

(1988) 01 GAU CK 0007

Gauhati High Court

Case No: Civil Rule No. 11 of 1988

Martin N.Majaw

APPELLANT

Vs

Chief Election Commissioner of
India

RESPONDENT

Date of Decision: Jan. 6, 1988

Acts Referred:

- Constitution of India, 1950 - Article 329, 329, 332, 332
- Representation of the People (Second Amendment) Act, 1987 - Section 2, 2, 9A, 9A

Citation: (1988) 1 GLJ 218

Hon'ble Judges: K.N.Saikia, C.J. and J.M.Srivastava, J

Bench: Division Bench

Advocate: S.Chand Mohammad, N.Majaw , Advocates appearing for Parties

Judgement

Saikia, C.J.

The petitioners, as constituted legal attorneys for the Hill State Peoples' Democratic Party, Meghalaya, challenge the election Omission of India's Notification No. 282/SCST/MEG/37 dated 24th December, 1987 declaring 55 out of 60 Legislative Assembly Constituencies for Meghalaya as reserved for the Scheduled Tribes. This means that 5 seats have been left as general seats. The 5 general seats are 18Pynthorumkhrah, 21Mawprem, 22Laban, 48Phulbari and 60Mahendraganj. The notification has been issued by the Chief Election Commissioner of India in pursuance of clause (e) of Subsection (2) of Section 9A of the Representation of the People Act, 1950.

2. The petitioner No. 1 Dr. Martin N. Majaw appearing in person submits inter alia, that this notification declaring only 55 Assembly Constituencies as reserved for Scheduled Tribes and leaving the remaining 5 Constituencies as general or unreserved Constituencies is contrary to the interest of the Tribal people of Meghalaya and is also at variance with the intents and purposes of the

Constitutional provisions and hence it is liable to be set aside. Dr. Majaw submits that the unique nature of governance and administration characteristic of the tribals of the State of Meghalaya, as the fact that ruthless economic exploitation by unscrupulous nontribals immigrating to these hills of Meghalaya from the neighbouring plains threatened that unique way of life of the simplehearted tribals, was well understood and recognised by the Founding Fathers of the Constitution of India who, for this very purpose, set up the North East Frontier (Assam) Tribal and Excluded Areas SubCommittee, under the Constituent Assembly of India, with Jate G.N. Bordoloi, as Chairman, and Rev. J.J.M. NicholsRoy, Mr. Rup Nath Brahma and Mr. A.V. Thakkar, all Members of the Constituent Assembly, as members. The petitioner points out that in paragraph 21 (e) of the First Part of the Report of the aforesaid SubCommittee the question of giving representation to nontribals in the Autonomous Hills District has been dealt with, and the appropriate portion is quoted as under :

(e) NonTribals Barred : We have considered the question of nontribals residing permanently in the hills. Some of these have been in residence for more than one generation and may or will claim the right to stand for election ; but we find that the feeling against allowing them to stand for election is extremely strong. It is felt that even though in predominantly tribal constituency the chances are all in favour of a tribal candidate, the nontribals, in view of their greater financial strength can nullify this advantage. We recommend therefore that plains people should not be eligible for election to the provincial Legislature from the hill constituencies."

The petitioner further states that following the aforesaid recommendations, Article 332 of the Constitution of India was enacted whereby no person who was not a member of the Scheduled Tribe, of any Autonomous District of Assam should be eligible for election to the Legislative Assembly of the State from any constituency of that district and even after the constitution of the State of Meghalaya the same law should govern and the impugned notification is contrary to the intents and purposes of that provision.

3. The petitioner fairly states that the notification for holding general election to the Meghalaya Legislative Assembly has already been published and the poll is scheduled to take place on 2nd February, 1988. The petitioners fairly submit that they did not challenge the amendment to the Representation of the People Act, 1950 whereby Section 9A was inserted. Hence this petition.

4. Mr. Sk. Chand Mohammad, the learned Sr. Central Govt. Standing Counsel submits that the Legislative Assembly election process having already been started this court should not interfere with that process at this stage,

5. It may be convenient at this stage to refer to the relevant constitutional provisions. Article 330 of the Constitution of India provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People. Article 332

provided for reservations of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States as follows :

""(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in Nagaland and in Meghalaya, in the Legislative Assembly of every State.

(2) Seats shall be reserved also for the autonomous districts iu the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause ^1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(4) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district.

(6) No person who is nut a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district."

However, by the Constitution (Fiftyseventh Amendment) Act, 1987 which received the assent of the President on the 15th September, 1 87 and was published in the Gazette of India, Extraordinary, Part II, Section 1 dated 15.9.87, a new clause under Clause (3A) was inserted after Clause(3) of Article 332 Clause (3 A) now provides :

"(3A) Notwithstanding anything contained in Clause (3), until the taking effect, under Article 170, or the readjustment, on the basis of the first census after the year 2000, of the number of seats in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such State shall be

a) if all the seats in the Legislative Assembly of such State existence on the date of coming into force of Constitution (Fiftyseventh Amendment) Act, 1987 (hereinafter in this clause referred to as the existing Assembly) are held by members of the Scheduled Tribes, all seats except one :

b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in

the existing Assembly."

(2) The amendment made to Article 332 of the Constitution by subsection (1) shall not affect any representation in the Legislative Assembly of the State of Arunachal Pradesh or the Legislative Assembly of the State "of Meghalaya or the Legislative Assembly of the State of Mizoram or the Legislative Assembly of the State of Nagaland until the dissolution of the Legislative Assembly of the State of Arunachal Pradesh or the Legislative Assembly of State of Meghalaya or the Legislative Assembly of the State of Mizoram or the Legislative Assembly of the State of Nagaland existing at the commencement of this Act."

Article 334 provides that notwithstanding anything in the foregoing provisions the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States, shall cease to have effect on the expiration of a period of forty years from the commencement of the Constitution.

The Representation of the People Act, 1950 is an Act to provide for the allocation of seats in, and the delimitation of constituencies for the purpose of elections to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union territories, and matters connected therewith. Section 7 deals with total number of seats in Legislative Assembly and assembly constituencies. Section 8 deals with consolidation of delimitation orders. Under sub section (1) thereof as soon as may be, after all the orders referred to in subsection (5) of Section 4 or in subsection (3) of Section 7 relating to the delimitation of Parliamentary and assembly constituencies have been made by the Delineation Commission or as the case may be, the Election Commission and published in the Official Gazette, the Election Commission shall, after making such amendments as appear to it to be necessary for bringing upto date the description of the extent of the parliamentary and assembly constituencies as given in such orders, consolidate all such orders into one single order to be known as the Delimitation of Parliamentary and Assembly Constituencies Order, 1976 and shall send authentic copies of that Order to the Central Government and to the Government of each State having a Legislative Assembly ; and thereupon that order shall supersede all the orders referred to in subsection (5) of Section 4 or in subsection (3) of section 7 and shall have the force of law and shall not be called in question in any court. Section 9 of this Act empowers the Election Commission to maintain Delimitation Order up to date. Under subsection (1) thereof the Election Commission may, from time to time, by notification published in the Gazette of India and in the Official Gazette of the State concerned (a) correct any printing mistake in the Delimitation of Parliamentary and Assembly Constituencies Order, 1966, or, as the case may be, the Delimitation of Parliamentary and Assembly Constituencies Order, 1976, or any error arising therein from inadvertent slip or omission ; (b)

where the boundaries or name of any district or any territorial division mentioned in the Order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the Order upto date. Under subsection (2) thereof every notification shall be laid as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned. By Section 2 of the Representation of the People (Second Amendment) Act, 1987 a new Section being Section 9A has been inserted and it provides :

"9A. (I) As soon as may be after the coming into force of the Representation of the People (Second Amendment) Act, 1987, the Election Commission shall, having regard to the provisions of the Constitution and the principle specified in clause (d) of subsection (1) of Section of the Delimitation Act, 19/2, determine the assembly constituencies in the States of Meghalaya, Mizoram and Nagaland in which seats shall be reserved for the Scheduled Tribes.

(2) The Election Commission shall,

(a) publish its proposals under sub section (1) with respect to any State in the Official Gazettee and also in such other manner as it thinks fit ;

(b) specify a date on or after which the proposals will be further considered by it;

(c) consider all objections and suggestions which may have been received by it before the date so specified ;

(d) hold, for the purpose of such consideration, if it thinks fit so to do, one or more public sittings at such place or places in such State as it thinks fit ;

(e) after considering all objections and suggestions which may have been received by it before the date so specified, determine, by order, the assembly constituency or constituencies in the State in which seats shall be reserved for the Scheduled Tribes and cause such order to be published in the Official Gazette ; and, upon such publication, the order shall have the full force of law and shall not be called in question in any court and the Delimitation of Parliamentary and Assembly Constituencies Order, 1976, or as the case may be, the Mizoram (Delimitation of Assembly Constituencies) Order, 1986 shall be deemed to have been amended accordingly.

(3) Every order made under sub section (2) shall, as soon as may be after it is published under that subsection, be laid before the Legislative Assembly of the State concerned.

Explanation. For The purposes of this section, "assembly constituency" means,

(a) in relation to the States of Meghalaya and Nagaland, the assembly constituencies in those States as specified in the Delimitation of Parliamentary and Assembly Constituencies Order, 1976 ; and

(b) in relation to the State of Mizoram, the assembly constituencies specified in the Mizoram (Delimitation of Assembly Constituencies) Order, 1986."

6. As provided in the aforesaid Section 9A, the Election Commission of India issued the Notification No. 282/SCST/MEG/87 dated 23rd November, 1987 published in the Gazette of Meghalaya, Extraordinary, dated November 23, 1987. This notification said :

"Whereas under clause (b) of subsection (IB) of Section 7 of the Representation of the People Act, 1950 (43 of 1950), fiftyfive seats shall be reserved for the Scheduled Tribes in the Legislative Assembly of the State of Meghalaya to be constituted at any time after the commencement of the Representation of the People (Amendment) Ordinance, 1987 (Ordinance 7 of 1987).

AND WHEREAS the Election Commission is required by subsection (1) of Section 9A of the said Act to determine having regard to the provisions of the Constitution and the principles specified in clause (d) of subsection (1) of Section 9 of the Delimitation Act, 1972 (76 of 1972) inter alia, the assembly constituencies in the State of Meghalaya in which seats shall be reserved for the Scheduled Tribes ;

NOW, THEREFORE, in pursuance of clause (a) of subsection (2) of section 9A of the Representation of the People Act, 1950 (43 of 1950) the Election Commission of India hereby publishes its PROPOSALS, made under subsection (1) of section 9A having due regard to the provisions of the Constitution and the principles specified in clause (d) of subsection (1) of section 9 of the Delimitation Act, 1972, with respect to the State of Meghalaya.

la pursuance of clause (b) of subsection (2) of the said section 9A, the Commission hereby specifies the 8th day of December, 1987 as the date on or after which its aforesaid proposals will be further considered by it."

Dr. Majaw submits that large number of objections were submitted by the people of Meghalaya, as required under the aforesaid notification..

7. The impugned notification recites that all objections and suggestions received in relation to the said proposals were considered by the Commission at the public sitting held at Shillong on 15th December, 1987.

8. From the above provisions of the Constitution as well as of the Representation of the People Act, 1950, we do not find any statutory violation in issuing the impugned notification. The notification has been issued in conformity with the provisions of Section 9A of the Representation of the People Act, 1950. So long that Section remains in the Statute Book, this notification , issued in conformity therewith cannot be challenged as ultra vires Dr. Majaw fairly states that the petitioners did not challenge the validity of the Representation of the people (Second Amendment) Act, 1987, which inserted Section 9A in the Representation of the people Act, 1950. The explanation given is that when (the notification dated 23rd November, 1987 inviting

objections to the , proposal for reserving 55 seats and by implication leaving the I remaining 5 seats as general seats, the petitioners had the impression that the entire proposal itself was open and could be objected to and prevented from being given effect to and objections were in fact submitted and only from this notification it is now clear that the Election Commission only considered the objections, but it does not say that the objections have been rejected. As we have already noted, the provisions required the objections to be considered and in conformity with the provisions the Election Commission has fairly said that the objections have been considered)" and the fact that the notification has been issued by implication shows that the objections have been considered according to law.

9. As regards the views of the North East Frontier (Assam) Tribal and Excluded Areas Sub Committee, it is now settled that such views may throw light in interpreting the provisions of the Constitution but cannot override them. The Constitutional provisions relating to the reservation of seats in what is now State of Meghalaya have been amended from time to time and the amended provisions of the Constitution alone are binding. The circumstances under which the Committee expressed its views have not remained static. There has been in the meantime considerable changes in the population composition in the State and this has been an important factor in the matter of reservation of seats. While the views deserve due respect the changes that have taken place affecting the question cannot be wholly ignored. The power of amendment of a Constitution is inherent in the concept of Constitution itself, and no Constitution of the world has ever remained entirely static. "We the people of India"" mean the living people after those who framed the Constitution, perpetual adherence to the old provisions and refusing to amend it would make the present and the future generations prisoners of the past generation. The present generation may be as wise and confident as the past generation. Hence no objection could generally be taken to the amendment of the above provisions of Constitution and the present generation must abide by the existing provisions.

10. As regards the impending election, admittedly the election process has already started from 2nd January, 1988 and the poll is scheduled to be held on 2nd February, 1988. Any interference with the reservation or otherwise of the Constituencies at this stage, as prayed by the petitioner in the petition, must necessarily interfere with the election process.

11. Article 329 puts complete bar to interference by courts An electoral matters. It says:

"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 327 of Article 328, shall not be called in question in any court :

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

12. In *N. P. Ponnuswami. vs. The Returning Officer, Namakkal*, AIR 1952 SC 64=1952 SCR 218, it has been held that the word "election" is used to embrace the whole procedure of election and rejection or acceptance of a nomination paper is also included and that the right to vote or stand as a candidate for election is not a civil right but is a creature of Statute or special law and must be subject to the limitation imposed by it. There can, therefore, be no doubt that the election process has already started. In *A. K. M. Hassan Uzzamaa vs. Union of India*, (1982) 2 SCC 218, it has been held that though the High Court did not lack the jurisdiction to entertain the writ petition and to issue appropriate directions therein, no High Court in the exercise of its power under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution. In *Charan Lal Sahu vs. Nandkishore Bhatt*, AIR 1973 SC 2464, it has been held that the right to challenge an election is a right provided by Article 329 (6) of the Constitution of India, which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made, by the appropriate Legislature. The right conferred being a statutory right, the terms of that statute had to be complied with. There is no question of any common law right to challenge an election. In *Mohinder Singh Gill vs. The Chief Election Commissioner, New Delhi*, AIR 1978 SC 851, it has been held that election covers the entire process from the issue of the notification under section 14 of the Representation of the People Act to the declaration of the result under section 66 of the Act. In *Inderjit Barua vs. Election Commission of India*, AIR 1984 SC 1912, where revision of electoral rolls was dispensed with by the Election Commission and the order was not challenged in the writ petition, it was held that the election held on the basis of such unrevised electoral roll could not also be challenged on that ground and the validity of the election could not be challenged on the ground that electoral rolls were not revised before election.

13. In view of the above provisions and pronouncements of their Lordships of the Supreme Court we are unable to interfere with the election process at this stage. (No statutory or Constitutional violation 1 having been shown in issuing the

impugned notification)we do not find any merit in this petition, which is accordingly rejected at the threshold. Dr. Majaw expresses that there should be no bar to the petitioners" challenging the validity of the Representation of the People (Second Amendment) Act, 1987. We have already noted that the petitioners have not challenged the validity of that Act in this writ petition. No question of the petitioners being barred to do so can, therefore, arise.

14, In the result, this petition is dismissed at the threshold.