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Court : Karnataka

Decided On : Oct-21-2016

Judge : P.S. Dinesh Kumar

Appeal No. : Writ Petition No. 106417 of 2016 (LB-RES)

Appellant : D. Siddayya and Others

Respondent : The State of Karnataka Department of Rural Development and Panchayat Raj, Represented by its Principal Secretary and Others

Judgement :

(Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying to direct the 6th respondent to vacate the office of the Adhyaksha, Zilla Panchayat, Ballari and to quash the proceedings dated: 29.04.2016 declaring the 6th respondent as Adhyaksha Of Zilla Panchayat, Ballari, vide Annexure-H.)

1. Petitioners in this writ petition have prayed for :

a) a writ of quo warranto and to direct 6th respondent to vacate the office of Adhyaksha, Zilla Panchayat, Ballari;

b) to quash proceedings dated 29.4.2016 declaring 6th respondent s election as Adhyaksha; and

c) to quash the CasteCertificate dated 26.4.2016 (Annexure-G).

2. Petitioners claim to be residents of Ballari. Their grievance is that 6th respondent obtained a false caste certificate and got elected to the post of Adhyaksha, ZillaPanchayat, Ballari, which is reserved for a candidate belonging to Backward Class II-B Category.

3. Heard Shri S.M.Chandrashekar, learned Senior Counsel for the petitioners and Smt.Veena Hegde, HCGP for R-1 and R-3 to R-5, Smt.Vidyavathi for R-2 and Shri Jayakumar S.Patil, learned Senior Counsel for R-6.

4. Shri S.M.Chandrashekar, learned Senior Counsel submitted that:

i) respondent No.6 was elected as a Member-Zilla Panchayat from 13-Badanahatti Constituency which was reserved for General (Women) Category in the elections held on 20.2.2016;

ii) by a notification dated 15.4.2016, the post of Adhyaksha for Zilla Panchayat, Ballari was reserved for a candidate belonging to Backward Community- B Category-Women;

iii) respondent No.6 obtained a false certificate dated 26.4.2016 as per Annexure-G from the Tahasildar, Kurugodu, to the effect that she belonged to Kapu caste which falls under Backward Class-B Category;

iv) based on the said false caste certificate, she contested for the post of Adhyaksha, Zilla Panchayat held on 29.4.2016 and was declared elected as per communication dated 29.5.2016 (Annexure-H).

5. Amplifying his submissions, learned Senior Counsel submitted that 6th respondent having been elected on the strength of a false caste certificate, cannot be permitted to continue in the post of Adhyaksha and therefore, she must be directed to quit the said office by issuing a writ of quo-warranto. He also urged for granting consequential prayers made in the writ petition.

6. In support of his contentions, he placed reliance on the following rulings:

a) Judgment of the Hon ble Supreme Court in the case of Nawabkhan Abbaskhan v. State of Gujarat reported in LAWS(SC)-1974-2-3:(1974) 2 SCC 121 to contend that since 6th respondent was elected based on a false caste certificate, the declaration as per Annexure-H is a nullity.

b) Judgments of this Court in the cases of Sri Yamanappa Satyappa Bandiwadar and Others v. Amingad Grama Panchayat and Others, reported in ILR 2008 KAR 3854 and Laxmi Bai v. The State of Karnataka and others in W.P.No.80422/2012.

7. Per contra, Shri Jayakumar S.Patil, learned Senior Counsel for respondent No.6 made following submissions:

i) though the relief sought for in the writ petition is for a writ of quo-warranto and writs of certiorari to quash election results and caste certificate, the petitioners are, de facto challenging the election of 6th respondent ;

ii) Respondent No.6 is elected as Adhyaksha of Zilla Panchayat under Rule-3 of Karnataka Panchayat Raj (Election of Adhyaksha and Upadhyaksha of Zilla Panchayat), Rules, 1994 (Panchayath Raj Rules for short);

iii) Under Rule -7 of Panchayath Raj Rules any person aggrieved by an election may challenge the same by way of an Election Petition before the jurisdictional District Judge;

iv) There exists an express bar under Clause-b of Article 243-0 of the Constitution of India, to entertain this writ petition.

8. In support of his contentions, he placed reliance on the following rulings:

i) Judgment of the Hon ble Supreme Court in the case of Gurdeep Singh Dhillon v. Satpal and others reported in 2006(10) SCC 616;

ii) Judgment of the Hon ble Supreme Court in the case of Kurapati Maria Das v. M/s. Dr. Ambedkar Seva samajan and Ors. reported in 2009 AIRSCW 4603 ; (2009) 7 SCC 387;

iii) Division Bench judgment of this Court in the case of Smt. Raniyamma v. M. Hemala Nayaka and Others, reported in ILR 1997 KAR 2518.

9. I have given my careful consideration to the submissions of the learned Counsel for the parties and perused material papers.

10. Adhyaksha and Upadhyaksha of Zilla Panchayat are elected in accordance with Section 177 of Karnataka Gram Swaraj and Panchayat Raj Act, 1993 and Panchayat Raj Rules. Rule 7 thereof provides for filing an election petition before the jurisdictional District Judge by an aggrieved party. In the case of Kurapati Maria Dasrelid upon by the learned Senior Counsel for 6th respondent, the petitioner therein had filed a petition praying for a writ of quo-warranto against the 9th respondent therein who was elected as a Chairperson of Bapatla Municipal Council, Guntur District on the ground that his claim of being a member of Scheduled Caste was false. The said writ petition was allowed by a learned Single Judge of High Court of Andhra Pradesh. A writ appeal filed thereon was also dismissed by the Division Bench of the High Court leading to filing an appeal before the Hon ble Supreme Court. It has been held by the Apex Court that though the writ petition was couched in a safe language seeking for a writ of quo-warranto, such petitions were not tenable in law. It is precisely stated thus in the said judgment:

17. There is no dispute that Rule 1 of the Andhra Pradesh Municipalities (Decision on Election Disputes) Rules, 1967, specifically provides for challenging the election of Councillor or Chairman. It was tried to be feebly argued that this was a petition for quo warranto and not only for challenging the election of the appellant herein. This contention is clearly incorrect. When we see the writ petition filed before the High Court, it clearly suggests that what is challenged is the election. In fact the Prayer clauses 12(b) and (c) are very clear to suggest that it is the election of the appellant which is in challenge. Even when we see the affidavit in support of the petition in Paragraph 8, it specifically suggested that the 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. Paragraph 9 speaks about the election of the appellant as

the Chairperson. Paragraph 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 Paragraph 33, it is contended that the first petitioner had no remedy to question the election of the 9th 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 herein on the ground that he did not belong to the Scheduled Caste. 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 on 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. (emphasis supplied)

Finally allowing the appeal, the Hon ble Supreme Court has held as follows:

27. xxx xxx xxx. In our opinion, it is necessary to get examined the Caste Certificates of all the elected persons from reserved constituencies within a time-frame to avoid such controversies.

28. Be that as it may, in our opinion, the High Court clearly erred firstly, entertaining the writ petition, secondly in going into the disputed question of fact regarding the caste status, thirdly, in holding that the appellant did not belong to the Scheduled Caste and fourthly, in allowing the writ petition.

(emphasis supplied)

11. The judgments in the cases of Sri Yamanappa and Lakshmibaisupra relied upon by the learned Senior Counsel for the petitioners are based on the Division Bench judgment rendered by the Hon ble High Court of Andhra Pradesh in the very case of Kurapati Maria Dasand the same has been reversed by the Hon ble Supreme Court. Resultantly, the said authorities are of no avail to the petitioners.

12. It would be profitable to note that it has been consistently held by the Hon ble Supreme Court that in view of express bar contained in Article 243-0 of the Constitution, once elected, disqualification, if any has to be raised in an election petition only. In the case of State of H.P. and others v. Surinder Singh Banoltareported in (2006) 12 SCC 484,the Apex Court has held as follows:

16. The provisions of the Act. as noticed hereinbefore, have been enacted, pursuant to or in furtherance of the constitutional mandate contained in Part IX of the Constitution of India. The provisions of the Act, therefore, are required to be construed strictly in terms thereof. Clause (b) of Article 243-0 of the Constitution of India mandates that no election shall be set aside save and except by an order passed by the authorised officer. In our considered opinion, Section 122 of the Act must be read in the light thereof. Section 162 of the Act expressly provides for the exclusive jurisdiction of the authorised officer to determine the existence or otherwise of any ground enumerated in Section 175 of the Act.

17. Once, thus, a person is declared to be an encroacher prior to the date on which he has been declared as elector and if the said order has attained finality, the question as to whether he stood disqualified in terms of the provisions of Section 122 of the Act, in our opinion must be raised by way of an election petition alone. If the submission of Mr Attri is to be accepted, the same may result in an anomalous position.

(emphasis supplied)

13. In the light of above discussion and the settled position of law, I am of the considered view that this writ petition is not maintainable in view of express bar contained in Clause-b of Article 243-0 of the Constitution.

14. Learned Counsel for the petitioners made elaborate arguments with regard to the manner in which the 6th respondent has obtained the caste certificate by adverting to various documents. However, in view of my finding that the writ petition is not maintainable, it is unnecessary to advert to those contentions.

15. Resultantly, the writ petition fails and is accordingly dismissed.No costs.

