

(2015) 06 KAR CK 0235

Karnataka High Court

Case No: Writ Petition Nos. 24271 and 24352 of 2015

Yashavantha

APPELLANT

Vs

Shetty and Others Vs State of  
Karnataka and Others

RESPONDENT

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**Date of Decision:** June 17, 2015

**Acts Referred:**

- Karnataka Panchayat Raj Act, 1993 - Section 44, 44 (2), 44 (2)(a), 44(2), 5

**Hon'ble Judges:** Raghvendra S. Chauhan, J

**Bench:** Single Bench

**Advocate:** S. Rajashekar, for the Appellant; Shwetha Krishnappa, HCGP, Advocates for the Respondent

**Final Decision:** Dismissed

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### Judgement

@JUDGMENTTAG-ORDER

Raghvendra S. Chauhan, J.

1. The petitioners have challenged the Notification dated 25.5.2015 passed by the respondent No. 2 and have prayed that a writ of mandamus be issued to the respondents to conduct the election to the post of President and Vice-President in the Gurupur village panchayat in accordance with Section 44 of the Panchayat Raj Act, 1993 ("the Act" for short).

2. Mr. S. Rajashekar, the learned counsel for the petitioners has relied on the case of Bhimappa -vs- The State of Karnataka, Department of Panchayat Raj and others (ILR 2007 Kar 3881) in order to buttress his plea that the idea behind fixing a shorter term for the Adhyaksha and Upadhyaksha as compared to the duration of the term of the members is to provide opportunities not only to different members to contest for the post of Adhyaksha and Upadhyaksha, but also to provide opportunities to members belonging to different categories to contest. The intention is to rotate

opportunities to different reserved categories to ensure that at the grassroots level, the power is shared by all sections, so that all sections of society effectively participate in the local self governance. The learned counsel for the petitioners has contended that, both according to Section 44 (2)(a) and (b) of the Act, the post of Adhyaksha and Upadhyaksha are supposed to be reserved for certain categories on rotation. However, according to the learned counsel, the Notification dated 25.5.2015 does not permit such rotation at the Gram panchayat level. In order to support his plea, he has taken the example of Gurupur Gram Panchayat . According to the learned counsel, out of the five panchayat elections held in the State, the post of the President has been reserved for general woman and only once the said post has been reserved for OBC-A in the said Gram Panchayat. Therefore, sufficient rotation has not been done in accordance with Section 44(2) of the Act, and for the last four terms, no reservations was fixed according to the roster system to the Gurupur Gram Panchayat. Therefore, according to him, the Notification dated 25.5.2015 is not in consonance with the spirit and Section 44 (2) of the Act. Hence, the prayer of the petitioners is that the Notification should be quashed and direction should be issued to the respondents to hold election for the post of President and Vice-President of Gurupur Gram Panchayat in accordance with Section 44 of the Act.

3. On the other hand, the learned counsel for the State has contended that the contentions raised by the petitioners are highly misplaced. In fact, the Notification dated 25.5.2015 is, indeed, in consonance with Section 44 of the Act. Explaining the notification, the learned counsel has pointed out that the Election Commission is required to take the entire State as a unit and deal with all the Taluk Panchayats of the State. It is required to take the percentage of population of the Scheduled Caste, Scheduled Tribe, OBC, and woman and ensure that the said percentage of particular communities is reflected in the Panchayat Raj by reserving extent of seats in the Taluk Panchayats. An elaborate procedure has been laid down by the Notification. Even the intention behind the notification is that every section of the society is given ample opportunity to be represented on the post of President and Vice-President at the grama panchayat level. Therefore, a stray example, that too a misplaced example, would not make the notification an illegal one. Hence, the learned counsel has supported the notification dated 25.5.2015.

4. Section 44 of the Act is as under :

"44. Election of Adhyaksha and Upadhyaksha.-

(1) Every Grama Panchayat shall, within one month from the date of publication of names of elected members under sub-section (8) of section 5 or immediately before the expiry of term of office of Adhyaksha and Upadhyaksha choose two members of the Grama Panchayat to be respectively Adhyaksha and Upadhyaksha. In the event of occurrence of any vacancy by reason of death, resignation, removal or otherwise in the office of Adhyaksha or Upadhyaksha, the Grama Panchayat shall choose another member to be the Adhyaksha or the Upadhyaksha, as the case may be.

(2) Subject to the general or special order of the State Election Commission, the Deputy Commissioner shall reserve,-

(a) such number of offices of Adhyakshas and Upadhyakshas of Grama Panchayats in the State for the Scheduled Castes and Scheduled Tribes and the number of such offices bearing as nearly as may be the same proportion to the total number of the offices in the State 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) such number of offices of Adhyakshas and Upadhyakshas of the Grama Panchayats, which shall as nearly as may be, one-third of the total number of offices of Adhyaksha and Upadhyaksha in the State for the persons belonging to the Backward Classes:

Provided that out of the offices reserved under this clause eighty per cent of the total number of such offices shall be reserved for the persons falling under category 45 "A" and the remaining twenty per cent of the offices shall be reserved for the persons falling under category "B";

Provided further that if no person falling under category "A" is available, the offices reserved for that category shall also be filled by the persons falling under category "B" and Vice versa

(c) not less than one third of the total number of offices of Adhyaksha and Upadhyaksha of Grama Panchayats in the State from each of the categories which are reserved for persons belonging to the Scheduled Castes, Scheduled Tribe and Backward Classes and of those which are non-reserved, for women;

Provided that the offices reserved under this sub-section shall be allotted by rotation to different Grama Panchayats. Explanation. -

For the removal of doubts it is hereby declared that the principle of rotation for purpose of reservation of offices under this section shall commence from the first election to be held after the commencement of the Karnataka Panchayat Raj Act, 1993."

5. Section 44 (2) clearly reveals that the decision of the Deputy Commissioner is subject to the general or special order of the State Election Commission. Further the decision of reserving the seats for Adhyaksha and Upadhyaksha is to be taken at the State level and bearing in mind, as nearly as may be, the same proportion as to the total number of offices in the State as the population of the scheduled castes in the State or of the scheduled tribes in the State. It further stipulates that such number of offices of Adhyakshas and Upadhyakshas of the grama panchayat shall be as nearly as may be one-third of the total number of offices of Adhyaksha and Upadhyaksha in the state for the persons belonging to backward classes. Thus, obviously according to the said provision, the State is to be taken as a single unit and one has to deal with the reservation for the specific communities vis-à-vis their

representation in the total population of the State. Section 44 (2) of the Act has been reproduced in the notification in para-3 and para-4.

6. The notification further goes on to lay down the procedure for reserving the Taluk Panchayat for different communities mentioned above. Item No. 9 (3) clearly states that the Deputy Commissioner shall fix the reservation talukawise to various categories and woman and general category to the post of President and Vice-President in the manner prescribed. Thus, the reservation has to be done talukawise and not grama panchayatwise. Moreover, rotation has to be done again talukawise. Therefore, by taking an example of a grama panchayat which may not have a reservation of other categories, except general woman and OBC, the argument cannot be raised by the petitioner that the Notification dated 25.5.2015 is contrary to the intention, aim and object of Section 44 (2) of the Act. For a single swallow does not make a summer. To question the legal validity of a notification on a single example is too shallow a basis.

7. The entire aim and intention of the exercise of reserving categories is, indeed, to ensure that the weaker sections of the society, namely scheduled caste, scheduled tribe, OBC and woman, get ample representation and are politically empowered throughout the State. The intention cannot be reduced to a particular grama panchayat as the rotation is being done talukawise throughout the State and not grama panchayatwise.

For the reasons stated above, this Court does not find any merit in the present petitions. The Writ Petitions are, hereby, dismissed.