
(2009) 12 CHH CK 0053
In the Chhattisgarh High Court

Naresh Sinha

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 13, 13(5), 17(3), 32(2)(b)

Citation : (2010) 2 CGLJ 100 : (2010) 1 MPHT 50 : (2010) 2 MPJR 103

Hon'ble Judges : Dharendra Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dhirendra Mishra, J.—The petitioner by the instant petition has prayed for quashing of the circular/order dated 30-9-2009 (Annexure P-1) issued by the Panchayat & Rural Development Department, Government of Chhattisgarh, whereby guidelines for allotment and reservation of different posts in Panchayat Elections, 2009 by lot has been circulated. The petitioner has also impugned the notification dated 20-10-2009 (Annexure P-2) issued in the exercise of powers u/s 13/129 (e) of the C.G. Panchayat Raj Adhiniyam, 1993 (for brevity "Adhiniyam, 1993") read with Rule 4 of the C.G. Panchayat Elections Rules, 1995 (for brevity "Rules, 1995") whereby reservation of different Wards of Gram Panchayats Suklabhata & Aamachani of Janpad Panchayat Magarlod has been notified.

2. The Adhiniyam, 1993 was amended vide notification dated 23-5-2008 whereby Section 13 (5) and (6), Section 17 (3), Section 23 (4) and (5), Section 25 (2) (b), Section 30 (4), (5) and Section 32 (2) (b) of the Adhiniyam, 1993 were amended and in place of the word "one-third", the word "half has been substituted in all the above provisions of the Adhiniyam, 1993.

3. The above referred provisions relate to reservation for women for the post of Panchas in Gram Panchayat, Sarpanch within the block, President and Members of Janpad Panchayat, President and Members of Zila Panchayat in the State. By the aforesaid amendment the extent of reservation for women has been

prescribed as "not less than half number of seats of the total number of seats" in place of one-third of the total number of seats, which was earlier reservation for women in each category.

4. Grievance of the petitioner is that circular of Annexure P-1 has been issued by wrongly interpreting the amended provisions of the Adhiniyam, 1993. The Collectors of the State have been instructed that they should ensure that while making reservation for women in each of the categories, the seat reserved for women is not less than 50%. There is specific instruction that where the seats are in odd numbers, for example, where only three seats are there of any category, in that case two seats should be reserved for women category.

Aforesaid interpretation of the provisions for reservation for women in the Adhiniyam, 1993 is resulting in a situation where more than 50% of seats of Panchas, Sarpanch, President and Members of the Gram Panchayat, Janpad Panchayat and Zila Panchayat are reserved for women, which is not permissible as per binding judgment of the Hon"ble Supreme Court. The Collector Dhamtari vide notification of Annexure P-2 has reserved nine wards out of sixteen wards of Gram Panchayats Suklabhata & Aamacheeni for women. There are only five unreserved wards in Gram Panchayat Suklabhata and out of these five wards, three wards have been reserved for women category.

5. Mr. Sharma, learned Counsel for the petitioner submits that the circular of Annexure P-1 has been issued on the basis of wrong interpretation of the amended provisions of reservation for women. The policy of reservation ought to have been implemented in such a manner that total reservation for women does not exceed 50%, as any reservation beyond 50% would be in violation of the law laid down by the Hon"ble Supreme Court. Reliance is placed on the judgments of the Hon"ble Supreme Court in the matters of M.R. Balaji and Others Vs. State of Mysore, , Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., , Govt. of Andhra Pradesh Vs. P.B. Vijaykumar and another, .

6. On the other hand, Mr. Bakshi, learned Government Advocate appearing for the State argued that the circular of Annexure P-1 has been issued in consonance with the amendment made in the Adhiniyam, 1993 which clearly provides that in every tier of Panchayat and each category reservation for women is to be provided for not less than half of the total number of seats. A bare reading of Section 13 (3), (4) and (5) read with Rule 4 (5) makes it clear that the reservation has to be made first of all for the different categories, i.e., Scheduled Castes, Scheduled Tribes, Other Backward Classes and Unreserved Categories, and only thereafter reservation for women has to be made in each category. It was further argued that language of the amended provisions is amply clear which provides that in no uncertain terms not less than half of the total number of seats will be reserved for women. There is no bar that the number of women seats cannot exceed 50%. Reliance is placed on the judgments in the matters of Dr. Satish Menon Vs. State of Madhya Pradesh and Others, and Government of Andhra Pradesh v. P.B. Vijaykumar and Anr. (supra).

7. I have heard learned Counsel for the parties.

8. Chapter 3 of the Adhiniyam, 1993 deals with the establishment of Panchayats. Section 13 deals with the constitution of Gram Panchayat. Section 13 (4) provides that seats shall be reserved in every Gram Panchayat for the Scheduled Castes and Scheduled Tribes. It further provides that number of seats for every two categories shall bear the same proportion to the total number of seats in the Gram Panchayat as the population of the Scheduled Castes and Scheduled Tribes in that Gram Panchayat area bears to the total population of that area. It further provides that where in any Gram Panchayat 50% or less than 50% seats have been reserved for Scheduled Castes and Scheduled Tribes, 25% seats of the total number of seats shall be reserved for Other Backward Classes. Section 13 (5) and (6) provide that not less than half of the total number of seats reserved under Sub-section (4) shall be reserved for women belonging to that category. Similar provisions are made for women reservation for the post of Sarpanch of Gram Panchayat, Members of Janpad Panchayat, President of Janpad Panchayat, Members of Zila Panchayat and President of Zila Panchayat in each category.

9. From the scheme of the Adhiniyam, 1993 and the Rules, 1995 it is clear that first vertical reservation is to be made for Scheduled Castes and Scheduled Tribes categories in the ratio of their population in the Gram Panchayat, Block and District. Thereafter, vertical reservation for Other Backward Classes category is to be provided. Only after the provision of vertical reservation is made, horizontal reservation for women in each category is to be provided. The language used by the Legislature for reservation for women is unambiguous. It mandates that not less than half of the total number of seats reserved under any category shall be reserved for women belonging to that reserved category.

10. In the matter of Balaji (supra), the Constitution Bench of the Hon'ble Supreme Court rejected the argument that in absence of a limitation contained under Article 15 (4), no limitation can be prescribed by the Court on the extent of reservation. It observed that a provision under Article 15 (4) being a "special provision" must be within reasonable limits. Interpreting Articles 15 (4) and 16 (4) of the Constitution, it was observed that a special provision contemplated by Article 15 (4) like reservation for posts and appointments contemplated by Article 16 (4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the State and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Article 15 (4). It was further observed that speaking generally and in a broad way a special provision should be less than 50%, how much less than 50% would depend upon the relevant prevailing circumstances in each case.

11. In the matter of Indira Sawhney (supra), according to the majority judgment reservation contemplated in Article 16 (4) should not exceed 50%, however, in

extreme cases under certain extra-ordinary situations and circumstances, some relaxation in the strict rules may be made.

12. In the matter of P.B. Vijaykumar (supra), while considering the special provision for women and children under Article 15 (3) of the Constitution, the Hon"ble Supreme Court in Para 8 of the judgment has observed thus:

...This Court has, therefore, clearly considered the scope of Article 15 (4) as wider than Article 16 (4) covering within its several kinds of positive action programmes in addition to reservations. It has, however, added a word of caution by reiterating M.R. Balaji to the effect that a special provision contemplated by Article 15 (4) like reservation of posts and appointments contemplated by Article 16 (4), must be within reasonable limits. These limits of reservation have been broadly fixed at 50% at the maximum. The same reasoning would apply to Article 15 (3) which is worded similarly.

13. In the matter of Dr. Satish Menon (supra), the Division Bench of the M.P. High Court relying upon the judgment in the matter of Vijay Lakshmi Vs. Punjab University and Others, in Para 10 of its judgment held that decisions of the Supreme Court under Articles 15 (4) and 16 (4) that reservations in favour of SC, ST and OBC categories cannot exceed 50% or cannot be 100% do not apply to a special provision in favour of women under Article 15 (3) of the Constitution.

14. In the instant case, the petitioner has impugned the circular of Annexure P-1, which has been issued by the State Government for the purposes of implementing the amended provisions of the reservation for women in the Panchayat institutions. The language of the statute is unambiguous and clear and it mandates that reservation for women in each category at every stage shall not be less than half of the total number of reserved seats under each category. By the circular of Annexure P-1 the State has issued guidelines to its officers for implementing reservation for women as per amended provisions of the Adhiniyam, 1993.

15. Therefore, in my considered opinion, issuance of circular (Annexure P-1) is strictly in consonance with the intention of the Legislature, as reflected from the provisions, and the same cannot be impugned without questioning the constitutional validity of the provisions itself, as from bare reading of the statute, it is manifestly clear that there is no limit of 50% for reservation for women in the Panchayat institutions.

16. In the result, the petition has no substance, the same deserves to be dismissed and accordingly, it is hereby dismissed.

17. No order as to costs.