

Agenda note-3

Subject : Notice of Supreme Court in Writ Petition (Civil) No 590 of 2008 by Surmukh Singh Vs Union of India & Ors in which NCST is at respondent no 4, regarding prayer to issue a writ of mandamus to The Delimitation Commission of 2002 directing it to rotate reserved assembly and parliamentary constituencies in the State of Haryana and also in the whole of India, after each general assembly/parliamentary election, respectively and further to distribute the 17 reserved assembly constituencies for scheduled caste evenly, as far as possible in all the ten parliamentary constituencies.

I. Case in brief

Under the delimitation Act, 2002, assembly and parliamentary seats have been reserved for SCs and STs, and these reserved seats will continue to be so reserved till the year, 2026, as per Article 170(3) and Article 83 Third Proviso. There is no provision for rotation of these reserved seats.

As per Articles 330 and 332 of the Constitution the total number of seats for SCs and STs in the House of People and the Legislative Assembly of the States are reserved on the basis of proportion of their total population in a particular state to the total population of the that State. Hon'ble Court has to consider the impact of stagnant reservations against the rotating reservations.

The petitioner has urged that:-

In those Assembly/Parliamentary constituencies, where the SCs and STs people are in good numbers in comparison to the total population of that particular Assembly / Parliamentary constituency, than they can elect a candidate belonging to their own community, if they so desire, even without reservation. Therefore, reservation of only those Assembly and Parliamentary Constituencies, which have large proportion of SCs and STs population in comparison to the total population of such Constituency, as provided by section 9(1)(c) and section 9(1)(d) of Delimitation Act, 2002 are totally irrational, illogical, unreasonable, unjustifiable, and thus, un-sustainable in law. The goals of social justice, political justice and equality as provided in preamble to our constitution can only be achieved by rotation of seats, as is being done presently, as per Article 243(D) and 243(T) in regard to seats for SCs and STs for Panchayats and for Municipalities, respectively.

(ii) The Delimitation Commission is of the view that there is considerable merit in the demand of rotation of reserved SC/ST constituencies and recommended that the Government may consider incorporating suitable provision in law to provide for rotation in the reservation of SC constituencies.

(iii) The reservation for SCs and STs as envisaged under Sections 8 and 9 of the delimitation Act, 2002 are arbitrary, un-reasonable and violative of equality and constitution, and also the basic structure of our constitution.

(iv) It is submitted that static reservation of SC and ST constituencies is an apparent violation of Article 14 of the Constitution and the same leads to discrimination amongst similarly placed persons and group of persons. By virtue of provisions of Section 9(1)(c) and Section 9(1)(d) of Delimitation Act, the right of people belonging to reserved category living in general constituencies to enjoy the benefit of reservation as provided under Article 330 and 332 of the Constitution, and to contest the election has been taken away practically, since, this reservation of particular constituencies has been continuing for last so many decades.

(v) SC and ST people can not be deprived of their constitutional right to reservation, on the ground that percentage of their total population in a particular assembly/parliamentary constituency is lesser in proportion to another parliamentary/ Assembly Constituency of that State.

Petitioner has therefore, prayed that the Hon'ble court may graciously be pleased to order that :-

- i) Section 9(1)(c) and 9(1)(d) of the Delimitation Act 2002 is violative of Article 14 of the Constitution of India;
- ii) Strike down Delimitation Act of 2002 (Act No. 33 of 2002), as violative of Article 82 and 170(3) of the Constitution of India, as also the said Act being violative of Article 338 and 338A read with Article 38 of the Constitution;
- iii) Issue a writ of mandamus to the 2nd respondent (The Delimitation Commission of 2002) directing it to rotate reserved assembly and parliamentary constituencies in the State of Haryana and also in the Whole of India, after each general assembly/parliamentary election, respectively and further to distribute the 17 reserved assembly constituencies for SC evenly, as far as possible in all the ten parliamentary constituencies;
- iv) To strike down Article 329(a) of the Constitution of India, as violative of the doctrine of basic structure of the Constitution, viz Judicial Review and to strike down Act No. 33 of 2002, and specially Section 9 and 10 of the said Act, as violative of the basic structure doctrine of equality;
- v) Direct the respondent No. 1 (Ministry of Law & Justice) to accept the recommendation made by the Delimitation Commission for rotation of reserved SC assembly as well as parliament constituencies and to make appropriate amendment in the Delimitation Act in this regard, and this Hon'ble court may extend the concept of rotation of reserved ST constituencies as well. Further, this Hon'ble Court may kindly pass

appropriate direction to the respondents for implementing the said recommendations for SC and ST constituencies, till the time aforementioned amendment shall be incorporated in the Delimitation Act;

- vi) Pass such other and further order(s) as deem fit and proper in the interest of justice and in the facts and circumstances of the present case.

The Hon'ble Supreme Court has issued notice confining to prayer (iii) in the writ petition.

II. Background

The National Commission for Scheduled Tribes has been created w.e.f 19.02.2004 by amending Article 338 of the Constitution of India and inserting a new Article 338A in the Constitution of India vide the Constitution (89th Amendment) Act, 2003. The NCST has six regional Offices having working jurisdiction over various States and UTs in the country. The Commission is vested with the following duties:

- a) To investigate and monitor all matters relating to the safeguards provided for the STs under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- b) To enquire into specific complaints with respect to the deprivation of rights and safeguards of the STs;
- c) To participate and advise in the planning process of socio-economic development of the STs and to evaluate the progress of their development under the Union and any State;
- d) To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

This does not empower the Commission the authority to enforce the various laws made for the STs under the Constitution of India. The Commission is, therefore, vested with the duty to only advise or make recommendations to the Union and State Govts, in the matters related to the safeguards provided for the STs and the major policy matters affecting the STs.

Large number of tribals migrates to the States other than the States of their origin in the process of acquiring higher education and in search of livelihood and employment, since requisite educational facilities of higher education were not available within tribal areas. The population of Scheduled Tribes living in the place of their nativity only is counted while estimating the population of Scheduled Tribes during the Census. It has also been noticed that the Population of ST persons and their family members who have

migrated to other States/ UTs is not enumerated and consequently the ST population reported in respect of such State or a District is always under-counted population, thereby adversely affecting their political representation.

The Commission has already recommended in case of Writ Petition No. 4860 of 2008 filed in the High Court of Judicature of Bombay Bench at Aurangabad in the matter of Vikramsing and Another Vs. the State of Maharashtra and Ors. Regarding non-implementation of the provisions of PESA Act, 1996 in elections to ZP and PS in the Scheduled Areas (Panchayats (Extension to the Scheduled Areas) Act, 1996) that the number of seats may be earmarked in relation to the Scheduled Area which is part of the Zilla Parishad or the Pachayat Samiti as the case may be and thereafter, the process of rotation may be made applicable to the seats calculated to be reserved for areas outside the Scheduled Area while rotation should not be applied to the seats earmarked for Scheduled Areas within a ZP/PS.

III. Proposed recommendations of the Commission

The Commission may consider to recommend the rotation of reserved parliamentary/Assembly constituencies except for reserved constituencies in the Scheduled Areas. Rotation of reserved constituencies has been recommended by the delimitation Commission also.