
(2008) 07 P&H CK 0019
In the Punjab And Haryana At Chandigarh

Anil Jain (Tinu)	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Constitution of India, 1950 — Article 243, 243T

Citation : (2009) 153 PLR 211 : (2008) 4 RCR(Civil) 445

Hon'ble Judges : Vijender Jain, C.J; Kanwaljit Singh Ahluwalia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Vijender Jain, C.J.—The present Letters Patent Appeal has been filed, challenging the order, dated 15.11.2006, passed by the learned Single Judge, dismissing C.W.P. No. 14083 of 2006, filed by the appellant.

2. The appellant, by filing the writ petition sought the issuance of a writ in the nature of certiorari for quashing the order/proceedings, dated 29th August, 2006, whereby respondent No. 4 was declared elected as President of Municipal Council, Hisar.

3. The preliminary legal issue, along with ancillary issue, raised before us, is whether a post of President of Municipal Council which, by rotation, is reserved for Scheduled Caste, women, Backward Class and General Category on the turn of general category candidate, can be occupied by a person belonging to reserved category of Scheduled Caste/Backward Class, woman to be precise by a Municipal Councillor elected, from a ward reserved for a backward class candidate.

4. Before we advert to the legal issues, raised before us, it will be necessary to set out the factual matrix, upon which the above issue arises for adjudication.

5. To manage the affairs of Municipal Councils, elections are held and Municipal Councillors are elected. Municipal Councillors have to elect one among them as

President of the Municipal Council, who is considered as the executive head of the Municipal Council. To facilitate election of the Municipal Councillors, Municipal Council, Hisar has been divided into 31 wards. To give effect to mandate of Article 243 of the Constitution of India, which provides reservation, out of 31 wards, 15 wards were for the general category, 5 wards for scheduled castes, 2 for backward class and 9 for women category respectively. The appellant was elected as a Municipal Councillor from ward No. 2, a general category ward, whereas respondent No. 4 was elected as a Municipal Councillor from Ward No. 18, exclusively reserved for backward class category. On 29th August, 2006 "at 11.00 a.m. election for the office of President, Municipal Council, Hisar was held in the office of Municipal Council, Hisar under the chairmanship of City Magistrate-cum-Prescribed Authority, Hisar (respondent No. 3). As per Schedule 3 of the notification (Annexure P-2) at entry No. 26 pertaining to Hisar, the office of President has been shown in the list of Municipalities, reserved for general category candidate.

6. Respondent No. 4, who was elected from ward belonging to backward classes, contested the election for the post of President of Municipal Committee, Hisar. The appellant also contested the election but was defeated by six votes. At the time of the election, it is averred in Para 10 of the Writ Petition that an objection was raised by the appellant that respondent No. 4 being elected as a member from a backward class ward, cannot contest election as the office of President can only be from general category. His objection was not considered and decided and respondent No. 4 was allowed to contest election and he was elected as President. Aggrieved against the election of respondent No. 4 as President. C.W.P. No. 14083 of 2006 was filed.

7. In furtherance to give effect to Article 243 of the Constitution, Section 10(5) of the Haryana Municipal Act, 1973 (for short herein after referred to as "the Act"), read with Sub-rule (4) of Rule 70 of the Haryana Municipal Election Rules, 1978 (hereinafter referred to as "the Rules"), the State Government on 8th April, 2005 issued a notification (Annexure P-2), whereby offices of the President of various Municipal Councils in the State of Haryana were reserved for general category, Scheduled Castes, backward classes and women and for this purpose, draw of lots was held on 4th April, 2005 at Kama Lake, Karnal. Schedule I to the notification contains 9 Municipal Councils, which were reserved for candidates belonging to scheduled castes category and 3 Municipal Councils were reserved for Scheduled Caste Women. Schedule 2 contains the list of five Municipal Councils, which were reserved for backward Classes and furthermore, two Municipal Councils, where the post of President was reserved for Backward Class women. Schedule 3 contains list of 35 municipalities, where the President was to be elected from general category. It also contains list of 12 Municipalities, where the President had to be a general category woman.

8. Before we notice the rival submissions, made by the counsel for the parties, and to appreciate the entire gamut of the controversy, it will be necessary to

reproduce Article 243T of the Constitution of India and Section 18 of the Act, which read as under:

243T. Reservation of Seats.- (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear as nearly, as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipality area or of the Scheduled Tribes in the Municipal Area bear to the total population of that area as such seats may be allotted by rotation to different constitution in a municipality.

(2) Not less than one third of the total numbers of seats reserved under Clause (i). shall be reserved for women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Caste and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seat may be allotted by rotation to different constituencies in a Municipality.

(4) The office of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may, by law, provide.

(5) The reservation of seats under Clauses (1) and (2) and the reservation of officers of Chairperson (other than the reservation for women) under Clause (4) shall cease to have effect on the expiration of the specific Article 334.

(6) Nothing in this Part shall prevent the legislature of a State from making any provision for reservation of seats in any Municipality or officers of Chairpersons in the Municipalities in favour of backward class of citizens.

18. Election of President and Vice-President.- (1) Every Municipal Committee or Municipal Council shall, from time to time, elect one of its members to be President for such period as may be prescribed, and the member so elected shall become President of Municipal Committee or Municipal Council;

Provided that the office of the President in Municipal Committee and Municipal Council shall be reserved for Scheduled Castes and women in accordance with the provisions made in Section 10:

Provided further that if the office of President is vacated during his tenure on account of death, resignation or no confidence motion, a fresh election for the remainder of the period shall be held from the same category.

(2) Every Municipal Committee or Municipal Council shall, also from time to time, elect one of its elected members to be Vice-President;

Provided that if the office of the Vice-President is vacated during his tenure on

account of death, resignation or no confidence motion, a fresh election of the remainder of the period shall be held.

(3) The term of the office of President shall be for a period five years or for the residue period of his office as a member, whichever is less.

The controversy also revolves around Section 10(5) of the Act and Sub-rule (4) of Rule 70 of the Rules, which read as under:

10(5) The office of Presidents in the Municipalities shall be filled up from amongst the members belonging to the general category, Scheduled Castes, Backward Classes and women by rotation and by lots in the manner prescribed.

70(4) The offices of the Presidents in the Municipalities shall be filled-up from amongst the members belonging to the general category, Scheduled Castes, Backward Class and women by rotation which will be determined in the manner as detailed below.

Provided that the number of office of the President reserved for the Scheduled Castes and Backward Classes in the State shall bear as may be the same proportion to the total number of such offices of the municipalities as the population of the Scheduled Castes and Backward Classes in the State bears to the total population of the State:

Provided further that not less than one third of the total number of offices of the President in the Municipalities shall be reserved for women including the offices reserved for Scheduled Castes and Backward Class women. The reservation of offices for women shall rotate to different Municipalities which will be determined by draw of lots, by a committee consisting of the Director, Local Bodies and Deputy Commissioners of the districts concerned or their nominee. If women of the reserved category are not available, then the office of the President shall be filled up from the male member of the said reserved category;

Provided further that the number of offices of the President for Scheduled Castes and Backward Classes shall be determined on the basis of their population and shall rotate to different municipalities firstly, having largest population of Scheduled Castes, Secondly, from the remaining municipalities having next largest population and so on. In case percentage of population of two Municipal Committees or Municipal Councils as regard backward classes and Scheduled Castes is the same, the reservation will be determined by draw of lots to be conducted by a committee consisting of Director, Local bodies and Deputy Commissioner of District concerned or his nominee:

Provided further that in case of offices of die Municipal Council reserved for the backward Classes, the President shall be elected from amongst the members belonging to the backward classes and in case of Municipal Committee, the member of Backward Class shall be deemed to be elected as President of the Municipality reserved for the Backward Classes.

9. Learned Single Judge, after hearing counsel for the parties, relied upon the judgment of the, Hon''ble Supreme Court in Shri V.V. Giri Vs. Dippala Suri Dora and Others, to conclude that a member of reserved category is not precluded from contesting the election for the general seat. To fortify this conclusion, learned Single Judge also relied upon the judgment of Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, and Union of India (UOI) and Another Vs. Satya Prakash and Others, . After analyzing various provisions, which have been reproduced herein above, the learned Single Judge held as under:

The word "general" relates to a whole class, which cannot be restricted or specialized and therefore, it will include even the members belonging to reserved category. Otherwise also, the Hon''ble Supreme Court, while interpreting the provisions regarding election to the Municipal Council has been pleased to lay down that a person who belongs to reserved category and is popular enough to get elected, from general standard could not be barred from contesting the election of the President when the office is required to be filled only from the General Category.

Therefore, it has to be held that when the post is to be filled by the general category candidate in terms of Section 10(5) there is no bar for the candidate belonging to the reserved category to contest the election if they are popular enough to contest the same as has been done in the present case.

Thus, there is no merit in the present petition, which is accordingly dismissed.

10. The dilemma before this Bench is compounded, as born the counsel for the appellant and respondent No. 4 have relied upon a judgment of the Hon''ble Supreme Court in Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput and Others, and have asked us to interpret the judgment in their favour. In the above said judgment, the question posed was, whether a person who belongs to a backward class but has been elected from unreserved seat could contest election for the office of President of the Municipality, which was reserved for a backward class candidate? The Hon''ble Supreme Court held that a candidate, who has been elected from un-reserved seat but belongs to a backward class, can contest the election for the office of President, as answering the above question, an earlier judgment of the Hon''ble Supreme Court rendered in Saraswati Devi Vs. Smt. Shanti Devi and Others, was over ruled. The learned Single Judge has relied heavily upon Para 13 of the Kasambhai F. Ghanchi's core (supra) to hold that respondent No. 4 was eligible to contest the election of President, whereas counsel for the appellant has placed implicit reliance upon Para 12 of the judgment to contend that once the roster fixes a category for which the election can be made, then for the office of President, which is for general category, backward class and scheduled caste candidates cannot contest and become President.

11. Mr. A.K. Chopra, Senior Advocate, appearing for the appellant has contended

that if principle of rotation is not strictly followed, then a very piquant situation would arise. For five years, office of the President will go to Scheduled Caste candidate, then for another five years to backward class, then for next five years to a woman and when by rotation, turn of the general category will accrue, if a backward class is allowed to become President then turn of a general category candidate will not come for 35 years. It has been contended before us that the object of Article 243 of the Constitution of India is social engineering and to create harmony among all sections of the society and is not to deprive any particular category from the office of the President for times to come. It has been urged before us that if it is permitted that a candidate elected from a reserved ward can contest from the general category, then the general category candidate will never become the President and there is bound to be social unrest.

12. It is further submitted that as per the first proviso to Rule 70(4) of the Rules, the number of offices of the President reserved for Scheduled Castes and Backward Classes etc. in the State shall bear the same proportion to the total number of such offices in the Municipalities as the population of Scheduled Castes and Backward Classes in the State bears to the total population of the State i.e. the number of reserved offices shall bear direct relation to the percentage of a reserved categories population vis-a-vis the total population of the State. It is, therefore, submitted that in case a candidate elected from a Backward Class ward is allowed to contest for the post of a President reserved for a general candidate, the percentage calculated as per the proviso that follows Rule 70(4) "if the Rules would exceed the number calculated in accordance with the rule, set out in the proviso. It is urged that the use of the words "number of offices" in the first proviso to Rule 70(4) of the Rules, indicates legislative intent to confine the number of offices, held by the Scheduled Castes and the Backward Classes etc. in the proportion their population bears to the total population of the State. In case, a candidate elected from a reserved seat is allowed to contest the election to the office of President reserved for the general category, it would violate the number of reserved offices, prescribed under the first proviso to Rule 70(4) of the Rules.

13. To counter these arguments, Mr. Akshay Bhan, Advocate appearing for respondent No. 4 has urged before us that backward class, scheduled caste and women are the categories which exclude a general category candidate, whereas the term general category includes backward class, scheduled caste and women and therefore no bar can be raised upon a person belonging to this category to contest when post is due for general category. Mr. Akshay Bhan, Advocate has vehemently urged that general category is a summum bonum, whereas scheduled caste, backward class and women are species of general category. It has been further canvassed by counsel for respondent No. 4 that the object of the statutory provisions is to promote deprived sections of the society, therefore, when democratic will of the people is reflected by way of election then at the time of general category candidate, backward class candidate cannot be ousted from contesting the election. It has been further submitted that once backward

class candidate has been accepted by the majority, this Court cannot trample the will and wishes of the general house, if they accepted a candidate of backward class category to be President.

14. We have heard counsel for the parties, perused the impugned judgment and the relevant statutory provisions.

15. The learned single Judge, by placing primary reliance upon a judgment of the Hon'ble Supreme Court in *Kasambhai F. Ghanchi's case (supra)*, dismissed the writ petition by holding that as the word "general" cannot be assigned a restricted or specialized meaning so as to exclude members belonging to the reserved category, respondent No. 4 could not be barred from contesting the election to the office of President. It would, therefore, be necessary to peruse the judgment in *Kasambhai F. Ghanchi's case (supra)*.

16. The question, posed before the Hon'ble Supreme Court in *Kasambhai F. Ghanchi's case (supra)*, is as follows:

The only question which arises for consideration in this appeal is whether the appellant, who belongs to a Backward Class but had been elected to the Jambusar Municipality from an unreserved seat, could stand for election for the post of President of the Municipality which was reserved for a Backward Class candidate or whether the candidate for that post could only be a person who was elected to the Municipality from a seat which was reserved for the Backward Class.

The Hon'ble Supreme Court, after considering the relevant statutory provisions, held that the language, used in the statutory provisions, does not suggest expressly or by necessary implication that a person, who belongs to a reserved category and is popular enough to be elected from a general ward should be barred from contesting the election of the President when that office is to be filled only by a reserved category person, namely, a Backward Class. There can be possibly no quarrel with the enunciation of law, as set down by the Hon'ble Supreme Court. The situation in the present writ petition, however, in our humble opinion, is entirely different.

17. Respondent No. 4 was elected from a municipal ward reserved for Backward Class candidate. On the basis of a policy of rotation, set out in the third proviso to Rule 70(4) of the Rules and as calculated, in terms of the first proviso to Rule 70(4), the post of President was set apart for a general candidate. The petitioner allegedly raised an objection that as respondent No. 4 was elected from a Backward Class ward, he could not contest the election for the office of President, reserved for general candidates. The petitioner's objection was apparently disregarded and respondent No. 4 was declared elected by six votes.

18. The question that now requires consideration is whether a candidate, elected from a Backward Class ward, can contest the election to the post of President, allotted to general category, and if allowed to contest can his election be called

into question for violation of any provisions of the Constitution, the Haryana Municipal Act, the Rules framed thereunder, or the notification providing reservation and rotation.

19. If the aforementioned questions were to be answered in terms of the judgment in *Kasambhai F. Ghanchi's* case (*supra*), the answer would be simple and straight forward, namely, that a backward class candidate cannot be barred from contesting election to an office reserved for a general candidate. The answer in the present case is however not so straight forward and simple, as in the present case, respondent No. 4 was elected from a ward reserved, as per the notification of reservation and rotation, for a Backward Class.

20. Section 10(5) of the Act provides that the offices of the President in municipalities, shall be filled from amongst the members belonging to the general category. Scheduled Castes, backward Classes and women by rotation and by lots in the manner prescribed. In furtherance of the mandate set out in Section 10(5) of the Act, Rule 70(4) of the rules provides that the office of the President shall be filled from amongst members belonging to the general category, Scheduled Castes, Backward Classes and women by rotation. The first proviso to Rule 70(4) of the Rules provides that the number of offices of the President reserved for Scheduled Castes, Backward Classes and women shall bear, as far as may be, the same proportion to the total number of such offices of municipalities as the population of Scheduled Castes, Backward Classes and women bear to the total population of the State. The proviso, therefore, required that while calculating the number of offices to be reserved for Scheduled Castes, Backward Classes and women, the percentage their population bears to the entire population of the State shall provide the basis for the number of seats to be reserved for each category. An illustration that demonstrates the working of the above provision would be appropriate. If the population of the State were taken to be 100 and the percentage of Backward Classes in the State as 20, the number of offices of President to be reserved for Backward Classes would have to be calculated in proportion to the population of Backward Classes to the total population of the entire State i.e. in a ratio of 100:20. The proviso, therefore, sets out the method for calculating the number of seats to be reserved for each category, whether scheduled castes, backward classes or women, and as a result general. As the proportion of seats to be reserved for Scheduled Castes, Backward Classes and women are to be calculated, as per the first proviso, the number of these seats would necessarily be definite in number and any increase or decrease in their number, on account of any other factor, would in our considered opinion, violate the formula set out in the first proviso to rule 70(4) of the Rules. If a candidate elected from a Backward Class ward is allowed to contest for the post of President, reserved in rotation for general candidates, the number of offices of the President occupied by Backward Classes would necessarily exceed the number reserved, in terms of the first proviso to Rule 70(4) of the Rules and the notification, issued in this regard, setting out rotation for different categories. We have no doubt that though the words "general

category", as interpreted by the Hon"ble Supreme Court in Kasambhai F. Ghanchi's case (supra) would include all categories or classes irrespective of their castes or status, but if a person elected from a reserved Ward, contests the election for the post of President, his election would lead to an increase in the reservation and rotation for the reserved class candidate that has already been set down, after calculation in accordance with the first proviso to Rule 70(4) of the Rules. Even otherwise, the issue of rotation etc. was never considered by the Hon"ble Supreme Court in Kashambhai F. Ghanchi's case (supra).

21. In order to fortify our above conclusion, a reference would necessarily have to be made to the third proviso to Rule 70(4) of the Rules. The third proviso to Rule 70(4) of the Rules provides that the number of offices of the President for Scheduled Castes and backward Classes, determined on the basis of the population, shall rotate to different municipalities, in accordance with the manner detailed thereunder i.e. in accordance with the population of the municipalities. The larger municipalities would be taken up first, in accordance with their population. Thus, in case a candidate elected from a backward Class ward is allowed to contest the office of President, reserved for general category, the rotation prescribed in the third proviso would, in our considered opinion, be violated. An illustration of this violation would be appropriate. As per the rotation, amongst the four categories, each category is entitled to the post of President for a period of five years. In case, the other reserved categories were to encroach upon the general category, a general category candidate may not be elected, after quarter of a century, as even then a general candidate may not be elected, as candidates from reserved categories would be entitled to contest the election. We are, therefore, sanguine in our understanding of the statutory provisions that a candidate elected from a backward class ward, as distinguished from a backward class candidate elected from a general ward, cannot contest the election for the post of President reserved for the general category, as per roster.

22. Applying our conclusions, recorded herein above, to the present controversy, the post of President was reserved for general category. Respondent No. 4 was, admittedly, elected from a Backward Class ward and in our considered opinion could not, therefore, be allowed to contest for the office of the President reserved for the general category, as per notification delimiting roster point, as his election led to an increase in the number of offices reserved for backward class candidates, and in violation of this roster. The election of respondent No. 4 is, therefore, in excess of the percentage of reservation calculated in terms of the first proviso to Rule 70(4) of the Rules and in violation of the roster/allocation provided under the third proviso to Rule 70(4) of the Rules. Though as held by the Hon"ble Supreme Court in Kasambhai F. Ghanchi's case (supra), a person, belonging to a Backward Class may contest an election for the post of President, reserved for general category but where the election of a Backward Class candidate elected from a Backward Class Ward, to the post of President, causes the number of offices reserved for a reserved category to exceed their figure as calculated and allocated as per the first and the third proviso to Rule 70(4) of the

Rules, it would necessarily upset the number of offices, so calculated, in terms of the formula prescribed under the provisos, referred to herein before and lead to a violation of the roster calculated under the third proviso to Rule 70(4) of the Rules.

23. In view of what has been stated herein above, the Letters Patent Appeal is allowed, the order, dated 15.11.2006, passed by the learned Single Judge is set aside and the election of respondent No. 4 is set aside. As a necessary consequence, we direct respondents Nos. 1 to 3 to hold a fresh election to the post of President of the Municipal Council, Hisar within one month from the receipt of a certified copy of this order.