

Shivanand Vs. The State Of Karnataka And Ors

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Court : Karnataka Kalaburagi

Decided On : Jul-11-2023

Judge : Suraj Govindaraj

Appeal No. : WP 201732/2023

Appellant : Shivanand

Respondent : The State Of Karnataka And Ors

Judgement :

- 1 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 IN THE HIGH COURT OF KARNATAKA, R KALABURAGI BENCH DATED THIS THE11H DAY OF JULY, 2023 BEFORE THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ WRIT PETITION No.201732 OF2023(LB-ELE) BETWEEN: SRI. SHIVANAND S/O MAILARI KADGONDA AGE54YEARS OCC: GRAM PANCHAYAT MEMBER, CHANDANHALLI HUMNABAD TALUK RESIDENT OF131 SONKHERA CHANDANHALLI TALUK HUMNABAD DISTRICT BIDAR58541 PETITIONER (BY SRI. GOURISH S KHASHAMPUR,ADVOCATE) AND:

1. THE STATE OF KARNATAKA DEPARTMENT OF RURAL DEVELOPMENT AND PANCHAYAT RAJ VIDHAN SOUDHA BENGALURU01REPRESENTED BY ITS PRINCIPAL SECRETARY2 THE STATE ELECTION COMMISSION No.16, 2ND AND3D FLOOR, BELLARY ROAD, SADASHIVA NAGAR, ARMANE NAGAR

BENGALURU, KARNATAKA56008 REPRESENTED BY ITS SECRETARY3 THE DISTRICT ELECTION OFFICER AND THE DEPUTY COMMISSIONER BIDAR DISTRICT BIDAR58540 4. THE CHIEF EXECUTIVE OFFICER ZILLA PANCHAYAT, BIDAR58540 - 2 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 5. THE EXECUTIVE OFFICER TALUK PANCHAYAT HUMNABAD DISTRICT BIDAR-585330 6. THE TASHILDAR HUMNABAD TALUK DISTRICT BIDAR58533 7. THE PANCHAYAT DEVELOPMENT OFFICER MANIKNAGAR GRAM PANCHAYAT TALUK HUMNABAD, DISTRICT BIDAR58533 RESPONDENTS (BY SMT. MAYA T.R., HCGP FOR R1, R3 , R6; SRI. K.N. PANEEDRA., SR. COUNSEL FOR SRI. AMARESH S. ROJA., ADVOCATE FOR R2; SRI. PRASHANTH S. KUMMAN., ADVOCATE FOR R4, R5, R7) THIS WRIT PETITION FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO ALLOW THIS WRIT PETITION AND ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR

ORDER

OR DIRECTION TO QUASH THE2020 II (2023) TERM PRESIDENT AND VICE PRESIDENT OF HUMNABAD TALUK IN RESPECT RESERVATION OF ST FEMALE FOR THE POST OF ADHYAKSHA OF CHANDANHALLI GRAM PANCHAYAT WHICH IS PRODUCED AT ANNEXURE-D ISSUED BY RESPONDENT No.3 AND ETC. THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN B GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 The petitioner is before this Court seeking for the following reliefs: a. Quash the 2020-II (2023) Term President and Vice President of Humnabad Taluk in respect reservation of ST Female for the post of Adhyaksha of - 3 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 Chandanhalli Gram Panchayat which is produced at Annexure-D issued by respondent No.3. b. Direct the respondents to reserve the post of Adhyaksha of Chandanhalli Gram Panchayat, Tq; Humnabad, Dist. Bidar by following the rotation system. c. Pass such other interim

order or orders as deemed in the circumstances of the case, in the interest of justice & equity.

2. The petitioner claims to be an elected Member of Sonkere Chandanahalli Gram Panchayat and is aggrieved by the reservation made for the post of Adhyaksha and Upadhyaksha in Chandanahalli Gram Panchayat.

3. The contention of Sri.Gourish Kashampur learned counsel for the petitioner is that:

3. 1. The total posts in Humnabad taluk in which Chandanahalli Gram Panchayat is situate is 19, out of which 6 seats have been reserved for persons belonging Scheduled Caste [SC]., 5 for Scheduled Tribe [ST]. and 8 for the General/open category. There being no reservation made for Category-A or Category- - 4 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 B, he submits that the persons belonging to Category-A or Category-B have been deprived of such reservation even though there are several persons belonging to Category-A or Category-B elected to various gram panchayats in Humnabad talk. 3.2. Secondly, he submits that the reservation which has been made exceeds 50% of the permissible reservation inasmuch as 6 posts have been reserved for members of SC and 5 for members of ST which comes to total number of 11 when the posts being 19, the maximum that could have been reserved is 9.5 or rounded off to 10. Thus, he submits that one extra post having been reserved exceeds 50% reservation which could have been apportioned to either Category-A or Category-B and if not to either of them, to the General category.-. 5 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 3.3. Thirdly, he submits that there is repetition in the rotation of roster reservation inasmuch as first term for the year 2010 was reserved for ST-Female for the post of President and General for Vice President. The first term for the year 2015 was reserved for SC-Female for the post of President and ST-Female for the post of Vice President. First term in 2021 was reserved for General for President and SC- Female for Vice President and now for the second term, the reservation is made for ST- female for President and General for the Vice President. Therefore, the contention is that the reservation

from 2010 first term, 2015, 2021 and now has been made only for SC/ST and General and no reservation has been made for Category-A or Category-B. There being a repetition, there is injustice which is caused inasmuch as even with regard to SC/ST, the horizontal reservation is for female and the - 6 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 Males cannot contest for such posts in the elections. 3.4. On all these grounds, he submits that the above writ petition is requires to be allowed.

4. Sri.K.N.Pthaneendra, learned Senior counsel for respondent No.2 submits that,
4.1. The entire reservation has to be done in terms Sub-section (2) of Section 44 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 [The Act for short]..
4.2. By relying on Sub-clause (a) of Subsection 2 of Section 44 of the Act, he submits that the total number of posts reserved for Adhyaksha and Upadhyaksha have to be in proportion to the total number of the population of the SC and STs.
4.3. By relying on Clause (c) of Subsection 2 of Section 44 of the Act, he submits that not less than 50% of the total number of offices of - 7 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 Adhyaksha and Upadhyaksha of Gram Panchayats in the State are to be reserved for persons belonging to SC and ST and backward classes and as such, he submits that the Election Commission has evolved a formula to cater to all the requirements. 4.4. In this regard, he submits that the total SC rural population of the State, as also that of the STs of the State is taken into consideration. There being no census carried out insofar as the backward classes are concerned, those figures not being available are not taken into consideration. As such, insofar as persons belonging to SC and STs are concerned, he submits that the formula which is used is, Total rural SC population/total State rural population x total number of Gram Panchayats. 4.5. Similarly, for STs, the formula is, - 8 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 Total rural ST population/Total State rural population x total number of Gram Panchayats. 4.6. The total State Rural population is 3,66,93,506 as per the census conducted on 2011 which is the last census which is available with the Election Commission, the said figure is taken into consideration. The total State Rural SC Population is stated to be 73,15,716

and the total State rural ST population is stated 33,55,090 as per the 2011 census and the total number of posts and the Gram Panchayats is stated to be 5,948. 4.7. It is on the basis of these figures that the above formula is applied and for SC population, the calculation would be; $73,15,716/36693506 \times 5948 = 1185$ posts 4.8. For ST population, the calculation would be; $33,55,090/3,66,93,506 \times 5948 = 543$ posts.-. 9 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 4.9. The total number of posts being determined for specific categories of SC and STs being arrived at by the above formula for the whole of the State he submits that there is a further calculation done on the basis of the population to the per post equivalent population and for that formula arrived at is; Total No.of SC population in the State/No.of posts 4.10. For ST per post equivalent population, the formula arrived at is: Total No.of ST Population in the State/number of posts. 4.11. By applying the above, he submits that per post population for SC is $73,15,716/1185 = 6173$ and per post population for ST is $33,55,090/543 = 6178$. 4.12. In that background, he submits that the total population of Humnabad taluk is 1,36,647, the - 10 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 SC population being 35,945, ST population being 28,712, the number of posts have been quantified by dividing the said Total population of the particular category divided by the post per population figure arrived at. Insofar as SC category is concerned, it would be $34,945/6173 = 5.82$ which has been rounded off to the next higher number in terms of Clause (c) of Subsection (2) of Section 44 of the Act to be 6 and for the ST population, it would be $28,712/6178 = 4.64$ which is also rounded off to next higher number in terms of Clause (c) of Subsection (2) of Section 44 of the Act to be 5 and as such, the total reservation made is 11 posts for both SC and ST together. This being in terms of mandatory terms of Clause (a) of Subsection (2) of Section 44 and Clause (c) of Subsection (2) of Section 44 of the Act, the mandate being next higher number, the total reservation of 11 posts for both the categories - 11 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 put together cannot be said to be in excess of 50%. What is required to be taken into consideration is per category

reservation which is 6 for SC which is the next higher number of 5.82 and 5 for ST category being the next number of 4.64. 4.13. Thus, he submits that the reservation being made for SC and ST depending on the population of Humnabad taluk, taking away 11 posts which is already little higher than 50%, there is no other post available for reservation for Category-A or Category-B hence no such reservation has been made. 4.14. Insofar as the contention of Sri.Gourish Kashampur, learned counsel that there is discrimination in Balki taluk where there is reservation made for 5, Category-A, he submits that that is on the basis of the SC and ST population of Balki inasmuch as SC - 12 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 population of Balki being 59,529, the number of seats which are required to be reserved being $59,528/6173=9.64$ which has been rounded off to next higher figure of 10. The ST population being 27,106, the number of post reserved would be $27,106/6178= 4.38$ which has been rounded off to the figure of 4 since 4.38 is lesser than 4.5 which is the median figure to be taken into consideration. Therefore, he submits that out of 40 posts, 14 posts being reserved for SC and ST category in terms of population thereof, there being an availability of 6 more number of seats for reservation to reach 50% of the posts that could be reserved, since total posts in Baliki being 40. 5 posts have been reserved for persons of Category-A and 1 post for Category-B. 4.15. He submits that even as regards other talukas in Bidar District, the reservation of posts has - 13 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 been taking into consideration the population of SC and ST population. The submission is that it is only after determining the number of posts required to be reserved for SC and STs and only if there are posts available for reservation for other categories, reservation would be made and as such, he submits that there is no discrimination which has been made in the present matter. 4.16. As regards the last contention of Sri.Gourish Kashampur that there is a repetition of SC and ST Female categories for the post of Adhyaksha and Upadhyaksha, he submits that this reservation has been made taking into account the entire taluk as a whole and both vertical and horizontal reservation has been given effect to. 4.17. For all the aforesaid reasons, he submits that the above petition is required to be dismissed.-. 14 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 5. Sri.Shivakumar Tengli, learned AGA for respondent No.1, 3 and 6 and Sri.Prashant S.Kamman, learned counsel for respondent Nos.4, 5 and 7 adopt the submissions made by Sri.K.N.Phaneendra, learned Senior counsel on behalf of Sri.Amaresh S.Roja, learned counsel for respondent No.2.

6. Heard Sri.Gourish S.Khashampur, learned counsel for the petitioner, Sri.K.N.Phaneendra, learned Senior counsel for Sri.Amaresh S.Roja, learned counsel for respondent No.2, Sri.Shivakumar Tengli, learned AGA for respondent No.1, 3 and 6 and Sri.Prashant S.Kamman, learned counsel for respondent Nos.4, 5 and 7. Perused papers.

7. The points that would arise for determination in the present matter are: i. Whether there is any discrimination in the reservation made of the posts for President and Vice President by the Election Commission?. ii. Whether by reserving posts for both SC and ST category, which in totality would - 15 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 exceed 50%, could there be said to be in violation of mandate of Clause (a) of Subsection (2) of Section 44 of the Act ?. iii. Whether in the present case there is any discrimination and or excess reservation requiring interference at the hands of this Court?. iv. What order ?.

8. I answer the above points as under:

9. ANSWER TO POINT NO.1: Whether there is any discrimination in the reservation made of the posts for President and Vice President by the Election Commission?.

10. Clause (a) and (c) of Subsection (2) of Section 44 of the Act are reproduced hereunder for easy reference: 44. Election of Adhyaksha and Upadhyaksha:

1. Xxxxx 2. Subject to the general or special order of the State Election Commission, the Deputy Commissioner shall reserve - (a) such number of offices of Adhyakshas and Upadhyakshas of Grama Panchayats in the State for the Scheduled Castes and Scheduled Tribes and the number of such offices bearing as nearly as - 16 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 may be the same proportion to the total number of the offices in the State as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: Provided that, if no person belonging to the scheduled caste is available, the seats reserved for that category, shall also be filled by the persons belonging to the scheduled tribes and vice-versa. (b) Xxxxx (c) not less than (fifty per cent) of the total number of offices of Adhyaksha and Upadhyaksha of Grama Panchayats in the State from each of the categories which are reserved for persons belonging to the Scheduled Castes, Scheduled Tribe and Backward Classes and of those which are non-reserved, for women [Subject to an overall limit of one half of the total number rounding of to the next number]. Provided that the offices reserved under this sub- section shall be allotted by rotation to different Grama Panchayats. [Provided further that the duration of the offices reserved under this sub-section shall be thirty months.]. 10.1. The manner of calculation for reservation of the posts have been succinctly explained by Sri.K.N.Phaneendra, learned Senior counsel. The formula which has been adopted by the Election Commission taking into account the total Rural population of the State, total rural SC population, total ST population to arrive at - 17 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 the number of posts to be reserved by taking into consideration the total number of posts available, to my mind appears to be a reasonable formula which does not suffer from any infirmity. 10.2. The parameters which are required to be considered being the total population of persons of a particular category, number of posts available has been taken into consideration the requisite parameters, there being no other parameter which has been pointed out to have been missed by either the petitioner or to my mind, the formula having taken into consideration all the variables, the number of posts which have been arrived at being 1185 posts for SC category and 543 for ST category is proper and correct. 10.3. Thus, what remains to be ascertained is the number of posts to be reserved in each of the - 18 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 talukas on the basis of the variables of SC and ST population of that particular taluka. There being no dispute that the first step to be taken is the reservation for the SC and ST vertically and thereafter

horizontally for female among that particular categories, the formula then adopted by the Election Commission to determine the population per post is also proper and correct inasmuch as what is done is, The total population of a category/No.of posts determined for that category to arrive at population per category. 10.4. In the present case though on the basis of older census of 2011 that being the only census available, the per post population of SC category arrived at 6173 and per post population of the ST category has been arrived at 6178 which also cannot be disputed.-. 19 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 10.5. The SC population of Humnabad taluk being 35,945, dividing the same by Per post population=5.82 and the said figure being higher than the median point 5.5 in terms of Clause (c) of Subsection (2) of Section 44 of the Act, the same has been rounded off to 6 which again cannot be found fault with. 10.6. The ST population of Humnabad taluk being 28,712, dividing the same by Per post population=4.64 and the said figure being higher than the median point 5 in terms of Clause (c) of Subsection (2) of Section 44 of the Act, the same has been rounded off to 5 which again cannot be found fault with. 10.7. I answer point No.1 by holding that in the present case there is no discrimination in the reservation made of the posts for President and Vice President by the Election Commission.-. 20 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 11. ANSWER TO POINT NO.2: Whether by reserving posts for both SC and ST category, which in totality would exceed 50%, could there be said to be in violation of mandate of Clause (a) of Subsection (2) of Section 44 of the Act ?. 11.1. Though at the first blush, the reservation of 11 seats for SC and ST category, out of 19 seats appears to be more than 50%. However a deeper examination indicates otherwise since in terms of Clause (c) of Subsection (2) of Section 44 of the Act, the per category reservation has to be fixed at not less than 50% and if 5.82 or 4.64 were to be rounded to the lower number, it would come to less than 50% of each category. As such, rounding off to 6 and 5 cannot be found fault with. The posts to be manned by individuals the decimals can only be given effect to by rounding off to a whole number since a human being cannot be divided into lesser than a whole number.-. 21 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 11.2. As regards reservation made for Female in the reserved categories, there appears to be merit in the submission made by Sri.Gourish Khashampur, learned counsel inasmuch as the reservation for the years 2010, 2015 and 2021 including the second term in the year 2024, the reservation has been made for Female. However, same would have to be taken into consideration while taking entire taluka into consideration. 11.3. The submission of Sri.K.N.Phaneendra, learned Senior counsel is that in one or two panchayats there could be repetition but on the whole taking taluka into consideration, the reservation has been maintained, more so since it is the 10th round of reservation, there is a possibility of repetition. 11.4. Be that as it may, the petitioners are permitted to submit a representation to respondent No.3 - 22 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 to enable respondent No.3 to consider the rotation of the post so that as far as possible, there is no repetition. 11.5. I answer point No.2 by holding that reserving posts for both SC and ST category, which in totality would exceed 50%, there cannot be said to be in violation of mandate of Clause (a) of Subsection (2) of Section 44 of the Act, so long as the reservation per category is 50%.

12. ANSWER TO POINT NO.3: Whether in the present case there is any discrimination and or excess reservation requiring interference at the hands of this Court?. 12.1. Sri.K.N.Phaneendra, learned Senior counsel submits that software has been developed by National Informatic Centre for the above purpose and the said software is being used to determine the rotation. However, while so submitting he submits that the population of - 23 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 the taluka is taken into consideration for the purpose of rotation. 12.2. To my considered mind the taking of the population into account would only arise for the purpose of determining the total number of posts, as also determining the population per pos, once that is done, the rotation is a standalone element which is required to be considered only on the basis of earlier reserved post and there is no nexus or relationship with the population once again. Thus, this aspect would have to be taken into consideration by the Election Commission, as also the Deputy Commissioner fix the rotation

without reference to the population of the taluka, but, however reference would have to be taken to the candidates who have been elected per category to each of the Gram Panchayat insofar as - 24 - NC:

2023. KHC-K:5205 WP No.201732 of 2023 Adhyaksha and Upadhyaksha of that Gram Panchayat is concerned.

13. ANSWER TO POINT NO.4: What Order?. 13.1. In view of the above, I pass the following:

ORDER

i. The writ petition stands dismissed. ii. Liberty is however reserved to the petitioner to submit a representation insofar as repetition is concerned to respondent No.3. iii. The said representation, if submitted within one week from today, respondent No.3 shall consider the same within two weeks thereafter, at any rate prior to the issuance of calendar of events. Needless to say, until the above process is completed, calendar of events shall not be issued. Sd/- JUDGE
LN List No.:

1. SI No.:

9.

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