

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.169 of 2022

***District Centre Owners'
Association***

....

Appellant

Mr. S.K. Acharya, Advocate

-versus-

State of Odisha and Others

....

Respondents

Mr. L. Samantaray, AGA

CORAM:

JUSTICE JASWANT SINGH

JUSTICE M.S. RAMAN

ORDER

22.04.2022

Order No.

05.

1. This matter is taken up by virtual/physical mode.

2. The Appellant has preferred this intra Court appeal to challenge the order dated 16.02.2022 passed by the learned Single Judge of this Court.

3. The brief facts of the case are that the appellant is an association consisting of resident members of District Centre Owners' Association Chandrasekharpur, Bhubaneswar (hereinafter appellant/Association) purported to be represented through Mr. Satya Narayan Mohanty, General Secretary of District Center Owners' Association, Bhubaneswar. The *locus standi* of the present appellant/association has been seriously assailed by an Interlocutory Application numbered I.A. No.600 of 2022 whereby a certain Prakash Chandra Bijuli son of Subash Chandra Ranabijuli submitted that he is the President of the District Center Owners' Association, Bhubaneswar and the said Satya Narayan Mohanty is neither the General

Secretary nor any office bearer of the society and is a stranger to the executive body of the society.

4. Be that as it may, the grievance of the appellant/association is said to have commenced by the reserving ward No.8 to a 'Scheduled Caste (woman)' candidate vide Draft Notification No.21389/HUD, published by Government of Odisha, Housing & Urban Development Department, Bhubaneswar dated 10-12-2021. The objection filed by the appellant/association led to the subsequent Draft Notification File No.: HUD-ELE-MISC-0002-2022 Letter No.:580 Dated: 07.01.2022 whereby the reservation of ward No.8 was changed to 'Scheduled Tribe'.

5. The appellant/association again sent various objections/suggestions to change the reservation in ward No.8 to the Principal Secretary, Housing and Urban Development, Govt. of Odisha. However, Government of Odisha, Housing and Urban Development Department, published the final Notification File No.: HUD-ELE-MISC-0002-2022 Letter No.:1556, dated 28.01.2022 whereby the reservation to ward No.8 was finally assigned to "Scheduled Tribe".

6. The said final Notification dated 28.01.2022 was put to challenge vide W.P.(C) No.4372 of 2022 on the ground that the domicile/ward, primarily, consists of General Category people and hardly 2% to 3% of the population belongs to the reserved SC and ST category. The learned single Judge disposed of the petition with the following order dated 16.02.2022 :-

“This writ petition is, therefore, not entertainable as it doesn’t involve the outcome on the objection of the Petitioner. This Court, therefore, directs, if the Petitioner is so advised, may file a fresh writ petition enclosing the outcome on its objection and also incorporating the grounds dependent on such outcome. It is at this stage recording the statement of the learned State Counsel that in the meantime the objection of the petitioner has been considered and disposed of by appropriate order, this Court directs, if the outcome on the objection of the Petitioner has not been served on the petitioner as yet, the same shall be served on the Petitioner within a period of seven days from the date of communication of an authenticated copy of this order by the Petitioner.”

7. Aggrieved by the order dated 16.02.2022, the present appellant has preferred this intra Court appeal. This Court on 23.02.2022 after a detailed hearing passed the following interim order:-

“1. After hearing, Mr. Mohanty, learned counsel for the appellant, we are not inclined to interfere with the order passed by the learned Single Judge in the light of no prejudice being caused to the Appellant-Petitioner as liberty has been granted for filing a fresh petition. However, in view of the importance & relevance of the issue involved, we deem it appropriate to direct Respondent No.1 to file a short affidavit indicating the implementation of reservation for Bhubaneswar City as per Rule-4 of the Orissa Municipal Corporation (Division of City Into Wards, Reservation of Seats and Conduct of Election) Rules, 2003 in the backdrop of constitutional provisions.”

8. The Respondent No.2-Director, Municipal Administration & Ex-Officio Additional Secretary, Housing & Urban Development, Bhubaneswar filed a detailed counter-affidavit dated 25.02.2022 showing the reasoning behind the reservation to a Scheduled Tribe in ward No.8 as

directed by this Court. A brief part of the said affidavit dated 25.02.2022 is reproduced below:

“Calculation Sheet of BMC, Bhubaneswar

Total Ward	67
Total Population	855535
Total S.C. Population	71967
Total S.T. Population	42374

Calculation of S.C. Wards $\frac{71967 \times 100}{855535} = 8.41$
 $8.41 \times 67 = 5.63 = 6 \text{ Wards}$

SC(W) Ward- 3 SC Ward- 3

Calculation of S.T. Wards $\frac{42374 \times 100}{855535} = 4.95$
 $4.95 \times 67 = 3.31 = 3 \text{ Wards}$

ST (W) Ward-2 ST Ward- 1

Calculation of Women Wards

S.C. (W) + S.T. (W) = 3 + 2 = 5

34 – 5 = 29 Women Ward

Total ward for Woman required = 29

Rest are kept Un-reserved”

The said affidavit also provided that in the year 2003 the Ward No.8 was reserved in favour of “women” candidate, in favour of “BCC” candidate in the year 2008 and in favour of “women” candidate in the year 2013. Accordingly, reservation is to be made in favour of “Scheduled Tribe” as per the “principle of rotation” mentioned under the Orissa Municipal Corporation Act, 2003 and various Rules made thereunder.

Further, it was brought to our notice that the election to the said ward number i.e. ward No.8 has already been conducted on 24th March 2022 and the results were notified.

9. After hearing the counsel for the Appellant, and on being satisfied with the reasoning provided in the counter-affidavit filed by Respondent No.2/ Director, Municipal Administration & Ex-Officio Additional Secretary, Housing & Urban Development, Bhubaneswar and by culmination of election with further notification of results, we dispose of this intra Court appeal as infructuous.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

April 22nd 2022
Cuttack