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Court : Karnataka

Decided On : Apr-05-2005

Reported in : ILR2005KAR2051; 2005(4)KarLJ449

Judge : D.V. Shylendra Kumar, J.

Acts : [Karnataka Panchayat Raj Act, 1993](#) - Sections 44(2)

Appeal No. : W.P. No. 12504/2005

Appellant : Narayanamma

Respondent : The State of Karnataka Represented by Its Secretary Panchayat Raj and Rural Development Dept. and or

Advocate for Def. : H.B. Narayana, High Court Government Pleader for R.1, 2 and 4

Advocate for Pet/Ap. : Mahale, Sr. Counsel for ;P.H. Virupakshaiah, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. Petitioner is a person who has been elected to the membership of Doddatekahalli Grama Panchayat in the election held on 8.3.2005. Petitioner had contested from a non-reserved constituency. The Deputy Commissioner of the District issued notification dated 23.3.2005 vide Annexure-C interalia indicating the reservation of the posts of President in several gram panchayats of the district including Sidlaghatta Taluk wherein the post of President in Doddatekahalli Grama Panchayat had been reserved in favour of a woman candidate belonging to backward class 'B' category and the post of Upadhyaksha was not reserved. However, in terms of another notification dated 30.3.2005 in NO. ELN (2) CR 59/2004-05 vide Annexure-D, the reservation for the post of President in this Grama Panchayat was sought to be de-reserved and made non-reserved.

2. Petitioner though elected from the general constituency, is a person belonging to backward 'B' class and was aspiring to become the President of the Panchayat in the absence of any other candidate amongst the members of the Panchayat in this category and the expectations were put paid because of the subsequent notification. Aggrieved by this subsequent notification dated 30.3.2005, the present writ petition is filed.

3. Sri Padmanabha Mahale, learned Senior counsel has put forth a two fold contention. It is firstly urged that the very reasoning mentioned in the notification to shift the reservation betrays the malafide intention on the part of the authority issuing the notification to deny the petitioner the definite possibility of being elected as Adhyaksha of the panchayat; that having issued a notification dated 12.3.2005, it could not have meddled or modified the same to the detriment of the petitioner and the reason for shifting viz., that there was no candidate belonging to Backward 'B' class amongst the members was factually incorrect as petitioner was very much available and more over, the modified notification is clearly in contravention of the provisions of Sub-section 2 of Section 44 of the [Karnataka Panchayat Raj Act, 1993](#) (for short 'the Act'). The submission of Mr. Mahale is that the reason is not tenable as in the earlier round of election while the reservation was in favour of backward class A, there is no embargo under the proviso for reservation in the

next round in favour of backward class 'B' as the reservations in respect of two categories are separate and independent; that while one-third of available posts are required to be reserved in favour of backward classes, 80% of it is required to be reserved in favour of backward class A and 20% of it in favour of backward class B, in which event, backward class B can take separate reservation and cannot be characterised as one which results in repetition in favour of backward classes for the purpose of ensuring rotation of reservations. Learned counsel submits that for such reasons, the modified notification dated 30.3.2005 requires to be quashed and the earlier notification be restored.

4. While opportunity to contest the post of President is definitely available to the petitioner as the post is now not reserved, she can definitely aspire to become President, but, opportunity for being elected as a candidate from backward class B category is definitely lost. To this extent, the petitioner is undoubtedly aggrieved. However, question is as to whether the subsequent notification modifying the earlier notification dated 12.3.2005 de-reserving the post of President in panchayat from backward class B to General category violates any statutory provision.

5. Reservation provided in favour of backward classes put together is at one-third. It is within this one-third of total posts, there is a sub-division to the extent of 80% and 20% in favour of backward classes A and B. That means, when reservation in favour of backward classes is provided for, class B gets reservation once in five terms of reservation earmarked for backward classes. It is not as though reservation in favour of backward class B is in addition to reservation in favour of backward class A. In fact it is only an internal adjustment within the one-third available for backward classes. This is so because proviso to Sub-section 2 of Section 44 read as under:

'Provided that out of the offices reserved under this clause eighty percent of the total number of such offices shall be reserved for the persons falling under category 'A' and the remaining twenty percent 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, the offices reserved for that category shall also be filled by the persons falling under category

'B' and vice versa;'

Provided that the offices reserved under Section 44(2) of the Act shall be allotted by rotation to different Grama Panchayats. This only means that reservation if given to any category in one Grama Panchayat in a particular round of election, it should be shifted to some other Grama Panchayat and should not be repeated to the very Grama Panchayat in the next round also. It is only here that the learned Senior Counsel for the petitioner submits that unless the respondents are able to demonstrate that the reservation has been shifted to some other Grama Panchayat to make good the one-third reservation in favour of backward classes, perhaps the compliance with the overall reservation of one-third will be satisfied and as the notification does not indicate any such de-reservation, the modified notification obviously renders the reservation at one-third not achieved and therefore, the notification should be held as bad on this ground also.

6. Shifting of reservation is not an aspect that is disclosed in the impugned notification, What is obvious is if a reservation is repeated, it is obvious that it has not been shifted.

7. When once the argument that backward classes A and B cannot be treated as independent categories for the purpose of reservation of one-third to backward classes is held to be not tenable, a reservation in favour of backward -B after reservation in favour of backward class A in die previous round of election amounts to repetition of the reservation. That is precisely what is frowned upon by the proviso to Sub-section 2 of Section 44 of the Act. If the notification only seeks to achieve the purpose and object of proviso to Sub-section 2 of Section 44 of the Act and in fact it was achieved, no exception can be taken. It may be true that the petitioner feels aggrieved because of a lost opportunity, but, that in itself is not sufficient to invalidate or quash the notification. As I find no statutory infraction in the issue of the notification dated 30.3.2005, no occasion for this Court to interfere with the same.

8. While it is open to the petitioner to contest the post even from the general category as provided for in the impugned notification, mere loss of a good opportunity to the petitioner itself is not sufficient to quash the notification.

Accordingly, the writ petition is dismissed.

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