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Court : Guwahati

Decided On : Jan-22-2014

Judge : B.K. Sharma

Appeal No. : WP(C) No.1559 of 2013

Appellant : Naba Kumar Nath and Others

Respondent : The State of Assam, Represented by the Commissioner and Secretary to the Government of Assam, Guwahati and Others

Advocate for Pet/Ap. : Mr. I.H. Saikia, Mr. Das

Judgement :

(Oral).

1. The petitioners numbering 7 are the elected members of No.7 Barkhetri Anchalik Panchayat. They are aggrieved by appointment of the respondent No.9 as the President of the said Anchalik Panchayat providing reservation as SC (Woman).

2. According to the petitioners, the post ought to have been provided to a General category member instead of reserving the same for SC (Woman) candidate. In this connection, referring to the provisions of the Assam Panchayat Act, 1994 and the Assam Panchayat (Constitution) Rules, 1995, the petitioners have shown the population pattern of Schedule Caste in descending orders of the jurisdictional Anchalik Panchayat in the District of Nalbari in the following manner:-

Sl No	Name of Anchalik Panchayat	General	Schedule Caste	Percentage
1.	No.5 Tihu A.P	70,160	13,486	19.22%
2.	No.3 Paschim Nalbari A.P	1,13,088	11,886	10.51%
3.	No.6 Barbhag A.P.	58,613	4,039	6.89%
4.	No.1 Pub Nalbari A.P	1,12,955	5,301	**4.69%**
5.	No.7 Barkhetri A.P	1,64,815	7,073	4.29%
6.	No.2 Barigog Banbhag A.P.	97,415	3,331	3.42%
7.	No.4 Madhupur A.P.	45,968	834	1.81%

3. The aforesaid population pattern is on the basis of 2001 census. Referring to the percentage of Schedule Caste population in reference to General population, it is the plea of the petitioners that by operation of the provisions of the Act and the Rules, it is the No.6 Barbhag, which ought to have been provided with the reservation for the post of President instead of providing the same to No.7

Barkhetri Anchalik Panchayat. Be it stated here that if the said plea of the petitioner is to be accepted, it is the No.3 Paschim Nalbari Anchalik Panchayat, which is to get the Schedule Caste reservation, but it is on record that the particular candidate belonging to the said Anchalik Pandhayat declined to accept the Presidentship as a reserved category candidate (SC-Woman).

4. I have heard Mr.B.C. Das, learned senior counsel assisted by Mr. I.H. Saikia, learned counsel for the petitioners. I have also heard Mr. N. Upadhyay, learned State counsel and so also Mr. M.I. Hussain, learned counsel representing the Election Commission. Mr.S.S. Dey, learned counsel has entered appearance on behalf of the respondent No.9, who is the beneficiary of the reservation and has been functioning as President of No.7 Barkhetri Anchalik Panchayat. Learned counsels for the parties have exclusively referred to the facts involved in this case and also the provisions of the aforesaid Act and the Rules. While Mr. Das, learned counsel for the petitioners has emphasised on the percentage of reservation to calculate the Schedule Caste population, Mr. Dey, learned counsel representing the respondent No.9 has emphasised on the total Schedule Caste population in the respective Anchalik Panchayats.

5. To appreciate the aforesaid submissions, let me now refer to the relevant provisions of the Assam Panchayat Act, 1994 and the Assam Panchayat (Constitution) Rules, 1995. Section 38 of the Act deals with reservation for the Offices of the President and Vice President of Anchalik Panchayat. For a ready reference, the section is quoted below:-

38. Reservation for the offices of the President and Vice- President of Anchalik Panchayat.- (1) There shall be reserved by the Government in the prescribed manner-

(a) such number of offices of the President of Anchalik Panchayat in the district for the person belonging to the Scheduled Castes and Scheduled Tribes and the number of such offices bearing as nearly as may be the same proportion to the total number of offices in the District as the population of the Scheduled Castes in the District or of the Scheduled Tribes in the district bears to the total population of the District;

(b) not less than one-third of the total number of offices of President and Vice-President of the Anchalik Panchayats in the District for each of the categories reserved for persons belonging to the Scheduled Castes, Scheduled Tribes and those which are non-reserved for women:

Provided that the offices reserved under this sub-section shall be by rotation in different Anchalik Panchayats:

Provided further that the principle of rotation for the purpose of reservation of office under this sub-section shall commence from the first election to be held after the commencement of the Act.

(2) Save as otherwise provided in this Act, the President and Vice-President of the Anchalik Panchayat shall hold office for the terms of office of the members of the Anchalik Panchayat.

6. Rule 7(3)(a) of the Assam Panchayat (Constitution) Rules, 1995 provides the methodology of reservation. For a ready reference, the relevant portion of the said Rule is also quoted below:-

[(3) (a) Such number of Offices of the President and Vice-President of the Anchalik Panchayats in the districts shall be reserved for the persons belonging to the Scheduled Castes and the Schedules Tribes as the case may be, as may be determined by the concerned Deputy Commissioner on the basis of the proportion as provided under clauses (a) and (b) of sub-section (1) of Section 38 to the Act. In determining the number of seats to be so reserved, if the result bears a function which is 5 or more it shall be rounded off to the next higher integer and if it is less than 5 it shall be ignored. In selecting, the Anchalik Panchayats for reservation under this provision, the Anchalik Panchayat with highest number of Scheduled Castes and Scheduled Tribes population as the case may be, shall be reserved first and so on in order of such population in the descending Order:

Provided that such reservation shall be done on rotation among the Anchalik Panchayats having the Scheduled Castes and Scheduled Tribes population in the descending order of such population.

7. On a total reading of the aforesaid provisions of the Act and the Rules, it is found that for the Office of the President reservation shall be by rotation in different Anchalik Panchayats. Such rotation for the purpose of reservation of the office shall commence from the first election to be held after the commencement of the Act. Proviso to Rule 2(a) provides that such reservation shall be done on rotation among the Anchalik Panchayats having the Schedule Caste and Schedule Tribe population in the descending orders of such population. The whole emphasis is on the population and not of the percentage of Schedule Caste population.

8. Going by the aforesaid provisions and in reference to the population pattern of Schedule Caste in the No.7 Barkhetri Anchalik Panchayat referred to above, it is seen that population wise the said Anchalik Panchayat is the 3rd Anchalik Panchayat after No.5 Tihu Anchalik Panchayat and No.3 Paschim Nalbari Anchalik Panchayat. No.5 Tihu Anchalik Panchayat Presidentship having been occupied by Schedule Caste category woman in 2007, in the next election with which the present proceeding is concerned in the normal circumstances, the same ought to have gone to No.3 Paschim Nalbari Anchalik Panchayat. However, as noted above, the post of president as per reservation having been declined by the concerned candidate the turn for such consideration came for No.7 Barkhetri Anchalik Panchayat. Accordingly, the respondent No.9, who belongs to Schedule Caste, has been elected as the president of the said Anchalik Panchayat.

9. On a bare perusal of the Chart quoted above, it is seen that population wise No.7 Barkhetri Anchalik Panchayat (7,073) is the 3rd Anchalik Panchayat. Nowhere in the provisions of the Act and the Rules there is any mention of percentage of population, which has been worked out by the petitioners in reference to general category population. The whole emphasis in the Act and the Rules being on the Schedule Caste population, this Court cannot fall back on the percentage of reservation in reference to the general category population.

10. Above being the position, I do not find any infirmity in the impugned decision of the Deputy Commissioner providing Presidentship to the respondent No.9 as she belongs to Schedule Caste category and when the post has been declined by the Paschim Nalbari Anchalik Panchayat candidate.

11. Accordingly, writ petition is dismissed. However, no order as to costs.

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