

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9426 OF 2023

Nitin Narayan Chogale

...Petitioner

Versus

The State of Maharashtra Through Government
Pleader & Ors

...Respondents

Mr Rohit Mahadik, *for the Petitioner.*

Mr AA Alaspurkar, AGP, *for the Respondent-State.*

Mr Suraj Chakor, *for the Respondent-State Election Commission.*

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 17th October 2023

PC:-

1. Mentioned out of turn.

2. Prayers (a) and (b) reads thus:

“(a) this Hon’ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of certiorari or any other appropriate writ, direction and order, thereby calling for the records and proceedings pertaining to the order dated 14th July, 2023 passed by Respondent No. 5 (Exhibit “A” hereto) and also notification dated 14th July, 2023 issued by Respondent No. 5 (Exhibit “F” hereto) and thereby quashing and setting aside the order dated 14th July, 2023 passed by Respondent No. 5 (Exhibit “A” hereto) and also

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notification dated 14th July, 2023 issued by Respondent No. 5 (Exhibit “F” hereto).

(b) this Hon’ble Court be please to issue a Writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ, direction and order thereby directing the Respondents to not to proceed with notification dated 14th July, 2023 issued by Respondent No. 5 (Exhibit “F” hereto) and further issue a fresh notification under Rule 5(1) of the Maharashtra Village Panchayat Act, 1959 thereby reserving a seat for Scheduled Caste in Ward No. 2 instead of Ward No. 4, and restoring the male open category to Ward no. 4 as per the rotation, in accordance with Rule 4(2) of the Maharashtra Village Panchayat Act, 1959.”

3. The dispute is about the reservations for Scheduled Castes in the Gram Panchayat elections, Kumbhivali. The election program has been announced and nominations are being accepted from 16th October 2023.

4. There is a reply of one Suryakrishnamurty, Deputy Secretary, State Election Commission Maharashtra, the 2nd Respondent. It is from page 127 onwards of the paper book.

5. The Affidavit in Reply deals with the substance of the Petition in paragraphs 6, 7, 8 and 9 as follows:

“6. The Respondent No. 2 submits that the interpretation of the law and the procedure of reservation of seats of the Petitioner is not correct. I say that the reservation of SC seat would not go to Ward No. 2 as suggested by the Petitioner for the reasons stated hereinafter.

7. The Respondent No. 2 submits that the population of Kumbhivali Village Panchayat as per the 2011 Census was 3336 and the number of members to be elected to this Village Panchayat was 11 divided into 4 wards. The population of Scheduled Castes in Kumbhivali Village Panchayat was 198 as per the 2011 Census. Therefore, as per Section 10 (2) (b), the number of seats to be reserved for SC was 1. Since the number of seats reserved for SC is less than the total number of wards, as per Rule 4 (2) of the Bombay Village Panchayat (Number of members, Divisions into Wards and Reservation of Seats) Rules, 1966, the seats have to be allotted in descending order beginning with a ward where the percentage of population of Scheduled Castes with regard to the total population of such ward is the highest.

8. The Respondent No 2 submits that the Ward wise population of Gram Panchayat for 2023 election is as follows:

Ward No.	No of seats	Total population	SC pop	% age of SC pop to ward population
1	3	865	44	5.09
2	3	904	66	7.30
3	2	666	0	0
4	3	901	88	9.76
Total	11	3336	198	

9. The Respondent No 2 submits that the proviso to Rule 4 (2) provides the seats to be reserved shall be rotated, in the subsequent elections, to the wards in the village in which no such seat has been reserved until such reservation is given to all the wards in the village by rotation. In the 2018 General election, the reservation of seat of Scheduled Caste was in ward no. 1. In the 2023 General election, the reservation of seat for Scheduled Caste is in ward no. 4. Therefore, the principle of rotation has been followed.”

6. There is simply no factual answer to what is stated in paragraph 8. It cannot be that the Scheduled Castes reservation simply ‘*rotates*’ between ‘Wards’ as per their Serial No., i.e., first Ward No. 1, then Ward No. 2, 3 and 4 and so on. As correctly pointed out, it operates in a ‘*descending fashion*’ by rotation and not simply by ‘*rotation*’. The *descending manner* is dictated by the Scheduled Castes population in each ward. The figures that are submitted on Affidavit by the State Election Commission show that the Scheduled Castes population in Ward No. 4 is the highest at 88. Then is the Scheduled Castes population of Ward No. 2 and finally the Scheduled Castes of Ward No. 1. This is the ward-wise distribution as shown.

7. Rule 4(2) of the Maharashtra Village Panchayats (Number of Members, Divisions into Wards and Reservation of Seats), 1986 makes it clear that where the number of seats to be reserved for Scheduled Castes or Scheduled Tribes is less than the number of wards in a village, then the seats are to be allotted in a ‘*descending order*’ beginning with a ward where the percentage population of Scheduled Castes or Scheduled Tribes is the highest. In subsequent elections, as per the proviso, there is to be a rotation. We reproduce Rule 4:

“4. Manner of allotment and rotation of seats reserved for Scheduled Castes and Scheduled Tribes.— Subject to the provisions of clauses [a] and [b] of sub-section [2] of Section 10, the seats to be reserved for the Scheduled Castes and the Scheduled Tribes shall be allotted and rotated in accordance with the following principles, namely :—

[1] Where the number of seats to be reserved for the Scheduled Castes or as the case may be, the Scheduled Tribes and the number of wards in a village is the same, then there shall be allotted to such Castes, or as the case may be, the Tribes, one seat to every ward.

[2] Where the number of seats to be reserved for the Scheduled Caste, or as the case may be, the Scheduled Tribes, is less than the number of wards in a village, then the seats shall be allotted in descending order beginning with a ward where the percentage of population of the Scheduled Castes or, as the case may be, the Scheduled Tribes with regard to the total population of such ward in the highest :

Provided that the seats to be reserved shall be rotated, in the subsequent election, to the wards in the village in which no such seat has been reserved for such Castes or Tribes until such reservation is given to the wards in the village, by rotation in which seats are admissible for such Castes or Tribes, having regard to the proportion of their population in those wards.

[3] Where the number of seats to be reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes is more than the number of wards in a village, then, with a view to securing representation to the members of such Castes or Tribes in as many wards as possible in the village, one seat shall be allotted to each ward for such Castes or Tribes and the remaining seats shall be allotted and rotated as provided in the proviso to sub-rule [2] :

Provided that, the seats to be reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes under sub-rules [1], [2] and [3] shall be allotted and rotated only among the wards in which seats are

admissible for such Castes or Tribes having regard to the proportion of their population in those wards.

[4] The allotment of seats as under sub-rules [1], [2] and [3] shall be made in such a way that at least one seat, as far as practicable, shall be kept unreserved in each ward.

Explanation.— While calculating the number of seats, the fraction of one-half or more of a seat shall be counted as one and the fraction of less than one-half shall be ignored.”

(Emphasis added)

8. It is for this reason that the State Election Commission makes the averment in paragraph 9 that in the 2018 general elections the only reservation for Scheduled Castes was in Ward No. 1. Consequently, in the immediately next election, i.e., the present 2023 election, going by that tabulation above, and application of the rule, viz., that *‘the seats have to be allotted in descending order beginning with a ward where the percentage of population of Scheduled Castes with regard to the total population of such ward is the highest’*, the reservation must correctly be made by *‘rotation’* not in Ward No. 2 but in Ward No. 4, as has correctly been done.

9. This Petition therefore has no merit. It is rejected. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)