

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.37903 OF 2018

DATED :22.11.2018

Between :

Telangana State Election Commission,
1st Floor, DTCP Building, Opp : PTI Building,
A.C.Guards, Hyderabad- 500 004,
Rep., by its Secretary.

.. Petitioner

And

State of Telangana,
Rep., by its Principal Secretary to
Government of Telangana,
Panchayat Raj & Rural Development Department,
Secretariat, Hyderabad & another.

.. Respondents



This court made the following :

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ORDER :

Heard learned counsel for the petitioner and learned Special Government pleader for learned Government Pleader for Panchayat Raj for respondents.

2. The State Election Commission, filed this writ petition praying to direct the respondent-State Government to finalize the reservation of seats in terms of Telangana Panchayat Raj Act, 2018 (Act No.5 of 2018) keeping in view of the interim order of this Court in writ petition within the stipulated time, to enable the State Election Commission to discharge its function for conduct of elections to the Gram Panchayats without loss of further time.

3. Though there is no mention of writ petition number, learned Special Government Pleader, circulated copy of the order of Division Bench made in I.A.No.2 of 2018 in W.P.No.21651 of 2018. The order reads as under :

“1. We have heard the learned counsel for the petitioner and the learned Special Government Pleader for Panchayat Raj and Rural Development for respondent Nos.1 and 2.

2. The fundamental issue raised in this writ petition is regarding the reservation of seats in the Grampanchayats and other local bodies which we hereinafter refer to as Local Self Government Institutions (‘LSGI’, for short). The fundamental contention of the petitioner is that the reservation is in excess of 50% which could not have been made in any LSGI, in the light of the Constitution Bench decision of the Apex Court in K.Krishna Murthy V. Union of India [(2010) 7 SCC 202].

3. *The learned counsel for the petitioner making reference to the said precedent argued for the position that it amounts to law laid by the Apex Court.*

4. *The learned Special Government Pleader very persuasively submits that in the existing scenario, the State Government is required to undertake a drill of re-considering some other provisions of the relevant statutes, particularly, in the light of some of the interlocutory orders in writ jurisdiction. He further submitted that the population ratio in the State of Telangana would show that there is a large OBC population and such outweighing factor ought to be decisive.*

5. *The matters pending in writ jurisdiction, which have been referred to by the learned Special Government Pleader, relate to aspects touching the quota or the percentage that could be earmarked or reserved for certain categories in terms of the State Law.*

6. *However, we are of the view that the law laid by the Apex Court is clear and categorical to the effect that the upper ceiling of 50% vertical reservations in favour of SCs/STs/OBs should not be breached in the context of Local Self-Government. Exceptions can be made only in order to safeguard the interests of the Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas. This is one of the specific enumerated conclusions rendered by the Constitution Bench after stating to the said effect in paragraph 64 at Page No.227 of the judgment in K.Krishna Murthy (supra), wherein the Apex Court had clearly taken the view that there cannot be any vertical reservation in excess of what has been noted above. It is also to be noted that K.Krishna Murthy (supra) was decided making specific reference to the Constituion (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992 and the Statements of Objects and Reasons of those Amending Acts.*

7. *Considering the submission of the learned Special Government Pleader on the basis of the OBC population in the State of Telangana, we are of the view that the only exception granted by the Apex Court through the directions issued in K.Krishna Murthy (supra) is only as regards Scheduled Tribes in Scheduled Areas. Therefore, we do not find our way to accept the submission of the learned Special Government Pleader at this point of time.*

8. *For the aforesaid reasons, there will be an interim order that the upper ceiling limit of vertical reservations in favour of SCs/STs/OBs should not be breached in the context of the Local Self-Government in the State of Telangana, subject of course to the*

exception that safeguards could be made to protect the interests of the Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas. It is so directed. This interlocutory order is issued without prejudice to the eligibility of the respondents to place their pleadings on record in respect of all reliefs sought for in this writ petition.”

4. However, W.P.No.27036 of 2018 & batch are filed challenging the appointment of Special Officers and not holding elections to the Gram Panchayats. The said writ petitions were heard and disposed by the learned Single Judge of this Court on 11.10.2018.

5. In Paragraph No.130 (f) of the said order, learned Single Judge directed completion of the entire exercise within three months from that date by the State Election Commission with the complete co-operation of the 1st respondent-State.

6. However, as noted above, the prayer sought in this writ petition is enforcement of the interim order which interim order was later merged into a final order and separate directions are issued. Thus, the relief as sought for in the writ petition cannot be granted.

7. Thus, leaving it open to the State Election Commission to take appropriate steps as warranted by law, the Writ Petition is disposed of. Pending miscellaneous petitions shall stand closed.

P.NAVEEN RAO,J

22nd November, 2018
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