
(2021) 10 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 200 Of 2009, IA No. 249 Of 2009

Chaman Lal Kanathia And Ors

APPELLANT

Vs

UOI And Others

RESPONDENT

Date of Decision : 08-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 82, 170, 330, 330(1), 330(2), 332, 327, 328

Citation : (2021) 10 J&K CK 0010

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Roop Lal, Vishal Sharma

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1 In this petition, the petitioners, who claim to be the members of Schedule Caste and Scheduled Tribe categories seek a mandamus to the respondents to reserve one Parliamentary Seat in the Lok Sabha in the State of Jammu and Kashmir for the Scheduled Castes and one Parliamentary Seat for the Scheduled Tribe categories under Article 330 (1) & (2) read with Article 341 & 342 of the Constitution of India. They also pray for an order restraining the respondents from conducting Parliamentary elections in near future.

2 Mr. Vishal Sharma, learned ASGI, appearing for the respondents, relies upon the counter affidavit which the respondents filed on behalf of Election Commission of India in OWP No. 816/1999 which already stands disposed of by a Division Bench of this Court vide its judgment dated 31.07.2000. He submits that the present writ petition is filed on a wrong premise and without proper understanding of provisions of Articles 82, 170, 330 and 332 of the Constitution of India as they stood before the amendments made thereto by the Constitution (42nd Amendment)Act, 1976. It is submitted that the existing Articles 82 and 170 as they stand after 42nd Amendment preemptorily provide that no further

delimitation of the existing parliamentary and assembly constituencies in any State which were last determined on the basis of 1971 Census shall be made by any authority, until the relevant population figures for the first Census taken after the year 2000 have been published. Likewise, Articles 330 and 332 also provided that the reservation for seats for the Scheduled Castes and Scheduled Tribes in the House of the People and the Legislative Assemblies of the States shall be made having regard to the population of the Scheduled Castes and the Scheduled Tribes as ascertained at the 1971 Census.

3 Reliance is placed by Mr. Sharma, learned ASGI on the judgment of the Hon'ble Supreme Court in the case of *Megh Raj Kothari vs. Delimitation Commission*, AIR 1967 SC 669 to contend that the validity of any law relating to delimitation of constituencies or the allotment of seats to such constituencies, made or purported to be made under Article 327 or Article 328 is not open to challenge in any Court.

4 Having heard learned counsel for the parties and perused the material on record, I am of the considered view that this Court cannot issue a mandamus to the respondents to reserve a particular parliamentary constituency for the Scheduled Caste or Scheduled Tribe categories. A view in this regard is required to be taken by the competent authority on the basis of recommendations made by the Delimitation Commission constituted under The Delimitation Act, 2002. [Act of 2002].

5 It has been brought to the notice of this Court that the Ministry of Law and Justice (Legislative Department), Government of India vide S.O 1015 (E) dated 06.03.2020 has constituted a Delimitation Commission for allocation of seats in the House of People to the UT of Jammu and Kashmir and number of seats in the Legislative Assembly. The Delimitation Commission constituted for Jammu and Kashmir was given one year's time to complete its exercise and submit its report. However, vide S.O 1023 (E) dated 03.03.2021, the period of Delimitation Commission has been extended from one year to two years.

6 In view of the aforesaid when the Delimitation Commission is seized of the matter and exercise is under way, it would not be appropriate for this Court to make intervention in the matter. The petitioners, if aggrieved, are well within their right to approach the Commission with their representation and seek consideration of their grievance. It is for the Delimitation Commission constituted for Jammu and Kashmir to consider the grievance of the petitioners and redress the same if found genuine. In due deference to the doctrine of separation of powers, I refrain myself from issuing any mandamus to the respondents to reserve one Parliamentary Seat each for SCs and STs as is claimed by the petitioners in this petition. This petition is, accordingly, found not maintainable and dismissed, leaving it open to the petitioners to approach the Delimitation Commission with an appropriate representation.