

(2011) 07 AHC CK 0052
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 52132 and 55306 of 2010

Chhabinath Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Constitution of India, 1950 — Article 243D(1)
Eight Amendment Rules, 2010 — Rule 5(2)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 110, 11A, 12, 3(5)

Citation : (2011) 7 ADJ 548

Hon'ble Judges : Sunil Ambwani, J;K.N. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Learned Counsel for the Petitioners. Shri Jafar Naiyer, Addl. Advocate General assisted by Dr. Y.K. Srivastava, Standing Counsel appears for the State Respondents.

2. The Writ Petition No. 52132 of 2010, Chhabinath Singh v. State of U.P. and Ors. has been filed for following reliefs:

(A) issue a writ order or direction in the nature of mandamus commanding the Respondent Nos. 2 and 4 not to declare general seat of the concerned Gram Panchayat in which there is not a single voter of general cast and also direct them to strictly comply the Government Order dated 9.7.2010 in respect of the reservation of S.T. 2%, S.C. 21% and O.B.C. 27% and the reservation should not be exceeded more than 50% in any circumstances in the concerned Gram Panchayats;

(B) issue any other and further writ, order or direction in the nature of mandamus commanding the Respondent Nos. 2 and 4 to strictly comply the rostering in accordance with the Govt. Order dated 9.7.2010,

(C) issue any other and further writ, order or direction, which this Hon''ble Court

may deem fit and proper in the circumstances of this case;

(D) award cost to the Petitioner.

3. The Writ Petition No. 55306 of 2010, Umesh Singh v. State of U.P. and Ors. has been filed for following reliefs:

(i) Issue a writ, order or direction in the nature of certiorari quashing Section 3 of U.P. Panchayat Raj (Reservation and Allotment of Seats and Offices) (Eighth Amendment) Rules, 2010 as well as impugned notification No. 1145/XXXIII-1-2010-39709 T.C. dated April 30, 2010((contained in Annexure No. 2) and the Government Order dated 9.7.2010 (contained in Annexure No. 3) both issued by the Respondent No. 1.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the Respondents to declare Section 3 of U.P. Panchayt Raj (Reservation and Allotment of Seats and Offices) (Eighth Amendment), Rules, 2010 as ultra virus.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the Respondents to adopt the formula for rotation of reservation of office of Gram Panchayt Chairman for forthcoming General Gram Panchayat Election 2010 as provided under Rule 5(2) of U.P. Panchayt Raj (Reservation and Allotment of Seats and Offices) Rules, 1994 as it was prior to issuance of impugned notification dated 30.4.2010 (contained in Annexure No. 2 to writ petition).

(iv) Issue any other suitable writ, order or direction as this Hon"ble Court deems fit and proper in the circumstances of the case.

(v) Award the cost of writ petition.

Both the writ petition, filed in public interest, were nominated to be heard by us by Hon"ble the Chief Justice on 9.9.2010.

4. Dr. Y.K. Srivastava, Standing Counsel appearing for the State of U.P. submits that in Writ Petition No. 52132 of 2010 filed by Shri Chhabinath Singh the prayers have been made to issue writ of mandamus commanding the Respondent Nos. 2 and 4 not to declare general seat of the concerned Gram Panchayat in which there is not a single voter of general caste and also to direct them to strictly comply with the Government Order dated 9.7.2010 in respect of the reservations and further that the reservation should not exceed more than 50% in any circumstances in the concerned Gram Panchayats. He submits that the elections were held in October, 2010 and the results have been declared. All the 47084 elected Gram Pradhans of Village Panchayats have been elected and are discharging their duties. 744 Chairmen of Kshetra Panchayat and 65 President of Zila Panchayats have also been elected and are functioning. He submits that since the Petitioner has not challenged the amended Rules, the prayers made in the writ petition have since become in fructuous.

5. So far as the Writ Petition No. 55306 of 2010, Umesh Singh v. State of U.P. and Ors. is concerned, Dr. Y.K. Srivastava, Standing Counsel has raised

preliminary objections to the effect that the Petitioner has not given any factual foundation in challenging the vires of the U.P. Panchayat Raj (Reservation and Allotment of Seats and Offices) (Eighth Amendment) Rules, 2010. It is submitted by Dr. Y.K. Srivastava that in *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, , the Supreme Court has indicated broad guidelines for maintainability of public interest litigation. In para 50 of the judgment the Supreme Court observed that ordinarily the High Court should not entertain the writ petition by way of public interest litigation questioning the constitutionality or validity of statute or statutory rule. Para 50 (xi) is quoted as below:

(xi) Ordinarily, the High Court should not entertain a writ petition by way of public interest litigation questioning the constitutionality or validity of a statute or a statutory rule.

6. Dr. Y.K. Srivastava further submits that the amendments were made to bring the rules in tune with Article 243D, which provides for reservation of seats and rotation of the number of offices of Chair Persons in the Panchayat in such order as may be prescribed. In para 20 of the counter-affidavit it is stated that the State Government felt that the Rules of 1994 (as they stood in the year 2005) after the 6th and 7th Amendment Rules, 2005, were not in consonance with the constitutional provisions. Accordingly a need was felt for amending the Rules, 1994 and for the said purpose, the State Government in pursuance of the constitutional mandate under Article 243D, in exercise of powers u/s 110 of the U.P. Panchayat Raj Act, 1947 read with Sub-section (5) of Section 11-A, and Clause (a) and Clause (c) of Sub-section (5) of Section 12, promulgated the Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) Eighth Amendment Rules, 2010, and notified them on 30.4.2010, well in advance to the elections to be held in October, 2010. The State Government has only done away with the three provisos to Rule 5(2) to the effect that the rotation may also be provided in the Gram Panchayats, where ratio of the population of ST or SC or Backward Class is more than 50% of the total population of the Gram Panchayat and in the previous elections office of Pradhan, thereafter, were reserved for ST or SC or Backward Class. By deleting the provisos to Rule 5 (2) of the rules provisions for rotation is provided in all the Gram Panchayats except in those, where population of ST or SC or Backward Class is less than two persons.

7. Dr. Y.K. Srivastava further submits that the vires of statutory provisions of law as in the present case can be challenged on limited grounds namely the lack of legislative competence and violation of any of the fundamental rights or constitutional rights. In the present case, the Petitioners have not challenged the Amendment to the Rules of 2010, on any of these grounds.

8. Learned Counsel for the Petitioner-Shri Umesh Singh submits that Article 243D of the Constitution of India provides for reservation of seats. The Third Proviso to Sub-clause (4) provides for rotation of the number of office reserved under the

clause. The method and manner of rotation, however, is not provided either in the Constitution of India or in the U.P. Panchayat Raj Act, 1947. The unamended Rules on the basis of which the elections were held in the year 2005, in the second and third proviso to Sub-rule (2) of Rule 5 provided that in the Gram Panchayats where the ratio of the population of the Scheduled Tribes or the Scheduled Castes or the Backward Classes is more than 50% of the total population of the Gram Panchayat the reservation for the office of Pradhan shall be rotated among the persons of the ST or SC or Backward Classes and the women of ST or SC or Backward Class as the case may be. The third proviso provided as follows:

Provided also that in the Gram Panchayats where the ratio of the population of the Scheduled Tribes or the Scheduled Castes or the Backward Classes is more than 50% of the total population of the Gram Panchayat and in the previous election the offices of Pradhan there of were reserved for the Scheduled Tribes or the Scheduled Castes or the Backward Classes and in which the rotation as stated above is not possible, then the reservation for the offices of Pradhan shall be rotated among the persons and the women.

9. Shri Singh submits that the object of the unamended second proviso was not to disturb those Gram Panchayats, where ratio of the population of reserved categories is more than 50%. The object of proportional representation at the local level for local self Government is achieved in such case. In any Gram Panchayat where more than 50% of the population belongs to reserved categories, there is no object to rotate the office of Pradhan. The State Government for oblique motive and for mala fide intentions deleted the second, third and fourth proviso in Sub-rule (2) of Rule 5 of the impugned amendment. The State Government intended to provide larger representation to Dalits, and thus amended the Rules, prior to the election to be held in the year 2010.

10. We find substance in the preliminary objections raised by Dr. Y.K. Srivastava, Standing Counsel that the prayers made in the Writ Petition No. 52132 of 2010, Chhabinath Singh v. State of U.P. for a writ of mandamus prior to the elections without challenging the amended Rules has virtually become infructuous. In Writ Petition No. 55306 of 2010, Umesh Singh v. State of U.P. and Ors. there is absolutely no foundation of facts in challenging the amendments. Further in the absence of any challenge to the legislative competence or violation of fundamental rights, the amendment to the Rules, which are legislative in nature cannot be challenged.

11. In order to find out whether the arguments made at the time of admission alleging that rotation will bring about startling results in which Dalits will have greater representation, we had asked the State Government to provide data of the proportional representation of SC, ST and OBC, after the election results were declared in Gram Panchayats, Kshetra Panchayats and Zila Panchayats. A supplementary counter-affidavit of Shri Sudhan Chandra Chandola, Joint Director, Department of Panchayati Raj, Government of UP, Lucknow has been filed

annexing therewith detailed charts of the election results giving the details of the representations in the elections to the SC, ST and OBC candidates. From these charts the correctness of which has not been denied, we find that as against the representation of Scheduled Tribe at 0.06%; SC at 21.15% in the State of UP. in the census of 2001 for SC and ST and for OBC at 53.12% the survey made for OBC in the year 2005, the representation of SC in the total number of 47084 Chairpersons of the Gram Panchayats (Gram Pradhans) is 24.03% and 45.74% OBCs have been elected. In the Kshetra Panchayat the representation of SC out of 744 elected persons is 22.72% and for OBC 40.99%. In Zila Panchayats out of 65 seats the representation of SC is 26.15% and OBC 46.15%.

12. The data collected by the State Government demonstrate that the mandate of reservation of seats in Article 243D (1), in such a manner that the reservation should bear as nearly as may be the same proportion to the total number of seats to be filled by direct elections in the Panchayats as the population of SC in that panchayat area or ST in the panchayat area bears to the total population of that area and such seats may be allotted as representation to different constituencies in a panchayat, has not been disturbed. The representation of the reserved categories is nearly to the same percentage, as that of the population of the State.

13. For the aforesaid reasons, both the writ petitions are dismissed.