

SMT. BHARATI REDDY

A

v.

THE STATE OF KARNATAKA AND ORS.

(Civil Appeal No. 10587 of 2017)

AUGUST 17, 2017

B

[J. CHELAMESWAR AND S. ABDUL NAZEER, JJ.]

Panchayats – Karnataka Gram Swaraj and Panchayat Raj Act, 1993 – s.177 – Karnataka Panchayat Raj (Election of Adhyaksha and Upadhyaksha of Zilla Panchayat) Rules, 1994 – r.7 – Zilla Panchayat Elections – Election of ‘Adhayaksha’, challenged u/Art.226 by the voters, who are not the members of the Zilla Panchayat – Maintainability of – Single Judge of High Court dismissed the writ petition on the ground of maintainability in view of the bar contained in cl.(b) of Art. 243-O – Division Bench set aside the order of the Single Judge and remanded back the matter for fresh disposal of the case – Appellant challenged the legality and correctness of the Division Bench’s order – Held: Power of judicial review u/Art.226/227 is the part of the basic structure of the Constitution, which can neither be tinkered with or eroded – Therefore, it cannot be said that the writ petition filed by respondents u/Art. 226 is not maintainable – In instant case, Respondents cannot challenge the election of the appellant to the office of Adhyaksha by filing an election petition as though they are voters, but not the members of the Zilla Panchayat in question – However, a voter who is not a member cannot be denied opportunity to challenge the election to the office of Adhyaksha u/Art.226/227 of the Constitution – Thus, writ petition filed by respondents before High Court is maintainable – Constitution of India – Arts.226/227, 243-O.

C

D

E

F

Judicial Review – Held: Power of judicial review under Articles 226/227 of the Constitution is an essential feature of the Constitution which can neither be tinkered with nor eroded – Constitution of India – Arts.226/227.

G

Remedy – Panchayat Elections – Held: A voter in a particular panchayat cannot be rendered remediless if he is

H

A *aggrieved by the election of the Adhayksha of the Panchayat – Writ petition filed by voters u/Art.226/227 before High Court is maintainable – Constitution of India – Arts.226/227.*

Disposing of the appeal, the Court

B **HELD: Whether the writ petition filed by the voters, who are not the members of the Zilla Panchayat, challenging the election of the Adhyaksha of the Zilla Panchayat is maintainable.**

C 1. The appellant contended that in spite of Article 226 of the Constitution, the High Court had no jurisdiction to entertain the writ petition in view of the bar contained in clause (b) of Article 243-O of the Constitution. It was argued that the aggrieved person will have to avail himself the remedy provided in Rule 7 of Karnataka Panchayat Raj (Election of Adhyaksha of Upadhyaksha of Zilla Panchayat), Rules, 1994 and cannot approach the High Court in the first instance under Article 226 of the Constitution of India. The contention is devoid of any merit. A voter in a particular panchayat cannot be rendered remediless if he is aggrieved by the election of the Adhayksha of the Panchayat. [Paras 11, 12] [864-C-D]

E 2. It is clear that power of judicial review under Articles 226/227 of the Constitution is an essential feature of the Constitution which can neither be tinkered with nor eroded. Even the Constitution cannot be amended to erode the basic structure of the Constitution. Therefore, it cannot be said that the writ petition filed by respondent Nos. 6 to 9 under Article 226 of the Constitution is not maintainable. However, it is left to the discretion of the court exercising the power under Articles 226/ F 227 to entertain the writ petition.[Para 13] [865-C-D]

G *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. (1973) 4 SCC 225 : [1973] Suppl. SCR 1 ; Minerva Mills Ltd. and Ors. v. Union of India and Ors. (1980) 3 SCC 625 : [1981] 1 SCR 206; L. Chandra Kumar v. Union of India and Ors. (1997) 3 SCC 261 : [1997] 2 SCR 1186 ; I.R. Coelho (dead) by Lrs. v. State of Tamil Nadu (2007) 2 SCC 1 : [2007] 1 SCR 706 – relied on.*

H

3. As noticed, though respondent Nos. 6 to 9 are the voters, but they are not the members of the Zilla Panchayat. They are aggrieved by the election of the appellant to the office of the Adhyaksha. They cannot challenge the election of the appellant to the office of Adhyaksha by filing an election petition as they are not the members of the Zilla Panchayat in question. However, a voter of the Zilla Panchayat who is not a member cannot be denied an opportunity to challenge the election to the office of Adhyaksha under Articles 226/227 of the Constitution. Therefore, the writ petition filed by respondent Nos. 6 to 9 before the High Court is maintainable. [Para 15] [865-F-G]

Charan Lal Sahu v. K.R. Narayanan (1998) 1 SCC 56 : [1997] 5 Suppl. SCR 317- referred to.

Case Law Reference

| | | |
|-------------------------|-------------|---------|
| [1997] 5 Suppl. SCR 317 | referred to | Para 5 |
| [1973] Suppl. SCR 1 | relied on | Para 12 |
| [1981] 1 SCR 206 | relied on | Para 12 |
| [1997] 2 SCR 1186 | relied on | Para 12 |
| [2007] 1 SCR 706 | relied on | Para 14 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10587 of 2017.

From the Judgment and Order dated 05.06.2017 of the High Court of Karnataka Circuit Bench at Dharwad in WA No. 101459 of 2016.

Mukul Rohatgi, Sr. Adv., Lakshmi Narayana N., Ms. Rekha Patil, H. Chandra Shekhar, Advs. for the Appellant.

Dr. Rajeev Dhawan, Sr. Adv, S. B. Malhpalhi, Sharan Gouda Patil, S. Anand and M/s S-Legal Associates, Advs. for the Respondents.

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J. 1. Leave granted.

2. The appellant was elected as a member of Zilla Panchayat, Bellary from 13-Badanahatti Constituency, which was reserved for

- A General (Women) category in the election held on 20.2.2016. The State Government issued a notification dated 15.4.2016 reserving the post of Adhyaksha of Zilla Panchayat, Bellary for Backward Class-B (Woman). The appellant contested for the said office and was declared as elected. Respondents 6 to 9 are residents of Bellary district and were voters in the election to the Zilla Panchayat in question. They filed Writ Petition No.106417 of 2016 in the Dharwad Bench of Karnataka High Court challenging the election of the appellant as the Adhyaksha mainly on the ground that she does not belong to backward class (B) and that she has contested the election on the basis of a false caste certificate issued by the Tehsildar, Kurugodu, Bellary. The appellant raised objection as to the maintainability of the writ petition having regard to the bar contained in Clause (b) of Article 243-O of the Constitution of India. It was also contended that the aggrieved party has to challenge the election by way of election petition before the jurisdictional District Judge.

3. Learned Single Judge by his order dated 21.10.2016 dismissed the writ petition on the ground of maintainability in view of the bar contained in Clause (b) of Article 243-O of the Constitution. Learned Single Judge also referred to Rule 7 of the Karnataka Panchayat Raj (Election of Adhyaksha and Upadhyaksha of Zilla Panchayat) Rules, 1994 providing for the filing of the election petition before the jurisdictional District Judge by an aggrieved party.

4. Respondents 6 to 9 challenged the said order by filing Writ Appeal No.101459 of 2016 before the Division Bench. The Division Bench by order dated 5.6.2017 set aside the order of the learned Single Judge by holding that the writ petition was maintainable. The Division Bench remanded the matter to the learned Single Judge for fresh disposal of the case, keeping open all the other questions. The appellant has challenged the legality and correctness of the said order in this appeal.

5. Appearing for the appellant, Shri Mukul Rohatgi, learned senior counsel, submits that the writ petition filed by respondent Nos. 6 to 9 challenging the election of the appellant, was not maintainable in view of the express bar contained in Article 243-O of the Constitution of India. It is submitted that the only remedy available to the aggrieved party is to file an election petition before the jurisdictional District Judge. In this connection, he has relied upon the decision of this Court in *Charan Lal Sahu v. K.R. Narayanan* (1998) 1 SCC 56.

6. On the other hand, Dr. Rajiv Dhawan, learned senior counsel, appearing for respondents 6 to 9 submitted that respondents 6 to 9 were the voters in the election to the Zilla Panchayat. They cannot maintain an election petition as they are not the members of the Zilla Panchayat. If the writ petition is dismissed on the ground of maintainability, the voter, who is not a member of Zilla Panchayat and aggrieved by the election of the Adhyaksha, will remain remediless. He submits that judicial review is the basic structure of the Constitution.

7. We have carefully considered the submissions of the learned senior counsel for the parties. The short question for our consideration is whether the writ petition filed by the voters, who are not the members of the Zilla Panchayat, challenging the election of the Adhyaksha of the Zilla Panchayat is maintainable.

8. Part IX containing Articles 243, 243-A to 243-O was inserted by the Constitution 73rd Amendment Act, 1992. Article 243-O which is relevant for this case reads as under:

“243-O. Bar to interference by courts in electoral matters –
Notwithstanding anything in this Constitution-

- (a) The validity of any law relating to the delimitation of constituencies or allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court;
- (b) No election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State.”

9. A bare reading of sub-section (b) of Article 243-O would show that election to any panchayat cannot be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

10. Adhyaksha and Upadhyaksha of the Zilla Panchayat are elected in accordance with Section 177 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 and Rule 7 of Karnataka Panchayat Raj (Election of Adhyaksha and Upadhyaksha of Zilla Panchayat) Rules, 1994. The said Rule reads as under:

A “7. Election dispute petition: (1) any member of Zilla panchayat, in whose jurisdiction the Zilla Panchayat lies, can question the election of Adhyaksha and Upa-Adhyaksha before the said District Judge, within 15 days from the date of declaration of election result by depositing Rs 2,000/- alongwith an Election Petition.”

B

It is clear from this Rule that a non-member of Zilla Panchayat cannot maintain an election petition.

C 11. Learned senior counsel for the appellant contended that in spite of Article 226 of the Constitution, the High Court had no jurisdiction to entertain the writ petition in view of the bar contained in clause (b) of Article 243-O of the Constitution. It was argued that the aggrieved person will have to avail himself the remedy provided in Rule 7 and cannot approach the High Court in the first instance under Article 226 of the Constitution of India.

D

12. We do not find any merit in this contention. We are of the view that a voter in a particular panchayat cannot be rendered remediless if he is aggrieved by the election of the Adhyaksha of the Panchayat. In *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr.* (1973) 4 SCC 225, a thirteen Judge Bench of this Court held that Article 368 of the Constitution does not enable the Parliament to alter the basic structure or framework of the Constitution. The basic structure of the Constitution could not be altered by any constitutional amendment and it was held in unambiguous terms that one of the basic features is the existence of constitutional system in judicial review. This view was followed by a Constitution Bench in *Minerva Mills Ltd. and Ors. v. Union of India and Ors.* (1980) 3 SCC 625. In *L. Chandra Kumar v. Union of India and Ors.* (1997) 3 SCC 261, a seven Judge Bench of this Court has held that jurisdiction conferred upon the High Courts under Articles 226/227 of the Constitution and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and tribunals may perform a supplementary role in discharging the powers conferred by Articles 226/227 and Article 32 of the Constitution of India. It has been held as under:

E

F

G

“We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and

H

in the Supreme Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.”

A

In *I.R. Coelho (dead) by Lrs. v. State of Tamil Nadu* (2007) 2 SCC 1, a Bench of nine Judges has again held that power of judicial review is the part of the basic structure of the Constitution. The power to amend cannot be equated with the power to frame the Constitution.

B

13. It is thus clear that power of judicial review under Articles 226/227 of the Constitution is an essential feature of the Constitution which can neither be tinkered with nor eroded. Even the Constitution cannot be amended to erode the basic structure of the Constitution. Therefore, it cannot be said that the writ petition filed by respondent Nos. 6 to 9 under Article 226 of the Constitution is not maintainable. However, it is left to the discretion of the court exercising the power under Articles 226/227 to entertain the writ petition.

C

D

14. In *Charan Lal Sahu* (supra) relied upon by the learned senior counsel, the question for consideration was maintainability of an election petition presented by a candidate challenging the election to the Office of the President of India who has not been duly nominated under Section 14A of the Presidential and Vice-Presidential Elections Act, 1952. This decision has no application to the facts of the present case.

E

15. As noticed above, though respondent Nos. 6 to 9 are the voters are not the members of the Zilla Panchayat. They are aggrieved by the election of the appellant to the office of the Adhyaksha. They cannot challenge the election of the appellant to the office of Adhyaksha by filing an election petition as they are not the members of the Zilla Panchayat in question. In our view, a voter of the Zilla Panchayat who is not a member cannot be denied an opportunity to challenge the election to the office of Adhyaksha under Articles 226/227 of the Constitution. Therefore, we hold that the writ petition filed by respondent Nos. 6 to 9 before the High Court is maintainable.

F

G

16. The appellant was elected as Adhyaksha of the Zilla Panchayat in the election held on 20.02.2016. As noticed above, the Division Bench has remanded the matter to the learned Single Judge for its disposal keeping open all other contentions of the parties. Therefore, we request

H

- A the learned Single Judge of the High Court to dispose of the writ petition as expeditiously as possible, preferably within four weeks from the date of receipt of this order. Till the disposal of the writ petition, we permit the appellant to perform the functions of Adhyaksha of Zilla Panchayat, Bellary in accordance with law and his continuation as such is subject to the result of the writ petition. The appeal is disposed of accordingly.
- B

17. There will be no orders as to costs.

Ankit Gyan

Appeal disposed of.