LAW COMMISSION OF KARNATAKA

THIRD REPORT

Consideration of observations in the Judgments of High Court of Karnataka in 1996(7) Karnataka Law Journal 215 & Writ Petition No.624/1996 to amend Sections 44 and 49 of Karnataka Panchayat Raj Act, 1993

Government of Karnataka, Ministry of Law
LAW COMMISSION OF KARNATAKA

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Government of Karnataka.

Government of Karnataka, Ministry of Law.
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Government of Karnataka, Ministry of Law

The Secretary to Government, Department of Law, Justice and Human Rights has by his letter No.LAW/LS(A) 277/2009 dated 23.7.2009 requested the Commission to consider making amendments to the Karnataka Panchayat Raj Act, 1993 in the light of the observations made by the Karnataka High Court in the case reported in 1996(7) Karnataka Law Journal 215 between Bapu Dada Patil v/s State of Karnataka, copy of which is enclosed as Annexure-1.

The following reasons have been stated in the letter of the Law Secretary:

“It is quite appropriate for the Government to consider the amendment. The facts of the case are that the 6th respondent therein had been elected as the Adhyaksha of the said Panchayat as she being the only woman Scheduled Tribe candidate. A “No confidence” motion was brought against her on 24-11-1995. But in the meantime, i.e. on 21-11-1995 she has submitted her resignation and has requested the concerned authorities to postpone the meeting. A question was asked to the appellants therein as to whether there is any provision in
the statute barring a person against whom no confidence is expressed by a resolution to contest for the same office at a later stage, in the normal circumstance when there is no reservation. The appellant’s counsel was not in a position to point out any such prohibition.

Therefore, it is observed at para 6 “If in the normal circumstance there is no bar against whom no confidence is expressed to contest to that post later and if he is very confident of winning the election thereto, why such a person cannot contest the election is beyond our understanding and such a view hardly stands to logic. Therefore, we think we should allow the process commenced by the respondent to reach its logical end”.

No doubt under Section 44 of the said Act reservations are made to certain castes or communities and such reservations are considered to be proper. If a person in whom no confidence is expressed and is elected again to such office and such person is not in a position to command majority in the Panchayat, there will be deadlock and stalemate in the Panchayat. Therefore, the Hon’ble High Court has directed that the Legislature will have to bestow its attention in this regard and suitably provide for such contingencies.

This direction was given by virtue of judgement dated 13-6-96, but still the amendment has not yet been carried out. As a result, in W.P.No.9957/2009 (LB-ELE) dated 9th April, 2009, which came up before the Hon’ble High Court, wherein it has considered its earlier decision rendered in Bapu Dada Vs. State of Karnataka reported in 1996(7) Kar.L.J. 215 (DB). At para 5 of W.P.No.9957/2009, it has been observed “It is a matter
of fact that although 13 years have gone by since the aforesaid observation of the Division Bench of this court, nothing precious is done by the State. It is hoped that the State would open its eyes and bestow its attention in that regard, at least now”.

It appears, that a direction was also given to the Registry to send a copy of the said order to the Secretary, Department of Panchayat Raj for taking needful action.

Though directions were given as early as in 1996, steps have not been taken for the amendment. It is therefore requested to take necessary action by suggesting proper amendment in view of the observation made by Hon'ble High Court.”

2. The High Court has made certain observations expressing desirability of amending the Karnataka Panchayat Raj Act, 1993 (hereinafter referred to as the ‘Act’), in the light of the situation that arose in the case of Bapu Dada Patil. One Smt. Prabhavathi was elected as the Member of the Gram Panchayat in the seat reserved for Scheduled Tribe Woman. She was in due course elected as the Adhyaksha of the said Gram Panchayat, the said office having been reserved in favour of Scheduled Tribe Woman. Later, a no confidence motion was brought against her on 24.11.1995. But three days before that, she had submitted her resignation to the office of Adhyaksha. In this background, she
requested to postpone the meeting scheduled to be held for considering the motion of no confidence against her. Not heeding to her request, the meeting was held and a resolution of no confidence was passed against Smt. Prabhavathi. She has challenged the validity of that resolution in separate proceedings. Sri. Bapu Dada Patil challenged the validity of Section 44 of the Act that provides for reservation of the offices of Adhyaksha and Upadhyaksha in favour of Backward classes, Scheduled Castes and Scheduled Tribes and women. The reserved posts are required to be rotated among the several Panchayats in the State. It is by the process of reservation in favour of reservation of the office of Adhyaksha in favour of women belonging to the Scheduled Tribe that Smt. Prabhavathi was elected as the Adhyaksha. It appears that she being the only woman candidate belonging to the Scheduled Tribe was elected unopposed. When she was removed from the office of Adhyaksha on the passing of vote of no confidence motion against her, she had to vacate office. Thereafter steps were initiated to convene a meeting to hold a fresh election to the office of Adhyaksha of the Gram Panchayat reserved for Scheduled Tribe woman. Bapu Dada Patil challenged Section 44 of the Act on the ground that it creates an awkward situation rendering removal of Adhyaksha by passing of motion of no confidence regulated by Section 49 of the Act nugatory. As in this
particular Gram Panchayat, the office of Adhyaksha was reserved in favour of a woman belonging to the Scheduled Tribe and Smt. Prabhavathi being the only woman candidate belonging to the Scheduled Tribe, she would again be elected unopposed in the vacancy created by her own being removed on a vote of no confidence motion being passed against her. The High Court had dismissed the writ petition. The High Court observed that if in the normal circumstances, there is no bar for the candidate against whom motion of no confidence is passed from contesting to the post vacated by the very said person, there is no good reason to prevent such a situation taking place only because the post is reserved and only one candidate is available, resulting in the same candidate who was removed on passing of no confidence motion getting re-elected there being no other candidate available to contest. In the light of the decision of the High Court, the Commission has to proceed on the basis that Section 44 of the Act is constitutionally valid. It is in this background that the High Court has observed as follows in paragraph 7 of its judgment:-

“In the light of the fact that the petitioner’s representation alleging that the 4th respondent has committed acts of misappropriation, is yet to be considered by the authority, it cannot be said that the 4th respondent is guilty of the said charges so as to disentitle her to contest the election to the Office of the President on 15.4.2009. In that view of the matter,
the representations Annexures G and H to stall the election to the Office of the President scheduled on 15.4.2009 is without merit and does not call for interference.”

3. It is in this background that the Commission has to examine if any amendment to the Act is required to be proposed.

4. Section 44 of the Karnataka Panchayat Raj Act, 1993 which relates to election of Adhyaksha and Upadhyaksha reads as follows:

“Section 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...
Tribe 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:

[Proviso x x x]

(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 percent of the total number of such offices shall be reserved for the persons falling under category ‘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. Clause “c” of sub-section (2) of Section 44 provides for reservation of offices of Adhyaksha and Upadhyaksha of Gram Panchayats. The reserved offices of Adhyaksha and Upadhyaksha are required to be allotted by rotation to different Gram Panchayats. A further reservation is required to be made for the women to the extent of 1/3rd of the total number of offices of Adhyaksha and Upadhyaksha reserved for different categories. In accordance with the provisions regulating reservation that the office of Adhyaksha of the concerned Gram Panchayat was reserved in favour of a Scheduled Tribe woman. Smt. Prabhavathi who was a Scheduled Tribe woman was elected as the Adhyaksha. Some time later a no confidence motion was brought against her on 24.11.1995. A few days before, that is on 21.11.1995, she had submitted her resignation to the office of Adhyaksha. In this background, she requested that the meeting for considering the motion of no
confidence against her should be postponed and her resignation accepted. Notwithstanding her request for postponement, the meeting was held and a resolution expressing no confidence against her was passed. Thereafter, steps were taken to convene a meeting of the Gram Panchayat for electing a new Adhyaksha. One Member Sri. Bapu Dada Patil challenged the steps taken to elect a new Adhyaksha by filing a writ petition under Article 226 of the Constitution in the High Court of Karnataka. The writ petition having been dismissed, the said order was challenged before the Division Bench in W.A.No.624/1996. The Appellate Bench while dismissing the appeal made the following observations in paragraph 7 of the judgment:

“At the same time we should also notice the very difficult and impractical results which would lead to if the provisions of the enactments are given full effect to. Under Section 44 certain reservations are given to persons belonging to certain castes or community and such reservations are considered to be proper, bearing in mind that such posts were never held by such persons belonging to such castes. History cannot be forgotten in that regard. Reservations made to protect such persons must further provide that the no confidence motion could be moved only in certain circumstances such as disability arising on account of serious misconduct of the incumbent in office. Otherwise as provisions stand, the enactment
leads to piquant situations such as in the present case, as if a person in whom no confidence is expressed and is elected again to such office and such person is not in a position to command majority in the Panchayath, there will be deadlock and stalemate in the Panchayath. The legislature will have to bestow its attention to this aspect and suitably provide for such contingencies.”

6. The Bench has invited the attention of the Legislature to bestow its attention to the problem discussed in paragraph 7 of the judgment and to resolve the problem by suitable amendment to the Panchayat Raj Act. Though the judgment was rendered on 13.6.1996, the Legislature not having taken any steps to amend the Act, in a subsequent case before the High Court of Karnataka in Writ Petition No.9957/2009 dated 9.4.2009, copy of which is enclosed as Annexure-2 the following observations have been made:

“It is a matter of fact that although 13 years have gone by since the aforesaid observation of the Division Bench of this Court, nothing precious is done by the State. It is hoped that the State would open its eyes and bestow its attention in that regard, at least now”
7. It is in this background that the Law Secretary has placed the matter before the Law Commission for its consideration and appropriate recommendations.

8. Sub-section (2) of Section 4 of the Act requires the Deputy Commissioner to reserve certain number of offices of Adhyaksha and Upadhyaksha of the Gram Panchayat in the State in favour of the members of the Scheduled Caste and Scheduled Tribes. There is a further reservation in favour of the woman from among the posts reserved for the scheduled Castes and Scheduled Tribes of 1/3rd number of such offices. The further requirement is that the offices so reserved have to be allotted by rotation to different Gram Panchayats. It is on the basis of such reservation in favour of women, in the category of scheduled tribes that Smt. Prabhavathi was elected as the Adhyaksha of the Gram Panchayat.

9. Section 49 of the Act provides that every Adhyaksha or Upadhyaksha shall forthwith be deemed to have vacated office if resolution expressing no confidence is passed by a majority of not less than 2/3rd of the total number of members of the Gram Panchayat, at a meeting specially convened for this purpose in accordance with the prescribed procedure. There is a proviso to this Section which states that no resolution expressing vote of
confidence shall be moved within 1 year from the date of election. There is a further proviso to the effect if the resolution expressing no confidence has been considered and negatived, a similar resolution in respect of the same Adhyaksha or Upadhyaksha shall not be moved within 1 year from the date of the decision of the Gram Panchayat.

10. The clear effect of these provisions is that the person who gets into office of Adhyaksha or Upadhyaksha by virtue of reservation may or may not enjoy continuous support of the majority of the members of the Gram Panchayat. Even when majority of the members of the Gram Panchayat lose confidence in Adhyaksha or Upadhyaksha, he cannot be removed from the office for a period of one year from the date of election as provided in the proviso to Section 49. Again, when a motion of no confidence fails no second motion can be moved for a year, thus enabling the President to continue in Office for that period of one year even if during that period the President loses the majority support. Thus, the Adhyaksha will continue to discharge his functions even when majority of the members of the Gram Panchayat do not support him. This is a necessary consequences that flows when the policy of reservation that has been incorporated in the Act in accordance with the mandate of Article
243 (d) (4) of the Constitution of India is given effect to. There is a further proviso which says that if motion of no confidence fails no second resolution of no confidence can be moved for a period of one year. Therefore, it follows that even if during that period the Adhyaksha or Upadhyaksha loses the support of the majority, the functioning of the Panchayat is not affected. Continuance in office of Adhyaksha/Upadhyaksha who does not have the majority support has thus the statutory sanction. In such situations, it cannot be said that there would be a deadlock or stalemate in the Panchayat as the business of the Panchayat can be carried out by taking appropriate decisions in accordance with the views of the majority of the members of the Panchayat.

11. Section 53(3) of the Act expressly provides that all questions shall unless otherwise specifically provided be decided by a majority of votes of the members presenting voting. Therefore even when the Adhyaksha is not in favour of the decision of the majority of the Panchayat it is the decision of the majority of the Panchayat that prevails and not the view of the Adhyaksha. As the decisions of the Panchayat can be taken in accordance with the majority opinion of the members of the Panchayat, there would be no stalemate, deadlock or difficulty in carrying out the affairs of the Panchayat irrespective of whether the
Adhyaksha enjoys the support of the majority or not. That the Adhyaksha does not enjoy the support of the majority of the members does not in any manner affect the normal functioning of the Panchayat.

12. If the person who holds the office of Adhyaksha is removed from the office by passing of the resolution of no confidence, there is no statutory provision which disqualifies him from contesting the election to the office of the Adhyaksha. Any Member who has the majority support can get elected as Adhyaksha. If the member enjoys support of the majority, he can get elected to the office of Adhyaksha which he has vacated on the passing of an earlier resolution expressing no confidence in him. This can not in any way affect the functioning of the panchayat, as all decisions for the administration of the panchayat can be taken on the basis of the majority views of the members of the panchayat. Even when Adhyaksha does not command the majority in the Panchayat, it will not create any deadlock or stalemate as already stated because decisions of the Panchayat can be taken only in accordance with the views of the majority of the members. It is because no stalemate or deadlock would be created that the Legislature did not make any provision to disqualify the person against whom the vote of no confidence is passed, from contesting
election to the same office. When no confidence motion is passed, it only means that the person does not have majority support. It is not a stigma or disqualification. It is common knowledge that in Parliament and State Legislatures persons losing majority at one point are not prevented from becoming a Prime Minister or Chief Minister when they are able to receive majority support. When an Adhyaksha is removed from the Office of Adhyaksha on the passing of a no confidence motion, it only means that he does not have the support of majority of the members. It does not attach any stigma and does not amount to any stigma. The intention of the Legislature obviously is that, persons in whose favour reservation is made should remain in office even when majority of members do not support him. The Law Commission therefore does not find any good reason to recommend any amendment to the Act as the existing statutory provisions are quite reasonable and do not bring about a situation which creates any stalemate or deadlock. They have the support of the Constitutional mandate contained in Article 243-D. With great respect, therefore, the Commission does not agree with the observations made by the High Court in Writ Appeal No.624/1996 between Bapu Dada Patil and State of Karnataka [1996 (7) Kar.L.J 215 DB]. Accordingly, the commission does not consider it necessary to recommend any amendments to the Act.
13. There is also an observation of the Bench that a provision should be made in the Act to provide that no confidence motion can be moved only in certain circumstances such as disability arising on account of serious misconduct of the incumbent of the office. Firstly, it must be pointed out that removal from office for misconduct is quite different from removal from office on the passing of resolution of no confidence. The Statute has provided in Section 48(4) a special provision for removal of Adhyaksha for misconduct. On such removal, he will not be eligible for re-election. Therefore, Vote of no confidence can not be equated with misconduct. What is crucial for no confidence motion is that the person does not enjoy the confidence meaning support of the majority of members. Loss of confidence or support of the majority of members may be for any reason whatsoever and misconduct is not the necessary ingredient for no confidence. In Democracy the support of members is fluctuating. No confidence resolution is not a stigma unlike misconduct. Misconduct would imply making allegations of deviant conduct, an opportunity to the person likely to be affected of showing cause and even an enquiry before holding one guilty of misconduct would be necessary. All these are not the indicia of simple ‘no
confidence’ motion. With great respect, we are unable to agree with the suggestions of Hon’ble High Court.

14. The Division Bench of the High Court while disposing of Writ Appeal No.624/1996 on 13.6.1996 has invited the attention of the Legislature to the problem noticed therein and suggested making suitable amendments to the Karnataka Panchayat Raj Act. When the High Court was dealing with a later case in Writ Petition No.9957/2009 which was decided on 9th April 2009 expressed surprise that nothing precious has been done by the State even though 13 years have gone by and then proceeded to observe “It is hoped that the State would open its eyes and bestow its attention in that regard atleast now”. With great respect, these are quite harsh observations. It may be recalled that the Supreme Court has laid down that no mandamus can be issued to the legislature to command it to enact a law in a particular manner in two decisions reported in AIR 1971 SC 2399 (Narinder Chand Hem Raj & Others v/s Lt. Governor, Administrator, Union Territory, Himachal Pradesh and others) and AIR 1992 SC 1546 (State of Jammu & Kashmir v/s A.R. Zakki and others). However, when the High Court makes observations expressing desirability of enacting a suitable law, the State ought out of deference consider the views expressed by the High Court and
convey its response expeditiously. The Commission is of the considered opinion that a healthy convention should be developed on these lines between the State and the High Court in regard to consideration of the observations of the High Court and conveying its response to the High Court expeditiously.

RECOMMENDATION

15. It is for the Government to consider the views expressed by the Commission in this report and if it agrees with the same to forward a copy of the report to the Registrar of the High Court for being placed before the Hon’ble Chief Justice of the High Court.

* * * * *

ANNEXURE - 1
IN THE HIGH COURT OF KARNATAKA

WA No. 624/1996

Decided On: 13.06.1996

Appellants: Bapu Dada Patil
Vs.
Respondent: State of Karnataka

Hon’ble Judges
S. Rajendra Babu, Ag. C.J. and Chidananda Ullal, J.

Counsels:
For Appellant/Petitioner/Plaintiff: G.S. Kannur, Adv.

For Respondents/Defendant: Nagarajappa, HCGP for R-1 to 5 and Ravi S. Balekai, Adv. for R-5

Subject: Election

Catch Words

Mentioned IN

Acts/Rules/Orders:
Karnataka Panchayatraj Act, 1993 - Section 44

Disposition:
Appeal dismissed

Case Note:
(A) KARNATAKA PANCHAYATRAJ ACT, 1993 (Karnataka Act No. 14 of 1993) - Section 44 -- post of Adhyaksha reserved for woman ST candidate -- on her removal by no-confidence motion, held, no bar for her contesting again, and no ground to interfere with re-election.

Held:

If in the normal circumstance there is no bar against whom no confidence is expressed to contest to that post later and if he is very confident of winning the election thereto, why such a person cannot contest the election is beyond our understanding and such a stand hardly stands to logic. Therefore we think we should allow the process commenced by the respondent to reach its logical end.

(B) OBITER - Protection to reserved posts -- removal of such persons be made possible on grounds of serious misconduct rather than on vagaries of politics.

JUDGMENT

S. Rajendra Babu, Ag. CJ.

1. This appeal is directed against an order made by the learned Single Judge refusing to interfere with the election process being commenced for electing an Adhyaksha to a gramapanchayat.

2. The contention advanced on behalf of the appellant is that one Smt. Prabhavathi had been elected as the Adhyaksha of the gramapanchayat. She belongs to Scheduled Tribe. The post of Adhyaksha is reserved for woman S.T. candidates in terms of Section 44 of the Karnataka Panchayatraj Act, 1993. The only ground urged in support of the challenge to the validity of the said provision is that it renders Section 49 otiose.
3. The 6th respondent had been elected as the Adhyaksha of the said Panchayat she being the only woman ST. candidate. A no-confidence motion was brought against her on 24.11.1995. It is also stated that she submitted her resignation on 21.11.1995 and requested the second respondent to postpone the meeting to be hold on 24.11.1995. Separate proceedings have been initiated before this Court challenging the validity of the resolution passed expressing no-confidence in the 6th respondent and to accept her resignation.

4. Now the Learned Counsel for the appellant submits that the intention of the Karnataka Panchayatraj Act is to take democracy to grass roots level. The Panchayat has to function according to the democratic principles and thus there is rule by majority and consequently when the majority had expressed want of confidence in the 6th respondent by setting the process of election into motion on the same terms as provided under Section 44 would lead to nullification of such a process. Thereby it will reduce the whole process to mockery of democracy. He emphasised that it is not the intention of the legislature at all. He also points out in such circumstances when a motion of no-confidence is carried against an office bearer, to allow such candidate to contest again will be stultification of democracy. He therefore contends that to allow Section 44 to work in the face of a resolution passed under Section 49 would render Section 49 useless and therefore seeks the remedy as stated earlier.

5. The learned Counsel appearing for the respondent submitted that the steps taken by the respondent are in terms of the statute. As along as provisions thereof are valid the question of modifying the same by an order of the Court would not arise and such a process cannot be favoured at all. He therefore submitted that this Court should not interfere with the process of election initiated by the respondents.
6. We pointedly asked the learned Counsel for the appellants as to whether there is any provision in the statute barring a person against whom no-confidence is expressed by a resolution to contest for the same office at a later stage, in the normal circumstance when there is no reservation. The learned Counsel is not in a position to point out any such prohibition. If in the normal circumstance there is no bar against whom no confidence is expressed to contest to that post later and if he is very confident of winning the election thereto, why such a person cannot contest the election is beyond our understanding and such a stand hardly stands to logic. Therefore we think we should allow the process commenced by the respondent to reach its logical end.

7. At the same time we should also notice the very difficult and impractical results which would lead to if the provisions of the enactments are given full effect to. Under Section 44 certain reservations are given to persons belonging to certain castes or community and such reservations are considered to be proper, bearing in mind that such posts were never held by such persons belonging to such castes. History cannot be forgotten in that regard. Reservations made to protect such persons must further provide that the no-confidence motion could be moved only in certain circumstances such as disability arising on account of serious misconduct of the incumbent in office. Otherwise as provisions stand, the enactment leads to piquant situations such as in the present case, as if a person in whom no confidence is expressed and is elected again to such office and such person is not in a position to command majority in the Panchayath, there will be dead-lock and stalemate in the Panchayath. The legislature will have to bestow its attention to this aspect and suitably provide for such contingencies.

8. In this case Sri Balekai, learned Counsel for the 6th respondent submits that the 6th respondent is confident of carrying the
majority in the Panchayath in the event she is elected now. It is very difficult and hazardous to guess anything in the political field. Therefore we express no view with regard to that matter bearing in mind the vagaries of the political field. All the same this appeal fails and is dismissed.
IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 9th DAY OF APRIL 2009

BEFORE

THE HON'BLE MR. JUSTICE RAM MOHAN REDDY

WRIT PETITION No.9957 OF 2009 (LB-ELE)

BETWEEN :

1  T M UMASHANKAR
   S/O. MARULUSIDDAPPA
   AGE : 58 YEARS
   R/AT TIMMA NAVAKANAHALLI
   SOMPURA HOBLI
   NELAMANGALA TALUK.

2  M G RAJASHEKARAIAH
   S/O. GANGADARAIH
   AGE : 52 YEARS
   R/AT. MADENAHALLI,
   LAKKUR POST, SOMPURA HOBLI
   NELAMANGALA TALUK.

3  G SHIVAKUMAR
   T GANGAPPA
   AGE : 47 YEARS
   SOMPURA VILLAGE
   NELMANGALA TALUK.

4  REVANASIDDAPPA
   S/O. REVAIH
   AGE : 38 YEARS
   SOMPURA VILLAGE
   NELMANGALA TALUK.

5  HANNUMANTHAIAH
   S/O. HANUMAIAH
AGE: 49 YEARS
R/AT SOMPURA VILLAGE
LAKKUR POST
NELMANGALA TALUK.

6  V VEERABHADRAIAH
S/O. VEERANANJAPPA
AGE: 58 YEARS
R/AT SOMPURA VILLAGE
NELMANGALA TALUK.

7  SHIVASHANKAR
S/O. RUDRAIAH
AGE: 42 YEARS
R/AT SOMPURA VILLAGE
NELMANGALA TALUK.

8  LAKSHMAMMA
W/O. THIMMAVANGAIH
AGE: 48 YEARS
R/AT PAMANAHALLI VILLAGE
NELMANGALA TALUK.

9  C RAMAIAH
S/O. NJAGALLU KAMPA HALLI
AGE: 45 YEARS
R/AT SOMPURA VILLAGE
NELMANGALA TALUK.

10  GANGAMMA
W/O. GANGARAJU
AGE: 40 YEARS
R/AT BARATHIPURA YEDEHALLI
NELMANGALA TALUK.

11  CHOWDAMMA
W/O. RAJANNA
AGE: 45 YEARS
R/AT YEDEHALLI VILLAGE
NELMANGALA TALUK.
12 M T KEMPANNA  
S/O. TAPASIMUNIYAPPA  
AGE: 58 YEARS  
R/AT NIDAVANDA VILLAGE  
NELAMANGALA TALUK.  

13 G KEMPEGOWDA  
S/O. GOVINDAPPA  
AGE: 40 YEARS  
R/AT BARATHIPURA, YEDEHALLI VILLAGE  
NELAMANGALA TALUK.  

14 ATHAULLA KHAN  
S/O. ZAHIR ULLA KHAN  
AGE: 45 YEARS  
R/AT KARIMANNE VILLAGE  
NELAMANGALA TALUK.  

15 INDRAMMA  
W/O. PARAMESHI  
AGE: 35 YEARS  
R/AT NIDAVANDA VILLAGE  
NELAMANGALA TALUK.  

... PETITIONERS  

(BY SRI. A L PREMA KUMAR, ADV)  

AND:  

1 STATE OF KARNATAKA  
REP. BY ITS SECRETARY  
DEPARTMENT OF PANCHAYAT RAJ  
M S BUILDINGS  
Dr. AMBEDKAR VEEDHI  
BANGALORE - 1.  

2 DEPUTY COMMISSIONER  
BANGALORE RURAL DISTRICT.  
BANGALORE.
3  THE RETURNING OFFICER/
   ASSISTANT EXECUTIVE ENGINEER
   ZILLA PANCHAYAT SUB-DIVISION
   NELAMANGALA TALUK
   BANGALORE RURAL DISTRICT
   BANGALORE.

4  KENCHAMMA
   W/O. KEMPARANGAIAH
   AGE: 35 YEARS
   R/AT KARIMANYA VILLAGE
   HEGGUNDA POST
   SOMPURA HOBLI
   NELAMANGALA TALUK
   BANGALORE RURAL DISTRICT.

   ... RESPONDENTS

(BY SRI R DEVDAS, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE NOTIFICATION DTD. 26.3.09 ISSUED BY THE
R3 TO HOLD ELECTIONS FOR THE POST OF PRESIDENT
TO SOMPURA GRAM PANCHAYAT VIDE ANNEXURE-F AND
ETC.

THIS PETITION, COMING ON FOR PRL. HEARING,
THIS DAY THE COURT MADE THE FOLLOWING:

ORDER

Fifteen out of 19 members of Somapura Gram
Panchayath, aggrieved by the notification dated
26.3.2009 of the Returning Officer, Zilla Panchayath –
3rd respondent convening the meeting on 15.4.2009, to hold elections to the Office of the President of the Panchayath, have presented this petition, for a writ of certiorari to quash the notification; for a mandamus directing the respondents to consider the petitioners' representation dated 30.3.2009 Annexure G; and a writ of mandamus directing the respondents to consider the petitioners' representation dated 2.4.2009 Annexure H.

2. According to the petitioners the 4th respondent being the only member elected to the membership of the Panchayath, reserved for Scheduled Tribe, when elected to the office of President of Somapura Gram Panchayath, also reserved for Scheduled Tribe though ousted from the office for want of Confidence, would be elected, unopposed to the said office once over, without a position to command majority in the Panchayath.
3. The petitioners contend that the 4th respondent having committed serious irregularities of misappropriating funds of the Panchayath when brought to the notice of the State to initiate action, for disqualification, under The Karnataka Panchayath Raj Act, 1993 remained unresponsive, leading to invoking the writ jurisdiction in W.F.6939/2009 whence this court by order dated 26.3.2009 Annexure E, recording the submission of the learned Govt. Advocate that the petitioner's representation dated 15.12.2008 Annexure E would be considered in accordance with law, disposed of the petition granting three months time for compliance. It is next contended that the election to the Office of the President to be held dated 15.4.2009 is contrary to the Election Code, in the wake of General Elections.
4. Having heard the learned counsel for the petitioner who reiterates the averments set out in the writ petition, it is no doubt true that the circumstances discloses a piquant situation since a person in whom No Confidence was expressed would be elected again to the very same office, though not in a position to command a majority in the Panchayath which would lead to a stalemate in the panchayathan. In identical circumstances, a Division Bench of this court in BAPU DADA vs. STATE OF KARNTAKA reported in 1996(7) Kar.LJ 215 (DB) while pointing out to the situation, observed that though it was for the legislature to bestow its attention to that aspect and suitably provide for such contingency.

5. It is a matter of fact that although 13 years have gone by since the aforesaid observation of the Division Bench of this court, nothing precious is done by the State. It is hoped that the State would open
its eyes and bestow its attention in that regard, at least now.

5. The contention that the 4th respondent ought not to be permitted to contest the election to the Office of the President reserved for Scheduled Tribe, and that reservation in the circumstances must be changed, cannot be countenanced.

6. While it is true that the petitioners have made a representation dated 15.12.2008 Annexure-D calling upon the State to initiate action against 4th respondent to disqualify her from membership of the Gram panchayath and in respect of which this court in W.P.6931/2009 by order dated 26.3.2009 Annexure E disposed off the petition recording the submission of the learned Govt. Advocate that the authority would consider and take action in accordance with law, granting 3 months for compliance, which
ends with 25th day of June, 2009, does not call for interference with the notification impugned.

7. In the light of the fact that the petitioner's representation alleging that the 4th respondent has committed acts of misappropriation, is yet to be considered by the authority, it cannot be said that the 4th respondent is guilty of the said charges so as to disentitle her to contest the election to the Office of the President on 15.4.2009. In that view of the matter, the representations Annexures G and H to stall the election to the Office of the President scheduled on 15.4.2009 is without merit and does not call for interference.

In the result, this writ petition is without merit and is rejected.
Registry is directed to address a letter to the Secretary, Department of Panchayath Raj, enclosing a copy of this order, for needful action.

Sd/-
Judge

csg