

Malurappa Vs. State of Karnataka and Others

Malurappa Vs. State of Karnataka and Others

SooperKanoon Citation : sooperkanoon.com/935125

Court : Karnataka

Decided On : Dec-02-2011

Judge : B.S. Patil

Appeal No. : Writ Petition No. 11556 of 2011 (GM-CC)

Appellant : Malurappa

Respondent : State of Karnataka and Others

Advocate for Pet/Ap. : For the Petitioner: H. Srinivas Rao for M/s. Anil Associates, Advocates. For the Respondents: Sathyanarayana Singh, High Court Government Pleader, H.V. Rajaram, Advocate.

Judgement :

1. In this writ petition, petitioner is challenging the certificate dated 14-3-2011 issued by the Tahsildar, Pavagada Taluk, Tumkur District showing that respondent 3 belongs to BCM-B category.

2. The certificate is issued on 14-3-2011 pursuant to the application filed by respondent 3 on 8-3-2011. Petitioner and respondent 3 both contested for the post of Member of Grama Panchayat, Y.N. Hosakote in Pavagada Taluk. Respondent 3 got elected under the General Category. It is the case of respondent 3 that she belongs to BCM-B category. She applied for issue of BCM-B category certificate to the Tahsildar, Pavagada. The said application was rejected on 18-2-2011 holding that her husband was a Government employee and possessed income more than

Rs.2 lakhs per annum.

3. Thereafter, petitioner filed M.C.No.13 of 2011 and in that petition, a decree of divorce by mutual consent was obtained and their marriage was dissolved vide order dated 4-3-2011.

4. By producing the decree of divorce passed by the Civil Court, respondent 3 applied a fresh on 8-3-2011 for issue of a fresh certificate claiming that she was entitled for BCM-B category certificate. The said certificate was apparently applied for enabling her to contest for the post of Adhyaksha of the Grama Panchayat as against reserved category, BCM-B (women). Some of the villagers filed objection stating that the father of respondent 3 owned more than 20 acres of land and therefore, respondent 3 was not entitled for issue for BCM-B category certificate. Copy of the objection is produced at Annexure-G.

5. On 14-3-2011, the Tahsildar has issued a certificate showing that the petitioner belonged to BCM-B category. Based on this certificate, respondent 3 contested the election, which was held on 22-3-2011 and was declared elected.

6. Petitioner herein who is one of the members of the Grama Panchayat approached this Court on 19-3-2011 challenging the certificate issued in favour of respondent 3. Though stay of elections was sought, on 21-3-2011, this Court did not grant an order staying the elections scheduled, but made it clear that the elections to be conducted would be subject to the result of the writ petition.

7. The contentions of the petitioner are that the Tahsildar has not taken note of the objections filed by the villagers producing documentary evidence to show that the petitioner was not entitled for issue for BCM-B certificate, in as much as, her father owned more than 20 acres of land.

8. Learned Counsel for the petitioner contends that as the Tahsildar has not considered the relevant materials before him and has only taken note of the decree of divorce passed by the Civil Court, the certificate issued vide Annexure-J is illegal and untenable. He further contends that if the action of the Tahsildar is approved, then it will perpetuate the illegality committed and respondent 3 who the

beneficiary of such illegal order would enjoy the post of Adhyaksha though she is not entitled to hold the said post. He has relied on the judgment in the case of Yamanappa Satyappa Bandiwadar and others v Amingad Grama Panchayat, Taluk Hungund, District Bagalkot and Others, (2009(1) Kar.L.J.247 : ILR 2008 Kar.3854) to contend that if a certificate is obtained by making false and fraudulent representations regarding caste, though the said person does not belong to that particular class for which the elective office is reserved, and masquerades as a person belonging to said category and gets elected to the reserved office, it cannot but be said that such act not only constitutes violation of statutory provisions of the Karnataka Panchayat Raj Act, 1993 but also a fraud on the Constitution.

9. Counsel appearing for respondent 3 contends that against the order of the Tahsildar, there is an appeal provided as per the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act, 1990. He has placed reliance on Section 4-B of the said Act to contend that any person aggrieved by the order passed by the Tahsildar under Section 4-A, may within thirty days from the date of receipt of the order prefer an appeal to the Assistant Commissioner of the revenue sub-division.

10. Having heard the learned Counsel for the parties and on perusal of the pleadings and the materials on record, I find that the Tahsildar has not taken note of the objections filed before him stating that the father of respondent 3 owned several lands and therefore she was not entitled for the benefit of BCM-B category certificate. As rightly contended by the Counsel for the petitioner, referring to the notification dated 13-1-1995 issued by the State Government, copy of which is produced at Annexure-L, any person falling under category B shall be entitled to contest for the post of Adhyaksha of the Zilla Panchayat, Taluk Panchayat and Grama Panchayat, if he/she or either of his/her parents/guardian or both together owns not more than 8 hectares of rainfed or dry land or its equivalent. The Tahsildar ought to have considered whether respondent 3 was entitled for the benefit of BCM-B certificate having regard to the extent of land possessed by her father, particularly when objections were filed by the villagers. The Tahsildar ought to have considered the same and formed an opinion in accordance with law. Such an exercise is not done by the Tahsildar.

11. There is no appeal provided against the order passed by the Tahsildar. The provisions of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointments, etc.) Act is not applicable for the present case, as the certificate is issue for contesting elections in terms of the provisions of the Panchayat Raj Act and the Rules framed thereunder.

12. Therefore, the appropriate course in this matter is to direct the Tahsildar to rehear respondent 3 and the objectors including the petitioner who has filed this writ petition making such a grievance against the petitioner even before the elections were held and pass fresh orders with regard to the entitlement of respondent 3 to BCM-B certificate. It is made clear that the certificate already issued will be subject to the result of such enquiry. If the Tahsildar comes to the conclusion, after the enquiry that respondent 3 was not entitled for issue of such certificate, he shall revoke the said certificate and issue an endorsement in that regard. The legal consequences of such an order will certainly follow in view of the fact that the election of the petitioner is made subject to the result of the writ petition. The Tahsildar is directed to expedite the enquiry and pass necessary orders as early as possible, at any rate, within a period of three months from the date of receipt of a copy of this order. Writ petition is accordingly disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com