

(2016) 03 BOM CK 0220

In the Bombay High Court

Case No : Writ Petition Nos. 3196 and 3420 of 2016

Sajid and Others

APPELLANT

Vs

The State Election Commission, Maharashtra State and
Others

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 AIRBomR 546 : (2017) MCR 1

Hon'ble Judges : S.V. Gangapurwala and A.I.S. Cheema, JJ.

Bench : Division Bench

Advocate : P.V. Mandlik, Senior Advocate, for the Appellant; S.T. Shelke, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.V. Gangapurwala, J.—1. This Court had issued notice on 17.3.2016 and 23.3.2016. Mr. Kagne and Mr. Patil, learned A.G. Ps submit that necessary instructions are received from the Officers who are present in the Court.

2. With the consent of the parties taken up for final hearing.

3. Both these Writ Petitions are based on similar set of facts and involve common question of law, as such to avoid rigmarole are decided by common judgment.

4. Mr. Mandlik, learned Senior counsel and Mr. Rakhunde, learned counsel for respective petitioners submit that the village Panchayat Waibazar, Tq. Mahur, Dist. Nanded and Village Panchayat Gokunda, Tq. Kinwat, Dist. Nanded are entirely scheduled areas. In case of Village Panchayat Waibazar, there are 13 seats, out of that 7 seats are reserved for Scheduled Tribe category and one seat is reserved for Scheduled Caste. As per 1st proviso to Section 10(2)(c) of the Maharashtra Village Panchayats Act, the reservation of the seats meant for Backward class of citizens shall be 27% of the seats remaining if any, after the reservation of the seats for Scheduled Tribes and Scheduled Caste. The learned

counsel submits that in the present case while reserving the seats for other Backward class category, the Respondents have followed the provision of Section 10(2)(c) ignoring the proviso. According to them, the same is illegal. In Waibazar Village Panchayat, four seats are reserved for Backward class citizen and one for General category, whereas in Village Panchayat Gokunda, out of 17 seats, four seats are reserved for Backward class citizen, nine are reserved for Scheduled Tribe, four for Scheduled Caste and no seat is meant for open category candidate.

5. Mr. Kagne and Mr. Patil, learned A.G. Ps. On instructions submit that Respondents have followed the provision embodied in Section 10(2)(c) of the Maharashtra Village Panchayats Act. Learned A.G. Ps further submit that the authorities have relied on the communication received from the office of the State Election Commission. Out of total number of seats, 27% seats are reserved for Backward class candidates. The same is legal and permissible.

6. Mr. Shelke, learned counsel for Election Commission submits that Ist proviso to Section 10(2)(c) is also required to be followed while issuing the notification regarding reservation.

7. We have considered the submissions canvassed by learned counsel for respective parties. Before we advert to the contentions of the learned counsel for respective parties, it would be appropriate to refer to the relevant provision :-

"10. Constitution of Panchayats.-(1)xxx

(2)(a) In the seats to be filled in by election in a Panchayat there shall be seats reserved for persons belonging to the Scheduled Castes, the Scheduled Tribes, Backward Class of Citizens and Women, as may be determined by the State Election Commission in the prescribed manner;

(b) the seats to be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in a Panchayat shall bear, as nearly as may be, the same proportion to the total number of seats to be filled in by direct election in that Panchayat as the population of the Scheduled Castes or, as the case may be, the Scheduled Tribes, in that Panchayat area bears to the total population of that area and such seats shall be allotted by rotation to different wards in a Panchayat

Provided that, in a Panchayat comprising entirely the Scheduled Areas, the seats to be reserved for the Scheduled Tribes shall not be less than one half of the total number of seats in the Panchayat.

Provided further that, the reservation for the Scheduled Tribes in Panchayat falling only partially in the Scheduled Areas shall be in accordance with the provisions of clause (b):

Provided also that one half of the total number of seats so reserved shall be reserved for women belonging to the Scheduled Castes, or, as the case may be, the Scheduled Tribes;

(c) the seats to be reserved for persons belonging to the category of Backward

Class of Citizens shall be 27 per cent of the total number of seats to be filled in by election in a Panchayat and such seats shall be allotted by rotation to different wards in a Panchayat:

Provided that, in a Panchayat comprising entirely the Scheduled Areas, the seats to be reserved for persons belonging to the Backward Class of Citizens shall be 27 per cent of the seats remaining, if any, after reservation of the seats for the Scheduled Tribes and the Scheduled Castes:

Provided further that, the reservation for the persons belonging to the Backward Class of Citizens in a Panchayat falling only partially in the Scheduled Areas shall be as per the provisions of clause (c)]:

Provided also that, one-half of the total number of seats so reserved shall be reserved for women belonging to the category of Backward Class of citizens;

(d) one-half (including the number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of Citizens) of the total number of seats to be filled in by direct election in a Panchayat shall be reserved for women and such seats shall be allotted by rotation to different wards in a Panchayat."

(Emphasis supplied to highlight difference)

8. It is not disputed that the Village Waibazar, Tq.Mahur and Village Panchayat Gokunda, Tq.Kinwat are entirely Scheduled areas, wherein the population is predominantly of Scheduled Tribe category persons.

9. As per Ist proviso to Section 10(2)(b) in a Panchayat comprising entirely the Scheduled areas, the seats to be reserved for the Scheduled Tribes shall not be less than one half of the total number of seats in the Panchayat. As stated above, it is not disputed that both these villages are entirely Scheduled areas. The Respondents have not committed any error while reserving 50% of the seats for Scheduled Tribes. In Grampanchayat Waibazar, out of 13 seats, 7 seats are reserved for Scheduled Tribe category and in Grampanchayat Gokunda out of 17, 9 seats are reserved for Scheduled Tribe category. Thus it would appear that the reservation for Scheduled Tribe category has been rightly provided. However, while providing reservation for Backward class citizen i.e. reservation of 27%, the Respondents have provided 27% reservation for Backward class citizen out of total number of seats to be filled in by the election. The Respondents have applied the provision as applicable to the Grampanchayat of non-Scheduled areas or partially Scheduled areas. While providing 27% of reservation to the Backward class category out of total number of seats, the Respondents have applied the provision of Section 10(2)(c) ignoring the proviso to said Section 10(2)(c).

10. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the

proviso would fall within the main enactment. A proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted. Where language used in proviso is clear unambiguous and no alternative view is possible, it is futile to go into the question whether the proviso operates as a substantive provision or only by way of exception and the plain meaning must be adopted. The Ist proviso to Section 10(2)(c) even if read harmoniously with Section 10(2)(c), it leads to an irresistible conclusion that in a Panchayat comprising entirely Scheduled Areas, the seats to be reserved for persons belonging to Backward class of citizens is 27% of the seats remaining after reservation of seats for the Scheduled Tribe and Scheduled Caste category.

11. In the present case as demonstrated above the reservation for Backward class of citizen has been provided out of total number of seats of the Panchayat and not out of the seats remaining after providing reservation for Scheduled Tribe and Scheduled Caste category candidates. The same is erroneous and not in consonance with the Ist proviso to Section 10(2) (c) of the said statute.

12. It is submitted that the notification for the elections has been issued and the date for filling in nomination forms is to commence from 29.3.2016 and the same can be filled in upto 2.4.2016.

13. We are conscious of the fact that this Court in normal course in exercise of its writ jurisdiction under Article 226 of the Constitution of India, would not interfere with the process of election. However, the powers under Article 226 of the Constitution of India can be exercised when there is an act which is manifestly against any provision of law. If the powers are not exercised when they are required the potential of powers would be redundant and would be reduced to dead letter. The reservations provided itself being illegal and against the statutory provision in operation, such a reservation would vitiate the election itself. The elections can not be allowed to be held on the basis of reservations and allocation of which on the face of it is against the statute, the same being ex-facie erroneous. The purity of the elections would not be maintained if the elections are held on the basis of such reservation not adhering to the Ist proviso of Section 10(2)(c) of the Maharashtra Village Panchayats Act.

14. In the result, the notification dated 26.2.2016 in respect of reservation of seats for elections of Grampanchayat Wai-bazar and Gokunda to the extent providing reservation for Backward class of citizens is quashed and set aside. The Respondents may issue fresh notification in respect of village Wai-bazar, Taluka Mahur, Dist.Nanded and Gokunda, Taluka Kinwat, Dist.Nanded, with regard to the reservation of Backward class citizen in accordance with first proviso to Section 10(2)(c) of the Maharashtra Village Panchayats Act and conduct elections accordingly.