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Court : Delhi

Decided On : Jan-01-1995

Reported in : 1995(32)DRJ231

Judge : D.P. Wadhwa and; D.K. Jain, JJ.

Acts : Constitution of India - Article 226

Appeal No. : Civil Writ Petition No. 1571 of 1994

Appellant : Hem Raj Arya and ors.

Respondent : Election Commission, Delhi

Advocate for Def. : Mr. Bansal

Advocate for Pet/Ap. : V.P. Chaudhary,; Rajan Sareen,; R.P. Bansal,;

Judgement :

D.K. Jain, J.

(1) Rule D.B.

(2) Since in this matter a very short question is involved and we have heard counsel for the parties at length, we propose to dispose of the writ petition at this stage itself.

(3) Challenge in this writ petition under Article 226 of the Constitution of India is to the two Notifications dated 23 March 1994 and 31 December 1993, both issued by the first respondent viz., the Election Commissioner of the National Capital Territory of Delhi, notifying the reservation for allotment of seats for women, members of the Scheduled Castes and women belonging to Scheduled Castes and the manner of reservation and rotation of reserved seats in different wards and calling upon the electorates of all the 134 wards to elect Councillors for the purpose of constitution of the Municipal Corporation of Delhi (for short the MCD) under Section 3 of the Delhi Municipal Corporation Act, 1957, as amended by the Delhi Municipal Corporation (Amendment) Act, 1993 (for short the Act) respectively. There are three petitioners, who claim to be the office bearers of the Delhi Pradesh Janta Dal and four respondents, being the Election Commission, Delhi, the Chief Electoral Officer, Delhi, Union of India through the Secretary, Ministry of Home Affairs and the Chief Election Commissioner of India.

(4) By Notification dated 20 December 1993 the Lt. Governor of Delhi, in the exercise of powers conferred upon him under sub-section (6) of Section 3 of the Act determined that on the basis of population of Delhi based on 1991 Census there shall be 134 seats of Councillors in the Mcd and out of such 134 seats, 25 seats shall be reserved for the members of the Scheduled Castes keeping in view the ratio of the Scheduled Caste population to the total population of Delhi based on 1991 Census. On 30 December 1993, another notification was issued by the Administrator of the National Capital Territory of Delhi under section 5(2) of the Act by which he determined the number of wards as 134 and also the extent of each of these wards as contained in Table - A annexed with the notification. It is not in dispute that out of the said 25 seats, reserved for the members of the Scheduled Caste, 9 seats had to be reserved for women and further out of the said 134 seats, 37 seats had to be reserved for women candidates of general category. Thus out of 134 wards, 62 wards were to be reserved for Scheduled Castes, Scheduled Caste women and general category women. On the same date yet another notification was issued by the Election Commissioner for the National Capital Territory of Delhi, under sub-sections (6), (7) and (8) of Section 3 of the Act by which the seats reserved for Scheduled Castes' Scheduled caste women and for women in general category were detailed out. In this petition, there is no challenge

to any of the said three notifications.

(5) The challenge to Notification dated 23 March 1994, whereby the aforesaid reservations have been notified and the manner of reservations and rotation of reserved seats in different wards has been detailed, is not with regard to the number but it is with regard to the manner of reservation and application of principle of rotation to different wards as envisaged in Section 3 of the Act. The petitioners allege that the formula adopted by the first respondent for reservation and rotation is wholly arbitrary, irrational, unintelligible, confusing and suffers from various legal infirmities. The challenge to the earlier Notification dated 31 December 1993 is two fold, viz., (i) it wrongly adopts electoral roll of the State assembly of the National Capital Territory of Delhi for the, purpose of elections to the Mcd and (ii) even assuming that the Notification is valid, nevertheless the first respondent is obliged to revise those electoral roll's with reference to 1 January 1984 as the qualifying date. The petitioners, thereforee, seek a writ of certiorari or an appropriate writ, order or direction quashing the aforenoted two Notifications. A further writ of mandamus is also sought directing respondent No.1 to issue.fresh notification regarding reservation and rotation of wards in accordance with law with a further direction not to hold elections to the Corporation till such time fresh electoral rolls are prepared, published and adopted under Section 7E of the Act.

(6) In response to the show cause notice, an answer has been filed on behalf of respondent No.1 by Shri D.M.Khaneta, Deputy Election Commissioner, National Capital Territory of Delhi and the petition is resisted. In so far as the Notification dated 31 December 1993, issued under Proviso to Sub-section (1) of Section 7E of the Act for adopting the electoral rolls of the assembly constituencies for holding the general elections to Mcd, is concerned, it is stated that earlier also a writ petition challenging the said Notification being Cwp No-5792/93 - Shri R.M.Bagai v. Uoi was filed but the notification to that extent was upheld by this Court vide order dated 13 March 1994. As regards the later Notification dated 23 March 1994, it is stated that apart from the fact that the manner of reservation of wards for women and members belonging to the Scheduled Caste being a legislative function, it is beyond the scope of judicial review unless it is challenged on the ground that it is ultra virus the powers of the authority exercising the powers under

the Act or it is ultra virus the Constitution, it is not practicable to evolve a precise mathematical formula to .provide reservation and rotation to different wards because the number of seats to be reserved are such that they are not divisible by a whole number of seats in relation to a total number of seats in the Corporation. Some instances have also been given to point out various defects even in the formula propounded by the petitioners for reservation and rotation of wards. It is stressed that due care has been taken to ensure that both the wards in an assembly constituency are not subjected to reservation in one election, which is the main objection of the petitioners.

(7) Along with the writ petition, an application being Cm 2590/94, seeking interim stay of the elections till the disposal of the writ petition was also filed. While dismissing the said application by a speaking order on 24 May 1994, we had indicated that in so far as the election for the first term is concerned, the question of rotation of seats reserved for the Scheduled Castes and women, as contemplated in sub-sections (6) and (8) of Section 3 of the Act, would not arise and, thereforee, we may not like to go into that question at this stage. On resumption of hearing after a short break, after hearing Mr. V.P.Chaudhry, Senior Advocate for the petitioners and Mr. R.P.Bansal, Senior Advocate for the respondents we expressed a prima facie view that after the amendment of the Act the notification in question should have been issued only for one term and we wanted to know from the respondents if the Notification already issued could be bifurcated and limited to the first term only. In response thereto, the respondents have placed before us a draft notification, indicating the manner of reservation of seats for various wards, applicable to the election for the first term only.

(8) Since Mr. Chaudhry, learned counsel for the petitioners was still not satisfied with the manner of reservation indicated in the said draft notification, we have heard both the learned counsel at length, who rightly restricted their arguments to the issue relating to the manner of reservation of seats in various wards.

(9) The main plank of Mr. Chaudhry's contention is that since the Election Commissioner has correctly proposed to reserve only one of the two wards of an assembly constituency and that too from amongst the even number of wards only,

it becomes important to know as to which of the two wards of an assembly constituency should be treated as first (having odd number) and which as second (having even number). His main objection to the new draft Notification is that no uniform principle has been applied to first determine which ward is to be treated as the first ward and which as the second in an assembly constituency. Mr. Chaudhry has been at pains to suggest that there is no difficulty in evolving a correct principle for the purpose either with reference to the polling station number or charge number and block number as given in the census book. Mr. Chaudhry has also submitted that there is no need for division of 134 wards in five groups as was done in the Notification dated 23 March 1994 and repeated in the proposed notification. On the other hand, Mr. Bansal, learned counsel for the respondents, while reiterating the aforementioned stand of the respondents has submitted that there being no challenge to the de-limitation directed by the Lt. Governor in terms of sub-clauses (a), (b) and (c) of Section 5 of the Act, in the aforenoted notifications issued on 20 December 1993 and 30 December 1993 the objection raised by the petitioners with regard to the manner of reservation is basically of academic interest particularly when the grievance of the petitioners about the reservation of both the wards in some assembly constituencies has been redressed.

(10) In order to appreciate the rival contentions it would be appropriate at this stage to notice relevant provisions of the Act on the basis whereof arguments have been addressed for and against the impugned notification. These are Sections 3 and 5, relevant portions whereof read as under:

'SECTION 3..... (6) Upon the completion of each census after the establishment of the Corporation the number of seats shall be on the basis of the population of Delhi as ascertained at that census and shall be determined by the Central Government by notification in, the Official Gazette and the number of seats to be reserved for the members of the Scheduled Castes shall, as nearly as may be, bear the same ratio to the total number of seats as the population of Scheduled Castes bears to the total population of Delhi; Provided that the total number of seats shall in no case be more than one hundred and thirty-four or less than eighty; Provided further that the determination of seats as aforesaid shall not

affect the then composition of the Corporation until the expiry of the duration of the Corporation; Provided also that for the first election to the Corporation to be held immediately after the commencement of the Delhi Municipal Corporation (Amendment) Act, 1993, the provisional population figures of Delhi as published in relation to 1991 census shall be deemed to be the population of Delhi as ascertained in that census; Provided also that seats reserved for Scheduled Castes may be allotted by rotation to different wards in such manner as the Central Government may, by order published in the Official Gazette direct. (7) Seats shall be reserved for women belonging to Scheduled Castes, from among the seats reserved for the Scheduled Castes, the number of such seats being determined by the Central Government by order published in the official Gazette which shall not be less than one-third of the total number of seats reserved for the Scheduled Castes. (8) Seats shall be reserved for women, the number of such seats being determined by order published in the Official Gazette by the Central Government which shall not be less than the one-third of total number of seats other than those reserved for the Scheduled Castes; Provided that such seats reserved for women shall be allotted by rotation to different wards in such manner as the Central Government may by order publish in the Official Gazette direct in this behalf.'

SECTION 5. Delimitation of wards - (1) For the purposes of election of councillors, Delhi shall be divided into single-member wards in such manner that the population of each of the wards shall, so far as practicable, be the same throughout Delhi. (2) The Central Government shall, by order in the Official Gazette, determine, - (a) the number of wards; (b) the extent of each ward; (c) the wards in which seats shall be reserved for the Scheduled Castes. (d) the wards in which seats shall be reserved for women; and (e) the manner in which seats shall be rotated under sub-sections (6) and (8) of section 3.'

From a bare reading of the above extracted Sections it is clear that upon the completion of each census after the establishment of the Corporation, the Central Government is obligated to determine the number of total seats, not exceeding 134, on the basis of the population of Delhi as ascertained at that census and also determine the number of seats to be reserved for the members of the Scheduled

Castes. Similarly it has to determine the seats to be reserved for women belonging to the Scheduled Castes from amongst the seats reserved for the Scheduled Castes as also the number of scats to be reserved for women in accordance with sub- sections (7) and (8) of Section 3. As noted above, there is no dispute with regard to the total number of seats and the reservation for Scheduled Castes, Scheduled Caste women and women in the general category. Similarly there is no challenge to the delimitation of wards notified by the Lt. Governor/Administrator vide Notifications dated 20 December 1993 and 30 December 1993. The only dispute is with regard to the manner of reservation of wards in terms of sub-clauses (c) and (d) of sub-section (2) of Section 5.

(11) As noted above, by determining the total number of seats; allocating 25 seats to members of the Scheduled Castes and out of the said 25 seats reserving 9 seats for women belonging to the Scheduled Castes; reserving 37 seats for .women; delimiting the wards and determining the extent of each ward, the respondents have complied with the basic requirements of Sections 3 & 5 of the Act. The respondents have explained the purpose behind division of 134 wards in five groups. They say that out of 32 wards each falling in first four groups, 16 wards have been taken out as not reserved; in remaining 16 wards in the said group, one seat is kept unreserved, 9 seats go for women and 6 seats go to the Scheduled Castes. In this manner in the four groups, 4 seats in general, 36 seats for women and 24 seats for scheduled Castes have been reserved. In the fifth group, the remaining reservation that is one for general, one for woman and one for Scheduled Caste has been given and in this way the Commission has spread over the reservation in a uniform way over all the seats in Delhi. No reservation for any group has been clubbed anywhere in the area. It is claimed that in case the wards are not divided in the above said manner there shall not be proper distribution of seats. It is also averred that the said grouping will also be helpful to give a uniform pattern for rotation of the seats in the elections for future terms, with which we are not presently concerned.

(12) As regards the manner of reservation, we have glanced through the draft notification and in our opinion the respondents have taken due care to see that only one of the two wards of each assembly constituency is reserved, which was

the main grievance of the petitioners. This is also borne out from the objections filed by the Janta Dal to the proposed Notification dated 8 October 1993. Indeed in their objections dated 17 November 1993 the only grievance made out was that in 8 assembly constituencies both the Corporation wards are reserved and in 14 assembly constituencies there is no reservation for any of the two Corporation wards., As is evident from the draft notification these objections have been given due regard and anomalies pointed out therein have been rectified in the draft notification. On our repeated pointed queries Mr. Chaudhry has not been able to point out as to how the manner of reservation as reflected in the new proposed notification would be prejudicial to the interests of the petitioners. He, however, insists that the respondents should indicate as to what principle has been adopted to treat a particular ward as the first ward and the other as the second ward.

(13) Learned counsel for the Election Commission has stated before us that every care has been taken to ensure that the reservation of seats is uniform and evenly spread over to all the wards and there is 170 concentration of reserved seats in a particular ward. It is pointed out that in the total number of 134 seats, out of every 5.36 seats I seat is a Scheduled Caste seat and out of every 3.6 seats, one is a women seat and to achieve equal and uniform distribution of reserved seats in the said ratio, a principle relating to linear progressive series of distribution of numbers in a chain had to be applied. It is further explained that for the purpose of an even and equal spread out of Scheduled Caste and Women Seats in each segment, a unit segment of 32 seats was identified and in each of these unit segments repetitively 6 Scheduled Caste seats and 9 Women seats were allocated. In case of Women seats the basis of 3-1-3-1-3-1-1-1-3-1-3-1-1-1-3-1-3-1 was adopted to take care of the fraction in the ratio, which fraction itself got converted into a whole number in case of Scheduled Caste seats. Since there are only 134 wards and the unit segment is of 32 seats, there are 4 complete unit segments and one incomplete unit segment of 6 seats.

(14) We are of the view that since no malafides on the part of the respondents have been pleaded or proved in adopting the stated method of reservation of seats, it is not for this Court to go into the minute details of the manner oi reservation particularly when the Court is neither conceived with any statutory

formula which had to be applied to test the correctness of the method adopted nor any precise fool proof mathematical formula can be spelt out for the said purpose. The method adopted for reservation of wards cannot be struck down merely because another method would be more fairer, scientific or logical. The court should interfere only if the impugned action is patently arbitrary, unconsciously unfair, discriminatory or malafide, which as already noted, is neither pleaded nor proved. In that view of the matter we do not find any ground to interfere. There is no merit in the petition and the same is accordingly dismissed. No costs.

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