

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5386 OF 2006

1. Uday Khanderao Pawar,
Age : 35 years, Occ.Social
Worker, R/o Pimpri Khurd,
Tq. Aurangabad
Dist. Aurangabad

2. Bhagwan Bhagaji Salve,
Age 36 years, occ.farmer,
R/o Ladsawangi, Tq.
Dist. Aurangabad

..PETITIONERS

VERSUS

1. The State Election Commission
through its Commissioner,
New Administrative Building,
Ist Floor, Opp. Mantralaya,
Mumbai

2. District Collector,
Aurangabad, Dist. Aurangabad

3. Zilla Parishad, Aurangabad
through its Chief Executive
Officer

4. The State of Maharashtra
Through Rural Development
Department, Mantralaya,
Mumbai

..RESPONDENTS

Mr S.V. Gangapurwala, Advocate for petitioners;
Mr K.B. Choudhari, A.G.P. for respondents no.2 & 4;
Mr S.T. Shelke, Advocate for respondent no.1.

CORAM : P.V.HARDAS AND
R.M. SAVANT, JJ.

(Date of reserving the
judgment : 15.9.2006

Date of pronouncing the
judgment : 3.10.2006)

JUDGMENT (PER HARDAS, J.)

. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties this petition is heard finally at the stage of admission.

2. By this petition the petitioners pray for issuance of an appropriate writ for holding that the reservation of seats for Scheduled Castes, Scheduled Tribes, O.B.C. and ladies made by respondents no.1 & 2 in respect of 60 electoral divisions be quashed and set aside and respondents no.1 & 2 be directed to make reservation in tune with the rotation policy as laid down by the Maharashtra Zilla Parishads and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules, 1996.

3. According to the petitioners, on 20.6.2006 the reservation of seats for O.B.C., ladies were made by draw of lots and reservation of seats of Scheduled Castes and Scheduled Tribes were already fixed by respondent no.1. The petitioners therefore contend that the respondents while reserving the seats for Scheduled Castes and Scheduled Tribes and also at the time of drawing of the

lots did not adhere to the said Rules more particularly the Rule regarding rotation of seats. The first petitioner had taken an objection to the said reservation on 26.6.2006.

4. On notice being issued to the respondents, respondents have filed their affidavit in reply and in the affidavit in reply it is stated that the strength of the members of the Zilla Parishad, Aurangabad was determined on the basis of the 2001 census. The determination of the number of seats to be reserved for Scheduled Castes, Scheduled Tribes, Backward Class and women as contemplated under section 3 of the Maharashtra Zilla Parishads and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules, 1996 also changed in view of the increase in the number of total seats of the Councillors of Zilla Parishad. It is further stated that provisions of rule 4 of Rules of 1996 regarding rotation therefore would not arise. It is also stated that the rotation system would be implemented in the subsequent election.

5. The petitioners have placed before us at Exh.A a list of various electoral divisions with the reservations which were applicable from the year 1997 to 2007. In the electoral division Ambelohol in the year 1997 it was

reserved for women (open) while in the election which were held in the year 2002 and which are to be held in the year 2007 the said post is reserved for O.B.C. Similarly, in respect of the electoral division Nagamthan in the election which were held in 1997 the said post was reserved for women (S.C.) and in the elections of the year 2002 and election to be held in 2007 the said post is also reserved for women (S.C.). In respect of electoral division Hatnoor the said post was reserved for O.B.C. in the 1997 election and in 2002 election. In the election to be held in 2007 the said post is again reserved for O.B.C. Similar is the situation in respect of the electoral division Undangaon. In the elections held in the year 1997 and 2002 the said post was reserved for Scheduled Tribes and the reservation is continued in 2007. In respect of electoral division Anvi in the year 2002 it was reserved for Scheduled Tribes and it is again reserved for Scheduled Tribes in 2007 election. In respect of electoral division Bhawan it was reserved for O.B.C. in 2002 and is also reserved for O.B.C. in 2007. In respect of electoral division Babra in Taluka Phulambri the said post was reserved for O.B.C. in 2002 election and is also reserved for O.B.C. in 2007 election.

6. Admittedly it seems that the rotation policy as

is contemplated under the relevant Rules has not been followed. The Rules are explicit in this behalf. It is no doubt true that because of the increase in the population that there would be increase in the number of seats and reservation is likely to overlap resulting in repetition of the reservation in respect of some posts. However, while doing so the authorities must apply their minds and ensure that the rule regarding rotation of reservation is followed both in letter as well as in spirit. Apparently this does not appear to have been done in the present matter.

7. Mr Gangapurwala, learned Counsel appearing on behalf of the petitioner has urged before us that the respondents have not followed the relevant Rules in this behalf in respect of rotation of the reservation. He has given the illustrative cases where the reservation which is followed in the earlier election has been maintained even in the forthcoming election in the year 2007, to which we have adverted above. It is therefore contended by learned Counsel for the petitioner that the Rule is observed by the respondents more in breach than in compliance. Mr Shelke, learned Counsel appearing on behalf of respondent no.1 has urged before us that in view of the increase in the population, there was increase in the number of seats and therefore the

reservation was required to be adjusted. According to the learned Counsel for the respondent no.1, the rotation policy would be observed in the next election.

8. According to us the relevant Rules in this behalf explicitly mandate the observance of the rotation policy. A brief reference in this regard may be made to the relevant rule. Rule 4 of the Maharashtra Zilla Parishads and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules, 1996 reads as under :-

"4. Manner of allotment and rotation of seats reserved for the Scheduled Caste and Scheduled Tribes -

(1) The number of seats reserved for persons belonging to the Scheduled Castes and Scheduled Tribes under rule 3 shall be allotted to the electoral divisions in the descending order beginning with the electoral division where population of such Castes or, as the case may be, Tribes is the highest :

Provided that, where in different electoral divisions the population of Scheduled Castes or

as the case may be Scheduled Tribes is equal, or in an electoral division where the population of both the Scheduled Castes and Scheduled Tribes is equal, then the allotment of seats in respect of such electoral divisions or electoral division shall be by drawing of lots :

Provided further that, where the population of the Scheduled Castes or, as the case may be, the Scheduled tribes in an electoral division is such that both the Scheduled Castes and Scheduled Tribes are entitled to have that electoral division reserved for each of them, then such electoral division shall be reserved for such category of them having higher population, and in the process for the other remaining category the electoral division in which it has the next highest population in the descending order, the seat shall be reserved.

(2) Notwithstanding anything contained in sub-rule (1) seats reserved for persons belonging to Scheduled Castes and Scheduled Tribes shall be rotated in the subsequent general elections to the electoral divisions in which no seats have, in the previous general elections been reserved

for such Castes or, as the case may be, Tribes, until such reservation is given, by rotation to different electoral divisions in a district :

Provided that, with a view to securing representation to the members of such Castes or Tribes in as many Blocks as possible in the districts the seats may be rotated to electoral divisions so however that no more than one seat is reserved in any one Block."

. This rule does not carve out any exception in respect of the increase in the population as determined by the census. The rotation policy has to be strictly adhered to. It is inevitable that on account of increase in the population and increase in the number of electoral divisions the reservation is likely to be repeated in respect of some electoral divisions. However, the respondents ought to exercise proper care to see that as far as possible the reservation is not repeated. This does not appear to have been done. The respondents have not observed the aforesaid rule 4 of 1996 Rules in its letter and in spirit. Mr Shelke, learned Counsel then urged before us relying on the judgment of Supreme Court in *State of U.P. vs. Pradhan Sangh Kshettra Samiti*, AIR 1995 S.C. 1512 that once the election notification was

issued, there was a bar to the Court from exercising its jurisdiction in respect of either delimitation of panchayat area or constituencies or allotment of seats to the constituencies. The respondents have produced before us either the notification or have stated the date of notification declaring the election. In the light of that therefore, according to us, the ratio laid down by the Supreme Court in State of U.P. vs. Pradhan sangh Kshettra Samiti (supra) is inapplicable to the facts of the present case. All that is contended on behalf of the respondents in their affidavit in reply is that the present petition was not maintainable in view of the Constitutional bar under Article 243 of the Constitution.

9. Thus, we allow the petition and make Rule absolute in terms of prayer clause (B) to the petition and direct the respondents to forthwith allot the reservation by observing the rotation policy in its letter and in spirit. Rule is thus made absolute on the terms indicated above with no order as to costs.

[R.M.SAVANT, J.].

[P.V.HARDAS, J.]

10. At this stage Shri Shelke, learned Counsel appearing on behalf of respondent no.1 states that in order to enable respondent no.1 to file appropriate proceeding before the Supreme Court, stay may be granted

to the judgment. We accordingly stay this judgment for a period of four weeks from today.

[R.M.SAVANT, J.].

[P.V.HARDAS, J.]

//Authenticated copy//

(A.M. Joshi),
P.S. to Honourable Judge.

Bombay High Court