

Bombay High Court

Vikas Kisanrao Gawali vs The State Of Maharashtra, Through ... on 3 April, 2019

Bench: Ravi K. Deshpande

34wp2756.

1/4

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2756 OF 2019
(Vikas Kisanrao Gawali .vs. State and Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr.M.V.Samarth, Advocate for the petitioner.
Ms N.P.Mehta, A.G.P. for respondent nos. 1, 3 and 4.

CORAM : R.K.DESHPANDE AND
S.M.MODAK, JJ.

DATE : 3.4.2019.

01. The petition challenges Constitutional validity of the provisions of Section 12(2)(C) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 regarding reservation of 27% seats of members for Backward Classes of citizens on the ground of it being ultra virus to the provisions of Articles 243-D and 243-T r/w. Article 14 of the Constitution of India. By way of interim relief, direction is sought to the respondents to restrain them from proceedings with ward formation and providing for reservation of more than 50 % in the Zilla Parishads and Panchayat Samitis of Akola and Washim districts.

02. Earlier Writ Petition No.5333 of 2018 was filed before this Court in respect of elections of Zilla Parishads 34WP2756.19.ODT and Panchayat Samitis, Akola and Washim districts, which was disposed of on 27.8.2018. Para nos. 12 and 13 of the said decision are reproduced below :

"12. In this situation, we direct State Government to take necessary decision on subject of amendment to provisions of Section 12(2)(C) of the Maharashtra Zilla Parishads and Panchayat Samitis Act within further period of three months. The status-quo as on today shall be maintained till then in respect of Zilla Parishad, Nagpur.

13. In Writ Petition NO.5333/2018, petitioner vide prayer clause (c) has urged that similar course should be followed in case of elections of Zilla Parishads, Akola and Washim and Panchayat Samities in these Districts. For reasons already recorded supra, directions issued above are also extended to these elections.

03. Again, this petition is filed to challenge notification DT.30.3.2019 for delimitation of wards issued by the State Election Council and it is apprehended that, by 30.4.2019, the program of election shall be declared and possibly the reservation of seats of members of Zilla 34WP2756.19.ODT Parishads and Panchayat Samitis, Akola and Washim shall exceed 50 % of the reservation, which shall be contrary to the decision of the Apex Court in the case of K. Krishna Murthy (Dr.) and Ors. vs. Union of India and another reported in (2010) 7 SCC 202.

04. It is urged by Mr.M.V.Samarth, learned Counsel for the petitioner that there is no change in the situation which was prevailing on the date of delivery of Judgment on 27.8.2018 by this Court in Writ Petition No.5333 of 2018. But, exercise of delimitation of wards and conducting of elections is again being taken up irrespective of order of status-quo passed by this Court to be maintained till the provision of Section 12(2)(C) of the Act is amended.

05. Prima facie, we find that, in view of the provision of Section 12(2)(C), the reservation for Backward Classes of citizens under the said Act would exceed 50 % of the total reservation. The reservation of seats above 50 % shall be in contravention of the law laid down by the Apex Court in the case of K. Krishna Murthy (cited supra).

06. Hence, issue notice for final disposal of the 34WP2756.19.ODT matter returnable on 26.6.2019. Notice be also issued to the Advocate General of Maharashtra.

Ms N.P.Mehta, learned Assistant Government Pleader waives service on behalf of respondent nos. 1, 3 and 4.

The process of delimitation of wards and reservation shall go on, but the program of election shall not be declared without prior permission of this Court.

Parties are at liberty to move this Court even on the earlier occasion if the process is completed.