

Court No. - 2

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 878 of 2022

Petitioner :- Vaibhav Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Urban Development, Civil Sectr. Lko. And Another

Counsel for Petitioner :- Sharad Pathak, Piyush Pathak

Counsel for Respondent :- C.S.C., Anurag Kumar Singh

Hon'ble Devendra Kumar Upadhyaya, J.

Hon'ble Saurabh Srivastava, J.

Notice on behalf of respondent no.1 has been accepted by the office of the learned Chief Standing Counsel, whereas Sri Anurag Kumar Singh, has accepted notice on behalf of respondent no.2.

Under challenge in this petition is the notification dated 05.12.2022 issued by the State Government under Section 9-A(5)(3)(b) of the Municipalities Act 1916, read with Rule 7 of the U.P. Municipalities (Reservation and Allotment of Seats and Offices) Rules 1994.

By issuing the said Notification dated 05.12.2022, objections have been invited to be filed within seven days i.e. till 12.12.2022 till 06:00 P.M. at Nagar Vikas, Anubhag-I, Bapu Bhawan, Secretariat, Uttar Pradesh.

It has been argued on behalf of the petitioner that the entire exercise of reservation of seats in the municipalities throughout the State of Uttar Pradesh is being carried out by the State Government in complete derogation and defiance of the mandate of Hon'ble Supreme Court in the case of **Suresh Mahajan Vs. State of Madhya Pradesh & Another**, reported in **2022 SCC Online SC 589**. His submission is that Hon'ble Supreme Court in the said case has clearly mandated not only the State of Madhya Pradesh and Maharashtra but all States and Union Territories and the respective Election Commissions that until triple test formality (as enunciated by Hon'ble

Supreme Court in the judgment in the case of **Vikas KishanRao Gawali Vs. State of Maharashtra and others** reported in **(2021) 6 SCC 73**, are completed in all respects by the State Government, no reservation for Other Backward Classes can be provided.

It has been argued further that Hon'ble Supreme Court has further directed that in case such exercise cannot be completed before issuing the election program by the State Election Commission, seats (except reserved for scheduled castes and scheduled tribes) must be notified as for the general category.

It has been, thus, argued on behalf of the petitioner that in the instant case though the State Government is in the process of conducting the elections for municipalities at various levels in the State of U.P., however for providing the reservation, the mandate of the Hon'ble Supreme Court as per the judgment in the case of **Suresh Mahajan (supra)** is not being followed in as much as that though admittedly, till date the triple test formality has not been completed, however by issuing the notification dated 05.12.2022, though it is a tentative draft order in terms of the provision contained in Section 9-A (5) (3)(b), but by inclusion of certain seats shown to be reserved for Other Backward Classes, it is clear that State Government is going to provide reservation to the Other Backward Classes as well.

Learned State Counsel has however vehemently opposed the writ petition, firstly, by submitting that since the notification dated 05.12.2022 is only a draft order and objections have been invited by the State Government, it is for the petitioner and other persons who are aggrieved by the said draft order to file their objections and accordingly in his submission, the writ petition is premature.

It has also been argued by the learned State Counsel that as a matter of fact the judgment in the case of **Suresh Mahajan (supra)** does not support the cause of the petitioner as any exercise to be undertaken as mandated by Hon'ble Supreme Court in the case of **Vikas KishanRao**

Gawali(supra) will only delay the process of election, which will be against the very concept of democratic setup of the municipalities.

So far as the first objection raised by learned State Counsel is concerned, for considering the same, we may extract paragraphs-13, 24 and 31 of the judgment in the case of **Suresh Mahajan (supra)**.

"13. For, until the triple test formality is completed "in all respects" by the State Government, no reservation for Other Backward Classes can be provisioned; and if that exercise cannot be completed before the issue of election programme by the State Election Commission, the seats (except reserved for the Scheduled Castes and Scheduled Tribes which is a constitutional requirement), the rest of the seats must be notified as for the General Category.

24. In other words, the exercise of collation of empirical data and after analysis thereof, the Commission is expected to make recommendation regarding the number of seats to be reserved for Other Backward Classes "local body wise". Apparently, that exercise has not been undertaken by the Commission. The State Government can act upon only thereafter and as per the recommendations of the Commission - which is an independent body created to ensure that there is no over-breadth of such reservation in the "concerned local body".

31. We also make it clear that this order and directions given are not limited to the Madhya Pradesh State Election Commission/State of Madhya Pradesh; and Maharashtra State Election Commission/State of Maharashtra in terms of a similar order passed on 04.05.2022, but to all the States/Union Territories and the respective Election Commission to abide by the same without fail to uphold the constitutional mandate."

Prima facie, what we feel is that in case the State Government had any intention to conduct the elections as per the mandate of Hon'ble Supreme Court in the case of **Suresh Mahajan (supra)**, it would not have, at the first hand, included the seats reserved for Other Backward Classes even in the draft order notified by the impugned notification dated 05.12.2022.

Accordingly, it becomes imperative for us to ascertain as to whether in the process of reserving the seats for the purpose of elections of the Urban Local Bodies of the State of U.P., the State Government is following the mandate in the case of *Suresh Mahajan* (supra) or not, hence we entertain this petition and direct the learned State counsel to seek complete instructions by tomorrow.

We further direct that the State Election Commission shall not issue the election notification by tomorrow; neither shall State Government make final order based on the draft order issued vide notification under challenge, dated 05.12.2022 by tomorrow.

We also permit the petitioners and other persons aggrieved by the impugned notification dated 05.12.2022 to file their objections through E-mail as well.

We have been apprised that E-mail address of the Additional Chief Secretary/ Principal Secretary, Department of Urban Development is **acsud.goup@gmail.com**

Objections by the petitioner and other persons may be filed through E-mail till 12:00 hours at night today.

List/ put up this case tomorrow i.e. on 13.12.2022 as fresh, along with Writ-C No.8928 of 2022, Writ-C No.8945 of 2022, P.I.L. No.880 of 2022, Writ-C No.8957 of 2022, Writ-C No. 8958 of 2022, Writ-C No.8961 of 2022 and Writ-C No.8975 of 2022.

Order Date :- 12.12.2022
Rahul