

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

WRIT PETITION NO. 5905 /2014

(Sudhir Tukaramji Nagot and another vs. State Election Commission ,
Maharashtra State and others)

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

Court's or Judge's order

Mr. N.A.Gawande, Adv. for petitioners
Mr. J.B .Kasat, Adv. for Respondent No.1
Mr N.S.Rao, Assistant Govt. Pleader for Respondents 2 & 3
Mr. R.Suryawanshi, Adv. for Respondent No.4

CORAM : SMT.VASANTI A. NAIK &
A.M.BADAR, JJ.

DATED : 26th March, 2015.

Heard.

By this petition, the petitioners impugn the final notification dated 31.7.2014 published by the State Election Commission allotting the sole post reserved for the Scheduled Tribes to women.

According to the petitioners, 17 members could be elected in the general elections to Gram Panchayat Shirajgaon Kasba to be held in April/May 2015. The Respondent no.2 Collector published the notification under Rule 5(2) of the Bombay Village Panchayats (Number of Members, Divisions into Wards and Reservation of Seats) Rules, 1966. According to the said notification, the sole seat reserved for Scheduled Tribes category, was allotted for the women. The petitioners filed an objection to the reservation of the Scheduled Tribes seat for women but, by overruling the objection of the petitioners, by the final notification

published by the respondent no.2, the sole Scheduled Tribes post was retained for women. According to the petitioners, though the provisions of Section 10(2) of the Maharashtra Village Panchayats Act were amended in the year 2011 and 50 % of the total number of seats in the Panchayats were reserved for women, the seats were required to be rotated as per the provisions of Rule 4-B (3) of the Rules of 1966. It is the case of the petitioners that the only seat earmarked for the Scheduled Tribes was reserved for woman in the last election to the Gram Panchayat in the year 2010 and in view of Sub-Rule (3) of Rule 4-B, the same could not have been again reserved for women in this election, in contravention to the provisions of Sub-Rule (3). It is stated that in view of the reservation of the sole Scheduled Tribes seat for women in both the elections, the petitioners, who were desirous of contesting the election on the Scheduled Tribes reserved seat, were prevented from contesting the elections.

The respondent nos. 2 and 3 have filed an affidavit-in-reply and it is stated therein that in view of the reservation of 50% of the total seats for women, it was necessary to earmark the only seat from the Scheduled Tribes category for women. It is stated that the issuance of the notification under Rule 5 (1) and 5(2) of the Rules of 1966 is based on the directives of the State Election Commission, dated 16.5.2011 which provide that the present election should be considered to be the first election reserving 50% of the seats for women in terms of the amendment to the provisions of Section 10(2) in the year 2011. It is stated on behalf of the respondents 2 and 3 that since this election is considered to be the first election, the only seat from the Scheduled Tribes category is earmarked for women and, as a consequence thereof, during the next elections, the seat would not be reserved for women.

It is submitted on behalf of the State Election Commission that the issuance of the final notification is in consonance with the directives of the State Election Commission, dated 16.5.2011, which have not been challenged by the petitioners in the instant case. It is stated that as per the directives dated 16.5.2011, the present election is to be considered as the first election, after the amendment to the provisions of Section 10(2) of the Act. It is stated that if the sole post for the Scheduled Tribes is not reserved for woman, it would not be possible to properly chalk out the reservation of the seats. It is stated that the reliance by the petitioners on the provisions of Rule 4-B (3) is misplaced as in view of the amended provisions of Section 10(2), earmarking 50% of the seats for women, the provisions of sub-rule (3) of Rule 4-B have been made unworkable. It is stated that when there is a conflict between the provisions of the Act and the Rules, the provisions of the Act would prevail.

It appears on hearing the learned counsel for the parties that the relief sought by the petitioners in the instant petition cannot be granted, as it cannot be held in the circumstances of the case, that the respondent no.2 was not justified in issuing the final notification dated 31.7.2014, earmarking the sole post reserved for the Scheduled Tribes, as a seat only for woman. The provisions of Section 10(2) of the Act have been amended in the year 2011 thereby increasing the reservation for women from 33% to 50%. The provisions of Rule 4B(3) were drafted after considering the reservation for women to be 33% and hence when one seat is reserved either for the Scheduled Caste, Scheduled Tribes or any other category of Backward classes, the seat was liable to be allotted to woman by drawing lots once in three consecutive elections, commencing from the first election to be held after the commencement of the Amendment Act of 1994. After the amendment to the provisions of Section 10(2) of the Act in 2011,

the provisions of Rule 4B (3) have been rendered unworkable. Now, there is no question of drawing of lots once in three consecutive elections for earmarking or allotting the seat for women as the reservation has been enhanced from 33% to 50%. Since the reservation is increased from 33 % to 50% in 2011 i.e. after the 2010 elections, the Election Commission rightly directed that the present election should be considered to be the first election after the increase in the percentage of the reservation for the women from 33 % to 50%. The amendment to the provisions of Section 10(2) of the Act has made the provisions of Section 4B (3) otiose. It is rightly submitted on behalf of the State Election Commission that sub-rule (3) of Rule 4B needs to be ignored as after the amendment of the provisions of Section 10(2), the same has been made unworkable and when there is a conflict between the provisions of the Act and the Rules, the provisions of the Act would prevail. We find that out of 17 seats, 9 seats are reserved for woman and it would not be possible to chalk out the reservation of seats if the single post reserved for the Scheduled Tribes is not allotted to women in this election by considering this election to be the first election after the 2011 amendment to Sec.10(2). The petitioners may be entitled to contest the election on the post earmarked for the Scheduled Tribes, in the next election, if they so desire.

In the result, the Writ Petition fails and is dismissed, with no order as to costs.

JUDGE

JUDGE

sa hase