

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

W.P.(C) No. 4374 of 2021

Ramnath Yadav

..... Petitioner

Versus

1. The Jharkhand State Election Commission, through the State Election Commissioner, Jharkhand, Ranchi

2. The District Election Officer-cum-Deputy Commissioner, Garhwa

..... Respondents

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**CORAM****HON'BLE MR. JUSTICE RAJESH SHANKAR**

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For the Petitioner:

Mr. Rahul Dev

For the Respondents:

Mr. Sumeet Gadodia

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03/31.03.2022

The present writ petition has been filed for quashing part of the list dated 25.09.2021 prepared by the respondent No.2 whereby the post of Mukhia of Ghaghari Panchayat has been reserved for 'Scheduled Castes' (Woman) and this is the third consecutive term when the said Panchayat seat of Mukhia has been reserved for the candidate belonging to Scheduled Caste which is against the provisions of Section 21(A) of the Jharkhand Panchayat Raj Act, 2001 [hereinafter referred to as 'the Act, 2001'] and Rule 9(c) of the Jharkhand Panchayat Election Rules, 2001 [hereinafter referred to as 'the Rules, 2001']. Further prayer has been made for issuance of direction upon the respondents to consider the case of the petitioner for reservation of the seat/post of Mukhia of Ghaghari Panchayat for 'Other Backward Classes' (OBC).

2. Learned counsel for the petitioner submits that on 25.09.2021, the respondent No.2 published the list of reserved constituencies for the post of Mukhia to be elected by way of forthcoming third Panchayat Election (General) whereby the constituency of Ghaghari Panchayat has been reserved for the Scheduled Caste (Woman) in a most arbitrary and discriminatory manner ignoring the fact that the largest population in Ghaghari Panchayat belongs to Other Backward Classes (OBC) whereas the second largest population in the said Panchayat belongs to Scheduled Caste. Section 21-A of the Act, 2001 and Rule 9(c) of the Rules, 2001 provide that the post of Mukhia shall be reserved for the candidates belonging to the Scheduled Castes, Scheduled Tribes (ST), Other Backward Classes and women in different constituencies on rotation

basis, however, the post of Mukhia of Ghaghari Panchayat has been reserved for the candidates belonging to Scheduled Castes for the third consecutive term.

3. Learned counsel for the respondents submits that Article 243-O of the Constitution of India has restricted the Courts from intervening in the matter of delimitation of Panchayat constituencies or the allotment of seats to such constituencies and as such the present writ petition is not maintainable. On bare perusal of Section 21-A of the Act, 2001 and the Rules, 2001, it would be evident that the percentage of reservations has to be given firstly to ST category then SC category and thereafter rest of the seats are to be reserved for OBC category, subject to the upper limit of 50% of the total seat. Further, at least 50% reservation has to be given to the women in each category including General (Other) category. The allotment of all seats has to be made on rotation basis by the District Magistrate as per Rule 15 of Rules, 2001 under the supervision, direction and control of the State Election Commission. On the basis of percentage of population in Sagma Block, total number of seats for the post of Mukhia are 5. Out of these, two posts are reserved for the SC as per their population in Sagma Panchayat Samiti (Block) and rest three posts are reserved for other categories as per their population in the said Panchayat Samiti. In the year 2015, election of 5 numbers of above posts of Mukhia was held on the basis of the percentage of their respective population wherein as per second proviso to Rule 11(1) of the Rules, 2001, the SC was allotted 2 seats whereas Others (General) were allotted 3 seats. In the year 2021, the population being the same, the reservation is also to be in the same manner. Hence, the allotment is as follows: (i) Backward Classes (ii) Others (General) (iii) Scheduled Tribes and (iv) Scheduled Castes on the basis of rotation in descending and cyclic order. As such, the 'Others' (General) have been allotted 3 seats and the SC have been allotted 2 seats. In the first Panchayat Election held in the year 2010, the rotation for these 5 seats of Mukhia in Sagma Block was as follows: (i) Scheduled Tribes (ii) Scheduled Castes (iii) Backward Classes (iv) Others (General) which was changed in the year 2015 as (i) Scheduled Castes

(ii) Backward Classes (iii) Others (General) (iv) Scheduled Tribes and in the year 2021, the said rotation has come as (i) Backward Classes (ii) Others (General) (iii) Scheduled Tribes and (iv) Scheduled Castes. Accordingly, for the next Panchayat Election (which was proposed to be held in the year, 2021 itself), allotment of seats for the post of Mukhia has been made on rotation basis in which in the first round of rotation, one seat has been allotted to Birbal Gram Panchayat (General category) and one seat has been allotted to Ghaghari Gram Panchayat (Scheduled Caste) having the highest population of the Scheduled Castes. Similarly, in the second round of rotation, one seat has been allotted to Sondeeha (General) and another seat has been allotted to Sagma Gram Panchayat (SC). In third round of rotation, rest one post has been allotted to Katharkalan (Others). In this way, all the five seats have been allotted to the five Panchayats. The reservation/allotment of seats for the Panchayat Elections, 2010 was made in the light of the published census data of 2001 and in the said election, as per Rule 9(ga) and 11 of the Rules, 2001, one post was allotted for the candidates belonging to Scheduled Castes in Ghaghari Gram Panchayat having the highest population of Scheduled Castes. However, during next Panchayat Election i.e. in 2015, the census report of 2011 was published and enforced. On the basis of the said census report, the highest population of Scheduled Castes category was in Ghaghari Gram Panchayat and in the light of the existing laws i.e. Rule 9(ga) and 11 of the Rules, 2001, again one seat was reserved for the candidates belonging to Scheduled Castes in Ghaghari Gram Panchayat under rotation policy. Similarly, in the year 2021 i.e. for the proposed third Panchayat Election, the census data of population was the same and hence percentage of population of all categories remained the same as was in the year 2015. As per third proviso to Rule 11(1) of the Rules, 2001, the rotation was started from Backward Classes to Others, Scheduled Tribes and Scheduled Castes keeping in seriatim without making any change in the allotment of seats and once again the seat for Ghaghari Gram Panchayat was reserved for Scheduled Castes. It is a matter of chance and also due to prevailing rules and

rotation policy, the seat for Ghaghari Gram Panchayat has been reserved for Scheduled Castes in three consecutive Panchayat Elections. It is further submitted that the preparation for conducting the Panchayat Elections has almost been completed by the respondent No.1 and the same is scheduled to be held any time as soon as the State Government gives its consent for conducting the same. Hence, there is no possibility of change in the reservation system and allotment of seat, especially, in the light of the provisions laid down in the Constitution of India as well as in terms with the relevant provisions of the Act, 2001 and the Rules, 2001. In a similar situation, the reservation of Chairperson in Municipality was earlier challenged by preferring a writ petition being W.P.(C) No. 358 of 2018 and after hearing both the parties, this Court dismissed the same vide order/judgment dated 14.03.2018.

4. Heard learned counsel for the parties and perused the relevant materials available on record. The petitioner has challenged the decision of the respondent No.2 whereby the post of Mukhia in Ghaghari Panchayat has been reserved for the candidates belonging to Scheduled Caste (Woman).

5. The thrust of the argument of learned counsel for the petitioner is that the said decision of the respondent No.2 has been taken in contravention of Section 21(A) of the Act, 2001 and Rule 9(c) of the Rules, 2001 by reserving the seat of Mukhia of Ghaghri Panchayat for the candidates belonging to SC category for third consecutive term. For better appreciation of the issue involved in this case, it would be appropriate to reproduce Section 21(A) of the Act, 2001 which reads as under:

**"Section 21 (A) Reservation of Posts of Mukhia (In general area)**

**(1) The following procedure shall be followed in respect of reservation for the candidates belonging to the Scheduled Castes and the Scheduled Tribes, namely:-**

**(i) In General Areas (Non Scheduled Areas), the posts of Mukhia shall be reserved for the candidates belonging to the Scheduled Castes and the Scheduled Tribes in proportion of their population and such posts shall be allotted by rotation in the prescribed manner to different constituencies by the State Election Commission.**

**(ii) In case of less than fifty per cent, reservation of**

**posts for the Scheduled Castes and the Scheduled Tribes candidates, rest of the posts shall be reserved for the Other Backward Classes in proportion of their population but in any case the total number of posts reserved for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes shall not exceed more than fifty per cent of the total posts.**

**(iii) Out of the total posts reserved under clauses (i) and (ii) of this sub section, not less than fifty per cent, of the posts shall be reserved for the women belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes.**

**(iv) Not less than fifty per cent, of the total posts of Mukhia (including the posts reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes) shall be reserved for women candidates and such posts shall be duly allotted by rotation by the State Election Commission in different Gram Panchayats of the Panchayat Samiti.**

**(2) If any Mukhia of a Gram Panchayat becomes a member of any house of the Parliament or a member of the State Legislature or Chairman/Vice-Chairman of any Co-operative Society, then as regard him it shall be deemed that he has vacated his post from the date on which he has become such member or Chairman or Vice-Chairman and for the purposes of section (63) it shall be deemed that casual vacancy has occurred in his office.**

**(3) Notwithstanding anything contained in this section, the Mukhia shall be deemed to be a member of the Gram Panchayat for all the purposes of this Act."**

6. Thus, in general areas (non-Scheduled areas), the post of Mukhia is to be reserved for the candidates belonging to SC and ST categories in proportion of their population as well as on rotation basis and only when the reservation of SC and ST is less than fifty percent, the rest of the posts of Mukhia are to be reserved for the Other Backward Classes in proportion of their population, but in any case, the total number of reserved posts should not exceed more than fifty percent of the total posts and out of the said reserved posts, fifty percent of the posts have to be reserved for the women belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes and such posts are to be duly allotted as per rotation by the State Election Commission in different Gram Panchayats of the Panchayat Samiti.

7. Further, Rule 9(c) of the Rules, 2001 provides that the post of Mukhia and Pramukh shall be reserved and allotted on rotation basis to the SC, ST, OBC

and women candidates by the District Magistrate on the direction, control and supervision of the State Election Commission on rotation basis.

8. In the case of **Piyush Kumar Jaiswal Vs. The State of Jharkhand & Ors. [W.P.(C) No. 358 of 2018]**, this Court has held as under:-

**"9. It appears from the record that the first General Election for Nagar Panchayats was held in the year, 2013 and by applying the provisions of Rule 6 of Rules, 2012, the reservation roster was applied point-wise i.e., (i) Scheduled Castes, (ii) Scheduled Tribes (iii) Backward Classes (iv) General in the said election. The reservation roster for the second municipal election was prepared in the year, 2015 itself when the election for two Nagar Panchayats i.e., Manjhiaon Nagar Panchayat and Koderma Nagar Panchayat was due. As per Rule 6 of Rules, 2012, the reservation roster for second general election was as; (i) Scheduled Tribes, (ii) Backward Classes (iii) General, (iv) Scheduled Castes. By following the said the reservation roster, the first set of the second municipal election was already conducted in the year, 2015. The election of remaining 13 Nagar Panchayat (i.e., the second set) fell due in the year, 2018 for which the same reservation roster is being followed. Annexure-C to the counter-affidavit filed on behalf of respondent nos. 2 and 3 is the Chart prepared in Part-III, wherein the population of each category has been arranged in descending order. As per the reservation roster for second municipal election, considering the maximum population in the order of Scheduled Tribe, Backward Class, General, Scheduled Caste, the reservation roster has been applied in "Khunti" Nagar Panchayat, "Chhatarpur" Nagar Panchayat, "Barharwa" Nagar Panchayat and "Hussainabad" Nagar Panchayat respectively. In the second round of reservation roster, "Chakulia" Nagar Panchayat has been declared as reserved for Scheduled Tribe, no post has been reserved for Backward Class, "Jamtara" Nagar Panchayat has been reserved for General and "Nagar Untari" Nagar Panchayat has been reserved for scheduled Caste since Chhatarpur Nagar Panchayat having the second highest population of scheduled Caste was already reserved for Backward Classes. Thus, I do not find any infirmity in the decision of the State Election Commission in declaring "Nagar Untari" Nagar Panchayat reserved for Scheduled Caste. There is no such provision in the Act, 2011 or in the Rules, 2012 to the effect that the reservation would be given to any category merely by taking into consideration the maximum population of that category in any Nagar Panchayat. On the contrary, a fixed procedure/methodology has been provided to reserve any constituency for the purpose of municipal elections.**

**10. The next contention of the learned counsel for the petitioner is that Nagar Untari Nagar Panchayat**

is a newly constituted one and as such, the reservation roster meant for the first election should have been applied by the respondents and by applying the reservation roster meant for second election, the respondent-State Election Commission has committed a serious error, thereby depriving the candidates of backward classes from contesting the election for the post of Chairperson of Nagar Untari Nagar Panchayat. I find no force in the said submission of the learned counsel for the petitioner. A Nagar Panchayat by itself is transitional in nature as the State Government, considering the development of the existing Village Panchayat, is empowered to constitute a Nagar Panchayat which is a continuous process. Thus, the reservation roster is to be applied uniformly irrespective of new constitution of a particular Nagar Panchayat. The reservation roster as well as the rotation cannot be applied for a particular Nagar Panchayat so far as the post of Chairperson of the same is concerned. The reservation roster has been fixed keeping in view the general election of the Nagar Panchayats and not by treating a particular Nagar Panchayat in isolation. Thus, in my considered view, the reservation roster and rotation for Nagar Panchayats should not be individually applied, rather the same should be applied in general so as to maintain uniformity in terms with the mandate of the Act, 2011 and the Rules, 2012 enumerated for conducting the election of the Nagar Panchayats failing which the purpose of reservation rotation would itself get inconsistent and unworkable. Moreover, it is well settled that if the election is imminent or well under way, the Court should not intervene to impede the election process as no election will ever take place because someone or the other will always find some reason to move the Writ Court with a view to stall the election process."

9. Thus, the reservation is not given to any category merely by taking into consideration the maximum population of that category, rather the same is given on the basis of the fixed procedure/methodology provided for the said purpose. It has further been held that the Court should be slow in making interference in the election process, if the same is imminent or well under way.

10. In the case in hand, the respondents in the counter affidavit have explained the manner in which the impugned decision of reserving the seat of Mukhia for SC (Woman) with respect to Ghaghri Panchayat has been taken. It has been elaborately illustrated that in the Panchayat Election held in the year 2010, the rotation was ST-SC-OBC-Others and in the year 2015, the rotation was SC-OBC-Others-ST and as such in the forthcoming Panchayat Election

(scheduled to be held in the year 2021 itself), the rotation has been fixed as OBC-Others-ST-SC. The population of SC in Sagma Panchayat Samiti is 9564 which is 31.46% of the total population and as such out of five posts of Mukhia in Sagma Panchayat, 2 posts have been reserved for SC which is less than 50% of the total post and hence the rest three posts have been allotted to the 'Others' category. It has also been explained that in the first round, Birbal Gram Panchayat was allotted to 'Others' (General) candidate and Ghaghari Gram Panchayat was allotted to SC category candidate. Further, in the second round of rotation, Sondeeha Panchayat was allotted to the 'General' candidate and Sagma Panchayat was allotted to SC candidate. In the third round of rotation, the rest one seat of Katharkalan Panchayat was allotted to 'Others' (General) candidate. The petitioner has not challenged the legality of Section 21(A) of the Act, 2001 and the Rule 9(c) of the Rules, 2001 as well as Form 3 of the Schedule which provides the manner of allotting the seats to different categories. The petitioner has also failed to show any infirmity in the procedure adopted by the respondents for allotting the seat of Mukhia in Ghaghari Gram Panchayat for SC (Women) candidate.

11. Under the aforesaid facts and circumstances, I do not find any reason so as to interfere with the impugned list dated 25.09.2021 prepared by the respondent No.2.

12. The present writ petition being devoid of merit is, accordingly, dismissed.

Satish/-

(RAJESH SHANKAR, J)