

(1998) 03 GAU CK 0017
In the Gauhati High Court
Case No : Civil Rule (PIL) No. 37 of 1997

Parimal Chandra Das

APPELLANT

Vs

State Election Commission and Others

RESPONDENT

Date of Decision : 10-03-1998

Acts Referred:

Assam Municipal Act, 1956 — Section 33, 33(1)
Constitution of India, 1950 — Article 243

Citation : (1998) 2 GLT 401

Hon'ble Judges : V.D. Gyani, J;P.C. Phukan, J

Bench : Division Bench

Advocate : N. Choudhury, S.C. Kayal and B.W. Phira, for the Appellant; B.P. Bora, Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Gyani, J.—By this petition, filed on 9.7.97 and brought in the name of Public Interest Litigation (PIL), the Petitioner, a practising Advocate, claiming to be General Secretary of Cachar District Branch of Asom Anusuchit Jati Parishad, a registered society prays for quashing of notification dated 11.6.97 issued by the Govt. of Assam and the Fax message dated 15.6.97, issued by the State Election Commission. Both these documents are reproduced below as a ready reference. The Petitioner also prays for a writ of Mandamus, commanding the Respondents to treat the office of the Chairperson, Silchar Municipality as reserved for Scheduled Caste women.

2. Heard learned Counsel for the Petitioner, learned Govt. Advocate Mr. Bora for the State and Mr. Saikia, Sr. Advocate for the Election Commission.

3. Before dealing with the submissions made, it would be proper to note the background of events. The Assam Municipal Act, 1956 was amended in; 1994 so as to bring it in tune with Article 243 T of the Constitution, as amended by Constitution (Seventy Fourth Amendment) Act, 1992, providing for reservation of seats for Scheduled Castes and Scheduled Tribes in every Municipality.

Accordingly Section 33(1) of the Assam Municipal Act was amended by Amendment Act of 1994.

4. On Petitioner's own showing, the election of Chairperson/Chairman of Municipalities and Town Committees was to be held on 16.6.97 vide Notification dated 28.5.97 issued by the Election Commission.

5. It is the Petitioner's case as highlighted by the learned Counsel that on 6.6.97, the Respondent No. 2 drew lots in presence of Respondent No. 4, a local M.L.A., thereby deciding that the office of the chairperson, Silchar Municipality should be reserved for Scheduled Caste women. The Petitioner has filed photostate copy of a typed sheet called "working-sheet", Annexure-2 in support of his case. This Annexure-2 has not been attested or authenticated by anyone neither MLA from whom it was obtained nor the Petitioner.

6. The impugned notification dated 11.6.97, Annexure-3 has been dubbed and denounced as arbitrary, unfair and illegal.

7. The Respondent State Govt. in its affidavit in opposition has averred:

With regard to the working out of seat for reservation of Chairperson of Municipal Boards and Town Committees including the Chairperson of Silchar Municipality, the deponent states that the said working sheet was a rough calculation sheet which is not a Govt. Notification or any statutory document and the said seats even does not bear the signature of any person.

8. In view of the above position, the petition stands on quick-sand. Even assuming for the sake of arguments, that two seats of Chairpersons of Municipal Board. On the basis of percentage of population, were to be reserved for Scheduled Caste candidate, and going by the calculation, so heavily relied upon by the Petitioner, yet no case is made out for insisting that the Office of Chairperson, Silchar Municipal Board should be reserved for Scheduled Caste. All that Annexure-2 provides for, is two seats for Scheduled Caste of which one shall be reserved for Scheduled Caste woman. It can be any two Municipal Boards out of twenty four Municipal Boards but not necessarily Silchar.

9. The Petitioner has based his case on the working sheet, Annexure-2 which is nothing but an unauthenticated, unattested, unsigned typed sheet. The Respondent No. 2 has explained the position. On 6.6.97 a meeting of political parties was held seeking their suggestion for reservation of office of Chairperson of twenty four Municipal Boards and thirty eight Town Committees. The Respondent No. 2 does not deny the fact that at the above meeting, the case of Silchar Municipal Board was taken up for consideration but no final decision by the State Govt. was arrived at. It is contended that the suggestions made by political parties are not binding on the Government. The final decision u/s 33 of the Act is to be taken by the State Govt.

10. The Petitioner's pleaded case as contained in para 7 of the petition is that:

... Respondent No. 2 after holding talks with the local MLAs of all the political parties arrived at the decision that the identification of municipalities for reservation of the office of Chairman, is to be made by drawing lots in presence of local MLAs and accordingly lots were drawn duly as decided. The Respondents No. 2 while accepted the decision by drawing lots for all other Municipalities/Town Committees of the State.

The Petitioner has referred to drawing of lot for deciding which Municipality should be reserved for Scheduled Caste (see para 6 of the petition) has averred in para 7:

having decided in accordance with the procedure established by law that the office of Chairperson, Silchar Municipality should be reserved for Scheduled Caste Women and the same having received due publicity through Press, the Respondents subsequently cannot cancel the same without giving an opportunity of hearing to the representative body of the Scheduled Caste people of the State and the local MLA, i.e. Respondent No. 4.

11. There is more to this petition than what meets the eye. At Petitioner's own showing the election process was on, notification was issued on 28.5.97 and nominations were to be filed by 30th May, 1997, 2.6.97 was fixed for scrutiny and withdrawal and 16.6.97 as the date for election. The decision for reservation of seats was arrived at on 6.6.97 in presence of Respondent No. 4, who is the sitting local MLA. Despite service of notice he has not entered appearance. Petitioner case was that the working sheet, Annexure-2 was given by him (Respondent No. 4 to the Petitioner yet, it is not signed by him. It cannot be gain said that this public interest litigation petition relating to election of Chairperson of Municipal Board is not free from political overtone. It is a settled principles of law that once election process is on, Courts does not interfere, The notification, Annexure-3, was issued on 11th June, 1997 and the petition was filed almost a month thereafter on 9th July, 1997 and a stay order passed. This brings the whole machinery to a grinding halt. What prevented this public spirited Petitioner so helped by the local MLA from approaching this Court soon after publication of the notification between 11.6.97 to 16.6.97 ? There was enough time for any vigilant citizen.

12. Public interest litigation is not adversely in nature. If it was a matter of principle of providing for reservation for Chairperson to two Municipal Board, where was the question asking for stay of elections. The Constitution and the legislator as provided for reservation in favour of Scheduled Caste and Scheduled Tribe which is as nearly as may be in the proportion of the population of those clauses in a particular State. Besides, this 30% reservation for women has been provided in local bodies with further co-reason for reservation in favour of other backward classes. On Petitioner's own showing the decision to reserve seats for Scheduled Caste and Scheduled Tribes and women was taken after holding talks with local MLA of all political parties as already quoted above and it is this decision, which is sought to be given effect to. On facts, the so called decision

does not stand even remotely substantiated. Assuming for the sake of argument that there was such a decision but this is not the procedure contemplated by Sub-clause (4) of Article 243 T. It speaks that the reservation has to be provided in such manner as the legislator of the State may by law provide. Merely talking with the M.L.As. and arriving at any decision is far, far away from the procedure contemplated by Article 243 T. The Petitioner's case has no legs to stand, both on facts as well as law.

13. There is yet another aspect. Before a Petitioner can claim a Writ of Mandamus, he must satisfy the following conditions:

- (a) the Petitioner has a legal right;
- (b) the Opposite party has a legal duty ;
- (c) the petition is made in good faith;
- (d) the Petitioner has no other alternative remedy; and
- (e) the opposite party has refused relief, i.e. a demand and a refusal.

There is no averment that the Petitioner demanded the relief sought in this petition from the Respondent authority and the same was denied before approaching this Court.

14. A public interest litigation should have a public purpose. The Supreme Court has deprecated the practice of converting the individual dispute into a public interest litigation. If it was only for the sake of establishing the rights of members of the Scheduled Caste to give them their due share of representation, the matter proposed would have been slightly different. But seeking a stay order clearly indicates that the petition was against an individual aspirant either holding or intending to hold office of Chairman of Silchar Municipality by stay order. The net effect of stay order can well be gauged, the one holding the-office has continued to be in office. This is certainly not the purpose of public interest litigation. Espousing the cause of an individual may be in a given case falls within the purview of policy decision of general application but by seeking to stay the election the Petitioner has made his intentions clear. PIL cannot be used to satisfy individual's claim, howsoever fierce and perfect they may be.

15. This petition, for the foregoing reasons, is liable to be dismissed, it is accordingly dismissed.