

Sunil Vs. State of M.P. and anr.

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Court : Madhya Pradesh

Decided On : Oct-28-2004

Reported in : 2005(2)MPHT24; 2005(1)MPLJ180

Judge : K.K. Lahoti, J.

Acts : Madhya Pradesh Municipalities (Reservation of Wards of Scheduled Castes and Scheduled Tribes, Other Backward Classes and Women) Rules, 1994 - Rules 3 and 4; Madhya Pradesh Municipal Corporation Act, 1956 - Sections 10, 10(1) and 11

Appeal No. : Writ Petition No. 4168/2004

Appellant : Sunil

Respondent : State of M.P. and anr.

Advocate for Def. : R.S. Jha, Dy. Adv. General and ;Vinod Mehta, Govt. Adv.

Advocate for Pet/Ap. : L.S. Baghel, Sr. Adv. and ;D.S. Baghel, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.K. Lahoti, J.

1. Petitioner has prayed for following reliefs in this case :--

'7.1 That, to issue writ, direction or order cancelling the reservation of wards as contained in Annexure P-1.

7.1 That, to issue writ, direction or order to the respondent No. 2 to reserve wards afresh according to the provisions of the Act and rules.

7.2 That, grant any other suitable relief which the Hon'ble Court may deem fit to grant in the circumstances of the case alongwith cost.'

2. The case of petitioner is that in the ensuing election for Municipal Corporation, Khandwa, respondent No. 1 has reserved Ward No. 3 Surajkund Ward, Ward No. 8 Sant Raidas Ward, Ward No. 24 Lakkad Bazar Ward, Ward No. 31 Singhad Talai Ward, Ward No. 40 Jawaharganj Ward and Ward No. 42 Mahatma Gandhi Ward for Scheduled Caste persons, while in the election of 1994, five wards were reserved namely : Ward No. 7 Dr. Ambedkar Ward, Ward No. 3 Sant Raidas Ward, Ward No. 26 Sanjay Gandhi Ward, Ward No. 31 Singhad Talai Ward and Ward No. 42 Mahatma Gandhi Ward. In the election of December, 1999, same wards which were reserved in the year 1994 were reserved. The grievance of the petitioner is that under Rule 4 of M.P. Municipalities (Reservation of Wards of Scheduled Castes and Scheduled Tribes, Other Backward Classes and Woman) Rules, 1994 (hereinafter referred to as 'Rules'), the reservation should have been made by rotation. The wards which were earlier reserved for a category should not have included in the lot for the reservation of that category until such ward does not come again in the serial of reservation. As Ward No. 8 Sant Raidas, Ward No. 31 Singhad Talai and Ward No. 42 Mahatma Gandhi were reserved for Scheduled Caste in the earlier elections, in the circumstances these wards ought not to have been reserved this year, and reservation of these wards for Scheduled Castes be quashed.

3. Learned Counsel appearing for respondents submitted that in the process of election under Section 10 of M.P. Municipal Corporation Act, 1956 (hereinafter referred to as 'Act'), steps have to be taken for determination of number and extent of wards. Under Section 11 reservation of wards has to be done and under

Section 11-A of the Act, reservation of the office of the Mayor has to be done. The reservation for Scheduled Castes and Scheduled Tribes is governed by the Rules. Rule 3 of the Rules is in respect of the reservation for Scheduled Castes and Scheduled Tribes. The same rule is applicable for the reservation for other backward classes and women. Rule 4 of the Rules provides reservation of wards in respect of subsequent election. The principle of rotation is not applicable in the case of reservation for Scheduled Castes and Scheduled Tribes as per Rule 3, and same rule has been followed in the case of Municipal Corporation, Khandwa. The criteria for reservation is ratio of population in the wards itself. As per census of 2001, population of Scheduled Caste persons in the wards is as under :--

S.No.	Ward No.	Name of Ward	Total Population	Scheduled Caste	Total population	Percentage (%)
1.8	Sant	Raidas	3601185451.482.31	Singhad		
	Talai	3957138434.973.3	Surajkund	6087206133.854.42	Mahatma	
	Gandhi	4070127231.255.24	Lakkad			
	Bazar	308079025.646.40	Jawaharganj	338584424.937.26	Sanjay	
	Nagar	426597122.768.1	Ganeshganj	336172821.669.7	Ambedkar	
	Ward	6991143220.4810.10	Gani	Bazar	295158319.7511.27	Padam
	Kund	5952106817.9412.11	Bhagat	Singh	245339015.8913.9	Sarojani
	Naidu	557687415.6714.5	Kishore Kumar Ganguli	433762714.4515.6	Sant Vinobha	
	Bhave	621384813.6416.13	Gurunanak	252331212.3617.45	Anand	
	Nagar	494559912.1118.4	Neelkantheshwar	685580111.6819.22	Kundleshwar	305932710.0
	Dhuniwale	575461310.6521.30	Lokmanya	Tilak	59555549.3022.2	Ranjeet
	Ward	40153478.6423.44	Lalbahadur			
	Shastri	Ward	69185568.0324.21	Kallanganj	27811886.7625.28	Bhairav
	Talab	40192245.5726.29	Padawa	31541725.4527.41	Pardeshipura	26911445.3528.43
	Ward	56752955.1929.34	Taigore			
	Ward	28121364.8330.12	Ghaspura	30941314.2331.32	Moghat	
	Ward	67892383.5032.23	Bhawanimata	2665903.3733.14	Kaharwadi	2300301.3034.19
	Laxmibai	3676150.4037.20	Hatkeshwar	191040.2038.39	Brahmanpuri	274020.0739.15
	Ward	291500.0044.37	Dr. Zakir Hussain	319500.0045.38	Hariganj	193000.00

Total1722422155012.51

For the ensuing election, respondents while reserving the wards have considered population of Scheduled Caste persons in particular ward and after ascertaining percentage of population of Scheduled Casts persons in the ward, reservation has been made which is in accordance with Rule 3 of the Rules and principle of rotation will be applicable only in the case of other backward classes and women which is apparent from the perusal of Rule 3 (2) of the Rules. The reservation is in accordance with law and the provisions of Rules, and petition has no merit.

4. Considering the contention of the parties, relevant provisions may be seen. Section 11 of the Act reads as under :--

Section 11. Reservation of seats.-- (1) Out of the total number of wards determined under Sub-section (1) of Section 10, such number of seats shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipal Corporation as bears, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the Municipal Corporation as the population of the Scheduled Castes or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such wards shall be those in which the population of the Scheduled Castes and the Scheduled Tribes, as the case may be, is most concentrated.

(2) As nearly as possible twenty five per cent of the total number of wards shall be reserved for other backwards classes in such Municipal Corporations, where fifty per cent, or less seats are reserved for Scheduled Castes and Scheduled Tribes, and such seats shall, be allotted by rotation to different wards in such manner as may be prescribed :

Provided that if from any ward so reserved no nomination paper is filed for election, as a councillor, by any member of the backward classes, then the Collector shall be competent to declare it as unreserved.(3) Not less than one-third of the total number of seats reserved under Sub-sections (1) and (2), shall be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes or other backward classes, as the case may be.

(4) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and other backward classes), of the total number of seats to be filled by direct election in every Municipal Corporation shall be reserved for women and such seats shall be allotted by rotation to different wards in a Municipal Corporation in such manner as may be prescribed.

(5) The reservation of seats under Sub-sections (1), (2) and (3) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India.

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

Section 5 (43-a) of the Act defines the population which reads as under :--

'Population' means the population as ascertained at the preceding census of which the relevant figures have been published.

Relevant Rules are as under :--

Rule 3. First time reservation of wards.-- (1) Out of the total number of wards determined under Sub-section (1) of Section 10 of the Madhya Pradesh Municipal Corporation Act, 1956 and Sub-section (1) of Section 29 of the Madhya Pradesh Municipalities Act, 1961, such number of wards shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipality the proportion of which in the total number of wards determined for that municipality may be, as nearly as may be, the same which is to the population of the Scheduled Castes or of the Scheduled Tribes in that municipality bears to the total population of that municipality and such wards shall be those in a descending order in which the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, is most concentrated.

(2) As nearly as possible, twenty-five per cent of the total number of wards shall be reserved for other backwards classes in such Municipalities, where out of the total number of wards fifty per cent or less in number wards are reserved for Scheduled

Castes and Scheduled Tribes, and such wards shall be reserved by lot from the remaining wards excluding the wards, reserved for Scheduled Castes and Scheduled Tribes.

(3) Out of the wards reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes, as above, one third wards for the women of the aforesaid castes, as the case may be, shall be reserved, by lot :

Provided that where only one ward is reserved for the Scheduled Castes or Scheduled Tribes, as the case may be, then in that case, such ward shall not be reserved for woman of Scheduled Castes or Scheduled Tribes, as the case may be. Explanation : When the Collector declares any ward as unreserved under Sub-section (2) of Section 11 of the Madhya Pradesh Municipal Corporation Act, 1956 or Sub-section (2) of Section 29-A of the Madhya Pradesh Municipalities Act, 1961, then such unreservation shall be limited to that election only.

(4) At the time of calculation under Sub-rules (1), (2) and (3) fraction less than half shall be ignored and fraction equal to half or more shall be counted as one.

(5) Reservation of wards for ladies shall be made by deriving lot of unreserved wards, in such number that comes after subtracting the number of wards reserved for Scheduled Castes, Scheduled Tribes and other backward classes under Sub-rule (3) from one third in number of the total number of wards :

Provided that the number of wards reserved for women, including the wards reserved for the women of Scheduled Castes, Scheduled Tribes and other Backward Classes shall not be less than one-third of the total number of wards. (6) The reservation made as aforesaid shall remain in force for the whole period of five years of Municipality including casual vacancies.

Rule 4. Reservation of wards at the time of subsequent elections.-- The authority prescribed by the State Government shall be authorized for making reservation of wards. The date on which the reservation is to be made by the prescribed authority a notice of that date, place and time shall be published in two local daily news papers, having circulation in the area concerned and copy of notice shall be

pasted on the Notice Board of the Collector's Office, on the Notice Board of the Office of the Municipality and on the conspicuous places of wards, so that the citizens those who wants to be-present at the time of reservation process, may remain present. The prescribed authority shall complete the reservation process in the presence of the citizen.

5. Section 5 (43-a) of the Act refers to the population as ascertained at the preceding census of which the relevant figures have been published. It is not disputed that the preceding census is of the year 2001 which has been taken into consideration by the authorities. Section 11 of the Act provides reservation of the wards. Under Sub-section (1) of Section 11 it is provided that out of the total number of wards determined under Sub-section (1) of Section 10, such number of seats shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipal Corporation as bears, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the Municipal Corporation as the population of the Scheduled Castes or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such wards shall be those in which the population of the Scheduled Castes and the Scheduled Tribes, as the case may be, is most concentrated.

6. Sub-section (2) of Section 11 of the Act provides that as nearly as possible twenty five per cent of the total number of wards shall be reserved for other backward classes in such Municipal Corporations, where fifty per cent, or less seats are reserved for Scheduled Castes and Scheduled Tribes, and such seats shall be allotted by rotation to different wards in such manner as may be prescribed. Sub-section (4) provides that not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and other backward classes), of the total number of seats to be filled by direct election in every Municipal Corporation shall be reserved for women and such seats shall be allotted by rotation to different wards in a Municipal Corporation in such manner as may be prescribed.

7. From the perusal of Section 11(2) and (4) of the Act, it is apparent that the seats reserved for other backward classes and women shall be reserved by rotation but

in respect of seats reserved for Scheduled Castes and Scheduled Tribes, there is no provision for reservation by rotation. The emphasis in Sub-section (1) is that wards which are most concentrated with the population of Scheduled Castes and Scheduled Tribes shall be reserved for that purpose. Rule 3 of the Rules provides that out of the total number of wards determined under Sub-section (1) of Section 10 of the Act, such number of wards shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipal Corporation of which in the total number of wards determined for that Municipal Corporation as nearly as may be, the same which is to be total population of the Scheduled Castes or of the Scheduled Tribes in that Municipal Corporation bears to the total population of that Municipal Corporation and such wards shall be those in a descending order in which the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, is most concentrated. Aforesaid Rule 3 of the Rules provides that population of a particular ward shall be determined on the basis of persons belonging to Scheduled Castes residing in that ward and criteria for reservation will be population which is concentrated in the ward and the reservation will be as per population but in the descending order. Meaning thereby, in a particular ward, the population of Scheduled Castes shall be determined on the basis of the persons residing in that particular ward and for the reservation, the first number of the ward in the seniority shall be taken into consideration in which population of the Scheduled Castes is higher in percentage. Under Rule 4 of the Rules there is provision for subsequent reservation but the principle of rotation is applicable only in the case where such rotation is provided but in the case of Scheduled Castes and Scheduled Tribes persons, principle of rotation is not made applicable. The respondents on the basis of population in wards have found aforesaid six wards to be most concentrated with the persons belonging to Scheduled Castes in descending order and have reserved the aforesaid six wards as per the percentage of population of Scheduled Caste persons.

8. From the perusal of table shown by the learned Counsel for the State, it appears that the percentage of the population of Scheduled Caste persons as per census of 2001 in the aforesaid six wards is concentrated and in the descending order, the aforesaid six wards have been reserved. I do not find any error in the action taken by the respondents.

9. This petition is without merits and it is dismissed. No order as to costs.

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