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SUBRATA ACHARJEE AND ORS.

v.

UNION OF INDIA AND ANR.

FEBRUARY 7, 2002

B [S.P. BHARUCHA, C.J., SYED SHAH MOHAMMED QUADRI, UMESH
C. BANERJEE, S.N. VARIAVA AND SHIVARAJ V. PATIL, JJ.]

Constitution of India, 1950 :

C *Article 332(3B)—Constitutional Validity of—Reservation for Scheduled Tribes in legislative assembly of Tripura on the basis of existing number of members belonging to Scheduled Tribes in the Assembly—Provision transient in nature—Reservation challenged being not proportionate to population—Held, not violative of any of the constitutional mandate—Temporary measures shall have to be taken for social goal and for the benefit of the country as deemed expedient—Proportionality though mainly dependent upon the basis of population, cannot always be done with arithmetical precision and mathematical nicety—Representation of People Act, 1950—Section 7(1C).*

D *Articles 82 and 170—Readjustment of seats in Lok Sabha and Legislative Assembly—Nature of—Held, are enabling provisions for adjustment of seats in accordance with the need of situation.*

Words and Phrases:

E *Expression "Parliament may by law determine"—Meaning of—In the context of Articles 82 and 170(3) of the Constitution of India, 1950.*

F **In the Legislative Assembly of State of Tripura, 17 Seats were reserved for Scheduled Tribes and 3 open seats were also held by members of Scheduled Tribes. There was demand for reservation of 20 seats for Scheduled Tribes which was agreed to in Memorandum of Settlement between Central Government and State of Tripura and hence by Constitution (72nd Amendment) Act, 1992 sub-Article (3B) in Article 332 of the Constitution of India, 1950 was inserted w.e.f. 5.12.1992, which provided reservation of seats for Scheduled Tribes in the Legislative Assembly of Tripura on the basis of proportion of the number of members belonging to the Scheduled Tribes in the Legislative Assembly of Tripura in existence on the date of commencement**

H

of the 72nd Constitution Amendment, until readjustment under Article 170 of the Constitution on the basis of census after year 2000. In order to effectuate 72nd Amendment, Representation of People Act, 1950 was amended by Act No. 38 of 1992 whereby new sub-section (1C) was inserted to Section 7. A

Appellants challenged the constitutional validity of the 72nd Amendment on the ground that it negated the proportional reservation on the basis of population based representation embodied in sub-Articles (3) of Article 332; and that the same violated Articles 82 and 170(3) of the Constitution; and since 72nd Amendment as well as Amendment in Representation of People Act were passed hurriedly so as to make the enforcement of both the provisions commencing from 5.12.1992, the same was *malafide*. B C

It was contended by the respondents that insertion of sub-Article (3B) to Article 332 was in implementation of the Memorandum of Settlement and thus, for the benefit of the people of the State without offending any constitutional provisions. D

Dismissing the petition, the Court

HELD : 1. The Constitution (Seventy Second Amendment) Act, 1992 does not violate any of the constitutional mandate. The expression, 'Parliament may by law determine' in Articles 82 and 170 ought to be attributed its proper meaning and upon consideration of the words used and the meanings to be attributed thereon, the amendment cannot be held unconstitutional by reason of the transient nature of incorporation since Article 332(3B) specifically refers to until the readjustment on the basis of first census after the year 2000. No exception can be taken for incorporation of such a transient provision : Temporary measures shall have to be taken for social goal and for the benefit of the country as deemed expedient. Parliament is the authority to understand and appreciate the need of the situation and in its wisdom has incorporated the amendment as envisaged in Article 332(3B). Thus, it can neither be said to be violative of nor be said to be even of infraction of any constitutional mandate. It is to bring forth and continue with the object of the Constitution social, economic and political justice of the people of India. [895-D-G] E F G

2. The authorisation as contained in Articles 82 and 170 stands out to be an enabling provision for incorporating sub-Article (3B) under Article 332. Proportionality though mainly dependent upon the basis of population but it cannot always be done with arithmetical precision and mathematical nicety. The leverage given by constitutional mandate by reason of inclusion of the H

A words “readjusted by such authority and in such manner as parliament may by law determine” in Articles 82 and 170(3) depicts the intent of the Parliament as to its true effect. It is an enabling provision for adjustment of seats in accordance with the need of the situation. [893-F-H]

B *R.C. Poudyal v. Union of India and Ors.*, [1994] Supp. 1 SCC 324, referred to.

C 3. Though there was some hurry in passing 72nd Amendment Act and amendment of Representation of People Act, but that in any way does not denounce the effort on the part of the Parliament to bring about a peaceful solution by implementing the accord. The social goal and social benefit ought to be the criterion for the law makers and having due regard to the existing situation and the impending election, the Parliament has passed a legislation with expedition and obtained Presidential assent thereon immediately and as such no motive, neither any *malafides* can be ascribed. [896-B-D]

D CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 2 of 1993.

(Under Article 32 of the Constitution of India.)

E Sunil Gupta, Rajiv K. Garg, Vivek Vishnoi, Annam D.N. Rao, Ms. Gitanjali Kapoor and Abhishek Soni for the Petitioners.

Mukul Rohtagi, Additional Solicitor General, T.V. Ratnam and Mrs. Sushma Suri for P. Parmeswaran for the Respondent No. 1.

S. Muralidhar for the Respondent No. 2.

F The Judgment of the Court was delivered by

G **BANERJEE, J.** The validity of the Constitution (72nd Amendment) Act, 1992 is the core question in this writ petition and pertains to the issue of reservation. The Constitution (72nd Amendment) Act, 1992 introduced a further sub-Article (3B) to the existing Article 332, which the learned Advocate appearing in support of the petition has contended, runs counter to the constitutional requirement of population based representation for the people and proportional reservation for the Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States. It would be convenient, however, to advert to the relevant extracts of Article 332 at this juncture and the same
H reads as below:

“332. *Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.*-(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes. [except the Scheduled Tribes in the autonomous districts of Assam], in the Legislative Assembly of every State. A

(2)..... B

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the State. C

(3A)

(3B) Notwithstanding anything contained in clause (3), until the re-adjustment, under article 170, takes effect on the basis of the first census after the year 2000, of the number of seats in the Legislative Assembly of the State of Tripura, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly, shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy second Amendment) Act, 1992, of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly.” D E

As indicated above, the sub-Article (3B) stands incorporated in the Constitution by the above noted Act of 1992 with effect from 5th December, 1992. It is this incorporation, which stands challenged on the ground that the same negates the proportional reservation on the basis of population based representation embodied in sub-Article (3) being the key factor of the constitutional scheme of democracy, social and political equality together with social and political justice, which by themselves form the basic features of the Indian Constitution. F G

The core issue raised in the matter stands out thus to be the constitutional validity of the effort of the Parliament to provide for reservation of seats for Scheduled Tribes in the Tripura Legislative Assembly on a basis other than H

A the proportion, which the population of the Scheduled Tribes in the State bears to the total population of the State, as would be evident from sub-Article (3B) herein before noticed. It has further been contended that the newly introduced basis is the basis of the proportion which the number of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the date of commencement of the Constitution Amendment

B bears to the total number of seats in that Assembly as on that date. The counter affidavit filed by respondent No.1 (Union of India), however, renders a factual support to the submission of the petitioners which *inter alia* records that 17 out of 60 seats were reserved for Scheduled Tribes on the basis of their percentage in the population of the State. In addition to the 17 seats

C reserved for the Scheduled Tribes, three open seats were also held by the tribal members and having regard to this position, agreement was reached to the demand of reservation of 20 seats held by the Scheduled Tribes, which was, however, intended to freeze till 2000 AD. In the bye-election in June 1991, Smt. Bibhudevi, a Scheduled Tribe Member of the Legislative Assembly holding a general seat in the Tripura Legislature was selected to the Lok

D Sabha and thus reducing the number of seats held by the tribals to 19 in the Assembly. This enhancement thus of two seats (from 17 to 19) has been the resultant effect for bringing about a satisfactory settlement of the problems of Tribals in the State of Tripura and for restoring peace and harmony in the State. It is on record before this Court that Memorandum of Settlement on

E Tripura commonly known as "TNV Accord" was signed on 12th August, 1988 by the representatives of the Central Government, State Government of Tripura and Tripura National Volunteer for bringing in a satisfactory settlement of the problems of tribals in Tripura and for restoration of peace and amity in the areas where the prevailing condition could not but be ascribed to be a disturbed one and the insertion of sub-Article (3B) in Article 332 is in

F implementation of the Memorandum of Settlement as noticed above and thus for the benefit of the people of the State without offending, as has been contended by Mr. Additional Solicitor General, any of the constitutional safeguards for less in breach of the basic features to the Indian Constitutional Scheme.

G While Mr. Gupta, learned Advocate in support of the petition contended that the rationale behind the reservation of such number of seats for SCs and STs cannot be doubted in order to enable the latter to have a role to play in the governance of the State but the reservation being influenced by consideration or criteria other than the proportion to the population of SCs

H and STs in the State to be totally deleterious to the basic features of the

Constitution.

For purposes of disposal of the matter, it is not necessary to go into the larger question of violation of basic features of the Constitution and it would be our primary consideration to see as to whether in view of the transient nature of sub-Article (3B) of Article 332, its constitutional validity can be sustained. The following sub-paragraphs would detail out our views in the matter.

Sub-Article (3B) first contains a time limit which records '*until the re-adjustment, under Article 170, takes effect on the basis of the first census after the year 2000*' and the second part has its relevance in the '*number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy-second Amendment) Act, 1992*' and the third part of the sub-Article '*of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly*'. (emphasis supplied).

Sub-Article (3B) thus stands out to be in different terms as compared to sub-Article (3) since the latter provision (sub-Article 3) provides for a proportional reservation in keeping with the proportion of their population in the State to the total population of the State.

The question thus to be asked is : as to whether the provision introduced by the Amendment Act of 1992 (sub-Article 3B), can be treated to be an insertion so as to whittle-down the provisions of sub-Article (3) of Article 332. In the view we have expressed it is not necessary for us to deal with the question as to whether proportionality in reservation in keeping with the proportion of the population of the reserved category in the State to the total population of the State is a basic structure of the Constitution. Incidentally, Articles 82 and 170(3) have been taken recourse to in support of the contention of the basic structure being violated by reason of the amendment in sub-Article (3B) of Article 332 of the Constitution. The leverage given by constitutional mandate by reason of inclusion of the words '*readjusted by such authority and in such manner as parliament may by law determine*' (emphasis supplied) depicts the intent of the Parliament as to its true effect. It is an enabling provision for adjustment of seats in accordance with the need of the situation. This authorisation as contained in Articles 82 and 170 stands out to be an enabling provision for incorporating sub-Article (3B) under Article 332. Be it noted that proportionality though mainly dependent

A upon the basis of population but it cannot always be done with arithmetical precision and mathematical nicety. The provision incorporated 'as the Parliament may by law determine' stands out to be an enabling provision to meet the exigencies of Constitution. It is in this context the observations of this Court in *R.C. Poudval v. Union of India and Ors.*, [1994] Supp. 1 SCC 324 may be of some relevance and we deem it to be apposite. The Constitution Bench of this Court in paragraph 126 stated:

“An examination of the constitutional scheme would indicate that the concept of ‘one person one vote’ is in its very nature considerably tolerant of imbalances and departures from a very strict application and enforcement.

C The provision in the Constitution indicating proportionality of representation is necessarily a broad, general and logical principle but not intended to be expressed with arithmetical precision. Articles 332(3-A) and 333 are illustrative instances. The principle of mathematical proportionality of representation is to a declared basic requirement in each and every part of the territory of India. Accommodations and adjustments, having regard to the political maturity, awareness and degree of political development in different parts of India, might supply the justification for even non-elected Assemblies wholly or in part, in certain parts of the country. The differing degrees of political development and maturity of various parts of the country, may not justify standards based on mathematical accuracy. Articles 371-A a special provision in respect of State of Nagaland, 239-A and 240 illustrate the permissible areas and degrees of departure. The systemic deficiencies in the plenitude of the doctrine of full and effective representation has not been understood in the constitutional philosophy as derogating from the democratic principle. Indeed, the argument in the case, in the perspective, is really one of violation of the equality principle rather than of the democratic principle. The inequalities in representation in the present case are an inheritance and compulsion from the past. Historical considerations have justified a differential treatment.”

It may be noticed that Tripura National Volunteer (TNV), through their letter dated the 4th May, 1988, addressed to the Governor of Tripura and signed by Shri Bijoy Kumar Hrangkhawl, stated that keeping in view the solution of problems through negotiations, TNV have decided to abjure violence, give up secessionist demand and to hold negotiations for a peaceful solution of all the problems of Tripura within the Constitution of India. The TNV also furnished its bye-laws, which conform to the laws in force. On this basis a series of discussions were held with representatives of TNV.

As regards reservation of seats in the Tripura Legislative Assembly for tribal, the records depict the following: A

“With a view to satisfy the aspirations of tribals of Tripura for a greater share in the governance of the State, legislative measures will be taken including those for the enactment of the Bill for the amendment of the Constitution. The Constitutional amendments shall provide that notwithstanding anything contained in the Constitution, the number of seats in the Legislative Assembly of Tripura reserved for Scheduled Tribes shall be such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitutional amendment, of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in the existing Assembly. The Representation of the People Act, 1950 shall also be amended to provide for reservation of 20 seats for the Scheduled Tribes in the Assembly of Tripura. However, the amendments shall not affect any representation in the existing Assembly of Tripura until the dissolution.” B C D

It is on this factual backdrop, the amendment in 1992 was introduced does it violate any of the constitutional mandate? The answer, however, in our view cannot but be in the negative. ‘Parliament may by law determine’ in Articles 82 and 170 ought to be attributed its proper meaning and upon consideration of the words used and the meanings to be attributed thereon, we cannot thus possibly lend concurrence to the submissions in support of the petition by reason of the transient nature of incorporation since Article 332 (3B) specifically readers to until the readjustment on the basis of first census after the year 2000. In our view, no exception can be taken for incorporation of such a transient provision: Temporary measures shall have to be taken for social goal and for the benefit of the country as deemed expedient. The Parliament is the authority to understand and appreciate the need of the situation and in its wisdom has incorporated the amendment as envisaged in Article 332(3B). Thus it can neither be said to be violative of nor be said to be even of infraction of any constitutional mandate. The felt need of the society of a trouble free Tripura State stands out to be effected and thus need not detain us any further to come to a conclusion of its constitutional validity. It is to bring forth and continue with the object of the Constitution social, economic and political justice of the people of India. E F G

Two other contentions need a brief reference as well. The first being H

A that to further effectuate the 72nd Amendment Act, amendments were also carried out by Act No. 38 of 1992 in the Representation of People Act, 1950 by inserting in Section 7 thereof, a new sub-Section being sub-Section (1C) wherein as many as 20 seats were reserved for the Scheduled Tribes in the Legislative Assembly of Tripura. It has been contended that both the

B Representation of People act (Act No. 38 of 1992) were passed by the Lok Sabha as well as the Rajya Sabha on the same day, i.e., on 3rd December, 1992 and the Presidential Assent was immediately obtained thereon on the very next day, i.e., 4th December, 1992 so as to make the enforcement of both the provisions commencing from 5th December, 1992.

C Admittedly, there was some hurry—but whether that in any way denounce the effort on the part of the Parliament to bring about a peaceful solution by implementing the accord—the answer cannot also but be in the negative. As noticed above, the social goal and social benefit ought to be the criterion for the lawmakers and having due regard to the existing situation

D and the impending election, the Parliament has passed a legislation with expedition and obtained Presidential assent thereon immediately and as such no motive neither any *malafides* can be ascribed.

E The only other issue raised by way of an alternative submission to the effect that even assuming that the Constitution (72nd Amendment) Act is valid, the provision made by Act No. 38 of 1992 in sub-Section (1C) of Section 7 of the Representation of People Act still *ultra vires* the amended Article 332 (3B) itself—we are, however, not inclined to go into this issue since the point has only been raised from the Bar without even any mention thereof in the petition itself.

F On the wake of the aforesaid, we do not find any merit in the petition.

The same is thus dismissed without, however, any order as to costs.

K.K.T.

Petition dismissed.