

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

:SINGLE BENCH:

{HON'BLE SHRI JUSTICE ANAND PATHAK}

WRIT PETITION NO.16370/2020

Dipesh Arya
Vs.
The State of Madhya Pradesh & Ors.

Shri Jitendra Sharma, learned counsel for the petitioner.
Shri Vijay Sundaram, learned Panel Lawyer for respondents/State.

Whether approved for reporting : Yes

Law laid down:

1. Process of election starts from notification and culminates at return of candidate, judgments of **N.P. Ponnuswami Vs. The Returning Officer, AIR 1952 SC 64, Mohinder Singh Gill and another Vs. Chief Election Commissioner New Delhi and others, (1978) 1 SCC 405** and **Lakshmi Charan Sen and others Vs. AKM Hassan Uzzaman and others, (1985) 4 SCC 689** have been relied.
2. Rule 3 of M.P. Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women), Rules 1994 contemplates reservation of wards on the basis of density of population of reserved category rather than total number of people of that category.
3. Election process must be transparent and fair and piousness of election proceedings are paramount to maintain the confidence of people in democracy.

ORDER
(Delivered on 21st day of December, 2020)

The instant petition under Article 226 of Constitution of India is being preferred by the petitioner, being crestfallen by the order dated 18-09-2020 (Annexure P/1) passed by the Collector District Sheopur as prescribed authority (respondent No.3 herein) whereby Collector District Sheopur reserved the ward No.2 (along with two other wards i.e. ward No.11 and 20) for reservation for representation of Scheduled Castes (hereinafter referred to as 'SC') candidate, whereas according to the petitioner ward No.10 ought to have been included as reserved ward for SC category candidate because of more number of people living in ward No.10 than in ward No.2.

2. Petitioner is also aggrieved by the letter dated 08-09-2020 (Annexure P/3) issued by Commissioner, Urban Administration and Development, respondent No.2 herein whereby he has given direction for reservation of ward No.2 instead of ward No.10. Petitioner is further aggrieved by notification Annexure P/11 issued by Urban Administration and Development Department.
3. Precisely stated facts of the case are that petitioner is resident of ward No.10 of municipality area Sheopur district Sheopur and is a member of SC category, therefore, entitled to cast his vote to the representative of his choice for the said ward in election of councillor/office bearer of Municipality Sheopur.

State Government in exercise of power conferred by Section 433 read with Section 11 of M.P. Municipal Corporation Act, 1956 (hereinafter referred to as 'the Act of 1956') and Section 355 read with Section 29-A of the M.P. Municipalities Act, 1961 (hereinafter referred as 'the Act of 1961'), made the rules -M.P. Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women), Rules 1994 (hereinafter referred as 'the Rules 1994') whereby the reservation in Municipalities, Panchayats and Municipal Corporation for different categories were prescribed.

4. Section 29-A of the Act of 1961 prescribes determination of number and extent of wards and conduct of elections in which formation of the wards and basis of the said formation has been prescribed. In Section 29-A of the Act of 1961 read with rule 3 of Rules 1994, reservation of seats has been prescribed whereby number of seats has to be reserved for SC/ST in every municipality in same proportion to the total number of seats to be filled by direct elections in the municipalities as per the proportion of the population of said category in municipal area and out of the wards so reserved, those wards shall be reserved for SC/ST candidates in which population of the SC/ST (as the case may be) are most concentrated.
5. It is the grievance of the petitioner that as per census 2011 total population of municipality Sheopur is 68,820 in which

population of people of SC category is 9,806 and total wards are 23 in number, therefore, proportion of population of SC *vis a vis* total population in 23 wards comes to 3.27 meaning thereby, 3 wards are to be reserved for SC category candidates and as per descending order of total population, ward No.11, 20 and 10 have maximum number of people of SC category, therefore, according to the petitioner, reserved wards should be ward No.11, 20 and 10 whereas respondents have taken ward No.11 and 20 as reserved wards correctly, but in place of ward No.10, respondents have reserved the ward No.2, which according to the petitioner is an arbitrary and illegal exercise. Therefore, this petition has been preferred.

6. It is the submission of learned counsel appearing for petitioner that in year 2009 (as per census 2001), 3 wards were reserved for SC category candidates and those 3 wards were determined on the basis of descending order of population and at that time ward No.11, 15 and 2 were having maximum number of SC population, therefore, those 3 wards were reserved for contest for SC candidates. Later on, in the elections of 2014 (as per census 2011) same way of determination continued because ward No.11 had maximum number of people of SC category, thereafter ward No.20 and thereafter ward No.10 and therefore, those wards were reserved for SC candidates. Keeping in line with the said thought process, the same

formula was devised by the Collector/Prescribed Authority and proposal was sent to the State Government on 11-08-2020 (Annexure P/2) which was just and proper but on the instructions of respondent No.2 i.e. Commissioner, the Collector District Sheopur (respondent No.3) changed the ward No.10 and in its place ward No.2 has been included for reservation which is arbitrary, illegal and contrary to spirit of rules 3 and 4 of Rules of 1994 which are being placed with the petition for perusal.

7. Learned counsel for the petitioner vehemently pressed into service the interpretation of rule 3 of Rules of 1994 which according to him prescribes pattern of reservation on the basis of descending order of population of SC people in a ward and as per that formula ward No.11, 20 and 10 were to be included as reserved wards for SC category but same has not been done therefore, violation of rule 3 of Rules of 1994 is apparent on record. It is further submitted that at this stage election process is not started and only administrative formalities have been completed. Therefore, this petition is maintainable for redressal of grievance of petitioner.
8. Learned counsel for the petitioner also raised the plea of malafide as according to him one Tarachand Dhuliya who is working as Project Officer, in District Urban Development Agency (DUDA) Sheopur and was part of impugned proceedings dated 18-09-2020 (Annexure P/1) and since he is

resident of ward No.2 therefore, he has ulterior motive to get ward No.2 reserved for SC category candidate. He relied upon judgment rendered by this Court in the case of **Prahlad Das and another Vs. State of M.P. and others, AIR 1995 MP 188**. According to him, earlier precedent of reservation of wards of SC category candidates has been given a go bye for ulterior motive and contrary to the mandate of rules. Therefore, appropriate writ of mandamus be issued and alleged anomalies be corrected.

9. Learned counsel for the respondents/State on the basis of reply/additional reply filed with the petition opposed the submissions and pleadings of petitioner as reflected in the petition and rejoinder. Learned counsel for the respondents referred the reply and the example placed into it to augment his arguments and submits that petitioner has misinterpreted the rules. As per rule 3 of Rules of 1994 it is to be seen where the ratio of population of SC category is more vis a vis general population and therefore, even if any ward has more number of people of SC category but in ratio to overall population, their percentage is lower and if any ward contains less number of people of SC category but their overall population vis a vis total population of ward is more then that ward shall be considered as the ward suitable for reservation for SC candidates.
10. Therefore, according to him ward No.11, 20 and 2 contain

maximum percentage of population vis a vis general population in descending order as compared to other wards. Therefore, said anomaly has been referred by the Commissioner (respondent No.2 herein) and therefore, same has been corrected. He denied the allegations of arbitrariness. It is further submitted through additional return that notification of list of reserved wards as per rule 7 of Rules 1994 has been published. Petitioner has not challenged the said notification, therefore, on this count also petition sans merits. He prayed for dismissal of petition.

11. Heard learned counsel for the parties at length and perused the documents appended thereto.
12. **Elections are the festivals of Democracy.** People of Democratic Republic of India reflect their choice of representatives by casting their votes. Instant matter pertains to election of municipality and same has been taken care of by Constitution (74th) Amendment Act, 1992 wherein part IX-A (the municipalities) has been inserted in Constitution. Municipality has been defined in Article 243 -P (e) of the Constitution. Municipality means an institution of self-government constituted under Article 243 (Q). Other provisions of the said Chapter deal with Composition of Municipalities, Constitution and Composition of Wards Committees, Reservation of Seats, Duration of Municipalities, Power Authorities and Responsibilities of Municipalities,

Elections to the Municipalities and bar to interference by Court in electoral matter etc.

13. Article 243 -ZA gives power to legislature of a State to make provisions with respect to all matters relating to or in connection with elections to the municipalities. Thereafter, present day Section 29 and 29-A of the Act of 1961 were inserted. Section 29 deals with determination of number and extent of wards and conduct of elections. Same is reproduced herein for ready reference:

“29. Determination of number and extent of wards and conduct of elections. - (1) The State Government shall from time to time, by notification in the official gazette, determine the number and extent of wards to be constituted for each Municipality :

Provided that the total number of wards shall not be more than forty and not less than fifteen.

(2) Only one Councillor shall be elected from each ward.

(3) The formation of the wards shall be made in such a way that the population of each of the wards shall, so far as practicable, be the same throughout the Municipal area and the area included in the ward is compact.

(4) As soon as the formation of wards of a Municipality is completed, the same shall be reported by the State Government to the State Election Commission.

(5) x x x

(6) x x x”

14. Similarly, Section 29-A deals with reservation of seats.

Relevant clause is reproduced for ready reference:

“29A. Reservation of seats. - (1) Out of the total number of wards determined under sub-section (1) of Section 29, such number of seats shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipality as bears as may be, the same proportion to the total number of seats to be filled by direct election in the Municipality as the population of the Schedule 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) xx xx xx

(3) xx xx xx

(4) xx xx xx

(5) xx xx xx”

15. As referred above in pursuance to Section 433 read with Section 11 of the Act of 1956 and Section 355 read with Section 29-A of the Act of 1961, Rules of 1994 were promulgated. Rule 3 of the said Rules which also has material bearing in the controversy deserves to be reproduced for ready reference:

“3. First time reservation of wards.- (1) Out of the total number of wards determined under sub-section (1) of Section 10 of the Madhya Pradesh

Municipal Corporation Act, 1956 and sub-section (1) of Section 29 of the Madhya Pradesh Municipalities Act, 1961 such number of wards shall be reserved for Scheduled Castes and Scheduled Tribes in every' Municipality the proportion of which in the total number of wards determined for that municipality may be, as nearly as may be, the same which is to the Population of the Scheduled Castes or of the Scheduled Tribes in that municipality bears to the total population of that municipality and such wards shall be those in a descending order 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 per cent of the total number of wards shall be reserved for other backward classes in such Municipalities, where out of the total number of wards fifty per cent or less in number wards are reserved for Scheduled Castes and Scheduled Tribes, and such wards shall be reserved by lot from the remaining wards excluding the wards, reserved for Scheduled Castes and Scheduled Tribes.

(3) Out of the wards reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes, as above, as nearly as possible fifty percent wards for the women of the aforesaid castes, as the case may be, shall be reserved, by lot :

Provided that where only one ward is reserved for the Scheduled Castes or Scheduled Tribes as the case may be, then in that case, such ward shall not be reserved for woman of

Scheduled Castes or Scheduled Tribes, as the case may be.

Explanation.- When the Collector declares any ward as unreserved under sub-section (2) of Section 11 of the Madhya Pradesh Municipal Corporation Act, 1956 or sub-section (2) of Section 29-A of the Madhya Pradesh Municipalities Act, 1961, then such unreservation shall be limited to that election only.

(4) At the time of calculation under sub-rules (1), (2) and (3) fraction less than half shall be ignored and fraction equal to half or more shall be counted as one.

(5) Reservation of wards for ladies shall be made by deriving lot of unreserved wards, in such number that comes after subtracting the number of wards reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes under sub-rule (3) from as nearly as possible fifty percent in number of the total number of wards :
Provided that the number of wards reserved for women, including the wards reserved for the women of Scheduled Castes, Scheduled Tribes and Other Backward Classes shall be as nearly as possible fifty percent of the total number of wards.

(6) The reservation made as aforesaid shall remain in force for the whole period of five years of Municipality including casual vacancies.”

- 16.** At this juncture, it would be apt to deal with the objection regarding maintainability of petition because it goes to the root of the matter and if this Court finds that at this stage, by

the operation of Constitutional provisions and statutory rules, any impregnability exists qua judicial review then this Court would have to desist from making any observations on merits.

17. In this regard Article 243 -ZG of Constitution is worth consideration which bars interference by Court in electoral matters. Same is reproduced for ready reference:

243-ZG. Bar to interference by Courts in electoral matters.-- Notwithstanding anything in this Constitution.--

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243 ZA shall not be called in question in any Court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

18. Similarly Section 20 of the Act of 1961 deals with election petition and it starts with non obstante clause that no election or nomination under this Act be called in question except by a petition presented before District Judge of the concerned revenue district in which the election is held in accordance with the provisions of the Section. This provision bars the challenge to election or nomination except by election petition. In such legal backdrop it is to be seen whether the procedure which is under challenge gets the umbrella of

election process or its a prelude to the commencement of election process.

19. Valuable guidance and precedential reflection can be borrowed from the judgment rendered by the Hon'ble Apex Court in the case of **N.P. Ponnuswami v. The Returning Officer, AIR 1952 SC 64** and **Mohinder Singh Gill and another Vs. Chief Election Commissioner New Delhi and others, (1978) 1 SCC 405**. In the case of Mohinder Singh Gill (supra), Apex Court has explained the term 'Election'. It reads as under:

“The rainbow of operations, covered by the compendious expression election, thus commences from the initial notification and culminates in the declaration of the return of a candidate. The paramount policy of the Constitution-framers in declaring that no election shall be called in question except the way it is provided for in Article 329 (b) and the Representation of the People Act, 1951, compels us to read, as Fazal Ali, J. did in Ponnuswami, the Constitution and the Act together as an integral scheme. The reason for postponement of election litigation to the post-election stage is that elections poll not unduly be protracted or obstructed. The speed and promptitude in getting due representation for the electors in the- legislative bodies is the real reason suggested in the course of judgment.”

20. This aspect has further been discussed by the Hon'ble Apex Court in the matter of **Indrajit Barau V. Election**

Commission of India, AIR 1986 SC 103 which is reproduced below:

"We are not prepared to take the view that preparation of electoral rolls is also a process of election. We find support for our view from the observations of Chandrachud, C.J. in Lakshmi Charan Sen's case (AIR 1985 SC 1233) (supra) that "it may be difficult, consistently with that view to hold that preparation and revision of electoral rolls is a part of 'election' within the meaning of Article 329(b)". In a suitable case challenge to the electoral roll for not complying with the requirements of the law may be entertained subject to the rule indicated in Ponnuswami's case. (AIR 1952 SC 64 : 1952 (2) SCR 218 (supra)."

21. Similarly in the case of **Election Commission of India Vs. Ashok Kumar and others, (2000) 8 SCC 216**, the Apex Court again considering the case of **N.P. Ponnuswami (supra), Mohinder Singh Gill (supra), Lakshmi Charan Sen and others Vs. AKM Hassan Uzzaman and others, (1985) 4 SCC 689** and **Anugrah Narain Singh and another Vs. State of U.P. and others, (1996) 6 SCC 303** concluded as under:

"For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us

hereinabove:-

1) *If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.*

2) *Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.*

3) *Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.*

4) *Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same*

would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the courts indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”

- 22.** Considering the above guidance given by different Benches of Hon'ble Apex Court including Constitution Bench, it is clear that any preparation before notification of election by Election Commission/competent authority and their administrative exercise to serve progress of election and facilitates completion of election if subjected to challenge and if election is not imminent (as per pleadings of parties, no notification has been issued yet) then certainly scope of judicial review lies. Here, petitioner challenges correctness of

decision taken by the administrative authority as per rule 3 of Rules of 1994.

23. Here, in the present case, validity of any law has not been challenged therefore, bar of 243 ZG does not come to hinder the prospects of petitioner to file writ petition. Similarly, petitioner has not challenged nomination or election of any candidate so as to attract the rigours of Section 20 of the Act of 1961. It is a case wherein petitioner intends to ensure the action of respondents as per rule 3 of the Rules of 1994, of course with the pleadings of malafide, which although not factually substantiated, but tangentially referred. Therefore, as per the mandate of Apex Court in the case of **N.P. Ponnuswami (supra), Mohinder Singh Gill (supra), Indrajit Barau (supra), Lakshmi Charan Sen and others (supra) and Ashok Kumar (supra)**, it can be well inferred that election starts with the notification and culminates in the declaration of the return of a candidate and the proceedings in the instant petition are not such proceedings which are post notification of election but constitutes preparation of election. Once the petition is found maintainable then this Court can enter into the arena of merits as put forward by the petitioner.
24. The main grievance of the petitioner is non compliance of rule 3 of the Rules of 1994. Perusal of rule 3 indicates that it provides a formula for ascertaining the number of wards for

SC category candidates in a given municipality and after ascertaining number of wards those wards are to be earmarked in which population of SC category is concentrated in descending order. Here, word “**Concentrated**” assumes significance because Connotation of Concentration leads to the fate of this controversy and determines whether the attempt of respondents is a course correction from earlier deviation or it is an attempt to subterfuge the electoral prospects by taking wrong interpretation. The word concentrate is defined in The New International Webster's Comprehensive Dictionary as under:

*“1. To draw to a common center; cocenter; focus.
2. To intensify in strength or to purity by the removal of certain constituents; condense. 3. To converge toward a center; become compacted or intensified. n. 1 A product of concentration. 2 Usually pl. Metall. The product of concentration processes whereby a mass of high metal content has been obtained from the ore of the other raw materials.”*

25. In reply, the respondents have demonstrated two hypothetical tables and through those tables tried to drive home the point that those wards have been taken into consideration in which population of SC category people vis a vis total population is more. In other words, it is the narration of the respondents that total percentage of population of SC people vis a vis population of general category is to be seen rather than number

of people *per se*.

26. Those tables deserve reproduction by this Court to clarify the position:

For example 1:

Ward No.	Population of SC people	Total Population of Ward
1	500	1000
2	600	1500
3	700	1200
4	800	2000
5	900	5000

For example 2:

Ward No.	Population of SC people	Total population of ward	Percentage
1	500	1000	50.00%
2	600	1500	40.00%
3	700	1200	58.33%
4	800	2000	40.00%
5	900	5000	18.00%

Through these examples, respondents have demonstrated that total percentage of SC population in any particular wards is to be seen and through that formula those wards which fall at serial No.1 to 3 having the most concentrated population of SC people are to be chosen for reservation of wards for SC category candidates. Respondents have placed Annexure R/4 on record in which percentage of SC population has been referred and perusal of that document reveals that ward No.11 (Dr. Ambedkar Ward) has 78.92% population of SC people in the ward, therefore, it was included for reservation. Ward No.20 (Malviya Ward) contains SC

population to the extent of 41.45%, therefore, it was also included and ward No.2 (Saint Kabir Ward) contains population of SC category to the tune of 30.99% of total population therefore, it was given precedence over ward No.10 (Lokmanya Tilak Ward) which has 26.61% of SC population in the ward. Interestingly, ward No.10 has total 921 persons from SC category whereas ward No.2 has 865 SC people in the ward and therefore, if descending order is to be determined through percentage, density or concentrated as interpreted by the respondents then respondents are right in their disposition to include ward No.2 in their reservation tally.

- 27.** If legislative intent and purpose are seen, then it has logical bearing, because total density of SC category of people has material bearing because that way they have the feeling of representation through the candidates of their categories and new leadership would emerge amongst them. Constitutional goal for which the very concept of reservation in part XVI of Constitution conceptualized, wherein special provisions relating to certain classes were made and which is later on reflected in other provisions also of Constitution then it appears that respondents were logical in their approach.
- 28.** Besides that Section 29(3) of the Act of 1961 contemplates formation of the wards in such a way that the population of each of the wards shall, so far as practicable, be the same

throughout the municipal area and the area included in the ward is compact. It means area of the ward should be clearly distinctive or geographically distinguishable forming a unit and it has to be seen that population of each of the ward shall be, so far as practicable, be the same throughout the municipal area meaning thereby population should be homogeneously distributed, therefore, it is assumed that total population of the municipal area is almost divided in equal number of people (as far as practicable) and therefore, density of the particular community assumes significance. Even otherwise there is not much difference between 865 people (ward No.2) and 921 persons (ward No.10) but difference of density is noticeable.

- 29.** One more fact deserves discussion is rule 3 (3) of the Rules of 1994 specially the explanation which clarifies the position that declaration of ward as unreserved shall be limited to that election only. It means if in 2014 elections, ward No.2 was unreserved then it was limited to that election only. Now with proper interpretation of rule 3 of the Rules of 1994 if ward No.10 has been declared unreserved and ward No.2 is being reserved then this pattern of reservation is confined to this election only.

Although in the present case, petitioner has filed certain documents with the rejoinder which are order-sheets of committee which earlier took decisions to include ward No.10

amongst the reserved wards and from perusal of those note-sheets it further appears that election of 2014 which was also based upon census of 2011 proceeded on different assumption. The respondents should have corrected the said anomalous position then and then only but for some elections respondents did not correct their stand therefore, petitioner has the occasion to raise the plea of foul play.

- 30.** In election matters, respondents must take precaution to streamline the free election process so transparently and fairly that nobody should have occasion to raise the doubt over intention because as said earlier Elections are the Festivals of Democracy and they should not convert into the event denoted by the phrase that “Chaos is come again” (from “Othello” by Shakespeare). Piousness of election and election proceedings are paramount to maintain the confidence of people in Democracy.
- 31.** However the attractive plea and dialectical ingenuity may exists in the submission of petitioner but it may lead to wrong interpretation, therefore, this Court does not subscribe to the view about the continuance of previous anomalies crept into as error in decision making made earlier by the respondents in 2009 and 2014 elections. However, it is expected from the respondents that they would maintain uniform standard for determination of wards on this principle throughout the State and for all those elections which are governed by the same

Act/Rules or identical provisions.

32. In the considered opinion of this Court, respondents have not erred in making course correction while correcting their earlier stand and now they have reserved ward No.2 on the basis of density of population rather than the numbers. Therefore, no case for interference is made out.
33. Consequently, petition sans merits and is hereby dismissed. No costs.

Anil*

(Anand Pathak)
Judge