

**(2008) 03 MP CK 0099**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 1369 of 2008**

Kalyan Singh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

**Date of Decision :** 28-03-2008

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64(2)(v)

**Citation :** (2008) ILR (MP) 1406 : (2008) 2 MPJR 239

**Hon'ble Judges :** S.C. Sharma, J

**Bench :** Single Bench

**Advocate :** Vivek Jain, for the Appellant; Praveen Newaskar, Deputy Govt. Advocate For Respondent No. 1 and 2, Mr. R.D. Jain with Mr. S.N. Seth, Advocate for intervener, Ballabh Singh Yadav, M.P.S. Raghuvanshi, Advocate and Mr. Raghavendra Dixit, District Cooperative Krishi Evam Gramin Vikas Bank Shivpuri, for the Respondent

**Final Decision :** Allowed

## Judgement

S.C. Sharma, J.

The Petitioner before this Court has filed this present writ petition under Article 226/227 of the Constitution being aggrieved by the illegal and arbitrary action of the Respondents in conducting elections in respect of the District Cooperative Krishi Evam Gramin Vikas Bank Shivpuri hereinafter referred to as the Society). The contention of the Petitioner is that while conducting the elections of the Society, the percentage of reservation of delegates is determined to the extent of 90% which is more than the constitutionally permissible percentage of 50% and therefore, the same deserves to be set aside.

As per averment made by the Petitioner in the writ petition there are about 8100 members of the Society and the following is the break-up of percentage of the reservation done in respect of the delegates of the Society.

SC

1900

23%

ST

2400

29%

OBC

3000

37%

GENERAL

800

10%

Petitioner has raised various grounds assailing the process of election and has relied upon a judgment delivered by a Division Bench of this Court in W.P. No. 1013 of 1996 (Anand Manohar Tambe v. State of M.P. and others) decided on 12th December, 1996.

The Respondents No. 1 and 2 have filed a detailed return and stand of the Respondents is that once election programme has been published, this Court does not have any jurisdiction to entertain the writ petition under Article 226 and 227 of the Constitution. It has also been averred in the return that statutory alternate remedy is available to the Petitioner to raise an election dispute u/s 64(2)(v) of the Madhya Pradesh Cooperative Societies Act, 1960 (hereinafter referred as to Act of 1960), and therefore, the petition deserve to be dismissed.

Intervention application has been filed on behalf of the District Cooperative Krishi Evam Gramin Vikas Bank Shivpuri and has also filed a reply. In the reply, it has been stated that the petition is not maintainable as there is alternate remedy available to the Petitioner to file an election dispute under the Act of 1960. The intervener has also relied upon a judgment delivered by the Apex Court in the case of Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, and a judgment of this Court in the case of Bhopal Co-operative Wholesale Consumer Stores Ltd., Bhopal Vs. M.P. Co-operative Tribunal, Bhopal and Others, wherein this Court has held that once election programme has commenced, the same should be allowed to complete. The intervener has also relied on various provisions of the Act of 1960 and also byelaws of the Society which provides for proportionate reservation in respect of the Scheduled Caste, Scheduled Tribe and Backward Classes in the same proportion in which members of each category are

members of the Society.

Arguments were heard at length and the record has been perused.

In the return filed by the Respondents/State a categorical statement has been made supported by an affidavit in paragraph 5.4 of the return which reads as under.

That, the contents of para 5.4 of this petition are not admitted as mentioned. It is not true that reservation has been made only to benefit a section of the members win the election. However reservation has been made by the Joint Registrar Cooperative Societies Gwalior, not by the Respondent No. 3. In the year 2001 at the time of election of delegates of the bank in question proportionate reservation were made. Joint Registrar has made the reservation after following the provisions of bye law No. 24(1 -b) (2) of the bye laws, Rule 23(3) (I) of the rules 1962 and Section 48(B)(3) of the Act 1960. However it is true that joint registrar should not have made the proportionate reservation more than 50%. On the basis of reservation made by Joint Registrar election programe (Ann. P/1) was issued by the returning officer.

The aforesaid statement is duly supported by an affidavit sworn by the Joint Registrar, Cooperative Societies, Gwalior and it is the specific pleading that the Joint Registrar should not have made the proportionate reservation more than 50%. It was also brought to my notice during the course of arguments that the Registrar has sought for an explanation from the Joint Registrar as to why action should not be taken against him for committing such an irregularity of determining the percentage of reservation to the extent of 90%.

A Division Bench of the Court in the case of Anand Manohar Tambe (Supra) taking note of various judgments including the judgment of the Apex Court in the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., has observed in paragraph 21 as under:

As a result of above discussion, we find that the provisions of Section 48(3)(a)(i) and Section 48B(2)(a) and (b) of the Act and Rule 43(3-A) of the Rule M.P. Cooperative Societies Act, 1960 and M.P. Co-operative Societies Rules 1962 do not lack of legislative competence nor they violate Articles 14 and/or 15 of the Constitution of India, but the interpretation put by the State in respect of making reservation beyond 50% has to be read down and the representation of Scheduled Castes, Scheduled Tribes and Other Backward Classes should be in proportion to the members of the said castes, tribes and Other backward classes which it bears to the total membership of the society and it should not exceed more than 50% reservation as laid down by their Lordships of Hon'ble Supreme Court in the case of Indra Sawhney (supra). The circular which has been issued by the State vide Annexure P/4 giving clarification in Clause (1) resulting into representation exceeding 50% is struck down. It is directed that a combined reading of the provisions of the Act and Rules should bear a proportion of reservation which should not exceed beyond 50%. If elections have already taken place, the same

shall not be disturbed and in future this proportion of 50% ceiling should be kept in mind while providing proportionate representation to these three categories of persons i.e. Scheduled Castes, Scheduled Tribes and Other Backward Classes. The petitions are accordingly allowed in part. In the facts and circumstance of the case, parties are left to bear their on costs.

The dispute in the present case relates to the percentage of reservation of delegates of the members of the Societies in question. The provisions of Section 48(3) of the Act of 1960 and the provisions of 43(3-A) of the M.P. Cooperative Societies Rules, 1962 referred to in the case of Anand Manohar Tambe (supra) are para materia to the dispute involved in the present case. In view of the above, keeping in view the law laid down by a Division Bench of this Court in the case of Anand Manohar Tambe (supra) and the categoric stand taken by the State Government which is reproduced hereinabove, I am of the view that by no stretch of imagination the percentage of reservation could exceeded more than 50%. The judgments cited by the Respondents on the question of maintainability of the writ petition referred to hereinabove, so also the judgment delivered by a Division Bench of the Court in the case of Ram Pratap Singh Sikarwar v. State of M.P. and others W.A. No. 626/2007 decided on 08th October, 2007 provides that proper course is to challenge such disputes by filing election dispute. This Court would not have entertained the present writ petition in view of the settled law that once the process of election has commenced, interference should not be made in the matter. However, keeping in view the peculiar facts and circumstances of the present case and the detailed return filed by the Respondents/State supported by an affidavit of the competent authority wherein the State has admitted the mistake committed, while providing reservation beyond 50% which is impermissible under the law, this petition deserves to be entertained and the objection raised by the Respondents stands rejected.

Keeping in view the pronouncement of the Apex Court in the case of Indra Sawhney (supra) wherein it has been held that the reservation cannot exceed more than 50%, and the decision of the Division Bench of this Court in the case of Anand Manohar Tambe (supra), I am of the view that the percentage of reservation which has been done in the present case beyond 50% to the extent of 90% is contrary to the provisions of the Act and the law laid down by the Apex Court and this Court.

The writ petition is allowed to the limited extent it provides for proportionate reservation up to 90% in respect of delegates of the Society is quashed. The Respondents are directed to conduct the process of elections afresh strictly keeping in view of the provisions of the Act of 1960 as well as the bye - laws of the Society. The Respondents shall also while determining the percentage of reservation of the delegates of the Society in question keep in mind the pronouncement of the Apex Court in the case of Indra Sawhney (supra), and the judgment delivered by a Division Bench of this Court in the case of Anand Manohar Tambe (supra).

The writ petition is allowed and disposed of to the extent indicated hereinabove.  
No order as to costs.