
(1994) 10 MP CK 0017

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3453 of 1994

Subodh Kumar Awasthy and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 19-10-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19, 21

Madhya Pradesh Municipal Corporation Act, 1956 — Section 11

Citation : (1994) ILR (MP) 323 : (1996) JLJ 349 : (1995) 40 MPLJ 807 : (1995) MPLJ 807

Hon'ble Judges : R.P. Awasthy, J; D.P.S. Chauhan, J

Bench : Division Bench

Advocate : Vivek Tankha, for the Appellant; Anoop Choudhary, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

D.P.S. Chauhan, J.

The six petitioners have approached this Court under Article 226 of the Constitution of India seeking 7 reliefs in following terms :

(i) The Hon''ble High Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing the notification dated 26-12-1984 Annexure-P/3 as void, illegal and contrary to law.

(ii) The Hon''ble High Court may be pleased to quash the voters'' list prepared under Rule 3 of the 1994 Niyam for Municipal Corporation, Jabalpur as void, illegal and contrary to law.

(iii) The Hon''ble High Court may be pleased to declare by issuance of appropriate writ, order or direction that any election held on the basis of notification dated 26-12-1984 would be invalid, illegal and unconstitutional.

(iv) The Hon''ble High Court may be pleased to declare that any election held on

the basis of voters" list prepared under Rule 3 would be illegal, unconstitutional and contrary to law.

(v) The Hon"ble High Court may be pleased to issue a writ of prohibition restraining the respondents from holding election of Municipal Corporation, Jabalpur on the basis of notification dated 26-12-1984 or any other subsequent list of backwards as it is contrary to petitioners" right under Articles 14, 15, 16, 19 and 21 of the Constitution.

(vi) The Hon"ble High Court may be pleased to restrain the respondents by issuance of a writ of prohibition or any other appropriate writ, order or direction from holding election to the Municipal Corporation, Jabalpur on the basis of illegal voters" list published under Rule 3.

(vii) Any other writ, order or direction as deemed proper in the facts and circumstances of the case may also kindly be issued.

In the petition counter and rejoinder affidavits were exchanged and after exchange of the same, the learned counsel for the petitioners and learned Addl. Advocate General Mr. Anoop Chaudhari are heard.

Learned counsel for the petitioners has enumerated his points of submissions in paragraphs 5, 6 of the petition which are as extracted below :-

(1) Whether the petitioners and others have a right to object to the notification of certain communities as socially backward by politically constituted commission before acceptance of the recommendations by the State Government?

(2) Whether in the absence of opportunity to the petitioners and others to object to the inclusion of certain communities as backward before the notification is violative of the petitioners" fundamental right under Articles 14, 15, 16, 19 and 21 and other provisions of the Constitution?

(3) Whether the qualifying date is necessary for preparation of voters" list? Corporation Act of 1956 read with M. P. Nagar Palika Nirvachan Niyam, 1994 do not provide any such qualifying date. Hence the preparation of the voters" list is arbitrary and capricious.

(4) Rule 3 of M. P. Nagar Palika Nirvachan Niyam, 1994 enjoins upon the Registration Officer to prepare ward-wise list of voters which means the basic list prepared after proper survey and public participation for preparation of preliminary voters" list.

(5) Whether the provisions of Rule 4 which merely give 07 days" opportunity to the public for inclusion or exclusion of name can be substituted for proper preparation and publication of the provisional voters" list.

So far as the question relating to the preparation of the voters" list as contained in points Nos. 3, 4 and 5 is concerned, Article 243ZA of the Constitution of India (for brevity hereinafter referred to as "the Constitution") provides the

superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K. The power of the Election Commission is wide enough and the objections as contained in points Nos. 3, 4 and 5 could have been agitated before the Election Commission. In view of this, this Court is not inclined to entertain these points.

Now the question remains regarding the points Nos. 1 and 2. So far as the point No. 2 is concerned, the objection is that in the absence of the opportunity to the petitioners and others to object to the inclusion of certain communities as backward before the notification is violative of the petitioners' fundamental right under Articles 14, 15, 16, 19 and 21 and other provisions of the Constitution. So far as the right to contest election is concerned, it is well settled that it is not a fundamental right. It is a right available under the Statute. Here the objection is regarding the inclusion of certain class-communities as backward without any opportunity to object before issuance of notification and such a procedure is said to be violative of fundamental right guaranteed under Articles 14, 15, 16, 19 and 21 and other provisions of the Constitution.

So far as the question of invitation of the objection to the proposed draft list relating to backward classes/communities is concerned, law does not provide for giving any such opportunity. Even the M. P. General Clauses Act does not provide that the proposed list of the backward classes would be notified inviting objections. It has not been pointed as to how the Articles 14, 15, 16, 19 and 21 are violated. The only objection is that opportunity has not been provided and that the opportunity has to be fair. However, here in the present case while cataloguing the backward classes a survey was made by Mahajan Commission, which was not a statutory Commission. Mahajan Commission visited almost all the places and also invited objections and the suggestions. After this, Mahajan Commission submitted its report. We are not convinced with the arguments that after Mahajan Commission submitted the report there was any occasion for inviting objections. On the foundation of the Mahajan Commission report the State Govt. issued a notification No. P.8-5-XXV-4-84, dated 26th December, 1984, published in the Madhya Pradesh Gazette Part I dated 8th February, 1985. There is no dispute that this notification is founded on the report of the Mahajan Commission, Subsequent to this another development took place. On account of the decision of the Supreme Court in the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., and as per direction of the Supreme Court a permanent Commission known as "the Madhya Pradesh Commission for Backward Classes" vide notification No. P-12-21-XXV-4-92, dated 13th March, 1993 published in Madhya Pradesh Gazette, dated 15th March, 1993, was constituted. The Commission consists of 5 persons, out of whom one has been appointed as Chairman.

The functions of the Commission are given in clause 3(3) of the abovesaid notification. The commission is a permanent commission and it has been

conferred the power for considering the requests of the persons or the citizens regarding inclusion of any class of citizens as backward class in the list. The commission is empowered to hear all kinds of complaints regarding over-inclusion or under-inclusion of backward classes.

If anybody was aggrieved from the list as mentioned above under the notification dated 26th December, 1984, then he could have approached the permanent commission after it was constituted. The permanent commission is equipped with full powers, for considering complaints or objections pertaining to over-inclusion in the backward classes as well as for under inclusion of the backward classes in the list. In the petition it is not averred that anybody approached the commission. After constitution of the permanent commission, the Mahajan Commission though was made foundation by the State Govt. under the notification dated 26th December, 1984, loses its significance.

Here in the petition, the petitioners Nos. 3 and 4 are the members of backward community as notified by the State Govt. under the notification dated 26-12-1984. The only grievance of the petitioners is regarding the over-inclusion of certain class of persons. The position would have been different if the petitioners would have had challenged the very authority of the State Govt. providing for reservation for backward classes and in which connection the challenge would have been given to clause (6) of Article 243T of the Constitution as well as Section 11 of the M. P. Municipal Corporation Act, 1956 as amended by M. P. Act No. 16 of 1994. Therefore, the Point No. 2 loses its significance.

Though in the petition it has not been pleaded yet from the counter filed from the side of the State Govt. in paragraph 10 thereof, it has been stated the M.P. Commission for Backward Classes vide its resolution dated 8-6-1993 has approved the list of backward classes as identified by the Mahajan Commission. On the foundation of this allegation, the question for consideration develops as to whether, after approval of the notification of backward classes issued by the State Govt. dated 26th December 1984, it was necessary for the State Govt. to issue a fresh notification. In this connection, learned Addl. Advocate General invited the attention of the Court to the notification dated 13th March, 1993 whereby the M. P. Commission for Backward Classes was constituted. On the basis of clause 3 he submitted that no notification was required as it is only the advice which is given to the Commission by the State Govt. and which advice is binding on the Commission and according to him, the variation, if any, recorded by the Commission, has to be given effect to by the State Govt. But, in the present case, the Commission has not made any variation to the notification issued by the State Govt. and in such a situation when there is no variation, law does not require a fresh notification as the notification is already in the knowledge of everybody or the persons affected. He further submitted that this controversy does not come in picture as the petitioners have not challenged the explanation to Section 11 of the said Act and since they have not challenged the explanation, it is not necessary to assess the validity of the explanation and it

would be premature to express any opinion regarding the same.

Learned counsel for the petitioners submitted that the list of Backward Classes prepared by virtue of Articles 15 and 16 of the Constitution cannot be adopted so far as the question of elections is concerned as the criteria of backward classes so far as election is concerned, would be different. He submitted that Article 243T, sub-clause (6) has made separate provision and which is to the following effect:

"(6) Nothing in this Part shall prevent the legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens".

In this connection he further submitted that language of Article 15(4) is also similar which is in the following terms :-

"(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

On this basis, learned counsel for the petitioners submitted that if it was the intention of the constituent assembly that the same list can be adopted or utilised for inclusion of backward class for the purpose of election there was no need of introduction of clause (6) to Article 243T of the Constitution. The argument is attractive. Nevertheless it has to be seen that the petitioners have not challenged the policy of reservation and have not challenged the explanation appended to Section 11 of the M.P. Municipal Corporation Act as amended up to date. The explanation as appended to Section 11, is extracted as below :

"Explanation : In this section "other backward classes" means category of persons belonging to backward classes as notified by the State Government."

The words "as notified" do not necessarily mean that category of persons belonging to backward classes should be notified under this Act. "As notified" means there must be a notification but not under the Act or the explanation. Unless the explanation is challenged, the argument cannot be entertained that category of persons belonging to backward classes should be notified under the Act. Learned counsel for the petitioners also invited the attention of the Court to Section 23 of the Madhya Pradesh General Clauses Act, 1957, which is as extracted below :-

"23. Publication of orders and notifications in the Official Gazette to be due publication - Where, in any Madhya Pradesh Act or any rule made under any such Act, it is directed that any order, notification or other matter shall be notified or published, then such notification or publication shall, unless the enactment or rule otherwise provides be deemed to be duly made if it is published in the Official Gazette."

In the explanation to Section 11 of the M.P. Municipal Corporation Act, 1956 the words are not "shall be notified", but the words are "as notified". In view of this, the notification of backward classes made by the State Govt. is a notification for the purpose of M.P. Municipal Corporation Act, 1956 as amended.

Learned counsel for the petitioners further submitted that the explanation to Section 11 of the M.P. Municipal Corporation Act read with sub-clause (2) of Section 11 indicates that the backward classes must cor relate to the Corporation area and in this connection, learned counsel for the petitioners submitted that the word "such" appearing in the said sub-clause is of great significance. Again it has to be seen that validity of the explanation to Section 11 has not been challenged. In the circumstances, we are not inclined to entertain the petition.

Learned counsel for the petitioners further submitted that he may be granted leave to file fresh petition on other grounds. If the matter is not covered by this petition, no leave is required. In view of above, the petition is dismissed in limine. No order as to costs. Interim order dated 10-10-1994 is hereby vacated.

Let certified copy of this order may be made available to the learned counsel for the parties on payment or usual charges.