

A. Ramdas and Another Vs. State of Karnataka and Another

A. Ramdas and Another Vs. State of Karnataka and Another

SooperKanoon Citation : sooperkanoon.com/382325

Court : Karnataka

Decided On : Jan-05-2001

Reported in : ILR2001KAR5354; 2001(5)KarLJ471

Judge : G.C. Bharuka and ;K. Sreedhar Rao, JJ.

Acts : [Constitution of India](#) - Articles 14, 32, 243-Q, 243-T, 243-ZA, 243-ZG, 226, 227 and 329-B; [Karnataka Municipalities Act, 1964](#) - Sections 11, 11(1), 13 and 13(1-A); [Karnataka Municipal Corporations Act, 1976](#) - Sections 7, 21 and 21(1-A)

Appeal No. : Writ Petition Nos. 39572 of 2000 and 31 of 2001

Appellant : A. Ramdas and Another

Respondent : State of Karnataka and Another

Advocate for Def. : Sri A.N. Jayaram, Adv. General and ;Sri Sudeesh Pai, Additional Government Adv.

Advocate for Pet/Ap. : Sri Ashok Harnahalli, Adv.

Disposition : Writ petitions accordingly disposed of

Judgement :

ORDER

G.C. Bharuka, J.

1. These writ petitions have been filed as Public Interest Litigations. The petitioner in W.P. No. 39572 of 2000 is a member of the Karnataka Legislative Assembly elected from Krishnaraja Constituency, Mysore. The petitioner in W.P. No. 31 of 2001 is the resident of Raichur Town and is an elected member from Ward 17, Raichur City Municipal Council. They have filed the present writ petitions questioning the constitutional validity of the two notifications dated 11-12-2000 issued by the State Government respectively under Section 21 read with Section 7 of the [Karnataka Municipal Corporations Act, 1976](#) (in short, the 'Corporation Act') and under Section 13 of the Municipalities Act, 1964 (in short, the 'Municipalities Act').

2. The impugned notifications pertain to the Corporation of City of Mysore and City Municipal Council of Raichur. These notifications have been placed at Annexures-A to the respective writ petitions. By these notifications, the State Government has inter alia provided for reservation for Scheduled Castes and Scheduled Tribes, Backward Classes and for Women in each territorial ward. Annexure-1 to the impugned notifications sets out category of reservation for each of the territorial wards in which the respective urban local bodies have been divided.

3. Similar notifications have been issued in respect of all other 147 urban local bodies comprising of City Municipal Councils, Town Municipal Councils and City Municipal Corporations since for these bodies elections were required to be held during January, 2001.

4. The determination of categories of reservation for individual wards in the urban local bodies as provided under the notifications like the impugned ones has triggered controversies leading to filing of a set of writ petitions including the present writ petitions. Admittedly, category of reservation made for each of the wards has been changed from what was determined during the earlier elections to the local bodies held in 1996.

5. According to the State Government, the above changes in the categories of reservation for the wards have been made to comply with the requirements of Article 243-T of the [Constitution of India](#), Section 7 read with Section 21 of the Corporation Act and Section 11 read with Section 13 of the Municipalities Act.

6. The petitioners and the Government are not at issue that the keeping in view the above provisions, the allotment of seat to a particular category of reservation in a given territorial ward should not be continued in successive elections of the local bodies and there is a mandate for effecting the rotation of the reserved categories amongst the different wards of such bodies, in successive elections.

7. The main grievance of the petitioners in the present public interest litigations is though the rotation of categories of reservation is permissible both under the Constitution and the respective statutes but the same has to be done in accordance with the professed policy identifiable through the statutory rules to be framed under the Acts and not in the manner in which the Government has done under the impugned notifications, which hardly conform to any principle or pattern based on rationality, reasonableness and transparency. According to the petitioners, reallocation of reservations has been done by the Government by adopting the policy of pick and choose in order to suit the interests of members belonging to the political party in power. It is their contention that the impugned notifications providing for wardwise reservations does not conform to rotational policy envisaged under the Constitution and it has been engineered with mala fide to harm the members of political parties in opposition or the prospective candidates who may be found to be unfavourable to their interest. It is also their contention that the power of rotation has been exercised by the Government for extraneous reasons, which are impermissible in any democratic set up committed to healthy administration meant to serve public interest at large and nothing else.

8. In order to appreciate the grievance raised herein, one needs to refer to the respective provisions in the Constitution and the concerned State enactments, namely, the Karnataka Municipal Corporation Act and the Karnataka Municipalities Act.

9. Part IX-A of the Constitution makes provisions for the Municipalities. Clause (e) of Article 243-P defines Municipality to mean an institution of self-Government constituted under Article 243-Q. It cannot be disputed that three Urban Local Bodies namely the Town Municipal Council, City Municipal Council and the City Municipal Corporation constituted under the above Acts are 'Municipalities' within

the constitutional meaning of the word.

10. Article 243-T of the Constitution makes provision for reservation of seats. This article reads as under.-

'248-T. Reservation of seats.--(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality'.

11. In furtherance of the above constitutional mandate, the State legislature has made appropriate provisions in the respective State enactments. Section 13 of the Municipalities Act reads as under.-

'13, Wards for elections.--(1) For the purposes of election of councillors to be elected to fill the seats under clause (a) of subsection (1) of Section 11, the Government shall, by notification determine.-

(a) the number of territorial wards into which the municipal area shall be divided;

(b) the extent of each territorial ward;

(c) the number of seats allotted to each territorial ward which shall be one; and

(d) the number of seats, if any, reserved for the Scheduled Castes, Scheduled Tribes, Backward Classes and for women in each territorial ward:

Provided that the territorial wards formed shall comprise, as far as may be, of contiguous blocks'.

12. Similarly, Section 7 of the Corporation Act provides for Constitution of the Corporation. Sub-section (4) thereof recognises constitutional mandate for allotment by rotation allotting reserved seats by rotation to different wards etc. This sub-section reads as follows.--

'7. Constitution of the Corporation.--

(1) XXX XXX XXX.

(4) Not less than one-third of the seats reserved for each category of persons belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and those of the non-reserved seats to be filled by direct election in a Corporation shall be reserved for women:

Provided that the seats reserved in sub-sections (2), (3) and (4) shall be allotted by rotation to different wards in a city'.

13. Section 21 of the Corporation Act provides for determination of wards. It reads as under.-

'21. Determination of wards etc.--(1) For purposes of election of Councillors Government shall, by notification, determine.-

(a) the wards, into which the city shall, be divided and the extent of each wards;

(b) the number of seats allotted to each ward which shall be one;

(c) the number of seats reserved for the Scheduled Castes, the Scheduled Tribes, Backward Classes and Women and the wards in which such seats shall be reserved.

(1-A) xxx xxx xxx.

(2) The ratio between the number of Councillors to be elected from each ward and the population of that ward shall so far as practicable be the same throughout the city.

(3) The State Government may make rules for the purposes of sub-sections (1) and (2)'.

14. Keeping in view the nature of grievances raised by the petitioners, by order dated 2-1-2001, time was granted to the Additional Government Advocate to file counter affidavit by 4-1-2001. Accordingly, statement of objections was filed on behalf of the State Government by the Under Secretary, Urban Development Department. But, curiously, instead of placing on record the basis on which rotation of category of reservation in different constituencies/wards was made, a preliminary objection regarding the very maintainability of the writ petitions was raised on the ground that keeping in view the provisions contained in Article 243-ZG of the [Constitution of India](#), Section 13(1-A) of the Municipalities Act and Section 21(1-A) of the Karnataka Municipal Corporations Act, validity of notification allotting seats to constituencies/wards cannot be called in question in any Court. In support of this contention, the learned Advocate General, appearing for the State of Karnataka relied on the decision of the Supreme Court in the cases of Meghraj Kothari v Delimitation Commission and Others, Lakshmi Charan Sen and Others v A.K.M. Hassan Uzzaman and Others and Election Commission of India v Shivaji .

15. For appreciating the above objection, we need to reproduce Article 243-ZG of the Constitution, Section 13(1-A) of the Municipalities Act and Section 21(1-A) of the Corporation Act, which read as under.-

'243-ZG. Bar to interference by Courts in electoral matters.--Notwithstanding anything in this Constitution.-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-ZA shall not be called in question in any Court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.'

'Section 21. Determination of wards etc.-

(1) xxx xxx xxx xxx.

(1-A) No notification under sub-section (1) shall be called in question in any Court of law;

Section 13. Wards for elections.-

(1) xxx xxx xxx xxx.

(1-A) No notification under sub-section (1) shall be called in question in any Court of law'.

16. It has also been stated in the statement of objections filed on behalf of the State Government that State Election Commission has already notified on 23-12-2000 its decision to hold elections to 14 Corporations, 31 City Municipal Councils, 76 Town Municipal Councils and 36 Town Panchayats, in all 147 institutions of local self-Government. Copy of the press note has been produced as Annexure-1 to show that the Election Commission intends to issue notification announcing holding of elections on 8-1-2001. Annexure R-I also specifies the date on which necessary statutory events are to take place for holding of elections on 28-1-2001. According to the Advocate General, keeping in view the publication of the press note by the Election Commission, any interference by this Court at this stage would amount to interference with the election process which is specifically prohibited under the constitutional and statutory scheme as also the pronouncements of the Supreme Court.

17. First attending to the objection raised regarding jurisdiction of this Court to entertain pleas of constitutional invalidity of the impugned notification based on Article 243-ZG, Section 21(1-A) of the Municipal Act, Section 13(1-A) of the Corporation Act, in our considered opinion, in view of the pronouncement of the

Supreme Court in the case of L. Chandra Kumar v Union of India and Others, the above provisions sought to ouster the jurisdiction of the Court cannot apply to High Courts and the Supreme Court since if any such interpretation is sought to be put, the provisions may face the risk of being declared unconstitutional. In para 99 of the judgment, it has been declared by the Supreme Court that,--

'The jurisdiction conferred upon the High Courts under Articles 226 and 227 of the Constitution, and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our constitution. While this jurisdiction cannot be ousted, the other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226, 227 and 32 of the Constitution'.

18. Therefore, though under the Constitution and the respective Acts the jurisdiction of the Courts and the Tribunals inferior to High Court can be ousted but not that of High Court itself. Therefore, objection raised by the learned Advocate General regarding jurisdiction of this Court to entertain constitutional validity of the notification cannot be accepted.

19. Further, in the case of Laxmi Charan Sen, supra, the Supreme Court in the context of Article 329-B of the Constitution and after referring to its earlier decision in the case of Pampakavi Rayappa Belagali v B.D. Jatti and Others, and the provisions contained in Representation of People Act, 1950 has held that-

'The entries made in an Electoral Roll of a constituency can only be challenged in accordance with the machinery provided by it and not in any other manner or before any other forum unless the question of violation of the provisions of Constitution is involved'.

20. In the present case, the impugned notifications have been questioned on the ground that those have been issued adopting arbitrary and mala fide policies and therefore are hit by equality and reasonable clause envisaged under Article 14 of the [Constitution of India](#). Though, successive affidavits have been filed on behalf of the State but they could not place on record any objective and rational policy on the basis of which the rotation of reserved categories in various wards and

constituencies were effected. We, further to satisfy ourself, required the learned Advocate General to produce the relevant files and records in which decisions were taken regarding rotations of seats to different constituencies of the bodies for which elections were sought to be held. But, the same were also not produced.

21. Anyhow, learned Advocate General after having heard the objections raised at the bar and keeping in view the pleadings, fairly conceded that there appears to be lack of appropriate policy underlying the rotational system adopted by the Government in issuing the notification like the impugned ones, which relates starting of election process for electing councillors for 147 local bodies. Accordingly, he, after having secured appropriate instructions from the responsible quarters in the Government, stated at the Bar that the Government will withdraw all the notifications of the nature impugned herein and undertake fresh exercise in this regard after framing appropriate guidelines/rules in this regard and publishing the same for information to the public at large. He further stated that the process of election will be undertaken only after publishing the notifications in accordance with the rules/guidelines framed for rotation of seats.

22. In view of the matter, the petitioners could get all the reliefs that they wanted. But according to them, Government by taking benefit of their own follies should not be allowed to delay the process of holding the elections to these local bodies and thereby defeat the very constitutional mandate of holding the elections within the given timeframe. We agree with the petitioners.

23. Accordingly, we direct that the entire process of issuing notifications allotting seats to different wards/constituencies as also publishing of calender of events for holding the elections should be completed within six weeks from today.

24. In the result, the writ petitions are disposed of in the above terms.