

(2002) 07 MP CK 0020

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3522 of 2001 (J)

Amar Chand Bawaria

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Cantonments Act, 1924 — Section 13(3)(f)
Cantonments Electoral Rules, 1945 — Rule 3

Citation : (2003) 2 MPJR 74

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : R.R Kanojiya, for the Appellant; O.P. Namdeo, Advocate for Respondent No. 1 and Smt. Indira Nair with Mr. Sandeep Awale, Advocate for Respondent Nos. 2, 3, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioner seeks the relief in the instant writ petition for enforcement of the Rule 3 of the Cantonment Electoral Rules, 1945 (hereinafter referred to as "the Rules") directing the Cantonment Board, Jabalpur to provide for reservation of seats for Scheduled Caste and Scheduled Tribes in the election to be held by Cantonment Board.

Petitioner is resident of Jabalpur Cantonment. He belongs to the scheduled caste. The grievance is that no seat has been reserved for the Scheduled caste and Scheduled Tribes in the wards although the population of the scheduled caste & scheduled tribe is more than 40% in the Cantonment Area. Petitioner further submits that the Rules have been framed for conducting election for the members of the Cantonment Board. Rule 3 provides for reservation of wards for scheduled caste and scheduled tribes. Petitioner represented the Cantonment Board for declaring reserved wards for returning SC and ST candidates but no action has been taken. The Central Government has issued a letter no. 29/3 land

C/67 dated 7.6.1967 in exercise of statutory provisions of Rule 3 (d) of the Rules for reserving wards where there is SC and ST population for returning ward members belonging to SC and ST. The letter is Annexure P.2. Petitioner further submits that total population of the Cantonment is 66,482 as per the census 2001. Out of this 50% of the population belongs to SC and ST. The most densely populated SC and ST wards are ward no. 1, 2 and 3. In these wards SC and ST population is more than 50%.

Respondents in the reply contend that for enforcement of rule 3 of the Rules it is necessary to bring to the notice that Rule 3 mentions about the divisions of Cantonments into wards, the number of members to be elected by each ward and the reservation of seats for SC or ST. The Cantonment Board consists of 7 members as per Section 13 (3) (f) of the Cantonment Act, 1924. Jabalpur Cantonment is a class 1 cantonment. Section 9 of the Administrative Instructions for Cantonment Board mentions about the Constitution of the Cantonment Board contained in Annexure R-3. Section 11 mentions about election in Cantonments, reservation of seats which is Annexure. R.4. Cantonment Board has to elect 7 members, the approximate percentage of SC population to the total civil population must be 14%. The respondents submit that census was conducted in 1991 and the Govt. has got details of the scheduled caste and scheduled tribe population in the cantonment Board. Another census was conducted during 2000 and the respondents do not have the details of SC and ST population within the cantonment so as to reserve wards for the SC and ST candidates. The Cantonment Board, Jabalpur has written to the census authority in Bhopal asking for information vide letter dated 18.9.2001 but the details have not been supplied as they were under preparation and would be given as soon as it is ready. According to 1991 census no ward had scheduled caste and scheduled tribes population more than 14% so as to make reservation for these categories. Because of these reasons the respondents submit that they are not in a position to reserve wards for scheduled caste and scheduled tribe. The election proceedings have already been started and election proceedings calls for no interference.

Shri R.P. Kanojiya learned counsel for the petitioner, submits that by not providing the reservation under rule 3 of the Rules, and the instructions issued by the Central Government as contained in Annexure R.4 have been violated. The action is arbitrary and contrary to the statutory provisions. Shri Kanojiya further submits that the figures of census are available with the respondents as mentioned in Annexure R.3 which mentions the percentage of population of SC and ST ward-wise on the basis of census of 1991. Election has been postponed by one year has not yet taken place which is proposed to be held in the year 2003.

Smt. Indira Nair, learned Sr. counsel appearing for respondents no. 2 & 3, submits that though Rule makes provision for providing the reservation so also as per the Govt. of India instructions Cantonment Board is willing to provide for

the reservation but there is practical difficulty in making the reservation as the figure of census 2000 has not been made available to the Cantonment Board.

Shri O.P. Namdeo, learned counsel appearing for respondent no. 1 and Registrar General of Census submits that for the security reasons ratio of defence and civil population has not been declared.

The primary question for consideration is whether the respondents are bound to provide for the reservation of wards for SC and ST. Section 31 of the Cantonment Act, 1924 provides power to make rules regulating elections. The Central Govt. may, either generally for any cantonment or group of cantonments, after previous publication, make rules consistent with the Act to regulate all or any of the matters for the purpose of the holding of elections under this Act, namely the division of a cantonment into wards; the determination of the number of members to be elected by each ward. In exercise of the powers conferred u/s 30 and 31 of the Cantonment Act, the Central Govt. has framed the rules called the Cantonment Electoral Rules, 1945 which extend to Cantonments in the whole of India. Under the definitions, "scheduled castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 of the Constitution to be scheduled castes. "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 of the Constitution to be Scheduled Tribes.

Rule 3 of the Rules provides for Division of Cantonments into wards, the number of members to be elected by each ward and the reservation of seats for scheduled Castes or Scheduled Tribes in such wards.

Rules 3 is quoted below:

(3) For the purpose of election to a Board of any Cantonments:

(a) the wards into which that Cantonment shall be divided,

(b) the extent of each such ward.

(c) the number of members to be elected by each such ward, and

(d) the number of seat or seats that may be reserved for the members of the Scheduled Castes or Scheduled Tribes in any such word or wards, shall be those as may be prescribed for that Cantonment by rules made by the Central Government under clauses (a) and (b) of section 31 of the Act.

It is incumbent upon the Cantonment Board for the purpose of election to reserve the seats for the members of SC and ST as per Rule 3. Govt. of India, Ministry of Defence vide letter dated 28.11.52 as amended on 25.4.53 and 7.6.67 has conveyed the decision to provide for reservation of seats for SC and ST on Cantonment Board on the basis of the percentage which their population bears to the total civil population of the Cantonment. The minimum percentage required for such reservation will be as under :

Cantonments

Approx. percentage of the Scheduled Castes population to the total Population.

Cantonments which have to elect 7 members

14%

Cantonments which have to elect 6 members

16%

Cantonments which have to elect 5 members

20%

Cantonments which have to elect 4 members

25%

Cantonments which have to elect 3 members

33%

Cantonments which have to elect 2 members

50%

If, however, the Scheduled Castes population so exceeds the minimum required percentage in any Cantonment that they become entitled to a further reservation, the number of seats reserved for them may be increased proportionately, according to their population of the area. In determining the number of seats to be reserved for Scheduled castes, if the Scheduled Castes population falls short by less than 3% of the required minimum percentage, the figure may be rounded off for the reservation of a seat or seats for which they would have otherwise been entitled.

For the purpose of holding elections on the basis of above decision, the Cantonment may be divided into the number of wards corresponding to the number of elected members less the number of seats to be reserved for the Scheduled Castes community. Out of the wards so divided any particular ward or wards where the Scheduled Caste community predominates, may be selected to return the Scheduled Castes candidate(s) and such ward (s) may be named as special Constituency (ies). The Cantonment Boards should be advised to ensure that the number of voters in the double member special constituency/ies should be roughly twice that in a single member constituency. The single member constituency will contain approximately equal number of votes."

It is clear from the aforesaid instructions that minimum percentage has been prescribed for making the reservation on the population.

Thus, it is clear that the respondents are duty bound to carry out the statutory mandate of rule 3 and the instructions issued by the Central Govt. as contained

in Annexure R.4 quoted above.

The next question is about the practical difficulty raised by the respondents in carrying out the reservation. Annexure P.3 is the additional Agenda which was placed for consideration by Cantonment Board in its meeting which mentions that data of census of 1981, 1991 and 2001 was available with the Cantonment Board and these figures have been reflected. In the Agenda SC and ST population has also been mentioned. The wards-wise population of SC and ST as per 1991 census have also been mentioned for 7 wards in which Cantonment Board Jabalpur has been divided. A note has been put up that SC and ST population in Civil is not available.

It cannot be said that the respondents are not having the relevant data on the basis of which they can enforce the mandate of rule 3 of the Govt. of India instructions. Their action is absolutely arbitrary. In my opinion, it is for the respondents to find out the ratio of civil and defence population. They cannot take shelter of any self created difficulty. When Cantonment Board is bound to provide such reservation, it is for the Union of India and Registrar General to provide data for limited purpose to Board to provide for reservation. It is stated that reservation has been provided in other Cantonments for SC/ST such as Mhow Cantonment. The rule 3 of the Rules cannot be allowed to become statutory mockery. Respondents are bound to implement it and provide for reservation for SC/ST as prescribed.

It is directed that before elections the ward be reserved as prescribed under rule 3 and the instructions of Govt. of India as contained in Annexure R.4 quoted above and only thereafter election be held of the Cantonment Board, Jabalpur. Let this exercise be completed expeditiously by the respondents before holding the election. Writ petition is allowed. The writ of mandamus is issued directing the respondents to provide the reservation of SC and ST in accordance with Rule 3 as contained in Annexure R.4 and thereafter to hold election. In the facts and circumstances of the case, cost on the parties.