

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 15TH DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 3399 OF 2022(LB-ELE)

BETWEEN:

SMT. ARCHANA M G,
W/O LATE RAMESH,
AGED ABOUT 37 YEARS,
RESIDING AT BALEKOPPA,
BALEKOPPA POST,
SHIVAMOGGA TALUK – 577 426.

... PETITIONER

(BY SRI. VENKATESHA T S, ADV.,)

AND:

1. SMT. ABHILASHA,
W/O PRASHANTH H,
AGED ABOUT 26 YEARS,
RESIDING AT NO.26,
LINGAYATHARA BEEDI,
CHAMENAHALLI, BALEKOPPA POST,
SHIVAMOGGA TALUK – 577 426.

2. SMT. GANGAMMA,
W/O VUJAYAKUMAR,
AGED ABOUT 36 YEARS,
RESIDING AT CHAMENAHALLI,
BALEKOPPA POST,
SHIVAMOGGA TALUK – 577 426.

3. SMT. SHASHIKALA,
W/O SHIVAPPA,
AGED ABOUT 38 YEARS,
RESIDING AT HOSAKERE,
CHAMENAHALLI,
BALEKOPPA POST,
SHIVAMOGGA TALUK – 577 426.
4. SRI. PRAKASH G,
URDU HIGH SCHOOL, HEAD MASTER
CUM THE RETURNING OFFICER,
(BALEKOPPA GRAMA PANCHAYATH)
N T ROAD, SHIVAMOGGA – 577 426.
5. THE TAHSILDAR,
SHIVAMOGGA TALUK,
SHIVAMOGGA – 577 426.
6. THE DEPUTY COMMISSIONER
CUM DISTRICT ELECTION OFFICER,
D.C. OFFICE, BAL RAJ URS ROAD,
SHIVAMOGGA – 577 426.
7. THE SECRETARY,
STATE ELECTION COMMISSION,
BEHIND KARNATAKA STATE
CO-OPERATIVE MARKETING
FEDERATION BUILDING, 1ST FLOOR,
NO.8, BEHIND CUNNINGHAM ROAD,
BANGALORE – 560 052.

... RESPONDENTS

(BY SRI. B S PRASAD, ADVOCATE FOR C/R1;
SRI. NITHYANANDA R R, AGA FOR R5 & R6;
SMT.VAISHALI HEGDE, ADVOCATE FOR R7;
(NOTICE NOT ORDERED IN R/O R2-R4))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
ORDER DATED 01.02.2022 IN ELECTION MISC 03/2021 PENDING

BEFORE THE HONBLE II ADDL SENIOR CIVIL JUDGE AND JMFC,
SHIVAMOGGA VIDE ANNEX-A AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING
THIS DAY THROUGH PHYSICAL HEARING, THE COURT MADE THE
FOLLOWING:-

ORDER

Petitioner a Grama Panchayat Member from a constituency reserved for Scheduled Tribe has been unseated by the learned II Addl. Sr. Civil Judge, Shivamogga vide order dated 01.02.2022 (Annexure-A) in Election Misc. No.3/2021 filed by the 1st respondent- Smt.Abhilasha on the ground of lack of social status. After service of notice the 1st respondent is represented by a private advocate. Official respondents 5 & 6 are represented by learned AGA and the 7th respondent –State Election Commission is represented by its Panel Counsel. All the respondents oppose the writ petition making submission in justification of the impugned order.

2. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines to grant indulgence in the matter for the following reasons:

(a) There is no dispute as to petitioner does not belong to Scheduled Tribe, by birth, although she claims to have acquired the said social status by marriage to a member of scheduled tribe. Ordinarily, caste is determined by birth and caste of a person follows that of his/her father. That is why Mahabharath states: "*daivaa yatnam kule janma, purushaa yatnam pourusham*". True it is, in rare circumstances a lady acquires the caste status of her husband provided she pleads and proves her admission to the community of the husband by social acceptance. However, that is not the case put forth by the petitioner in the court below in her objections to election petition as rightly contended by learned counsel for the respondent no.1. Such a plea now being taken in the writ petition is only an after thought and cannot be accepted as the pleadings in the election petition.

(b) Learned AGA appearing for the official respondents vehemently resists the writ petition placing heavy reliance on a decision of a Co-ordinate Bench in **M/S. SHANTHA NAIK VS. SMT. RAJEEVI & OTHERS**, (2011) 1 KCCR 711. Learned Co-

ordinate Judge having surveyed this branch of law has observed at paragraph 8 & 20 as under:

"8. From the material on record, what is seen is that the petitioner by birth belongs to Scheduled Caste and thereafter; on her marriage on 7/9/1993, she might have been recognised as belonging to the husband's family and therefore. Belongs to Scheduled Tribe community. But What has to be seen in the instant case is as to whether the petitioner was entitled to be certified as belonging to Scheduled Tribe and therefore, which is necessary contest for the post.

20. In the instant case, it is also necessary to observe that the petitioner belonged to a Scheduled Caste by birth. Therefore, it is not a case where a person who belongs to a forward caste sought to contest the election which was reserved for a Scheduled Tribe category. Although the petitioner belong to a Scheduled Caste, it is necessary to note that the seat was reserved for a Scheduled Tribe candidate and under the circumstances, it is only a Scheduled Tribe candidate by birth who could have contested for the said seat. The reliance placed by the petitioner on the caste certificate which was issued to her stating that she belong to Scheduled Tribe could not have been relied upon by the petitioner in support of her status as a Scheduled Tribe and the same would have been useful to her social purpose only. But for seeking reservation of a seat for the purpose of election in the instant case or for any benefit under the Constitution, a person could claim such reservation only if she is a Scheduled Tribe by birth as in the present case, the said seat was reserved for Scheduled Tribe woman."

(c) Learned counsel for the petitioner found fault with the procedure adopted by the Election Tribunal arguing that no fair opportunity was given to his client. This is difficult to countenance inasmuch as petitioner herself had appeared in the matter and sought time for engaging another advocate, after the first one retired from the case. Thrice adjournment was granted and she concurrently remained absent. Even here no plausible explanation is offered for such a lapse. Petitioner is an elected representative of people and not a peasant or a labourer who can seek leniency in matters like this. This apart, learned AGA is more than justified in pointing out that in matters pertaining to election, equity and common law principles have no place vide **JYOTHI BASU vs. DEBI PRASAD GHOSAL**, AIR 1982 SC 983 wherein it is observed *"An election petition is not an action at common law, nor an equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies"*.

In the above circumstances this writ petition being devoid of merits is liable to be rejected and accordingly it is, costs having been made easy.

This Court appreciates the valuable assistance rendered by Sri B.S.Prasad, learned advocate appearing for the 1st respondent and Sri Nithyananda, learned AGA appearing for respondents nos. 5 & 6.

**Sd/-
JUDGE**

Snb/