

Ratan Kumar Dixit and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Oct-24-2000

Reported in : 2000(4)AWC3433; (2001)1UPLBEC390

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

Acts : [Constitution of India](#) - Articles 226, 243C, 243K, 243O, 243P, 243T and 243ZG; Uttar Pradesh Municipal Corporations Act, 1959 - Sections 2(53A), 7 and 32(1) and (2); Constitution (Amendment) Act, 1992; Uttar Pradesh Municipalities (Reservation and Allotment of seats and office) Rules, 1994; Delimitation Act, 1950 - Sections 2

Appeal No. : C.M.W.P. No. 44546 of 2000

Appellant : Ratan Kumar Dixit and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C., B.D. Mandhyan and ;Ashok Mehta, Advs.

Advocate for Pet/Ap. : Pushkar Mahrotra and ;Ravi Kiran Jain, Advs.

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 for several reliefs and the principal reliefs are that the notification issued by the State

Government providing for reservation of wards in all the eleven Nagar Nigams (Municipal Corporations) in the State be quashed and a direction be issued to the respondents not to proceed with the election in the Municipal Corporations until the exercise of determination of actual population of the Scheduled Castes, Scheduled Tribes, Backward Classes and also the total population of different wards of Nagar Nigams is completed and the seats in the wards are reserved in accordance with law for different categories of persons who are entitled for reservation,

2. Petitioner Nos. 1, 3 and 4 are residents of and are registered as voters in Nagar Nigam. Allahabad. petitioner No. 2 is resident of and is registered as voter in Nagar Nigam. Gorakhpur and petitioner No. 5 is resident of and is registered as voter in Nagar Nigam. Aligarh, The respondents arrayed in the writ petition are State of U. P., Director, Local Bodies, State Election Commission, and the District Election Officers/District Magistrates. Allahabad. Gorakhpur and Aligarh.

3. Sri Ravi Kiran Jain, learned senior counsel for the petitioners has submitted that the last census in the State of U. P. had been held in the year 1991 and the figures of population are available of the said census only and thereafter a rapid survey was done in the year 1994 with a view to determine the population of other backward classes alone. No fresh survey has been undertaken to determine the actual population of the different categories of persons namely, Scheduled Castes. Scheduled Tribes and Other Backward Classes. The numbers of wards in the Nagar Nigams as per the Delimitation Order of 1995 done consequent upon the Constitution (74th Amendment) Act of 1992 were substantially increased. In Allahabad, the number of wards which were 40 in the year 1991, have been increased to 70 in the year 1995 and in Gorakhpur and Aligarh they have been increased from 30 to 60 in the same, period. However, for the purpose of forthcoming election of Nagar Nigams in the State which is scheduled to take place in November, 2000, no survey of population has been done either of the general category or of reserved category nor the population of individual wards has been ascertained. According to the learned counsel, the mandatory requirement of sub-section ID of Section 32 of U. P. Municipal Corporations Adhiniyam, 1959 (hereinafter referred to as the Act) had not been complied with,

and therefore, the notification issued by the State Government regarding reservation of seats in different wards was wholly illegal. Learned counsel has thus urged that till such exercise was done and the provisions of subsection (1) of Section 32 of the Act and also the directions issued by a Division Bench of this Court in *Mukesh Ram Chandani v. State of U. P.*, 1996 AWC 153, had been complied with, no election for electing Sabhasads of Nagar Nigam should be held in the State.

4. Sri Ashok Mehta, learned chief standing counsel appearing for the respondents has submitted that the Nagar Nigams have been divided into wards strictly in accordance with clause (a) of sub-section (1) of Section 32 of the Act and the delimitation of wards and reservation thereafter for different categories of persons have been done in accordance with the provisions of the Act and the rules and there was no illegality in the same. He has further contended that the draft of the order under subsection (1) of Section 32 of the Act, which was proposed to be passed by the State Government, was published in the official gazette and also in the newspapers inviting objections and the objections filed thereto had been considered which were decided by speaking order. There was no error or illegality in creating the wards or reserving the same for different categories of persons and provisions of Section 32 of the Act had been fully complied with, and as such, there was no ground for quashing the final order or for staying the holding of elections.

5. The submission of Sri Jain is based upon Section 32 of the Act relating to Delimitation Order which is being reproduced below :

'Delimitation Order.-- (1) The State Government shall, by order, determine.-

(a) a City shall be divided into wards in such manner that the population in each ward shall, so far as practicable, be the same throughout the municipal area ;

(b) the extent of each ward ;

(c)(Omitted by U. P. Act 12 of 1994) ;

(d) The number of seats to be served for the Scheduled Castes, the Scheduled Tribes. Backward Classes and women ;

(2) The draft of the Order under sub-section (1) shall be published in the official Gazette for objections for a period of not less than fifteen days.

(3) The State Government shall consider any objection filed under sub-section (2) and the draft Order shall, if necessary, be amended, altered or modified accordingly and thereupon it shall become final.'

6. The main ground of challenge of Sri Jain is that the State Government did not conduct any survey for determining the exact population of Scheduled Castes. Backward Classes and women before issuing the notification and as such the provisions of clause (a) of subsection (1) of Section 32 of the Act have not been complied with. A plain reading of clause (a) of sub -section (1) will show that a City is to be divided into wards in such manner that the population in each ward shall, so far as practicable, be the same throughout the municipal area. The word 'population' has been defined both in the Constitution and also in the Act. Part IXA of the Constitution deals with Municipalities and clause (g) of Article 243P defines 'population' which means the population as ascertained at the last preceding census of which the relevant figures have been published. Section 2 (53A) of the Act also defines 'population' and it is the exact reproduction of clause (g) of Article 243P of the Constitution. Therefore the word 'population' as used in clause (a) of sub-section (1) of Section 32 of the Act would mean the population of the city as ascertained at the last preceding census of which the relevant figures have been published. It is averred in paragraph 13 of the writ petition that in the entire State of Uttar Pradesh, the last census was undertaken in the year 1991 and the only published figures available are that of the said census. Subsequently, a rapid survey was undertaken in the year 1994 to determine the population of Other Backward Classes only. It is further averred that no fresh survey of population was undertaken to determine the actual population of other categories namely. Scheduled Castes and Scheduled Tribes at the time of rapid survey. Therefore, it is the own case of the petitioners that the relevant figures of last preceding census, which was held in the year 1991 alone, are available. This factual position

has also been admitted by the learned chief standing counsel. Therefore, the division of the city into wards has to be done on the basis of the figures which have been published on the basis of census conducted in the year 1991 and reservation of seats in the wards had to be done after taking into consideration the figures of Backward Classes as revealed by the rapid survey. Learned counsel for the petitioners has not been able to point out any provision which may require that before holding the election, a fresh survey of the entire population ought to have been done or that the reservation of wards for different categories of persons could not be done till a fresh survey had been done and the population of different categories of persons for whom reservation has to be provided namely. Scheduled Castes. Scheduled Tribes and women had been ascertained. We, therefore, do not find any illegality in the order of the State Government by which delimitation or reservation of wards has been done.

7. Sri Jain has laid great emphasis on certain observations made by a Division Bench of this Court while deciding a bunch of writ petitions which had been filed challenging the elections to Nagar Nigams which were going to be held in November, 1995. According to learned counsel, the observations made in paragraphs 79 to 81 of the judgment in Mukesh Ram Chandani v. State of U. P., 1996 AWC 153, are still applicable as the situation has not changed. The relevant portion of the judgment in the said case on which reliance is placed is being reproduced below :

'79. The facts of the present case fully demonstrate that there did not exist any material or basis either in the census of 1991 or with the respondents on the basis of which the general population or the population of Scheduled Castes could be assessed or determined from any of the wards notified. The State Government acted arbitrarily in delimiting the wards and allocation of reserve seats without undertaking any survey operations for determining the actual population which alone could be the sole criteria provided under the Act, both for the purpose of delimitation of constituencies as also for reservation and for allocation of reserved seats. The act of putting the figures of population general and reserved category in each of the newly carved out wards has been done on mere imagination on the basis of the census of 1991 and which was only for the erstwhile wards and was

not based on mohallas or localities or part of the locality which have now been included in the new wards.

80. On account of the failure of the State Government to determine the wardwise population, which was absolutely essential for the purpose of allocation of seats and for making reservations in their favour, the reservation of seats for the Scheduled Castes stands vitiated.

81 . This survey of the backward class population made during the years 1994 and 1995 when delimitation of constituencies was in process, also stands vitiated on account of the fact that survey of their population has been done without either identifying or excluding those persons who fall in the category of creamy layer. In fact, there does not exist any norm for excluding the creamy layer. The State Government has not yet framed any valid norms for identification of the creamy layer and their exclusion and, therefore, it is not permissible in law to provide reservation in favour of the Backward Classes.'

8. Sri Ashok Mehta, learned chief standing counsel has, however, submitted that the decision in the case of Mukesh Ram Chandani (supra) was challenged by filing an appeal and the same was allowed by the Supreme Court on September 10, 1996. He has referred to paragraphs 32 to 34 of the decision of the said case in Anugrah Narain Singh and another v. State of U. P. and others, JT 1996 SC (8) 733, which are relevant to the controversy in hand and they are reproduced below :

'32. The case of the State Government in the Court below as well as here is that the election has to be conducted on the basis of the last census which was held in the year. 1991. The next census is due to be held in 2001. But in the meantime, election to the municipal bodies will have to be held. The basis for holding such elections is the last available census figures. But where no census figures are available, then a survey has to be made by the Government to find out the correct figures. For example Article 243T specifically reserves the right of the State Legislature for making provisions for reservation of seats in favour of backward classes of citizens. This reservation has been made by the State Legislature of U. P. for ensuring that the backward class people are adequately represented in the

local bodies. Section 7 of the U. P. Act specifically provides for reservation of seats for backward classes and empowers the State Government that if the figures of Backward Classes were not available, their population may be determined by carrying out a survey in the manner prescribed by the Rules.

33. In our view, the argument advanced on behalf of the State must be upheld. It is true that Article 243P(g) has defined population to mean 'population as ascertained by the last preceding census of which the relevant figures have been published.' The delimitation of constituencies and also preparation of electoral rolls will have to be done on the basis of the figures available from the last census which was taken in 1991. Reservation of seats for Scheduled Castes and Scheduled Tribes is mandatory under Article 243T of the Constitution. This must also be done on the basis of the available figures from the census. Clause (6) of Article 243T of the Constitution has made it permissible for the State Government to reserve seats for other backward classes. The census of 1991 has not enumerated the number of persons belonging to Backward Classes. Therefore. In order to reserve seats for citizens belonging to Backward Classes their number will have to be found out. Clause (6) of Article 243T has impliedly empowered the State Government to ascertain the backward classes and the number of people belonging to such classes. Otherwise, the provisions of clause (6) of Article 243T will become otiose and meaningless. Merely because such an enumeration of people belonging to Backward Classes was made does not mean that the figures enumerated by the last census were discarded. The latest available census figures had to be the basis for delimitation of the constituencies, preparation of electoral rolls and also for reservation of seats for Scheduled Castes. Scheduled Tribes and women. But census figures are not available for persons belonging to Backward Classes, The next census will be held in the year 2001. There is no way to reserve seats for Backward Classes in the meantime except by making a survey of the number of persons belonging to such classes for the purpose of giving them assured representation in the municipal bodies. To do this exercise is not to do away with the last available census figures but to find out what was not to be found by the last census. Had such counting been done in the census, then it would not have been open to the State Government to embark upon a survey on its own. The State Government here had only two choices. It could say that there will be no

reservation for people belonging to Backward Classes because the census figures of such people are not available or it could make a survey and count the number of people belonging to the Backward Classes and reserve seats for them in the municipal bodies. The State Government has taken the latter course. This is in consonance with the provisions of clause (6) of Article 243T. Therefore, the survey made by the State Government for finding out the number of persons belonging to Backward Classes was not in any way contrary to or in conflict with any of the provisions of the Constitution.

34. Moreover, the U. P. Act of 1959 was amended to make it consistent with the provisions of Part IX-A of the Constitution. Population was defined in Section 2 (53A) to mean 'population as ascertained in the last preceding census of which the relevant figures have been published.' This is identical to the definition given in Article 243P(g). Section 32 which deals with delimitation, inter alia, provides that the State Government shall by order determine the number of seats to be reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and for women. Section 7 lays down that in every Corporation, seats shall be reserved for Scheduled Castes, Scheduled Tribes and Backward Classes. There is a second proviso to Section 7 which lays down that if the figures of backward classes are not available, their population may be determined by carrying out a survey in the manner prescribed by the rules. These provisions come within the ambit of the phrase 'any law relating to the delimitation of the constituencies or allotment of seats to such constituencies'. The validity of this law cannot be challenged because of the protection given by Article 243ZG of the Constitution. Therefore, the question whether the survey made by the State Government to ascertain the figures of persons belonging to backward classes was lawful or not cannot be raised in any Court.'

The operative portion of the order of the Supreme Court reads as follows :

'For the reasons given hereinabove, we are of the view that the impugned Judgment was erroneous and improper. We allow this appeal. The Judgment under appeal is set aside.....'

9, It is, therefore, clear that the Judgment of the Division Bench of this Court in Mukesh Ram Chandani (supra) had been held to be erroneous and improper and the same was set aside. Therefore, the contention of Sri Jain that the order regarding delimitation and reservation of wards is illegal as the direction given in the said case had not been complied with by the State Government cannot be accepted. On the merits also, the view taken by us is in consonance with the observations made by the Apex Court wherein it has been held that the delimitation of constituencies and also preparation of electoral rolls will have to be done on the basis of the figures available from the last census. The same principle has to be applied for reservation of seats for Scheduled Castes and Backward Classes. It has been observed in paragraph 33 of the Judgment that the next census is due to be conducted in the year 2001 and reservation of seats of backward classes which is mandatory under Article 243T of the Constitution, can be done by making survey and this will not mean that the figures available from the last census were to be discarded. In fact Section 7 of the Act clearly provides that if the figures of backward classes are not available, their population shall be determined by taking out survey in the manner prescribed by Rules.

10. The writ petition was filed in office of October 13, 2000 and till then the objections filed by the petitioner No. 1 on the draft of the order issued by the State Government under sub-section (2) of Section 32 of the Act had not been decided. The writ petition was heard for admission on October 18, 2000 when the State counsel was directed to obtain instructions whether the objections had been decided and the hearing was adjourned to October 20, 2000. On the said date, learned chief standing counsel made a statement that the objections had been decided by the State Government and consequently, a direction was issued to supply copy of the order to the writ petitioners. The petitioners thereafter filed copy of the order passed by the State Government along with a supplementary affidavit and also moved an application praying that the said order be quashed and a direction be issued to the respondents to redetermine the delimitation of wards and reservation of seats for the ensuing election and not to hold the election of the Municipal Corporations unless the said exercise was done. Learned counsel has submitted that the order passed by the State Government is a non-speaking order which gives no reason and, therefore, the same deserves to be quashed. We have

carefully gone through the order under challenge and we are unable to hold that the same is a non-speaking order. The order makes reference to the objection filed by petitioner No. 1 Ratan Kumar Dixit, the grounds taken in the objection and the reasons for rejecting the same. The principal reason given therein is that in view of the Constitutional provisions contained in Article 243P(g) 'population' would mean the population as ascertained at the last preceding census of which the relevant figures have been published and after taking note of Section 2 (53A) of the Act it has been held that as the last survey had been done in the year 1991 and the figures of the said survey alone are available, the same had been taken into consideration. Besides that the figures obtained in the rapid survey done in the year 1994 were also considered. It has also been held that the delimitation and reservation of seats had been done in accordance with U. P. Municipal Corporations Adhiniyam, 1959 and U. P. Municipalities (Reservation and Allotment of seats and office) Rules, 1994, as amended from time to time. A reading of the order of the State Government clearly shows that the concerned authority has applied his mind to the contention raised in the objection filed by petitioner No. 1 and has thereafter passed the order after taking into consideration the relevant factors and also the constitutional and statutory provision governing the controversy in issue. Thus, the submission of the learned counsel that the order of the State Government dated October 15, 2000 is a non-speaking and arbitrary order, cannot be accepted.

11. It may be mentioned here that in *State of U. P. and others v. Pradhan Sangh Kshettra Samitti and others*, AIR 1995 SC 1512, the Apex Court while considering a similar question relating to delimitation and reservation for the purpose of holding election in the panchayats, observed as follows :

'.....If we read Articles 243C, 243K and 243O in place of Article 327 and Section 2 (kk) of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in the said area and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation no objections were invited and no hearing was given Even this challenge could not have been entertained after the notification for holding the elections was issued.....'

12. It is not the case of the petitioners that no objections were invited or they were not given any opportunity to file objection. The draft order was published by the State Government in accordance with sub-section (2) of Section 32 of the Act and the petitioners were given opportunity to file objections. Thus, the ground on which an order of delimitation and reservation of constituencies can be challenged, as observed by the Apex Court, is not available to the petitioners.

13. Sri Jain has also submitted that the impugned order dated October 15, 2000, of the State Government has been antedated and in fact it was not in existence till as late as October 22, 2000. This question is purely factual in nature. We have gone through the averments made in the supplementary affidavit and have also heard the learned chief standing counsel on this point. On the basis of material placed before us, it is not possible to hold that the impugned order dated October 15, 2000, deciding the objection filed by petitioner No. 1, has been antedated or that the same was not in existence till October 22, 2000.

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