
(1995) 01 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Special Appeal No. 84 of 1995

Man Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-01-1995

Acts Referred:

Constitution of India, 1950 — Article 243K
General Clauses Act, 1897 — Section 23
Rajasthan Panchayati Raj (Election) Rules, 1994 — Rule 5
Rajasthan Panchayati Raj Act, 1994 — Section 102, 117

Citation : AIR 1995 Raj 276 : (1995) 2 RLW 234 : (1995) 2 WLC 17

Hon'ble Judges : P.P. Naolekar, J;B.R. Arora, J

Bench : Division Bench

Advocate : K.N. Joshi, for the Appellant; M.R. Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Arora, J.—This special appeal is directed against the judgment dated 16-1-1995, passed by the learned single Judge, by which -the learned single Judge dismissed the writ petition filed by the petitioners and refused to quash the notification Annexure-4 issued by the District Election Officer (Collector Panchayat), Jodhpur, by which the District Election Officer determined the constituencies reserved for Scheduled Castes, Scheduled Tribes, Other Backward Classes (O.B.C.), Women and General Category for the election of various Gram Panchayats of Panchayat Samiti, Balesar, district Jodhpur.

2. The State Government took a decision to hold elections to the various Gram Panchayats, Panchayat Samitis and Zila Pari-shads in the State of Rajasthan under the Rajasthan Panchayat Raj Act, 1994 (for short, "the Act, 1994") and the Rajasthan Panchayat Raj (Election) Rules, 1994 (for short, "the Rules, 1994"). The Collector, Jodhpur, in exercise of the powers conferred by Section 102 read with Section 17(5) of the Act, 1994, issued notification Annexure-1 under the Rajasthan Panchayat Raj (Election) Rules, 1994, determining and allocating the

constituencies reserved for the Scheduled Castes, Scheduled Tribes, Other Backward Classes, Women and other General Categories. In this notification Annexure-1, the total number of the constituencies for the Panchayat Samiti, Balesar, were shown as thirty-three, while six constituencies were reserved for Scheduled Castes, one for Scheduled Tribes, five for Other Backward Classes and six for Women (the reservation for women candidates in total was eleven). Some mistakes were pointed out by the local M.L.A. and, also, by some other persons that the reservations have not been properly made. Two constituencies/wards were wrongly allocated as constituency reserved for Scheduled Castes though population of Scheduled Castes in these constituencies/wards were less and two constituencies in excess were allocated to women in this Scheduled Caste Reserved Constituencies. The matter regarding the identification, allocation and reservation of constituencies was therefore re-examined on the basis of the material available and the Collector, Jodhpur, who is the District Election Officer for Panchayats in Jodhpur District, vide his order dated 12-12-1994 (Annexure-3) held that a mistake has crept-in while determining the constituencies to be reserved for the Scheduled Castes as well as for determination of the constituencies for women and, therefore, it became necessary to re-determine the reservations to the various categories. The Collector, therefore, cancelled the earlier notification and ordered for the determination of the reservation of the constituencies afresh. After determining and allocating the seats reserved for the persons belonging to Scheduled Castes and Scheduled Tribes, on the basis of their population in the respective constituencies, the Collector, in the meeting held on 14-12-1994, allocated the remaining seats for ladies, Other Backward Classes and for General Category by Draw of Lots. After the identification and allocation of seats by the Draw of Lots, the notification Annexure-4 was issued showing the reservation for the seats for Women and General Categories. Appellants Man Singh, Bheru and Joga Ram are the voters of Gram Panchayat, Chamu, Kanodiya Purohitan and Dhadniya Bhayla, the three Gram Panchayats of Panchayat Samiti, Balesar. Vide notification Annexure-4, these three constituencies, i.e., Chamu, Kanodiya Purohitan and Dhadniya Bhayla, which were declared as General Constituencies/Wards vide Annexure-1, were included in the category of constituency reserved for Other Backward Classes. The appellant-petitioners, therefore, challenged this notification Annexure-4 by way of filing S. B. Civil Writ Petition No. 5757 of 1994 (Man Singh v. State of Rajasthan), which was dismissed by the learned single Judge vide judgment dated 16-1-1995. It is against this judgment dismissing the writ petition filed by the petitioner-appellants that the appellants have preferred this special appeal.

3. The validity of the notification and the correctness of the judgment, passed by the learned single Judge, have been challenged by the learned counsel for the appellants on the grounds that the learned single Judge has dismissed the writ petition on extraneous ground that the election process has already started but in fact neither any notification was issued for the election of the Gram Panchayats or the Sarpanchas nor any election process for the election of the

Gram Panchayats was started. It has, also, been contended that the finding of the learned single Judge that the appellant-petitioners are not the affected persons by the re-demarcation of the constituencies, is not correct. His further contention is that once the constituencies and the wards have been demarcated and published under Rule 4 of the Rules, the Collector (District Election Officers, Panchayat), Jodhpur, has no jurisdiction to cancel the earlier notification and to re-issue a fresh notification demarcating the constituencies/wards which became final. It has further been contended that the Collector or any other authority under the Act or the Rules, has no power to rescind the earlier notification or to issue fresh notification and the election can, now, be held only in accordance with the notification Annexure-1. It is, also, contended by the learned counsel for the appellants that Rule 4 of the Rules authorises the authority concerned, while publishing the list of the wards/constituencies to invite objections from the inhabitants of the area of the Panchayat Circle or the constituency within seven days from the date of affixing the notification and if any objections are received then to consider those objections and the other materials available with him and record his decision thereon determining the wards/constituencies and thereafter to notify the same by affixing the final statement at the place mentioned in the Rules. When once the constituencies are notified, the objections received thereafter should not have been considered again and the constituencies/wards should not have been changed. Alternatively, it is contended by the learned counsel for the appellants that there was no error so far as the demarcation of the constituencies for the Other Backward Classes is concerned and therefore, while correcting the mistake occurred, only the constituencies reserved for Scheduled Castes and for the Women should have been considered and it was not necessary for the Collector to have Draw of Lots so far as the reservation regarding O.B.C. candidates is concerned and the re-allocation of the O.B.C. reserved constituencies is an arbitrary act of the respondents which has adversely affected the right of the appellants and alike to contest the election because the constituencies, to which they belong, have been declared as "reserved for Other Backward Classes". Learned counsel for the respondents, on the other hand, has supported the judgment passed by the learned single Judge.

4. We have considered the submissions made by the learned counsel for the parties.

5. The first question requires consideration is: whether any prejudice has been caused to the appellant-petitioners due to the change of the Constituencies? Earlier the wards/ constituencies were declared as reserved for general category and by the change in the Notification they have fallen in the category of reserved for Other Backward Classes. The appellant-petitioners belong to the general category and, therefore, now, they cannot contest the election from these constituencies reserved for Other Backward Classes. The Notification Annexure 4 has, thus, taken away their right to contest the election and, therefore, a prejudice has been caused to the appellant-petitioners by the issuance of the Notification Annexure 4. The finding, arrived at by the learned single Judge that

no prejudice has been caused to the petitioner-appellants, is, thus, not correct.

6. The next contention requires adjudication is: whether the election process has already been started or not in the present case? No Notification for holding the election to the various Gram Panchayats was issued by that time and, therefore, it cannot be said that the election process for these Gram Panchayats has already been started.

7. The next contention, raised by the learned counsel for the appellants is that when once the wards/constituencies have been demarcated by the Collector vide Annexure 1 and displayed on the Notice Board of Panchayat Samiti under the Rules then he had no power under the Act or the Rules to cancel that Notification and issue a fresh Notification like Annexure 4 because the Notification Annexure 1, issued under Rule 4 of the Rules, had become final. There is one fallacy in this argument. The Notification Annexure 1, issued by the Collector after a meeting held on 18-10-1994, is not a Notification determining the wards or the constituencies of the Panchayat Samiti issued under Rule 3 but it is a notification identifying and allocating the seats reserved for Scheduled Castes, Scheduled Tribes, O.B.C., Women and General categories. The Notification determining the wards and the constituencies was issued earlier which has neither been placed on record nor has it been challenged by the appellant-petitioners. As the Notification Annexure 1 or Annexure 4 is not relating to "Determination of the Wards or the Constituencies" therefore, the contention, raised by the learned counsel for the appellants, is devoid of any force. These Notifications relate to the reservation and allocation of the constituencies for Scheduled Castes, Scheduled Tribes, Other Backward Classes, Women and General Categories and has no concern with the demarcation. In the Notification Annexure 1, six constituencies were reserved for Scheduled Castes candidates and out of these six constituencies four were reserved for women candidates. As per Rule 6 of the Rules this reservation of four constituencies for women out of the six constituencies reserved for Scheduled Castes candidates, was in excess. Only two, i.e., 1/3rd of the constituencies reserved for Scheduled Castes candidates could have been reserved for women candidates and, therefore, this error, which crept in the Notification reserving four constituencies instead of two necessitated the cancellation of Notification Annexure 1. One more error crept in allocating and reserving of Nathraou and Keshugadha constituencies as Scheduled Castes Constituencies though these areas do not belong to this category as the number of the Scheduled Castes persons residing in these constituencies was less. This error, also, necessitated for the reconsideration and fresh allocation and identification of the reserved constituencies. On the re-determination of the constituencies in the descending order of percentage of Scheduled Castes persons these two constituencies were not found belong to the Scheduled Castes candidates while as per the Rules, the constituencies which fall in this category are Deriya and Shekhala. The taking out of these two constituencies Nathraou and Keshugadha from the category of the constituencies belonging to Scheduled Castes and declaring Deriya and Shekhala as the "Constituencies belonging to

Scheduled Castes"and reserving two more constituencies for women candidates are the reasons which necessitated the cancellation and compelled the authority to re-determine the constituencies / wards reserved for Other Backward Classes, Women and General Category by the Lottery System.

The power to issue a Notification includes the power to rescind, vary, modify or amend a Notification. In the absence of any provision in the Act or the Rules empowering the authority to vary or rescind the order made under the Rules, the provisions of Section 23 of the General Clauses Act can be pressed into operation if the circumstances so necessitated, but, however, the procedural formalities have to be followed and it cannot be circumvented. Section 23 of the General Clauses Act reads as under:--

"23. Power to make or issue includes power to add, to amend, vary or rescind orders etc. -- Where, by any law, a power to make or issue orders, rules, regulations, schemes, forms, bye-laws or Notification is conferred then that power includes the power exercisable in the like manner and subject to the sanction or condition (if any) to add, to amend, vary or rescind any orders, rules, regulations, schemes, forms, bye-laws or notification so made or issued."

Thus, where the cancellation of the Notification already issued is legitimately necessary and it is required to make the thing practicable to the peculiar conditions of the case for carrying it into operation and affects the election process then the earlier order can be cancelled and an authority, who has been vested with the power to issue a Notification, has power to cancel or withdraw the earlier Notification if material error in issuing the earlier Notification is there. The power to do a particular thing includes the power to undo that thing. The District Election Officer (Collector, Panchayat), Jodhpur, had power to allocate and reserve seats in the Gram Panchayat if he finds that some mistake has been committed (i) in reserving a particular constituency for a particular class which actually does not belong to that class; and (ii) allocation of more constituencies for women in the Scheduled Castes Constituencies then he has all powers to rescind that notification which was not correct and to issue a fresh Notification re-distributing the reserved seats and correcting the error which has crept in. Power to rescind a notification is without any limitation, but, however, before issuing the fresh notification he has to observe the procedural formalities which are required to be followed. Rules 5, 6 and 7 of the Rules provide procedure for the reservation of the constituencies and that has to be followed while making reservation. That procedure has been followed by the District Election Officer (Collector, Panchayat), Jodhpur, before issuing the Notification Annexure 4 and, therefore, Annexure 4 does not suffer from any infirmity.

8. The next ground, raised by the learned counsel for the appellants, is that there was no change in the number of the seats reserved for Other Backward Classes and if at all there was some change then that change was in the case of reservation of the seats for Scheduled Castes and the Women candidates and, therefore, there was no necessity of applying the Lottery System (Draw of Lots)

so far as the reservation of the constituencies for Other Backward Classes is concerned. The two constituencies, namely Nathraou and Keshugad ha were taken out from the Scheduled Castes Constituencies and were included in the General Category. Two constituencies, namely. Deriya and Snekhar. which were the constituencies of General Category, were included in the Constituencies reserved for the Scheduled Castes. Earlier four constituencies were reservation women out of six constituencies were reserved for Scheduled Castes while only two constituencies could have been reserved for women in this category. Excluding two constituencies reserved for Women from this category resulted into the increase of the reserved constituencies for women from six to eight. By these changes, the whole complexion of reservation was changed, which necessitated the authorities to re-determine the reserved constituencies again by the Lottery System. The law requires that before issuing a Notification for the reservation of the seats of Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women etc., the procedure provided under Rules 5, 6 and 7 of the Rules has to be followed and in pursuance to that it was necessary for the authorities to have determined the reservation in accordance with the procedure provided under Rules 5, 6 and 7 of the Rules and, therefore in the meeting held on 14-12-1994 for the identification, allocation and reservation of the constituencies, the procedure under Rules 5, 6 and 7 were followed and thereafter Annexure 4 was issued. No illegality, therefore, has been committed by the Authority in Drawing the Lots again for the determination of the O.B.C. constituencies, also. The work had been undertaken by the authorities in accordance with law as it was necessitated to correct the errors which crept-in at the time of identifying and allocating the constituencies to various categories while issuing the Notification Annexure 1. The Notification Annexure I was, therefore, cancelled and fresh Notification Annexure 4 was issued. The appellants, therefore, cannot claim any benefit out of the Notification Annexure I dated 18-10-1994 which was later on cancelled and the fresh Notification Annexure 4 was issued.

9. In the result, we do not find any merit in this appeal and the same is hereby dismissed.