

(2012) 01 SC CK 0055

In the Supreme Court Of India

Case No : Writ Petition (C) No. 540 of 2011

Virendra Pratap and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Constitution of India, 1950 — Article 243D, 330, 332

Citation : (2012) 1 SCALE 174 : (2012) 11 SCC 764

Hon'ble Judges : J. Chelameswar, J;Altamas Kabir, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This writ petition has been filed by one Mr. Virendra Pratap and Mr. Pyarelal, purportedly in public interest, to secure the rights of the Scheduled Tribes, who have been deprived of their constitutional rights of proportional representation under Articles 332, 330 and 243D of the Constitution of India and to prevent violation of the fundamental rights of the Scheduled Tribes.

2. The Petitioners also claim to be public-spirited citizens, who have for the past several years been actively pursuing the cause of protecting the constitutional rights of the Scheduled Tribes and for securing their well-being.

3. Appearing in support of the writ petition, learned senior advocate, Mr. Narasimhan, submitted that by virtue of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002 [Act No. 10 of 2003], passed by the Parliament, several castes, which had not been included in the list of Scheduled Tribes, were included as Scheduled Tribes by virtue of the said Act. Consequently, the population of the Scheduled Tribes increased considerably due to such inclusion in some of the constituencies, which had already been de-limited. However, despite inclusion of such castes as Scheduled Tribes, the Respondent No. 1, Union of India and the Respondent No. 2, the Election Commission of India, had failed to carry out their consequential constitutional obligations to

reflect this change and to ensure proportional representation to the Scheduled Tribes under the aforesaid provisions of the Constitution.

4. Mr. Narasimhan, also submitted that since the schedule of Assembly Elections for the State of Uttar Pradesh has been published, the Election Commission may be directed to take steps for proper representation of Scheduled Tribes in the forthcoming elections by identifying constituencies for reservation for Scheduled Tribes on account of their proportional representation in terms of Article 330 of the Constitution.

5. When the matter was moved earlier, we had requested Ms. Meenakshi Arora, who had appeared for the Election Commission of India, to take instructions as to whether the exercise contemplated for bringing about such proportionate representation in the ensuing elections would be possible before the date of the elections. It has been submitted by her that the entire exercise will take about three months, to which the learned Attorney General submitted that he had nothing further to add to such submission made on behalf of the Election Commission of India. From the submissions made on behalf of the respective parties, it is submitted that the exercise to be undertaken would also involve the figures which are to be taken into consideration de hors the Census figures of 2001.

6. As submitted by the learned Attorney General, the same may be available with the Registrar General of India of Census Operations, and the same could be the basis for the Election Commission to take a fresh decision in keeping with the submissions made by Mr. Narasimhan.

7. Having regard to the submissions made, we see no reason to keep this writ petition pending since we agree with the submissions made by Mr. Narasimhan, that having regard to the constitutional obligations, as contained in Articles 332, 330 and 243D of the Constitution of India, the Scheduled Tribes have a right to be represented in proportion to their numbers in the different constituencies in the State.

8. Accordingly, we dispose of the writ petition by directing the Election Commission of India, to consider the case of the Scheduled Tribes, as indicated in the writ petition and to take appropriate steps for their representation in the Lower Houses, both in the Parliament, as well as in the State Assemblies in accordance with the provisions of the Constitution. The Petitioners will be at liberty to supply necessary details of the figures indicated to the Election Commission of India and the Election Commission may itself also obtain figures from the Registrar General, as suggested by the learned Attorney General and, thereafter, proceed to take steps in accordance with the provisions of the Constitution for due representation of the Scheduled Tribes population.

9. We also make it clear that we are not insisting that the exercise has to be completed before the elections are conducted since it has been definitely submitted that the exercise will take at least about three months, but it will not

also prevent the Election Commission from completing the exercise before the elections are held, without, however, disturbing the election schedule as declared.

10. There will be no order as to costs.