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**IN THE HIGH COURT OF KARNATAKA
AT BANGALORE**

Dated this the 31st day of March, 2006

BEFORE:

THE HON'BLE MR JUSTICE D V SHYLENDRA KUMAR

Writ Petition No 30717 of 2004 (LB-ELE)

Between:

- 1 IBRAHIM SAB IMAM SAB MULLA
AGE.54 YEARS
MEMBER TOWN PANCHAYAT
KUSTAGI, KOPPAL DISTRICT
- 2 MOHAMMAD BEGUM
W/O.NIZAMUDDIN KUSTAGI
AGE.25 YEARS
MEMBER, TOWN PANCHAYAT
KUSTAGI, KOPPAL DIST ... PETITIONERS

(By M/s Neelakanth R M & Shivanand D S, Advs.)

And:

- 1 THE STATE OF KARNATAKA
REP BY ITS SECRETARY
TO THE URBAN DEVELOPMENT
M.S.BUILDING,
BANGALORE-1
- 2 THE COMMISSIONER
KARNATAKA STATE
ELECTION COMMISSION
KARNATAKA STATE CO.OP FEDERATION
BUILDING, CUNNINGHAM ROAD
BANGALORE
- 3 THE CHIEF OFFICER
TOWN PANCHAYAT
TALULK KOPPAL
KUSTAGI

favour reservation is provided to the extent of 1/3rd in terms of the provisions of Section 142 2(A) of the Act. The interim order was granted on the premise that the backward classes had not been provided an opportunity during the last three elections and even now there is no opportunity provided to them in terms of the present notification.

5. *Learned Counsel appearing for the applicant points out that the information and data that had been placed by the petitioners in the above writ petition to indicate the pattern in which the elections are held is incorrect that the post of President had been reserved in favour of a person belonging to backward class - B category in the very first term of elections during the year 1996 and as such not providing reservation in favour of backward classes in the present election, which is the 4th term in the series is not in violation of the provisions of Section 142 2(A) of the Act.*

6. *Sri. Narayan, learned HCGP, for the State Government also affirms this factual position. Learned HCGP submits that for the first term election was held in the year 1996, elections to the post of President had been earmarked in favour of backward classes - B category. If that is the factual position the present notification dated 12.7.2004, insofar as it relates to the post of President in the Kustagi Town Panchayat does not suffer from violation of the provisions under Section 142 2(A) of the Act. In the circumstances, there is no justification to continue the interim order dated 29.7.2004. It is accordingly vacated.*

7. *Petitioner having mis-used the process of this Court by placing incorrect facts has to be dealt with accordingly.*

8. *Learned HCGP and learned Counsel for the impleaded respondent/ applicant points out that the Chief Officer, Kustagi Town Panchayat has in fact issued a false certificate based on which the petitioner could obtain such interim order. Learned HCGP is directed to cause an enquiry into circumstances under which the Chief Officer could*

i.e. two parts of 1996 to 2001 and the first part of 2003, it is turned out that the information as contained in Annexure-B with reference to the pattern of reservation for the first part of 1996 is incorrect and it was for such reason that an application filed by the present fifth respondent, who was sought to be impleaded as a respondent and who had also moved an application for vacating the interim order of stay and in terms of the order dated 6-8-2004 the interim order of stay was vacated and the High Court Government Pleader was directed to cause an enquiry into the circumstances under which the third respondent Chief Officer is said to have issued such an incorrect certificate in favour of the petitioners.

3. *Thereafter, the third respondent had filed statement of objections emphatically asserting that he had never issued any such letter or copy of the same; that the signature contained therein is also not his signature and that there were certain discrepancies in the copy of the document as produced by the petitioners vide Annexure-B to the writ petition, such as the letterhead being not the actual one that was being used by the Panchayat at the relevant point of time; that the seal was also not of the Panchayat and that it did not bear any date and the very fact that at the top of it indicated as one addressed to the Pattana Panchayat Karyalaya, Kushtagi, Koppal district, which showed the artificial nature of the same, as the Chief Officer of the very Panchayat could not have addressed it to the office of the panchayat etc.*

4. *However, a rejoinder was filed by the first petitioner asserting that the first petitioner had approached the third respondent for furnishing of information as regards the reservation for the post of Adhyaksha during the previous occasions, before filing the writ petition; that the third respondent had, in response to such request, asked him to come to collect the information after two days; that the third respondent when contacted again after two days had given the document at Annexure-B to the first petitioner from a file which was available at the office of third*

