

K. Krishnaiah and ors. Vs. the District Collector and ors.

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Court : Andhra Pradesh

Decided On : Dec-24-1996

Reported in : 1997(1)ALT350

Judge : M.N. Rao and ;T.N.C. Rangarajan, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 6688 of 1996

Appellant : K. Krishnaiah and ors.

Respondent : The District Collector and ors.

Advocate for Def. : Government Pleader for Panchayat Raj for Respondent Nos. 1 to 4 and 6 and ;A. Giridhar Rao, Adv. for Respondent No. 5

Advocate for Pet/Ap. : M. Ravindranath Reddy, Adv.

Disposition : Petition allowed

Judgement :

M.N. Rao, J.

1. Seeking election to the Office of Sarpanch of Juvvalapalem Gram Panchayat of Naidupet Mandal, Nellore District, three persons - petitioner No. 1, one Masthanaiah and the fifth respondent - filed nominations. The office of Sarpanch,

Juvvalapalem Gram Panchayat was reserved in favour of Backward Classes and this fact is not in dispute. The fifth respondent filed his nomination claiming himself to be a member of 'Ganika' caste, which, uncontroversially, is a recognised backward community. What was at issue was whether the fifth respondent really was a member of 'Ganika' caste? In support of his claim that he belongs to 'Ganika' caste, the fifth respondent filed a certificate issued by the Mandal Revenue Officer, the fourth respondent herein. The polling took place on 30-6-1995, but the results were not announced because of certain orders passed by this Court in batch of writ petitions. On 1-9-1995, Masthanaiah, one of the unsuccessful contestants for the office of Sarpanch, filed a suit - O.S. No. 210 of 1995 - in the Court of the District Munsif, Sullurpet, seeking a declaration that the fifth respondent is a member of 'Adivelama' caste but not 'Ganika' caste and as 'Adivelama' is not a recognised backward caste, he sought a consequential relief by way of an injunction restraining the fifth respondent from functioning as Sarpanch of the Gram Panchayat. The Mandal Revenue Officer filed a counter in the suit asserting that the fifth respondent is a member of 'Adivelama' caste but not 'Ganika' caste and that the certificate issued by him earlier was obtained fraudulently. In LA. No. 523 of 1995, the District Munsif granted an interim injunction restraining the District Collector and other authorities from dealing with the fifth respondent as a member of 'Ganika' caste, which was challenged by way of a C.M.A., before the Sub-Court by the fifth respondent and the same is now pending; no interim order was passed suspending the operation of the interim injunction. In the third week of October, 1995 the results were declared by the authorities in consequence of which the fifth respondent was declared elected as Sarpanch with a margin of 72 votes and is functioning as such till date.

2. Masthanaiah, who filed the suit, also filed an election petition - E.P. No. 33 of 1995 - in the Court of the Munsif Magistrate, Sullurpet, challenging the election of the fifth respondent to the office of Sarpanch of the Gram Panchayat on the ground that he did not belong to a recognised backward class community and, therefore, was disqualified to hold the post.

3. The present writ petition was filed seeking a writ of Quo Warranto challenging the continuance of the fifth respondent in the office of Sarpanch, Juvvalapalem

Gram Panchayat since he is not a member of a backward caste. In the counter-affidavit filed by the fifth respondent in the writ petition, inter alia, it is asserted that he is a 'Ganika' by caste and that the same was mentioned in his transfer certificate issued by the Head Master, Z.P. Boys High School Naidupet on 28-11-1990. He also asserts that all his kith and kin are members of Ganika caste.

4. The question for our consideration is whether the fifth respondent is disqualified from holding the post of Sarpanch on the ground that he is not a member of 'Ganika' caste, a backward community?

5. In the counter-affidavit filed by the fifth respondent herein in LA. No. 523 of 1995 in O.S. No. 210 of 1995 on the file of the Court of the District Munsif, Sullurpet, he asserted that:

'.. just as barbers are called as Mangalis as well as Nayee Brahmins, just as Dhobis are called as Rajakas as well as Chakalis, just as Kamsalis (gold smiths) are also called as Viswabrahmins and so on and so forth, Adivelamas are also called as Arava Karanams as well as Ganikas'.

From a reading of the above, it is clear that the fifth respondent has admitted that he is an 'Adivelama' and that 'Adivelamas' are also called as 'Arava Karanams' as well as 'Ganikas'. Stated differently, he claims that 'Ganikas' and 'Adivelamas' are one and the same. We are of the view that such an enquiry is impermissible in law. This position is fully settled by a plurality of binding precedents.

6. In *Basavalingappa v. Munichinnappa*, : [1965]1SCR316 , a case arising under the Representation of the People Act, dealing with the question whether members of a particular caste can legitimately claim that their caste was same as another caste recognised as a Scheduled Caste, it was held by the Supreme Court:

'It may be accepted that it is not open to make any modification in the Order (the Scheduled Castes Order, 1950) by producing evidence to show (for example) that though caste A alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after

it in the Order: (See: Aray (Mala), Dakkal (Dokkalwar) etc) Therefore, generally speaking, it would not be open to any person to lead evidence to establish that caste B (in the example quoted above) is part of caste A notified in the Order.'

7. The Judgment in Basavalingappa (1 supra), which was rendered by a Constitution Bench of five learned Judges, was followed by another Constitution Bench of the Supreme Court in Bhaiya Lal v. Harikishan Singh, : [1965]2SCR877 , wherein it was ruled:

'It is thus clear, that in order to determine whether or not a particular caste is a scheduled caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. In the present case, the notification refers to Chamar, Jatav or Mochi and so, in dealing with the question in dispute between the parties, the enquiry which the Election Tribunal can hold is whether or not the appellant is a Chamar, Jatav or Mochi. The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a Sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Article 341.'

The same reasoning applies to the case on hand. Although it was open to the Election Tribunal to enquire into the question whether the fifth respondent is a member of the 'Ganika' caste, but having regard to his assertion in the counter-affidavit filed in the Court of the District Munsif in O.S. No. 210 of 1995 that he is an 'Adivelama' by caste and Adivelamas are also known as 'Ganikas', it would not be permissible for the Election Tribunal to enquire into the question whether 'Adivelamas' are also known as 'Ganikas'. In view of the admitted stand of the fifth respondent that he is an 'Adivelama', a caste which is not recognised as a backward community for the purpose of reservation for the office of Sarpanch, Juvvalapalem Gram Panchayat, he was disqualified at the time of the election and this disqualification disentitles him from continuing as Sarpanch of the Gram Panchayat. The election itself was vitiated since a person suffering from a legal disability was allowed to contest in a reserved constituency and his success would amount to usurpation of the office of Sarpanch. The law in this regard is well

settled: In R v. Speyer and R. v. Cassel (1916) 1 K.B. 595 (Quoted with approval in Venkataraya v. Simrama Prasad - : AIR 1961 AP250 , it was held:

'.....this proceeding by information in the nature of quo warranto will lie for usurping any office, whether created by charter alone, or by the Crown, with the consent of Parliament, provided the office be of a public nature, and a substantive office, not merely the function or employment of a Deputy or servant held at the will and pleasure of others. The test to be applied is whether there has been usurpation of an office of a public nature and an office substantive in character that is, an office independent in title.'

8. For these reasons, the writ petition is allowed. The fifth respondent is hereby declared as disqualified from continuing in office as Sarpanch of Juvvalapalem Gram Panchayat and the office shall stand vacated. The Election Petition - E.P. No. 33 of 1995 - now pending on the file of the Court of Munsif Magistrate, Sullurpet, stands closed as no further orders are necessary having regard to this judgment. The authorities shall take consequential action to fill the post of Sarpanch, Juvvalapalem Gram Panchayat. No costs.

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