

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03..12..2015

(Reserved on : 25.11..2015)
(Delivered on : 03..12..2015)

C O R A M

The Honourable Mr. SANJAY KISHAN KAUL, CHIEF JUSTICE
and
The Honourable Mrs. Justice PUSHPA SATHYANARAYANA

Writ Petition No.28189 of 2012

S. Karuppiah,
Founder of Central & State Government
Scheduled Castes and Scheduled Tribes
Employees' Federation,
No.1-A, Bharathi Nagar,
Main Road, Perunkalathur,
Chennai-600 048. ... Petitioner

Versus

1. The Government of Tamil Nadu,
Rep. by Chief Secretary,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Secretary for Co-operation,
Food and Consumer Protection Department,
Secretariat, Fort St. George,
Chennai-600 009. ... Respondents

Prayer : Petition filed under Article 226 of the
Constitution of India praying for a Writ of Mandamus
for the relief as stated within.

For Petitioner : Mr. P. Vijendran

For Respondents : Mr. A.L. Somayaji, Advocate General
Assisted by Mr. S.T.S. Murthy,
Government Pleader (For R-1)

Mr. L.P. Shanmugasundaram,
Spl. Govt. Pleader (Co-op.) (For R-2)

O R D E R

The Honourable the Chief Justice

The petitioner claims to be the Founder of the Central and State Government Scheduled Castes and Scheduled Tribes Employees' Federation. He seeks to file the present Public Interest Litigation making a prayer for issuance of a writ of mandamus to direct the respondents to implement the reservation policy in the then forthcoming co-operative societies elections on rotation basis on par with Parliamentary and State Legislative Assembly Elections, in order to achieve the goal of the Constitution of India.

2. The petitioner claims that since the social system in our country is ailed by the caste system, the Constitution makers envisaged reservation system. In the year 1992, by the 73rd Amendment to the Constitution, Parts IX, IXA and Articles 243 to 243-ZG were inserted. Article 243(T) dealt with reservation in Municipalities. However, insofar as co-operative societies functioning in the State like housing societies, agricultural, milk producing societies and agricultural co-operative societies etc. are concerned, there is absence of such mandate and thus, the petitioner's Federation passed resolutions seeking to implement reservation in co-operative societies elections in the year 2011, which was sent to the State Government, but to no avail.

3. It is further pleaded that by the 97th Amendment to the Constitution of India effective from 15.2.2012, Part IX-B has been inserted and Articles 243-ZH to 243-ZT. However, these provisions did not provide for any reservation for the post of President of a Co-operative Society. The claim is that though the State could have done it, it will not do it. No Scheduled Caste person is stated to have been the President of a Co-operative Society, since the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as the Act) was enacted and no members from the said community would be able to become the President in a single society unless reservation on rotation is provided on par with the General Elections.

4. The respondents have opposed the petition by filing a counter affidavit. It has been averred that the petitioner has no legal, statutory or constitutional right to claim the reservation for the post of President in the co-operative societies for any section of the society. However, Article 243-ZJ of the Constitution of India has the second proviso requiring the Legislature of a State, by law, to provide for reservation

of one seat for the Scheduled Castes or Scheduled Tribes and two seats for women on the Board of every Co-operative Society. The relevant provision reads as under :-

"243-ZJ. Number and term of members of board and its office bearers.--(1) The board shall consist of such number of directors as may be provided by the Legislature of a State, by law :

Provided that the maximum number of directors of a co-operative society shall not exceed twenty-one;

Provided further that the Legislature of a State shall, by law, provide for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on board of every co-operative society consisting of individuals as members and having members from such class or category of persons.

..."

5. The aforesaid does not provide for any reservation to the post of President of a co-operative society. This is contrary to the position in Part IX-A dealing with Municipalities, where Clause 4 of Article 243-T provides that the offices of Chairpersons in the Municipalities shall be reserved for Scheduled Castes, Scheduled Tribes and women in such a manner as the Legislature of a State may, by law, provide. The said Article reads as under :-

"243-T. Reservation of seats.--(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every

Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens."

6. In the subsequent amendment to the Constitution of India by insertion of Part IX-B in the year 2011, no such provision has been incorporated, which is an aspect in the wisdom of the Parliament. The submission, thus, is that unless there is such a provision in the Constitution, the petitioner cannot presume that such a reservation must exist for the post of President of a co-operative society.

7. The Government of Tamil Nadu is stated to have amended various provisions of the said Act vide the Tamil Nadu Ordinance No.1 of 2013 published in the Government Gazette on 21.1.2013 in order to bring them in conformity with the mandate of the Constitution of India as amended by the said Act. Thus, the first proviso to sub-section (1) and sub-section (2)(a) of Section 33 of the said Act post the amendment, 18% of the elected members of the Board have to be from the Scheduled Castes and Scheduled Tribes. The relevant provisions, i.e. first proviso to sub-section (1) and sub-section (2)(a) of Section 33 of the Act read as under :-

"Provided that of the members to be elected to the board of every registered society, there shall be thirty per cent reservation for women and eighteen per cent reservation for Scheduled Castes and Scheduled Tribes."

"(2) Notwithstanding anything contained in clause (a) of sub-section (1), but subject to sub-section (3), in the case of every Scheduled Co-operative Society, the board shall consist of -

(a) Such number of members elected from such area or from such class or category of

registered societies as may be prescribed, of whom eighteen percent shall be elected from members of Scheduled Castes and Scheduled Tribes and thirty percent shall be elected from women, as provided in the first proviso to sub-section (1)."

8. In paragraph 16 of the counter affidavit, it is specifically averred that as per Article 19(1)(c) of the Constitution of India as amended by the 97th Amendment Act, 2011, the right to form a co-operative society has become a fundamental right, which would include the other rights incidental to the formation of a society, including the right to become a Member of the Board or the President of the Board and thus, any provision as stated by the petitioner infringing the right to become the President would be arbitrary and unconstitutional and against the mandate of Article 14 of the Constitution of India. Further, there is no restriction on any member from the Scheduled Castes or Scheduled Tribes from being a President of a co-operative society.

9. We may notice that in the aforesaid behalf, learned Advocate General had produced data of the Tamil Nadu State Co-operative Societies Election Commission, setting out the status as on 1.8.2015. This data shows that there were 25,603 Societies in existence in the State of Tamil Nadu as on the said date, and the number of Board of Directors elected from the Scheduled Castes/ Scheduled Tribes community was 33,761 out of the total elected members of 2,32,642. The women were numbering 64,849. What is most relevant is that in these societies, members of the Scheduled Castes/Scheduled Tribes community who have been elected as Presidents is 1,545 and as Vice Presidents is 1,984. This data has been shown in order to rebut the apprehensions of the petitioner, which are based on surmises and conjectures as it is different from the ground reality which came into being.

10. Insofar as the legal pleas are concerned, learned counsel for the petitioner relied upon the judgment of the Supreme Court in Vipulbhai M. Chaudhary vs. Gujarat Co-operative Milk Marketing Federation Ltd., (2015) 8 S.C.C. 1, to canvass the position that where a statute is silent, then the court could step in to declare the constitutional mandate. In the facts of that case, the Gujarat Co-operative Societies Act, Rules and Bye-laws did not provide for a No Confidence Motion and it is in view thereof that the Court had stepped in to say that such a right of no confidence motion would exist. The relevant portion of the judgment is extracted herunder :-

"24. No doubt, in the cases referred to above, the respective Acts contained a provision regarding no confidence. What about a situation where there is no express provision regarding no confidence? Once the cooperative society is conferred a constitutional status, it should rise to the constitutional aspirations as a democratic institution. So, it is for the respective legislative bodies to ensure that there is democratic functioning. When the Constitution is eloquent, the laws made thereunder cannot be silent. If the statute is silent or imprecise on the requirements under the Constitution, it is for the court to read the constitutional mandate into the provisions concerned and declare it accordingly. Article 243ZT has given a period of one year to frame/reframe the statutes in consonance with Part IXB and thereafter, i.e., with effect from 12.01.2013, those provisions which are inconsistent with Part IXB, cease to operate."

11. A reference was made to the judgment in D. Pothumallee & Others vs. The District Collector, The Project for Children Development and V. Thentral & Others, 2010 (5) M.L.J. 46, where in respect of Anganwadi workers employed by the Government, reservation provisions were made through judicial pronouncement, which was followed by the State Government, accepting the judgment.

12. A reference has also been made to the judgment of the Supreme Court in Vishaka vs. State of Rajasthan, (1997) 6 S.C.C. 241, more specifically paragraphs 8 and 11, which are reproduced hereunder :-

"8. Thus, the power of this Court under Article 32 for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the working women from sexual harassment and to make their fundamental rights meaningful. Governance of the society by the rule of law mandates this requirement as a logical concomitant of the constitutional scheme. The exercise performed by the Court in this matter is with this common perception shared with the learned Solicitor General and other members of the Bar who rendered valuable assistance in the performance of this difficult task in public interest."

"11. The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the

Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are :

"Objectives of the Judiciary

10. The objectives and functions of the judiciary include the following :

(a) to ensure that all persons are able to live securely under the Rule of Law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) to administer the law impartially among persons and between persons and the State."

13. On the other hand, learned Advocate General submitted that the necessary provisions to carry out the mandate of the Constitution as per the amendments have already been made in the said Act by stipulating the provisions in Section 33 of the Act. The contention is that the prayer has been made for amendment as if a reservation policy for the post of President/Chairperson exists, which is required to be implemented. This is contrary to the existing position.

14. Learned Advocate General, while referring to the judgments cited by the learned counsel for the petitioner, pointed out that the facts in the Gujarat Co-operative case (supra) were different as the court therein was dealing with a no confidence motion and not reservation. Incidentally, Rule 61 of the Tamil Nadu Rules under the said Act provides for a no confidence motion and thus, the factual situation of that judgment does not exist in respect of the Act and the Rules in the present case. Insofar as the judgment relating to Anganwadi workers is concerned, it was submitted that once Government employment is given, naturally reservation should apply. The case of Vishaka was stated to be quite different as that was an arrangement made pending legislation, there being a vacuum.

15. To substantiate his plea, learned Advocate General referred to the judgment of the Supreme Court in Jyoti Basu vs. Debi Ghosal, (1982) 1 S.C.C. 691, wherein it was held that the right to elect, to be elected and to dispute an election are

neither fundamental rights nor common law rights, but are simply statutory rights and are subject to statutory limitations.

16. We may note that in the rejoinder filed, the learned counsel for the petitioner sought to advance a new plea in respect of the requirement of consultation with the National Commission for Scheduled Castes/Scheduled Tribes as contained in Article 338(9) of the Constitution of India in policy matters affecting Scheduled Castes and Scheduled Tribes, alleging that no such consultation was held, but on being asked to point out the averments and the plea, learned counsel conceded that there was neither such plea raised nor any averment was made about such facts.

17. Having given our thought to the matter, we find really no merit in the petition. The Parliament enacts the law. The Court interprets the law. The Parliament in its wisdom provided for in the 73rd Amendment, while dealing with Part IX-A of the Municipalities, such kind of reservation by rotation even for Chairpersons. However, while making the subsequent amendment by the 97th Amendment in the year 2011 in respect of Part IX-B dealing with Co-operative Societies, reservation has been provided for membership of the Board and not for the post of a President. This Court cannot step in and assume the role of the Parliament to in fact amend the Constitution of India Part IX-B, which would be the logical consequence, were the plea of the petitioner to be accepted. This is the role exclusively of the Parliament and this is not a matter where the Court can step in to fill in, what the petitioner claims to be, a lacuna or a gap. In fact, there is no such lacuna, and the reason for the constitutional amendment to be so worded possibly arises from what is set out in paragraph 16 of counter affidavit, as it may infringe the right of other members to be President of the Co-operative Society.

18. Learned Advocate General is right in contending that the nature of the relief claimed in the petition is based on a premise as if a reservation exists and which is not being implemented, while the body of the petition refers to the absence of such reservation on a rotation basis for the post of a President.

19. The judgments referred to by the learned counsel for the petitioner have been rightly distinguished as a no confidence motion in case of an elected body like the co-operative society not having been provided for, the Supreme Court stepped in, and incidentally such a factual situation does not even exist in the Act and the Rules now under question, where there is such a provision. The reservation for Anganwadi

workers was based on the principle of Government employment, where there is a constitutional mandate for reservation. Again, the judgment in Vishaka's case arose in a scenario where a vacuum in the absence of legislation was sought to be filled in.

20. On the factual contours also, on the basis of the data produced, the apprehensions of the petitioner are really without any basis as the numbers of elected Presidents and Vice Presidents from the Scheduled Castes/Scheduled Tribes community are 1,545 and 1,984 respectively. Thus, the very premise that none from this community would ever become President of a Co-operative Society is completely belied.

21. In the pleadings, there are some allegations which are best left unsaid as they seek to cast aspersions on MPs, MLAs, bureaucrats etc. who have been titled as "upper caste high brass officers". Greater care would have certainly required to be taken in the pleadings, especially when they are vetted by an advocate.

22. In view of the aforesaid discussion, we find the writ petition completely devoid of any merit and accordingly, we dismiss the same, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary to Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Secretary for Co-operation,
Food and Consumer Protection Department,
Secretariat, Fort St. George,
Chennai-600 009.

+1 cc to M/s.P.Vijendran, Advocate, sr.65582
+1 cc to The Government Pleader, sr.65575

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