
(1979) 03 MP CK 0035
In the Madhya Pradesh High Court
Case No : M.P. No. 668 of 1978

Nawal Singh

APPELLANT

Vs

Government of M.P. and others

RESPONDENT

Date of Decision : 23-03-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 330, 330(2), 332, 332(3)
Madhya Pradesh Municipalities Act, 1961 — Section 19, 29

Citation : (1979) J LJ 606

Hon'ble Judges : K.K. Dube, J; A.R. Naokar, J

Bench : Division Bench

Advocate : M.A. Shah, for the Appellant;

Final Decision : Dismissed

Judgement

K.K. Dube, J.—By this petition under Art. 226 of the Constitution of India, the petitioner seeks a mandamus to set aside the election of the councillors of the Municipal Council Jora and to direct the State Government to hold the above election after a proper reservation of seats has been done in the Council for the members of the Schedule castes.

2. The Jora Municipality is a Class IV Municipality constituted under the provisions of the M.P. Municipalities Act, 1961 (Act No. 37 of 1961) (hereinafter referred to as "the Act"). By section 19 of the Act it was provided that the Municipal Council shall consist of elected councillors and selected Councillors. The State Government is authorised to make rules regulating the mode of elections as also to fix the number of councillors for each Municipality. They are further authorised u/s 29(1)(b)(iii) of the Act to fix in accordance with the provisions of the Constitution of India the number of seats to be reserved for the Schedule Castes and the Scheduled Tribes and allot them to the various Wards. For the Jora Municipality the Government had fixed the number of councillors as 15 out of whom 12 are to be elected and 3 to be selected u/s 19 of the Act. In exercise of the powers conferred by para (3) of Clause (b) of sub section (1) of section 29

of the Act, the State Government issued a notification published in the M.P. Rajpatra, dated 21-3-1972, fixing only one seat as reserved for the scheduled castes and allotted it to Ward No. 5 of the Jora Municipality. Section 29(1)(b)(3) reads as under:

29. Determination of number of councillors and powers to make rules for regulating elections.--(1) The State Government shall from time to time generally or specially in respect of each Municipality, by notification -

(a)....

(b) Subject to rules framed under this Act -

(iii) fix, in accordance with the provisions of the Constitution of India the number of seats to be reserved for the scheduled castes and Scheduled Tribes and allot them to the various Wards:

Provided that if in any Municipality the President is elected from amongst the persons who are not councillors, the total number of councillors determined shall, in respect of such Municipality be deemed to have been increased by one so long as such person continues to be President thereof.

3. The Articles of the Constitution alluded to in the above provisions are Article 330 and 332 Article 330(2) provides that the number of seats reserved in any state for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be the same proportion to the total number of seats allotted to that State in the House of the people as the populations of the Scheduled Castes in the State in respect of which the seats are so reserved bears to the total population of the State. In the like manner, Article 332(3) fixes the reservation in the Legislative Assembly to be as nearly as may be in the same proportion as the population of the Scheduled castes bears to the population in the State. Clause (i) of Article 332 of the Constitution reads as under:

332 (3) The number of seats reserved for the scheduled castes or the scheduled tribes in the Legislative Assembly of any state under Clause. (I) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the state or of the Scheduled Tribes in state or part of the state, as the case may be, in respect of which seats are so reserved bears to the total population of the State.

4. It is not disputed that the total population of Jora Municipality at the relevant time was 10,007 out of which 1,184 were Scheduled Castes members according to the census report of 1971. The petitioner contend that in view of the above provisions, the Government should have fixed two seats for Scheduled Castes and since they had fixed only one seat, they have not fixed the number of Scheduled Castes-seats in the council in accordance with the proportion the scheduled castes population bears to the population of the Jora Municipality. This being a material illegality, it is urged, the election of the 12 Wards is vitiated. The question in the petition is whether or not the fixation of one seat for the

Scheduled Castes out of the 15 seat Council of the Jora Municipality would be said to contravene sub-clause (iii) of Clause (b) of sub-section (1) of section 29 of the Act. According to the requirement of the above provisions the reservation in the Council must bear the same proportion as the general population of the Municipality.

5. On the admitted figures, if it is worked out mathematically the reservation ought to be 1.7 for the Scheduled Castes out of the 15 members Council since a fraction is involved it would not be practicable to fix such reservation with mathematical exactitude. The figure undoubtedly has to be either one or two. The constitution provisions viz. Articles 330 and 332, guarantee a minimum number of seats to the members of the Scheduled castes. The term "reservation" itself implies departure from the general rule and it has undoubtedly to be strictly construed. With a guarantee of the Scheduled castes, it is wholly open for the Scheduled Casts candidate to contest from other general seats. Therefore, in our opinion, the reservation has to be construed in a manner as would be conducive to the principle embodied in the Articles 330 or 332 of the Constitution and would not widen the scope of reservation. Now, by fixing only one seat as reserved out of 15, the proportion of the reservation is less than what actually should be. But, as already pointed out, 1.7 reservation involves fraction and as such, the only reservation that was possible on the smaller side of 1.7 was one seat. On the greater side the nearest number would be two. We are of the opinion that this would have the effect of enlarging the reservation more than what was intended by Articles 330 and 332 of the Constitution. The phrase "as nearly as may be" "with a reference to the proportion has not to be worked out by measuring its nearness with 1.7 but the practicability of adhering to the proportion at the same time not exceeding the reservation more than what was necessary. We are, therefore, of the view that the reservation of one seat is proper in the circumstances of the case. We do not, therefore, see any ground to interfere with the election which has already taken place, nor is it necessary to direct elections on the basis of fresh reservation.

6. We accordingly dismiss this petition. There shall be no order as to costs. The outstanding amount of security deposit be refunded to the petitioner.