

**State of Karnataka and ors. Vs. Ramappa and ors.**

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**Court :** Karnataka

**Decided On :** Sep-24-2001

**Reported in :** ILR2002KAR35; 2002(2)KarLJ12

**Judge :** G.C. Bharuka and ;A.V. Sreenivasa Reddy, JJ.

**Acts :** [Karnataka Municipalities Act, 1964](#) - Sections 2, 42(1), 42(2), 42(2A) and 353; Karnataka Municipalities (President and Vice-President) Election Rules, 1965 - Rule 13 and 13(6); [Constitution of India](#) - Articles 14 and 243P to 243ZG; [Constitution of India](#) (Seventy-third Amendment) Act, 1992; Karnataka Municipalities (Amendment) Act, 1994; Karnataka Municipalities (Amendment) Act, 1995

**Appeal No. :** Writ Appeal Nos. 3572 to 3579 of 2001

**Appellant :** State of Karnataka and ors.

**Respondent :** Ramappa and ors.

**Advocate for Def. :** Ashok Haranahalli, ;V.T. Rayaraddi and ;Subhash B. Adi, Advs.

**Advocate for Pet/Ap. :** A.N. Jayaram, Adv. General

**Disposition :** Appeals dismissed

**Judgement :**

**G.C. Bharuka, J.**

1. These writ appeals have been preferred by the Government of Karnataka against the order of the learned Single Judge whereby he has declared Sub-rule (6) of Rule 13 of the Karnataka Municipalities (President and Vice-President) Election Rules, 1965 (in short the 'Rules') as amended by Notification No. HUD 647 MLR 95, dated 20-12-1995 to be constitutionally invalid and has quashed the notifications dated 30-5-2001 (Annexure-R2) and dated 2-6-2001 (Annexure-F) issued by the State Government pursuant to the powers conferred on it under the said sub-rule.

2. The writ petitions, out of which the present writ appeals arise, had been filed by the elected Councilors of the City Municipal Councils and Town Municipal Councils constituted under the Karnataka Municipalities Act (in short the 'Act') questioning the validity of the above sub-rule and the notifications at Annexure-F and R-2 on the ground that the said sub-rule conferred arbitrary and naked powers on the State Government permitting it to reserve the offices of the Chairpersons in the City Municipal Council, Town Municipal Council and Town Panchayats (for convenience hereinafter referred to as 'Municipalities') to Scheduled Castes/Scheduled Tribes/Women and Backward Classes for second and subsequent elections, in any manner that it deems fit.

3. The learned Single Judge after having gone through the Government records found that the discretion so vested in the State Government was grossly misused in order to appease the members of the ruling political party or even otherwise it was exercised in a most arbitrary manner without having any rational basis for making such reservations. Accordingly, the learned Single Judge has struck down the impugned rule as well as the impugned notifications issued by the State Government in exercise of the said powers.

4. The Parliament, by the Constitution (Seventy-third Amendment) Act, 1992, which came into force with effect from 1-6-1993, inserted Part IX-A in the Constitution with the title 'Municipalities' containing Articles 243-P to 243-ZG. Clause (e) of Article 243-P defines 'Municipality' to mean an institution of self-Government constituted under Article 243-Q. This chapter contains elaborate

provisions for constitution of municipalities which include Town Panchayats, Municipal Councils and Municipal Corporations. It provides for constitution and composition of the Municipalities, its wards and reservations of seats in the Municipalities as also in the offices of the chairpersons in such Municipalities.

5. In the present appeals, we are concerned with the provisions providing for reservations in the offices of the Chairpersons in the Municipalities. Clause (4) of Article 243-T of the Constitution, which is material for the present purpose, reads as under.-

'Article 243-T. Reservation of seats.-- (1) xxx xxx xxx xxx xxx

(2) xxx xxx xxx xxx xxx

(3) xxx xxx xxx xxx xxx

(4) The office of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may, by law, provide.

(5) xxx xxx xxx xxx xxx

(emphasis supplied)

6. To bring the provisions contained in the Act in conformity with the above constitutional provisions, the Act was amended by the State Act 36 of 1994 with effect from 1-6-1994 inter alia to provide for reservations in the offices of the Chairpersons in the Municipalities. Sub-sections (1),(2) and (2-A) of Section 42 of the Act, as amended by Act 36 of 1994 (with effect from 1-6-1994) and subsequently by Act 24 of 1995 (with effect from 22-6-1995), are relevant for our purpose. These sub-sections read as under.-

'42. President and Vice-President.--(1) For every Municipal Council, there shall be a President and a Vice-president.

(2) Subject to the provisions of Sub-section (2-A) the Councilors shall at the first meeting of the Municipal Council after the general election and at a subsequent

meeting held immediately before the expiry of term of office of the President and Vice-President choose two members from amongst the elected Councilors to be respectively President and Vice-President and so often as there is a casual vacancy in the office of the President, or Vice-President shall choose another member from amongst the elected Councilors to be the President or Vice-President, as the case may be.

(2-A) There shall be reserved by the Government in the prescribed manner.-

(a) such member of offices of President and Vice-President in the State for the persons belonging to the Scheduled Castes and Scheduled Tribes and the number of such offices bearing as nearly as may be the same proportion to the total number of 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;

(b) such number of offices of President and Vice-President in the State which shall as nearly as may be one-third of the total number of offices of President and Vice-President in the State for the persons belonging to the Backward Classes;

Provided that out of the offices reserved under this clause, eighty per cent of the total number of such offices shall be reserved for the persons falling under Category 'A' and the remaining twenty per cent of the offices shall be reserved for the persons falling under Category 'B':

Provided further that if no person falling under Category 'A' is available, offices reserved for that category shall also be filled by the persons falling under Category 'B' and vice versa;

(c) not less than one-third of the total number of offices of the President and Vice-President in the State from each of the categories, reserved for persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes and those which are non-reserved, for women:

Provided that the offices reserved under this sub-section shall be allotted by rotation in the prescribed manner to different Municipal Councils.

Explanation.--For the removal of doubts it is hereby declared that the principle 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'.

7. For the aforesaid reasons, the Rules were also amended. Rule 13 of the Rules deals with Reservation of Offices of President and Vice-President. This rule reads as under.-

'Rule 13. Reservation of offices of President and Vice-President.--(1) Reservation of offices of President and Vice-President of the Municipal Councils and Town Panchayats for different categories in accordance with Sub-section (2-A) of Section 42 read with Section 353 shall be as specified in the table below.-

Sl. No.

Category

President

Vice-president

Total

Women

Total

Women

1. Scheduled Castes

CityMunicipal Council

4

1

4

1

TownMunicipal Councils

11

4

11

4

TownPanchavats

11

4

11

4

2. Scheduled Tribes

CityMunicipal Council

1

1

1

1

TownMunicipal Councils

2

1

2

1

TownPanchavats

3

1

3

1

3. Backward Classes A and B

CityMunicipal Council

11

4

11

4

TownMunicipal Councils

27

9

27

9

TownPanchavats

28

9

28

9

4.General

CityMunicipal Council

17

6

17

6

TownMunicipal Councils

40

13

40

13

TownPanchavats

44

15

44

15



Total

199

68

199

68

(2) The offices of President reserved for Scheduled Tribes shall be allotted by the Government to the Municipal Councils, or as the case may be, Town Panchayats having the highest percentage of population belonging to the Scheduled Tribes with reference to the total population of the municipal area. The same procedure shall be followed by the Government for allotting to the Municipal Councils, or as the case may be, Town Panchayats the same number of offices of Vice-President for members belonging to the Scheduled Tribes but excluding the Municipal Councils, or as the case may be, Town Panchayats in which the office of President have been already allotted to them.

(3) The offices of President and Vice-President of Municipal Councils or as the case may be, Town Panchayats in the State shall be allotted by the Government for members belonging to the Scheduled Castes in the same manner as specified in Sub-rule (1):

Provided that both the offices of President and Vice-President in any Municipal Council, or as the case may be, Town Panchayats shall not be allotted in favour of the category of Scheduled Castes and Scheduled Tribes only:

Provided further that if the reservation worked out to any category is less than 0.5% no offices of President and Vice-President be reserved to such category.

(4) The offices of President and Vice-President of the Municipal Councils, or as the case may be, Town Panchayats, reserved for Backward Classes and those of unreserved category, shall be allotted by the Government taking into consideration such factors as the Government may deem fit.

(5) The offices of President and Vice-President reserved for women in each category referred in Sub-rule (1) shall be allotted by the Government to the Municipal Councils, or as the case may be, Town Panchayats taking into consideration such factors as the Government may deem fit:

Provided that both the offices of President and Vice-President of the Municipal Council, or as the case may be, Town Panchayats shall not be reserved for women.

(6) The offices of President and Vice-President of Municipal Councils and Town Panchayats of the State to Scheduled Castes/Scheduled Tribes/Women and Backward Classes for the subsequent terms be determined by the Government from time to time by taking into consideration such factors as deem fit'.

8. The first election to the Municipalities were held in 1995-96 in accordance with the reservation policy indicated in the above rules. But, in the current election, which is second in sequence, when it was found that the State Government acting through its political executives has indulged in exercising the discretion conferred under Rule 13(6) in mala fide manner, the elected Councilors questioned the constitutional validity of the very source of power as well as its exercise as evidenced by Annexure-F and R-2 and succeeded in getting the relief as noticed above.

9. During the course of hearing, we required the learned Advocate General to place on record the norms on the basis of which the reservations had been made to the offices of the Chairpersons of the Municipalities, but, the learned Advocate General after seeking instructions fairly conceded that no such uniform pattern or norm can be placed before this Court to justify issuance of notifications at Annexure-F and R-2 by which reservations for the post of Chairpersons had been made in such bodies. He also could not deny or dispute the facts found by the learned Single Judge regarding interference by the MLAs and MLCs in making reservations to suit their personal adjustment requirements.

10. The learned Single Judge has struck down the rule both on the ground of impermissible delegation in favour of the State Government as well as on the

ground of conferring absolute discretion on the State Government in providing the impugned reservations, with which, we will be dealing hereinafter.

Re: Impermissible Delegation

11. Clause (4) of Article 243-T of the Constitution has specifically provided that the office of the Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may, by law, provide. Therefore, the manner of making reservations was to be provided by the State Legislature by itself or through its delegate by providing sufficient guidelines for exercise thereof. But, the State Legislature instead of providing the manner by itself, left it to be done by the rule making authority as is evidenced from Clause (c) of Sub-section (2-A) of Section 42 of the Act.

12. Clause (21) of Section 2 of the Act defines 'prescribed' to mean prescribed by rules made by the Government under this Act. But, curiously, instead of providing the manner of reservations by rotation, even in the rules, the State Government as a delegate of the legislature retained the power to itself in its executive side to be exercised in any manner it likes. This was totally impermissible. The powers so retained by the State Government was clearly amenable to abuse and as of fact it has been so found by the learned Single Judge. Since the very Sub-rule (6) of Rule 13 of the Rules authorises the executive to make reservations at its sole sweet will, without providing any guideline or standard for exercise of such power, the sub-rule is on its very face discriminatory in nature and thus is hit by Article 14 of the [Constitution of India](#). For this purpose, the learned Single Judge has rightly relied on the decision cited in the case of Common Cause, A Registered Society v. Union of India<sup>1</sup>, in para 23 whereof it has been held that:-

'Discretionary power which is capable of being exercised arbitrarily, is not permitted by Article 14 of the [Constitution of India](#)'.

13. For the said reasons, we find no occasion to interfere with the order of the learned Single Judge.

14. The next question is whether despite declaring Sub-rule (6) of Rule 13 and the impugned notifications at Annexure-F and R-2 as ultra vires and consequently quashing the same, whether the learned Single Judge was right in holding that 'it is made clear that this shall not affect the posts of President and Vice-President of the City Municipal Councils, Town Municipal Councils and Town Panchayats to which elections have already been conducted as on today'. The date of the impugned order was 15-6-2001.

15. Having agreed with the view taken by the learned Single Judge with regard to striking down of the impugned sub-rule and quashing impugned notifications, we found it desirable to direct that the State Government to immediately proceed with the making of appropriate rule providing for the reservations in question in accordance with the constitutional requirements.

16. The learned Advocate General very fairly conceded that the State Government will immediately proceed to frame the rules providing by itself the manner in which the reservations by rotation to the offices of the Chairpersons in municipalities has to be made and the executive will not be left with any discretion in this regard except to carry out the ministerial work so that the process of making reservations by rotation may be absolutely transparent and predictable. We place on record our appreciation for the State Government for at last conceding to the requirements of non-arbitrariness and fairness in all its acts, which as a welfare State, it should have been alive right from the inception.

17. The learned Advocate General has further submitted that the State Government will have no difficulty in making such rule, but the only problem will be that if in view of the new reservations to be made, and the elections to such offices where elections have been held and if those are found to be contrary to such reservations, then in such municipalities fresh elections to the offices of the Chairpersons will be required to be held, so a direction to this effect may be given by this Court.

18. We appreciate the difficulty of the Government as expressed by the learned Advocate General in holding of elections in all the City Municipal Councils, Town Municipal Councils and Taluk Panchayats. To avoid such difficulties, we direct that

the elections to the offices of Chairpersons should be held only if the reservations of particular category to be made hereinafter is found to be in conflict with the category of reservations made under notifications at Annexure-F and R-2 and not otherwise. To make it more specific, it is directed that if the category of reservations made remains the same both under the old notification as well new notification to be published hereinafter and if the elections have already been held to the offices of Chairpersons then in such City Municipal Councils, Town Municipal Councils and Town Panchayats, no elections need be held since it will be an unnecessary exercise and will merely unsettle the administrative set up of such bodies without any meaningful purpose.

19. The learned Advocate General after seeking instructions has stated at the Bar that the entire process of re-framing Sub-rule (6) of Rule 13 of the Rules and issuance of consequential notification providing for reservations to the offices of Chairpersons of the municipalities will be completed within 70 days from today. We agree with the proposal and accordingly direct that the said process should be completed on or before 3rd December, 2001. We further direct that within seven days of the issue of notifications by the State Government providing for reservations to the offices of the Chairpersons, the Councilors of the concerned City Municipal Council, Town Municipal Council and Town Panchayats, which has to be specified by the State Government by a separate order, shall initiate the process of elections of President and Vice-President in such bodies and complete the same as per the provisions contained in the rules. Till further elections, the present President and Vice-President will continue to hold the posts and discharge their statutory duties in accordance with law.

20. With the aforesaid observations and directions, the writ appeals are dismissed. Anyhow, there will be no order as to costs.