

(1968) 08 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 779 of 1966

Harinder Kaur alias Bhupinder Kaur

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 05-08-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Panchayat Samitis and Zila Parishads Act, 1961 — Section 12, 12(1), 12(2), 16, 5

Citation : (1969) 2 ILR (P&H) 161

Hon'ble Judges : S.S. Sandhawalia, J; R.S. Narula, J

Bench : Division Bench

Advocate : T.S. Doabia, for the Appellant; M.S. Pannu, for A.G. and J.S. Rekhi, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sandhawalia, J.—In this petition under Article 226 and 227 of the Constitution of India, the facts are in a narrow compass. The writ-Petitioner is a Panch of the Panchayat of village Kirian. tehsil Tarn Taran, which falls within the area of Block Samiti of Chola Sahib. A General Election to the Block Samiti above-said was held in February, 1965. Amongst the women who had contested in the general election were three, namely, Smt. Gurnam Kaur, wife of Charan Singh, Smt. Bhagwan Kaur, wife of Ghula Singh and Smt. Taro alias Kartar Kaur, wife of Jaswant Singh, Respondent No. 3 to this petition. Of these three, Smt. Gurnam Kaur had secured the highest number of votes amongst the women candidates contesting the election. Next to her in that order was Smt. Bhagwan Kaur and Respondent No. 3 was third in the order of hierarchy of the highest votes secured by women candidates.

2. When the Block Samiti consisting of 25 members was constituted, 16 members thereof were elected by direct voting, 4 Harijan members were to be co-opted whilst one member was elected by the Market Committee and two

members were elected by the Co-operative Societies u/s 5(2) of the Punjab Panchayat Samiti and Zila Parishads Act, 1961, hereinafter referred to as the Act. Two women members had also to be co-opted to the block samiti and in conformity with the provision of Section 5 (2)(cc), Smt. Gurnam Kaur and Smt. Bhagwan Kaur above-mentioned were duly co-opted as members of the block samiti. It appears that some time thereafter Smt. Bhagwan Kaur above-mentioned who was the co-opted member of the block samiti died. To fill the seat which had thus fallen vacant, a meeting for the said purpose was fixed by Respondent No. 2 on the 10th of March, 1966, and was duly held on that date. On the said date, Respondent No. 2 purporting to act under the provisions of Section 5(2)(cc) of the Act appointed Smt. Taro, Respondent No. 3 as a co-opted member of the block samiti on the ground that in the last general election which had been held in February, 1965, she had stood third in the order of the highest votes secured by the women candidates. Subsequently a Punjab Government Gazette Notification was published on the 2nd April 1966 publishing the name of Respondent No. 3 as a duly co-opted member. It is this co-option and appointment of Smt. Taro, Respondent No. 3, by Respondent No. 2 which is being challenged in this petition.

3. An affidavit in reply to the petition has been filed on behalf of Respondent No. 1, the Deputy Commissioner, Amritsar. No return has been filed on behalf of Respondent No. 3, In the affidavit of Respondent No. 1. the position taken by him is that by placing reliance on the amendment of Rule 4-A of the Panchayat Samitis (Co-option of Members) Rules. 1961. Respondent No. 3 could be the only person who was to be co-opted under the provisions of the Act and the rules framed thereunder. Reliance is further placed on the contention that for the subsequent filling of casual vacancies also the provisions of Section 5(2)(cc) of the Act are applicable.

4. Mr T.S. Doabia on behalf of the Petitioner has contended that on the facts of the case, Section 5(2)(cc) has no application whatsoever. He submits that this provision applies only to the stage for the first filling of the vacancies after the general election. Any casual vacancy thereafter, according to him. is to be governed by the provisions of Section 12 of the Act and is to be filled in consonance with the provisions of Sections 16 and 5(2)(c), and the Panchayat Samitis (Co-option of Members) Rules, 1961. His contention is that instead of Section 5(2)(cc) on which reliance has been placed by the Respondents, the only relevant provision applicable is Section 5(2)(c) of the Act read with Section 16. In support of this contention he has submitted that the legislature whilst introducing Section 5(2)(cc) by an amending Act has not substituted Section 5(2)(c) From this fact he submits that we should raise an inference that after the first general election is over and once the vacancies have been filled in accordance with Section 5(2)(cc), any subsequent vacancy thereto should be filled in accordance with the Panchayat Samitis (Co-option of Members) Rules, which have been framed in conformity with the direction in Section 16 of the Act.

5. Mr. Pannu on behalf of the Respondent (No. 1) in reply has confined himself to contending that to the facts of the present case, only Section 5(2)(cc) would apply and the provisions of Section 5(2)(c) and the relevant rules for the purpose of election of co-opted members would not at all have any play whatsoever.

6. The point in issue involves the interpretation of the statute as amended by introducing Section 5(2)(cc). It is likely to affect a large number of casual vacancies which may arise amongst the co-opted women members of the Samitis and probably because of this reason the writ petition was admitted to hearing before a Division Bench and that is how the matter is before us. I am constrained to remark that we have received scanty assistance at the bar for the decision of this point. No authority has been cited on either side of the Petitioner or the Respondents nor succinct elaboration of principles has been advanced.

7. The scope of the provisions of Section 5(2)(cc) has been considered in two Division Bench decisions of this Court, namely Jalpu Ram etc. v. The Deputy Commissioner. Kulu and Ors. C.W. 536 of 1965 decided on 12th May, 1965 and Charan Dass Dogra and Ors. v. Punjab State and Ors. 1965 P.L.R. 1238. Both these cases, however, deal generally with the scope of Section 5(2)(cc) of the Act which had been added to the statute-book by a recent amendment. They are, however, not very helpful in determining the particular point which is at issue in the present writ petition. As already mentioned no authority directly on the point has been brought to our notice nor has any been discovered by us.

(2) The point that arises for determination in this petition may be formulated thus--

Do the provisions of Section 5(2)(cc) continue to apply whenever a casual vacancy of a co-opted woman member occurs under the provisions of Section 12 of the Act or do the above provisions cease to apply after they have been once resorted to for the filling of the vacancies after the general election.

9. To this main question a subsidiary point which arises is whether under the provisions of Section 5(2)(cc)(i), a woman who has contested the election and stood third or lower in the hierarchy of securing the highest number of votes would be entitled to be co-opted as a member of the Panchayat Samiti.

10. To appreciate the purposes of the amendment the history of this legislation may be briefly noticed. The Punjab Panchayat Samitis and Zila Parishads Act, 1961, was published in the Punjab Government Gazette, Extraordinary legislation supplement of the 25th of January, 1961. After its promulgation and enforcement, elections under the provisions, thereof were held all over the State to the Block Samitis, Tahsil Samitis and the Zila Parishads. This is probably what is termed as the first general election under the provisions of this Act. Under the provisions of Section 5 of the Act, in each tahsil or Block Samiti, as the statute originally stood, two women members had to be co-opted in case no woman was elected as a primary member and similarly four persons belonging to the Scheduled Castes and Scheduled Tribes were to be co-opted if no such person

was elected as a primary member to the statutory body. As such a very large number of seats in the Samitis quo women members and Scheduled Castes members had to be filled in after the first general election. To provide for the same, the Punjab Panchayat Samiti and Zila Parishad (Amendment) Act, 1964, Punjab Act No. 14 of 1964 was enacted. This Act for the first time introduced the provisions of Section 5(2)(cc) which call for interpretation in this petition. Section 5(2)(cc) runs as follows:

After the first general election of primary members of Panchayat Samitis is held, co-opted members to be co-opted in the following manner, notwithstanding anything containing in Clause (c) or Section 16, comprising--

(i) two women securing the highest number of votes amongst the women candidates in the election under Sub-clause (i) of Clause (a), where no woman is elected under Clause (a):

Provided that if only one woman is so elected, then one more woman securing such highest number of votes shall be co-opted:

Provided further that where no woman or only one woman contested the election, then two women or one woman, interested in social work among women and children, as the case may be, shall be co-opted in accordance with the provisions of Section 16;

(ii) four persons belonging to Scheduled Castes and Scheduled Tribes securing in the election under Sub-clause (i) of Clause (a) the highest number of votes amongst candidates of those Castes and Tribes, where no such person is elected under Clause (a):

Provided that if only one, two or three such persons are elected under Clause (a), then three, two or one such person, respectively, securing in the election under Sub-clause (i) of Clause (a) the highest number of votes amongst candidates of those Castes and Tribes, shall be co-opted:

Provided further that where no such person or less than four such persons contested the election, then four such persons or the requisite number of such persons, as the case may be, shall be co-opted in accordance with the provisions of Section 16.

11. Prior to the above-mentioned amending statute the relevant provisions for the purposes of co-option were laid out in Section 5(2)(c) which is as follows:

Co-opted members, to be co-opted in accordance with the provisions of Section 16, comprising--

(i) two women interested in social work among women and children; if no woman is elected under Clause (a):

Provided that if only one woman is so elected, then one more woman shall be co-opted;

(ii) four persons belonging to Scheduled Castes and Scheduled Tribes if no such person is elected under Clause (a):

Provided that if only one, two or three persons are elected under Clause (a), then three, two or one such person, respectively shall be co-opted.

12. We have, therefore, first to examine the situation before the amendment of the statute. The relevant provisions governing co-option prior to the amendment were Section 5(2)(c) quoted above read with Section 16 and the Panchayat Samitis (Co-option of Members) Rules, 1961. Section 5(2)(c) had laid down certain qualifications for the women who would be eligible to be co-opted. The criterion provided by the statute was that such women should be persons who were interested in the social work amongst women and children. Further Rule 5(2) of the Panchayat Samitis (Co-option of Members) Rules, 1961, laid down some other conditions also regarding the eligibility of persons who could be co-opted as members of the statutory bodies. Thereafter Section 16 enjoined the calling of a meeting for the purpose of co-option by the Deputy Commissioner concerned or any Gazetted Officer appointed by him in this behalf. This meeting was to be the meeting of all primary members and such a meeting was then to co-opt the members in the manner prescribed by law. The manner of co-option was further elaborated in the Panchayat Samities (Co-option of Members) Rules 1961. It is provided under Rule 3 to give a notice for a special meeting for co-option whilst Rule 4 laid out the quorum necessary at such a meeting. Rule 4-A on which reliance was placed on behalf of Respondents had stated that at the time of co-option under Clause (cc) of Section 5(2) no quorum would be necessary. Rule 5 has already been adverted to and Rule 6 provided for an election of persons by secret ballot in case the number of proposals for co-option exceeded the number of seats to be filled in. Rule 7 which has 11 sub-clauses made a detailed provision regarding the procedure to be followed for this election by secret ballot and Rule 8 adverted to the validity of the ballot paper whilst the last Rule 9 provided for the publication of the names of the persons who had been duly elected by the rules. It, therefore, emerges from the above provisions that the legislature as a general rule had expressly provided that co-option to the Panchayat Samiti was to be done by the normal process of election by secret ballot. As already noticed the amending Act being Punjab Act No. 14 of 1964, Section 5(2)(cc) was brought on the statute book. The language of this provision is far from clear and the drafting thereof leaves much to be desired. On a consideration of the language used in Section 5(2)(cc), the other relevant provisions already noticed, the time of introducing the amendment and the probable purpose of introducing the same as also from the reference to the general election therein, we are of the view that Clause (ee) of Section 5(2) of the Act was primarily introduced to provide for a special purpose. This patently was for the situation which arose immediately after the general election. Large number of co-options would have become necessary to fill in the number of seats for women and Scheduled Castes in each Panchayat Samiti and in each Block Panchayat Samiti in the wake of the first general election. This rule of co-opting

those women who had contested in the general election was, therefore, introduced to provide for the above contingency. Necessarily in our view this would be in the nature of an exception for the purpose of filling in the large number of vacancies. However, it does not appear that the legislature wished to abrogate the general pre-existing mode of co-option by election by the use of secret ballot altogether. That machinery was expressly retained by maintaining the provisions of Section 5(2)(c) on the statute book. We are, therefore, of the view that once Section 5(2)(cc) had been resorted to for filling the vacancies in the general election, the casual vacancies thereafter would be governed by the provisions of Section 12 of the Act. These would necessarily have to be filled under the provisions of Section 5(2)(c) read with Section 16 and the Panchayat Samitis (Co-option of Members) Rules, 1961.

13. In this context it is particularly noticeable that the amending Act had made the consequential changes in Section 16 as it existed prior to the amendment. However, Section 12 of the Act which relates to the filling of the casual vacancies was left un-amended and retained on the statute book. Section 12 runs as under:

(1) When the place of a Primary or Co-opted Member becomes vacant by resignation; death or otherwise, a new Member shall be elected or co-opted, as the case may be, in the manner provided in Section 5.

(2) A person elected under this section to fill a casual vacancy shall hold office until the person whose place he fills would regularly have gone out of office but shall be eligible for re-election or co-option if otherwise qualified.

14. In this section the mode of co-option is referred to as "in the manner provided in Section 5." This obviously would have reference to Section 5 as it stood unamended and casual vacancies, therefore, arising the first general election would clearly fall within the ambit of the provisions of Section 12 as it has always existed and reading Sections 12 and 16 along with Co-option rules it is patent that the legislature intended to retain the mode of co-option by election for the subsequent vacancies which may arise. Another factor which is in favour of the construction which we have proposed is that the amending Act of 1964 has retained Section 5(2)(c) on the statute book. It is, therefore, patent that it was not the intention of the legislature to in any way abrogate the provisions of the said clause and thereby substitute the method of election by secret ballot by rule that only women who had contested the general election would become eligible for co-option. As already noticed, Section 5(2)(cc) was, therefore, only engrafted as an exception to the general mode of the election laid out earlier in Section 5(2)(c). The second proviso to Section 5(2)(cc)(i) may be noticed and is as follows:

Provided further that where no woman or only one woman contested the election, then two women or one woman, interested in social work amongst women and children, as the case may be, shall be co-opted in accordance with the provisions of Section 16.

15. If it were to be construed that even every casual vacancy after the general election has to be filled in by resorting to Section 5(2)(cc)(i) then the provisions of Section 5(2)(c) would become virtually redundant and would arise in those very rare cases where no woman contestant would be available for co-option. We do not think that such was the intention of the legislature.

16. Though we are considering it as the last argument, yet a very strong inference in favour of the above construction arises from the language of Section 5(2)(cc)(i) which is--

two women securing the highest number of votes amongst the candidates in the election under Sub-clause (i) of Clause (a), where no woman is elected under Clause (a).

17. The language of the above provision is clear and explicit. It limits the right to be co-opted to the Panchayat Samiti to the first two women alone in the hierarchy of the contestants who secured the highest number of votes. It makes no reference whatsoever to the rest of the women contestants who may have secured a lower number of votes thereafter. When the language is clear it cannot be extended except by straining it to the third, fourth or fifth woman in the order of votes secured. Clearly the purpose was that as an exceptional case, the two women, who secured the highest number of votes and thereby showed their popularity and acceptance by the electorate, may be given the privilege of co-option in cases where no woman had been able to be elected as a primary member. It could not have been the intention of the legislature that a vested right should be created for all times in a group of women contestants who merely had chosen to contest in an election irrespective of the number of votes they had secured and irrespective of their qualifications and fitness to be co-opted to the Panchayat Samitis. If the contention of the Respondents were to be upheld then every time when a vacancy occurs irrespective of the provisions of Sections 12 and 16 it must necessarily be filled from out of women who had contested the election and in the order of the votes secured by them therein. If that was ever to be the intention of the legislature it could have been easily provided for by explicitly referring to the third, fourth or fifth woman contestant u/s 5(2)(cc)(i). In our view the explicit reference to two women alone limits the right of co-option to them only.

18. In view of the foregoing discussion we are of the view that this petition must succeed. The orders of Respondents Nos. 1 and 2 are quashed, and the appointment of Respondent No. 3 as a co-opted member to the Panchayat Samiti is set aside. In the circumstances of the case, there will be no order as to costs.

R.S. Narula, J.

19. As succinctly put by my Lord Sandhawalia, J., the fate of this case depends on the answer to the question whether the choice of a woman Panch for co-option in a casual vacancy caused by the death of a lady Panch who had originally been co-opted u/s 5(2)(cc)(i), of the Punjab Panchayat Samitis and Zila

Parishads Act, 1961, is or is not restricted to woman, if any, who had secured the highest number of votes among the women candidates in the election of primary members next below the two such women members including the deceased, who had originally been co-opted under that provision immediately after the general election of primary members of the Panchayat Samiti concerned. If the correct answer to the above question is in the affirmative this writ petition must fail as Shrimati Taro Respondent No. 3 was the only person who fell in that category and no fault can, therefore, be found in her having been declared as co-opted. If, however, on a correct interpretation and construction of the relevant provisions of the Act the answer to the question posed by me in the negative this petition must succeed as the appropriate authorities have admittedly not held the election for co-opting a member in the casual vacancy of Bhagwan Kaur as required by Section 16 read with Sections 12 and 5 (2)(c)(i) of the Act.

20. The place of the co-opted member having become vacant by death, a new member had to be co-opted in that place under Sub-section (1) of Section 12 "in the manner provided in Section 5." Sub-section (2) of Section 5 gives a list of the members who have to constitute the Panchayat Samiti for a block. The sub-section says that where a "Panchayat Samiti is to be constituted" for a block, it shall consist of the members mentioned therein. Clause (c) and not Clause (cc) of Sub-section (2) would apply to a case; (i) where at least two women have been elected as primary members as a result of the election of such members; or (ii) where no women at all contested the election of primary members. On the other hand Clause (cc) and not Clause (c) of Sub-section (2) will apply to a situation in which it is found that one or more women contested the election, but either none or only one of them was declared elected, In the latter class of cases, Clause (cc)(i) would apply notwithstanding what is contained in Clause (c) (i) of Sub-section (2) of Section 5 of the Act. Once Clause (cc) has fully operated and its benefits conferred on both the women entitled thereto, the power of automatic co-option under that clause stands exhausted. Clause (cc) applies only at the stage immediately "after the general election of primary members." There is great force in the submission of Mr. Doabia that there would otherwise have been no sense in retaining Clause (c) even after the incorporation of Clause (cc) in Sub-section (2) of Section 5 of the Act. The words "in the manner provided in Section 5" used in Sub-section (1) of Section 12 of the Act take us back to Section 5 itself. The only obvious difference between a situation arising out of the occurring of a casual vacancy of a co-opted member after the Panchayat Samiti has once been fully constituted for a block and the situation with which the authorities find themselves faced immediately after the first general election of primary members of Panchayat Samitis is that the women interested in social work who have exhibited their interest by contesting the election in question are given the first chance of co-option in the available vacancies after the first general election, but remaining such women are presumed to have devoted themselves to some other social work subsequently and, therefore, no necessity has been felt to give them a right to preempt the co-opted seat after it

subsequently falls vacant. Whatever be the intention of the Legislature, with which we are really not directly concerned, while construing the relevant provision of the Act it is clear that Clause (cc) applies only after the general election of the Panchayat Samitis is held. The use of the word "Samitis" in plural is significant. If the word "after" in Clause (cc) was intended to refer to every point of time after the election in question had been held, the Legislature would have appropriately used the expression "the Panchayat Samiti concerned" and not "Samitis". The expression "Samitis" necessarily applies to the general election of all the Panchayat Samitis in the State and appears to have been consciously and deliberately used to restrict the operation of Clause (cc) in supersession of Clause (c) only the first occasion of co-option immediately after the general election of primary members in the State. I also agree with my learned Brother that the use of the phrase "two women" in Sub-clause (i) of Clause (cc) of Sub-section (2) is intended to restrict the operation of automatic co-option from amongst members who contested the election to a maximum number of two women. With these observations, I agree with the order proposed by my Lord Sandhawalia, J., allowing this writ petition and setting aside the purported co-option of Shrimati Taro Respondent No. 3. As a result, Respondent No. 1 will now proceed to fill the casual vacancy of the co-opted woman in the Panchayat Samiti of the block in question in accordance with the provisions of Section 16 read with Section 5(2)(c)(i) of the Act. I also agree that the parties should be left to bear their own costs of this case.