
(2011) 12 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 7897 of 2011

Gajanan Babar and Ors

APPELLANT

Vs

The State of Maharashtra and Ors

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 3, 5, 5(1), 5(3), 5A
Constitution of India, 1950 — Article 243P

Citation : (2012) 4 ALLMR 821 : (2012) 4 BomCR 143

Hon'ble Judges : V.K. Tahilramani, J; S.A. Bobde, J

Bench : Division Bench

Advocate : P.S. Dani instructed by and Mr. Drupad Patil, for the Appellant; Vijay Patil, GP for Respondent No. 1, Mr. Sachindra B. Shetye for Respondent No. 2 and Mr. S.R. Ganbavale, for the Respondent

Judgement

S.A. Bobde, J.—Rule, returnable forthwith. Heard finally by consent of the parties.

2. The petitioners in these petitions are the residents of Pimpri Chinchwad Municipal Corporation and Pune Municipal Corporation respectively. They have challenged the final notification issued u/s 5(3) of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as "BPMC Act, 1949") by which the city of Pimpri Chinchwad and Pune have been divided into various wards for the purpose of forthcoming elections to the Municipal Corporation.

3. The main contention on behalf of the petitioners is that the State Election Commission has committed serious error of law in taking the population figure of 2011 for determining number of councilors who should be elected but has taken into account the population figure of the year 2001 for determining number of reserved category seats even though such seats are bound to have a certain proportion to the general population. In other words, the contention is that though the law requires the State Election Commission to determine the number of seats for reserved category candidates in certain proportion to the seats of open category candidates for the purpose of determining the figures, the State

Election Commissioner has taken into account the population figures of the year 2001 and for the later period, the Commission has taken into account the figures for the year 2011. Section 5 of the B.P.M.C. Act reads as follows :

Constitution of Corporation - (1) Every Corporation shall, by the name of "The Municipal Corporation of the City of...", be a body corporate and have perpetual succession and a common seal and by such name may sue and be sued.

[(2) Each Corporation shall consist of, -

(a) such number of councilors, elected directly at ward elections, as is specified in the table below

TABLE

Population

Number of Councilors

(i)

Above 3 lakhs and upto 6 lakhs

The minimum number of elected councilors shall be 65. For every additional population of 15,000 above 3 lakhs, one additional councilor shall be provided. So however that the maximum number of elected councilors shall not exceed 85.

(ii)

Above 6 lakhs and upto 12 lakhs

The minimum number of elected councilors shall be 85. For every additional population of 20,000 above 6 lakhs, one additional councilor shall be provided. So however that the maximum number of elected councilors shall not exceed 115.

(iii)

.....

(iv)

.....

Section 5A of the B.P.M.C. Act which provides for reservation of seats reads as follows :

(1)(a) In the seats to be filled in by election in a Corporation, there shall be seats reserved for persons belonging to the Scheduled castes, Schedule tribes, Backward Class of citizens and women, as may be determined by the State Election Commissioner, in the prescribed manner.

(b) the seats to be reserved for the persons belonging to the scheduled castes

and scheduled tribes in a Corporation shall bear, as nearly as may be, the same proportion to the total number of seats to be filled in by direct election in the Corporation as the population of the scheduled castes or, as the case may be, the scheduled tribes in that Corporation area bears to the total population of that area and such seats shall be allotted by rotation to different electoral wards in the Corporation.....

From Section 5(1) of the B.P.M.C. Act, it is obvious vide table that the number of councilors must be fixed having regard to the population. For instance, in column (i) of the table, it is provided that whereas the population is above 3 lakhs and upto 6 lakhs, the number of elected councilors shall be 65 and so on. While the word, "population" has not been defined in the said Act, it is an admitted position that the respondent has taken into account the population of entire Corporation area as communicated to it by the Census Commission of India vide letter dated 9th October, 2011. The figures communicated by the Census Commission is 17,29,359 for Pimpri Chinchwad and 31,15,431 for Pune. However, while determining the number of seats that shall be reserved for persons belonging to Schedule castes and Schedule tribes, Backward Class of Citizens and women u/s 5A, the State Election Commission, for the purpose of Section 5A(1)(b) taken into account the population of such Schedule castes, Schedule Tribes, backward class of citizen which is available under the census figures of 2001 which are the latest census figures available within the meaning of that term in the explanation of Sub-Section 3 of Section 5 (Supra) which is reproduced hereunder for the sake of convenience particularly (a) and (b), that figures are 10,14,598 for Pimpri Chichwad and 23,81,373 for Pune. Sub-Section (3) of Section 5 of the B.P.M.C. Act :

(3) The [State Election Commissioner] shall, from time to time, by notification in the Official Gazette, specify for each City the number and boundaries of the wards into which such City shall be divided for the purpose of the ward election of councilors [so that, as far as practicable, all wards shall be compact areas and the number of persons in each ward according to the latest census figures shall approximately be the same. Each of the wards shall elect only one Councilor]

[Explanation : for the purpose of this Act, the expression "latest census figures" obtaining in sub-section (3), shall mean - (a) the figures of the latest census finally published and pending publication of final figures of the latest census shall mean the provisional figures published of such census; and (b) where the relevant final or provisional figures of the latest census are not available, the final relevant figures of the census immediately preceding the latest census].

4. The contention of Shri. Dani, the Learned Counsel for the petitioners is that sub-section 1(b) of Section 5 (a) requires that the number of seats which should be reserved for the persons belonging to schedule castes and schedule tribes must bear the same proportion to the total number of seats to be filled in by direct election in Corporation as the population of such caste or tribe bears to the total population of that area. Therefore, according to the Learned Counsel, it is

not permissible to take into account the population of the schedule castes and schedule tribes etc of the year 2001 and at the same time take into account the total population of that area from the census figures as are available in the year 2011. Admittedly, there is increase in the total population of the area between 2001 to 2011 and since the respondents have taken into account the population of schedule castes, schedule tribes etc of the year 2001, the reservation is bound to be less than what it should be. In other words, the number of seats to be filled in by direct election in the general open category will be disproportionately more than the number of seats that are available to be filled in by schedule castes and schedule tribes etc.

5. Mr. Shetye, Learned Counsel for the State Election Commission does not dispute that the proportion of reserved seats to the general seats should be worked out on the basis of the same population figures. Ideally, according to the Learned Counsel, the number of seats for reserved category candidates in the present election ought to have been worked out on the basis of 2011 figures which are available. However, the figures for the year 2011 do not contain the figures of the population of schedule castes and therefore the respondents have had to increase the population of schedule castes and schedule tribes in the same proportion they bear to the general population in the year 2001. In other words, the respondent has taken into account what was the proportion of that particular reserved category to the general population for the year 2001 and have increased the figures of the reserved category in the same proportion to the general category, having regard to the figures of the general category available in 2011.

This is apparent from the following chart:

POPULATION, TOTAL SEATS & RESERVATION IN THE MUNICIPAL CORPORATIONS ELECTIONS 2012

Sr No

MUNICIPAL CORPORATION

CENSUS 2011

2001 CENSUS

TOTAL VOTERS (Appro)

TOTAL SEATS OLD

TOTAL

SC

ST

1

2

3

4

5

6

7

8

6

Pune

3115431

2381373

280391

21618

2456253

144

7

Pimpri-Chinchwad

1729359

1014598

142537

19888

1095505

105

TOTAL SEATS NEW

DIFF

TOTAL WARD NEW

WOMEN SEATS

DETAILS REGARDING RESERVATION GEN SC ST BCC

(9-8)

O

N
O
N
O
N
O
N
O
N
9
10
11
12
13
14
15
16
17
18
19
20
21
152
8
76
48
76
87
92
17

18

1

1

39

41

128

23

64

35

64

60

72

15

18

2

3

28

35

O = Seats in 2007 elections.

N = Seats in 2012 elections.

The above figures show that the seats for schedule castes, schedule tribes and backward classes have been increased (against "N" in columns 17, 19 and 21 i.e in 2012 election) proportionately. In view of increase in the population from columns 4, 5 and 6 which give the figures of 2001 census to the figures in column 3 give the available undifferentiated figures of total population in 2011.

6. It was rightly contended by Shri. Dani, Learned Counsel for the petitioners that Section 5(a) of the B.P.M.C. Act which provides for reservation of seats contemplates that the same figure of population arrived at from the same census should be taken into account for determining the number of seats for schedule castes and schedule tribes. Indeed, the number of seats to be arrived at in the same proportion which the population of reserved category bears to the total population of that area. As contemplated in Section 5(A) sub-section (1)(b), both the figures of population of the reserved categories total population must be from the said census. It would be anomalous to hold otherwise. In the present

case, however, it was impossible for the State Election Commission to take into account the figures of the population of reserved categories in the year 2011 census since they are not available. Only the figures of the total population of 2011 census are available, therefore, if the seats are to be reserved in the correct proportion, there was no option but to take into account a notional figure which bears same proportion of the population of schedule castes and schedule tribes to the total population as available from the census of 2001. We are mindful of the fact that such course of taking a notional figure in the same proportion is not contemplated by Section 5A which contemplates the actual population. However, it was also urged on behalf of the petitioners that if the figures of population of the schedule castes and schedule tribes as obtained in the 2001 census were to be taken into account, then the respondents ought to have taken into account the figures of the total population as obtained in 2001 census also.

7. Shri. Shetye, Learned Counsel for the State Election Commission has submitted that if this was done, it would have reduced the number of councilors since that number had to be determined with reference to the existing population as provided in the table to Section 5 (supra). Further, as a result, the proportion of councilors to the population contemplated by law would have been breached since the State Election Commission would have taken into account a much smaller figure of population i.e 1014598 for Pimpri Chinchwad and 2381383 for Pune (2001 census) instead of 1729359 for Pimpri Chinchwad and 3115431 for Pune vide column 4 and 3 of the chart (Supra). We find that Article 243P(g) of the Constitution of India defines population as follow:

"Population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

That term "at the last preceding census of which the relevant figures have been published" is not defined in the B.P.M.C. Act by the explanation to sub-section 3.

For the purpose of the B.P.M.C. Act, the expression "latest census figures" obtaining in sub-section (3) shall mean -

(a) the figures of the latest census finally published and pending publication of final figures of the latest census shall mean the provisional figures published of such census; and

(b) where the relevant final or provisional figures of the latest census are not available, the final relevant figures of the census immediately preceding the latest census].

Thus, the Act under which the election in question are to be held contemplates that if the figures of the latest census are not finally published, then the provisional figures published in such census should be taken into account and where neither final nor provisional figures of the latest census are available, final figures of the census immediately preceding the latest census should be taken

into account. Thus, the State Election Commission has not committed any illegality in taking into account the provisional figures of the latest census i.e 2011 census while determining number of councilors. In the result, we do not consider the case of the petitioners is appropriate for interference with the impugned final notification for formation of the wards in reservation of the seats.

8. Shri. Dani, Learned Counsel for the petitioners submitted that sub-section 3 of Section 5 of the B.P.M.C. Act contemplates that the number of persons in each ward according to the latest census figures shall approximately be the same. The Learned Counsel has submitted that there are some discrepancies in formation of wards in the census and that the number of persons is not the same. Shri. Dani, Learned Counsel, however fairly accepted that the differences are not greater than 10% between two wards which is a margin permitted by the Election Commission in the guidelines dated 16th August 2011 framed by it.

9. In the circumstances, Rule is discharged.