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**(1989) 08 AHC CK 0036**

**In the Allahabad High Court**

**Case No : Writ Petition Nos. 6945 & 6946 of 1989**

Mohd.Rafiq

APPELLANT

Vs

Union of India & Others

RESPONDENT

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**Date of Decision : 23-08-1989**

**Acts Referred:**

Constitution (Forty-Fifth Amendment) Act, 1980 — Section 2

Constitution of India, 1950 — Article 331, 38, 46

Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 11(1)(b), 7(2)

**Citation : (1989) 08 AHC CK 0036**

**Hon'ble Judges : S.Saghir Ahmad, J and H.C.Mittal, J**

**Final Decision : Dismissed**

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## **Judgement**

1. The petitioners by means of these petitions have, inter alia, challenged the election of opposite parties nos. 5 to 13, who have been elected as members of the Lucknow Municipal Corporation from reserved seats, on the principal ground that the reservation of the seats made in favour of the members of the scheduled caste community was bad. It is pointed out that under section 7 (2) of the U.P. Nagar Mahapalika Adhiniyam under which reservation has been provided for, the benefit of reservation would be available only up to the date upto which reservation for such castes exists under the Constitution of India. It is contended that the period for which reservation was last made in favour of the scheduled castes and scheduled tribes under Article 334 of the Constitution was 30 Years which was extended to 40 years by Section 2 of the Constitution (45th Amendment) Act, 1980. It is this Act which is sought to be challenged in this petition on the ground that the amendment introduced in Article 334 extending the period from 30 years to 40 years was against the basic structure of the Constitution and could not have been made particularly after the introduction of the word 'Secular' in the Preamble of the Constitution by Section 2 of the Constitution (42nd Amendment) Act, 1976. We are unable to appreciate the contention raised by the learned counsel for the petitioner.

2. In *Minerva Mills Ltd. v. Union of India and others*: (1980) 2 SCC 59 and

(1980) 3 SCC 625), which are equivalent to AIR 1980 SC 1789 the Supreme Court had an occasion to consider the decision in Kesavananda Bharati's case 1973 (4) SCC 225: (AIR 1973 SC 1461) which was discussed and explained and the concept of the 'basic structure' of the Constitution was clarified visavis the power of the Parliament to amend the Constitution. Since the amendment made in Article 334 of the Constitution is not hit by the law laid down in Minerva Mill's case (supra) we have to reject the contention raised by the learned counsel petitioners particularly as we are fully satisfied that the extension of the period from 30 to 40 years does not affect, alter or destroy the 'basic structure' of the Constitution.

3. Under section 7 (2) of the U.P. Nagar Mahapalika Adhiniyam it has been clearly provided that the reservation of seats in favour of Scheduled castes made under subsection (1) shall continue to be available upto the date upto which reservation in favour of such caste exists under the Constitution. Since under Article 334 of the Constitution the reservation is available upto 40 years, the said benefit would also be available under Section 7 of the U.P. Nagar Mahapalika Adhiniyam till the expiry of that period. Consequently, the election of opposite parties 5 to 13 who have been elected against reserved seats remains unaffected.

4. Learned counsel for the petitioner contended that the benefit of Article 334 is available only in respect of the elections to the Parliament and the State Legislative Assemblies and, therefore, this benefit cannot be extended to the elections held under the U.P. Nagar Mahapalika Adhiniyam. The contention is fallacious.

5. The legislative competence of the state Legislature in enacting Section 7 (2) has not been challenged before us nor has the vires of the Section been assailed in this petition.

6. Part IV of the Constitution, which contains Directive Principles of State Policy, is an important Chapter enumerating basic policies for the governance of the country. Article 37 specifically provides that although the provisions contained in Part IV are not enforceable by any court, the principles laid down therein are nevertheless fundamental in the governance of the country. It further provides that it shall be the duty of the State to apply these principles in making laws.

Article 38 of the Constitution provide as under:

""38. State to secure a social order for the promotion of welfare of the people

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people functioning in different areas or engaged in different vocations.?

7. Article 46 provides as under:

46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.?

The two Articles read together indicate that there has to be an effort made by the State to promote the welfare of the people by ushering in a social order in which all the institutions of the national life are governed by justice which may be social, economic or political. In order to achieve this goal or object, an effort, nay, a Herculean effort, has to be made to obliterate the inequalities in whatever form or segment may be in the form of social inequalities, they might be existing. A vast segment of Indian population belongs to scheduled castes or scheduled tribes which, undoubtedly, rather unfortunately, lies at the lowest strata of the society. It is in order to bring the people belonging to this segment of the society to the upper strata that Article 334 and other allied Articles were adopted in the Constitution. We would not endeavour to go into the social philosophy of reservation but we cannot resist ourselves in saying that in order to achieve the object of bringing up the downtrodden, the vehicle of legislation has been utilised in terminating social inequalities by providing reservation in many a sphere of public life; so that the person belonging to the scheduled castes community etc. are not left behind in the race to achieve a social order where a man can confidently and conveniently say that in the matter of opportunities, he was not denied the equality. Since these principles had to be kept in view, the State Legislature while enacting law under Entry 5 of List II of the Seventh Schedule of the Constitution which reads:

5. Local government, that is to say, the constitution and powers of Municipal Corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local selfgovernment or village administration.?

did not lose sight of the requirement of making reservation in favour of the scheduled castes by providing in Section 7 of the U.P. Nagar Mahapalika Adhiniyam that certain seats in the Municipal Corporation shall be reserved for the scheduled caste community.

8. As pointed out earlier, the petitioners did not question the legislative competence of the State Legislature in enacting Section 7 of the Act under which certain seats were reserved for scheduled caste community and it was for these reserved seats that opposite party's nos. 5 to 13 were elected from their wards.

9. In view of the legislative mandate contained in section 7 (2) of the Act that benefit of reservation for scheduled castes shall continue to be available upto the date upto which reservation in their favour exists under the Constitution, the election of opposite parties nos. 5 to 13 cannot be assailed nor can their seats be

treated to be vacant with the result that they can validly participate in the election to the office of the Mayor scheduled to be held today.

10. The reliance placed by the learned counsel for the petitioner on Punjab Rao v. Dr. D.P. Megha Ram and others (AIR 1965 SCI 179) is wholly out of place. Similar question as was raised in Punjab Rao's case was also considered by their Lordships of the Supreme Court in Ganpat v. Union of India (AIR 1975 SC 420).

11. No other infirmity in the election of the opposite parties nos. 5 to 13 has been pointed out.

12. In Abdul Maroof Khan's case the extra point urged is that the petitioner's nomination for the office of the Mayor for which election is proposed to be held today has been rejected on the ground that he has not attained the age of 30 years. It is contended that if the persons below the age of 30 years can be elected as members (Sabhasads) of the Municipal Corporation, there cannot be any age restriction placed for the office of the Mayor. The contention is without merit.

13. Section 11 (1)(b) which provides that no person shall be qualified for election as Nagar Pramukh (Mayor) if he has not attained the age of 30 years is specific, unambiguous and clear in its terms and tenor. Negatively, it would mean that anyone who is below the age of 30 years would not be eligible to seek or contest an election to the office of ?Mayor?.

14. It is undoubtedly competent for a Legislature to provide and lay down different eligibility criteria for different public or statutory offices, no matter that access to that office can be had only through the process of election. The various offices under the Constitution, for example, which can be occupied only through election, have different eligibility criteria.

15. Learned counsel for the petitioner has also not questioned the legislative competence of the State Legislature in enacting section 11 (1) (b). That being so, we have no hesitation in holding that although there may be different criteria laid down for seeking election to the office of the member of the Corporation, the State Legislature could validly lay down a different eligibility criteria for the office of the ?Mayor? under the Act.

16. The petitioner has not filed a copy of the order by which his nomination paper has been rejected by opposite party no. 4 but since it has been stated in the petition that it was rejected only on the ground that the petitioner has not attained the age of 30 years, we are compelled to say that there is no infirmity in the order.

17. In view of the above the contention of the learned counsel for the petitioners that notwithstanding that the petitioner was below the age of 30 years, he should have been allowed to contest the election to the office of Mayor is devoid of any merit and has to be rejected.

18. For the reasons stated above the writ petitions are dismissed summarily.

19. After the above order was passed learned counsel for the petitioners made an oral request for leave being granted to him for appeal to the Supreme Court. In our opinion the petition does not raise any substantial question of law of general importance which need be considered by the Supreme Court. The leave prayed for is refused.

(Petitions dismissed)