

(1988) 10 AHC CK 0033

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 6611 of 1988

Mahendra Singh

APPELLANT

Vs

District Magistrate, Hardoi &
Others

RESPONDENT

Date of Decision: Oct. 28, 1988

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Panchayat Raj Rules, 1947 - Rule 2(g), 3D

Hon'ble Judges: K.C.Agarwal, J and B.L.Loomba, J

Final Decision: Dismissed

Judgement

K.C. Agrawal, J.

This petition under article 226 of the Constitution has been filed by Mahendra Singh for direction to the District Magistrate, Hardoi to administer him oath as the member of the Nyaya Panchayat of village Garaura, Pargana Gopamau, Vikas Khand Ahrauri and district Hardoi, held in June, 1988.

2. The petitioner was a candidate for being elected member of Gaon Panchayat from Constituency no. 4 of the aforesaid village. The number of seats allotted for Nyaya Panchayat should have been on the basis of 1981 Census. In that year population of the aforesaid village was 2725. According to it total number of seats were thirteen. It was wrongly announced as fifteen. The seats allotted to the petitioner's Constituency were five, three Scheduled Caste and two general. As a fact, in accordance with Rule 3D read with Rules 2 (g) of the U.P. Panchayat Raj Rules, 1947, the number of seats should have been one for general candidate and two for Schedule Caste. Upon Census, the general seats allotted to the petitioner's Constituency were two. He claimed that he was entitled to be declared elected as against the second seat. For the first seat Rama Shanker Singh had been declared elected.

3. After the election had taken place, the District Magistrate detected the mistake and got the result of three members of the Nyaya Panchayat announced. Out of these three, two were of Scheduled Caste and one general candidate.

4. Contending that the notification under Rule 3D was final, the total number of the seats of village Garaura was 15 and that out of 15, 5 seats had to be treated that of the constituency from which the petitioner stood.

5. Sri S.R. Dwivedi, counsel for the petitioner, urged that stages of contending that there was a mistake in the number of seats announced being over, the District Magistrate had no power to reduce the seats from 5 to 3.

6. We have heard learned counsel for the parties and have also examined the record brought by the official of the Returning Officer concerned. We found from the record that the total number of votes secured as a general candidate was less than that of Rama Shanker Singh. As there only one member had to be elected for the Nyaya Panchayat from the constituency in question, the petitioner having obtained less than Ram Shanker Singh, was not entitled to be elected.

7. Sri S.R. Dwivedi urged that in accordance with the present Census, to be found from the electoral rolls maintained by the District Magistrate, the population of village Garaura was three thousand and, therefore, fifteen seats for the Nyaya Panchayat had been rightly allotted to village Garaura. He urged that if fifteen seats are found to have been rightly allotted within the Constituency from which the petitioner contested, the number of seats should have been five.

8. We do not find any substance in this argument. The latest Census, had to be taken into account, as laid down by Rule 2(g) of the aforesaid Rules, in which the population was found to be 2725. If the allotment is made in accordance with Rule 3D of the aforesaid Rules, the total number of seats would come to three. The population of the Constituency in question was 640; its member should be three and not five. Consequently, the petitioner is not entitled to any relief. The Court cannot issue a mandamus to the district authorities to do wrong, which law does not permit.

9. The writ petition is, consequently, dismissed.

10. The prayer made for leave to appeal to Supreme Court having been found no merits by us, as the writ petition does not involve any substantial question of law of general importance needing to be decided by the Supreme Court, is refused.

(Petition dismissed)