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THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

16th JANUARY, 2025

SPECIAL APPEAL NO.7 OF 2025

Smt. Shobha JoshiAppellant

Versus

State of Uttarakhand and OthersRespondents

Counsel for the Appellant: Mr. K.K. Tiwari,
Advocate.

Counsel for the Respondent: Mr. J.S. Bisht, Standing
Nos.1 to 3 Counsel, Mr. Gajendra
Tripathi, Standing
Counsel and Mr. Naveen
Tiwari, Brief Holder.

Counsel for the Respondent
No.4 : Mr. Sanjay Bhatt,
Advocate.

Hon'ble Alok Kumar Verma,J.

This Special Appeal is preferred against the Order passed by the learned Single Judge in Writ Petition (M/S) No.3627 of 2024 dated 10.01.2025, whereby the learned Single Judge has dismissed the Interim Relief Application of the appellant/ writ petitioner.

2. Mr. K.K. Tiwari, learned counsel appearing for the appellant, has submitted that the appellant herein



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filed Writ Petition (M/S) No.3627 of 2024 challenging the Notification No.1536/ IV(3)/ 2024-11 (3निर्वाo)/2024 dated 23.12.2024, issued by the respondent no.2, whereby the post of Mayor, Nagar Nigam, Almora has been reserved/ allotted for Other Backward Caste Category. The petitioner sought a direction to declare the post of Mayor, Nagar Nigam, Almora as General (Women).

3. Mr. K.K. Tiwari, Advocate, has contended that the appellant is a permanent resident of District Almora. She wants to contest the election for the post of Mayor, Nagar Nigam, Almora. As per the Municipal Corporation (Reservation and Allocation of Seats and Posts) Rules, 2024, the criteria for reserving the seat is population. Rule 6(3) (kha) of the said Rules, 2024 provides that where there is a population less than ten thousand then such category shall be excluded from reservation. The population of OBC Category in Nagar Nigam, Almora is 2513, the population of the Scheduled Caste Category is 5575 and the unreserved population is 30663 as per 2011 census. The Nagar Nigam, Almora seat in the tentative list was kept reserved for General Category (Women), but, after finalizing the tentative list, it has been reserved for



OBC Category without any basis.

4. Mr. J.S. Bisht, learned Standing Counsel for the State, has opposed the said submissions.

5. The State Election Commission has announced the election schedule on 23.12.2024. The Election schedule is as follows:-

(i) Nomination Date – 27.12.2024 to 30.12.2024.

(ii) Scrutiny of the nomination papers – 31.12.2024 to 01.01.2025.

(iii) Date for Withdrawal of nomination – 02.01.2025.

(iv) Allotment of Symbols – 03.01.2025.

(v) Date of Voting - 23.01.2025.

(vi) Date of Counting of Votes – 25.01.2025.

6. Learned Single Judge, after considering Articles 243T, 243(2), 243(S), 243(U), 243(V), 243ZA, 243ZG of the Constitution of India and the judgments of the Hon'ble Supreme Court in "**Boddula Krishnaiah and Another vs. State Election Commissioner, A.P. and Others**", (1996) 3 SCC 416, "**Mohinder Singh Gill vs. Chief Election Commissioner**", 1978 (1)



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SCC 405, “Election Commission of India Vs. Ashok Kumar”, (2000) 8 SCC 216, “Union Territory of Ladakh and Others Vs. Jammu Kashmir National Council”, 2023 SCC OnLine SC 1140, “State of Goa Vs. Fouziya Imtiaz Shaikh and Another”, (2021) 8 SCC 401, “Dravida Munnetra Kazhagam (DMK) vs. Secretary, Governor’s Secretariat”, (2020) 6 SCC 548 and “Anugrah Narain Singh & Others Vs. State Of U.P.”, 1996 (6) SCC 303, observed, in the bunch of the writ petitions:-

“49. Since the issue is only confined to the impugned notification dated 23.12.2024, which pertains to the allotment of seats, but what would be the impact of the impugned notification to the Election Notification this aspect cannot be overlooked. Therefore, at this juncture, if this Court scrutinises the decision for determination of allotment of seats, even for one constituency, then it will certainly affect the other constituencies. No doubt, the mandate of Article 243(T) of the Constitution of India is to follow the roster of reservation and even if while determining the allotment of seats, the roster in respect of some of the constituencies have not been followed which are disputed by the State as well as by Election Commission, any interference with the impugned notification will certainly effect the election of other



constituencies in respect of which there is no challenge to the allotment of seat. In other words disturbing one seat certainly will affect the other constituencies, therefore, as a whole, any interference at this juncture in respect of the impugned notification will amount to an interference with the election process at this stage, particularly when the election has already been notified.

60. Therefore, due to lack of pleadings at this juncture, this Court is keeping all these petitions pending and inviting counter affidavit from the State as well as from the State Election Commission to examine the validity of impugned notification by framing an issue “what would be the impact of impugned notification if the elections are concluded, after declaring the result of the returned candidate and whether the non-compliance of Constitutional provision as well as non-compliance with the provisions of Municipality Act and the Municipal Corporation Act as well as Rules of 2024 can be a subject matter of election petition or not,” and this issue will be decided later on but that too after the election are over, otherwise any interference at this stage amounts to an interference with the on going elections, which is against the mandate of settled principle of law.”

7. In the facts and circumstances of the case, I



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am of the considered view that the learned Single Judge has not erred in passing the impugned order. I do not find any perversity and infirmity in the impugned order warranting interference. This Court does not find any merit in the present appeal. Special Appeal is liable to be dismissed at the admission stage.

8. In the result, the Special Appeal is dismissed.

ALOK KUMAR VERMA, J.
Vacation Judge

Date: 16.01.2025

Pant /

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KUMAR PANT