

**(2010) 12 AHC CK 0197**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 69868 of 2010

Smt. Nisha Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 16-12-2010

**Acts Referred:**

Constitution of India, 1950 — Article 334  
Uttar Pradesh Kshettra Panchayat and Zila Panchayat (Reservation & Allotment of  
Seats and Offices Rules, 1994 — Rule 3

**Citation :** (2011) 2 ADJ 786 : (2011) 112 RD 290

**Hon'ble Judges :** D.S.R. Varma, J; Abhinava Upadhyay, J

**Bench :** Division Bench

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## **Judgement**

1. Heard Sri U.N. Sharma, Senior Advocate assisted by Sri Arvind Kumar Singh, Advocate for the Petitioner, Sri S.G. Hasnain, learned Additional Advocate General, Sri M.C. Chaturvedi, learned Chief Standing Counsel, Dr. Y.K. Srivastava and Sri Hemant Srivastava, learned Standing Counsel for the State of U.P. and Sri P.K. Mishra, Advocate for Respondent No. 4, State Election Commission.

2. The learned Additional Advocate General and Senior Counsel Sri S.G. Hasnain along with other colleagues representing the State Government submitted that no counter affidavit is necessary, inasmuch as, the facts in question are not in dispute and only the question of law is involved and the same may be heard and settled finally. He submits that there is urgency in the matter as the interim order of this Court is operating against the State due to which the election of Chairman of Kshettra Panchayat for district Etah is held up, whereas the election notification for rest of the State has been issued on 13.12.2010.

3. By means of this petition the validity of the order dated 12.8.2010 of the Government is questioned by which four posts out of eight posts in the district of Etah has been reserved for OB Cs for the forthcoming election of Pramukhs of Kshettra Panchayat. The said four posts reserved for OB Cs is pursuant to the policy of the Government as enumerated in the G.O. dated 9.7.2010.

4. The core issued involved in this petition is the policy of the State Government regarding reservation as propounded as per rules in force for the purposes of election. It appears that the election is slated to be conducted on 22.12.2010.

5. On the request of both the sides, the case has been taken up. We have heard the matter at great length. On 15.12.2010 this Court heard the matter up to the lunch recess and today the hearing has continued since morning. We have heard the argument of Sri U.N. Sharma, learned senior counsel for the Petitioner and that of the learned Additional Advocate General extensively. Today also, we have heard the matter for the whole of the first session and both the sides have concluded their arguments. Before rising for lunch, we informed in the open Court to the learned Counsel appearing for both sides including the learned Additional Advocate General that this Court will proceed to dictate the judgment at 2PM after re-assembling.

6. Pursuant thereto when we started dictating judgments, Sri Arvind Kumar Singh, Advocate holding brief of Sri U.N. Sharma, learned senior counsel appearing for the Petitioner raised an objection seriously that the judgment cannot be rendered in this matter without calling for a counter affidavit from the State for the reason that certain factual aspect regarding the number of allotments made to the Etah District are not known to the Petitioner pursuant to the orders passed by the State Government and they are not in a position to refute those factual aspects. Therefore, unless all those facts are brought on record by way of filing counter affidavit, the judgment cannot be rendered.

7. We tried our best to reasons with the learned Counsel for the Petitioner that the factual position is very limited in this matter and the application of the reservation policy of the State Government is under challenge which involves only question of law, if any, yet he was stubbornly insistent upon calling for counter affidavit little realizing that it is the sole discretion of the Court to call for a counter affidavit or not. A counsel cannot insist for an affidavit from the Respondents to build up his case. His case is to stand on its own merit.

8. From the submissions we could perceive that the factual position of allotment of seats has been very much in the knowledge of the learned Counsel for the Petitioner, inasmuch as, he dealt with all the factual aspects and participated in the arguments all through effectively. At no point of time, during the course of argument any objection was raised with regard to non filing of the counter affidavit or on that count learned Counsel for the Petitioner could not present his case effectively. Only for the first time, when we have re-assembled after lunch to render the judgment, that too after informing in the open Court that the judgment would be dictated after lunch, this objection has been raised by Sri Arvind Kumar Singh, learned Counsel for the Petitioner, which in our considered view, neither appropriate nor fair. Upon such insistence we are, therefore, unable to render final judgment and, hence, we are proceeding only to consider the interim application.

9. We may also point out that this matter has not been placed before us in the regular course but only by nomination made by Hon''ble the Senior Judge after being released by the earlier Bench vide its order dated 14.12.2010, perhaps with due regard to the urgency in the matter. Therefore, considering the urgency of pending elections, we are called upon to consider the matter in detail.

10. Earlier, while considering the interim application only, this Court vide order dated 10.12.2010 had sought for some clarification with regard to some of the facts from the State Counsel and the matter was directed to be posted on 14.12.2010. However, this Court while fixing the date also directed that till that date no Notification or any progress in the matter was to take place and status quo as on the date was to be maintained. In view of the above facts, now we are to consider as to whether the interim order passed by this Court on 10.12.2010 is sustainable and should continue in the facts and circumstances of the case. The order of the State Government dated 12.8.2010 which has been impugned herein, certain materials have been furnished which form part of the order which envisages that the allotment of seats with regard to reserved categories will be made in the respective districts according to the chart enclosed with the impugned order. Therefore, obviously the Petitioner had full knowledge of the materials which has now prompted him to file this petition. However, no acceptable explanation has been furnished for filing the petition with such delay.

11. Now considering the merits of the case, the grievance of the Petitioner is that in so far as the district Etah is concerned, there are 8 posts of Block Pramukh of the Kshettra Panchayat and out of the 8 posts by applying 27% quota for the OBC, only 2 posts could have been reserved in favour of the OBC candidates. But on the contrary 4 posts are being reserved for the OBC category. It is the next contention that the said post are being allotted to the Etah district without following the procedure established by law. Secondly, the allocation of 4 posts towards the OBC category would not be with the norms of confining the reservation to the extent of 50%, inasmuch as, another seat was allocated for the Scheduled Castes Candidates and thereby the total number of reservation in the said districts being 5 in number, exceeded the established norms of reservation that it shall not exceed 50%. It is further clear from the averments made in the writ petition that pursuant to the impugned order dated 12.8.2010 list of the post of Pramukh of Kshettra Panchayat in the district of Etah was published on 12.8.2010. It is further averred that they had knowledge of this violation from the said publication only. Pursuant to it a copy of the chart prepared by Respondent Nos. 2 and 3 is filed and marked as Annexure-2. Therefore, it is further obvious that the Petitioner has complete knowledge of the issue involved as long back as on 12.8.2010 and also about further proceedings dated 17.8.2010. In fact, from the said material enclosed with the writ petition, it is clear that it is for the Respondents to refute the allegation made by the Petitioner by way of making their submissions on the aspects of the application of the reservation policy, and whether the said policy was in accordance with rules, statutes and the orders which are in force.

12. Further as we have already noted categorically that since we have been prevented from dictating the judgment, we confine ourselves and our reasoning in this order only to the extent as to whether the interim order dated 10.12.2010 should continue or not.

13. It has been pointed out by Sri U.N. Sharma, learned senior counsel appearing for the Petitioner that it is not in dispute that for the purposes of post of Pramukh, Kshettra Panchayat, percentage of 27%, 21% and 2% towards the OBC, Scheduled Castes and Scheduled Tribes respectively have been identified as given in the statutes, i.e., Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (Act No. 33 of 1961) (hereinafter referred to as the Act).

14. It is the specific contention of the learned senior counsel for the Petitioner that the reservation policy as above shall be made applicable taking the district as a unit and in such a case allotment of 5 posts towards the OBC and other classes exceeds 50% of the prescribed quota. The said question is the basic question. The question which has been pin pointed in the present writ petition is with regard to the allotment of two more posts to the OBC which also exceeds 27% reservation permissible for the said category.

15. No doubt if a district is taken as one unit then obviously the Government has allocated more number of seats both by way of exceeding 50% in over all reservation as also 27% reservation for OBC in the district of Etah.

16. The entire thrust was placed on the reservation of 27% in the district of Etah only. In order to substantiate his submission , learned Counsel for the Petitioner placed reliance on Section 6A of the Act which reads as under:

6A. Reservation of seats:(1) In every Kshettra Panchayat seats shall be reserved for the persons belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes and the number of seats so reserved shall, as nearly as may be, bear the same proportion to the total number of seats to be filled by direct election in the Kshettra Panchayat as the population of Scheduled Caste in the Khand or of the Scheduled Tribes in the Khand or of the Backward Classes in the Khand bears to the total population of such Khand and such seats may be allotted by rotation to different territorial constituencies in a Kshettra Panchayat in such order as may be prescribed:

Provided that the reservation for the Backward Classes shall not exceed twenty seven per cent of the total number of seats in the Kshettra Panchayat.

Provided further that if the figures of population of the backward classes are not available, their population may be determined by carrying out a survey in the prescribed manner.

(2) Not less than one-third of the seats reserved under Sub-section (1) shall be reserved for the women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes, as the case may be.

(3) Not less than one third of the total number of seats, including the number of seats reserved under Sub-section (2) shall be reserved for women and such seats may be allotted by rotation to different territorial constituencies in a Kshettra Panchayat in such order as may be prescribed.

(4) The reservation of seats for the Scheduled Castes and the Scheduled Tribes shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

Explanation.-It is clarified that nothing in this section shall prevent the persons belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes and the women from contesting election to unreserved seats.

17. Learned Counsel for the Petitioner further laid emphasis on the proviso to Section 6A of the Act. Keeping in view the said proviso, the learned senior counsel appearing for the Petitioner contended that allocating four posts to OBC is bad in law, particularly, in the light of the proviso to Section 6A of the Act. He also contended that the reservation has to be worked out as provided under Rule 3 of the U.P. Kshettra Panchayat and Zila Panchayat (Reservation & Allotment of Seats and Offices Rules, 1994 (hereinafter referred to as the Rules). For convenience and ready reference, Rule 3 of the said Rules is quoted below:

3. Number of seats and offices to be reserved: In computing the number of seats or offices to be reserved for the Scheduled Tribes, the Scheduled Castes or the Backward Classes in accordance with the provisions of Section 6A, or Section 7A or Section 18A or Section 19A of the Act, if the remainder is not less than half of the divisor, the quotient shall be increased by one, and if the remainder is less than half of the divisor, it shall be ignored and the number so arrived at shall be the number of seats or offices to be reserved for the Scheduled Tribes, or the Scheduled Castes or the Backward Classes, as the case may be:

Provided that the number of seats or offices reserved for the Backward Classes shall not exceed twenty seven percent of the total number of seats or offices, as the case may be.

18. The aforesaid rule prescribes in a nutshell that while computing the number of seats or offices (emphasis supplied) to be reserved for the Scheduled Tribes, Scheduled Castes and the Backward Classes in accordance with the provisions of Section 6A or 7A of the Act, the computation of seats shall be made by taking into account that divisor. The said rule prescribes that if the divisor is less than 0.5, it should be ignored. However, if it is 0.5 or exceeds that, it should be made as one which is the nearest number. It further provides that the number of seats/offices reserved shall not exceed 27% of the total number of seats or offices as the case may be.

19. Therefore, it is further contended that the allocation of seats to Etah district, which are 4 in number taking into account the method adopted by the Government was erroneous.

20. In this context, it is necessary and apposite further to deal with the method and the manner in which the Government has computed the seats and its allocation.

21. Particularly, it has to be seen in this regard that taking into account the over all population of each category in the State, each district will be allocated the office. It is very significant to notice at this juncture that it is not the office or the post which is/are allocated to each district depending upon the population of each district. Basically, it is the population in the entire State that was taken into account depending upon various conditions including the economic condition etc. and that all classes of the society are duly represented at all levels while enunciating the policy of reservation. In other words, due representation to all sections of the society is to be taken care of.

22. It has been informed to us and not disputed by the parties that the OB Cs are 53.12% of the total population of the State as per survey conducted in 2005. While so computing, a benchmark has been prescribed that in a district where the population of OBC is more than 53.12% or more, 27% of the office of Pramukh will be allotted. If the said population exceeds 53.12%, the Government Order dated 9.7.2010 provides for the allocation of one more office to the OBC in the said district. Obviously, the said method is adopted in order to meet the two aspects. Firstly, to meet the minimum requirement of 27% allocation to the OBC in a district; and secondly, in order to see that the total reservation in the State for all the categories does not exceed 50%.

23. In the present context, the issue that has to be considered is whether the representation of OBC is at the rate of 27% with due regard to over all population of the State in all the districts or not. In other words, no district shall be deprived of such reservation to the OBC for any reason.

24. The record that has been placed before the Court reveals that out of 72 districts, in 33 districts the population of OBC has exceeded beyond the prescribed percentage of 53.12. In such event, it is apparent that the Government intended to accord a little more share commensurate with the excess population in the district keeping in view the ultimate goal of achieving reservation of 27% for the OBC in a district. It also cannot be ignored that in each district at the district level also 27% reservation shall be maintained provided the OBC have the prescribed percentage of 53.12, equivalent to 27% of the population, which is the State average.

25. In that process, it has been brought to the notice of the Court by the learned Additional Advocate General that in the remaining 39 districts, on the basis of State average of OBC , proportionate allocation of the office of Pramukh was made.

26. The next question would be as to what shall happen to those districts where the population of OBC exceeded beyond 53.12%. In that regard, it is the contention for the Government that in computing as prescribed under Rule 3 of

the Rules, the divisor of 0.5 to 0.9 was ignored but in fact, that has to be treated as one and as a result, one more seat has to be allotted. But instead of doing so, excess was ignored for the purpose of computation as contemplated under Rule 3 of the Rules and was kept aside for a different purpose and the said purpose was only in order to meet any peculiar contingency.

27. Such peculiarity would be the number of offices to be allotted if it goes beyond the prescribed percentage of 27 and at the same time the main object of the Act would be defeated. In order to avoid such contingency, obviously, the Government had preferred to adopt a policy of not keeping 0.5 to 0.9 as one and equal number of posts have been allotted to the districts which had an average population of OBC beyond 53.12%. Such distribution is permissible under Rule 5 (1) (c) of the Rules. For ready reference, Rule 5 (1) (c) is quoted below:

5(1)(c). The number of offices of Pramukhs for the other Backward Classes of citizens in the district shall bear as nearly as may be, the same proportion to the total number of offices of Pramukhs in the district as their population in the Zila Panchayat bears to the total population of the Zila Panchayat:

Provided that the number of offices of Pramukhs reserved for the Backward Classes in a district shall not exceed twenty seven percent of the total number of offices of Pramukhs in the district:

Provided further that in the case of undistributed numbers of offices of Pramukhs as computed in Rule 3 shall be redistributed amongst only those Zila Panchayats, where the proportion of their population in the total population of Zila Panchayat exceeds the proportion of their population in the total population of the State, in the descending order of the ratio of their population in the total population of the Zila Panchayat.

28. From a bare reading of the first proviso, which has been hotly relied upon by the learned senior counsel appearing for the Petitioner, it appears that it is meant for restricting the Government regarding the allocation of offices of Pramukh to be reserved for the OBC in a district which shall not exceed 27% of the total number of the offices of Pramukh in the district. The learned senior counsel, obviously, has placed reliance on this in order to demonstrate that the district is unit and not the State. In other words, it is the population of the district alone and not the population of the State which has to be taken into account and computation of percentage shall not be on that basis but only on the basis of population of each class in the district alone.

29. In the background of the above contention and in retaliation of the said contention, the learned Additional Advocate General and his associates contended that it is not the seat but the office of Pramukh that should be taken into consideration for the purpose of reservation in the present context. The present controversy, from a bare reading of the petition, is only with regard to the election for the office of the Pramukh of Kshettra Panchayat and not the "seat".

30. The "seat" is to be understood in the light of Clause (b) of Sub-section (1) of Section 6 of the Act, which deals with the composition of Kshettra Panchayat. From the said provision it is clear that the Kshettra Panchayat shall consist of various bodies including the Pramukh who are to be elected indirectly, i.e., by the various representatives forming part of the Kshettra Panchayat but not for the office of Pramukh of Kshettra Panchayat, which has a large spectrum.

31. The next point to be seen, as contended by the learned Additional Advocate General is that the reservation of the office of Pramukh, which is in dispute, has to be looked into in the light of Section 7A of the Act and not Section 6A of the Act. In other words, he tried to draw a distinction between the reservation of seat and the reservation of office of the Pramukh.

32. Obviously, the present dispute deals with the allocation of office of the Pramukh only, which is not in dispute, and has to be seen from the averments made in the writ petition. Section 6A of the Act is meant for a different purpose, i.e., reservation of seats of various members of the Block Development Committee but not for the Pramukh of Kshettra Panchayat. Two different principles are incorporated in the statute for two different purposes. We have, therefore, to think strictly in terms of the reservation of the office of Pramukh only and, therefore, we have to look into Section 7A of the Act only and the present controversy has to be decided in view of Section 7A of the Act read with Rule 5 (1)( c ) of the Rules. For ready reference Section 7A is quoted below:

7A:Reservation of the offices of Pramukhs:(1) The offices of the Pramukhs of Kshettra Panchayats in the State shall be reserved for the persons belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes:

Provided that the number of office of the Pramukhs so reserved shall bear, as nearly as may be, the same proportion to the total number of such offices in the State as the population of the Scheduled Castes in the State or of Scheduled Tribes in the State or of the Backward Classes in the State bears to the total population of the State and the offices so reserved may be allotted by rotation to different Kshettra Panchayats in the State in such order as may be prescribed.:

Provided further that the reservation for the Backward Classes shall not exceed 27% of total number of offices of Pramukhs in the State.

Provided also that if the figure of population of the backward classes are not available, their population may be determined by carrying out a survey in the prescribed manner.

(2). Not less than one third of the offices reserved under Sub-section (1) shall be reserved for the women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes, as the case may be.

(3) Not less than one third of the total number of offices of Pramukhs, including the number of offices reserved under Sub-section (2), shall be reserved for women and such offices may be allotted by rotation to different Kshettra

Panchayats in the State in such order as may be prescribed.

(4). The reservation of the offices of Pramukhs for the Scheduled Castes and the Scheduled Tribes under this Section shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

Explanation: It is clarified that nothing in this section shall prevent the persons belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes, and the women from contesting election to unreserved offices.

33. From a reading of the above said provision it is obvious that the reservation for the office of Pramukh and the computation of such offices of Kshettra Panchayat has to be made keeping in view the population of the State only. In other words, for the purpose of computation of population of OBC communities, State has to be taken as a unit and for the implementation of the scheme or the policy, as the case may be, the avowed object of preserving the rights of the backward communities, should be taken into consideration. Therefore, the genesis of calculation of the population of backward community would start at the State level - in the present case basing on the survey in respect of OBC conducted in 2005.

34. In this process, in the light of materials placed before this Court, it appears that the district Etah tops the list of the districts having highest population of backward classes, i.e., 67.09%.

35. As already noticed earlier, the total number of districts which have been specifically benchmarked having at least 53.12%, population which is the State average of OBC, are 39 in number and the number of districts which have crossed the said limit of 53.12% are 33 in number.

36. What should follow is the question now. As the answer is that the re-distribution, which has been provided in Rule 5 (1) (c) of the Rules only, therefore the re-distribution is in conformity of the Rules and the policy is in conformity with the Statute. There is absolutely no inconsistency between the present policy enunciated in the impugned order and the various provisions of the Act and the Rules.

37. From a further reading of the averments made in the writ petition, it is clear that the policy of the Government enunciated in the G.O. dated 9.7.2010 under the provisions of the Statute or the Rules, is not under challenge. It is only the interpretation of the provision of the statute and the obligations of those provisions are in question before us that so far refers to the district Etah.

38. As we have already discussed above, since there is absolutely no inconformity nor any repugnancy in the policy of the Government and the order dated 9.7.2010 read with the provisions already referred to above, we prima facie, see no justification in the submission made on behalf of the Petitioners.

39. Accordingly, we do not find any valid reason or justification in the light of the

above factual and legal position to continue the interim order dated 10.12.2010 granted by this Court and extended from time to time and the same is liable to be vacated.

40. The interim order dated 10.12.2010 is, therefore, vacated. It has been brought to our notice that pursuant to the above interim order granted by this Court, the Government has issued a notification dated 13.12.2010 with regard to the election for the entire State excluding the district of Etah, which is in the eye of storm.

41. the writ petition before the appropriate Bench after exchange of affidavits between the parties.

42. Arvind Kumar Singh, learned Counsel for the Petitioner prays for permission to file appeal before the Hon"ble Supreme Court. However, we are of the view that there is no illegality or irregularity in the impugned order passed by the State Government nor any substantial question of law is involved and, therefore, for the aforesaid reasons there appears to be no good ground to grant such permission.

43. prayer of the learned Counsel for the Petitioner, therefore, stands rejected.