

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1788 OF 2015

(Vijay Mahadeo Khobragade & others Vs. State Election Commission of Maharashtra & others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M. V. Samarth, Advocate for the petitioners.
Shri J. B. Kasat, Advocate for respondent No.1.
A. G. P. for respondents No. 2 to 4.

CORAM : B. P. DHARMADHIKARI
AND S. B. SHUKRE, JJ.
DATED : 21 APRIL, 2015

1. Heard Shri Samarth, learned Counsel for the petitioner, learned A.G.P. for respondents No. 2 to 4 and Shri Kasat, learned Counsel for respondent No.1.
2. Respondent No.1 has tendered additional affidavit dated 20/4/2015 in terms of orders of this Court dated 16/4/2015.
3. Advocate Shri Samarth has submitted that here joint publication of a draft showing ward formation and reservation therein is vitiated in as much as, as per law, there has to be determination of boundaries of wards first. The population of a particular ward can be finalized only thereafter and in the light of such population then reservation can be fastened. He has submitted that in the present case, the boundaries of wards, i.e. electoral divisions and electoral colleges for Bhandara and Gondia Zilla

Parishads and Panchayat Samittees are bound to be affected on larger scale because of constitution of separate Nagar Panchayats. He points out that within Bhandara district, Nagar Panchayats have been constituted for Lakhandur, Mohadi, Sakoli and Lakhni while at Gondia district, Nagar Panchayats have come up at Salekasa, Sadak-Arjuni, Goregaon, Deori and Amgaon. Because of constitution of these Nagar Panchayats, the area earlier falling under the respective Zilla Parishads will be excluded and this may result in reduction of area of electoral divisions or colleges and it may lead to creation of new electoral divisions. However, unless and until the exact area of such electoral division or college becomes known and its population is within the knowledge of person who is entitled to raise objection, reservation cannot be worked out. He has also invited attention to impugned communication whereby this exercise is being undertaken jointly. He submits that though in some cases such joint exercise may not have been objected to, as law does not permit it, the said joint exercise as undertaken on 25/3/2015 be set aside. He submits that the programme may continue further only for the purposes of determination of boundaries of electoral divisions or electoral colleges and thereafter a separate programme to determine

the reservation or roaster can be undertaken.

4. Learned A.G.P. as also Advocate Shri Kasat are strongly opposing the petition. Advocate Shri Kasat submits that the exercise has been taken jointly and independently, no prejudice is complained of so far. He has also relied upon a Division Bench Judgment of this Court delivered on 21/8/2008 in Writ Petition No. 3648 of 2008 at Aurangabad to urge that challenge to such joint exercise is already negated by this Court.

5. Inviting attention to orders of this Court dated 16/4/2015, Advocate Shri Kasat reads out additional affidavit filed today to demonstrate that in past and also after the guidelines/order of Election Commission dated 04/10/2011 the process has remained same. He wanted to go through the objections received to show that the citizens have raised objection not only to area of proposed electoral division/college but also to reservation.

6. Advocate Shri Samarth has pointed out that nature of objection being raised in terms of impugned notification cannot be decisive. According to him, the reservation is subsequent exercise and is dependent upon formation of electoral college or electoral division. He contends that as contemplated by the guidelines, particularly

Clause-10 thereof, map showing the boundaries of proposed electoral college/division was not published at any point of time.

7. Advocate Shri Kasat points out that not publishing of a map is not the plea raised in the present petition. He, however, submits that in reply affidavit respondent No.1 has pointed out due compliance also with the said condition.

8. The Division Bench of this Court in Judgment dated 21/8/2008 in Writ Petition No. 3648 of 2008 specifically considered this stand only. The contention has been negated and Division Bench has found that there is no wrong in simultaneous consideration of formation of electoral division/college as also reservation.

9. This Court has on 16/4/2015, after hearing respective Counsel, passed following orders.:

“ Matter was heard for some time yesterday and today also. The respondents relied upon a Division Bench judgment of this Court dated 21/8/2008 in Writ Petition No. 3648 of 2008 to show that simultaneous exercise of publication of draft of electoral divisions/electoral colleges and proposed reservation therein as also finalization thereof is legally permissible.

Advocate Shri Samarth submits that said judgment considers position prevailing prior to the guidelines/orders of State Election Commission dated 04/10/2011. As per those orders, essentially initially the electoral divisions and

colleges must be finally determined to arrive at exact population of backward communities therein. Depending upon that population and as specified in that order, reservation can be applied thereafter. He contends that simultaneous exercise is contrary to the orders of Election Commission dated 04/10/2011.

Advocate Shri Kasat submits that order dated 04/10/2011 does not make any departure from previous practice and same practice as has been noted in the judgment (supra) is being followed even thereafter. He is seeking time till 21/4/2015 to further assist the Court in this regard.

Time granted as last chance.

S. O. to 21/4/2015.”

In the light of that order, an affidavit has been filed by respondent No.1. As per that affidavit, the very same process is being followed even after 04/10/2011.

10. Perusal of impugned notification dated 25/3/2015 shows that after publication of draft of formation of electoral division/college, on 08/4/2015 objections were to be taken till 17/4/2015. Respondent No.1 has pointed out that on 08/4/2015 along with proposed electoral division/college, the proposed reservation was also published and objections were invited. The objections are to be considered till 27/4/2015.

11. This Court has already found joint exercise as legal and valid. The arguments advanced before us are not

sufficient to enable us to take a different view.

12. However, in peculiar facts pressed into service by Advocate Shri Samarth namely formation of about 7 to 8 Nagar Panchayats within the limits of respective Zilla Parishad, if any unforeseen prejudice is caused to the petitioners or then whether the process of formation of electoral division/college and stipulation of reservation therein is adversely affected or not, are the disputed questions. As the hearing is yet to begin and the final declaration regarding formation of electoral division/college or roaster is to be made on 29/4/2015, at this stage, it will be premature for us to consider said aspect.

13. In this situation, leaving said contention open, we dispose of the present petition. No costs.

JUDGE

JUDGE