
(2008) 01 MP CK 0005
In the Madhya Pradesh High Court
Case No : Writ Petition No. 684 of 2008

Archana Dhaman and Another	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Cantonments Act, 2006 — Section 30, 31, 31(d)
Cantonments Electoral Rules, 2007 — Rule 6(b)

Citation : (2008) ILR (MP) 753 : (2008) 2 MPLJ 595

Hon'ble Judges : Prakash Shrivastava, J; Arun Mishra, J

Bench : Division Bench

Advocate : Sanjay K. Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Mishra, J.

The writ petition has been preferred by the petitioner challenging constitutional validity of section 31 of Cantonment Act, 2006 and Rule 6(b) of the Cantonment Election Rules, 2007 framed by the Govt. of India in exercise of powers conferred u/s 30 of Cantonment Act, 2006.

The petitioners have submitted that they are resident of Ward No. 7 and 3 respectively of Cantonment Board, Mhow. The Cantonment Act, 2006 was published in the Gazette on 14-9-2006. The cantonments constituted under the Act have been broadly classified in four categories on the basis of population. Cantonment Board, Mhow has been placed in category (1). As per section 12(3) such a Board is comprised of 8 elected members. Section 31(d) of the Act provides that the Rules framed by the Central Government may provide for reservation of wards for election of the scheduled caste, scheduled tribes and women.

Petitioners have submitted that section 31 confers unbridled and uncanalised power on the Central Government to make rules regulating elections. No policy

has been laid down in the Act in the aforesaid matter. It has been left to the discretion of the executive to provide for reservation for such category of candidates, thus section 31 suffers from the vice of excessive delegation.

The Central Government in exercise of power conferred u/s 31 of the Act has framed the rules known as Cantonment Election Rules, 2007 published in gazette on 19-4-2007. Rule 6 of the Rules provides that not less than 1/3rd of the total number of seats reserved for scheduled caste and scheduled tribes shall be reserved for women belonging to SC or as the case may be ST. Clause (b) of Rule 6 further provides that no reservation shall be made for women candidate of SC or ST whenever there is only one ward reserved for SC or as the case may be ST. Ward No. 7 has been reserved for SC category. Reservation for women belonging to general category has been done. Three wards were reserved for general women candidate.

Shri Sanjay K. Agrawal, learned counsel appearing for petitioners has mainly assailed the vires of Rule 6(b) of the Election Rules of 2007. He has submitted that if there is one seat for SC or ST, reservation for women ought to have been provided on that seat of SC/ST category. He has further submitted that section 31 of the Act of 2006 is unconstitutional as it gives unbridled power to Government to exercise executive powers of framing rules. Section 31 as well as Rule 6(b) is arbitrary and violative of Article 14. Since reservation for women is horizontal reservation, concept of cent percent reservation could not apply. He has further submitted that in case of one ward for SC/ST category, it ought to have been reserved by rotation for women category candidates.

In order to appreciate the submission made by the petitioner's counsel, it is necessary to consider section 31 of the Act of 2006, same is quoted below:

31. Power to make rules regulating elections. - The Central Government may, either generally or specially for any cantonment or group of cantonments, after previous publication, make rules consistent with this Act to regulate all or any of the following matters for the purpose of the holding of elections under this Act namely:

- (a) the division of a cantonment into wards;
- (b) the determination of the number of members to be elected by each ward;
- (c) the preparation, revision and final publication of electoral rolls;
- (d) the reservation of wards for election of the Scheduled Castes, the Scheduled Tribes and women;
- (e) the registration of electors, the nomination of candidates, the time and manner of holding elections and the method by which votes shall be recorded;
- (f) the authority which may be an officer of the State Government by which and the manner in which disputes relating to electoral rolls or arising out of elections shall be decided, and the powers and duties of such authority and the

circumstances in which such authority may declare a casual vacancy to have been created or any candidate to have been elected;

(g) the fee to be paid for admission and consideration of any application relating to election or election disputes;

(h) any other matter relating to elections or election disputes in respect of which the Central Government is empowered to make rules under this Chapter or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary.

Rule 5 of the Rules provides for reservation of seats for Scheduled Castes and Scheduled Tribes, same is quoted below:

5. Reservation of seats for Scheduled Castes and Scheduled Tribes. -(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Cantonment on the basis of the percentage which their population bears to the total population of the Cantonment according to latest census and the minimum percentage required for such reservation shall be as specified in the First Schedule:

Provided that the Scheduled Caste or the Scheduled Tribe population so exceeds the minimum required percentage in any Cantonment that they become entitled to higher reservation, the number of seats reserved for them may be increased proportionately, according to their population of the area and in determining the number of seats to be reserved for the Scheduled Castes or the Scheduled Tribes, if the Scheduled Castes or Scheduled Tribes 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.

(2) The number of seat or seats reserved for the Scheduled Castes or the Scheduled Tribes referred to in sub-rule (1) shall be allotted to those ward or wards, which have the highest population of Scheduled Castes or Scheduled Tribes, as the case may be.

(3) The wards reserved in every Cantonment shall be notified by the Central Government in the Official Gazette and shall be effective for complete five years or till the next ordinary election, whichever is later, irrespective of election to fill any casual vacancy.

Rule 6 provides for reservation of seats for women, same is quoted below:

6. Reservation of seats for women. - (a) Not less than one-third of the total number of seats reserved for the Scheduled Castes and the Scheduled Tribes shall be reserved for women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes.

(b) No reservation shall be made for women candidate of Scheduled Castes or Scheduled Tribes wherever there is only one ward reserved for the Scheduled

Castes or as the case may be, the Scheduled Tribes.

(c) Not less than one-third (including the number of seats reserved for women belonging to the scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled in an ordinary election in every cantonment shall be reserved for women.

(d) The seats reserved under this section shall be effective for complete five years or till the next ordinary election, whichever is later, irrespective of election to fill any casual vacancy.

(e) While calculating the number of seats reserved for women under clauses (a) and (c) a fraction less than half shall be left out and more than half shall be taken as one.

(f) (i) The seats reserved for women in a Cantonment (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) shall be allotted to different wards in the Cantonment in accordance with Rule 7.

(ii) The wards reserved for women in every Cantonment shall be notified by the Central Government in the Official Gazette.

It is apparent that the power to frame rules has been delegated to the Central Government for the purpose of holding elections under the Act. The matter includes division of cantonment into wards and reservation of wards for election of Scheduled Castes and Scheduled Tribes and women. It is well accepted having regard to the complexity of problems which have to be faced that delegated legislation is a necessity and has its own advantages as observed in *Jyoti Pershad vs. Union Territory of Delhi*, AIR 1961 SC 1612; *Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others*, ; *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, , *A.V. Nachane and Others Vs. Union of India (UOI) and Another*, , *J. Jayalalitha Vs. U.O.I. and Another*, .

In *Dr. Haniraj L. Chulani Vs. Bar Council of Maharashtra and Goa*, considering the set up of entire scheme of Advocates Act and rules framed by Bar Council, the Apex Court has observed in the light of the nature of the power entrusted to the elected body of advocates themselves it cannot be said that while regulating the entry to the legal profession the Bar Councils would find themselves without any Yardstick or guidelines and would be trading an uncharted sea and consequently the rules of enrolment framed by them would fall foul on the altar of permissible delegation of legislative power. It cannot therefore, be said that the impugned Rule 1 suffers from the vice of excessive delegation of legislative power or by providing rule making power to the State Bar Councils for regulating entries of new advocates seeking to join the profession the legislature has effaced itself. Any conditions laid down by the State Bar Councils for fructifying this laudable object of legislature would remain germane to the exercise of this power and can well be said to be logically flowing from it. It cannot therefore, be

said that any unguided and unchartered power is handed over on a platter by legislature to the concerned Bar Councils for regulating entry to the legal profession. Rule making power conferred on the State Bar Councils is inherently hedged in with the obligation to frame only such rules regarding enrolment which would fructify the purpose of having efficient members of the Bar who can stand up to the expectation of the noble and learned profession to which they are to be given entry. Any rule which effectuates this purpose will be within the permissible field and will not fall foul on the altar of Article 14 and Article 19(1)(g) read with Article 19(6). It was held that there was no excessive delegation of legislative power. The Apex Court has held thus:

17. In this connection the learned senior counsel for the appellant invited our attention to the decision of this Court in *A.N. Parasuraman Etc. Vs. State of Tamil Nadu*, and *Ajoy Kumar Banerjee and Others Vs. Union of India (UOI) and Others*, for buttressing her submission that legislature cannot delegate essential legislative functions to its delegate. There cannot be any dispute about the settled legal position on this aspect. However, as discussed by us earlier, in the set-up of the entire scheme of the Act and the rules framed by the Central Bar Council and in the light of the nature of the power entrusted to the elected body of advocates themselves it cannot be said that while regulating the entry to the legal profession the Bar Councils would find themselves without any yard-stick or guideline and would be trading an unchartered sea and consequently the rules of enrolment framed by them would fall foul on the altar of permissible delegation of legislative power. It is, therefore, not possible to agree with the contention of the learned senior counsel for the appellant that the impugned rule suffers from the vice of excessive delegation of legislative power or by providing rule-making power to the State Bar Councils for regulating entries of new advocates seeking to join the profession the legislature has effaced itself. The power conferred on the State Bar Councils to lay down further conditions for controlling the entries to the legal profession cannot be said to be an unguided power conferred on them. The conditions which the State Bar Councils can lay down by rules must be conditions which would be germane to the high and exacting standards of advocacy expected of the new entrants to the fold of the profession. Implicit in the conferment of such rule-making power is the guideline laid down by the legislature itself that the conditions must be commensurate with the fructification of the very purpose of the Act of putting the profession of advocates on a sound footing so that the concerned new entrant can well justify his role as an officer of the Court admitted to the fold of the noble profession to which he seeks his admission. Any conditions laid down by the State Bar Councils for fructifying this laudable object of legislature would remain germane to the exercise of this power and can well be said to be logically flowing from it. It cannot, therefore, be said that any unguided and unchartered power is handed over on a platter by the legislature to the concerned Bar Councils for regulating entry to the legal profession. Rule-making power conferred on the State Bar Councils is inherently hedged in with the obligation to frame only such rules regarding enrolment which

would fructify the purpose of having efficient members of the Bar who can stand up to the expectation of the noble and learned profession to which they are to be given entry. Any rule which effectuates this purpose will be within the permissible field and will not fall foul on the altar of Article 14 and Article 19(1)(g) read with Article 19(6). Any rule framed for enrolment which does not meet this yardstick will be a taboo. Hence it cannot be said that the rule making power entrusted to the State Bar Councils suffers from absence of any guidelines or exhibits effacement of legislative power. The first point for determination, therefore, is answered in the negative by holding that the impugned rule does not suffer from vice of any excessive delegation of legislative power. That takes us to the consideration of Point No. 2.

Section 31 of the Act of 2006 itself contemplates that rule is required to be framed for reservation of SC/ST and women, if rule is required to be framed by the Central Government, it is clear that it has to be on the basis of the guidelines provided for such categories of persons as constitutionally envisaged. Thus it cannot be said that any unbridled power has been conferred by virtue of section 31 hence it cannot be said to be ultra-vires of Article 14. It cannot be said that any arbitrary power has been conferred on Central Government u/s 31 of the Act of 2006.

When we consider Rules 5 and 6 of the Rules of 2007, reservation for SC/ST category is clearly provided under Rule 5, reservation for women has also been provided, one-third seats have to be reserved under Rule 6(a) of the Rules out of the seats reserved for SC/ST category, thus the rule provides reservation for women of SC/ST category also. Rule 6(b) provides that no reservation shall be made for women candidate of Scheduled Castes or Scheduled Tribes wherever there is only one ward reserved for the Scheduled Castes or as the case may be, the Scheduled Tribes. As only one third of total number of seats have to be reserved, in case of one seat, it is not possible to reserve one third seat for women and it being horizontal reservation out of the SC/ST category seats, thus the provision enacted in Rule 6(b) cannot be said to be illegal or arbitrary. On the other hand Rule 6(a) provides for reservation of women of SC/ST category out of the seats reserved for SC/ST category. It cannot be said that women are being deprived of staking their claim. Rule 6(a) provides for reservation on one-third seats in the category in question also. When one seat is there it is not possible to make horizontal reservation, thus it cannot be said that Rule 6(b) is illegal or arbitrary in any manner. The submission raised that seats should have been reserved on rotation basis, rotation has been dealt with in Rule 7, same is quoted below:

7. Manner of rotation of seats reserved for women to different wards of a Cantonment. - (a) While reserving the wards for women in a Cantonment for the first time, the seats reserved for women belonging to Scheduled Castes or Scheduled Tribes shall be allotted to different wards by drawing lots between the wards reserved for Scheduled Castes or Scheduled Tribes, as the case may be.

(b) Reservation for women in respect of the remaining seats, after reservation in accordance with clause (a), shall be allotted by drawing lots between the remaining wards other than those reserved for Scheduled Castes or Scheduled Tribes.

(c) In case of category IV Cantonments, one ward out of two shall be reserved for women candidate alternately in subsequent ordinary election.

(d) During every subsequent ordinary election in a Cantonment other than category IV Cantonment, the procedure for reservation of wards for women as referred to in clauses (a) and (b) shall be followed but all those wards which had been reserved in just earlier election shall not be included while drawing the lots for reservation.

Rotation has been prescribed in the circumstances provided in the rules, whenever seats have been reserved for women when it has not been reserved, it is not possible to reserve seats on the basis of horizontal reservation out of one seat obviously rotation of the seats cannot be made, thus Rule 6(b) cannot be said to be ultra-vires.

Shri Sanjay K. Agrawal, learned counsel for petitioner has relied upon the decision of Apex Court in Union of India and Another Vs. Madhav Gajanan Chaubal and Another, to submit that even single post in the category can be reserved, here the reservation has been provided for SC/ST category, question involved is of horizontal reservation and out of one seat it is not possible to make horizontal reservation, consequently decision has no relevance with the issue involved in the case. Resultantly, we find no merit in the writ petition, same deserves to be dismissed. Writ petition is hereby dismissed.