

(2001) 11 AP CK 0031

Andhra Pradesh High Court

Case No: Writ Petition No. 19800 of 2001

B. Balaji and Another

APPELLANT

Vs

Govt. of A.P., Panchayat Raj
Dept. and Others

RESPONDENT

Date of Decision: Nov. 23, 2001

Acts Referred:

- Andhra Pradesh Panchayat Raj Act, 1994 - Section 1(3), 242B, 242D
- Constitution of India, 1950 - Article 242D, 242M, 243D, 243M, 244
- Endowments Act - Section 114
- Panchayats (Extension to Scheduled Areas) Act, 1996 - Section 10(3), 2, 3, 304, 4
- Panchayats (Extension to Scheduled Areas) Rules - Rule 9
- Parliamentary Act - Section 4

Citation: (2002) 3 ALT 14

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: M. Surender Rao, for the Appellant; A.A.G. and G.P. for Respondent Nos. 1, 3 and 4, V.V. Prabhakar, S.C. for APSEC for Respondent No. 2 and M. Rajamalla Reddy, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, C.J.

The short question involved in this writ petition is whether it is open to the State to reserve the Post of Chairperson, Singareni Mandal Parishad in favour of a B.C. (Woman) whereof 12 out of 13 mandal territorial constituencies fall within the scheduled area.

2. This writ petition has been filed to declare the reservation of the post of President of Mandal Parishad, Singareni in favour of Backward Class Woman as illegal being contrary to the A.P. Panchayat Raj Act, 1994 and Articles 242 (D) and (M) (sic. 243-D

and 243-M) of the Constitution of India and consequently to declare the election of fifth respondent as illegal.

3. The petitioners herein belong to Scheduled Tribe community and are residents of a village under Singareni Mandal, which has got 13 territorial constituencies. According to them, the entire Singareni Mandal, except Singareni village, falls in agency/scheduled area.

4. The District Collector, Khammam had determined the number of members for the offices of Mandal Parishad Territorial Constituencies for all categories viz., SC, ST, BC, Women and unreserved and the allotment of seats was decided by the Revenue Divisional Officer. Notification of election schedule was issued on 25-6-2001.

5. The main contention of the petitioners is that the Singareni Mandal having been notified as Agency/Scheduled Area, The Andhra Pradesh Panchayat Raj Act, 1994 cannot be made applicable. It is also contended that the post of President of Mandal Parishad should be reserved in favour of a Scheduled Tribe, but not in favour of any other reserved class.

6. It was urged that as the Parliament enacted the Provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996 (Act 40 of 1996) (hereinafter referred to as "the said Act"), the State Legislature could not have any jurisdiction to make any law reserving any post in favour of any other class or Backward Class other than Scheduled Tribe, having regard to the second proviso appended to Section 4 (g) thereof.

7. The learned Addl. Advocate General would, on the other hand, submit that a scheduled area would mean an area which has been declared as scheduled area in terms of Fifth Schedule of the Constitution of India. Drawing our attention to Rule 13(1) of G.O. 140 dated 20-4-2001, it was submitted that reservation in favour of a member of Scheduled Tribe is only made when a Mandal Parishad is constituted wholly within a scheduled area. The learned Counsel would urge that as the part of Parishad falls outside the scheduled area, the second proviso appended to Section 4(g) of the said Act would not apply in this case.

8. This Court in Arka Vasanth Rao and others Vs. Govt. of A.P. and others, held that the provisions of the Panchayat Raj Act will have no application in relation to a scheduled area. It stands admitted that the Apex Court did not interfere with the said judgment. The judgment of this Court received legislative recognition by enacting the said Act.

9. In Section 2 of the said Act, the expression "Scheduled Areas" has been defined to mean:

In this Act, unless the context otherwise requires, "scheduled areas" means the Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution.

10. Section 4 (b), (c) and (g) respectively of the said Act, reads as under:

4. Exceptions and modifications to Part IX of the Constitution:--

(b) A village shall ordinarily consist of a habitation or a group of habitations or a hamlet of a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;

(c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.

(g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution.

Provided that the reservation for the Scheduled Tribes shall not be less than one half of the total number of seats;

Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes.

11. Having regard to the aforementioned enactment, the Government of A.P. amended A.P. Panchayat Raj Act by A.P. Panchayat Raj (Amendment) Act, 1998 (Act No. 7 of 1998).

12. Section 1(3) of the A.P. Panchayat Raj Act reads thus:

It shall come into force on such date and in such area as the Government may, by notification in the Andhra Pradesh Gazette appoint and they may appoint different dates for different areas and for different provisions.

13. Section 242-D of the A.P. Panchayat Raj Act provides for reservation in the following terms:

Reservation of seats of members of Gram Panchayat and Mandal Parishad and Offices of Sarpanch of Gram Panchayats and Presidents of Mandal Parishads:--

The reservation of seats in the Scheduled Areas to every Gram Panchayat and Mandal Parishad shall be in proportion to the population of the communities in that Gram Panchayat or the Mandal Parishad as the case may be.

Provided that the reservation for the Scheduled Tribes shall not be less than one half of the total number of seats;

Provided further that all seats of Sarpanch of Gram Panchayats and Presidents of Mandal Parishads shall be reserved for the Scheduled Tribes.

14. Thus, whereas, in terms of Section 4 (g) of the 1996 Act, all seats of Chairpersons of Panchayats at all levels have been reserved for Scheduled Tribes, the State Act provides for such reservation in Panchayats and Mandal Parishads only.

15. The said Act was extended to the scheduled areas by reason of G.O. 123 dated 8-3-1995. "Scheduled Area" has been defined to mean the area as referred in Clause (1) of Article 244 of the Constitution of India, which reads as under:

Administration of Scheduled Areas and Tribal Areas:-- (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the State of Assam, Meghalaya, Tripura and Mizoram.

16. Paragraph 5 of the Vth Schedule to the Constitution of India reads thus:

"Law applicable to Scheduled Areas:-- (1) Notwithstanding anything in this Constitution the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good Government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in Sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to him by, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Government making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council."

17. According to Section 4 of Act 40 of 1996 which begins with a non-obstante clause, a statutory injunction has been issued restraining the Legislature of the State from making any law under that part which is inconsistent with any of the features specified therein. It is not in dispute that in terms of the provisions of Parliamentary

Act, the State enacted the A.P. Panchayat Raj Amendment Act, 1998 whereby and whereunder various sections were inserted therein some of which are:

Section 242-B: Declaration of village in Scheduled Areas:--

For the purposes of Section 3, a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets thereof comprising a community or communities and managing their affairs in accordance with traditions and customs.

Section 242-D. Reservation of seats of members of Gram Panchayat and Mandal Parishad and offices of Sarpanchas of Gram Panchayats and Presidents of Mandal Parishads:--

The reservation of seats in the Scheduled Areas to every Gram Panchayat and Mandal Parishad shall be in proportion to the population of the communities in that Gram Panchayat or the Mandal Parishad as the case may be:

Provided that the reservation of the Scheduled Tribes shall not be less than one half of the total number of seats;

Provided further that all seats of Sarpanchas of Gram Panchayats and Presidents of Mandal Parishads shall be reserved for the Scheduled Tribes.

18. Section 3 of the Act 40 of 1996 conforms to the requirements of Section 242-B of the Panchayat Raj Act. By reasons of the provisions of Act 7 of 1998, reservation is required to be made at the Panchayat and Mandal Parishad levels. There are 46 Mandal Parishads in Khammam District of which 22 Mandals are located in the scheduled area, whereas nine Mandals are partly located in scheduled areas and the remaining 15 Mandals are non-scheduled areas.

19. All 22 Mandals which are wholly located in scheduled area have been reserved for Scheduled Tribes. The Singareni Mandal consists of 12 Mandal Parishad territorial constituencies (MPTC) of which Singareni MPTC is in a non-scheduled area. The Singareni Mandal is therefore treated as not wholly located in a Scheduled Area,

20. In the instant case, we are concerned only with one of the nine Mandals which comprise of a part of scheduled area and part of non-scheduled area.

21. In the aforementioned backdrop, the question posed in this writ petition has to be answered.

22. The Constitutional provisions coupled with the provisions of Act 40 of 1996 leave no manner of doubt that the provisions of the said Act and the Rules framed thereunder which are inconsistent therewith must be held to be ultra vires.

23. For the purpose of construction of the provisions contained in Section 4(g) of the said Act, the purport and object of the Parliament must be taken note of. A bare

perusal of the relevant provisions of the relevant statutes leave no manner of doubt that the reservation in favour of the Scheduled Tribe is the legislative policy. Such legislative policy, in our considered opinion, must be given its full effect.

24. Whereas in terms of Section 4(g) of the Central Act, reservation of seats in every scheduled area shall be in proportion to the population in that panchayat, the second proviso appended thereto clearly states that the posts of Chairpersons at all levels shall be reserved for Scheduled Tribes. The first proviso to Section 4(g) specifies 50% of the total number of seats whereas the second proviso categorically states that the seats of Chairpersons shall be reserved for the Scheduled Tribes.

25. The scheme of the Fifth Schedule appended to the Constitution is absolutely clear and unambiguous. The Constitution envisages self governance as far as practicable. The tribals inhabiting the scheduled areas enjoyed special protection; their way of life, their social structure and primitive living made them unfit to be governed by ordinary laws to a great extent. The Scheduled Tribes Order, 1950 includes groups or communities distinguished by tribal characteristics, culture and their isolation from the rest of the population. Para 5 of the fifth schedule clearly says that the Government may apply any Act or may not apply the same to a scheduled area and such application may be made with exceptions and modifications. In terms of sub para (2) of para 5, the Governor may for the peace and good governance of any area in a State which is for the time being a scheduled area, make regulations inter alia in the matters specified therein.

26. In this context, applicability of the Panchayat Raj Act in terms of a Parliamentary Act would clearly envisage self governance by the people of their choice subject of course to the limitations provided for under the statute. Whereas the first proviso appended to Section 4 (g) speaks of reservation to the extent of 50%, the second proviso provides reservations in favour of members of Scheduled Tribes so far as of seats of Chairpersons at all levels. Chairpersons of Mandal Parishad Territorial Constituencies and Zilla Parishad Territorial Constituencies enjoy various statutory powers and it would, in our opinion, lead to incongruity if it be held that in a territorial area of Mandal Panchayat, although the members of the Scheduled Tribe would form majority members keeping in view the fact that 12 out of 13 villages are within the scheduled area and a Chairperson would be a member of the Backward Class women only because one village falls outside the scheduled area. The purport and object of the Constitutional mandate and also the Parliamentary Act No. 40 of 1996 would be completely defeated if a Chairperson is allowed to run the entire show despite the fact that the 12 out of 13 villages form part of the scheduled area. By reason of such measure, exploitation of the members of the Scheduled Tribe in a scheduled area which was the basic purpose for which part of Fifth Schedule in terms of Article 244 of the Constitution of India as also Act 40 of 1996 had been enacted, cannot be ruled out. If any other interpretation is taken recourse to, the purport and object of the statutory provisions shall stand defeated.

27. Further more, if the contention of the learned Addl. Advocate General is accepted, the same would lead to illogicality. By reasons of executive action, a territorial authority may be constituted in such a manner which would take away the benefit granted in favour of the members of Scheduled Tribe.

28. The Court, it is trite, may not in the garb of interpretation, legislate, but it can certainly iron out the creases.

29. It is a well settled principle of law that where the law is not clear, recourse must be taken to purposive interpretation.

30. In Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, it was held:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrases and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and every thing is in its place.

31. In *Anantha Kumar Bej v. State of West Bengal*, 1999 (4) SLR 661 (D.B.) a Division Bench of the Calcutta High Court has noticed that authorities as regards purposive construction.

It is a well settled principles of law that despite absence of a rule, the Selection Committee is entitled to short list the candidates. Rule 9(c)(ii) of the rules only gives a statutory recognition to the aforementioned service jurisprudence. In a case of this nature, therefore, the doctrine of purposive interpretation should be invoked, and in such a situation the word "written test" must be held to be incorporated within the word "interview". The answer to the question posed in this appeal, thus in the opinion of this Court, should be rendered in affirmative as otherwise the word "written examination" would become totally otiose. Such a construction is permissible by taking recourse to the doctrine of strained construction, as has been elaborately dealt in by Francis Bennion in his *Statutory Interpretation*.

32. In Francis Bennion Statutory Interpretation. Second edition, as regards the rule of "purposive construction", it has been stated at Section 304 as under:

A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in the Code called a purposive-and-literal construction),

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).

33. In DPP v. Schildkamp, (1971) AC 1 it was held that the rule that severance may be effected even where the "blue pencil" technique is impracticable.

34. In Jones v. Wrotham Park Settled Estates, (1980) AC 74 at 105 the law is stated in the following term:--

.... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a Court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it. Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd. (1971 AC 850) provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the Draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a Court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed.

35. The above principle has been followed in Andhra Pradesh State Road Transport Corporation Vs. State Transport Appellate Tribunal and Others, (See also: M.S. Grewal and Another Vs. Deep Chand Sood and Others, and Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others, .

36. In S.R. Chaudhuri v. State of Punjab, 2001 (5) ALD 97 (SC) the Apex Court has clearly held that the provisions of the Constitution must be interpreted having regard to the intent of the Constitution makers. The Constitution makers left the matter of self-governance at the discretion of the State. The State therefore may not

grant the right of self-governance to the people of entire State. Some exceptions are required to be carved out and the State Legislature by reason of Section 114 of the Endowment Act had carved out such exception.

37. In Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, the rule of addition of word had been held to be permissible in the following words:--

We are of the view that having regard to the pattern in which Clause (a) of Sub-section (3) of Section 10 of the Act is enacted and also the context, the words "if the landlord required it for his own use or for the use of any member of his family" which are found in Sub-clause (ii) of Section 10(3) (a) of the Act have to be read also into Sub-clause (iii) of Section 10(3) (a) of the Act. Sub-clauses (ii) and (iii) both deal with the non-residential buildings. They could have been enacted as one sub-clause by adding a conjunction "and" between the said two sub-clauses, in which event the cause would have read thus: in case it is a non-residential building which is used for the purpose of keeping a vehicle or adopted for such use, if the landlord required it for his own use or for the use of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own; and in case it is any other non-residential building, if the landlord or member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own. If the two sub-clauses are not so read, it would lead to an absurd result.

38. In R.C. Poudyal and Others Vs. Union of India and others, it was held that non-obstante clause in 371-F cannot be construed as taking Clause (f) of Article 371-F outside the limitations on the amending power itself. The provisions according to the Apex Court, must be construed harmoniously consistent with the foundational principles and basic features of the Constitution.

39. The object of the Central Act is to see that members of Scheduled Tribe themselves should hold certain posts.

40. The Court, it is well settled, must ascertain the legislative intent so as to give effect thereto. Constitutional safeguards have been provided in favour of the members of Scheduled Tribe. State Legislation as also the executive action, thus, must conform to the legislative intent. What has been given by one hand should not be allowed to be taken away by the other. The State cannot be permitted to take recourse of machinations. "Just principle" must be applied where two views are possible. (See: Siddappa Vasappa Kuri and Another Vs. Special Land Acquisition Officer and anr. .

41. Applying the principles of purposive construction, we are of the opinion that in the cases of this nature, the Court can supply the words also which may be necessary for complying with the intention of the Parliament in its true letter and spirit. The legislative deficiency of the said Act which cannot be filled in having

regard to Section 4 of the Parliamentary Act, cannot be permitted to be filled in by a delegated legislation. We are, therefore, of the opinion that reservation of the post of President could not have been made in favour of B.C. (Woman). In that view of the matter, G.O. 140 dated 20-4-2001 providing for reservation rules cannot be said to have any application whatsoever in the instant case. We are therefore of the considered view that Singareni Mandal could have been reserved only for the members of the scheduled tribe and the reservation made in favour of the "Backward Class (woman)" to which category the third respondent belongs, must be held to be bad in law. Consequently, the election to the post of President of Singareni Mandal Parishad must be held to be a nullity.

42. The official respondents are directed to conduct fresh election in the said constituency in accordance with law declaring the same as being reserved for the members of Scheduled Tribe only. The writ petition is therefore, allowed. No costs.

43. After the pronouncement of the judgment, Mr. Rajamalla Reddy requested for staying the operation of the judgment. The same is refused.