

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

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Court : Karnataka

Decided On : Jun-15-2001

Reported in : ILR2001KAR3655; 2002(2)KarLJ106

Judge : V. Gopala Gowda, J.

Acts : [Karnataka Municipalities Act, 1964](#) - Sections 42(2-A), 323 and 323(6); Karnataka Municipalities (President and Vice-President) Election (Amendment) Rules, 1995 - Rule 13, 13(1), 13(2), 13(3), 13(4), 13(5) and 13(6); [Constitution of India](#) - Articles 14, 226, 243T, 243T(1), 243T(4) and 243T(6)

Appeal No. : Writ Petition Nos. 21815, 21905, 21906, 21977, 22262, 22428, 22461 and 22779 of 2001

Appellant : Ramappa and ors.

Respondent : State of Karnataka and ors.

Advocate for Def. : A.N. Jayaram, Adv. General, ;Suman Hegde, Government Pleader, ;S.S. Patil and ;G.R. Gurumath, Advs.

Advocate for Pet/Ap. : Subhash A. Adi, ;Jayakumar S. Patil, ;Ashok Haranahalli, ;A.S. Mahesh, ;Y. Lakshmikant Reddy and ;V.T. Rayaraddi, Advs. and ;Mylaraiah Associates

Disposition : Petitions allowed

Judgement :

ORDER

V. Gopala Gowda, J.

1. These writ petitions are filed by the elected Councillors of City Municipal Councils and Town Municipal Councils in the State of Karnataka seeking to strike down Sub-rule (6) of Rule 13 of the Karnataka Municipalities (President and Vice-President) Election (Amendment) Rules, 1995 (hereinafter referred to as the 'Rules') as ultra vires and violative of Article 14 of the [Constitution of India](#) and to quash the notifications bearing No. UDD 47 MLR 2001, dated 30-5-2001 and UDD 47 MLR 2001 dated 2-6-2001.

2. In order to answer the legal questions raised in these writ petitions, certain brief facts are stated as under:

The State Government in exercise of its legislative power under Article 243-T(4) and (6) of the Constitution inserted Sub-section (2-A) to Section 42 of the [Karnataka Municipalities Act, 1964](#) (which is hereinafter referred to as 'the Act'), providing for reservation to the offices of President and Vice-President in the Municipal Councils and Town Panchayats for Scheduled Castes, Scheduled Tribes, Backward Classes and Women. The third proviso to Clause (c) provides that the offices so reserved to various categories shall be allotted by rotation in the manner prescribed to different Municipal Councils and Town Panchayats in the State. We are concerned with Rule 13 of the Rules. Sub-rule (1) provides for reservation as specified in the table therein. Sub-rules (2) to (5) prescribes the manner in which such reservation shall be made. Sub-rule (6) which is sought to be struck down will be extracted at the appropriate place. Invoking the power under Sub-rule (6) of Rule 13 of the Rules, the State Government issued notification dated 30-5-2001 allotting offices of President and Vice-President in the Municipal Councils and Town Panchayats to various categories as enumerated in Annexure-I to III to the said notification. By another notification dated 2-6-2001 the State Government modified certain reservations, which are clearly mentioned therein. Petitioners are seeking to quash the said notifications urging various legal

grounds.

3. The principal contention of learned Counsel for the petitioners is that Rule 13(6) confers unguided, unbridled power upon the State Government and consequently the notifications issued by it are without any relevant material basis. According to them, the above said sub-rule provides for arbitrary and unbridled power on the State Government and the same is violative of Article 14 of the [Constitution of India](#) and they have placed strong reliance upon the law declared by the Supreme Court in various cases which will be adverted to in this judgment. In other words, there is no declared policy by the State Government in the matter of allotting reservations to the chairpersons of various reserved categories as provided under the provisions of Section 42, Sub-section (2-A) and proviso to Clause (c) of that sub-section of the Act in respect of Municipal Councils and Town Panchayats. It has been argued that Section 323 of the Act confers power upon the State Government to frame rules for effective implementation of the intentment of the constitutional mandate as provided under Article 243-T of the Constitution and Section 42, Sub-section (2-A), proviso to Clause (c) of the Act. Sub-section (6) of Section 323 of the Act mandates that every rule so made shall be laid before each House of the State Legislature in the manner provided therein. The said rule has been held to be mandatory by the Full Bench of this Court in W.P. Nos. 3893 and 3894 of 1998 and connected writ appeals disposed of on 11-2-1999 (R. Prasanna Kumar and Anr. v. State of Karnataka and Ors.). It is contended on behalf of the petitioners that Sub-rule (6) of Rule 13 of the Rules is in the nature of delegation of power to the State Government which is not permissible in law. In support of this submission, Mr. Ashok Haranahalli appearing for some of the writ petitioners has placed reliance upon a passage at page 550 of Principles of Statutory Interpretation, Fourth Edition, authorised by Justice Guru Prasanna Singh. The learned Counsel contends that therefore the rule in question is bad in law and is liable to be struck down.

4. Mr. Jayakumar S. Patil, learned Counsel appearing for some of the petitioners made elaborate submissions. According to him, the conferment of power on the State Government for allotment of reservation is opposed to the mandate of legislation as provided under Section 42, Sub-section (2-A) of the Act. Learned

Counsel Mr. Ashok Haranahalli submits that the impugned notifications are not based on any definite declared policy prescribed by the State Government as required under law. Before issuing the calendar of events for each election to be held to the Municipal Councils and Town Panchayats, the policy or guidelines have to be published each time. Absence of definite policy regarding reservation to be made by allotment to the offices of chairpersons to the Municipal Councils and Town Panchayats for subsequent terms Tanta-mounts to lack of transparency and it is possible to promote nepotism and arbitrariness and the same is hit by Article 14 of the [Constitution of India](#).

5. Mr. Subhash B. Adi appearing for some of the petitioners in the connected writ petition submitted that the second notification dated 2-6-2001 changing the reservation made in the earlier notification dated 30-5-2001 was without any relevant consideration or criteria. The reservation is made to appease the persons who are in power and therefore the same is liable to be quashed. He placed strong reliance on the unreported judgment of this Court in W.P. No. 39572 of 2000 and connected matters disposed of on which has dealt with Article 243-T(1) wherein the notification issued by the State Government for conducting elections to the Municipal Councils and Town Panchayats, the Division Bench of this Court, after taking into consideration various aspects of the case at paragraph 20 of the order, this Court has held that the allotment of seats to the reserved categories in the wards in the absence of declared policy by the State Government is violative of Article 14 of the Constitution. The State Government having accepted the said judgment has declared the policy in allotting the reserved seats to the wards in respect of various categories as provided under the provisions of the Act prior to conducting elections to the Municipal Councils and Town Panchayats in the State.

6. Mr. A.N. Jayaram, learned Advocate General, vehemently argued contending that the impugned rule is legal and valid and justifying the impugned notifications. According to him, the State Government exercising its power under Section 323 of the Act while framing rules has retained its freedom and power to make reservations as provided under Section 42, Sub-section (2-A) of the Act. He submits that the sub-committee comprising of five Cabinet Ministers under the chairmanship of a senior most Cabinet Minister has taken into consideration all the

relevant factors and determined the allotment of reservation to chair- persons of different Municipal Councils and Town Panchayats and based upon the same the notification dated 30-5-2001 had been issued. Since some modifications were necessary on certain material facts to some of the Municipal Councils and Town Panchayats, the second notification dated 2-6-2001 had been issued. The learned Advocate General submits that there is no delegation of power to the State Government in the matter under impugned sub-rule as contended by the learned Counsel for the petitioners. According to him, having regard to the mandate of the Constitution, the provisions of the Act and the Rules framed thereunder, the State Government alone is competent to determine the reservation policy in the matter of allotment of chairpersons to the various reserved categories of the Municipal Councils and Town Panchayats for the subsequent terms on rotation. He submits that the vague allegations made by the petitioners about arbitrariness in the impugned sub-rule and the alleged mala fide action on the part of the State Government in issuing the impugned notifications in exercise of its power is not sufficient to interfere in the matter by this Court. Reliance was placed by him on the decisions in *Indian Express Newspapers (Bombay) Private Limited and Ors. v. Union of India*, and Ors. (paragraph 73) and *State of Andhra Pradesh and Ors. v. McDowell and Company and Ors.*, (paragraph 45) in support of his submission contending that, the allegation of arbitrariness by the petitioners in the matter, they must show that their fundamental rights are affected and the same shall be established. The learned Advocate General has also placed reliance upon the decision in *State of Tamil Nadu v. Hind Stone*, in support of the proposition of law that, the State Government has got power under Section 323 of the Act to frame rules for the effective implementation of the constitutional mandate and the statutory provisions of Section 42, Sub-section (2-A) of the Act. According to him, the same has been strictly complied with by the State Government and therefore it is not open for the petitioners to question the legality and validity of Sub-rule (6) of Rule 13 impugned in these writ petitions. Reliance was also placed by him on the decision in AIR 1982 SC 982 (sic), contending that petitioners must show and establish that their statutory rights are infringed in issuing the impugned notifications, then only this Court can exercise its power. It has been further submitted by him that in matters of this nature the power of judicial review can be

exercised by this Court in exercise of its power under Article 226 of the [Constitution of India](#) only when it is shown that there is violation of their fundamental and statutory rights in challenge to the impugned notifications, as the question of violation of fundamental rights do not arise in all these petitions. According to him, this Court cannot strike down the impugned sub-rule under challenge unless it is shown that fundamental rights of the petitioners are infringed or that the State Government lacks legislative competency to make the said rule. The learned Advocate General has made further responsible submission that the State Government has neither declared guidelines nor policy before issuing the impugned notifications, as the policy in reservation allotting to the offices of chairpersons to the Municipal Council and Town Panchayats is in-built in the impugned rules and under the provisions of the Constitution as provided under Article 243-T and under the provision of Section 42(2-A) of the Act by rotation of offices of chairpersons to various reserved categories for subsequent terms. The learned Advocate General submits that the power conferred upon the State Government in the impugned Sub-rule (6) of Rule 13 is neither unguided or unbridled for the reason that it has to take certain relevant factors, namely the criteria laid down in the provision of Article 243-T in the Constitution, law enacted by the State Legislature and rules framed by the State Government under the said provision of Section 323 of the Act as required under proviso to Clause (c) of Sub-section (2-A) of Section 42 of the Act and it has to strictly comply with the provisions of the Act and Rules. Further, it is urged that predetermination of allotment of offices to the chairpersons of various reserved categories to the Municipal Council and Town Panchayats is not possible and desirable. He further submitted that definite scheme for that purpose is either necessary or desirable for implementation of the provision of Section 42(2-A) of the Act and the impugned rule. Therefore, the learned Advocate General has prayed for dismissal of the writ petitions and to uphold the impugned rule and the notifications. A statement has been made on behalf of the respondents that out of 144 Municipal Councils where elections were held in the State out of which in five districts, elections to the offices of chairpersons have already been held for 13 Municipal Councils.

7. After hearing the learned Counsels for the parties at length, this Court perused the records maintained by the State Government pertaining to the impugned

notifications. On the basis of the legal submissions made in these matters, the following two points that would arise for consideration and answer the same with reference to the legal grounds, the constitutional provision under Article 243-T provisions of the Act and the rules referred to supra and law on the question:

(1) Whether Sub-rule (6) of Rule 13 of the Rules is in conformity with Section 42, Sub-section (2-A) and proviso to Clause (c) of the Act conferring right upon the State Government to fix the reservation for the offices of President and Vice-President of Municipal Councils and Town Panchayats for the subsequent terms from time to time by taking into consideration such factors as deem fit?

(2) Whether the impugned notifications are bad in law in the absence of a definite declared policy in the matter of making reservations as part of the rules and are those notifications vitiated?

In order to answer these two questions, it is necessary to look into the relevant provisions of the Act and the Rules. The proviso to Clause (c) of Sub-section (2-A) of Section 42 of the Act reads as under.--

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

Prescribed manner means by framing relevant rules as provided in Subsection (2-A) of Section 42 of the Act, the relevant portions of which reads as under.--

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

(a) such number 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 be 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'.

8, After considering the rival contentions and perusing the documents and the record of the State, this Court proceeds to examine the challenge made to Sub-rule (6) of Rule 13 of the Rules as to its legality and validity. This sub-rule empowers the State Government to determine the reservation to the offices of President and Vice-President of Municipal Councils and Town Panchayats for the subsequent terms from time to time by taking into consideration such factors as deem fit. A plain reading of this sub-rule makes it clear that there is no proper policy or guidelines for determining the reservations to be made to the various reserved categories. The words 'taking into consideration such factors as deem fit' by the Government, implies that it is the will of the Government to take the factors into consideration which it deems fit. The factors to be taken into consideration is not mentioned. State Governments of different political parties in power may take different factors into consideration for determining the reservation policy. Such unguided and uncontrolled power conferred upon the State Government in this sub-rule gives room for arbitrary exercise of power by the Government in power to suit their convenience. Such unbridled and unguided rule is contrary to the

provisions of Sub-section (2-A) of Section 42 of the Act and proviso to Clause (c) of this section. The said sub-section prescribes that the reservation shall be made to the persons belonging to the SCs and STs and the number of such office bearing as nearly as may be the same proportion to the total population of SC/ST category of persons in the State and the allotment of reservation of offices of chairpersons to the Municipal Councils and Town Panchayats to the reserved categories shall be by rotation as provided in the proviso to Clause (c) of that sub-section. The impugned rule has been framed by the State Government ignoring the provisions of Section 42, Sub-section (2-A) and Section 323(6) of the Act and hence the same is contrary to the said provision of the Act. The impugned sub-rule is also not in consonance with Sub-rules (2) to (5) of Rule 13 of the Rules which prescribes the manner in which allotment of reservation is required to be made to the chairpersons for the first time to the offices of President and Vice-President of Municipal Councils and Town Panchayats in the State. The allotment of reservation is required to be made taking into consideration the highest percentage of population in a particular category after the provision of Section 42, Sub-section (2-A) was inserted to the Act by way of an amendment to the Act pursuant to the legislative power conferred upon the State under Sub-articles (4) and (6) of Article 243-T of the Constitution. But Sub-rule (6) of Rule 13 empowers the Government to take such factors which it considers deem fit for allotment of offices of chairpersons to the various reserved categories for subsequent terms. Virtually this makes Sub-rules (2) to (5) redundant and runs contrary to those sub-rules. In order to avoid arbitrariness, the Government should have framed the rule in such a manner that allotment of reservation to the offices of chairpersons to various reserved categories shall be made on a definite and fixed policy fixed by the State Government as part of the rules in accordance with the other provisions of the statute so as to achieve the intendment and object of the Constitution and the Act are sought to be achieved. The same is taken away by the State Government by conferring unguided and uncontrolled power to the State Government. Hence, the impugned rule is bad in law and liable to be struck down.

9. Mr. Ashok Haranahalli, learned Counsel for some of the petitioners has rightly placed reliance upon the decision rendered in 'Common Cause', a Registered Society v. Union of India, at paragraph 23 which relevant portion is extracted as

hereunder:

'23. Such a discretionary power which is capable of being exercised arbitrarily is not permitted by Article 14 of the [Constitution of India](#). While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category. If there are two eminent sportsmen in distress and only one petrol pump is available, there should be clear, transparent and objective criteria/procedure to indicate who out of the two is to be preferred. Lack of transparency in the system promotes nepotism and arbitrariness. It is absolutely essential that the entire system should be transparent right from the stage of calling for the applications upto the stage of passing the orders of allotment. The names of the allottees, the orders and the reasons for allotment should be available for public knowledge and scrutiny. Mr. Shanti Bhushan has suggested that the petrol pumps, agencies etc., may be allotted by public auction category-wise amongst the eligible and objectively selected applicants. We do not wish to impose any procedure on the Government. It is a matter of policy for the Government to lay down. We however, direct that any procedure laid down by the Government must be transparent, just, fair and non-arbitrary'.

Same is the view taken by the Apex Court in another case of State of Punjab and Anr. v. Khan Chand, at paragraph 8 and also in the judgment of the Apex Court in case of Ramana Dayaram Shetty v. The International Airport Authority of India and Ors., at paragraph 10 with reference to the concept of rule of law and 'The Law of the Constitution' or the definition given by Hayek in his 'Road to Serfdom' and 'Constitution of Liberty as pointed out by Mathew, J., in the relevant portion from the said paragraph is extracted as hereunder:

'10. . . . The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power- holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his 'The Law of the Constitution' or the definition given by Hayek in his 'Road to Serfdom' and 'Constitution of Liberty' or the exposition set forth by Herry Jones in his 'The Rule of Law and the Welfare State', there is, as pointed out by Mathew, J., in his article on 'The Welfare State, Rule of Law and Natural Justice' in Democracy, Equality and Freedom 'substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found'. It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege'.

It is held that conferment of vast power upon an authority would lead to abuse of power, which is violative of Article 14 of the Constitution. In view of the law laid down by the Supreme Court in the aforesaid cases and the statutory duty cast upon the State Government, it is obligatory on the part of the State Government to prescribe a fixed policy for allotment of reservation to various reserved categories as contemplated under Sub-section (2-A) of Section 42 of the Act as part of the rule by way of an appendix. The Government shall not have any option in the matter except to follow the policy or guidelines so fixed once as part of rule. On each occasion of general election to the Municipal Councils and Town Panchayats it shall follow such guidelines that would be specified as part of rule to allot reservation of chairpersons to various reserved categories for offices of President and Vice-President to the Municipal Councils and Town Panchayats, but shall not venture upon on such factors which the Government in power deems fit as

presently provided in the Sub-rule (6) of Rule 13. In this view of the matter, the submissions of learned Advocate General that the rule in question is legal and valid, cannot be accepted. There cannot be any quarrel on the law laid down by the Apex Court in the decisions of *Indian Express Newspapers (Bombay) Private Limited, supra*, *State of Andhra Pradesh, supra* and *State of Tamil Nadu supra*, relied upon by the learned Advocate General in support of his submissions. The aforesaid judgments are inapplicable to the cases on hand, as the petitioners' Counsels have correctly placed reliance upon the judgments of the Apex Court to show that impugned rule and notifications are vitiated on account of arbitrariness, legal mala fides, legal malice and for extraneous political reasons.

10. Sub-rule (6) of Rule 13 of the Rules is also bad in law for one more reason that as the same is contrary to Sub-rules (2) to (5) of Rule 13. Sub-Rules (2) to (5) are mandatory in nature and they are self-contained rules providing certain guidelines for implementation and Sub-rule (6) which is contrary to the same cannot be allowed to stand any more. Sub-rule (6) is also in the nature of delegation of power to the State Government which is contrary to the proviso to Clause (c) of Sub-section (2-A) of Section 42 of the Act. Mr. Ashok Haranahalli has rightly relied upon the passage from the textbook of 'Principles of Statutory Interpretation' authored by Justice Guru Prasanna Singh. The relevant portion of that passage is extracted:

'Even a discretionary administrative power entrusted by a statute to a particular authority cannot be further delegated except as otherwise provided in the statute. 'The principle against sub-delegation is reasoned from the maxim *delegatus non potest delegare*' and the correct rule of construction is stated to be that, 'a discretion conferred by statute is *prima facie* intended to be exercised by the authority on which the statute has conferred it and by no other authority but this intention may be negatived by any contrary indications found in the language, scope or object of the statute'.

This above said view has been expressed by various pronouncements made by the Apex Court in the following cases:

Barium Chemicals Limited and Anr. v. Company Law Board and Ors., State of Rajasthan and Anr. v. Hari Ram Nathwani and Ors. and A. K. Roy and Anr. v. State of Punjab and Ors..

11. By careful reading of the above said passage laid down by the Apex Court in the cases cited supra along with the mandatory provisions of Sub-section (2-A) of Section 42 and proviso to Clause (c) of the Act read with Section 323(6) of the Act, while framing the impugned rule there is sub-delegation of power to the State, which is in violation of Sub-section (6) of Section 323 of the Act as every rule made under the Act has to be laid before each House of the State Legislature while in session. In the instant case, both the Houses of Legislature have no opportunity to look into the same as the State Government itself exercised the power. The right conferred upon the State Legislature under the provision of Subsection (6) for its scrutiny of the rule has been taken away by the State Government while framing the impugned sub-rule to make any modification of the rule so framed. Further retaining such power by the State Government itself in the impugned sub-rule for allotment of offices to the chairpersons to various reserved categories on rotation for subsequent terms to the Municipal Councils and Town Panchayats Tanta-mounts to encroachment upon the statutory right of the State Legislature. Therefore, this Court is of the firm view that retaining of the power by the State Government in the impugned rule for allotment of offices of chairpersons to the reserved categories in the Municipal Councils and Town Panchayats on rotation for subsequent terms amounts to sub-delegation of power to it, which is totally impermissible in law and therefore the impugned sub-rule is liable to be struck down as it confers arbitrary and unguided power and State Government shall not retain power in the rule while exercising its rule making power.

12. Now I proceed to examine the second question relating to the two impugned notifications. Learned Advocate General submitted that a committee of five Cabinet Ministers was constituted for fixing the reservation policy and based on the recommendations made by the said committee the first notification dated 30-5-2001 had been issued. The file of the said committee is not produced and therefore it is not possible to ascertain the factors that took into consideration for its recommendations. However, the proceedings of the committee dated 15-5-

2001 found in the file produced before the Court reveals that the committee had fixed four guidelines for fixing reservation to the posts of President and Vice-President of various reserved categories. Accordingly, notes have been put up for approval in the file by the Principal Secretary of the Urban Development. The Cabinet Sub-Committee in its meeting dated 30-5-2001 as per the note No. 24 took the view that it was not necessary to issue the guidelines for allotment of offices of chairpersons to various reserved categories and further directed the concerned officers to proceed further in the matter regarding allotment of offices on the basis of the earlier notification bearing No. A.E. 647 MLR 95, dated 20-12-1998, which is a clear case of arbitrary exercise of power on irrelevant factors though in its earlier proceedings dated 17-5-2001 at paragraph 21 of the file it has taken decision for publishing the guidelines for allotment of offices of the chairpersons on rotation for subsequent terms to the various reserved categories. This decision of the Sub-Committee and stand of the Government is wholly untenable in law in view of the decision of this Court in W.P. No. 39572 of 2000 in which judgment this Court has interpreted Article 243-T(1) of the Constitution and held that the State Government shall frame the guidelines and on that basis the allotment of seats to the wards in the Municipal Councils and Taluk Panchayats for conducting elections shall be made. The above said decision of the Division Bench of this Court was accepted and implemented, when such being the undisputed fact it is ununderstandable as to how State Government can take different stand. The file produced by the State Government to justify the impugned notification does not disclose the relevant factors that have been taken into consideration in allotting offices of chairpersons to the reserved categories as provided under Section 42, Sub-section (2-A) of the Act, Therefore, the allotment of offices of chairpersons on rotation to the various reserved categories in the notification is a clear case of arbitrary exercise of power by the State Government in exercise of its power Sub-rule (6) of Rule 13, which is in violation of Article 14 of the [Constitution of India](#) and the law declared by the Apex Court in the cases referred to supra. No reasons are assigned to come to that conclusion. The same had been approved and the notification dated 30-5-2001 had been issued. The State Government has not produced any material except the file to show that its procedure in allotment of offices of chairpersons to reserved categories on rotation is on definite procedure

laid down by the Government which must be transparent, just, fair and non-arbitrary. Further, in view of the responsible submissions made by the learned Additional Government Advocate that there are no definite policy or guidelines are framed by the State Government for the aforesaid purposes as it is stated that they are neither necessary nor desirable for the reason that the State Government has exercised its discretionary power and freedom as provided under the impugned rule strictly in conformity with law is wholly untenable in law. From the above said submission of the learned Additional Government Advocate and lack of any material in the file produced by the State Government to show that on what relevant material factors the impugned notifications are issued this Court has to record its finding holding that the action of the State Government in issuing the impugned notifications is arbitrary which is in utter violation of Article 14 of the [Constitution of India](#). It is thus clear that the prescription made in Sub-rules (2) to (5) of Rule 13 of the Rules is not followed. It follows that the notification dated 30-5-2001 was issued contrary to the statutory requirements and the same is liable to be quashed.

13. Adverting to the second notification dated 2-6-2001, perusal of the file reveals interesting and chockfull factors. According to the learned Advocate General, the said notification was issued since some modifications were warranted to the first notification on account of certain factual matters. Pages 130 to 135 in the file produced before the Court are the letters dated 31-5-2001 written by Sri D.K. Shivakumar, Minister for Co-operation, the reservations to be made has been clearly mentioned. The Chief Minister has ordered on the same to issue the modified notification. Sriyuths Mohan K Shetty, M.L.A., Kumta Constituency, Syed Yasin, M.L.A., Raichur, in which letter Venkatesh Naik (M.P.) from Raichur Parliamentary Constituency, K.M. Chikkamada Naika, M.L.A., Bannur Constituency and G.D. Naik, M.L.A., Bhatkal Constituency, seeking change of certain reservations made in their respective constituencies. Based on those letters, a note has been made in paragraph 29 of the notes sheet in the file to issue modified notification. The same has been approved by the Chief Minister and consequently the notification dated 2-6-2001 had been issued. It is thus clear that the second notification had been issued pursuant to the letters written by the aforesaid politicians. Another interesting fact is, along with the letter of Mr. Syed

Yasin, M.L.A., Raichur, a list of candidates has been enclosed, which contain the candidates belonging to Congress, independent candidates who joined Congress and opposition candidates. A note is made thereon indicating the reservation to be made except BCB (Women). This exclusion has been indicated as there was no woman Congress candidate but such candidate is available in opposition candidates.

14. From what has been noted by me above from the notings of the file of various dates, it is obvious that the modified notification dated 2-6-2001 had been issued at the instance of political leaders in power for extraneous reasons. Such action was totally impermissible and the same is against the statutory prescription and rule of law. Interference by political leaders in power in the matter is glaring. It is nothing but abuse of power. Power is a trust conferred upon the Government by the citizens. The modified impugned notification dated 2-6-2001 was issued for the reasons mentioned at Note No. 29 in the file, without there being any approval of the same by the sub-committee constituted but there is an approval of the Chief Minister. The Government has to maintain that trust and exercise the power strictly in conformity with the provisions of the Act and the Rules. The exercise of power by the executive is for extraneous considerations to overcome the political challenges. Since the notification dated 2-6-2001 has been issued contrary to the provisions of the Act and Rules and for extraneous reasons, the same is bad in law and liable to be quashed. The impugned notifications are also tainted with legal mala fides and legal malice as rightly contended by the learned Counsels for the petitioners.

15. What will happen if power conferred upon authority is exercised other than for the purpose for which it is entrusted with it has been clearly pointed out by the Hon'ble Supreme Court in the case of State of Punjab and Anr. v. Gurdial Singh and Ors., quoting the Benjamin Disraeli the relevant portion at paragraph 9, which is extracted hereunder:

'9. The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of

power sometimes called colourable exercise or fraud on power and often-times overlaps motives, passions and satisfactions is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated 'I repeat ... that all power is a trust that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist'. Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act'.

In view of the fact that the notification dated 2-6-2001 had been issued at the intervention of Congress Cabinet Ministers, M.Ps. and M.L.As. it has to be held that the exercise of power is not by the Government independently. Hence, the said notification is liable to be quashed.

16. For the reasons stated supra, I.A. Nos. III and IV filed in W.P. No. 21815 of 2001 for impleading and additional prayer are dismissed as not pressed and I.A. No. V is allowed. Further, applications filed in all these cases raising additional grounds seeking additional prayers and producing additional documents are allowed. Counsels for the petitioners are directed either to amend the writ petitions suitably or to file amended petitions, as the case may be, within a period of ten days.

17. Since it is stated that elections to the chairpersons have already been over in 13 Municipal Councils in the State as on today, quashing of the impugned notifications and declaring Sub-rule (6) of Rule 13 of the Rules would affect their position. They are not before this Court. Since they have been duly occupying the offices, their offices shall not be disturbed. Therefore, the relief has to be moulded in such a way that the elections already conducted as on today shall not be disturbed.

18. Before concluding, it has to be observed that the Government take necessary steps bearing in mind the provisions of Sub-section (2-A) of Section 42 of the Act and Sub-rules (2) to (5) of Rule 13 of the rules and publish the guidelines as appendix to the rules specifying relevant factors and criteria well in advance each time before issuing the calendar of events for general elections to the City Corporations, Municipal Councils, Town Panchayats for allotment of offices to the chairpersons to various reserved categories on rotation as provided under the above said provisions for subsequent terms with a view to provide political and social justice to SCs, STs, BCs and women which is the dream of the framers of the Constitution.

19. Writ petitions are allowed. Sub-rule (6) of Rule 13 of the Karnataka Municipalities (President and Vice-President) Election (Amendment) Rules, 1995 is hereby struck down as arbitrary, ultra vires and violative of Article 14 of the [Constitution of India](#). The impugned notifications bearing No. UDD 47 MLR 2001, dated 30-5-2001 and No. UDD 47 MLR 2001, dated 2-6-2001 respectively are quashed. 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.

20. It is hoped and trusted that the State Government, without any delay, will frame definite reservation policy/guidelines by way of appendix to the rules referred to supra in conformity with the provisions of Section 42, Sub-section (2-A) and proviso to Clause (c) to that sub-section for reservation of offices of President and Vice-President by rotation for subsequent terms in the Municipal Councils and Town Panchayats in the State of Karnataka keeping in view the object sought to

be achieved as per the constitutional mandate under the provision of Article 243-T of the [Constitution of India](#) by covering all the Municipal Councils and Town Panchayats in the State in such a way that litigation of this nature will not arise in the future.

21. Office may furnish the operative portion of this order to the learned Advocate General to take necessary steps for speedy compliance and to avoid unnecessary delay in the matter.

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