

C. Ramappa Vs. B. Bolegouda and Others

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Court : Karnataka

Decided On : Jul-08-1998

Reported in : ILR1998KAR4019; 1998(6)KarLJ576

Judge : B.N. Mallikarjuna, J.

Acts : [Karnataka Panchayat Raj Act, 1993](#) - Sections 2(2), 11, 12, 44 and 45(2); Karnataka Panchayat Raj (Conduct of Election) Rules, 1993 - Rules 2, 13 and 14; [Code of Civil Procedure \(CPC\), 1908](#) - Order 9, Rules 4 and 9 - Order 41, Rule 27; [Constitution of India](#) - Articles 226, 227 and 243; Karnataka Scheduled Castes and Scheduled Tribes and other Backward Classes (Reservation of Appointment, etc.) Act, 1990; Gujarat Municipalities Act, 1963 - Sections 33; Karnataka Zilla Parishads, Taluk Panchayat Samithies, Mandal Panchayats and Nyaya Panchayats Act, 1983; Karnataka Zilla Parishads, Taluk Panchayat Samithies, Mandal Panchayats and Nyaya Panchayats (Amendment) Act, 1985

Appeal No. : Writ Petition No. 30 of 1997

Appellant : C. Ramappa

Respondent : B. Bolegouda and Others

Advocate for Def. : M/s. Shetty and ;Hegde Associates, Advs.

Advocate for Pet/Ap. : Sri M. Shivappa, Adv.

Judgement :

ORDER

1. In this writ petition under Articles 226 and 227 of the [Constitution of India](#), petitioner calls in question the legality and the correctness of the order of the third respondent-the Munsiff and JMFC, K.R. Pet, Mandya district dated 21-12-1996 in Election Petition No. 8 of 1994. Annexure-A is the copy of the said order.

2. Briefly stated the facts are:

Petitioner C. Ramappa and first respondent-B. Bolegowda were elected to Bookinakere Grama Panchayat, K.R. Pet Taluk, Mandya district in the election held in the month of December 1993. It is undisputed that the petitioner was elected from the Modur-1 General Constituency and the first respondent from Bookinakere-3 Constituency reserved for Backward Class. The second respondent called for a meeting on 18-3-1994 for the election of the Adhyaksha and Upadhyaksha of Bookinakere Grama Panchayat. It is also undisputed that the office of Adhyaksha was reserved for Backward Class and the office of Upadhyaksha for general-women. In the meeting held on 18-3-1994, the petitioner who had been elected from the General Constituency claiming to be the person belonging to Backward Classes contested the election. First respondent is the other candidate. In the said election the petitioner having secured 9 votes as against 7 votes secured by the first respondent, was declared elected as Adhyaksha of the said Bookinakere Grama Panchayat. Petitioner in support of his claim that he belongs to Backward Classes appear to have produced Caste and Income Certificate dated 7-3-1994 issued by the Tahsildar, Bookinakere.

3. Thereafter the first respondent filed Election Petition No. 8 of 1994 in the Court of Munsiff, K.R. Pet (Prescribed Judicial Officer under Section 45(2) of the [Karnataka Panchayat Raj Act, 1993](#)) challenging the election of the petitioner as Adhyaksha of Bookinakere Panchayat. First respondent pleaded that the petitioner gets an annual income of Rs. 30,000/-, he has 150 fruit yielding coconut trees and as such he does not belong to Backward Classes. The petitioner having made false allegations has obtained the Certificate and therefore, he was not entitled in law to contest the election to the office of Adhyaksha as that was reserved for

Backward Classes. The petitioner resisted the petition contending inter alia that the first respondent is an agriculturist besides being a Contractor and Vice-President of P.S.S.K. Sugar Factory and his annual income exceeds Rs. 1 lakh a year from all sources and he is an income-tax assessee and as 'such he could not have contested for the election as against a seat reserved for Backward Classes. He further contended that his income is only Rs. 3,400/- and at no time exceeded Rs. 30,000/-. It is also his case that before contesting, he has produced the caste certificate issued by the Tahsildar.

The second respondent who is the Returning Officer also contested the proceedings contending that the petitioner was permitted to contest in view of the certificate produced by him. Further contends that since no objection was raised for his candidature, either by the 1st respondent or by any other member present at the meeting, it is not correct to say that there is improper receipt of nomination.

4. On the above pleadings, the parties went to trial. The first respondent who was the petitioner in the election petition examined himself and produced documents Ex. P. 1 to P. 5 to substantiate his plea that the petitioner herein does not belong to Backward Classes. Petitioner examined himself and produced documents Ex. R. 1 to R. 10. Respondent 2 is examined as D.W. 2. The learned Munsiff after hearing the arguments on behalf of the parties and considering the evidence both oral and documentaiy, by the order impugned at Annexure-A declared the election of the petitioner as null and void and further declared that the first respondent is validly elected Adhyaksha of the Bookinakere Grama Panchayat. Aggrieved by the said decision, the present writ petition is filed.

5. It would be necessary to note that the first respondent herein challenged the correctness of the certificate issued by the Tahsildar in favour of the petitioner before the Deputy Commissioner, Mandya in MSC (2)/CR/7/94-95. The Deputy Commissioner by order dated 9-8-1994 communicated to the parties, by the endorsement dated 11-8-1994 cancelled the certificate. Aggrieved by that order the petitioner herein challenged the correctness of the said order of cancellation before this Court in W.P. No. 24730 of 1994. That writ petition came to be admitted on 6-1-1995 and rule issued. On 19-8-1994, the operation of the order of

the Deputy Commissioner was stayed and that order continued to be in force. However on 19-9-1996 the writ petition came to be dismissed for default and non-prosecution. The petitioner thereafter made an application for recalling the said order of dismissal. On 21-11-1996 the said order came to be recalled subject to the petitioner depositing a sum of Rs. 249/- by way of cost. Thereafter that writ petition came to be disposed of on merits on 28-5-1997.

The learned Judge upholding the arguments on behalf of the petitioner that the Deputy Commissioner was not the authority to consider the correctness of the certificate in view of the provisions contained in the Karnataka Scheduled Castes and Scheduled Tribes and other Backward Classes (Reservation of Appointment, etc.) Act, 1990 and the Rules framed thereunder, cancelled the order of the Deputy Commissioner reserving liberty to the Committee under the Act to go into the question, provided an application is made alleging that, the petitioner does not come within the limit of income as claimed by him, in accordance with law. This order is after the disposal of the Election Petition No. 8 of 1994.

The learned Munsiff referring to the fact that the petition was dismissed for default and non-prosecution on 19-9-1996 holds that in view of the dismissal, the interim order staying the operation of the order of the Deputy Commissioner also stood cancelled as no specific order is there in regard to the interim order while recalling the order of dismissal. The learned Munsiff has also held that the income of the petitioner exceeded Rs. 10,000/- a year and as such he could not have contested in the election for the office of the Adhyaksha reserved for Backward Classes. It is further held that the petitioner having been elected from General Constituency, law did not permit him to contest for the office of Adhyaksha, reserved for Backward Classes.

6. Heard the learned Counsel for the petitioner and the first respondent. In view of the contentions raised the points that would arise for consideration in this writ petition are:

1. Whether the petitioner having been elected from General Constituency could have contested for the office of the Adhyaksha of the Grama Panchayat, reserved for a person belonging to Backward Classes?

2. Whether the Prescribed Judicial Officer was right in holding that the income of the petitioner exceeded Rs. 10,000/- a year from all sources and therefore he was barred from contesting in the election to the office of Adhyaksha, reserved for Backward Classes?

3. To what relief the petitioner is entitled?

Point No. 1: The declaration by the learned Munsiff that the petitioner having been elected from General Constituency could not have contested in the election held for the office of Adhyaksha reserved for Backward Classes does not survive for consideration in view of the recent decision of the Supreme Court in *Kasambhai F. Ghanchi v Chandubhai D. Rajput and Others*. The Apex Court while dealing with a similar situation has held that a person elected from the General Constituency could as well contest for the chairperson of the Municipality reserved for Backward Classes provided that person belongs to Backward Classes. The relevant portion reads thus:--

'Just as all members of the municipality, irrespective of the fact whether they had been elected to a reserved seat or not, are eligible for election to the post of the President when it falls in the general category, similarly when as per the roster the President is to be one who, say, belongs to the category of Scheduled Caste then all members of the municipality who are Scheduled Caste, irrespective of the seat to which they had been elected, would be eligible to stand for election. Neither the Act nor the Rules stipulate that it is only such a member who has been elected to the reserved seat who would be eligible to stand for election to the post of President when it is the turn of that category of candidate to become the President of the municipality'.

The Court was considering the purport and object of Section 33 of the Gujarat Municipalities Act, 1963. The relevant section was introduced by way of amendment in order to give effect to the provisions of Article 243T of the [Constitution of India](#). In the instant case we are concerned with Section 44 of the [Karnataka Panchayat Raj Act, 1993](#), the Act called, the Karnataka Act 14 of 1993. This Act replaces the earlier Act called the Karnataka Zilla Parishads, Taluk Panchayat Saraithies, Mandal Panchayats and Nyaya Panchayats Act, 1983

(Karnataka Act 20 of 1985) and introduced by the State Legislature to give effect to Article 243 of the [Constitution of India](#) introduced by 73rd amendment.

Chapters III to V of the [Karnataka Panchayat Raj Act, 1993](#) deal with the constitution of the Grama Panchayat, power and duties of staff of Grama Panchayats. Section 44 which provides for election of Adhyaksha and Upadhyaksha also contemplates that certain posts of Adhyakshas and Upadhyakshas in the State shall be reserved for Scheduled Caste and Scheduled Tribe and for other Backward Classes. It is undisputed that the Deputy Commissioner issued notifications indicating which are the offices of Adhyaksha in the district of Mandya reserved for which category and also in respect of Upadhyakshas. Ex. P. 4 is the said notification and accordingly, the office of the Adhyaksha of Bookinakere Grama Panchayat is reserved for Backward Classes and Upadhyaksha for general-women. The petitioner no doubt was elected from the Constituency reserved for general but contested the office of the Adhyaksha claiming to be the person belonging to Backward Classes on the strength of the certificate issued by the Tahsildar.

Sub-section (2) of Section 2 of the Panchayat Raj Act defines 'Backward Classes' and according to the definition such of those persons classified as category 'A' and 'B' and notified by the Government from time to time would be entitled to claim the tag of Backward Classes. See Rule 2 of the Karnataka Panchayat Raj (Backward Classes) Rules, 1993 and the Government Order No. SWL 66 BCA 86, Bangalore, dated the 13th October, 1986. In the instant case admittedly the petitioner belong to Lingayath Community. Persons belong to Lingayath Community, according to the Government Order of 1986, could not have claimed Backward Class tag unless their income from all sources did not exceed Rs. 10,000/-. The petitioner obtained certificate from the Tahsildar regarding his caste and income and based on that certificate contested the election and of course won the election. Therefore, in view of the decision of the Supreme Court in the case of Kasambhai F. Ghanchi, supra, the argument that the petitioner having been elected from General Constituency could not have contested for the office of the Adhyaksha reserved for Backward Classes, does not survive and that is my finding on the first point.

Point No, 2: Before advertng to the arguments advanced on behalf of the parties in this regard, it would be appropriate to note that today an application on behalf of the first respondent is filed under Order 41, Rule 27 of the CPC read with Article 226 of the [Constitution of India](#) praying the Court to take on record certain documents as additional evidence. The learned Counsel for the petitioner opposes the application. Additional evidence under Order 41, Rule 27 can be permitted in certain circumstances and not as a matter of course. An application under Order 41, Rule 27 can only be allowed if the applicant satisfies the Court that during the trial of the case he was incapable of getting those documents despite exercising due diligence. The documents sought to be produced along with the application are not the documents which were not within the knowledge of the petitioner. More importantly in the circumstances of the case, the first respondent was required to establish that the income of the petitioner exceeded Rs. 10,000/- a year. The matter was also agitated before the Deputy Commissioner. The application is now sought to be moved on the ground that those documents produced before the Deputy Commissioner may be read as additional evidence. This cannot be done for more than one reason. Admittedly by the time the matter was taken up for trial by the Prescribed Officer, the writ petition in this Court had been dismissed for default. The first respondent had the knowledge of it. It would only make it clear that these documents were not only within the knowledge of the first respondent but they were also within his reach, despite he has not produced and therefore, I am of the considered view that it is too late in the day to permit such evidence more importantly at the stage of hearing. Therefore, the application filed today is accordingly rejected.

7. Whether the petitioner belong to Backward Classes or not is no doubt a question of fact. The Prescribed Officer after considering the evidence records a finding. The question is whether in a writ proceeding this Court can interfere with that finding. True this Court in writ proceedings cannot reappreciate the evidence and interfere with the finding on a question of fact. But in a case where it is shown that the finding is based on no evidence or is based upon irrelevant evidence or is otherwise perverse, this Court can certainly interfere with such finding.

Here the first respondent approaches the Prescribed Officer for setting aside the election on an allegation that the petitioner did not belong to Backward Classes as his income exceeded Ten thousand rupees a year. Further he contends that the certificate issued by the Tahsildar is based on false representation. I do not wish to enter into elaborate discussion on this point as admittedly the matter is pending before the appropriate authority under the Act 1990, but only consider whether the finding that the petitioner's income exceeded Rs. 10,000/- a year is based on satisfactory and acceptable evidence.

8. Petitioner had obtained the income certificate from the Tahsildar (See Ex. II. 6 notice dated 5-7-1994 from the office of the Deputy Commissioner, Mandya). Secondly, election to the office of Adhyaksha is required to be held in a meeting called for that purpose by the Returning Officer in view of Section 45(2) of the Act. Ex. P. 5 would demonstrate that the election to the office of Adhyaksha and Upadhyaksha was held in the meeting held on 18-3-1994 at 10.30 p.m. It would also demonstrate that before the meeting, notices were issued to all the members concerned and 17 members were present in the meeting. Nominations according to the proceedings and according to the evidence of D.W. 2 were received in the meeting but nothing is elicited either in the examination of D.W. 1 or D.W. 2 indicating that the first respondent raised his objections while the nomination of the petitioner was accepted, on the other hand it would reveal that the elections went on without any objections. These two circumstances should have been borne in mind by the Prescribed Officer (learned Munsiff) while appreciating the solitary, uncorroborated evidence of P.W. 1, the respondent herein.

9. The first respondent who was the petitioner in the election petition, was required to establish by acceptable and convincing evidence that the income of the petitioner from all sources exceeded Rs. 10,000/- a year and as such could not have claimed the status of 'Backward Classes'. But the evidence of P.W. 1 does not indicate as to what the income of the petitioner was in a particular year, even assuming for a moment that the petitioner had certain lands and certain fruit bearing coconut trees. The first respondent only states that the petitioner had 150 fruit bearing trees but nowhere in his evidence states as to what was the income the petitioner derived from those trees. He does not say that he had any other

source of income and his income exceeded Rs. 10,000/- a year. On the other hand D.W. 1-petitioner in evidence states that he has 2 acres 10 guntas of dry land in Sy. No. 172/1 and out of it 6 guntas is wet land. Further his evidence is that he has 15 to 18 fruit bearing coconut trees and not 150 trees. It is not even elicited in the cross-examination of D.W. 1 as to what was his actual income from the land and from coconuts. It is needless to say that in order to show that a person does not belong to the category of Backward Classes, it is necessary to show by acceptable and convincing evidence that his income from all sources exceeded Rs. 10,000/- a year. Evidence being what it is as stated above, the learned Munsiff does certain mathematic which I fail to understand and appreciate. On certain inferences (there being nodefinite evidence) he finds that the income of the petitioner exceeded Rs. 22,500/- a year. He accepts the statement of the petitioner that he has 18 coconut trees, but jumps to the conclusion that the yield per tree would have been 250 coconuts which amounts to 4,500 fruits a year. Then he calculates in terms of money by saying that each one of the fruit would have fetched Rs. 5/- and it would come to Rs. 22,500/-. Adds another Rs. 8,000/- as income from other agricultural lands and holds that the petitioner gets Rs. 30,000/- a year. I am really surprised as to what was the basis for determining that figure since neither the evidence of first respondent nor the evidence of the petitioner disclosed what the yield from a tree was and what was the price of each coconut. Except the oral assertion of the first respondent, no other document is produced to substantiate his statement. In the case of agricultural lands, production of the documents like extract of RTC would have certainly demonstrated as to what crop the petitioner raised and what was the quantity. Obtaining certain statistics from the statutory bodies like the Agricultural Produce Market Committee would also reveal as to what was the price of the coconut. Ragi or any other crop or for that matter crops grown in that area in a given year. But no such document is produced and no other evidence of like nature is adduced on behalf of the first respondent. It is needless to say that production of any such document would have certainly assisted the Court in determining what exactly was the income of the petitioner derived from the agricultural lands during the relevant year. Without there being any such evidence either oral or documentary, the Presiding Officer comes to the conclusion that the income of the petitioner exceeded Thirty (30) thousand rupees.

Finding recorded on no evidence or inference drawn on imagination and surmises cannot stand the test of judicial scrutiny. Therefore, the finding recorded by the learned Munsiff in regard to the income of the petitioner cannot be sustained.

10. The other observation is that since the writ petition filed by the petitioner challenging the genuineness of the certificate had been dismissed for default, interim order granted at the time of admission was not available to him. Here again the learned Trial Judge has committed an error. Whether the interim order made during the pendency of the matter would be effective or not when once the order of dismissal is recalled depends upon the nature of the order made at the time of dismissal of the petition for default and non-prosecution. Perusal of Ex. P. 2 and Ex. R. 1, certified copies of the order sheet in the writ petition makes it clear that W.P. No. 24730 of 1994 came to be dismissed for default on 19-9-1996 and at the time of making that order there was no specific order vacating the interim order granted earlier. On 21-11-1996, the dismissal order has been recalled and the petition is restored. When at the first instance the interim order has not been vacated, question of making further order while restoring the petition as observed by the learned Munsiff did not arise. Therefore, when once the writ petition was restored on 21-11-1996 the earlier interim order staying the operation of the order of Deputy Commissioner became effective in Shivaraya and Others v Sharanappa and Others, till the disposal of the writ petition. Thus the certificate of income issued by the Tahsildar was in force during the trial of election case.

11. The learned Senior Counsel Sri Reddy further submitted that the petitioner having been elected to the panchayat from General Constituency could not have changed his status in the midstream and permitted to contest the election for the office of Adhyaksha, reserved for Backward Classes. In support of his arguments invited my attention to Form 5 of the Karnataka Panchayat Raj (Conduct of Election) Rules, 1993 and submitted that the petitioner having not declared that he belonged to Backward classes in the said form while contesting the panchayat election in December 1993, could not have contested the election held on 18-3-1994 for the office of Adhyaksha reserved for Backward Classes.

The scheme of the Act and the Rules 1993 do not require a person contesting against a General Constituency to declare as to his caste or the category to which he belonged. General Constituency is opened to all. The form itself indicates that no such declaration is necessary from a person contesting against General Constituency, the form is for all categories and it directs to score out that portion which is not applicable. Further a plain reading of Section 11 of the Act 1993, also makes it clear that any person whose name is in the list of voters and who does not suffer any other disqualification enumerated in Section 12 of the Act can contest against General Constituency. Rules 13 and 14 of the Karnataka Panchayat Raj (Conduct of Election) Rules, 1993 do not require the candidate contesting against General Constituency to declare his caste or category to which he belongs. More so in view of the law declared by the Supreme Court in the case of Kasambhai F. Ghanchi, supra, and for the reasons hereinabove stated, I do not find any merit in this last submission also.

12. In view of the reasons hereinabove stated, the finding recorded by the learned Munsiff on the question of income being based on no evidence and irrelevant considerations, is not sustainable. Therefore, the order impugned declaring the election of the petitioner to the office of Adhyaksha as null and void is not sustainable in law.

Hence the petitioner succeeds. Rule issued. Impugned order dated 21-12-1996 in Election Petition No. 8 of 1994 is hereby set aside. The declaration that the first respondent is the elected Adhyaksha of the Bookinakere Grama Panchayat consequently fails. In the circumstances of the case, I direct each parties to bear their own costs.