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Court No. - 3

Case :- WRIT - C No. - 2713 of 2023

Petitioner :- Vikash Agarwal

Respondent :- State Of U.P. Thru. Addl. Chief/Prin.Secy.
Urban Development Urban Development U.P. Lko. And Others

Counsel for Petitioner :- Gaurav Mehrotra, Tushar Mittal

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

Hon'ble Rajan Roy, J.

Hon'ble Manish Kumar, J.

This petition has been filed with the following reliefs:-

" I. To issue writ, order or direction in the nature of Certiorari, quashing the impugned notification no. 708/no.-1-2023-05nirv0/2023 dated 30.03.2023, issued by the Respondent No. 2 Principal Secretary, Urban Development, copy whereof is annexed as Annexure-1, insofar as it relates to reservation of seat of Nagar Panchayat Nighasan, District Lakhimpur Kheri, in other Backward Classes.

II. To issue Writ, order or direction in the nature of Mandamus commanding the Respondent No. 1 and 2 to make available in public domain (either by publishing on websites or any other mode), the list of politically backward castes, identified as OBC, for the purpose of local bodies election, forthwith prior to finalization of reservation of seat of Nagar Panchayat Nighashan, District Lakhimpur Kheri, in O.B.C.

III. To issue Writ, order or direction in the nature of Mandamus commanding the Respondent No. 1 not to proceed in pursuance of the Notification No. 708/no.-1-2023-05nirv0/2023 dated 30.03.2023, issued by the Respondent No. 2 Principal Secretary, Urban Development, to this Writ Petition, insofar as it relates to reserving of seat of Nagar Panchayat Nighasan, District Lakhimpur Kheri, in the other backward classes.

IV. To issue Writ, order or direction in the nature of Mandamus commanding the Respondent no. 5 to notify elections only after providing sufficient time to raise objections after notifying the list of politically backward castes, identified as other backward castes, identified as Other Backward Class for the purpose of local bodies election."

This Court had passed the following order on 05.04.2023:-

"This writ petition has been filed inter alia challenging the

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notification dated 30.03.2023 so far as it relates to reservation of seat of Nagar Panchayat Nighasan, District Lakhimpur Kheri for other Backward Classes and for issuance of writ of mandamus for making available in public domain (either by publishing on website or any other mode), the list of politically backward castes, identified as OBC for the purpose of local bodies election, forthwith prior to finalization of reservation of seat of Nagar Panchayat Nighasan, District Lakhimpur Kheri for the OBC.

Apart from other contentions, Sri Gaurav Mehrotra has submitted that by the impugned notification dated 30.03.2023, all that has been done is to mention the reserved and unreserved constituencies and against the reserved constituency, specific mention has been made as to whether it is reserved for Scheduled Castes, Scheduled Tribes or Other Backward Classes but it has not been disclosed as to which are the backward classes for which the said reservation will apply as in view of the Constitution Bench decision of Hon'ble the Supreme Court in the case of Dr. K. Krishna Murthy vs. Union of India [(2010) 7 SCC 202] and the Division Bench judgment of this Court in PIL No. 878 of 2022 in the case of Vaibhav Pandey and Ors. vs. State of Uttar Pradesh, specific Backward Classes had to be identified on the basis of empirical data. Political backwardness is different from social and educational backwardness. Identification of politically backward classes was to be done in terms of the said judgment but the State has not disclosed specifically such backward classes. This creates a hurdle for the petitioner to submit his objections to the notification dated 30.03.2023 for which the last date is 06.04.2023, apart from the complications, which it will create in the election process as and when it is notified, especially at the time of nomination. The petitioner has submitted tentative objection in the short time available for this purpose.

In response, Sri Kuldeep Tripathi, learned Additional Advocate General along with Sri Rajesh Tiwari submits that this eventuality will arise at a subsequent stage and is not very relevant at this stage. Moreover, the petitioner has not approached any Officer of the State Government making such a request for disclosure of specific classes which have been identified as Backward, therefore, the writ petition should not be entertained.

In response, learned counsel for the petitioner invites our attention to para 61 wherein it has been alleged that the petitioner went to the Office of the District Magistrate seeking such information several times, but the same was not provided.

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Put up tomorrow i.e. 06.04.2023 keeping all the pleas open for consideration.

Let the report of the U.P. State Local Bodies Dedicated Other Backward Class Commission, which is the basis for the notification dated 30.03.2023 be placed before the Court for its perusal.

Learned AAG may also seek instructions with regard to other issues raised in the petition.

We make it clear that all issues including maintainability of the petition are open for consideration."

In response thereto, the report referred in our earlier order has been produced before us.

We have perused the same but say no more as the report is not under challenge.

With regard to list of politically backward classes identified by the aforesaid commission, Shri Kuldeep Tripathi, learned Additional Advocate General says that list of such castes/classes would be provided to the learned counsel for the petitioner today itself within one hour without waiting for a certified copy of this order.

As regards relief no. 2 made in this petition, learned Additional Advocate General says although there is no requirement in law for providing the said report but if this Court orders, it will be uploaded on the official website of Urban Development Department, Government of U.P..

Details of the website referred above have been provided by Shri Kuldeep Tripathi, learned Additional Advocate General to Shri Gaurav Mehrotra, learned counsel for the petitioner.

We accordingly, provide that the aforesaid report be uploaded on the aforesaid website within four days.

As regards the other reliefs made in this petition, we see no reason to interfere at this stage for the reason that the petitioner has already been informed that 'Agarwal' Caste does not fall in the O.B.C. Category and the petitioner has submitted a tentative objection to the notification dated 30.03.2023. It is open for him to submit a supplementary objection today itself, which can be taken into consideration.

The supplementary objection to be filed by the petitioner today shall also be taken into consideration while deciding the

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objection. If the petitioner has any difficulty in filing the objection before the concerned office, petitioner's counsel shall provide it to Shri Kuldeep Tripathi, learned Additional Advocate General, who shall forward the same to the concerned for consideration.

Now, when petitioner is aware that the seat pertaining to the Nagar Panchayat Nighasan has been reserved for O.B.C. and petitioner does not belong to the same, other reliefs can be claimed at appropriate forum at appropriate stage as and when the cause arises.

The report of the Commission placed before us is returned to Shri Rajesh Tiwari, learned Additional Chief Standing Counsel.

With these observations, writ petition is ***disposed of***.

At this stage, Shri Gaurav Mehrotra, learned counsel for the petitioner says that he has been served with notification dated 31.08.2002 which according to the opposite parties, contains list of politically backward classes.

Shri Kuldeep Tripathi, learned Additional Advocate General admits this fact.

Order Date :- 6.4.2023

Ashish