
(2009) 08 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition No. 7399 of 2008

Iliyas Amir Maniyar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Constitution of India, 1950 — Article 15(3), 15(4), 16, 16(4), 243T
Maharashtra Municipal Councils and Nagar Panchayats (Election of President) Rules, 1981 — Rule 2A

Citation : (2009) 6 BomCR 138

Hon'ble Judges : Gavai B.R., J;Deshpande N.D., J

Bench : Division Bench

Advocate : A.P. Bhandari, for the Appellant; N.B. Khandare, G.P., for respondent Nos. 1 and 2, S.B. Parnere, a/h., S.T. Shelke and B.L. Sagar (Killarikar), for the Respondent

Final Decision : Dismissed

Judgement

Gavai B.R., J.—By way of present petition, the petitioner challenges the virus of Rule 2-A(a)(iv) of Rules which are called as Maharashtra Municipal Councils, Nagar Panchayat (President Election) Rules, 1981.

2. Shri Bhandari learned Counsel appearing for the petitioner submits that, by the said Rules a reservation is provided for women belonging to general category, so also a women from reserved category like the Scheduled Caste, the Scheduled Tribes, O.B.C., etc. Shri Bhandari further submits that a women form a class apart and further classification of reserved category i.e. women belonging to the Scheduled Caste, woman belonging to the Scheduled Tribe and women belonging to O.B.C. is not permissible under the constitutional scheme. Relying on provisions of Article 15(3) and 15(4), it is submitted that, reservation is provided under Article 15(3) of Constitution of India to women. So far as other reserved categories are concerned it is provided under Article 15(4) of the Constitution of India. Therefore, he submits that, since the source of reservation

for women and backward class is under different provisions of the Constitution, overlapping reservation to that extent is not permissible under the Constitutional Scheme.

3. On facts learned Counsel for the petitioner submits that, in so far as the Manvat Municipal Council, with which the petitioner is concerned, there would be reservation for women for continuous period of 10 years. He submits that, in some other Municipal Councils, there is reservation for women for 15 years. He submits that, this would deprive the male citizen of such municipal councils from holding the office of President of the Municipal Council for substantial period and as such, the impugned rule requires to be quashed and set aside. Learned Counsel for the petitioner further submits that, even from the perusal of Article 243-T, it would reveal that reservation is provided for women only and not for women belonging to the Scheduled Caste, the Schedule Tribe, etc.

4. Article 15(3) is enabling provision which enables the State to make certain special provisions for upliftment of women. Article 16(4) is a enabling provision which enables the State to make special provisions for the advancement of any social, educational, backward classes and for the Scheduled Caste and the Scheduled Tribe. The framers of the Constitution of India, taking into consideration that due to historical reasons women in this country and the certain backward class"s of citizens including the Scheduled Caste and the Scheduled Tribe were deprived from coming into main stream of the society, have made this aforesaid provision so as to give an opportunity to these classes to compete with the advanced classes.

5. The Parliament by 73rd amendment to the Constitution and particularly by Article 243-T, has provided reservation for the Scheduled Caste, the Scheduled Tribe and women. Clause (4) of Article 243-T also provides that the Offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Caste, the Schedule Tribes and women in such a manner as the Legislature of a State may, by law, provide. It can be seen that, by taking recourse to Clause 4 of Article 243-T, the aforesaid provision which is challenged by the petitioner has been introduced. The same provision reads thus:

2-A. Reservation of offices of President and procedure for allotting the reserved seats to different Municipal Councils and Nagar Panchayats:

(a)

(i) ...

(ii)

(iii) ...

(iv) not less than one-third (including the number of offices reserved for women belonging to the Scheduled Castes, Scheduled Tribes and the Backward Class of Citizens) of the total number of offices to be filled in the State, shall be reserved

for woman candidates; and such offices may be allotted by rotation to different Municipal Councils and Nagar Panchayats in the State. In determining such figure, a fraction shall be taken into consideration so as to ensure that not less than one-third of the total number of offices of Presidents are reserved for the above categories are reserved for woman.

6. The reservation provided for the Scheduled Caste, the Schedule Tribe and O.B.C. would be a vertical reservation. However, it could be seen that, the reservation for women would be horizontal reservation. It could not be in dispute that, the women belonging to all category, whether open or reserved are entitled to the benefit of the reservation as provided in the Constitution. Taking into consideration this aspect, reservation provided for the Scheduled Caste, the Scheduled Tribe and O.B.C. which is vertical reservation may overlap a reservation for women which is horizontal reservation. It can be said that in certain cases, the seats reserved for women may be available for a woman belonging to the open category and in another eventuality the seat could be available for a woman belonging to the reserved category.

7. The Apex Court in the case of (Indra Sawhney v. Union of India) 1992 DGLS (soft) 768 : 1992 Supp (3) S.C.C. 217, has held that horizontal reservation may overlap with the vertical reservation on certain point and it is permissible under the Constitutional Scheme. It is to be noted that the Apex Court in the said case was considering issue regarding the right of the citizens under Article 16, which guarantees an equality of opportunity to all the citizens. In spite of said fundamental right being guaranteed, the Apex Court has found that such a situation is permissible.

8. In the present case, we are dealing with the electoral rights. It is settled law that, the electoral rights are neither fundamental rights nor the common Law rights, and the said rights are purely statutory in nature. Unless the statute provides for any right a citizen, he cannot as a matter of right claim the same. In any case, from the perusal of Sub-clause (4) of Article 243-T, it can be seen that power has been given to the State to prescribe the manner in which the reservation provided has to be worked out. In that view of the matter, we do not find any force in the submissions made by the learned Counsel for the petitioner, regarding challenge to the validity of aforesaid Rule.

9. We find that petitioner also lacks the locus to approach this Court. The petitioner has not contested the election as councillor and as such there is no question of, he being elected and desirous of holding the post of Chairperson. In any case as already held by us hereinabove, the right of any citizen would be subject to statute, which prescribes the manner of right to hold a electoral post. There is no merit in the petition, the same is therefore, rejected.