

(2019) 09 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 3421 Of 2019

Hanifa Akhter

APPELLANT

Vs

State And Others

RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Jammu And Kashmir Panchayati Raj Act, 1989 — Section 2(p), 27(3), 28, 41
Ladakh Autonomous Hill Development Councils Act, 1997 — Section 3
Code Of Civil Procedure, 1908 — Section 89, 89(2)(c), 89(2)(d), Order 7, Order 7 Rule 14(4), Order 8, Order 8 Rule 1A(4)

Citation : (2019) 09 J&K CK 0012

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Ashish Singh Kotwal, Seema Shekhar

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

1. The petitioner is aggrieved against the Notification No. 05 of 2019 dated 04.09.2019 vide which final Block-wise list providing for reservation for Scheduled Castes, Scheduled Tribes and Women for District Reasi, was notified.

2. Learned counsel for the petitioner submitted that vide Notice No. 01 of 2019 dated 11.07.2019, the Director, Rural Development Department (for short 'the Director') published a draft proposal for reservation for Block Development Council constituencies in every block of Jammu Division. Objections/response was invited from general public within seven days. In the draft proposal, Mahore Constituency was reserved for women. Representation was filed, District Panchayat Officer, Reasi recommended to the Director vide letter dated July 20, 2019 that the Block Mahore seat should be kept reserved for women without any change. Thereafter fresh public notice No. 02 of 2019 was issued on 31.07.2019 inviting objections for draft proposal specifying reservation of various seats of the Block Development Councils. Objections were invited within seven days.

However, the time was later on extended up to 19.08.2019, vide public notice dated 10.08.2019. The petitioner filed objections on 16.08.2019. Thereafter, the final list was notified vide Notification No. 05 of 2009 dated 04.09.2019 reserving the Mahore seat for ST Women.

3. Impugning the aforesaid notification, the learned counsel for the petitioner submitted that Section 27(3) of the Panchayati Raj Act, 1989 (for short 'the Act') provides that there has to be direct election whereas Section 41 thereof talks of limited electorates. Meaning thereby indirect elections. Hence, the entire scheme is bad. It is further submitted that Section 27(3) of the Act provides that the powers are to be exercised by a Prescribed Authority. It has been defined in Section 2(p) of the Act to mean the authority appointed by the Government by way of notification. In the absence of any notification exercise of power by the Director is totally illegal. He further submitted that the petitioner does not challenge reservation of number of seats provided for different categories. Out of 12 constituencies in District Reasi, 4 have been kept in Open Category, 3 have been reserved for Women, 4 have been kept for Scheduled Tribe category, out of which one has been reserved for Women and one for SC Category. However, it was submitted that for reservation of seats for the women proper procedure has been prescribed by reserving seats at Serial Numbers 1,4,7,10.... However for Scheduled Tribes, there is no such system. At random seat at serial No. 7, which is the constituency in dispute, has been reserved for Scheduled Tribes. If the serial numbers in the list are seen, the seats at serial Nos. 3, 5, 7 & 12 have been reserved for Schedule Tribes, which does not make any sense. It smacks of arbitrariness in exercise of power.

4. On the other hand, learned counsel for the respondents submitted that the fact that State had issued public notice twice inviting objections shows that its intention was to be fair and give opportunity to all the stakeholders. She further submitted that Section 27(3) of the Act gives complete power to the Prescribed Authority to reserve the seats. The same has to be in proportion to the population in that District. As far as reservation for women is concerned, not less than 1/3rd of the total number are to be reserved. There are 12 constituencies. Learned counsel for the petitioner has not raised any issue regarding number of seats reserved for each category. The same is as per the population data. As far as reservation of seats is concerned, it was submitted that election for Block Development Council are being held for the first time in the State of Jammu and Kashmir. As far as women are concerned, the system has been devised to reserve seats at serial numbers 1,4,7,10 and 13..... As far as other categories are concerned, as per population statistics, one seat is required to be reserved for scheduled castes, whereas four are required to be reserved for scheduled tribes. The needful has been done keeping in view the constituencies where there was highest percentage of population of that category. Hence, the argument that there was arbitrary exercise of power is totally misconceived. Same process has been followed for all the constituencies in the State of Jammu and Kashmir to rule out any arbitrariness. It was further submitted that the list of blocks in all

the Districts has been prepared alphabetically.

5. It was further submitted that the work 'direct election' as used in Section 27(3) of the Act, does not fit in there. It has to be harmoniously construed considering other provisions of the Act. When Section 41 of the Act provides for 'indirect election', we have to read the same into this section as well. As far as Prescribed Authority is concerned, she referred to Schedule 'X' as annexed with the Jammu and Kashmir Panchayati Raj Rules, 1996 (for short 'the Rules'), which clearly provides that powers as referred to in Section 27(3) of the Act have been conferred on the Director, Rural Development Department. Hence, the argument is totally misconceived.

6. Heard learned counsel for the parties and perused the paper book.

7. Before the arguments raised by learned counsel for the parties are considered, it would be appropriate to refer to the relevant provisions of the Act.

"27. Constitution of Block Development Council.-

(1)&(2) xxx

(3) The Block Development Council shall consist of,-

(i) a Chairman ;

(ii) all Sarpanches of Halqa Panchayats falling within the Block ;

(iii) Omitted :

a) The scheduled castes; and

b) The Scheduled Tribes, in every district and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of offices of chairpersons to be filled by direct election in that district as the population of Scheduled Caste in that district or of the Scheduled Tribes in that district bears to the total population in that district and such offices may be allotted by rotation to different Block Development as may be prescribed. Provided further that

(a) Not less than one third of the total number of offices of chairpersons reserved under the above proviso shall be reserved for women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes; and

(b) Not less than one third of the total number of offices of chairpersons to be filled by direct election in the district shall be reserved for women (including the number of offices of chairpersons of Block Development Councils reserved for women belonging to Scheduled Castes or Scheduled Tribes) and such offices may be allotted by rotation to different constituencies in a district by such authority and in such manner as may be prescribed.

Provided further that in the case of districts of Leh and Kargil the councilors of

any council constituted under the section 3 of the Leh Autonomous Hill Development Council Act, 1997 representing the area following in any block shall be ex-officio members of Block Development Council for such Block.

28. Chairman, Vice-Chairman and Secretary.-

(1) Every Block Development shall have a Chairperson who shall be a Sarpanch or Panch in any Halqa Panchayat of that Block and shall be elected in accordance with the provisions contained in section 41;

Provided that on election of a sarpanch or a Panch as the chairperson of Block Development Council, he shall, after having been so elected, vacate his office as Panch or Sarpanch as the case may be.

41. Election of the Chairperson of Block Development Council.- The Chairperson of Block Development Council shall be elected by the electoral college comprising Panches and Sarpanches of Halqa Panchayats falling within the Block. The election shall be held in such manner as may be prescribed."

8. A perusal of the aforesaid provisions of the Act shows that the offices of the Chairpersons of the Block Development Councils shall be reserved for Scheduled Castes and Scheduled Tribes in every district. The number of seats so reserved shall be close to the proportion of the population of that category in that district and there may be allotment by rotation. It further provides that not less than one third of the total number of seats of the Chairpersons shall be reserved for women and not less than one third of the total number of offices of Chairpersons shall be reserved for women belonging to scheduled castes or scheduled tribes categories.

9. As far as reservation for women is concerned as one third seats are to be reserved for them. Roster was prescribed. The seats at serial numbers 1,4,7,10,13..... are reserved for the purpose. The list of constituencies in every district has been prepared alphabetically. Meaning thereby proper system has been followed. It was claimed that the same uniform system has been followed for all the districts in the State of Jammu and Kashmir. This rules out any arbitrary exercise of power. As reservation of minimum one third seats for the women is fixed, there is no error in providing for the constituencies in the list in every district specifying the numbers thereof. This according to the counsel for the State will change next year and different numbers may be provided because the rotation is permissible.

10. As far as reservation for the scheduled tribes and scheduled castes is concerned, total population of scheduled tribes in district is 30.66%. Hence, one third seats have been reserved for scheduled tribes category. This issue has not even been questioned by the petitioner.

11. The ground on which the petitioner sought to challenge is how out of the 12 constituencies, seats have been reserved for scheduled tribes category as compared to proper system followed in the reservation for women. To this in my

opinion, the answer given by the State is justifiable. The stand taken is that this being the first election of Block Development Councils in the State of Jammu and Kashmir, percentage of population in all the 12 blocks in district Reasi was worked. Four blocks, the details of which have been given below, have been reserved for schedule tribes category as the percentage of population of schedule tribes category in those blocks is the highest. It has nothing to do with the number or the order as is sought to be compared with the reservation for women. Same principle was followed for providing reservation for scheduled castes seat. The same is again in the constituency where highest percentage of population is of scheduled castes category. Hence, the argument of the petitioner that no system has been followed has no legs to stand and deserves to be rejected.

BLOCK WISE RESERVATION OF SC/ST/OC & WOMEN IN RESPECT OF REASI DISTRICT (AS PER 2011 (CENSUS) ANNEXURE "A"

S. No.

Name of District

Name of Block

Name of Block

Population

% Percentage

Reservation SC/ST Women

SC

ST

OC

TOTAL

SC

ST

OC

8

REASI

1.

ARNAS

2238

6005

17608

25851

8.66

23.23

68.11

WOMEN

2.

BHAMAG

2613

2701

9359

14673

17.81

18.41

63.78

OPEN

3.

CHASSNA

267

18084

25443

43794

0.61

41.29

58.10

ST

4.

GULAB GARH

0

2755

11625

14380

0.00

51.96

80.84

WOMEN

5.

JIJ BAGLI

501

6915

5893

13309

3.76

9.12

44.28

ST

6.

KATRA

6060

1789

11762

19611

30.90

40.10

59.98

SC

7.

MAHORE

519

14736

21491
36746
1.41
12.62
58.49
ST WOMEN
8.
PANTHAL
4635
2261
11021
17917
25.87
21.17
61.51
OPEN
9
POUNI
7807
9030
25810
42647
18.31
25.65
60.52
OPEN
10.
REASI
7819
6891

12159

26869

29.10

31.48

45.25

WOMEN

11.

THAKRAKOTE

778

3239

6272

10289

7.56

64.39

60.96

OPEN

12.

THUROO

399

13709

7181

21289

1.87

30.66

33.73

ST

TOTAL

33636

88115

165624

287375

11.70

30.66

57.63

12. As far as argument raised regarding the language used in Section 27 of the Act being 'direct election' whereas in terms of Section 41 of the Act, indirect election is provided, the scheme of the Act as is evident from Sections 28 & 41 of the Act clearly provides for indirect election of Block Development Councils. Merely because in Section 27(3) of the Act, the words 'direct election' have been mentioned, the petitioner does not get any advantage therefrom. It may be omission in the aforesaid provision or some error. The principles for interpretation of statutes are well settled. Reference can be made to the judgment of Hon'ble the Supreme Court in *Afcons Infrastructure Limited and another vs Cherian Varkey Construction Company Private Limited and other*, (2010) 8 SCC 24. Relevant paras therefrom are extracted below:

"20. The principles of statutory interpretation are well settled. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule, by making structural changes or substituting words in a clear statutory provision, under the guise of interpretation will pose a great risk as the changes may not be what the legislature intended or desired. Legislative wisdom cannot be replaced by the Judge's views. As observed by this Court in a somewhat different context:

'6. ... When a procedure is prescribed by the legislature, it is not for the court to substitute a different one according to its notion of justice. When the legislature has spoken, the judges cannot afford to be wiser.'

(See *Shri Mandir Sita Ramji v. Lt. Governor of Delhi*, (1975) 4 SCC 298, SCC p. 301, para 6.)

21. There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance with a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to

avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.

21.1. Maxwell on Interpretation of Statutes (12th Edn., p. 228), under the caption 'modification of the language to meet the intention' in the chapter dealing with 'Exceptional Construction' states the position succinctly:

'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's un-skillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.'

This Court in *Tirath Singh v. Bachittar Singh*, AIR 1955 SC 830, approved and adopted the said approach.

21.2. In *Shamrao V. Parulekar v. District Magistrate, Thana*, AIR 1952 SC 324 : 1952 Cri LJ 1503, this Court reiterated the principle from Maxwell: (AIR p. 327, para 12)

'12. ... if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided.'

21.3. In *Molar Mal v. Kay Iron Works (P) Ltd.*, (2000) 4 SCC 285, this Court while reiterating that courts will have to follow the rule of literal construction, which enjoins the court to take the words as used by the legislature and to give it the meaning which naturally implies, held that there is an exception to that rule. This Court observed: (SCC p. 295, para 12)

'12. ... That exception comes into play when application of literal construction of the words in the statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning.'

21.4. In *Mangin v. IRC*, 1971 AC 739 : (1971) 1 All England Reporter 179 (PC) : (1971) 2 WLR 39, the Privy Council held: (AC p. 746 E)

'... the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.'

21.5. A classic example of correcting an error committed by the draftsman in legislative drafting is the substitution of the words 'defendant's witnesses' by this Court for the words 'plaintiff's witnesses' occurring in Order 7 Rule 14(4) of the Code, in *Salem Advocate Bar Assn. (II) v. Union of India*, (2005) 6 SCC 344. We extract below the relevant portion of the said decision: (SCC pp. 368-69, para 35)

'35. Order 7 relates to the production of documents by the plaintiff whereas Order 8 relates to production of documents by the defendant. Under Order 8 Rule 1-A(4) a document not produced by the defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witness with a document during cross-examination. By mistake, instead of 'defendant's witnesses', the words 'plaintiff's witnesses' have been mentioned in Order 7 Rule 14(4). To avoid any confusion, we direct that till the legislature corrects the mistake, the words 'plaintiff's witnesses', would be read as 'defendant's witnesses' in Order 7 Rule 14(4). We, however, hope that the mistake would be expeditiously corrected by the legislature.'

21.6. Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the statute, in his treatise *Principles of Statutory Interpretation* (12th Edn., 2010, Lexis Nexis, p. 144) from the decision of the House of Lords in *Stock v. Frank Jones (Tipton) Ltd.*, (1978) 1 WLR 231 : (1978) 1 All England Reporter 948 (HL) : (WLR p. 237 F-G)

'... a court would only be justified in departing from the plain words of the statute when it is satisfied that: (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly.'

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25. In view of the foregoing, it has to be concluded that proper interpretation of Section 89 of the Code requires two changes from a plain and literal reading of the section. Firstly, it is not necessary for the court, before referring the parties to an ADR process to formulate or reformulate the terms of a possible settlement. It is sufficient if the court merely describes the nature of dispute (in a sentence or two) and makes the reference. Secondly, the definitions of 'judicial settlement' and 'mediation' in clauses (c) and (d) of Section 89(2) shall have to be interchanged to correct the draftsman's error. Clauses (c) and (d) of Section 89(2) of the Code will read as under when the two terms are interchanged:

(c) for 'mediation', the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for 'judicial settlement', the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The above changes made by interpretative process shall remain in force till the legislature corrects the mistakes, so that Section 89 is not rendered meaningless and infructuous."

13. While applying the aforesaid principles in Afcons Infrastructure Limited and others' case (supra), Hon'ble the Supreme Court interchanged the words 'judicial settlement' and 'mediation' as contained in Section 89(2)(c) & (d) of the Code of Civil Procedure, 1908, to correct the draftsman's error. Applying the aforesaid principles of interpretation of statutes, in my view, the words 'direct election' used in Section 27(3) of the Act is an error which has to be read in consonance with other provisions of the Act and keeping in view scheme of the Act, namely, Sections 28 & 41 of the Act, which provide for indirect election. Hence, even this argument of learned counsel for the petitioner has no merit.

14. Third argument raised was regarding the Prescribed Authority. Section 27(3) of the Act provides that power has to be exercised by Authority, as may be prescribed. Section 2(p) of the Act defines 'Prescribed Authority' to mean as notified by the Government for all or any of the provisions of this Act. A perusal of Schedule 'X' attached with the Rules clearly shows that the authority has been specifically prescribed to mean Director, Rural Development. Relevant part of the Schedule 'X' is extracted below:'

"SCHEDULE 'X'

SCHEDULE REGARDING DELEGATION OF POWERS UNDER VARIOUS SECTIONS OF J&K PANCHAYATI RAJ ACT, 1989

Sl. No.

Section

Authority

1-11

xxx

xxx

12.

27(3) proviso

Director, Rural Development

13-17

xxx

xxx

Hence, even this argument is also rejected being misconceived.

15. For the reasons mentioned above, I do not find any merit in the present petition. The same is accordingly dismissed.