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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.No.1204 of 2022

P.Veeramuthu

...

Petitioner

vs

1. The State of Tamil Nadu
rep. by its Secretary to Government
Municipal Administration and Water Supply Department
Secretariat, Chennai - 9.
2. The State Election commissioner
No.208/2, Jawaharlal Nehru Road
Arumbakkam, Chennai 600 106.
3. The Director of Town Panchayats
Directorate of Town Panchayats
Chennai - 28.
4. The District Collector
Perumbalur District
Perumbalur.
5. The Executive Officer
Labbaikudikadu Town Panchayat
Perambalur District.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified mandamus to call for records connected in Gazette Notification No.226, dated 24.05.2019 of the 3rd respondent and Na.Ka.No.112/2019, dated 23.12.2019 and also Na.Ka.No.112/2019, dated 25.02.2020 of the 5th respondent and quash the same in so far as the Labbaikudikadu Town Panchayat, Perambalur district is concerned and consequently direct the respondents to follow the Article



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243-D of the constitution of India and reserve seats for the SC people among the 15 wards in Labbaikudikadu Town Panchayat, Perambalur District for SC people representation.

For the Petitioner : Mr.G.Elanhezhiyan

For the Respondents : Mr.R.Shunmugasundaram
Advocate General
Assisted by
Mr.P.Muthukumar
Government Pleader for
for R1, R3 to R5

Mr.Sivashanmugham
for R2

ORDER

(Order of the Court was made by the Hon'ble Acting Chief Justice)

The writ petition has been filed challenging the Gazette Notification No.226 dated 24.05.2019 issued by the third respondent and the subsequent notification, apart from the notification in Na.Ka.No.112/2019 dated 25.02.2020, which do not provide reservation in favour of Scheduled Caste out of 15 wards of the Town Panchayat.

2. Learned counsel for the petitioner submits that as per Article 243D of the Constitution, the respondents are under an obligation to provide reservation for all the categories referred to therein, including Scheduled Caste. However, the respondents have not provided reservation in favour of the Scheduled Caste out of 15 wards of the Town Panchayat for the ensuing election and thereby committed illegality. It is more so when one seat/ward, was reserved for the Scheduled Caste in the previous election. Thus, a prayer is made to set aside the notifications and to direct the respondents to provide reservation of one seat at least in favour of the Scheduled Caste out of 15 wards.

3. Learned Government Pleader submits that reservations are provided based on the population of each category. Referring to the population of Scheduled Caste in the Town Panchayat in question, he submits that the reservation could not be provided because the population of the Scheduled Tribe was less than 0.5%. A reference to the circular issued by the first respondent dated 26.06.1996 has been made to show that wherever the population of a particular category is said to be less than 0.5%, then it would be ignored and if it is 0.5% and more, then it would be considered as 1.



4. The above circular is supported by the judgment of the Apex Court in the case of State of Uttar Pradesh v. Pawan Kumar Tiwari, (2005) 2 SCC 10, wherein it was held that the rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. In the instant case, the population of Scheduled Caste in the Town Panchayat in question is negligible and therefore, a seat for Scheduled Caste could not be reserved.

5. Learned Advocate General, referring to Article 243T of the Constitution, submits that the same is applicable for the reservation to different categories and not Article 243D, as referred to by learned counsel for the petitioner, which is applicable only to the Panchayat and not Municipalities. He further submits that in the previous election, reservation was provided since the population at the relevant time may be more than 0.5% and if it was not, the illegality should not be perpetuated by the process of law and accordingly, prays for dismissal of the writ petition.

6. We have considered the submission made by learned counsel for the petitioner as well as learned Government Pleader.

7. The issue for our consideration is as to whether the notifications under challenge are unconstitutional or illegal, as they do not provide reservation in favour of the Scheduled Caste.

8. It is the fact that out of 15 wards of the Town Panchayat, not a single ward has been reserved for the Scheduled Caste. Learned counsel for the petitioner has made a reference to Article 243D, while learned Advocate General made a reference to Article 243T of the Constitution. Both provisions are quoted hereunder for ready reference.

Article 243D of the Constitution:

"243D. Reservation of seats.

(1) Seats shall be reserved for-

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat 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 Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by



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rotation to different constituencies in a Panchayat.

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

(4) The offices of the Chairpersons in the Panchayats at the village or any other level 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:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(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 Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

Article 243T of the Constitution:

"243T. 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



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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.

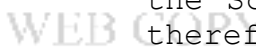
(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(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."

9. A perusal of Article 243D of the Constitution provides for reservation of seats for Scheduled Caste and Scheduled Tribe. Article 243T applies to the Municipalities which is applicable to the present case, in view of the fact that Town Panchayat is a Municipality.

10. As per Article 243T, seats have to be reserved for Scheduled Caste and Scheduled Tribe in every Municipality based on the population of each category. The reservation has been separately indicated for the women of Scheduled Caste and Scheduled Tribe and also for the women general. In the absence of population requiring the application of Article 243T of the



11. The facts available on record show that population of the Scheduled Caste in the Town Panchayat is less than 0.5% and therefore, the Government has ignored it in the light of the Circular dated 26.06.1996 and otherwise, we find that even as per the ratio propounded by the Apex Court in the case supra, the fraction of one less than 0.5% is to be ignored, while 0.5% or more is to be treated as 1%. However, there cannot be a strait-jacket formula regarding rounding off. What has to be seen is that when there is no power provided in the statute and also in the Rules permitting any such rounding off so as to bring a category to the minimum requirement, no such rounding off or relaxation is permissible. The Apex Court in *Bhanu Pratap v. State of Haryana*, (2011) 15 SCC 304, emphatically held that somewhere a line has to be drawn and that line has to be strictly observed which is like a Lakshmana Rekha and no variation of the same is possible unless it is so provided under the Rules itself. In the case on hand, the respondent authorities found that the present population of the Scheduled Caste population was less than 0.5%. Such statutory prescription cannot be diluted and any rounding off would tantamount to acting beyond the parameters prescribed by the statute and will work injustice to other candidates. On finding that the population of Scheduled Caste is less than 0.5%, the respondents have rightly not carved out reservation in favour of the Scheduled Caste.

12. If the argument of learned counsel for the petitioner is accepted and one seat out of 15 wards is reserved for the Scheduled Caste, it would be going against the object of Article 243T of the Constitution. The reservation has to be provided based on the proportion of the total number of seats vis-a-vis the population of the category in whose favour reservation has to be given. The reservation depends on the population of the category. Thus, the respondents, taking into consideration the population of the Scheduled Caste in the Town Panchayat in question, which is said to be less than 0.5%, did not provide reservation for Scheduled Caste. We do not find any illegality in the action of the respondents as they are not offending the constitutional mandate to give reservation to different category of persons.

13. If the argument of learned counsel for the petitioner is accepted that in all circumstances, the reservation in favour of the Scheduled Caste and Scheduled Tribe is to be given, then it has to be tested even on hypothetical facts. If a Town Panchayat or Municipality has no population of a particular category like Scheduled Caste or Scheduled Tribe and still reservation has to



be given, it would not only offend the requirement of ratio of population, but would also raise a question as to who would represent the said category when the required population does not exist.

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14. In view of the above, we do not find any case in favour of the petitioner to quash the notifications, even if one seat is reserved for the Scheduled Caste in the previous election. It is not only for the reason that reservation of seats depends on the ratio of the particular category, population or otherwise, but even if the existing population of the Scheduled Caste was less than 0.5%, then earlier reservation cannot be taken to be a precedent for perpetuating the illegality. Accordingly, the writ petition is dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kpl/drm
To:

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 9.
2. The State Election commissioner,
No.208/2, Jawaharlal Nehru Road,
Arumbakkam, Chennai 600 106.
3. The Director of Town Panchayats,
Directorate of Town Panchayats,
Chennai - 28.
4. The District Collector,
Perumbalur District, Perumbalur.
5. The Executive Officer,
Labbaikudikadu Town Panchayat,
Perambalur District.

+1cc to Mr.G.Elanchezhiyan, Advocate Sr.4617
+1cc to the Government pleader Sr.5703

W.P.No.1204 of 2022

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srg 04/02/2022