

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****SPECIAL LEAVE PETITION (C) NO.2879 of 2017**

Arun S/o Shankar Dokhe & Another Petitioners

Versus

State of Maharashtra & Others Respondents

J U D G M E N T

A.M.KHANWILKAR, J.

1. This Special Leave Petition emanates from the judgment and order dated 16.01.2017 passed by the High Court of Bombay at Aurangabad in Writ Petition No.11214 of 2016. The said writ petition was filed for the following reliefs:

“18. The petitioners therefore pray that your lordship will be pleased to:

- (A) Call for record and proceedings of the case.
- (B) Hold and declare that, the impugned order dated 08.11.2016 passed by respondent No.3 Divisional Commissioner, Nashik

Division, Nashik, thereby rejecting the objection raised by the petitioner No.2 for dereserving the Chande-Kasare Block, Tq. Kopergaon, Dist. Ahmednagar, is illegal, arbitrary and violative of Article 14 & 21 of the constitution of India hence liable to be quashed and set aside.

- (C) Issue writ of mandamus, or any other appropriate writ, order or directions in the nature of writ of mandamus directing the respondent No.2 to 4 to take necessary steps to reserve the Chande-Kasare Block, Tq. Kopergaon, Dist. Ahmednagar for backward class of citizen category instead of other backward class category (Women) and to take consequential steps from conducting the elections for the said block according to law and for that purpose issue necessary orders.*
- (D) Pending hearing and final disposal of this writ petition, grant an injunction directing the respondent No.2 to 4 to take necessary steps forthwith for dereserving the Chande-Kasare Block, Tq. Kopergaon, Dist. Ahmednagar and further to take necessary steps as per law and accordingly to conduct the elections for the said block and for that purpose issue necessary orders.*
- (E) Pending hearing and final disposal of this writ petition, grant an injunction restraining the respondent No.2 to 4 from taking further steps for holding the elections to the extent of Chande-Kasare Block of Kopergaon Taluka, District Ahmednagar of Ahmednagar Zilla Parishad and for that purpose issue necessary orders.*
- (F) Grant ad interim relief in terms of prayer clause (D) & (E).*
- (G) Pass such other and further order as this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of the case."*

The Division Bench of the High Court summarily dismissed the said writ petition on 16.01.2017 in the following terms:

"PER COURT;
Heard.

2. The concerned officers have considered the objections of petitioners in detail and in view of declaration of election schedule and programme by the respondents, there is constitutional bar to entertain the writ petition.

3. The writ petitions are accordingly dismissed.”

2. The grievance of the Petitioners is that the writ petition was filed at the earliest opportunity on 15.11.2016 to challenge the order passed by Respondent No.3, dated 08.11.2016, rejecting the objection raised by Petitioner No.2 for dereserving the Chande-Kasare Block in relation to the ensuing panchayat election. The hearing of the writ petition was deferred until it was summarily dismissed because of the declaration of the election schedule on 11.01.2017. According to the Petitioners, the State Authorities, including the Election Commission, failed to abide by the mandate of Rules 6, 9 and 10 of The Maharashtra Zilla Parishads and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules, 1996, (for short “**the 1996 rules**”). Further, Section 12 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (for short “**the said Act**”), provides for division of District into Electoral Divisions. Sub-clause (d) of sub-section 2 of this Section predicates that one half (including the number of seats reserved for

women SC, ST and the category of Backward Class citizens) of the total number of seats to be filled in by direct election in a Zilla Parishad shall be reserved for women and such seats shall be allotted “by rotation” to different Electoral Divisions in the Zilla Parishad. Similarly, the Petitioners are relying on Rules 6, 9 and 10 of the 1996 rules, which provide for the manner of allotment of rotation of seats reserved for women and backward classes of citizens respectively. In the present case, however, contends learned counsel for the petitioners that there has been a clear violation of the said mandate. Therefore, the High Court ought not to have thrown out the petition at the threshold.

3. The Petitioners, therefore, have approached this Court to challenge the decision of the High Court as also the decision taken by the State Authorities/Election Commission. It is, however, not in dispute that the election schedule was notified by the State Election Commission on 11.01.2017, pursuant to which the election programme was to proceed and conclude with the declaration of results on 28.02.2017. Accordingly, the Petitioners had applied for

an interim relief which was granted by this Court vide order dated 25.01.2017, as follows:

“In the 2012 Elections, Electoral Division No.20 (Chande-Kasare) was reserved for women belonging to scheduled Tribe. In the 2017 Elections, it is proposed to be reserved for women belonging to Other Backward Classes.

Under the Maharashtra Zilla Parishads and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules, 1996, Rule 6 provides for manner of allotment and rotation of seats reserved for women. Under proviso to sub-rule (2) of Rule 6 it is clearly provided that while drawing lots at the time of subsequent general elections, the Electoral Divisions where such seats were already reserved in earlier elections for such women shall be excluded until reservation is given to all the Electoral Divisions by rotation.

Shri Rakesh Khanna, learned senior counsel appearing for the Petitioners submits that this rotation is not complete.

In the above circumstances, issue notice, returnable on 10.02.2017. The election programme to Electoral Division No.20 (Chande-Kasare), notified as per order dated 11.01.2017 by the State Election Commission, Maharashtra will stand suspended until further orders.

Dasti service, in addition, is permitted.

Mr. Mahaling Pandarge, learned counsel, appears and accepts notice for Respondent Nos.1, 3 & 4.”

(Emphasis supplied)

In view of the aforementioned interim order, except for the Electoral Division No.20 Chande-Kasare Block, the election programme for

rest of the constituencies of the 15 Zilla Parishads and 165 Panchayat Samitis in the State in Phase One of the General Elections proceeded further.

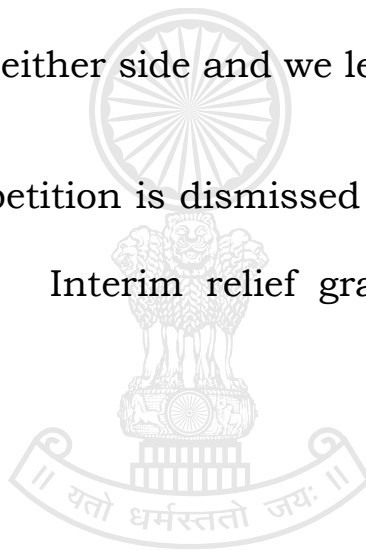
4. We have heard the counsel for both sides at length. During the hearing, it was noticed that the scheme regarding rotation of seats reserved for women or backward class of citizens etc., is a very complex process. That is discernible from the relevant provisions regarding allotment and rotation of seats reserved for women. We are of the considered opinion that even if the Petitioners succeed in persuading us on merits, as the election process of phase one has concluded with declaration of results in respect of other Electoral Divisions, the same cannot be undermined. Any attempt to make adjustment even in respect of one constituency i.e. Electoral Division No.20 (Chande-Kasare), would create an imbalance in the ratio of seats to be reserved for the respective categories as mandated by the provisions of the 1961 Act and the 1996 Rules. Indeed, the Petitioners have invited our attention to the dichotomy in the provisions of the Act, in particular Section 12(2) (d), which postulates allotment of seats by rotation to different Electoral

Divisions in a Zilla Parishad whereas the 1996 Rules provides for allocation of seats by drawing of lots. There appears to be some confusion if not conflict in the case of reconciling the mandate of reservation of seats for women in terms of Section 12(2) (d) and reservation of seats for women in reserved categories in terms of the Rules. The fact remains that the validity of provisions contained in the 1996 Rules has not been challenged in the writ petition. Further, the election schedule notified on 11.01.2017 by the State Election Commission has proceeded to its logical end in respect of all other Electoral Divisions of the concerned Zilla Parishad/Panchayat Samitis. There is no challenge to those elections nor those elections have been made subject to the outcome of the present Special Leave Petition. As a result, no effective relief can be granted to the Petitioners.

5. As aforesaid, any attempt to do so would inevitably upset the ratio of reservation of seats for women in the other Electoral Divisions where the election process is complete. In other words, accepting the Petitioners' prayer in the writ petition at this stage would result in creating an imbalance in that ratio, which will be in

violation of the letter and spirit of the law. For that reason, we decline to interfere in this petition and leave it open to the Petitioners to pursue any other remedy as may be permissible by law. The same will have to be decided in accordance with law. We make it clear that in the peculiar facts of the case on hand, we do not intend to express any view on the correctness of the issue canvassed before us by either side and we leave all questions open.

6. Accordingly, this petition is dismissed in the above terms with no order as to costs. Interim relief granted on 25.01.2017 is vacated forthwith.



.....J.
(Kurian Joseph)

JUDGMENT

.....J.
(A.M.Khanwilkar)

New Delhi,
Dated: May 04, 2017