
(2009) 11 AHC CK 0121
In the Allahabad High Court

Ch. Dhruv Ram Lodhi alias Dhruv Ram Chaudhary	APPELLANT
Vs	
Election Commission of India and Others	RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Constitution of India, 1950 — Article 170, 226, 327, 328, 329
DELIMITATION ACT, 2002 — Section 10, 9

Citation : (2009) 11 AHC CK 0121

Hon'ble Judges : Ashok Srivastava, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—Petitioner is a sitting M.L.A. of State Assembly constituency Rath, district Hamirpur, Uttar Pradesh. He has filed this writ petition on 7th March, 2007 praying inter alia;

I. A writ, order or direction in the nature of certiorari quashing the relevant part of the order dated 18.12.2006 (annexure No. 10) to the extent it reserves the 229 Rath assembly constituency situated in district Hamirpur for Scheduled Castes, passed by respondent No. 2 u/s 9(2)(d) and published in the Gazette of India and Gazette of Uttar Pradesh u/s 10(i) of the Delimitation Act, 2002.

II. A writ, order or direction in the nature of mandamus commanding the respondents not to reserve the 229 Rath assembly constituency situated in district Hamirpur (U.P.) for Scheduled Castes and let it be a general constituency.

III. Any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

IV. Award cost of the petition to the petitioner.

3. Pursuant to earlier directions of the Court, parties exchanged their affidavits and matter was placed for hearing before this Bench.

4. Mr. Ravi Kiran Jain, learned senior counsel appearing for the petitioner made

submissions before this Court as against the preliminary point of maintainability of writ petition raised by the respondents and also on merits.

5. According to the petitioner, by recent delimitation of constituencies, the State Assembly constituency of Rath has been declared as reserved constituency for Scheduled Caste candidates which will affect petitioner's right to contest elections from such constituency being general candidate in the forthcoming general elections of the Assembly, therefore, writ lies as against such action on the part of Union of Indian and/or State, responsible for the cause. According to Mr. Jain, there is an apparent error in the order of delimitation. The population of Scheduled Castes in State Assembly constituency Rath (district Hamirpur) is 24.40 % whereas in State Assembly constituency Charkhari (district Mahoba) is 27.17 % and in State Assembly constituency Manikpur (district Chitrakoot) is 35.16 %, but for unknown reasons, neither the State Assembly constituency Charkhari nor Manikpur has been declared as reserved constituency, when State Assembly constituency Rath has been declared as reserved constituency for the Scheduled Caste candidates, therefore, the petitioner is entitled to raise his voice by means of writ petition under Article 226 of the Constitution of India.

6. Mr. Jain has further contended before this Court that under Article 329(a) of the Constitution of India there is a bar about interference of the Courts in the electoral matters. It speaks that the validity of any law relating to the delimitation of constituencies or the allotments of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any Court. According to Mr. Jain, this embargo cannot be applicable in the case of reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States under Article 332 of the Constitution of India. Therefore, Article 226 of the Constitution of India being extra ordinary power of the High Courts in connection with issuance of high prerogative writs, cannot be curtailed. The petitioner has made representation on 27th December, 2006 which deserves at least consideration by the appropriate authority in this respect, particularly when there is apparent error on the part of the Election Commission in reserving such seat for the Scheduled Caste candidates. He has drawn our attention to Section 9(1)(c) of Delimitation Act, 2002 (for short the Act) which is a law enacted by Parliament and promulgated on 3rd June, 2002. Such part of the provision says that the constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large.

7. Mr. Bhupendra Nath Singh, learned Counsel appeared on behalf of the Election Commission and the Delimitation Commission, the respondents No. 1 & 2 and Mr. Awdhesh Narain Shukla, learned Standing Counsel appeared on behalf of the respondents No. 3 to 6. Mr. Singh has referred paragraphs 15 to 17 of the counter affidavit which are quoted hereunder:

15. That the entitlement of seats for Scheduled Tribes/Scheduled Castes is on the

basis of arithmetic calculation and neither the Constitution nor the Delimitation Act 2002 permits the Commission to make any deviation from the principle of entitlement of seats on the basis of the published population figures of census 2001. Further, Articles 82 and 170 of the Constitution make it mandatory on the part of the Delimitation Commission to complete its exercise only on the basis of the published census figures.

16. That u/s 9(1)(c) of the said act, the constituencies for SCs are to be distributed in different parts of the state and seats are to be reserved for SCs in those constituencies where the percentage of their population to the total population is comparatively large. Therefore, while working out the allocation of total number of seats for each district, the number of seats to be reserved for SCs in those Districts is also worked out separately. Subsequently, SC seats are reserved in those constituencies in the district in which, so far as practicable, the percentage of their population to the total population is the largest, in descending order equal to the number of SC seats in the District concerned.

17. That as stated above the constituencies in which seats are to be reserved for the Scheduled Castes are required, u/s 9(1)(c) of the Delimitation Act, 2002, to be distributed in different parts of the state and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large. In order to comply with this mandate of the Parliament, the total number of constituencies to be reserved for the SCs on the basis of their determined seats are allocated to different districts in the state as the delimitation is normally done by taking District as the administrative unit having regard to the provisions of Section 9(1)(a) of the said Act.

8. He placed reliance upon a Constitution Bench judgment reported in *Meghraj Kothari Vs. Delimitation Commission and Others*, to establish before this Court that when the delimitation has already taken effect, the orders have attained the force of law and could not be called in question in any Court. He further submitted that the guidelines and the methodology issued by the Delimitation Commission is already annexed to the writ petition and heading No. III (Population), sub-heading (iv) is applicable, which is as follows:

(iv) The Delimitation Commission has, however, taken an internal decision that a constituencies cannot be delimited having exactly equal population in all cases, a deviation to the extent of 10 percent plus or minus from the State/district average would be acceptable to the Commission, if the geographical features, means of communication, public convenience, contiguity of the areas and necessity to avoid breaking of administrative units so demand.

9. Therefore, it is a clear answer to the query of the petitioner before the writ Court in respect of grievance in question.

10. We have carefully gone through the respective submissions of the parties. Firstly we have to deal with the preliminary question which is about maintainability of the writ petition. According to us, normally any application

under Article 226 of the Constitution of India before the High Court, cannot be said to be a proceeding before the Court of common parlance. It excludes the jurisdiction of High Court under Article 226. When no avenue is available to a person in enforcing his legal right or vested right or any other grievance alike, writ jurisdiction of the High Court cannot be made available. An argument has been put forth before the Constitution Bench of the Supreme Court in *Meghraj Kothari* (supra) by saying that when the Representation of People Act was enacted subject to the provisions of the Constitution, it could not bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution of India. However, we find from the interpretation of the judgment itself that Article 329(b) seems to be read as complementary to the article under Clause (a) relating to the matters of delimitation under Articles 327 and 328 of the Constitution of India, we cannot hold and say that alternative remedy is not available to a person aggrieved. Article 329(b) speaks that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. The Constitution Bench of Supreme Court held that if part XV (relating to election) of the Constitution is a code by itself, it creates rights and provides for their enforcement by special tribunal to the exclusion of all Courts including the High Court. There can be no reason for assuming that the Constitution left one small part of the election process to be made subject matter of contest before the High Courts and thereby upset the time schedule of the elections. The more reasonable view seems to be that Article 329 covers all "electoral matters". Therefore, the interpretation of the Constitution Bench of the Supreme Court clearly speaks that there is no bar to the petitioner to proceed before an authority or tribunal which deals with such cases "electoral matters". Mr. Jain's argument is that reservation of seats for Scheduled Castes and Scheduled Tribes in Legislative Assemblies of the States does not contemplate a situation which could disentitle the election petition and entitle an application under Article 226 of the Constitution of India. Reservation of the seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States are special issues and require to be determined by the appropriate forum as "electoral matters." In the present scenario the delimitation has been questioned which includes various articles including Article 332 of the Constitution of India. Section 9(1)(c) of the Act squarely prescribes about reservation of the seats for the Scheduled Castes. The same is as follows:

(c) constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large; and"

11. From the plain reading of such section it appears to us that there is no fixed parameter for the purpose of fixation of percentage. The guiding principles are that the number of Scheduled Caste citizens are to be considered as far as

practicable when it is comparatively large and if it is made in consonance with the guidelines and methodology as referred above, 10 percent plus or minus from the State/district average would be acceptable to the Commission based on various features as we have already indicated. The instances which are shown cannot be said to be beyond 10 percent on the average basis. Therefore, we cannot hold and say that a very positive cause has come before this Court for the purpose of interference under writ jurisdiction of the High Court.

12. This Court cannot lose sight of the constitutional aspect of the matter that the bar inserted by Article 329 of the Constitution commences with non obstante clause i.e. notwithstanding anything in this Constitution (and not in this part of the Constitution), therefore, despite any thing provided under Article 332, the bar will have overriding effect.

13. The petitioner has already been elected as general candidate. He may or may not get a ticket and/or contest the election in future, therefore, neither he has any legal right nor has he any vested right to invoke jurisdiction of this Court. Administrative conveniences for the purpose of delimitation cannot be ignored. The delimitation has already taken effect. If we keep all the backgrounds intact, we cannot hold and say that there is a fault on the part of the Commission apparently to do justice by the writ Court without investigation of the materials as normally done by the appropriate forums investigating the materials to come to a conclusion.

14. A significant feature to be noted here is that the writ petitioner is neither a Scheduled Caste citizen nor he is seeking the relief for the purpose of reservation of the seats for Scheduled Castes in the Legislative Assembly of the State rather he wants a relief to delete the reservation so that he can contest in the Legislative Assembly election as general candidate, therefore, his relief is not with regard to protection of the rights of a Scheduled Caste candidate under the special provisions relating thereto i.e. part XVI of the Constitution of India. Hence, he cannot extend his scope except the process of raising his objections etc. as per the Act. Thus, we have given the answer to the substantial question of law which has been raised by the petitioner before this Court under Article 226 of the Constitution of India. Further incidental fact which is required to be considered by the Court is that normally writ Court interferes with the "electoral matters" when election is notified and declaration of the result of the election is notified since election petition is prohibited in between such period. There is no such limitation here.

15. Hence, in totality, we do not find any reason to interfere with the delimitation and pass any affirmative order in favour of the petitioner. The writ petition is thus dismissed, both on the preliminary point as well as on merits as both the arguments were advanced at a time.

16. No order is passed as to cost.

17. I agree.