

Suresh Vs. State of Kerala

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Court : Kerala

Decided On : Feb-11-2005

Reported in : 2005(1)KLT848

Judge : K.S. Radhakrishnan and; M.N. Krishnan, JJ.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 153(3) and 153(4); [Constitution of India](#) - Articles 14, 16(4), 243D, 243D(2) and 243D(4); [Constitution of India \(73rd Amendment\) Act, 1992](#)

Appeal No. : W.A. No. 1714 of 2003

Appellant : Suresh

Respondent : State of Kerala

Advocate for Def. : Murali Purushothaman, Adv.,; M.K. Aboobacker, Government Pleader and;

Advocate for Pet/Ap. : Kauser Edappageth and Sathya Sree Priya, Amicus Curie;;C.P. Sudhakara Prasad, ;Elvin Peter. P.J., ;S. Ramesh, ;P.N. Santhosh, ;

Disposition : Appeal dismissed

Judgement :

K.S. Radhakrishnan, J.

1. Whether reservation of the office of the President of a Grama Panchayat exclusively to woman belonging to Scheduled Caste/Scheduled Tribe community under the second proviso to Section 153(4)(d) of the Kerala Panchayat Raj Act is constitutionally valid, is the question that has come up for consideration in this case.

2. Appellants-petitioners, who are members of Vadavucode Puthencruz Grama Panchayat submit that reservation of the office of President of the Grama Panchayat exclusively to women belonging to Scheduled Caste/Scheduled Tribe community is opposed to Article 14 of the [Constitution of India](#) and also would override the provisions of Article 243D of the [Constitution of India](#). Further they also maintain the stand that the second proviso to Section 153(4)(d) is liable to be struck down as ultra vires the Constitution on the ground that such a reservation would amount to 100% reservation offending the principles of democracy.

3. Facts and Pleadings:

Appellants and fifth respondent are members of Vadavucode Puthencruz Grama Panchayat in Ernakulam District. First petitioner is now the elected Vice President of the said Panchayat. For the purpose of general election to the local bodies, the Kerala State Election Commission issued notification reserving the office of the Panchayat to Scheduled Caste/Scheduled Tribe and women by notification dated 28.7.2000 published in the Gazette of the same day. Notification states that the office of the Panchayat is reserved to woman belonging to Scheduled Caste/Scheduled Tribe Community. Vice President of the Grama Panchayat, the only one elected in the category of women belongs to Scheduled Caste Community, is the fifth respondent. Hence after the election she was elected as President of the Panchayat. While she was holding that office, there were serious allegations of dereliction of duties and a no confidence motion was moved against the fifth respondent, which was carried. This fact was reported to the State Election Commission. The fifth respondent had therefore vacated the office of the President on 6.10.2003 and the first petitioner is acting in his capacity as the Vice President. First petitioner who is duly elected as Vice President of the Grama Panchayat maintained the stand that he may be allowed to function as President.

Respondents 1 and 2 are not taking any steps to conduct election to the office of President on the ground that the office is reserved for woman belonging to Scheduled Caste/Scheduled Tribe Community. Fifth respondent is the sole elected woman from the Scheduled Caste/Scheduled Tribe Community. Appellants therefore approached this Court seeking a direction to respondents 1 and 2 to conduct election to the office of President of the Grama Panchayat by reserving the post to the members of Scheduled Caste in general and not to woman belonging to Scheduled Caste Community. They have also sought a declaration that second proviso to Section 153(4)(d) of the Kerala Panchayat Raj Act is unconstitutional.

4. Legal contentions:

Counsel appearing for the appellants Sri. Elvin Peter submitted that reservation of the office of the President of the Grama Panchayat to woman belonging to Scheduled Caste/Scheduled Tribe Community under the second proviso to Section 153(4)(d) of the Act 1994 is unconstitutional and violative of Article 14 of the [Constitution of India](#). Contention was also raised that the second proviso to Section 153(4)(d) of the Kerala Panchayat Raj Act would have the effect of overriding the provisions contained in Article 243D of the Constitution. Counsel also submitted that Section 153(4)(d) of the Kerala Panchayat Raj Act is ultra vires the Constitution on the ground that such reservation would amount to 100% reservation and is undemocratic.

5. Counsel appearing for the fifth respondent Sri. M.C.Nambiar submitted that reservation of the office of President to women belonging to Scheduled Caste/Scheduled Tribe Community under the second proviso to Section 153(4)(d) is perfectly valid and is in consonance with the constitutional principles of reservation, for women of weaker section of the community including that of Scheduled Caste/Scheduled Tribe.

6. Learned Government Pleader as well as the counsel appearing for the State Election Commission Sri. Murali Purushothaman supported the arguments advanced on behalf of the fifth respondent. Being a question of considerable general importance which is likely to affect the election to the office of the Grama

Panchayats in the State in general we requested Sri. Kauser Edappageth and Smt. E.Sathya Shree Priya, Research Scholars of Indian Law Institute (Kerala Chapter) to assist the Court as amicus curie and they responded with considerable research and study. We place on record our appreciation for the assistance rendered.

7. Sri. Kauser Edappageth submitted that the second proviso to Section 153(4)(d) of the Kerala Panchayat Raj Act would not fall beyond the periphery of the matters referred to as item No. 5 of List II of the seventh schedule of the Constitution and therefore it is well within the legislative competence of the State Legislature. Counsel also submitted that the reservation afforded to women belonging to Scheduled Caste/Scheduled Tribe has a rational nexus to the object sought to be achieved which is to uplift politically and socially the women belonging to Scheduled Caste/Scheduled Tribe. Counsel also submitted that the second proviso to Section 153(4)(d) of the Kerala Panchayat Raj Act neither offends Article 14 of the Constitution nor it destroys the principle of democracy and the State Legislature is competent to pass such legislation. Counsel further submitted that the right to elect or get elected is neither a common law right nor a fundamental right but is only a statutory right.

8. Smt. SathyaShree Priya submitted that Clause(3) of Article 15 permits special provision for women and children and the same has been duly resorted to and the Courts have upheld the validity of special measures in legislature or executive orders favouring them. Counsel submitted that Article 246(3) gives the State exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule to the Constitution. Reference was made to Entry 5 of List II of the Seventh Schedule. Counsel submitted the State has enacted the [Kerala Panchayat Raj Act, 1994](#) deriving powers from Articles 243 and 246 of the [Constitution of India](#). Referring to the Constitutional Law by Seervai, counsel submitted that Parliament has enacted Constitution (Seventy-Third Amendment) Act, 1992 to give effect to one of the directives of State Policy. Under Article 46 of the Constitution, counsel submitted. State shall promote with special care the educational and economic interests of the weaker sections of the people, in particular, Scheduled Castes and Scheduled

Tribes.

Discussion:

9. The Seventy-third Amendment Act has laid down new principle of reservation under Article 243D and the State Government has enacted Panchayat Raj Act, 1994 incorporating provisions in accordance with the Seventy-third Amendment Act. Article 243G dealing with powers, authority and responsibilities of Panchayats, states that the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified in the 11th Schedule to the Constitution.

10. Part IX of the [Constitution of India](#) deals with the Panchayats. Article 243 to 243O are the provisions dealing with the Panchayats. Part IXA deals with the Municipalities. Articles 243P to 243ZG are the relevant provisions. Part IXA was also inserted in the Constitution by the Seventy-fourth Amendment Act, 1992. Article 243C deals with composition of Panchayats. Subject to the provisions of Part IX the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats. Article 243D deals with reservation of seats. The said provision is extracted below for easy reference.

243D. Reservation of seats. (1) Seats shall be reserved for--

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat 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 Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats under Clause (1) shall be reserved for women belonging to 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 Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under Clauses (1) and (2) and the reservation of office of Chairpersons (other than the reservation for women) under Clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

Article 243D(1) states that seats shall be reserved for Scheduled Castes and Scheduled Tribes. Article 243D(4) states that the offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. Second proviso to Section 243D(4) states that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women.

11. State Legislature apart from what has been conferred in Part IV of the Constitution have also got power as per entry 5 of VII Schedule to enact laws for Local Government that is to say, the Constitution and powers of Municipal Corporation, improvement of trusts, District Boards, mining settlement authorities and other local authorities for the purpose of local self Government or Village administration. The State Legislature accordingly enacted the [Kerala Panchayat Raj Act, 1994](#) deriving powers under Articles 243 and 246 of the [Constitution of India](#).

12. Chapter XIV of the Act deals with provision relating to members and President of Panchayats of which we are concerned with Section 153. Relevant portion of the said reads as follows:

153. Election of President and Vice President--

(1) In every Panchayat there shall be a President and a Vice President elected from among the elected members of that Panchayat in accordance with the provisions of this Act and the President shall be full-time functionary of the Panchayat.

(2) On the constitution of a Panchayat or on its reconstitution under any provision of this Act, there shall be called a meeting by the Returning Officer referred to in Sub-section (6) for the election of its President and Vice President from among the elected members of the Panchayat.

(3)(a) The offices of President of Village Panchayats, Block Panchayats and District Panchayats in the State shall be reserved by the Government for the

Scheduled Castes and the Scheduled Tribes and the number of the offices of President reserved for Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in the State shall bear, as nearly as may be, the same proportion to the total number of offices of President at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State.

(b)(i) one-third each of the total number of offices of President of Village Panchayats, Block Panchayats and District Panchayats in the State reserved under Clause (a); and

(ii) one-third each of the total number of offices of President of Village Panchayats, Block Panchayats and District Panchayats in the State, not so reserved, shall be reserved by the Government for women.

(4)(a) The offices of the President reserved under Sub-section (3) shall be allotted to every level of the Panchayat in the different districts by the State Election Commission by notification in the Gazette.

(b) In the case of Block Panchayats and Village Panchayats the reserved seats for the Scheduled Castes and Scheduled Tribes shall be allotted proportionate to their population in the respective districts.

(c) In the case of Village Panchayat, the reserved seats in each district shall be distributed among the Village Panchayats within the area of the various Block Panchayats in the district.

(d) Before issuing notification for general election the State Election Commission shall allot by rotation the reserved seats under Clauses (a) (b) and (c) and the rotation shall start from the Panchayat in which the Scheduled Castes, or the Scheduled Tribes or women have the largest percentage of population and so on:

Provided that where the Panchayat the office of President of which is to be reserved for women and the Scheduled Castes and Scheduled Tribes is one and the same; in so reserving the Office of President, preference shall be given to the Scheduled Castes or Scheduled Tribes and in lieu, the office of the President in

the Panchayat next having their largest percentage population of women shall be reserved for women:

Provided further that in Panchayats the office of President of which is reserved for the Scheduled Caste or Scheduled Tribes, those in which the women have the more percentage of population of women shall be reserved for women, belonging to them:

Provided also that the office of President of any Panchayat shall be reserved for the Scheduled Caste or Scheduled Tribes or women belonging to them only if at least one constituency of that Panchayat is reserved for that category.

Contention was raised relying on Article 243D(2) that not less than one-third number of seats shall be reserved for women belonging to Scheduled Castes, or as the case may be, the Scheduled Tribes. Constitutional reservation is made only for seats and not for reservation of the office of the President. Contention was also raised that Sub-clause (4) of Article 243D states that the office of the Chairperson in the Panchayat at the village or any other level shall be reserved for the Scheduled Caste, the Scheduled Tribes and women in such manner as the Legislature of a State may by law provide. It is stated that the Constitution authorises reservation only for Scheduled Caste/Scheduled Tribe and women as a separate category. Proviso to Sub-clause (4) of Article 243-D also would state that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women. Contrary to the above mentioned constitutional provision, it is contended by the counsel for the petitioners that the State has made a special reservation for women belonging to Scheduled Caste/Scheduled Tribe by the second proviso to Section 153(4)(d) of the [Kerala Panchayat Raj Act, 1994](#) which counsel submitted would violate the principles of equality and State Legislature is incompetent to make the legislation overriding the provisions contained in Article 243D of the Constitution and that the second proviso to Section 153(4)(d) would amount to 100% reservation for women belonging to Scheduled Caste/Scheduled Tribe.

Constitutional provisions and judicial precedence favouring women:

13. Article 15 states that, State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (3) thereof states that nothing in the Article shall prevent the State from making any special provision for women and children. Clause (4) of Article 15 states that nothing in the article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Article 335 states that the claims of members of Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. In *Government of Andhra Pradesh v. P.B. Vijayakumar* ((1995) 4 SCC 520) the Apex Court held that the insertion of Clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped thereby they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) has been enacted. Its object is to strengthen and improve the status of women, an important limb of this concept of gender equality.

14. Article 14 states that the State shall not deny to any person equality before the law or the equal protection of the laws within the Territory of India. Principle of equality does not mean that every law must have universal application. The Apex Court in *Islamic Academy of Education v. State of Karnataka* (2003 (3) KLT (SC) (SN) 118 = (2003) 6 SCC 697) held that whatever may be the power and jurisdiction of the State and State Authorities to make a special provision in favour of the backward and the downtrodden, when the Court tests the reasonableness of such distinctive State action, it should be done by posing a question whether such State action to ameliorate social, economic and political poverty; whatever be the reason, delays the journey towards the proclaimed goal of equality. If a measure tends to perpetuate inequality and makes the goal of equality a mirage, such measures should not receive approval of the Court. Concept of equality is not a doctrinaire approach but a golden thread which runs through the entire

constitutional text. An affirmative action may, therefore, be constitutionally valid by reason of Articles 15(4) and 16(4) and various Directive Principles of State Policy. The Apex Court in *State of A.P. v. Nallamilli Rami Reddi and Ors.* ((2001) 7 SCC 708) held that what Article 14 of the 'Constitution prohibits is 'class legislation' and not 'classification for the purpose of legislation'. If the Legislature reasonably classifies persons for legislative purposes so as to faring them under a well-defined class, it does not apply to other persons. The test of permissible classification is two fold; (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection with the object sought to be achieved. The validity of the second proviso to section 153(4)(d) be tested in the light of the abovementioned constitutional principles.

Findings and conclusion:

15. Second proviso to Section 153(4)(d) leans in favour of women belonging to Scheduled Caste/Scheduled Tribe for election to the post of President of the Grama Panchayat. Question is whether such a reservation to women belonging to Scheduled Caste/Scheduled Tribe is justified or not. Can there be any discrimination between men belonging to Scheduled Caste/Scheduled Tribe and women belonging to Scheduled Caste/Scheduled Tribe communities is the bone of contention. Constitution permits special reservation for women in contra distinction to men. Article 243D(2) states that not less than one-third of the total number of seats reserved under Clause(1) shall be reserved for women belonging to Scheduled Castes or as the case may be, the Scheduled Tribes. Clause(4) states that the offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. State has enacted the Kerala Panchayat Raj Act and incorporated the second proviso to Section 153(4). Constitution permits reservation to be made to women and it does not forbid any reservation in favour of women belonging to Scheduled Caste/Scheduled Tribe to any office. Scheduled Caste/Scheduled Tribe men and women is a class belonging to weaker section of the society and therefore it is illogical to contend that women belonging to that class are not weaker than men

socially and economically. Such classification would be necessary to uplift the women belonging to Scheduled Caste/Scheduled Tribe to the forefront and bring them to the level of men belonging to Scheduled Caste/Scheduled Tribes.

16. We may adopt simple analytical reasoning for our conclusion. Constitution apart from giving reservation to Scheduled Caste/Scheduled Tribe under Article 16 has also made substantial provision for reservation of seats to Scheduled Castes/Scheduled Tribes community. Point urged can be tested applying the Aristolian syllogism.

Constitution permits special reservation to women generally
Major premises Constitution recognises Scheduled Castes/Scheduled Tribes community (men and women) as weaker sections of the society
Minor premises Scheduled Caste/Scheduled Tribe women are weaker section compared to men belonging to SC/ST
Conclusion

17. The above syllogism is unimpeachable in our legal system and has constitutional support in Articles 14, 15(3) and 16, Article 243D(4) and the Directive Principles of State Policy read with second proviso to Section 153(4)(d) of the [Kerala Panchayat Raj Act, 1994](#), Adopting the above mentioned reasoning within the frame work of our Constitution, second proviso to Section 153(4)(d) reserving office of the Chairman to women belonging to Scheduled Caste/Scheduled Tribe is not unconstitutional on the ground that it violates equality clause enshrined in Article 14 of the [Constitution of India](#).

18. Parliament in its wisdom thought to amend the Constitution and have enacted Part IX of the Constitution by 73rd Amendment Act, 1992 and felt it necessary that not less than one third of the total number of seats shall be reserved, for women belonging to Scheduled Caste or as the case may be to Scheduled Tribe. So far as the offices of Chairpersons are concerned, the Parliament felt that the manner in which such reservation has to be made to Scheduled Caste/Scheduled Tribe women be left to the State Legislature. The State while enacting the Panchayat Raj Act enacted Section 153(3)(b) by which one third each of the total number of offices of President of Village Panchayats, Block Panchayats and District Panchayats in the State has been reserved for women. State Legislature felt

unless and until Scheduled Caste/Scheduled Tribe women belonging to weaker section is given some reservation they would not come to the level of women of other communities. Such a reservation, in our view, would not override the provisions of Article 243D of the [Constitution of India](#).

19. We may also examine whether the second proviso to Section 153(4) would amount to 100% reservation and therefore would militate against the democratic principle. There are 991 Grama Panchayats in the State of Kerala. 294 posts of President have been ear marked for women. 33 posts have been ear marked for women belonging to Scheduled Caste community. Four posts have been ear marked for women belonging to Scheduled Tribe community. Sixty five posts have been earmarked for members of Scheduled Caste community and even have been ear marked for members of Scheduled Tribe community, which works out to only 403 out of 991. Contention was raised that office of the President is to expire within a couple of years and steps are being taken for election. Reservation of 100% for a single post would amount to the [Constitution of India](#). Normal rules is that the reservation under Article 16(4) should not exceed 50% of the appointments or posts to be made in a particular year. When there is only one post in the category there can be no reservation of post with reference to that cadre. Reservation of seats in local bodies like Municipalities are not governed by Article 16(4) which states about reservation in public employment. Apex Court in *M.R. Balaji v. State of Mysore* (AIR 1963 SC 649) held that the reservation under Article 16(4) should not exceed 50% is not applicable to reservation to the post of Chairpersons in local bodies. *Bindhya Charan Sinha v. State of West Bengal* (AIR 2004 Cal. 27) learned Single Judge held that while interpreting Section 224 of the West Bengal Panchayat Act and Articles 14 and 243C and D of the Constitution, the reservation to the post of Chairperson of Grama Panchayat cannot be made and the rule providing reservation was struck down as unconstitutional, a view which we find unable to accept. We would rather lean in favour of the decision of the Bombay High Court in *Mahesh Muljibhjaj Misre v. State of Maharashtra* (AIR 1999 Bom. 404). Reservation to local bodies, municipalities etc. have got their genesis in Part IX of the Constitution, especially Article 243D read with the legislation enacted by the State. Right to elect or get elected is neither a common law right nor a fundamental right and is only a statutory right created by statutes

and they are to be enjoyed only within the framework of the statute and therefore it cannot be examined with the touchstone of reasonableness under Article 16 of the [Constitution of India](#). We therefore hold-

(i) Second proviso to Section 153(4)(d) of the [Kerala Panchayat Raj Act, 1994](#) reserving the post of Chairman to women belonging to Scheduled Caste/Scheduled Tribe is not unconstitutional and it does not violate the equality clause enshrined in Article 14 of the [Constitution of India](#).

(ii) State Legislature is competent to lay down the provision reserving the office of the President of the Grama Panchayat to women belonging to Scheduled Caste/Scheduled Tribe under the second proviso to Section 153(4)(d) of the Kerala Panchayat Raj Act and it will not offend the provisions contained in Article 243D of the [Constitution of India](#).

(iii) The second proviso to Section 153(4)(d) is not liable to be struck down on the ground that the reservation of the post of President to women belonging to Scheduled Caste/Scheduled Tribe would amount to 100% reservation.

The Writ Appeal is dismissed.

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