
(2018) 05 UK CK 0130

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1500 of 2018

MUSHTAQ AHMAD

APPELLANT

Vs

STATE OF UTTARAKHAND AND OTHERS

RESPONDENT

Date of Decision : 28-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 334

Uttar Pradesh Municipalities Act, 1916 — Section 9A, 9A(5)(1)

Citation : (2018) 05 UK CK 0130

Hon'ble Judges : SUDHANSHU DHULIA, J

Bench : Single Bench

Advocate : U.K. Uniyal, Sandeep Kothari, M.C. Pande, Yogesh Pandey,

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J

1. Petitioner before this Court is a resident of Kichha, District Udham Singh Nagar. The election of the urban local bodies is to be held shortly in

Uttarakhand. The petitioner has challenged the notification dated 28.04.2018, by which a tentative notification proposing reservation for 39 Nagar

Palika Parishads in Uttarakhand has been made. Admittedly, in total, there are 41 Nagar Palika Parishads in Uttarakhand and vide the impugned

notification, no reservation has been proposed for two Nagar Palika Parishads, namely, Bazpur and Srinagar.

2. Learned Additional Advocate General for the State could not give a reasonable explanation before this Court as to why these two Nagar Palika

Parishads have been left out while determining the tentative reservation in Nagar Palika Parishads of the State.

3. Learned Senior Counsel for the petitioner Sri U.K. Uniyal has relied upon sub-

section (5) (1) of Section 9-A of the Uttar Pradesh Municipalities

Act, 1916, wherein reservation has been given for the office of President in Municipal Councils and Nagar Panchayats. Section 9-A of the Uttar

Pradesh Municipalities Act, 1916 reads as under:-

Section 9-A. Reservation of seats.

(1) ..

(2) ..

(3) ..

(4) ..

(5) The offices of President and [***] of the Municipal Councils and Nagar Panchayat shall be reserved and allotted for the Scheduled Castes, the

Scheduled Tribes and the Backward Classes and

Women, in the manner given below :-

(1) Reservation and allotment of offices of the President. - (a) The reservation and allotment of offices of the President under this sub-section, shall

be done separately for the Municipal Councils and Nagar Panchayats in the manner hereinafter provided.

(b) The number of offices to be reserved -

(i) for the Scheduled Castes or for the Scheduled Tribes or for the backward classes shall be determined in the manner that it shall bear, as nearly as

may be, the same proportion to the total number of offices in the State as the population of the Scheduled Castes in the urban area of the State, or of

the Scheduled Tribes in the urban area of the State, or of the backward classes in the urban area of the State bears to the total population of such area

in the State and if in determining such number of offices, there comes a remainder then, if it is half or less than half of the divisor, it shall be ignored

and if it is more than half of the divisor, the quotient shall be increased by one and the number so arrived at shall be the number of offices to be

reserved for the Scheduled Castes or the Scheduled Tribes or the backward classes, as the case may be:

Provided that the number of offices to be reserved for the backward classes under this clause shall not be more than twenty-seven per cent of the

total number of offices in the State;

(ii) for the women belonging to the Scheduled Castes, the Scheduled Tribes and the backward classes, as the case may be, under sub-section (3) shall

not be less than one-third of the number of offices for the Scheduled Castes, Scheduled Tribes and for the backward classes and if in determining

such number of offices there comes a remainder then the quotient shall be increased by one and the number so arrived at shall, as the case may be,

the number of offices be reserved for women belonging to the Scheduled Castes, Scheduled Tribes and backward classes:

Provided that the number of offices to be reserved for the backward classes under this clause shall not be more than twenty-seven per cent of the

total number of offices in the State;

(iii) for the women belonging to the Scheduled Castes, the Scheduled Tribes and the backward classes, as the case may be, under sub-section (3) shall

not be less than one-third of the number of offices for the Scheduled Castes, Scheduled Tribes and for the backward classes and if in determining

such number of offices there comes a remainder then the quotient shall be increased by one and the number so arrived at shall, as the case may be,

the number of offices be reserved for women belonging to the Scheduled Castes, Scheduled Tribes and backward classes.

(c) All Municipal Councils and Nagar Panchayats of the State shall be arranged in such serial order that the Municipal Councils or Nagar Panchayats

having largest percentage of population of Scheduled Castes in the State, shall be placed at Serial Number 1 and Municipal Councils or Nagar

Panchayats having lesser population of the Scheduled Castes than those shall be placed at number 2 and the rest shall likewise be placed respectively

at succeeding numbers.

(d) Subject to item (ii) of sub-clause (b) the number of offices of the Presidents determined under sub-clause (b) for Municipal Councils or the Nagar

Panchayats of the State shall be allotted to different Municipal Councils or Nagar Panchayats in the State, as the case may be, in the manner that -

(i) the number of offices determined under item (i) of sub-clause (b) for the offices of Scheduled Castes including the number of offices determined

under item (ii) of the said sub-clause for the women belonging to the Scheduled Castes, shall be allotted to Scheduled Castes next to the Municipal

Council or Nagar Panchayat placed at Serial No. 1 under subclause (c):

Provided that such Municipal Council or Nagar Panchayats shall be first allotted to the women belonging to the Scheduled Castes:

(ii) the number of offices determined under item (i) of sub-clause (b) for the offices of Scheduled Tribes including the number of offices determined

under item (ii) of the said sub-clause for the women belonging to the Scheduled Tribes be allotted to Scheduled Tribes serial-wise next to the last serial

allotted under item (i):

Provided that such Municipal Council or Nagar Panchayat shall be first allotted to the women belonging to the Scheduled Tribes.

(iii) the number of offices determined under item (i) of sub-clause (b), for the offices of backward classes including the number of offices determined

under item (ii) of the said sub-clause for the women belonging to the backward classes shall be allotted to backward classes serial-wise next to the

last serial number allotted under item

(ii):

Provided that such Municipal Council or Nagar Panchayat shall be first allotted to the women belonging to the backward classes.

(iv) the number of offices determined under item (ii) of sub-clause (b) excluding the officers determined under the said sub-clause for the women of

Scheduled Castes, Scheduled Tribes and backward classes shall be allotted to the women serial-wise next to the last serial number allotted under item

(iii).

(e) If on the basis of the population of Scheduled Castes or Scheduled Tribes in a Municipal Council or Nagar Panchayat -

(i) only one office could be reserved for the Scheduled Castes or for the Scheduled Tribes, as the case may be, such office shall be allotted to the

women.

(ii) no office could be reserved for the Scheduled Castes or for the Scheduled Tribes, the order of allotment of offices referred in sub-clause (d) shall

be so adhered to as if there is no reference in it to the Scheduled Castes or to the Scheduled Tribes, as the case may be.

(f) The offices allotted in any previous election to the Scheduled Castes, the Scheduled Tribes, the backward classes or the women shall not be

allotted in the subsequent election respectively to the Scheduled Castes, the Scheduled Tribes, the backward classes or the women and the offices in

such subsequent election shall be allotted serially from the next to the last office allotted to the women in the previous election in the order referred to

in sub-clause (d) in cyclic order.

[XXX]

(3) Allotment order. - (a) Notwithstanding anything contained in the foregoing clauses the State Government shall, determining the number of offices

to be reserved for the Scheduled Castes, Scheduled Tribes, Backward Classes and the women, by order published in the

Gazette, allot the offices to the Municipalities.

(b) The draft of order under sub-clause (a) shall be published for objections for a period of not less than seven days.

(c) The State Government shall consider the objections, if any, but it shall not be necessary to hear in person on such objections unless the State

Government considers it necessary so to do and thereupon it shall become final.

(d) The draft of order referred to in sub-clause (b) shall be published in at least one daily newspaper having wide circulation in the concerned district

and shall also be affixed on the notice board of the offices of the District Magistrate and the concerned Municipality.

(6) The reservation of seats and offices of the Presidents for the Scheduled Castes and the Scheduled Tribes under this section shall cease to have

effect on the expiration of the period specified in Article 334 of the Constitution.

Explanation. - It is clarified that nothing on this section shall prevent the persons belonging to the Scheduled Castes, Scheduled Tribes, the Backward

Classes and the women from contesting election to unreserved seats and offices.â??

4. Learned Senior Counsel for the petitioner would argue that while making reservations of the offices of the President, all the Municipal Councils and

Nagar Panchayats have to be considered.Â

5. The argument of the learned Senior Counsel for the petitioner is also that while making reservations for Scheduled Caste, Scheduled Tribe, Other

Backward Class or woman, as the case might be, the relative strength of population of each of the Municipality has to be considered, which has

presently not been done as two of the municipalities have been left out of this consideration, which are of Bazpur and Srinagar.

6. Learned Additional Advocate General for the State has pointed out that in a similar matter being the Writ Petition (M/S) No. 1434 of 2018 which was relating to Municipal Corporation, Roorkee, where the Municipal Corporation Roorkee was excluded while making the preliminary notification regarding reservation for the post of Mayor in the Municipal Corporations of the State, this Court had disposed of the said writ petition with the direction that while making the final notification regarding reservations, Roorkee Municipal Corporation shall also be considered along with other Municipal Corporations of the State.Â

7. In view of the above, this writ petition is also disposed in the light of the same decision as decided by this Court in WPMS No. 1434 of 2018 on 25.05.2018 and it is directed that while considering reservation of Nagar Palika & Nagar Panchayat, all of them be considered including Nagar Palika, Bazpur and Nagar Palika, Srinagar. With the directions, the writ petition stands disposed.Â