
(1997) 09 MP CK 0051

In the Madhya Pradesh High Court

Case No : Writ Petition No. 310 of 1997

Bhawani Shanker Sharma

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 18-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 MP 254 : (1998) 2 MPLJ 20

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : A. Adhikari, for the Appellant; R.S. Jha, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.

The questions involved in all the aforesaid writ petitions are all identical questions of law; therefore, they are disposed of by this common order.

For convenient disposal of all the aforesaid writ petitions, the facts given in the case of, Bhawani Shanker Sharma v. State of M.P., (W.P. No. 310 of 1997), are taken into consideration:

The petitioner by this writ petition, has prayed that the reservation of the Hoshangabad Block Committee seat for other Backward Classes (OBC) is wholly illegal. It has also been prayed that a direction may be given to re-define and re-reserve the Block Committee Seats as per the procedure and norms laid down in the Notification of the State Government and fresh elections may be conducted only after the seats have been reserved as per the policy of the State Government and in accordance with law.

The petitioner is a Director of the District Co-operative Central Bank of the Hoshangabad Block. Therefore, he is eligible to contest the election for Committee Members being held by the said Co-operative Bank, which is a Central Co-

operative Bank. A notification dated 9-1-1997 was issued by the respondent No. 4/Joint Collector-cum-Returning Officer, declaring the election programme. The election was scheduled to take place on 28-1-1997 at 11.00 hrs. It is alleged that as per the said notification, a post of Director has been reserved for Scheduled Caste category which is from Seoni Malwa and other seat has been reserved for Scheduled Tribe (Woman) from the Block Khirkya and further two more posts of Directors have been reserved for Other Backward Classes (OBC), the first one being from Hoshangabad Block and the second one being from Bankhedi Block. The petitioner is entitled to contest from Hoshangabad Block as a delegate of Vrahatakar Sahakari Samiti Maryadit, Sawalkheda, District; Hoshangabad. It is alleged that the petitioner belongs to General Category. Therefore, he has filed the petition being aggrieved by the declaration of Hoshangabad Block Committee Seat as being reserved for O.B.C. and as such, he could not fight the election. Therefore, he has challenged this reservation by filing the present petition.

The elections have already been taken place. The question was with regard to the reservation of various Blocks by issuing notifications; therefore, this petition was entertained.

The learned counsel for the respondent/ State has submitted that the election has already been taken place; therefore, now the issues cannot be examined here and he invited our attention to Section 64 of the M.P. Co-operative Societies Act, 1960 (hereinafter referred to as the "Act" in short), which says that any dispute touching the constitution, management or business, terms and conditions of employment of a society or the liquidation of a society shall be referred to the Registrar. Therefore, it is submitted that this Court should not examine whether particular reservation in favour of S.C./S.T. or O.B.C. has been rightly made or not. All disputes can only be decided by the Registrar u/s 64 of the Act. This submission of the learned counsel for the respondent/State appears to be justified.

All the disputes which have been raised in all the aforesaid petitions, do arise touching the constitution and management of the Society. But the argument has been raised that, therefore, reserving this objection of the respondents, we may dilate some points on the subject for convenience of the future guidance.

A notification dated 26-2-1996 (Annex. P/ 6) has been issued by the State Government in exercise of power conferred u/s 48(3) of the Act, which reads as under;--

"Notification No. F-5-2-95-XV-1, dated 26th February, 1996, published in M.P. Rajpatra dated 26-2-1996, p. 126:--

In exercise of the powers conferred by Clause (b) of Sub-section (3) of Section 48 of the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961) and in super session of all previous Notifications issued in this behalf, the State Government hereby directs that on the Committee of the Central or Apex Society, reservation of seats for the Scheduled Caste, Scheduled Tribes and Other

Backward Classes shall be in such proportion as the membership of Scheduled Caste, Scheduled Tribe and Other Backward Classes to the total membership of its members in primary societies affiliated to such Central or Apex Society:

Provided that the number of seats so reserved shall not exceed two for each category of members:

Provided further that on the Committee of every Central or Apex Society of the resource Class at least one seat each shall be reserved for the members of Scheduled Caste, Scheduled Tribes and Other Backward Classes."

Thereafter some batches of petitions were filed and certain orders were passed by this Court. After that, another circular has been issued by the Joint Registrar dated 20-12-1996 (Annexure R-5/F) and that they have observed that keeping in view the Circular issued by the State Government dated 26-2-1996, further guidelines have been issued by the Registrar for conducting the elections of the Block Committees. The State Government has already issued a notification u/s 48(3) of the Act, in which it has been mentioned that reservations shall be made in proportion to the membership of Scheduled Caste, Scheduled Tribe and other Backward Classes. It is also provided that number of seats so reserved shall not exceed two for each category of members. The question before us is that on what basis, the elections for the Committee should be conducted.

In order to understand the controversy, it may be relevant to give few facts of the case. In the present case, the entire District of Hoshangabad has been divided into 10. Blocks, viz.. Hoshangabad, Kesla, Babai, Sohagpur. Pipriya, Bankhedi, Seoni-Malwa, Timarni, Harda and Khirkiya. The memberships of all the Societies have been first calculated and thereafter they have been divided in various categories like General Category, Scheduled Caste, Scheduled Tribes and Other Backward Classes. The reservation has been made on the basis of the majority of persons belonging to particular caste, viz, S/C./S.T. and O.B.C. Wherever in particular block, there is majority of particular caste, then that block has been ear-marked for that particular caste. In the case of Hoshangabad Block, there were 5300 members of O.B.C. category and the next was 5322 members at Seoni-Malwa, but it was re-served for S/Caste because there were 1058 members of S/Caste. As such, next highest population of OBC was in Hoshangabad. Therefore, it was earmarked for O.B.C., The next to that was Bankhedi, i.e., 3777 members of OBC and it has been reserved for OBC. The majority of the community of S.C. at Seoni Malwa was 1058 and it was ear-marked as S.C. and in Khirkiya, there were 1666 of S.T. and it was ear-marked for S.T. So, the idea behind this reservation to all these castes is on the basis of number of persons represented to a particular community and that has been made a basis for ear-marking constituency for election of each member for the committee.

The learned counsel for the petitioners submitted that the reservation should be made according to the proportion to the memberships of particular castes and

not on the basis of numerical strength. In this connection, the learned counsel has invited our attention to the notification issued by the State Government dated 26-2-1996, which says that it should be on proportional basis. However, in reply, it has been mentioned that keeping in view of the above Government Notification general guidelines have been issued by the Registrar dated 20-12-1996 (Annex.R-5/F) that governs the ear-marking of constituency and not notification dated 26-2-1996. It only lays down that the members of the Committee shall be in proportion with caste. It further lays down that number of seats so reserved shall not exceed more than two for each category of members and how the constituency is to be ear-marked is not laid down by this notification. The earmarking of constituency is being laid down by the general instructions issued by the Registrar (Annex. R-5/F) and in that Clause-4 clearly lays down that the reservation of seat of the community shall be on the basis of majority of persons of particular block. Therefore, this has been done on basis of the guidelines issued by the Registrar. We are of the opinion that the contention of the learned counsel for the State appears to be justified.

The block has to be fixed on the basis of numerical strength of the community concerned and if particular community of S.C./S.T. and O.B.C. is larger in number, then that should be a determinate factor to decide. In this connection, reference may also be made to Rule 25 as also Rule 40 of the M.P. Co-operative Societies Rules. Rule 40 says that bye-laws shall be framed by each Society, but no bye-laws of Society on this issue were brought to our notice, but general guidance has been issued by the Registrar, which has been uniformly followed all over the State and each Society reserved the constituency for election on the basis of population of that particular caste. Therefore, this uniform policy adopted by the State Government for electing the representatives to the Committee, which appears to be legal. In our opinion, this uniform policy adopted by the State appears to be justified and we do not find any illegality.

The submission of the learned counsel that it shall be proportionate to memberships of caste is not a decisive factor, but the decisive factor is majority of the community in that particular block, i.e., numerical strength of particular community. In our opinion, it appears to be justified and there is no reason to hold it to be otherwise. These are the general guidelines for deciding the ear-marking of the particular constituency for election and if any action taken by the authority appears to be in violation of the directions, it will be open for the party to approach u/s 64 of the Act before the Registrar. We need not go into the factual aspect of the matter as it will involve leading of evidence and specially when the provisions of alternative remedy is already available to them under Sec. 64 of the Act, the party should approach the authority for redressal of their grievances. The elections have already been taken place and if the alternative remedy for filing election petition is available before the Registrar, matter cannot be agitated in a writ jurisdiction. As such, we do not find any merit in this petition and the same is dismissed. However, it will be open for the petitioners to approach the concerned Registrar for redressal of their grievance, if there is any.

In W.P.No. 167/1977, Sewa Shahkari Samiti Maryadit Chandametta v. State of M.P., it has specifically mentioned that so far as reservation in Barikhedi is concerned, all the three Directors have been from S.C./S.T. and O.B.C. and earmarked for S.C., but no reservation has been given to general category. This is a post election matter and it cannot be now agitated. If petitioners want to approach the authority, they can challenge it before the Registrar u/s 64 of the Act because we do not want to enter in factual matrix. The proper forum for the petitioners is to approach the Registrar u/s 64 of the Act. Hence, we do not find any merit in this petition and the same is dismissed.

In view of the observations made above, this petition along with connected petitions are dismissed. The petitioners should approach the Registrar u/s 64 of the Act for redressal of their grievances, if there is any. If any petitioner wants to approach the Registrar, the period which has been spent in disposing of the petition shall be taken into consideration by the Registrar for condoning the delay. No order as to costs.