

Chattisgarh High Court
Chattisgarh High Court
Konda Ram Sahu vs State Of Chhattisgarh & ... on 16 July, 2010
WRIT PETITION C No 7123 of 2009

Konda Ram Sahu

...Petitioners

Versus

State of Chhattisgarh & Others ...Respondents

! Shri R Pradhan Advocate for the petitioner

^ Shri P K Bhaduri Panel Lawyer for the State respondents 1 & 2

CORAM: Honble Shri Satish K Agnihotri J

Dated: 16/07/2010

: Judgement

O R D E R

Delivered on 16th day of July 2010

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Heard.

1. Challenge in this petition is to the notice dated 20.10.2009 (Annexure P/1), whereby reservation of seats of all the 11 wards of Gram Panchayat, Jova, District Mahasamund, has been declared, on the ground that reservation of the seats is not in accordance with law and is in contravention of the provisions of the rules laid down under the Panchayat Nirvachan Niyam, 1995.

2. The facts, in nutshell, are that the petitioner is a resident of Ward No. 2 of Gram Panchayat, Jova. The petitioner belongs to Other Backward Class category and was intending to contest the Panchayat Election from Ward No. 2. By the impugned notice dated 20.10.2009, issued by the office of Collector, Mahasamund, the seat of ward No. 2 was declared as reserved for a women candidate (unreserved). The grievance of the petitioner is that out of 11 seats of Gram Panchayat, Jova, 6 seats have been reserved for scheduled caste and scheduled tribe but not a single seat has been reserved for a candidate of Other Backward Class category. Even in the earlier elections held in the year 1994, 1999 and 2004, not a single seat was reserved for Other

Backward Class category candidate which is evident from Annexure P/3. The further grievance of the petitioner is that there are about 935 voters and out of which, 382 belong to OBC category, 378 belong to SC category and 150 belong to ST category. Thus, looking to the percentage of OBC voters, there should have been reservation of a seat for the OBC candidate also.

3. Learned counsel appearing for the petitioner submits that in view of the provisions of sub rule (4) of Rule 4 of the Rules, 1995, 25 percent of the seats of Gram Panchayat, Jova, ought to have been reserved for Other Backward Class category. Further, the object and intention of the legislature is clear that the total number of seats as regards to that of SC, ST and OBC should not exceed 75 and at least one seat ought to have been reserved for OBC category candidate for the panchayat election.

4. On the other hand, Shri Bhaduri, learned counsel appearing for the State/respondent No. 1 and 2, would submit that the reservation of the wards is made before initiation of election proceedings for Gram Panchayat. In the case, reservation of wards in Gram Panchayat was published on 20.10.2009. The petitioner, without raising any objection before the Collector or any other authority, filed the present writ petition on 02.12.2009. During pendency of this petition, election programme has been notified on 24.12.2009 and election thereon had been held on 28.01.2010, 31.01.2010 and 03.02.2010. The result was also declared thereon. Thus, this petition has become infructuous as if the petitioner has any grievance against the reservation of wards made by the Collector under the provisions of Rule 4 of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 (for short 'the Niyam, 1995'). The petitioner may approach the Collector raising his grievances before next election as reservation of wards vary from election to election of Gram Panchayat. Even otherwise, the petitioner may very well file election petition under the provisions of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995'), where there is no restriction that only a contesting candidate or elected candidate can present election petition. Thus, the petition deserves to be dismissed as having become infructuous. Reservation of wards rotate and vary in every election.

5. The petitioner has not specified in the petition as to whether village Jova, is in the scheduled area as the reservation of wards is different in general areas than the scheduled areas. The petitioner ought to have approached the Collector who has published the notice in exercise of its power under Rule 4 of the Niyam, 1995 on 20.10.2009. The petitioner has further not stated in his pleadings or even in the argument as to whether the election had taken place or not and what would be the result if the petitioner succeeds in the present petition, once election has already been held. Thus, without deciding the merits of reservation which had become academic after election has been held. There is no live issue for adjudication. Thus, the petition deserves to be dismissed as having become infructuous.

6. Rules 1995 provides for filing of an election

petition. Rule 3 of the Rules, 1995 prescribes

presentation of election petition by a person. Rule 4 of

the Rules, 1995, provides that the petitioner, in

addition to claiming a declaration that the election of

all or any of the returned candidates is void, claims a

further declaration that he himself or any other

candidate has been duly elected, he shall join as

respondents to his petition all the contesting candidates at the election. Any person (elector/voter) who is aggrieved by a declaration of the election, may file a petition seeking a declaration that the election of all or any of the returned candidate is void.

7. It is well settled that if a case has become infructuous on the facts of the case and question remains to be decided for academic purpose, it is not necessary to examine the case. In the matter of *Basheshar Nath v. Commissioner of Income-tax, Delhi* and *Rajasthan and another*¹, the Supreme Court observed as under :

“12. ...We take the view that this Court should not make any pronouncement on any question which is not strictly necessary for the disposal of the particular case before it. We, therefore, confine our attention to Art. 14 and proceed to discuss the question on that footing.”

8. In the matter of *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*², their Lordships observed as under :-

“4. ...In this view grounds raised in the petition for setting aside the election of the respondent have been rendered academic. Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it. Lord Viscount Simon in his speech in the House of Lords in *Sun Life Assurance Co. of Canada v. Jarvis* observed :

I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. It is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties to a matter in actual controversy which the House undertakes to decide as a living issue.”

9. In the matter of *Secretary, Ministry of Information & Broadcasting, Govt. of India and others v. Cricket Association of Bengal and others*³, the Supreme Court observed as under :-

"121. The orders passed by the High Court have to be viewed against the backdrop of the events and the position of law discussed above. The circumstances in which the High Court passed the orders and the factual and legal considerations which weighed with it in passing them speak for themselves. However, since the cricket matches have already been telecast, the question of the legality or otherwise of the orders has become academic and it is not necessary to pronounce our formal verdict on the same. Hence we refrain from doing so."

10. In the matter of State of Manipur and others v.

Chandam Manihar Singh⁴ the Supreme Court observed as

under:-

"10. Having given our anxious consideration to the rival contentions, we find that as the High Court's direction in favour of the respondent's tenure which is to expire on 15-10-1999 has almost worked itself out and less than a month remains for him to act as Chairman of the Board, the first grievance raised by learned Senior Counsel for the appellants in connection with the removal of the respondent by order dated 19-10-1998 has become of academic interest. We, therefore, did not permit learned Senior Counsel for the appellants to canvass this point any further before us. That takes us to the consideration of the second point."

11. The Hon'ble Constitution Bench of the Supreme Court

in the matter of Arnit Das v. State of Bihar⁵ observed

as under:-

"6. It is settled practice that this Court does not decide matters which are only of academic interest on the facts of a particular case. (See with advantage: Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd., R. S. Nayak v. A. R. Antulay and Dharti Pakar Madan Lal Agarwal v. Rajiv Gandhi.)".

12. In the matter of Prakash Singh Badal and another v.

State of Punjab and others⁶ the Supreme Court observed

as under:-

"39. So far as the question about the non-application of mind in the sanction or absence of sanction is concerned, this has been answered in the first question i.e. where the public servant has ceased to be a public servant since he has ceased to hold the office where the alleged offence is supposed to have taken place, the other questions really become academic."

13. This Court, relying on the observations made by the

Supreme Court in the cases as aforesaid, in *Tritiya*

Verg Shaskiya Karamchari Grih Nirman Samiti Maryadit v.

*The Chhattisgarh Information Commission & Others*⁷, held

that question of law of academic interest cannot be

adjudicated upon.

14. In view of the foregoing, and for the reasons stated hereinabove, without going into the merits of the case as the instant petition is not an election petition, this petition is dismissed as having become infructuous.

15. There shall be no order as to costs.

JUDGE