has emphasized on the fact that "there shall be no repetition of reservation to the seats until and unless the entire cycle is completed ". However, in the present case, according to the learned Senior Counsel, for Bagepalli Town Municipal Council, the post of President was already kept for General-Woman Category in the sixth term. Therefore, the post of President in the present term (Eighth term) cannot be kept for General Woman ( G- W).For, to keep the post of President for the category of General Woman ( G- W) would be to repeat the same category which is impermissible in law.

15. In order to buttress this plea, the learned Senior Counsel has heavily relied upon Rule 13- A (2) of the Rules, and has pointed out that even the category of General Woman in the previous term shall not be

allowed for the same category in the succeeding term until the cycle of rotation is completed in respect of such category. Therefore, keeping the post of President for the category of General Woman is absolutely illegal. Hence, the Notification dated 13.03.2017, deserves to be set aside by this Court. Consequently, the election notice dated 15.03.2017, fixing the date of election as 24.03.2017, should be set aside by this Court.

16. On the other hand, Mr. Sreenidhi the learned AGA, has raised the following contentions before this Court:

Firstly, although Section 42 (2- A) of the Act deals with reservation of certain posts of President and Vice-President, in favour of Scheduled Caste/Scheduled Tribe and the Backward Classes, it does not deal with the category of " General Woman ".

Secondly, Rule 13 of the Rules contains certain Tables, namely Table- 1 for reservation of offices in City Municipal-Councils, Table- 2-for reservation of offices in Town Municipal Councils, and Table- 3 for reservation of offices in Town-Panchayats. According to Table- 2, Twenty-eight posts of Presidents have to be reserved for General-Women, while Twenty-nine posts of Presidents have to be kept for General Category. Thus, out of 113 Town Municipal Councils functioning in the State, in 57 of the Town Municipal Councils, the post of President has to be kept for the General Category including General-Women. Since a large portion of the post of Presidents have to be kept for General Category, or General Women, in the Government order, dated 05.02.2016, it was clearly stipulated that " as far as possible, the rotation in respect of other categories shall ensure that there is no repetition of reservation of a seat with reference to the reservation in the previous seven terms, except general and general women category. " Therefore, even the cycle rotation will have to be followed " as far as possible ".Thus, it need not be followed in absolute terms. Moreover, as far as the categories of ' General ' and ' General Women ' are concerned, the same could be repeated. Thus, there is no bar that the category of General Women cannot be repeated. In order to buttress this plea, the learned counsel has relied upon the case of Ravi and Others v. State of Karnataka (W.P.No.102383/2016 and other connected writ petitions decided by this Court on 16.03.2016).

Thirdly, even Rule 13- A ( 2) of the Rules stipulates that " General-Women in the previous terms shall as far as possible be not allotted to the same category in the succeeding term until the cycle of rotation is completed in respect of such category. "

17. The learned counsel has emphasized the words " as far as possible " and the words " succeeding terms ".According to him, the only bar contained in Rule 13- A ( 2) of the Rules, with regard to General-Women, is that the said category should not be applied in two consecutive terms. Hence, the law does permit the repetition of said category, but not in two consecutive terms. In the present case, the post of President was reserved for the sixth term, but not for the Seventh term. Since the present term is the Eighth term, the respondents are free to keep the post of President for the category of General Women for the present term. Therefore, the reservation is not hit by the bar contained in Rule 13- A ( 2) of the Rules. Therefore, the learned counsel has justified both the Notification dated 13.03.2017, and the Election Notice dated 15.03.2017.

18. The entire emphasis laid by Mr. Lakshminarayana, the learned Senior Counsel, on the reservation of the posts for certain reserved categories is highly misplaced. For, in the present case, the issue is whether the category of General Women could be repeated for the post of Town Municipal Council, even before the rotation is complete, or not? Although the learned Senior Counsel has vehemently claimed that the said category cannot be repeated until and unless the rotation is complete, but the said plea is belied both by the Government Order dated 05.02.2016, and by Rule 13- A ( 2) of the Rules. The Government Order clearly makes an exception in favour of the General-Women category when it extracts the said category, from the bar contained with regard to repetition of reservation of seats with reference to the reservation in the previous seven terms.

Item No.7 of the Order is as under:

“(vii) As far as possible, the rotation in respect of other categories shall ensure that there is no repetition of reservation of a seat with reference to the reservation in the previous Seven terms, except general and general women category. ”(Emphasis added)

Therefore, the embargo that the reservation of seats with reference to reservation in the previous Seven terms should not be repeated, does not apply to the General-Women Category.Hence, the General-Women Category can certainly be repeated.

19. Moreover, according to Rule 13- A ( 2) of the Rules, as far as possible, the category of General-Women should not be allowed in the succeeding term, the office which was reserved for the said category in the previous term until the cycle of rotation is completed. Firstly, the said prohibition is not an absolute one as it uses the words " as far as possible ".Secondly, it merely prohibits two consecutive terms to be allowed for the category of General-Women for the post of President and Vice-President. However, in the present case, the post of President is being reserved for the category of General-Women with a gap of one term, namely the Seventh term. Thus, the post of President is not being kept for the category of General-Women in consecutive terms. Hence, mere repetition of the said post for the said category in the Eighth term is absolutely legal.

In the case of Ravi and Others v. State of Karnataka (W.P.No.102383/2016 and other connected writ petitions decided by this Court on 16.03.2016), this Court has clearly held that the category of ' General ' and ' General-Women ' can be repeated by the Government, but not in successive terms. Therefore, the contention raised by Mr. Sreenidhi is worthy of acceptance.

20. Mr. Lakshminarayana, the learned Senior Counsel, has also pleaded that in catena of cases, this Court has clearly opined that before a category can be changed from one Notification to other, a Draft Notification is to be issued, the comments or objections from the public have to be invited, and only thereafter, a final Notification for holding the election can be issued by the respondents. In order to buttress this plea, the learned Senior Counsel has relied on the case of Ravi and Others (supra) Somashekar. S and Others v. State of Karnataka (W.P.No. 15881-883/2016, decided by this Court on 13.04.2016), and on the case of Kallappa v. State of Karnataka (W.P.No.202075/2016, decided by this Court on 02.06.2016).

21. On the other hand, Mr. Sreenidhi submits that in none of the cases referred by the learned Senior Counsel, has this Court laid down any guideline, or prescribed any need for issuing a draft notification, and for calling for public hearing, and for issuing a final Notification. According to the learned Counsel, in both these cases, this Court has relied on the case of Ravi (supra), and the case of Manjunath v. State of Karnataka and Others (W.P.No.102319/2016, decided by this Court on 16.03.2016), and on the case of D.K.Timmappa v. State of Karnataka and Others (W.P.No.12256/2016, decided by this Court on 09.03.2016).According to the learned counsel, in the case of Manjunath (supra), D.K.Thimmappa (supra), this Court has nowhere prescribed any guidelines for change of categories in succeeding Notifications. The learned counsel, in fact, has relied on the case of S.T. Krishnegowda v. State of Karnataka and Others (W.P.No.57303/2015 and other connected matters decided by this Court on 18.01.2016) in order to plead that in the said case, this Court has clearly observed that in the case of Chennigappa and Another v. State of Karnataka and Others [ILR 2000 KAR 2941], a leaned Division Bench of this Court had recommended that the State would be will advised to amend the Rules for issuing a draft notification, providing an opportunity to the general public, and for inviting objections from the public, and for issuing a final notification. However, the said recommendation has never been acted upon by the State Government.

Therefore, presently there is no legal requirement that before a category is changed for the post of President, or Vice-President, by a subsequent Notification, the Draft Notification needs to be published, the objections to the public notice be invited, and only thereafter a Final Notification needs to be issued.

22. As far as the need for application for Draft Notification inviting objections from the public and the requirement of issuing a Final Notification only thereafter is concerned, suffice it to say that there is some legal confusion about the same. In the case of Ravi (supra), this Court had not laid any guidelines to be followed when a category is changed from one Notification to another. Moreover, in the case of Somashekar (supra) this Court has relied on the case of Manjunath (supra) and D.K. Timmappa (supra). However, in neither of these two cases, this Court has laid down any guidelines for change of categories from one Notification to the other. Although in the case of Kallappa (supra) this Court has relied on the case of Somashekar (supra), Ravi (supra), but even in the case of Kallappa, no such guidelines were ever prescribed.

Thus, these three cases are a classic example of the blind following the blind.

23. It is only in the case of S.T. Krishnegowda (supra) that this Court has noticed the fact that the learned Division Bench of this Court in the case of Chennigappa (supra) had recommended that the State Government would be well advised to formulate certain Rules with regard to issuance of draft Notification, calling of objections by the public, and issuance of Final Notification. However, the said suggestion made by the Court has not been accepted by the Government. Thus, presently, there is no legal requirement of publication of a draft Notification, calling for objections from the public at large, and for the final Notification to be issued. Therefore, the contention raised by the learned Senior Counsel that the said procedure has not been followed in the present case is clearly untenable.

24. Considering the fact that the petitioner has not been able to make out a clear and strong case for intervention of this Court, that too, just a day prior to holding of the election, this Court is of the opinion that the present petition is merely a subterfuge for retarding, interrupting, protracting or delaying the progress of the election proceedings.

Hence, the petition is not even maintainable as it is hit by the prohibition contained in Article 243ZG of the Constitution of India. This Court is of the opinion that the writ petition is not maintainable. Furthermore, this writ petition is deprived of any merit.

25. For the reasons stated above, this Court does not find any merit in the present writ petition. Therefore, the writ petition is, hereby, dismissed.