HIGH COURT OF MADHYA PRADESH : JABALPUR

Heard through Video Conferencing

Writ Petition No.18702/2020

Mithlesh Jain vs. State of Madhya Pradesh & others

Jabalpur, dated : 15.12.2020

Shri Utkarsh Agrawal, learned counsel for the petitioner.

Shri Swapnil Ganguly, learned Deputy Advocate General for the respondent-State of M.P.

Petitioner, practicing Advocate, Katni and an active member of Indian National Congress, aspiring to contest the election for Councillor, in Municipal Corporation, Katni, has filed this petition seeking quashment of communication dated 23.10.2020 by the State Government and the consequential proceedings initiated thereon on 26.11.2020, with a further direction to the respondents to carry on election in pursuance to letter dated 31.07.2020.

2. Matter pertains to reservation of wards of Scheduled Caste & Scheduled Tribes, Other Backward Classes and Woman in Municipal Corporation, Katni which is governed by Section 10 and 11 of the Madhya Pradesh Municipal Corporation Act, 1956 and the Rules made thereunder, viz, Madhya Pradesh Municipalities (Extent of Wards) Rules, 1994.

3. Whereas, Section 10 of the Act of 1956 provides for steps to be taken for determination and Extent of Wards, Section 11 deals with reservation, stipulating therein:

"11. *Reservation of seats.* - (1) Out of the total number of wards determined under sub-section (1) of Section 10, such number of seats shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipal Corporation as bears, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the Municipal Corporation as the population of the Scheduled Castes or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such wards shall be those in which the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, is most concentrated.

(2) As nearly as possible twenty five percent of the total number of wards shall be reserved for other backward classes in such Municipal Corporations, where fifty per cent, or less seats are reserved for Scheduled Castes and Scheduled Tribes, and such seals shall be allotted by rotation to different wards in such manner as may be prescribed :

Provided that if from any ward so reserved no nomination paper is filed for election, as a councillor, by any member of the backward classes, then the Collector shall be competent to declare it as unreserved.

(3) As nearly as possible fifty percent] of the total number of seats reserved under sub-sections (1) and (2), shall be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes or other backward classes, as the case may be.

(4) As nearly as possible fifty percent (including the number of seals reserved for women belonging to the Scheduled Castes, Scheduled Tribes and other backward classes), of the total number of scats to be filled by direct election in every Municipal Corporation shall be reserved for women and such seats shall be allotted by rotation to different wards

> in a Municipal Corporation in such manner as may be prescribed.
>
> (5) The reservation of seats under sub-sections (1), (2) and (3) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India."

4. That the Rules of 1994 framed by the State Government in exercise of powers under Section 433 of 1956 Act lays down the procedure to be followed while reserving wards for Scheduled Caste & Scheduled Tribes, Other Backward Classes. Rules 5, 6 and 7 relevant for the present stipulates :

> "5. Number and the name of wards.— Every ward shall be given its number and such numbers shall be in a serial order. Every ward shall be given a name also.
>
> 6. Preparation of proposal to determine the extent of wards. — (1) The proposal to determine the extent of wards shall be prepared by the Deputy Collector as nominated by the Collector of the District in which the Municipality is situated and for this purpose, any information as called for by such nominated Deputy Collector from Chief Municipal Officer for which the Chief Municipal Officer shall be bound to make available such information within the specified time, otherwise such nominated Deputy Collector may prepare the proposal at the cost of Municipality concerned.
>
> (2) The following information shall be regarding extent of wards included in the proposals as prepared by the Deputy Collector : —
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> (i) four directions of the proposed wards;
>
> (ii) Map showing all the four dimensions of every proposed ward in such a way that the boundaries of each ward may be visible separately;

> (iii) Statement regarding population in which the total population of the Municipal area as per the figures published of the last census, total population of Scheduled Castes and of Scheduled Tribes, the total number of wards as determined by the State Government for concerning Municipal area and on that basis the average population of each ward;
>
> (iv) The population of each of the proposed ward and the figures of population of Scheduled Castes and Scheduled Tribes therein.
>
> 7. Preliminary publication of determination of the extent of wards.— A notice regarding the proposal as prepared under Rule 6 shall be published by the Deputy Collector in the local newspapers in the form as appended to these rules and the copies of the notice shall be pasted on the notice board of the office of the Collector as well as of the office of the Municipality and on the conspicuous places in the wards for the information of the general public."

5. Thus, unless notified under Rule 7 of the Rules of 1994, the steps under Rule 5 and 6 are interregnum stages; and are not final. The communication dated 31.07.2020 is not final but the information collected under Rule 6 and sent to the State Government for its publication. The State being not abrogated of its power to objectively consider the same will be within its jurisdiction to either accept the same or call upon the prescribed Authority to re-examine it. That is what exactly has been done by the State Government vide impugned communications dated 23.10.2020, 12.11.2020 and 26.11.2020. The contention that these communications suffer jurisdictional error, therefore, cannot be accepted, as would warrant any indulgence. Even otherwise, it is informed by learned Deputy Advocate General

that the State Government in exercise of its powers under Rule 7 of the Rules of 1994 has issued a final notification.

6. In view whereof, also no relief can be granted.

7. Consequently, petition fails and is dismissed. No costs.

(Sanjay Yadav)
Acting Chief Justice

(Vijay Kumar Shukla)
Judge

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