

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1491 OF 2015

Vinod s/o Vitthalrao Sonwane

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr.Vishnu B. Madan, advocate for the petitioner
Mr.S.K.Kadam, A.G.P. for Respondent No.1.
Mr.S.T.Shelke, advocate for Respondent No.2.
Mr.A.M.Karad, advocate for Respondent No.3.

WITH
WRIT PETITION NO.1492 OF 2015

Sachin s/o Asaram Gangawane

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr.D.P.Palodkar, advocate for the petitioner
Mr.S.K.Kadam, A.G.P. for Respondents No.1.
Mr.S.T.Shelke, advocate for Respondent No.2.
Mr.A.M.Karad, advocate for Respondents No.3 & 4.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 06th February, 2015

PER COURT:

1 The petitioners, in both these petitions, are objecting to the notification issued on 03.02.2015 by the Commissioner, Municipal Corporation, Aurangabad, in respect of draw of lots for prescribing reservation as well as relating to draft declaration of

formation of lots.

2 Learned Counsel appearing for respective petitioners contend that unless wards are formed and boundaries are specified, it would not be permissible for the Election Commission to prescribe reservation. It is contended that rotation of reservation will have to be made only after formation of wards. It is also contended that division of corporation area into different wards shall be as per the population figures declared in accordance with the last Census and unless number of wards and their boundaries are specified, it is impermissible for the Election Commission to draw lots in respect of reservation of wards.

3 Learned Counsel appearing for the Election Commission, on instructions, states that the whole exercise undertaken in pursuance to the notification under challenge is provisional one and the final declaration in respect of formation of wards and prescription of reservation would be published in the Official Gazette only after consideration of objections by the concerned objectors. Reliance is placed on the judgment in the matter of **Narendra Sacchidanand Kulkarni Vs. State of Maharashtra & others**, reported in 2009 (2) MhLJ 689. The Division Bench of this Court, while dealing with an identical issue, has observed in paragraphs 9 and 10 of the judgment, as quoted below:

“9 We now consider the true import of section 5-A of the Act. Section 5-A(1)(a) mandates that the Election Commission shall reserve seats for the categories set out therein. Sub-clause (b) sets out that reservation is to be

done as nearly as may be in the same proportion to the seats to be filled in by direct election in the Corporation as the population of the Scheduled Castes or, as the case may be, the Scheduled Tribes in that Corporation area, bears to the total population of that area and such seats shall be allotted by rotation to different electoral wards in a Corporation. It is thus clear that reservation is based upon the population of the respective category of voters in that particular ward and which thereafter are to be rotated. Sub-section (3) of section 5 sets out that the State Election Commissioner must specify the number and boundaries of the wards into which the City shall be divided for the purpose of the ward election of Councillors. The exercise, therefore, for formation of the ward and also provision for reservation is the power conferred on the Election Commission.

Does the section contemplate that the wards have to be first formed and notified and only thereafter reservation has to be done. The reservation of seats is based on the population which is normally based on the electoral roll prepared by the Election Commission of India. The wards though geographical have also been notified by the State Election. The section also provides for the number of Councillors in each council and depending upon the population, additional number of Councillors. In other wards, as far as possible the area of the ward will provides for more than one Councillor from one ward based on the number of seats to be provisionally in that ward. In the instant case, we are not confronted with that situation as provisionally the City has been divided into 65 wards as per draft notification and also the reserved seats are set out.

10 In our opinion, on plain reading of sections 5 and 5(3) of the Act, we have absolutely no doubt in our mind that both the formation of wards and reservation can be done

simultaneously and the Act does not prohibit such an exercise. The provisional formation of wards and reservation is again subject to the objections that may be made before the wards are finally notified. The submission, therefore, made on behalf of the petitioner that reservation can only be subsequent to the formation of the wards, in our opinion, is misplaced. The population of the area would be known based on the census figures and other material including the electoral roll. Similarly, the population of the reserved categories would also be available. What the Election Commission therefore does is to notify the draft wards and draft reservation based on the material which will only be finalized after objections filed are considered. The exercise of power and formation of opinion in the matter of forming wards or provisions for reservation is based on the material available to the Election Commission.”

4 In view of the law laid down by the Division Bench of this Court, as referred to above and in view of the statement made by the learned Counsel appearing for Election Commission, that the exercise undertaken in pursuance to the notification is provisional one and is subject to finalisation after consideration of objections, grievance raised by the petitioners, in these petitions, stands redressed.

5 Both the writ petitions accordingly stand disposed of.

P.R.BORA
JUDGE

adb/wp149115

R.M.BORDE
JUDGE