

(2015) 03 MP CK 0071

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7876 of 2014

Prahlad Singh Raghuvarshi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 243B, 243C, 243-C, 243D
Delimitation Commission Act, 1962 — Section 10 [1], 10 [4], 2 [kk], 8, 9
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 122
Representation of the People Act, 1951 — Section 14, 66

Citation : AIR 2015 MP 171 : (2015) 2 MPJR 249 : (2015) 2 MPLJ 465

Hon'ble Judges : Rohit Arya, J.

Bench : Single Bench

Advocate : Vivek Jain, for the Appellant; R.P. Rathi, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rohit Arya, J.—By this petition under Article 226 of the Constitution of India, petitioner has put to challenge an order dated 07/11/2014 (Annexure P/1) passed by the respondent No. 2/Collector, District Vidisha whereby reserved the post of President, Janpad Panchayat, Basoda for OBC - Woman category. It is alleged that provision as contained under rule 3(6) of the Madhya Pradesh Panchayat (Upsarpanch, President and Vice President) Nirvachan Niyam, 1995 has been violated. It is contended that as per the aforesaid provision, the seat reserved in the previous election shall not be included in the drawing lots for reservation of a particular category till all remaining Panchayats are not exhausted. In the instant election, the post of President, Janpad Panchayat, Basoda constituency has been reserved for OBC woman category again which according to counsel is contrary to rule 3(6) of the Madhya Pradesh Panchayat (Upsarpanch, President and Vice President) Nirvachan Niyam, 1995 (hereinafter referred to 1995 Rules). Besides, it is further contended that instead of drawing lot from among all Janpad Panchayats, lot was drawn only from and out of two

Janpad Panchayats, Vidisha and Basoda. It is also contrary to rule 3(6) of the 1995 Rules.

2. Per contra, learned senior counsel appearing on behalf of the respondents" raised preliminary objection as regards maintainability of writ petition on the ground that the impugned notification was passed on 07/11/2014 whereas the present writ petition has been filed by the petitioner on 15/12/2014. Besides, election programme had already set in motion and notified on 15/12/2014. Therefore, in the light of the provisions as contained under Article 243-O of the Constitution of India, no interference is warranted and the remedy lies only by way of election petition under the provisions of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 and the Rules framed thereunder. Besides, learned senior counsel further submits that there are seven Janpad panchayats, namely; Vidisha, Basoda (Ganj Basoda), Kurwai, Sironj, Gyaraspur and Nateran in the district Vidisha. In the year 1994, Vidisha and Basoda, year 1999 Kurwai and Sironj, year 2004 Gyaraspur and Nateran and in the year 2009 Basoda and Sironj have been reserved for OBC category.

3. With reference to the aforesaid details, State's counsel submits that for the first time in the year 1994, Janpand Panchayat Basoda was reserved for OBC category and thereafter by rotation, all the aforesaid Janpad Panchayats have been reserved for OBC category and each subsequent draw of lots, Panchayats already reserved for OBC category were excluded. In the election for the year 2014, one Janpad Panchayat was remained to be reserved for OBC, namely; Nateran and the same was reserved for OBC category. As out of the seven Janpad Panchayats, two were required to be reserved for OBC category, the same was done by drawing lot between Vidisha and Basoda as for the first time in the year 1994, Basoda and Vidisha were earmarked for OBC category. Accordingly, Basoda was reserved for OBC (Woman) category. It is submitted that there is no illegality in the matter of reserving Basoda for OBC category and the provision of rule 3(6) of the 1995 Rules; a regulatory measure has all along been followed for reservation of seats for the OBC category by rotation.

4. Counsel for the respondents No. 1 and 2 further contended that the scope of interference in the matter of election under Article 226 of the Constitution of India has consistently been held by the Hon"ble Apex Court is circumscribed by self-imposed limitations, moreso, when the election machinery has been set in motion by issuance of election notification. It is further contended that the matters relating to constitution of Panchayats, composition of Panchayats, delimitation of Panchayats, allotment of seats, reservation of seats and conduct of elections are essentially for the Government to decide albeit with due regard and observance of the relevant Act enacted under the provisions of Articles 243B, 243C, 243D and 243K respectively and it is not for the Court how to control and regulate the manner in which the same would be done. Besides, it is submitted that there is a specific bar against interference by Courts in electoral matters as provided under Article 243O and Article 329(b) of the Constitution of India.

Learned counsel refers to judgment of the Hon"ble Apex Court in the case of State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., are relevant which reads as under:

"44. It is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the court to dictate the manner in which the same would be done. So long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the courts cannot interfere with the same. We may, in this connection, refer to a decision of this Court in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, . In this case, the petitioner mine owners, had among others, challenged the method prescribed by the legislature for recovering the cess under the Orissa Mining Areas Development Fund Act, 1952 on the ground that it was unconstitutional. The majority of the Bench held that the method is a matter of convenience and, though relevant, has to be tested in the light of other relevant circumstances. It is not permissible to challenge the vires of a statute solely on the ground that the method adopted for the recovery of the impost can and generally is adopted in levying a duty of excise.

45. What is more objectionable in the approach of the High Court is that although clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in this connection, refer to a decision of this Court in *Meghraj Kothari Vs. Delimitation Commission and Others*, In that case, a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved for the Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of sections 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any court of law. There was a very good reason for such a provision because if the orders made under sections 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Although an order under Section 8 or 9 of the Delimitation Commission Act and published under Section 10 [1] of that Act is not part of an Act of Parliament, its effect is the same. Section 10 [4] of that Act puts such an order in the same position as a law made by the Parliament itself which could only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-

O in place of Article 327 and sections 2 [kk], 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31st August, 1994"

With the aforesaid submissions, it is contended that no interference is warranted in the instant writ petition and the same deserves to be dismissed.

5. Learned senior counsel appearing for the respondent No. 3/State Election Commission supported the stand of the State's counsel and adopted the counter-affidavit filed by the respondents No. 1 and 2/State.

6. Intervention has also been filed vide I.A. No.1479/15 by one of the contesting candidates, namely; Smt. Anjali Yadav w/o Manoj Yadav and submitted that the instant writ petition has been filed after elections were notified. Hence, the process of election was started and thereafter nominations have been filed. Therefore, at this stage, no interference is warranted in the matter of election in the light of Article 243O of the Constitution of India. Counsel for the intervenor adopted the counter-affidavit filed by the respondents No. 1 and 2/State.

7. Heard counsel for the parties.

8. There is no dispute between the parties that the election has been notified on 15/12/2014. Challenge to the notification for reservation dated 07/11/2014 (Annexure P/1) is made by filing instant writ petition on 15/12/2014.

9. Before advertng to the contentions advanced by respective parties, it is considered apposite to refer to decisions of the Hon'ble Apex Court in the context of Article 329(b) of the Constitution of India as in the opinion of this Court, the ratio of decisions in the context thereof also have full application as regards scope of judicial review under Article 226 of the Constitution of India in the context of panchayat elections.

"243-O. Bar to interference by courts in election matters.- Notwithstanding anything in this Constitution-

a).....

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State.

329. Notwithstanding anything in this Constitution..

(a).....

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

10. In catena of decisions, a comprehensive detailed and authoritative pronouncement of law has been laid down by Hon"ble Apex Court explaining the object, ambit, scope, limit and extent of jurisdiction of High Court under Article 226 of the Constitution of India in the matter of election in the light of Article 329(b) of the Constitution of India.

11. Three judges Bench in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, , the Hon"ble Apex Court has addressed upon the issue as regards jurisdiction of the High Court to entertain writ petition under Article 226 of the Constitution of India and issue of interim direction after commencement of election process in the context of Article 329 of the Constitution of India. The term "election" as occurring in Article 329 of the Constitution of India has been held to mean and include the entire process from the issue of the notification under section 14 of the Representation of People Act, 1951 to the declaration of result under section 66 of the said Act.

12. True, it is that power of judicial review is part of a basic structure of the Constitution of India; concept no more in issue but the scope of interference under Article 226 of the Constitution of India in the light of the embargo envisaged by Article 329 of the Constitution of India is well addressed by the Hon"ble Apex Court in the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and reiterated in subsequent judgment in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . The provision as contained in Article 329 of the Constitution of India was described by the Constitution of India on two principles; (I) the peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion; (2) the provision for special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution of India. In Mohinder Singh Gill's case, the authoritative meaning of Article 329 of the Constitution of India has been further reiterated as follows:

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person effected to call it in question, they should be brought so before a special tribunal by means of an election petition being and not be made the subject of a dispute before any court while the election is in progress."

The same principle was reiterated by the Hon"ble Apex Court in the case of Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others, .

13. There is no cavil of doubt that aforesaid principles squarely applies to Panchayat elections as well. For that reason alone, as a matter of fact, no interference is warranted in this writ petition. The remedy of filing an election petition is very much available to a party seeking to challenge the election of the declared/returned candidate under section 122 of the Adhiniyam, 1993 read with the Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995.

14. Therefore, in the light of constitutional limitation coupled with the fact that the impugned notification was issued on 07/11/2014 and the election programme announced and notified on 15/12/2014 and thereafter, the present writ petition has been filed on 15/12/2014, in the opinion of this Court, at this stage no interference is warranted under Article 226 of the Constitution of India.

15. However, as submissions have been advanced with reference rule 3(6) of the Nirvachan Niyam, 1995, it is considered apposite to deal with the same.

16. Provision for reservation of seats for the Scheduled Castes and Scheduled Tribes are made in the light of Article 243D of the Constitution of India and the Legislature of the State under Article 243D(6) of the Constitution of India is empowered for making provision of reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

17. Relevant for the purpose of this writ petition is rule 3(6) of the Nirvachan Niyam, 1995 and for ready reference, the same is reproduced below:

"3. Determination of reserved seats of Chair Person of Panchayat.-

(1).....

(2).....

(3).....

(4).....

(5).....

(6) In subsequent general election, the Panchayats previously reserved shall be excluded from drawing lots, for that particular category till all such Panchayats are not exhausted"

18. A careful reading of the aforesaid provision suggests; (i) that all the Panchayats have to be reserved for particular category by rotation; (ii) if Panchayat/Panchayats is/are reserved for OBC in a given election such Panchayat/Panchayats shall be excluded from drawing lots for a particular category (OBC) and (iii) till all remaining Panchayats are not reserved for OBC.

(Emphasis supplied)

19. Therefore, the provision contemplates reservation of all Panchayats by rotation and unless all Panchayats are reserved for OBC by rotation, Panchayat already reserved for OBC should not be included in drawing of lots. After all Panchayats are reserved for OBC, as a matter of fact, the regulatory measure under rule 3(6) of the 1995 Rules is exhausted in strict sense and no further drawing of lots amongst the Panchayats is necessary though respondent/State shall ensure that all the Panchayats are reserved for OBC in a fair manner bearing in mind the object as contained under rule 3(6) of the 1995 Rules.

20. In the instant case, there is no dispute that all the Panchayats by rotation have been reserved for OBC category except Nateran which has been reserved for OBC in the instant election. Therefore, the decision of the respondent/State with reference to the reservation made in the year 1994 for the first time, regulating the reservation by drawing lots between those two Panchayats; Basoda, and Vidisha and regard being had to concept of rotation; a regulatory measure, reserved Basoda constituency for OBC woman category, in the opinion of this Court, cannot be said to be arbitrary or in violation of rule 3(6) of the 1995 Rules for the reasons stated hereinabove.

21. That apart, there is no allegation of any mala fides or collateral purpose with oblique motive is attributed in the matter of reservation of seats. After finalization of reservation of seat for OBC as early as on 07/11/2014, the elections were notified on 15/12/2014 and thereafter election process has started.

22. In the facts and circumstances of the case, writ petition sans merit and is hereby dismissed.