

(2024) 12 GUJ CK 0018

In the Gujarat High Court

Case No : Special Civil Application No. 22533 of 2022

Ibrahimbhai Rahimbhai Parbadiya Versus

APPELLANT

Vs

The Secretary, State Election Commission & Ors.

RESPONDENT

Date of Decision : 05-12-2024

Acts Referred:

Constitution of India, 1950 — Articles 14, 243D(1), 243(f), 243(k)
Gujarat Panchayat Act, 1993 — Section 2(33), 9(4), 16, 16(1)

Citation : (2024) 12 GUJ CK 0018

Hon'ble Judges : Mauna M. Bhatt, J

Bench : Single Bench

Advocate : Sunil K Shah, Aishvarya, Dhawan Jayswal, R B Thakor

Final Decision : Dismissed

Judgement

Mauna M. Bhatt, J

1. A social worker as petitioner has filed this petition challenging the decision of respondent No.2 – The Collector dated 03.02.2022, whereby one seat has been allotted to Scheduled Tribe Caste (General) as a member, in Gram Panchayat of Village- Karnala in Ward No.8 of area-Mujahidpura, Taluka- Vadgam, District-Banaskantha. It is also prayed that one seat allotted to Scheduled Tribe Cast in ward-8 of Village- Karnala, be allotted to any other category instead of Scheduled tribe.

2. It is case of the petitioner that allotment of seat in Ward No.8 in Village: Karnala area of Mujahidpura, to Scheduled Tribe Caste is required to be cancelled because more persons of Scheduled Tribe Caste are not residing or staying in Ward No.8 area of Mujahidpura of Village: Karnala.

3. Facts in brief, as referred in the petition, are as under:

Respondent No.1 – Secretary, State Election Commission in exercise of powers conferred under Article 243(k) read with Section 16 of the Gujarat Panchayat

Act, 1993 ("the Act, 1993" for short) issued Notification dated 07.09.1994. Under the said Notification, certain guidelines were issued which are required to be adhered by the Collector of the District while constituting wards of a Village Panchayat. According to the said guidelines, ward of each Village Panchayat shall be constituted in such a manner that population in all the wards shall as far as practicable be equal, in particulars, the population of a ward, shall not vary 10 percent in case of village panchayat from the average ward population of a village Panchayat. The respondent No.1 – Secretary thereafter, by letter dated 10.01.2022 issued guidelines regarding the allotment of seats as per the division of wards in Gram Panchayats. Accordingly, respondent No.2- The Collector by notification dated 03.02.2022 allotted 8 seats to the village: Karnala, Tal: Vadgam, District: Banaskantha. Out of 8 seats, one seat has been allotted to Scheduled tribe caste in Ward No.8 area of Mujahidpura in Village: Karnala. Since there is no population of Scheduled tribe caste residing or staying in Ward No.8 area of Mujahidpura in Village: Karnala, the present petition is filed challenging the decision/notification of respondent No.2-collector dated 03.02.2022.

4. Heard learned advocate Mr.Sunil Shah for the petitioner; learned advocate Ms.Aishvarya for respondent No.1; learned Assistant Government Pleader Mr.Dhawan Jayswal for respondent No.2 and learned advocate Mr.R.B.Thakor for respondent No.3.

5. Learned advocate Mr.Sunil Shah for the petitioner submitted that Notification dated 03.02.2022 issued by respondent No.2- Collector as State Election Commission Officer is erroneous and illegal because the same is against the Rules and Regulations issued on 10.01.2022. The notification is in violation of Article 14 of the Constitution of India. Learned advocate submitted that as referred in the petition, the allotment of seat is to be done as per the division of ward in Gram Panchayat. According to which, 8 seats have been allotted to Ward No.8 area of Mujahidpura of Village: Karnala and out of those 8 seats, one seat has been allotted to Scheduled tribe caste. The said allotment is illegal because there is no population of Scheduled tribe caste people in Village: Karnala area of Mujahidpura and in absence of any population of Scheduled tribe caste people, allotment of 1 seat to the said caste would create non-representation, which is contrary to the intent of the guidelines dated 10.01.2022. Since there is no such population of Scheduled tribe caste, the villagers' made representation dated 16.02.2022 to the Chief Election Officer, however nothing has been done. Zero population of Scheduled tribe in area of Mujahidpura village Karnala is evident from Gram Panchayat Certificate dated 14.02.2022 (Annexure "D").

6. Moreover, the respondent has erred in not appreciating that earlier there was a group Gram Panchayat consisting of 11 wards. In the year 2022, division of Gram Panchayat took place. At present in the year 2022, as per voters list No.119/120 the Mamlatdar Vadgam has not shown any name of Scheduled tribe people in the voters list of Karnala Gram Panchayat. Name of 22 persons shown in voters list as per the reply given by respondent no.1 belongs to village of

Hatvada and their names are shown in voters list No.121 of Village: Hatvada. Therefore, Notification is required to be changed accordingly.

7. Learned advocate for the petitioner reiterated that if no change is made prior to the election which are likely to be held in the month of December 2024, it would cause injustice to villagers of Village: Karnala area of Mujahidpura. He submitted that considering the above facts, the respondents may be directed to quash and set aside the Notification dated 03.02.2022 for allotting the seat to Scheduled tribe caste in Ward No.8 area of Mujahidpura in Village: Karnala and the respondents may be directed to allot that seat in any other category instead of Scheduled tribe in Ward No.8 area of Mujahidpura in Village: Karnala, Taluka: Vadgam, District: Banaskantha.

8. Opposing the present petition, learned advocate Ms.Aishvarya for the respondent No.1 pointed out following facts :

8. 1 That reservation and allocation of seats in a ward for election of members of Village Panchayat, is to be carried out on the basis of the current population of such ward. For this, various provisions of law, including that of the Constitution of India, mandate the formation of wards on the basis of population as ascertained in the last preceding census of which the relevant figures have been published.

8.2. In the month of October 2021, the State Government passed a notification whereby 11 Village Panchayats In Vadgam were constituted/bifurcated from existing Village Panchayats. One of Village Panchayat is of Village Karnala, Taluka Vadgam, District: Banaskantha.

8.3. Under Section 16 of the Gujarat Panchayats Act, 1993, electoral divisions are required to be formed for the purpose of election of the members to a Village Panchayat by the State Election Commission and for the said purpose the concerned Village Panchayat is divided into single member wards. As per Section 9(4), a Village Panchayat of a village having population not exceeding 3000, is to consist of eight members and in case of Village Panchayat where the population exceeds 3000, then for every 3000 or part thereof in excess of 3000, the number of eight is increased by two. Such powers of the election commission i.e., Respondent no.1, have been delegated by the Commission to the Respondent No. 2, i.e., the Collector who has been designated as the Election Officer for the District, vide notification dated 13.03.1995. The Respondent No.1 has also published various guidelines for formation of wards, the most recent being guidelines dated 10.01.2022.

8.4 As per the said guidelines, the proposal for the formation of wards has to be sent by the Mamlatdar to the Prant Officer who thereafter, sends it to the Collector. In the facts of the present case the proposal for the election of members to the newly constituted Karnala Village Panchayat was sent by the Mamlatdar to the Collector.

8.5 Subsequently, the Collector published preliminary Notification dated 03.02.2022 relating to formation of Wards of the newly constituted Village Panchayats, including Karnala Village, inviting objections within a period of 10 days from the publication of the notification.

8.6 The petitioner raised his objections vide letter dated 16.02.2022 and upon consideration, the said objections were rejected by respondent No.2 vide communication dated 24.02.2022. In the communication dated 24.02.2022, it was pointed out that the formation of wards has been carried out as per the extant Rules.

8.7 Thereafter, on 02.03.2022, respondent No.2 published final notification in relation to formation of the wards, wherein also, objections were raised by the petitioner along with other persons by communication dated 29.06.2022.

8.8 Objection dated 29.06.2022 was also rejected by communication dated 05.07.2022. In the communication dated 05.07.2022, it was once again informed to the petitioner that formation of wards has been carried out as per the figure of the population ascertained in the 2011 census and the extant rules and regulations published by the State Government.

Therefore, formation of wards has been carried out as per the extant Rules and as per the figure of the population ascertained in the 2011 census and no illegality has been committed, as alleged.

9. Learned advocate further submitted that following legal provisions would enumerate that the action taken by respondent No.1 is legal.

(a) Referring to Section 2(33) of the Gujarat Panchayats Act, 1993, she submitted that the said section defines "population" and "village" and the same shall have the meaning respectively assigned to them in Part- IX of the Constitution.

(b) Section 9(4) provides that a Village Panchayat of a village having population not exceeding three thousand shall consist of eight members and in case of a village panchayat where the population of the village exceeds three thousand, then for every three thousand or part thereof in excess of three thousand, the said number of eight shall be increased by two.

(c) Section 16(1) provides for the purposes of elections of members to a village panchayat, and a village shall be divided by the State Election Commission into as many single member wards as the total number of members specified in respect of the village panchayat or that village in sub-section (4) of section 9, and in such manner that as far as practicable the population of all the wards is the same; and one member shall be elected from each such ward.

10. Thus, from the above provisions, it is evident that formation of wards of Village Panchayat has to be carried out on the basis of population of the Village Panchayat and the word "Population" used in the Gujarat Panchayats Act, 1993

has the same meaning as assigned to it as in Part IX of the Constitution. Under Article 243(f), "population" means the population as ascertained at the last preceding census of which the relevant figures have been published. Thus, formation of wards/ electoral divisions of the newly constituted Village Panchayat was to be carried out as per the data and figures of population ascertained in the 2011 census, which has been done in the present case.

11. Referring to the facts of the present case, learned advocate for respondents no.1, submitted that formation of wards of Karnala Village Panchayat was prepared by the Election Officer and a perusal of the same would indicate that the total population of Karnala village as per the 2011 census is 1992. The proposal would further indicate that there is a population of 22 persons belonging to the Scheduled Tribes category in ward no.8, and therefore there is no illegality in allotting one seat for Scheduled Tribe Cast.

12. Moreover, as per judgement of this Court dated 16.12.2011 in Special Civil Application No.17901 of 2011, the State Government is under a legal obligation to reserve a seat for Scheduled Castes and Scheduled Tribes in a Village Panchayat and thus, there is no illegality, as alleged. Moreover, under Article 243D(1) of the Constitution of India,

(1) Seats shall be reserved for:

(a) the Scheduled Castes; and

(b) the Scheduled Tribes, and therefore contention that ignoring the census of 2011, let the seat be allotted to other candidate is contrary to law. Therefore, the petition deserves to be rejected.

13. Considered the submissions and decisions relied upon. Upon revisitation of facts, it is noticed that the petitioner is seeking allotment of one seat of Scheduled Cast Tribe in Ward No.8 area of Mujahidpura, of Village: Karnala, Taluka-Vadgam, District : Banaskantha to any other category because as per submission of the petitioner, there is no population of Scheduled Cast Tribe in village Karnala and therefore, the seat would remain unrepresented.

14. It is also noticed from the representation of all villagers dated 16.02.2023 (Annexure "C" Page-28) as also from the Certificate of Gram Panchayat at Annexure "D" dated 14.02.2022 that there is no population of Scheduled Cast Tribe in Ward 8 area of Mujahidpura of Village Karnala. However, it cannot be ignored that the allocation of ward and the seats thereof for village karnala was done by issuance of notification dated 03.02.2022, as mandated under the provisions of Section 2(33), read with Section 9(4) and Section 16(1) of Gujarat Panchayats Act, 1993.

15. Further, as per guidelines dated 12.01.2022 published by respondent commissioner, election of members of newly constituted Village Panchayat shall be carried out as per population in 2011 census. As per 2011 census, the population of village Karnala is 2992. Further, 2011 census refers to population of

22% belonging to Scheduled tribe caste and therefore, considering 2011 census, one seat has been reserved for Scheduled tribe caste in village: Karnala.

16. Moreover, this court finds force in the submission of learned advocate for the respondent that in view of Article 243D(1) of the Constitution of India, the seat shall be reserved in every panchayat on pro rata basis to the population of the Scheduled caste in panchayat area or of the Scheduled Tribe in that panchayat area bearing to the total population of the said area and such seats may be allotted by rotation to different constituencies in panchayat.

17. Once aspect, which needs consideration is that if the contention of learned advocate for the petitioner is accepted that the basis of 2011 census is to be ignored , the same would be contrary to the provisions of the law, particularly the meaning of population as given under Article 243(f) of The Constitution of India.

18. Further, in view of the decision of this Court in Special Civil Application No.17901 of 2011, the State Government is under a legal obligation to reserve the seat for Scheduled tribe and Scheduled caste in Karnala village panchayat as per the 2011 Census. Therefore, since the Notification dated 03.02.2022 was issued after taking into consideration the 2011 census and as per the extant provisions of Gujarat Panchayat Act, 1993, this Court does not find any illegality, which deserves interference of this Court. This Court does not find any merits in the petition and the same is dismissed. Rule is discharged.