

Devender Vs. Union of India (Uoi) Thru. Secy. Min. of Defence and ors.

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Court : Allahabad

Decided On : Jan-27-2010

Judge : Prakash Krishna and; Yogesh Chandra Gupta, JJ.

Appellant : Devender;dinesh Goel;praveen Kumar Balmiki

Respondent : Union of India (Uoi) Thru. Secy. Min. of Defence and ors.;union of India (Uoi) Min. of Defence and O

Advocate for Pet/Ap. : Sri. Anoop Trivedi

Judgement :

1. All these writ petitions were heard together and are being disposed of by a common judgment.
2. The argument was advanced with reference to the facts of the writ petition No. 27630 of 2008 and it was agreed by the learned Counsel for the parties that the judgment passed in the said writ petition will also cover the decision of the writ petition No. 7214 of 2008. None appeared to press the writ petition No. 3264 of 2008 even in the revised list. The said writ is, therefore, dismissed in default.
3. The facts of the case may be noticed in brief.
4. The Cantonment Board, Meerut is category -I Cantonment and is governed by the provisions of the Cantonments Act, 2006. Section 12 of the said Act provides the constitution of a Cantonment Board. It further provides that in Category I

Cantonments, the Board shall consist of the following members, namely:

(a) the Officer Commanding the station as ex officio or, if the Central Government so directs in respect of any cantonment, such other military officer as may be nominated in his place by the General Officer Commanding-in-Chief, the Command;

(b) the District Magistrate or an Executive Magistrate not below the rank of Additional District Magistrate nominated by him;

(c) the Chief Executive Officer;

(d) the Health Officer ex officio;

(e) the Executive Engineer ex officio;

(f) three military officers nominated by name by the Officer Commanding the station by order in writing;

(g) eight members elected under this Act.

5. The dispute in the present writ petition is confined with regard to the last Category of the members i.e. the elected members of the said Cantonment Board.

6. It was agreed by the learned Counsel for the parties that the term of the elected members expired sometimes in the year 2002. After the expiry of the aforesaid term, steps were being taken for the purposes of holding fresh election to elect the members of the Board. In this regard, a meeting of the President and the Executive Officer took place. It has been averred that in the said meeting, no nominee of the Central Government was present. However, it was not disputed by the petitioner that the Central Government had not nominated any member in this regard. The resolution passed in the said meeting was referred to the General Officer Commanding in Chief on Command who was the President. He in exercise of power conferred on him under Section 58(2) of the Act set aside the said resolution. The said order has been set aside by the Central Government vide its order dated 1st of May, 2008, a copy whereof has been filed along with the counter affidavit.

7. It may also be stated here that by the resolution was passed by the Board regarding the delimitation of wards for the purposes of holding the ensuing election. But the effect of the order passed by the Central Government on 1st of May, 2008 is to approve the delimitation as was proposed by the Board.

8. Challenging the aforesaid order and resolution, the present writ petition has been filed wherein the following reliefs have been claimed:

i) issue an appropriate writ, order or direction commanding the respondents to produce the entire record including the order dt.1.5.2008 and 6.5.2008 passed respectively by respondent Nos. 1 and 2 and thereupon to quash the orders dt.1.5.2008 and 6.5.2008.

ii) issue an appropriate writ, order or direction prohibiting the respondents from taking any action on the basis of the resolution No. 251 dt. 20.9.2007.

iii) issue an appropriate writ, order or direction quashing the resolution No. 251 dt.20.9.2007 as well as the notification dt.28.12.2007 passed by the respondent No. 1.

iv) issue any other and further appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

v) Award the cost of the petition to the petitioner.

9. In the counter affidavit, besides justifying the impugned order dated 1st of May, 2008 and the resolution of the Board, a preliminary objection has been raised with regard to the maintainability of the writ petition on the ground that in effect the petitioner is challenging the delimitation of the wards, as such no writ petition in this regard can be issued.

10. Heard Sri Shashi Nandan, learned senior counsel along with Sri Anoop Trivedi, learned Counsel for the petitioner and Sri Dr. Ashok Kumar Nigam, the Additional Solicitor General of India along with Sri Mohd. Isa Khan, the learned Counsel for the respondents.

11. Before proceeding further, it is also relevant to notice one fact. The present writ petition was filed in this Court during the summer vacation and an interim order dated 9.6.2008 was passed directing the parties to maintain status quo till the next date of listing i.e. 19.6.2008. It appears that the said interim order remained in operation. Being aggrieved by the said interim order, the respondents approached the Apex Court by way of Special Leave Petition. The Apex Court decided the said Special Leave Petition vide its judgment dated 23rd of November, 2009 with request to the Chief Justice of Allahabad High Court to take such other steps deemed necessary for expeditious disposal of the matter at least within a period of three months.

12. A query was put to the Learned Senior Counsel for the petitioner regarding the status of the petitioner to maintain the present writ petition. Sri Shashi Nandan, Learned Senior Counsel for the petitioner, submits that since the petitioner is a voter and intends to participate in the ensuing election, the petitioner has a right to maintain the present writ petition. He submits that the petitioner is not challenging the delimitation of the wards. We are not satisfied with the said reply. We are of the considered opinion that the petitioner has no locus standi to maintain the present writ petition, specially in view of the fact that the term of the elected members has expired long ago, as admitted by the petitioner, in the year 2002. In para 3 of the writ petition, the petitioner claims himself a resident of Meerut Cantonment and expresses his intent to contest the election of the post of member of Cantonment Board. The subsequent paragraphs of the writ petition do show that the petitioner intends to challenge the delimitation of wards and, in particular, the declaration of ward No. 6 as reserved seat for SC/ST caste vide para 17 of the writ petition.

13. In the writ petition there is no disclosure as to whether the petitioner is also resident of ward No. 6 or he intends to contest the election from the said ward. The learned senior counsel for the petitioner could not refer anything from the pleadings to show as to how the petitioner is entitled to maintain the present petition.

14. This being so, the petitioner has filed the writ petition with a view to stall the election process. He could not show as to how the petitioner is going to suffer in any manner if the election of the elected members takes steps.

15. Even otherwise also, we are of the opinion that the present writ petition is not maintainable and is nothing but an abuse of the process of the Court as by means of the present writ petition, the petitioner has sought to challenge the delimitation of the wards.

16. The contention of the petitioner is that reservation of ward No. 6 for Scheduled Caste purposes is not in accordance with the policy as was laid down by the Central Government. We were taken through the policy of the Central Government laid down through the letter dated 22.8.2007, paragraph No. 4 in particular. Annexure-3 to the writ petition goes to show that there are eight wards which have been proposed to be constituted by the Board. The learned senior counsel for the petitioner submits that as per the census of the year 2001, the population of the Schedule Caste in ward No. 8 being 27.55 per cent is maximum and therefore, the reservation of the ward No. 6 for Scheduled Caste candidate where the population has been shown as 9.33 per cent is palpably incorrect.

17. We have given a thoughtful consideration to the above submission of the petitioner. But it is difficult to agree with him. Dr. Ashok Nigam, learned Additional Solicitor General of India, rightly pointed out that the said delimitation of ward was only a proposal and while finalising the delimitation of wards, the blocks of the wards have been adjusted as per the aforesaid guideline. We were taken through the paragraph No. 12 of the counter affidavit as also C.A. 11 and C.A. 12 thereof. The ward-wise chart of population after adjusting the blocks shows that in ward No. 6 the total Scheduled Caste population is 1861 while in ward No. 8 the total Scheduled Caste population has been shown as 1192. These figures were not disputed and could not have been disputed by the petitioner in reply. This being so, it is but evident that the total number of the Scheduled Caste population in ward No. 6 is the maximum. Therefore, there is every justification for reserving the ward No. 6 for Scheduled Caste Category candidate. In this regard, paragraph 4 of the Circular dated 22nd of August, 2007 relied by both the counsel for the parties

is reproduced below:

While undertaking the exercise, CEOs may simultaneously be instructed to initiate exercise for determining the number of seats reserved for SC/Sts and their allotment among the proposed wards, in accordance with Rule 5 of CER 2007. The total SC/St population in the Cantonment, as per Census 2001 data, is already available with the Boards. This data would be used to determine the number of seats reserved for SC/STs as per their proportionate percentage defined in the 'First Schedule' of CER 2007. However, the allotment of these reserved seats among various wards would depend upon the SC/ST population in the proposed wards. Although the SC/ST population figures for the existing wards as per Census 2001 are available with the Boards, the same may not be forthcoming for the proposed wards. Wherever required, the SC/ST population figures in respect of individual blocks (created for the purpose of carrying) out Census 2001) may be obtained by the CEOs from the concerned Directorates of Census operations in the State. The block-wise figures may be used to determine the total SC/ST population of each ward. Accordingly, the seats reserved for SC/ST may be allotted to the wards having highest population of SC/STs, as stipulated under Rule 5(2) of CER, 2007. It has already been clarified in para 3 above that while preparing the draft plan for division of Cantonment into Wards, the proposed wards need to be so aligned that individual blocks completely fit in the proposed wards and do not get divided between different wards.

18. Indisputably, the aforesaid guideline has made the necessary provision for transferring the entire block of SC/ST population in one ward. It shows that the block-wise figures may be used to determine the total SC/ST population of each ward. Accordingly, it says that the seats reserved for SC/ST may be allotted to the wards having highest population of SC/ST as stipulated under Rule 5 (2) of CER, 2007.

19. This being so, we do not find any error or even irregularity in the order of the Central Government dated 1st of May, 2008 holding that the Cantonment Board has rightly resolved for reservation of ward No. 6 for SC/ST. On merit also, therefore, we do not find any substance in the submission of the petitioner.

20. Besides above, by means of the present writ petition, the petitioner in substance has sought to challenge the delimitation of wards. The learned senior counsel for the petitioner submits that the petitioner is challenging the resolution of the Board who by the said resolution resolved to reserve the ward No. 6 for SC/St caste. In effect, it follows that the petitioner is challenging the delimitation of wards and as such, no writ can be issued for the aforesaid purpose.

21. The learned senior counsel for the respondents has placed reliance upon a recent judgment of the Apex Court in the case of Association of Resident of Mhow (ROM) and Anr. v. The Delimitation Commission of India and Ors. : JT 2009 (5) SC 69. The aforesaid submission of the respondents is well-founded and needs no authority. Even the said proposition was not disputed by the learned senior counsel for the petitioner.

22. No other point was pressed by the petitioner.

23. Viewed as above, we do not find any merit in the writ petition. The writ petition Nos. 27630 of 2008 and 7214 of 2008 are dismissed with costs of Rs. 10,000/- (Rupees Ten Thousand) each, payable by the writ petitioners to the respondent No. 3 therein.

24. The writ petition No. 3264 of 2008 is dismissed in default.

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