

Vidyanand Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Oct-24-2000

Reported in : 2001(1)AWC46; (2001)1UPLBEC513

Judge : Shyamal Kumar Sen, C.J. and ;G.P. Mathur, J.

Acts : U.P. Municipalities (Reservation and Allotment of Seats and Officers) Rules, 1994 - Rule 4; [Constitution of India](#) - Article 226; U.P. Municipalities Act - Sections 9A and 296

Appeal No. : C.M.W.P. No. 43800 of 2000

Appellant : Vidyanand

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Mrs. Poonam Srivastava, Adv.

Judgement :

Shyamal Kumar Sen, C.J. and G. P. Mathur, J.

1. This writ petition under Article 226 of the Constitution has been filed praying that the notification issued by the State Government on September 27, 2000 reserving only 7 wards in Nagar Palika Parishad, Farrukhabad for backward classes be quashed and a writ of mandamus be issued restraining the respondents from

issuing any notification for holding election for the said Nagar Palika Parishad till the number of wards reserved for backward classes is increased.

2. Mrs. Poonam Srivastava, learned counsel for the petitioner has submitted that the last election for electing Sabhashads for Nagar Palika Parishad was held in the year 1995 on the basis of the census conducted in 1994. In the said election, the Nagar Palika Parishad was divided into 29 wards and 8 wards were reserved for backward classes. However, in the notification issued by the State Government on September 27, 2000 the wards reserved for backward classes have been reduced from 8 to 7. Learned counsel has elaborated her argument by submitting that though according to the population of the backward classes they are entitled to reservation in 10 wards in view of formula contained in U. P. Municipalities [Reservation and Allotment of Seats and Offices) Rules. 1994 but as their number cannot be more than 27 per cent, the number of wards to be reserved for them should be 8 as was done in the last election which was held in 1995.

3. The State Government in exercise of the powers conferred by Section 296 of the U. P. Municipalities Act read with Section 9A of the said Act has made the U. P. Municipalities [Reservation and Allotment of Seats and Offices) Rules, 1994. Rule 4 (1) provides the method for determination of seats to be reserved for Scheduled Castes and Scheduled Tribes. This rule was amended on April 20, 1995 and after the amendment it reads as follows :

'4. (1) The number of seats to be reserved in a municipality for the Scheduled Castes or the Scheduled Tribes, or the backward classes under subsection (1) of Section 9A of the Act shall be so determined that it shall bear, as nearly as may be, the same proportion to the total number of seats in a municipality as the population of the Scheduled Castes in the municipal area or the Scheduled Tribes in the municipal area or the backward classes in the municipal area bears to the total population of such area and if in determining such number of seats there comes a remainder then if it is half or less than half of the divisor, it shall be ignored and if it is more than half of the divisor, the quotient shall be increased by one and the number so arrived at shall be the number of seats to be reserved for the Scheduled Castes or the Scheduled Tribes or the backward classes as the

case may be :

Provided that number of seats to be reserved in a municipality for the backward classes under sub-section (1) of Section 9A of the Act, shall not be more than twenty seven per cent of the total number of seats in a municipality.'

According to the aforesaid rule the number of wards to be reserved for backward classes has to be calculated on the basis of following formula :

$$\frac{\text{Number of wards} \times \text{Backward Classes population of Nagar Palika Parishad}}{\text{Total number of population}}$$

4. It is averred in the writ petition that the total population of Nagar Palika Parishad as per the census of 1994 is 1,94,567 and the population of backward classes is 67,953. By applying the aforesaid formula, the number of wards to be reserved for backward classes come to 10.12. However, in view of the restriction that the wards reserved for such category of persons cannot exceed 27 per cent which when calculated on the total figure of 29 comes to 7.83. The contention of Mrs. Srivastava is that as the remainder is more than half, the quotient should be increased by one. It is thus urged that the figure 7.83 so calculated should have been treated as 8 and such number of wards should have been reserved for the backward classes.

5. The argument of learned counsel for the petitioner looks attractive at the first blush but a deeper scrutiny would show that it has no substance. Though the main part of sub-rule (1) of Rule 4 provides that if after determining the number of wards according to the formula there comes a remainder which is less than half, it shall be ignored and if more than half the quotient shall be increased by one, but there is proviso to the sub-rule which clearly lays down that number of wards to be reserved for backward classes shall not be more than 27 per cent of the total number of wards in a municipality. In CIT, Mysore v. Indo Mercantile Bank Ltd., AIR 1959 SC 713 at 717, it was held that 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. Similar view was taken in S. Sundaram Pillai

v. P. Pattabiraman, AIR 1985 SC 582. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Therefore, the effect of main part of sub-rule (1) of Rule 4 is curtailed or circumscribed by the proviso. As mentioned earlier, the total number of wards in Nagar Palika Parishad is 29 and its 27 percent comes to 7.83. If the said figure is taken to be 8 in view of the main part of sub-rule (1), it will definitely exceed 27 per cent which is clearly prohibited by the proviso. In view of proviso, the number of wards to be reserved for backward classes cannot exceed 27 per cent and, therefore, 7.83 is the outer figure. In such circumstances, the number of wards to be reserved for backward classes has to be 7 and not 8.

6. For the reasons mentioned above, we find no merit in the writ petition, which is hereby dismissed summarily at the admission stage.

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