



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2327 OF 2012

Mrs. Shailaja Sunil Kolpe ]  
Pushpa Emerald Housing Society ]  
A Wing, Flat No. 101, Survey No.75 ]  
Near Wonder City, Katraj ]  
Pune 411 046 ] ..Petitioner

versus

1. State of Maharashtra ]  
(summons to be served on the ]  
learned Government Pleader ]  
appearing for State of Maharashtra ]  
under Order XXVII Rule 4 of the ]  
Code of Civil Procedure, 1908) ]
2. District Collector Pune ]  
(summons to be served on the ]  
learned Government Pleader ]  
appearing for State of Maharashtra ]  
under Order XXVII Rule 4 of the ]  
Code of Civil Procedure, 1908) ]
3. State Election Commission ]  
Maharashtra, First floor, ]  
New Administrator Building, ]  
Hutatma Rajguru Chowk, ]  
Madam Cama Road, ]  
Mumbai 400032 ]
4. Election Officer Zilla Parishad ]  
Panchayat Samiti, Election 2012, ]  
Velhe, Taluka – Velhe ]  
District Pune ]
5. Panchayat Samittee Welhe, ]  
Taluka : Welhe, District : Pune ]
6. Mrs. Chatura Keshav Nagine ]  
Age Adult, Residing At & Post: Velhe]   
Bazar Peth, Taluka : Welhe ]  
District : Pune ] ..Respondents

Mr. S. B. Deshmukh for Petitioner.  
Mrs M. P. Thakur – A.G.P. for Respondent Nos. 1 and 2.  
Mr. S. B. Shetye for Respondent No. 3.

CORAM : A. S. OKA & M. S. SONAK, JJ.  
08TH JANUARY 2014

**JUDGMENT (Per : M. S. Sonak, J.)**

1] Rule. With the consent of the learned counsel appearing for the Respondents, the Rule is made returnable forthwith.

2] The main challenge in this petition is to the vires of 'Explanation' to Rule 3 of the Maharashtra Zilla Parishads and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules, 1996, on the grounds that the same travels beyond the substantive provision contained in Section 12 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 and further violates the provisions of the Constitution of India.

3] The aforesaid Rule 3 and Section 12 concerns determination of number of seats to be reserved for the Scheduled Castes, Scheduled Tribes, Backward Class of citizens and women for general election to the Zilla Parishad.

4] From the averments in the petition however, the Petitioner appears to be concerned with election of Panchayat Samiti, Taluka Velhe, in respect of which the post of Chair Person has been reserved for Scheduled Tribe Woman. In the circumstances, the

Petitioner's challenge ought to have been directed against 'Explanation' to Rule 7 of the 1996 as being allegedly *ultra vires* Section 58 of the said 1961 Act.

5] However, since there is no appreciable difference between Rule 3 and Section 12 on one hand and Rule 7 and Section 58 on the other, except that the former set concerns Zilla Parishads and the later set concerns Panchayat Samitis, we proceed to consider the challenge to the 'Explanation' to Rules 3 and 7 of the 1996 Rules.

6] The Petitioner, who is a citizen of India and the resident of Velhe claims to be a member of the Scheduled Tribe. By the Notification dated 12.12.2011 the post of Chair Person in the Panchayat Samiti of Velhe has been reserved for Scheduled Tribe women. Reference is made in the Petition to letter dated 07.10.2011, which interalia indicates that the total population comprising limits of Panchayat Samiti Velhe is 55874. Out of this, the population of Scheduled Caste members is 2773 and the Scheduled Tribe members is 1439. This is as per the 2001 census. Annexure 5 to this letter contains the workings of the manner in which the seat reservations have been determined. There is no serious dispute that the workings are in terms of Section 58 of the

1961 Act read with Rule 2(A) of the Maharashtra Zilla Parishads (Electoral Divisions and Conduct of Election) Rules 1962. Further, there is no dispute that the workings are in accordance with the Rule 7 of 1996 Rules as well as the Explanation appended thereto. Accordingly, in so far as the Panchayat Samiti of Velhe is concerned, based upon such workings, it is seen that not even a single seat can be reserved for members of Scheduled Tribes and Scheduled Castes. The workings as contained in Annexure 5 are as follows:

$$\begin{aligned}
 &\text{SEATS} \quad 2776 \quad \times 4 \\
 &\quad \quad \quad (\text{Population of S.C.}) \quad (\text{Total No. of Seats}) \\
 \text{SEATS} &= \frac{\text{-----}}{55874} = 0.20 \\
 &\quad \quad \quad (\text{Total Population}) \\
 &\quad \quad \quad 1439 \quad \times 4 \\
 &\quad \quad \quad (\text{Population of S.T.}) \quad (\text{Total No. of Seats}) \\
 \text{SEATS} &= \frac{\text{-----}}{55874} = 0.10 \\
 &\quad \quad \quad (\text{Total population})
 \end{aligned}$$

- \* As per the Explanations to Rules 3 and 7 of 1996 Rules, while determining 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.
- \* In the present case, since the fraction in respect of S.T. And S.C. is less than one half, the same is ignored. Accordingly, no seats have been reserved for the members of S.T. and S.C.

7] The Petitioner, by reference to Sections 12 and 58 of the 1961 Act contends that there is a mandate for reservation of seats for the members of S.C., S.T. B.C and Women at elections to the Zilla Parishad and Panchayat Samiti. Under the garb of determination of the quantum and the manner of reservation, by resort to Rules 3 and 7 of the 1996 Rules, it is impermissible for the State Government to create a situation whereby not even a single seat is reserved for the members of S.C., S.T, O.B.C. at elections to Zilla Parishad or Panchayat Samiti. Such a situation will patently defeat the reservation provided for Scheduled Tribe Women in the post of Chair Person, Velhe Panchayat Samiti. The 'Explanation' to Rules 3 and 7, which are primarily responsible for bringing about such a situation, therefore travel beyond the substantive provisions contained in Sections 12 and 58 of the 1961 Act. The 'explanation' is therefore *ultra vires*. Even otherwise, such 'explanation' which is the prime cause for denial of reservation of even a single seat in the context of Panchayat Samiti Velhe, is *ex facie* arbitrary, illegal, unconstitutional, null and void.

8] Affidavits in reply have been filed by the Respondent Nos. 1 and 2, in which it is contended that determination of seats is in accordance with the provisions of the 1961 Act and the 1996 Rules. Further, the return points out that the Petitioner had filed her

nomination on 20.01.2012 from 114 – Margasani Gan reserved for ladies of General Category for the Zilla Parishads and Panchayat Samiti Election 2012. The nomination was declared valid in the scrutiny held on 24.01.2012. However, later on the Petitioner withdrew her nomination on 30.01.2012 which was the date fixed for withdrawal. In such circumstances, it is submitted that the present petition be not entertained. Further it is pointed out that elections have taken place on 14.03.2012, in which Mrs. Chatura Keshav Nagine has been elected as a Chair person of the Panchayat Samiti Velhe.

9] In the petition, Mr. Deshmukh, the learned counsel for the Petitioner realising that most of the reliefs claimed are consequential to the main challenge, has rightly advanced submissions pertaining to the vires of explanations to Rules 3 and 7 of the 1996 Rules. In a light of such focused challenge, we do not deem it appropriate to advert to the other issues which find place in the memo of the writ petition, but which were rightly not urged at the time of arguments.

10] In order to appreciate the challenge, reference is required to be made to provisions of the 1961 Act and the 1996 Rules which have direct bearing upon the issues raised in the petition.

11] Section 12 of the 1961 Act provides for division of district into electoral division for purposes of elections to Zilla Parishad. Section 12(2) which is relevant for the purposes of the present petition, reads thus :

**“ S.12. Division of District into electoral division. –**

*[ (2) (a) In the seats to be filled in by election in a Zilla Parishad there shall be seats reserved for persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Class of citizens and women, as may be determined by the State Election Commission in the prescribed manner;*

*(b) the seats to be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in a Zilla Parishad shall bear, as nearly as may be, the same proportion to the total number of seats to be filled in by direct election in that Zilla Parishad as the population of the Scheduled Castes or, as the case may be , the Scheduled Tribes, in that Zilla Parishad area bears to the total population of that area and such seats shall be allotted by rotation to different electoral divisions in a Zilla Parishad :*

*[Provided that, in a Zilla Parishad comprising entirely the Scheduled areas, the seats to be reserved for the Scheduled Tribes shall not be less than one half of the total number of seats in the Zilla Parishad :*

*Provided further that, the reservation for the Scheduled Tribes in a Zilla Parishad falling only partially in the Scheduled areas shall be in accordance with the*

*provisions of clause (b)]:*

12] Section 58 deals with the provisions regarding electoral colleges, disqualifications, elections and election disputes concerning Panchayat Samitis. A portion of Section 58 (1B) which is relevant for the purposes of the present petition, reads thus :

*“ [(1B) (a) In the seats to be filled in by election in a Panchayat Samiti, there shall be seats reserved for persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Class of citizens and women, as may be determined by the State Election Commission in the prescribed manner;*

*(b) The seats to be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in a Panchayat Samiti shall bear, as nearly as may be, the same proportion, to the total number of seats to be filled in by direct election in that Panchayat Samiti as the population of the Scheduled Castes or, as the case may be, the Scheduled Tribes, in that Panchayat Samiti area bears to the total population of that area and such seats shall be allotted by rotation to different electoral colleges in a Panchayat Samiti :*

*Provided that, in a Panchayat Samiti comprising entirely the Scheduled areas, the seats to be reserved for the Scheduled Tribes shall not be less than one-half of the total number of seats in the Panchayat Samiti :*

*Provided further that, the reservation for Scheduled Tribes in the Panchayat Samiti falling*



*only partially in the Scheduled areas shall be in accordance with the provisions of clause (b)] :*

*[Provided also that], one-half of the total number of seats so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes;"*

13] Section 2(21) defines the term "prescribed" to mean prescribed by Rules made under this Act. Similarly, Section 2(31A) defines "State Election Commission" to mean State Election Commission consisting of State Election Commissioner appointed in accordance with Clause (1) of Article 243K of the Constitution of India.

14] Section 274(1) empowers the State Government to make Rules not inconsistent with the provisions of the Act, for the purposes of carrying into effect the provisions of the Act.

Section 274(2) in particular and without prejudice to the generality of the provisions contained in sub section (1) empowers the State Government to make rules for the various matters specified, including inter alia:

*"(ii) under section 12, prescribing the seats to be reserved for representation of the Scheduled Castes, Scheduled Tribes, Backward Class of citizens and women in any electoral division and the manner and rotation of such reservation.*

*(xiii) under section 58, prescribing the seats to be reserved for Scheduled Castes, Scheduled Tribes, Backward Class of citizens and women in electoral colleges and the manner and rotation of such reservation."*

15] In exercise of the powers conferred by clauses (ii) and (xiii) of sub section 2 of Section 274 of the Act, the State Government has framed the Rules of 1996. Rules 3 and 7 which are relevant for the purposes of the present petition, reads thus :

*"3. State Election Commission to determine the number of seats to be reserved for the Scheduled Castes, Scheduled Tribes, Backward Class of Citizens and Women."*

*For every general election to a Zilla Parishad the State Election Commission shall determine, out of the total number of seats to be filled in by section, the number of seats to be reserved for persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Class of Citizens and Women as provided in sub-section (2) of section 12 of the Act.*

***Explanation.- While determining 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."***

7. *State Election Commission to determine number of seats to be reserved for the Scheduled Castes, Scheduled Tribes, Backward Class of Citizens and*

*Women.-*

*For every general election to a Panchayat Samiti, the State Election Commission shall determine, out of the total number of seats to be filled in by election, the number of seats to be reserved for persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Class of Citizens and Women, as provided in sub-section (1B) of section 54 of the Act.*

***Explanation.- While determining 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.”***

16] As observed above, there is no appreciable difference between the provisions contained in Section 12(2)(a) and Section 58(1B)(a) of the Act, except that the former concerns elections to the Zilla Parishad and the later concern selections to Panchayat Samitis. Mr. Deshmukh, learned counsel for the Petitioner contends that these sections mandate reservation of seats for S.C., S.T. O.B.C. and Women and therefore for elections to Zilla Parishad and Panchayat Samitis, at least one seat has to be reserved for the said categories irrespective of the population figures as may be reflected in the census. Mr. Deshmukh submitted that the mandate of the substantive provisions contained in Section 12(2)(a) and Section 58(1B)(a) cannot be whittled down or virtually abrogated by recourse to 'explanation' appended to Rules 3 and 7 of the 1996

Rules. To the extent such '*explanation*' whittles down and abrogates the substantive provisions as contained in Sections 12(2)(a) and 58(1B)(a), '*explanation*' is *ultra vires*, inoperable, null and void.

17] Having considered the submissions in the backdrop of the aforesaid legal provisions as also the provisions contained in the Constitution of India, we are unable to see any merit in the submissions of Mr. Deshmukh.

18] In the first place, the submissions proceed on the basis of an incomplete reading or misreading of the provisions contained in Sections 12(2) and 58(1B) of the Act. Undoubtedly Sections 12(2) and 58(1B) make provisions for reservation of seats for S.T., S.T., O.B.C. and Women. However, the very Sections provide that such reservation shall be determined by the State Election Commission and that too in the '*prescribed manner*'. Therefore, it is fallacious to read a part of the Section and urge that reservation of at least one seat for S.C. S.T is a mandate, irrespective of the position of the population of seat numbers in a Zilla Parishad and Panchayat Samiti area. The quantum of reservation or the determination of number of seats to be reserved has been left by the Legislature itself to the determination of the State Election Commission as defined under Section 2(31) of the said Act. Further, the legislature

has provided that the State Election Commission has to make such determination in the '*prescribed manner*'.

19] As observed earlier, Section 2(21) of the said Act defines '*prescribed*' to mean '*prescribed by the Rules made under this Act*'. The 1996 Rules, are Rules made under the said Act in exercise of powers conferred by the State Government by Sections 274(2)(ii) and (xiii) of the said Act. Therefore, where the parent Act itself empowers the State Election Commission to determine the number of reserved seats in the manner prescribed under the Rules, there can arise no question of the Rules or the Explanation appended to the Rules being *ultra vires* the provisions of the parent Act. It bears a repetition to state that the parent Act does not mandate reservation for S.C. S.T. members irrespective of the population position of S.C. and S.T. members in the Zilla Parishad or Panchayat Samiti areas. On the contrary, Sections 12(2)(b) and Section 58(1B)(b) which concerns quantum of reserved seats, provides that the seats to be reserved for the persons belonging to S. C. and S.T. in a Zilla Parishad or Panchayat Samiti area shall bear as nearly as may be, the same proportion of the total number of seats to be filled by direct elections in that Zilla Parishad or Panchayat Samiti as the population of S.C. or S.T. in that Zilla Parishad or Panchayat Samiti area bears to the total population of

that area.

20] Thus, population based proportionate representation is not only the accepted but the prescribed norm. This is virtually reiterated in Rules 3 and 7 of the 1996 Rules. The Explanation to Rules 3 and 7 makes express, what possibly was implicit in the phrase “as *nearly as may be*’ employed in Sections 12(2)(b) and 58(1B)(b) of the said Act. In the context of determination of quantum of reservation, the *Explanation* merely provides that fraction of one half or more of a seat shall be counted as one and conversely fraction of less than one half shall be ignored. In our opinion, neither the Rules 3 and 7 nor the *Explanation* thereto travel beyond or abrogate or cut down the scope and import of Section 12(2) or Section 58(1B) of the said Act. The Rules together with the Explanation merely prescribe the manner of determination of reserved seats, which manner is entirely consistent with the provisions contained in the parent Act. The challenge based upon substantive *ultra vires*, accordingly fails and deserves rejection.

21] The second challenge based upon arbitrariness and therefore unconstitutionality also does not commend to us. As observed earlier all that the Explanation does, is to give effect to the phrase ‘as *nearly as may be*’ employed in Sections 12(2)(b) and

58(1B)(b) of the said Act. Further, the said two Sections are premised upon the principle of population based proportionate representation. In order that ambiguities in interpretation are reduced, if not wholly wiped out, if the State Government in exercise of its rule making power provides an *Explanation* that fraction of one half or a more of a seat shall be counted as one and fraction of less than one half ignored, we can detect no arbitrariness or unconstitutionality in such an approach. The principle of population based proportionate representation is discernible in Article 243D of the Constitution of India upon which the provisions contained in Sections 12(2) and Section 58(1B) of the said Act are premised. Article 243D(1) of the Constitution of India reads thus :

*"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 rotation to different constituencies in a Panchayat."*

22] The very same principle of population based proportionate

representation is discernible in Article 243T (concerning Municipalities), Article 330 (concerning House of People) and Article 332 (concerning Legislative Assemblies of State) of the Constitution of India. In all these Articles it is provided that seats shall be reserved for S.C. and S.T. and the number of seats reserved shall bear, '*as nearly as may be*', the same proportion to the total number of seats in the Municipality, House of People or Legislative Assembly of the State as the case may be, as the population of S.C. and S.T. in the municipal area or State as the case may be, in respect of which seats are so reserved, bears to the total population of the Municipal area or State, as the case may be. In a situation where departure was intended, as for example in the case of Anglo Indian Community, specific provisions have been made making express such intent.

23] The provisions contained in Sections 12(2) and 58(1B) of the said Act are entirely consistent with the prescribed norm of population based proportionate representation. The same is the position with Rules 3 and 7 read with the *Explanations* thereto in the 1996 Rules. If the population of S.C. or S.T. in a given area is so minuscule, that upon applying the norms prescribed, the fraction is less than one half of a seat, then surely the Rules can provide that such fraction be ignored. Similarly, if the fraction is one half or



even marginally more than one half, then the seat shall be counted as one. Such a Rule or any Explanation appended to the Rule neither travels beyond the provisions in the parent Act, nor can the same be stigmatized as being arbitrary, unconstitutional, null and void.

24] In the case of *Anand Singh Kunwar & Ors. vs. Election Commission of India*<sup>1</sup> the Election Commission of India, the issue concerned determination of reserved seats to the Legislative Assembly of Uttaranchal. The census data indicated the population of Scheduled Tribes in the State as being 3% of the total population. The total number of seats in the Legislative Assembly were 70. By reference to Article 332(3) of the Constitution of India, the number of seats, *as nearly as may be*, had to be to the extent of 3% of 70 seats. This figure came to 2.1 which was nearly to 2 seats than to 3 seats. However, the Election Commission went on to reserve 3 seats for the members of the Scheduled Tribes and the issue before the Supreme Court was whether reservation of 3 seats instead of 2 was contrary to the provisions of Article 332(3) of the constitution of India.

25] During pendency of the petition however, the Election Commission upon realising its mistake reduced the number of

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1 (2007) 7 SCC 234

reserved seats for the members of S.T. from 3 to 2 and issued an appropriate Notification in that regard. Despite the challenge / issue having become academic, the Supreme Court at paragraph 5, observed thus :

*“5. Though now the issue is purely academic because the Election Commission having realised its mistake has reduced the number of seats of Scheduled Tribes from three (3) to two (2) and the notification to this effect has already been issued but in order to justify the order dated 5-11-2001 the Election Commission has made certain observations which need not be repeated again. It should be made clear that the mandate of Article 332(3) of the Constitution of India should always be kept in mind. Article 332(3) mandates that the reservation must be made in proportion to the population of the Scheduled Castes and Scheduled Tribes of the State. This should be the paramount consideration of the Election Commission and not any other consideration. We need not make any observation but the consideration for increasing the seats of Scheduled Tribes from two (2) to three (3) was not at all warranted as it is in violation of Article 332(3) of the Constitution of India. The mandate of the Constitution is supreme and the Election Commission has no scope to go beyond the Constitution. Therefore, we hope and trust that when any notification is issued, the Election Commission shall confine itself to the mandate of the provisions of*

*the Constitution of India and will not be swayed by any other consideration.”* (Emphasis supplied).

26] Thus, it is clear that in matters of reservation of these types governed by provisions like Article 332 of the Constitution of India reservations have to be based upon the principle of population based proportionate representation. The phrase '*as nearly as may be*' employed in Articles 243D, 243T, 330 and 332 by itself supports the construction commended by Explanation to Rules 3 and 7 of the 1996 Rules. The expression '*as nearly as may be*' significantly finds place in Sections 12(2)(b) and Section 58(1B)(b) of the said Act as well. The *Explanation* to Rules 3 and 7, in the circumstances assists in the implementation of the principle of population based proportionate representation, which as observed by the Supreme Court has to be 'paramount consideration' of the Election Commission and not any other consideration. This is yet another reason to reject the challenge based upon arbitrariness and consequently, unconstitutionality.

27] In conclusion, we see no merit in either of the contentions of the Petitioner. The petition is accordingly rejected. Rule is discharged. However, there shall be no order as to costs.

(M. S. SONAK, J.)

(A. S. OKA, J.)