

Ratanlal Nath and Others

Vs

State of Tripura and Others

Civil Appeals Nos. 1640-1641 of 1997

(B. P. Jeevan Reddy, K. S. Paripoornan JJ)

25.02.1997

JUDGMENT

B. P. JEEVAN REDDY J.

1. Leave granted in both the special leave petitions.

2. Civil Appeal No. 1641 of 1997 [arising from Special Leave Petition (C) No. 22702 of 1994] is preferred by the State of Tripura, while the other civil appeal [arising from Special Leave Petition (C) No. 10413 of 1994] is preferred by a voter who was the writ petitioner before the High Court. The main challenge in the writ petition was to the validity of certain rules framed by the State of Tripura under and in pursuance of the Tripura Panchayats Act, 1993. The High Court has struck down sub-rules (3) to (7) of Rule 8-A of the Tripura Panchayats (Preparation of Electoral Rolls) Rules, 1993 (hereinafter referred to as "Panchayat Rules") and proviso (ii) to sub-rule (3) of Rule 3, Proviso (ii) to sub-rule (4) of Rule 6 and proviso (ii) to clause (c) of sub-rule (4) of Rule 8 of the Tripura Panchayats (Delimitation of Constituencies) Rules, 1993 (hereinafter referred to as "Delimitation Rules"). The High Court, however, sustained the validity of Rule 3 of the Tripura Panchayats (Constitution of State Panchayat Election Commission) Rules, 1993.

3. The Tripura Legislative Assembly enacted the Tripura Panchayats Act, 1993 in the light of and to bring the law relating to panchayats in conformity with the purpose, substance and direction of the Constitution (73rd Amendment) Act, 1993. The Act has created a three-tier system. Gram Panchayats are constituted for Grams (villages), Panchayat Samitis at the block level and Zilla Parishads at the district level. The Act provides for the constitution and composition of these bodies besides providing for their powers, duties and functions et al. We may briefly notice the relevant provisions of the Act. Clause (16) of Section 2 defines the expression "First General Election". It means "the First General Election of members held for constitution of Gram Panchayats, Panchayat Samitis and Zilla Parishads after commencement of this Act". The subject-matter of the present proceedings is the "First General Election". Clause (32) in Section 2 defines the expression "population" to mean "the population as ascertained at the last preceding census of which the relevant figures have been published". Section 3 provides for the constitution of the Gram. Section 11 provides that for every Gram there shall be constituted a Gram Panchayat. Section 12 provides inter alia that the strength of a Gram Panchayat shall not be less than nine and shall not exceed fifteen. Section 13 provides that each Gram shall be divided into not less than five but not more than fifteen constituencies. Section 14 provides for reservation of seats in every Gram Panchayat in favour of Scheduled Castes and Scheduled Tribes. Similar provision is made in respect of Panchayat Samitis and Zilla Parishads as well. Section 176 provides for the constitution of a State Panchayat Election Commission. The Commission is vested with the power of superintendence, direction and

control of the preparation of the electoral rolls and the conduct of all elections to Panchayat Bodies under the Act and the Rules made thereunder. Section 177 says that "for each constituency, there shall be an electoral roll showing the names of the persons qualified to vote. The electoral roll shall be prepared in accordance with the provisions of this Act and the Rules made thereunder". Section 183 provides for preparation, revision and correction of electoral rolls. Section 189 bars the jurisdiction of the civil court in respect of matters provided by the Act. Section 213 bars the court from granting an injunction interfering with the process of election. Section 228 empowers the State Government to make rules for carrying out the purposes of the Act.

4. In exercise of the rule-making power conferred by Section 228, the State Government has framed the aforesaid three sets of rules among others. We may first notice the relevant provisions of the Delimitation Rules. Rule 3 provides for determination of the number of members for a Gram Panchayat and the number of members of Scheduled Tribes, Scheduled Castes and women in each Panchayat. The number of members of each Panchayat is related to the population of each Gram. For a Gram, the population of which does not exceed three thousand, the number of members is nine (which is the minimum number prescribed by the Act) and for a Gram the population of which exceeds six thousand, the number of members is fifteen (the maximum number prescribe by the Act). Sub-rule (3) provides for the reservation of seats in favour of Scheduled Tribes and Scheduled Castes whereas sub-rule (4) provides for reservation in favour of women. Having regard to the nature of the controversy involved herein, it would be appropriate to set out sub-rule (3) of Rule 3 in its entirety :

"(3) The number of the Scheduled Caste members and the Scheduled Tribe members to be elected from among the members determined under sub-clause (1), which shall bear, as nearly as may be, the same proportion with the number of the members of the Gram Panchayat as the Scheduled Castes population or the Scheduled Tribes population, as the case may be, bears with the total population in the Gram :

Provided that -

- (i) the number of the Scheduled Castes or the Scheduled Tribes or the total population in a Gram shall be determined primarily on the basis of the last preceding census of which the relevant figures are published;
- (ii) when census figures are not available for any area of a Gram, the prescribed authority shall, subject to such order of the State Government as may be made in this behalf, determine the number of the Scheduled Castes or the Scheduled Tribes or the total population on the basis of any other authenticated record maintained by any office or organisation of any department of the State Government or, where no such record is available, on the basis of a local enquiry, which may include house to house enumeration, caused by him for the purposes as aforesaid after consulting where necessary, any portion of the census report, electoral roll of the Tripura Legislative Assembly or any other authenticated record that may be assistance;
- (iii) when it is ascertained from the available records that one or more portions of the area of a Gram have, in all such portions taken together, the Scheduled Castes or the Scheduled Tribes population constituting less than one per cent of the total population of the Gram, such Scheduled Castes or Scheduled Tribes population figures in respect of such portions shall not be taken into account for the purpose of

sub-clause (3);

(iv) the Sub-Divisional Magistrate by an order in writing, shall record, before publication of the draft of the order in Form A, the procedure adopted, the records and documents relied upon and the findings made for the purpose of determination of the Scheduled Caste and the Scheduled Tribes member."

5. Rule 6 deals with determination of number of members and constituencies for Panchayat Samiti and the reservation of seats in favour of Scheduled Castes and Scheduled Tribes in each Panchayat Samiti. Sub-rule (4) of Rule 6 corresponds to sub-rule (3) of Rule 3. It is, therefore, unnecessary to set out the said sub-rule. Rule 8, in turn, deals with determination of number of constituencies and allotment of seats to Scheduled Tribes and Scheduled Castes in each Zilla Parishad. The relevant provisions of clause (c) of sub-rule (4) of Rule 8 are in pari materia with sub-rule (3) of Rule 3 and, therefore, the said clause or sub-rule too need not be set out.

6. The scheme of the three sub-rules aforementioned is identical, viz., (a) the number of Scheduled Caste members and Scheduled Tribe members to be elected shall bear, as nearly as may be, the same proportion with the number of members of the Gram Panchayat as the population of the Scheduled Castes and Scheduled Tribes bears with the total population in the Gram, in the Panchayat Samiti area, and in the area of Zilla Parishad, as the case may be [Rule 3(3), Rule 6(4) and Rule 8(4)(c) - main limb]; (b) the population of the Scheduled Tribes and Scheduled Castes as well as total population of a Gram, Panchayat Samiti area or Zilla Parishad area shall be determined primarily on the basis of last preceding census of which the relevant figures are published [proviso (i) appended to each of the above sub-rules]; and (c) in case where census figures are not available for any area of a Gram Panchayat/Samiti/Zilla Parishad, the prescribed authority shall determine the population of the Scheduled Castes, Scheduled Tribes, or for that matter, the total population of a Gram/Panchayat Samiti area/Zilla Parishad area "on the basis of any other authenticated record maintained by any office or organization of any department of the State Government or where no such record is available, on the basis of local enquiry, after consulting, where necessary, any portion of the census report, relevant electoral roll of the Tripura Legislative Assembly or any other authenticated record that may be of assistance". [Proviso (ii) to each of the above sub-rules.] There are certain other provisions in sub-rule (3) which are not necessary to notice for the purpose of this case.

7. The Tripura Panchayats (Preparation of Electoral Rolls) Rules, 1993 (Panchayat Rules) have been made to regulate that preparation and publication of electoral rolls under the said Act and to provide for other incidental matters. Sub-rule (1) of Rule 8 provides that "there shall be an Electoral Roll which shall be prepared in accordance with provisions of the Tripura Panchayats Act under the superintendence, direction and control of the State Panchayat Election Commission". The other sub-rules provide for publication of a draft electoral roll, considerations of objection received and publication of the final electoral roll. Rule 8-A was inserted in these rules by an amendment published in the Gazette dated 29-12-1993. It deals with the preparation of the electoral rolls for the "First General Election". Sub-rule (1) provides that for the purpose of "First General Election", the State Panchayat Election Commission shall, in consultation with the State Government, draw up the programme for publication of the draft electoral rolls and the final electoral rolls and other incidental matters. Sub-rule (2) provides that in connection with the preparation of such electoral rolls, the State Election Commission shall publish the dates for publication of draft electoral rolls, the last date for filing claims/objections and the date of final publication of the electoral rolls. Sub-rule (3) provides that "so much of the electoral rolls of any Assembly constituency or, as the case may be, Assembly constituencies for the time being in force, as relates to the area comprised within

the panchayats, shall be the electoral rolls for the election of members of Gram Panchayat, Panchayat Samiti and Zilla Parishad". Sub-rule (4) similarly provides that "so much of the electoral rolls for any Assembly constituency or, as the case may be, Assembly constituencies for the time being in force as it relates to the area comprised within a constituency or constituencies of Gram Panchayat, Panchayat Samiti and Zilla Parishad shall be the electoral rolls for the First General Election of the Members of Gram Panchayat, Panchayat Samiti or Zilla Parishad from that constituency". Sub-rule (5) says that "the electoral rolls for the First General Election for each constituency of the Panchayat shall be prepared by the Electoral Registration Officer". Sub-rule (6) provides that "for the purpose of preparing the electoral rolls of each constituency for the First General Election to Gram Panchayat, Panchayat Samiti or Zilla Parishad, the electoral rolls of any Assembly constituency, or as the case may be, Assembly constituencies shall be split up in such manner as the Electoral Registration Officer may consider fit, proper and necessary". Sub-rule (7) provides that "electoral rolls for the First General Election of each constituency of the Gram Panchayat, Panchayat Samiti or Zilla Parishad may be divided into convenient parts which shall be numbered recording (according to) the number of constituencies given as per the delimitation of constituency of Panchayats". The other sub-rules provide for publication of draft rules, consideration of objections and claims received and the final publication. [We have quoted sub-rules (3), (4), (5), (6) and (7) in full because of the fact that the said rules have been struck down by the High Court.]

8. The State has preferred the appeal (Special Leave Petition No. 22702 of 1994) aggrieved by the striking down of the Rules aforementioned whereas the writ petitions, Ratanlal Nath, has filed the appeal [Special Leave Petition (C) No. 10413 of 1994] contending that not only the aforesaid Rules but another set of Rules called the Tripura Panchayats (Constitution of State Panchayat Election Commission) Rules, 1993 (hereinafter referred to as "Election Commission Rules") should also have been struck down. The Election Commission Rules provide for the constitution of Election Commission (Rule 3). The rule inter alia provides that the Governor shall appoint the State Election Commissioner on the recommendation of the State Government and further that "the State Election Commissioner shall hold office for a period not exceeding six months at a time from the date on which he enters upon his office. Provided that the Governor may reappoint the same Officer for another term with the recommendation of the State Government if he is otherwise not disqualified for reappointment."

PART - II

9. So far as Panchayat Rules and Delimitation Rules are concerned, the only ground urged by the writ petitioner is that the said Rules travel beyond the four corners of the Act and are, therefore, incompetent and invalid. No other ground of invalidity is urged.

10. Let us first deal with the Delimitation Rules. The contention of the writ petitioner is that the provisions contained in proviso (ii) to sub-rule (3) of Rule 3 are inconsistent with the definition of the expression "population" in clause (32) of Section 2 of the Panchayats Act as well as the definition of the said expression in clause (f) of Article 243 of the Constitution and are, therefore, incompetent. The reasoning which has appealed to the High Court is that inasmuch as the definition of "population" contained in the Constitution as well as in the Act means "the population as ascertained at the last preceding census of which the relevant figures have been published", the second proviso to sub-rule (3) of Rule 3 which provides for looking into some other records in the absence of census figures is outside the purview of the Act and the Constitution. We are unable to agree. Clause (f) of Article 243 of the Constitution defines the expression "population" in the

following words : "(f) 'population' means the population as ascertain at the last preceding census of which the relevant figures have been published". [Clause (32) of Section 2 of the Tripura Panchayats Act faithfully reproduces the said definition.] All that the first the second provisos to sub-rule (3) of Rule 3 of the Delimitation Rules provide is that where census figures are available that shall be the primary basis - indeed, it shall be the only basis - for determining the total population of a Panchayat, or for that matter, the population of the Scheduled Tribes and Scheduled Castes, as the case may be, but where the census figures are not available, the population figures shall be ascertained from the other relevant authenticated record. Similar provisions are contained in Rule 6 and Rule 8 relating to Panchayat Samitis and Zilla Parishads respectively. The provisos do not say that even where the census figures are available, the authorities should go to other record. The provisos really provide for a situation where census figures are not available. The Rules are inspired by the objective that elections have to be held and it is with this objective that they have made the said provision. We are unable to see how the said provisos can be held to travel outside the purview of the Act. The Rules are made for carrying out the purposes of the enactment [Section 228(1) of the Act] and the purpose of the Act is to ensure conduct of the elections. Indeed, Part IX of the Constitution was amended in 1973 to ensure periodic and regular elections of Panchayats, which were not being held regularly in many States. Not only the said provisos are not inconsistent with the provisions of the Act and the Constitution, but they in fact further and advance the object underlying the Act and Part IX of the Constitution. We must say that we find no proper or acceptable reasoning in the impugned judgment for striking down the said Rules.

11. We shall now consider the validity of sub-rules (3) to (7) of Rule 8-A of the Tripura Panchayats (Preparation of Electoral Rolls) Rules, 1993. The said sub-rules have already been set out in their entirety hereinbefore. The contention of the writ petitioner is that these sub-rules are inconsistent with Sections 176, 177 and 183 of the Act. The High Court has accepted the said plea in two short paragraphs which are, if we may say so with respect, devoid of any reasoning. In para 39, they noticed the provisions in Sections 176, 177 and 183. (Section 176 vests the superintendence, direction and control of the preparation of the electoral rolls and conduct of elections under the Act in the State Panchayat Election Commission and provides for the appointment and other matters concerning the members of the Commission and other officers. Section 177 provides that the electoral roll for each constituency "shall be prepared in accordance with the provisions of this Act and the rules made thereunder" and Section 183 provides that the electoral roll for each constituency shall be prepared by the Electoral Registration Officer in the prescribed manner with reference to the qualifying date and that the electoral roll may be divided into convenient parts. It also provides for the revision of the electoral rolls.) Having set out the purport of Sections 176, 177 and 183, the High Court observed :

"In view of the provisions contained in Sections 176, 177 and 183, according to the learned counsel, the amendment of Rule 8-A is ultra vires inasmuch as it is contrary to the said sections. As per the provisions of the said sections preparation of electoral rolls cannot be synonymous with the adoption of any electoral roll in view of the fact that the two concepts are widely different and opposed to each other.

We have perused the provisions of Sections 176, 177 and 183 and the amended Rule 8-A. On perusal of the Rule we find that the amended Rule 8-A(3) to (7) is contrary to the provisions of the said sections of the Act. It is well established that a rule-making authority has no power to make rules contrary to the provisions of the Act. Therefore, in our view amendment of Rule 8 by the Amendment Rules, 1993 is contrary to the provisions of the Act and, therefore, it is ultra vires."

12. Except saying that "preparation of electoral rolls cannot be synonymous with the adoption of any electoral roll in view of the fact that the two concepts are widely different and opposed to each other", on other reasons is given for invalidating the said sub-rules. Even the reasoning given does not appear to be clear or cogent. Statutory rules could not have been struck down on such ambiguous reasoning. Sub-rules (3) and (4), which have been struck down, say that the relevant portion of the electoral rolls of the Assembly constituency shall be the electoral rolls for the Gram Panchayat/Panchayat Samiti/Zilla Parishad, whereas sub-rules (5), (6) and (7) - which too have been struck down - deal with and provide for the "First General Election". These sub-rules too provide that the electoral rolls of the Assembly constituency shall be split up appropriately for the purpose of the First General Election in respect of Gram Panchayat, Panchayat Samiti and Zilla Parishad, as the case may be. These are treated as draft electoral rolls and are published as such. After receipt of objections/claims, if any, final electoral rolls are published. Thus, these sub-rules are not only not inconsistent with Sections 176, 177 and 183, they are indeed made pursuant to the said sections and are meant to carry out the purposes of the enactment as a whole.

13. For the above reasons, we set aside the judgment of the High Court declaring proviso (ii) to sub-rule (3) of Rule 3, proviso (ii) to sub-rule (4) of Rule 6 and proviso (ii) to clause (c) of sub-rule (4) of Rule 8 of the Tripura Panchayats (Delimitation of Constituencies) Rules, 1993 and sub-rules (3) to (7) of Rule 8-A of the Tripura Panchayats (Preparation of Electoral Rolls) Rules, 1993 as ultra vires the Constitution of India and Tripura Panchayats Act. We declare the said provisions to be perfectly valid and effective.

14. The civil appeal preferred by the State is accordingly allowed with costs. The appellant's costs are estimated at Rs. 10,000 consolidated.

15. Now coming to the appeal [arising from Special Leave Petition (C) No. 10413 of 1994] preferred by the writ petitioner, the only contention advanced is that the Constitution and the Act contemplate the State Election Commissioner to be an independent authority, not subject to control of the State Government, whereas sub-rule (3) of Rule 3 of the Tripura Panchayats (Constitution of State Panchayat Election Commission) Rules, 1993 provides that the tenure of the said Election Commissioner shall be for a period not exceeding six months at a time providing at the same time for reappointment and that such a provision detracts from and militates against the concept of independence of such authority. The contention of Shri Jaideep Gupta, learned counsel for the writ petitioner, is that the State Election Commissioner is akin to the Chief Election Commissioner under the Constitution and that the appointment of the State Election Commissioner should also be on a permanent basis just as in the case of Chief Election Commissioner. Limiting his tenure to a period not exceeding six months and at the same time providing for a reappointment diminishes and affects its independence, it is submitted. We are unable to agree. Be that as it may, it is not suggested that the elections conducted by the State Election Commissioner were not properly conducted or that the elections are void on account of the said limitation of his tenure. The contention, in our opinion, is untenable and has rightly been rejected by the High Court.

16. We any clarify that we have dealt with only the questions relating to the validity of the Rules in this judgment. We declined to go into the validity or correctness of the proceedings taken or acts done under those Rules, since those are matters outside the purview of the writ petition (see *Anugrah Narain Singh v. State of U.P.* [(1996) 6 SCC 303 : JT (1996) 8 SC 733]).

17. Accordingly, the appeal preferred by the writ petitioner, Shri Ratanlal Nath, is dismissed. No costs.