

SUPREME COURT OF INDIA

Anand Singh Kunwar

Vs.

Election Commission of India, through Chief Election Commissioner, New Delhi

Transfer Case (civil) 20 of 2004

(A.K. Mathur and Markandey Katju JJ.)

07.08.2007

ORDER

1. This is a petition transferred from the High Court on the request of the Union of India and it has been registered as Transferred Case No. 20 of 2004. The Writ Petition was filed by the petitioner before the High Court with the following prayers:-

1. Issue a writ of certiorari or any other appropriate writ, direction or order quashing/setting aside the order and Notification No. 282/UTI/2001-DEL dated 5.11.2001 issued by the Respondent No. 1 insofar as it pertains to increasing the reserved seats from 2 to 3 for Schedule Tribes in the State of Uttaranchal and consequently declare that only 2 seats be reserved for Scheduled Tribes in the State of Uttaranchal.

2. Issue a writ of mandamus or any other appropriate writ or directions directing the Respondents to modify the impugned order dated 5.11.2000 notified and published in the official gazette of the Uttaranchal Government and consequently direct the Respondents to declare the Dharchula constituency in District Pithoragarh (AC No. 70) as a general seat.

3. Issue a writ of certiorari to quash clause 5(c) of Section 22 of the Uttar Pradesh Reorganisation Act, 2000 insofar as it relates to "...and shall not be called in question in any court" as the same is violative of the basic feature of the Constitution of India.

4. Costs and such further relief(s) be granted as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.

2. The petitioners are the citizens of India and residents of Dharchula constituency. They filed the Writ Petition before the Uttaranchal High Court in public interest inter alia, praying for issuance of a Writ of Certiorari or any other appropriate writ, direction or order quashing the Notification No. 282/UTI/2001-DEL dated 5.11.2001 issued by the Respondent No.1 i.e. Election Commission of India insofar as it pertains to increasing the reserved seats for Scheduled Tribes in the State of Uttaranchal. The Election Commission passed an order in continuance to this Notification under Sub-Section 5 of Section 22 of the Uttar Pradesh Reorganisation Act, 2000 in respect of the delimitation of Assembly constituencies in the State of Uttaranchal and by that order the number of

seats in the Legislative Assembly of the State of Uttaranchal was fixed at seventy by the Election Commission and the Election Commission has determined the number of seats to be reserved for the Scheduled Castes and Scheduled Tribes in the Legislative Assembly of Uttaranchal as twelve (12) and three (3) respectively. That means, three (3) seats were reserved for Scheduled Tribes which is the subject matter of dispute in the present cases.

3. The main contention of the petitioner in this petition is that as per the census data the population of the Scheduled Tribes is 3% of the total population of Uttaranchal and as per the delimitation of State of Uttaranchal, seventy (70) single member territorial assembly constituencies were created in the State of Uttaranchal. In reference to Article 332 (3) of the Constitution of India the number of seats as far as possible is to the extent of 3% of the seventy (70) seats of the State of Uttaranchal. That comes to 2.1 which is nearer to two (2) seats than to three (3) seats, but the Election Commission has fixed three (3) seats for Scheduled Tribes which is beyond the provisions of the Constitution.

4. A Counter Affidavit was filed by the Election Commission and they have tried to justify it alleging that this was a bonafide mistake and they have rectified the same now and they reduced the seats of Scheduled Tribes from three (3) to two (2). Para 3 of their Counter Affidavit reads as under:-

"(iii) In the delimitation order dated 28.12.2006 of the Delimitation Commission under the Delimitation Act, 2002 published in the Official Gazette, only 2 seats, namely, Chakrata in District Dehradun and Nanak Matta in District Udham Singh Nagar have been reserved for the Scheduled Tribes in the State of Uttarakhand and Dharchula in District Pithoragarh, the bone of contention in the present petition, has been declared as a general Constituency seat, which will take effect from such date as the President of India may by order specify under Article 170(3) of the Constitution.

(iv) the order of delimitation dated 5.11.2000 was passed by the Election Commission keeping in view the special requirements of the development of tribal areas, particularly in the areas adjoining international border with the two neighbouring countries and the aspirations of the local people to be part of the mainstream in the democratic process. Further, there was also a strong demand for the increase for representation of tribals from the Associate Members and from the public."

5. Though now the issue is purely academic because the Election Commission having realised its mistake has reduced the number of seats of Scheduled Tribes from three (3) to two (2) and the Notification to this effect has already been issued but in order to justify the order dated 5th November, 2001 the Election Commission has made certain observations which need not be repeated again. It should be made clear that the mandate of Article 332 (3) of the Constitution of India should always be kept in mind. Article 332 (3) mandated that the reservation must be made in proportion to the population of the Scheduled Castes and Scheduled Tribes of the State. This should be the paramount consideration of the Election Commission and not any other consideration. We need not make any observation but the consideration for increasing the seats of Scheduled Tribes from two (2) to three (3) was not at all warranted as it is in violation of Article 332 (3) of the Constitution of India. The mandate of the Constitution is supreme and the Election Commission has no scope to go beyond the Constitution. Therefore, we hope and trust that when any Notification is issued, the Election Commission shall confine itself to the mandate of the provisions of the Constitution of India and will not be swayed by any other consideration.

6. Now that the 2007 elections have already taken place we are not disturbing the elections on this ground but in future Scheduled Tribes vacancy should be treated as two only.

7. The Transferred case No 20 is accordingly disposed of.