

(1968) 03 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 801 of 1968

Jiana Singh

APPELLANT

Vs

L. Isa Dass, Deputy Commissioner and Others

RESPONDENT

Date of Decision : 08-03-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Municipal Election Rules, 1952 — Rule 11, 11(1), 11(2), 12, 7

Citation : (1969) 1 ILR (P&H) 12 : (1969) 71 PLR 46

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : P.C. Jain and V.M. Jain, for the Appellant; D.N. Rampal, Assistant A.G. and P.S. Jain, for the Respondent

Judgement

Shamsher Bahadur, J.—This petition of Jiana Singh under Articles 226/227 of the Constitution of India challenges the order of the Deputy Commissioner, Rohtak (Annexure "B"), who as Revising Authority under the Punjab Municipal Election Rules, 1952 hereinafter called "the Rules" affirmed the order of the Returning Officer rejecting his nomination papers.

2. The indisputable facts may briefly be set out. Jiana Singh Petitioner as well as Respondents 3 to 6 filed their nomination papers for the reserved seat in Ward No. 4 of the Municipal Committee, Gohana, which is a double-member Constituency. Respondents 7 to 12 filed their nomination papers for the general seat. On the scrutiny of the nomination papers the Returning Officer being of the view that the Petitioner had not filed the declaration which is essential in case of a Scheduled Caste candidate contesting the reserved seat, rejected his nomination papers. The order passed by the Returning Officer on 5th of February, 1968 was affirmed) in a revision petition filed by the Petitioner on 13th of February, 1968. The election being fixed for 10th of March, 1968, the Motion Bench while admitting this petition made a direction that it should be heard on 7th of March, 1968. The relevant rules relating to the matters in controversy are

7, 11 and 12 and the extracts from the rules with which we are concerned are given below:

7. No person shall be eligible for election as a member of a Municipal Committee, who--

(a) * * * * *

(b) in the case of a seat reserved for the Scheduled Castes is not a member of any of the Scheduled Castes

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11. (1) Any person not ineligible for membership of the Committee under the provisions of Rule 7 * * * * * may be nominated as a candidate for election, provided that on or before the date specified for the nomination of candidates * * * he shall either in person or by his proposer or seconder or by a duly authorised agent appointed by authority in writing, signed by him and, unless such agent is a legal practitioner, verified by a Magistrate, Sub-Registrar of the registration department, Zaildar, Lambardar or member of a local authority, deliver to the authority specified * * * * * to any Magistrate of the first class at such headquarters, a nomination paper completed in Form I appended to these rules and subscribed by the candidate himself * * * * *.

(2) In a constituency where a seat is reserved for the Scheduled Castes, no candidate shall be deemed to be qualified to be chosen to fill that seat unless his nomination paper is accompanied by a declaration verified by any of the authorities mentioned in Sub-rule (1) that the candidate is a member of the scheduled castes for which the seat has been so reserved and the declaration specifies the particular caste of which the candidate is a member.

(3) * * * * *

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(4) * * * * *

12. (1) Each candidate nominated under the provisions of Rule 11 shall * * * * * deposit or cause to be deposited with the Deputy Commissioner or other officer to whom the nomination paper has been delivered * * * the sum of one hundred rupees if he is a candidate for election in a Municipality of the first class or of fifty rupees if he is a candidate for election in a Municipality of the second class * * * * *.

Provided that where the candidate is a member of the Scheduled Castes the

amount to be deposited by him or on his behalf shall be rupees fifty or rupees twenty-five according as he is a candidate for election in a first or second class Municipality.

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3. Now, Form I relating to nomination papers under Rule 11(1) requires a candidate to state "where the candidate is a member of the Scheduled Castes the particular caste to which the candidate belongs". This is the only addition which has to be made in the nomination paper himself by a member of the Scheduled Castes who is filing his nomination paper. There is a separate form prescribed for a declaration by a candidate who is a member of any of the Scheduled Castes and this has to be verified by a Magistrate. What is important to note is that under Sub-rule (2) of Rule 11 such a declaration is to accompany the nomination paper where a person is a candidate for a seat reserved for the Scheduled Castes. Admittedly no declaration was filed by the Petitioner and his nomination paper for election to the Municipal Committee on the reserved seat in Ward No. 4 was rejected. On behalf of the Petitioner Mr. P.C. Jain has not seriously challenged the ground on which the nomination paper was rejected by the Returning Officer. It seems plain to me that the requirement of Sub-rule (2) of Rule 11 was mandatory that the declaration should have accompanied the nomination paper of the Petitioner who wanted to contest at the reserved seat of the double-member constituency. Mr. P.C. Jain, however, further submits that the Petitioner in any event should have been allowed to contest the general seat for which no such declaration was required. The Petitioner no doubt described himself a member of the Scheduled Castes and had accordingly paid the fee of Rs. 25, Gohana being a second class Municipality. If he had been a candidate other than a Schedule Caste, the fee would have been fifty rupees. If a person describes himself as a Schedule Caste candidate and does not actually stand for the reserved seat, there is no requirement in the Rules that the declaration, mentioned in Sub-rule (2) of Rule 11 has still to be filed by him nor is it necessary for a person to qualify himself to make the concessional deposit of Rs. 25 to show by a verified statement of the Magistrate that he belongs to a Scheduled Caste if, in fact, he is not contesting a seat reserved for a Scheduled Caste person. This point was not taken up by the Petitioner either before the Returning Officer or the Revising Authority and it is for the first time that this question has been raised in this writ petition. The authority on which counsel for both the parties placed reliance is a decision of Chief Justice, Falshaw and Grover, J., in Fateh Singh v. Shri K.C. Grover, Additional District Magistrate, etc. C.W. 927 of 1964 decided on 1st October, 1964. While holding that the nomination form, which is not accompanied by the declaration, becomes invalid, the Bench before whom the second point now pressed by Mr. P.C. Jain was raised did not decide it as it had not been mentioned in the grounds of the writ petition itself. The point was not decided as it was argued for the first time before Harbans Singh. J., who

referred it for decision to a larger Bench. As pointed by Chief Justice Falshaw, speaking for the Court--

In my opinion the first of these points should never have been allowed to be raised, since the plea was not taken either before the scrutinising officer or the revising authority and it was not even raised in the writ petitions. In fact it only appears to have occurred to the learned Counsel for the Petitioners in the course of the arguments and it seems to have been inspired because he had become aware of the decision of the Supreme Court in *V.V. Giri v. D. Suri Dora and Ors.* XXI (1960) E.L.R. 188, a case where two candidates who had been nominated in a double-member constituency as candidates for a seat reserved for a member of a scheduled caste came first and second in the poll, and it was held that one of them was entitled to the seat reserved for a member of the scheduled caste and the other was entitled to the general seat.

It is sought to be spelled from the Supreme Court decision that there is no prohibition for a member of the Scheduled Castes to contest for a general seat in a double member constituency. Of course, one of the seats is reserved but the other one can be filled by a member of the Scheduled Castes or any other person. To this proposition of law Mr. Pitam Singh Jain cannot object and indeed has not done so. Learned Counsel for the Respondents, however, submits that the deposit of Rs. 25 by the Petitioner showed plainly that he intended to stand only for the reserved seat. It is pointed out that even in the writ petition it is stated in paragraph 3 that the Petitioner filed his nomination paper to the reserved seat being the member of the Scheduled Castes, while Respondents 7 to 12 filed their nomination papers to the general seat. Can there be any inference from this statement of the Petitioner that he had precluded himself from election to the Municipal Committee from the general seat in the double-member constituency of Ward No. 4. I do not think that the answer to this question is in favour of the result contended for by the counsel for the Respondents. If the Petitioner was free to contest the general seat, his nomination paper, which has been rejected by the Returning Officer, must be deemed to have been rejected only so far as his candidature for the reserved seat 3s concerned. The nomination paper of the Petitioner for the general seat cannot be attacked on any valid ground and the point having been taken up in this writ petition, I feel bound to decide the merits of this part of the controversial point raised by Mr. P.C. Jain. In my view, there is substance in the contention raised by him and I would accordingly allow this petition only to the extent that the Petitioner's nomination would be deemed to be valid so far as the election to the general seat from Ward No. 4 of the Gohana Constituency is concerned. I want to make it clear that the rejection of the nomination paper of the Petitioner so far as the reserved seat is concerned was perfectly valid and has not been seriously challenged in the course of arguments by his learned Counsel. As there has been divided success in this petition, I would leave the parties to bear their own costs.

4. As the election is to take place on the 10th instant a telegraphic intimation may be sent to the Deputy Commissioner, Rohtak, as also to the Returning Officer of the Constituency in question.