

(2015) 04 P&H CK 0115

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 4152, 4164 and 4248 of 2015

Manjit Singh Sethi and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 243T, 366
Punjab Municipal Corporation Act, 1976 — Section 38, 5, 5(3), 6, 6-A

Citation : (2015) 04 P&H CK 0115

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Advocate : D.S. Patwalia, Senior Advocate assisted by Kannan Malik, for the Appellant; Ashok Aggarwal, Advocate assisted by Jaskirat Singh Sidhu, A.A.G, Advocates for the Respondent

Final Decision : Allowed

Judgement

Jaswant Singh, J.

This common order shall dispose of the aforesaid three writ petitions since they involve similar facts and identical issues for determination.

The three elected councillors of Municipal Corporation, SAS Nagar, Mohali vide their aforesaid individual writ petitions are challenging the Letter dated 05.03.2015 (Annexure P-4 in CWP Nos. 4152 and 4164 of 2015 and Annexure P-6 in CWP No. 4248 of 2015) whereby the office of "Mayor" has been reserved to be filled up from the category of "Women" from amongst, 50 Councillors elected for Municipal Corporation, SAS Nagar, Mohali in elections conducted in February 2015.

Admitted facts in Brief

The following facts as culled out from the writ petition and the written statement are as under:-

1. That vide by 74th Amendment of the Constitution of India w.e.f. 1.6.1993, a new Chapter PART IX A-THE MUNICIPALITIES was incorporated adding Article 243P to 243ZG and reservation of seats and offices of Chairpersons of Municipalities was provided in Article 243T. The relevant Clause-4 of Article 243T lays down that the office of Chairpersons in Municipalities shall be reserved for Scheduled Castes, Scheduled Tribe and Women in such manner as the State Legislature may by law provide. The same reads as under:-

"The offices 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."

2. give effect to the constitutional mandate providing for reservation to the stated categories for the office of Chairpersons in the Municipal Corporations established in the State of Punjab, the legislature has inserted Section 6-A in the Punjab Municipal Corporation Act, 1976 (for short the 1976 Corporation Act) by the Act No. 12 of 1994.

As per the scheme of the 1976 Corporation Act, the total number of Councillors to be elected from various wards in Municipal Corporation are determined under Sub Section 3 of Section 5, and the reservation of seats for election of councillors from the categories of Scheduled Castes, Backward Class, Women etc., by rotation as laid down under Section 6 of the 1976 Corporation Act.

The relevant Section 6 and 6-A of the 1976 Corporation Act providing for reservation of seats in the office of Chairperson in the Municipal Corporation reads as under:-

"6. Reservation of Seats-In every Corporation, out of total number of elected Councillors determined under sub-section (3) or s.5, the Government shall reserve,-

(a) Such number of seats for the Scheduled Castes as may be determined by it subject to the condition that 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 to the Corporation as the population of Scheduled Castes in that City bears to the total population of that City and such seats may be allotted by rotation to different wards in the City; and

(b) two seats in each corporation for the members of the Backward Classes, and such seats may be allotted by rotation to different wards in that corporation.

(2) Not less than one third of the total number of seats reserved under Clause (a), shall be reserved for women belonging to the Scheduled Castes.

(3) Not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes), of the total number of seats to be filled by direct election, shall be reserved for women and such seats may be allotted by rotation to different wards in the City.

Explanation:-In this Section the expression,-

(a) "Scheduled Castes" shall have the same meaning as assigned to them in Clause (24) of Article 366 of the Constitution of India; and

(b) "Backward Classes" means the Backward Classes as the Government may, from time to time declare by issuing a Notification in the Official Gazette.

6-A. Reservation for the Offices of Chairperson Offices of Mayors of Corporations shall be reserved by rotation in the prescribed manner for the members of the Scheduled Castes, Backward Classes and Women in the following ratio, namely:-

(a) five per cent for Scheduled Castes;

(b) two per cent for Backward Classes; and

(c) five per cent for women including women belonging to the Scheduled Castes. "

A bare perusal of the aforesaid Sections makes it clear that the aforesaid Section 6-A lays down reservation by rotation in the ratio of (i) 5% for Scheduled Castes; (ii) 5% reservation for women and (iii) 2% reservation for Backward Class in the office of Mayors of a Municipal Corporation, and the manner of enforcing the same has to be prescribed by framing of Rules.

3. To enforce the reservation for the office of Mayors of Corporation as provided under Section 6-A, the Reservation in the office of Mayors of Corporation Rules 1996 (for short the "1996 Corporation Rules") have been framed, which read as under:-

"1. Short title and commencement.-(1) These rules may be called the Reservation for the Offices of Mayors of Corporations Rules, 1996.

(2) They shall come into force at once.

2. Reservation for the Offices of Mayors.-(1) Out of hundred offices of Mayors of the Corporations falling vacant in elections conducted from time to time, the offices occurring at Serial nos. 10, 32, 51, 70 and 95 shall be reserved for the members of Scheduled Castes and the offices occurring at serial numbers 14, 34, 53, 75 and 93 shall be reserved for women including women belonging to Scheduled Castes. Similarly, the offices occurring at serial numbers 18 and 77 shall be reserved for the members of Backward Classes.

(2) The reservation referred to in sub-rule(1), shall be effected in the manner as indicated in the Schedule appended to these rules.

3. On filling up of hundred offices of Mayors as specified in rule 2, the process of giving this reservation shall continue for further election also.

Explanation.-For the purpose of sub-rule(1) the expression "Election" shall mean the general election held after the completion of duration of five years of a Corporation.

SCHEDULE [See rule 2(2)] Reservation of offices of Mayors in Corporation

Reading of Rule 2(1) of the 1996 Corporation Rules reveals that it was contemplated that out of 100 offices of Mayors falling vacant in elections conducted from time to time, the offices occurring at 5 stated serial numbers each were to be reserved for the members of "Scheduled Castes" and for "Women" and at the two stated serial numbers to be reserved for members of "Backward Class". The manner of implementing the reservation referred to in Rule 2(1) was provided in the Schedule prepared under Rule 2(2). Since by that time three Municipal Corporations, namely, Amritsar (constituted on 29.03.1975), Jalandhar (constituted on 5.7.1977) and Ludhiana (constituted on 5.12.1975) were existing, the reservation was implemented by naming the particular Corporation in the Schedule. It transpires that the corporations were placed in a alphabetic order and not according to the dates of their constitution/creation. It is admitted that the first election after the promulgation of 1996 Corporation Rules were held on 28.5.1997 and Mayors were elected for the existing Municipal Corporation of Amritsar, Ludhiana and Jalandhar.

4. Thereafter Municipal Corporation Patiala was constituted on 24.09.1997 necessitating the amendment of the 1996 Rules. The amendment to Rule 2(1) as well as the Schedule appended to Rule 2(2) was made vide Notification dated 29.04.1999. The relevant portion reads as under:-

"Rule 2. In the reservation for the offices of Mayors of the Corporations Rules, 1996 (hereinafter referred to as the said rules), in rule 2, for sub rule (1) the following sub-rule shall be substituted, namely:-

"(1) Out of the hundred offices of Mayors of the Corporations falling vacant in elections conducted from time to time, the offices occurring at Serial Numbers 13, 36, 54, 79 and 94 shall be reserved for the members of the Scheduled Castes and the offices occurring at serial numbers 18, 37, 59, 81 and 100 shall be reserved for women including women belonging to the Scheduled Castes. Similarly, the offices occurring at serial numbers 23 and 76 shall be reserved for the members of the Backward Classes.

3. In the said rules, for existing Schedule, the following Schedule shall be substituted, namely:-

SCHEDULE [See rule 2(2)] Reservation of offices of Mayors in Corporation

"

Perusal of the above shows that an amendment to Rule 2(1) itself was also made thereby changing the reserved points earmarked for various categories apart from inserting MC, Patiala in the roster for reservation for the office of Mayors. It is admitted that the elections on the basis of aforesaid roster for the four existing Municipal Corporations were held on 27.04.2002.

5. Thereafter Bathinda Municipal Corporation was constituted on 10.04.2003 and

the 1996 Corporation Rules were further amended vide notification dated 19.07.2007. Sub Rule 1 of Rule 2 as well as the Schedule attached to Rule 2(2) was amended which read as under:-

"2. In the reservation for the offices of Mayors of the Corporations Rules, 1996 (hereinafter referred to as the said rules), in rule 2, for sub rule (1) the following sub-rule shall be substituted, namely:-

(1) Out of the hundred offices of Mayors of the Corporations falling vacant in elections conducted from time to time shall be reserved for the members of the Scheduled Castes and the offices occurring at serial numbers 10, 36, 54, 77 and 93 shall be reserved for the members of Scheduled Castes, and the offices occurring at serial numbers 17, 43, 64, 85 and 96 shall be reserved for women including women belonging to the Scheduled Castes. Similarly, the offices occurring at Serial numbers 24 and 81 shall be reserved for the members of the Backward Classes.

SCHEDULE [See rule 2(2)] Reservation of offices of Mayors in Corporation

A perusal of the same shows that the reserved points earmarked for the categories were yet again changed. The elections to the Municipal Corporations of Amritsar, Jalandhar, Ludhiana and Patiala on the basis of the amended Rules w.e.f. 19.07.2007 were held on 8.8.2007, whereas election for office of Mayor, Municipal Corporation, Bathinda were held in the year 2008.

6. Thereafter Municipal Corporation for SAS Nagar, Mohali was constituted on 19.01.2011, Moga, Pathankot, Phagwara on 26.7.2011. Accordingly, vide notification dated 01.06.2012 (R-4) an amendment to the 1996 Corporation Rules was made whereby only the Schedule was amended, which reads as under:-

RULES

"1.(1) These Rules may be called the Reservation for the Offices of Mayors of Corporations (First Amendment) Rules, 2012.

(2) They shall come into force on and with effect from the date of their publication in the Official Gazette.

2. In the Reservation for the Offices of Mayors of Corporations Rules, 1996, for the existing Schedule, the following Schedule shall be substituted, namely:-

SCHEDULE [See rule 2(2)] Reservation of offices of Mayors in Corporation

It is apparent from the above that the Schedule was amended with the reservation provided by running roster points identified by keeping in view the number of vacancies falling for election to a Municipal Corporation from time to time instead of the Corporation by name since it is stated that constitution of new Corporations every time required an amendment to incorporate their name in the Schedule, as had been done vide amendments carried out in 1999 and

2007. Thus vide the amendment dated 1.6.2012 the roster point was assigned by number in order to avoid any further amendments after the constitution of new Corporation. In fact a new Municipal Corporation of Hoshiarpur was constituted on 17.9.2013 requiring no further amendment. It is further a matter of record that after this amendment w.e.f. 1.6.2012, the general elections in the year 2012 for Municipal Corporations were held only for Amritsar, Jalandhar, Ludhiana and Patiala on expiry of their five year term, although four new corporations had been established in the year 2011 raising the number of Corporations to 09.

7. That the government after determining the number of elected councillors for a corporation by exercising powers under Section 5(3) and providing for reservations of the seats for Municipal Corporations vide Annexure R-5, issued a notification dated 16.12.2014 regarding holding of general elections by end of February 2015 to elect members of six Municipal Corporations of Pathankot, Phagwara, Hoshiarpur, SAS Nagar (Mohali), Moga and Bathinda.

Elections to the stated 06 Municipal Corporations by direct elections were held on 22.02.2015 and result declared on 26.02.2015, wherein the petitioners have been elected as councillors from different wards for the Municipal Corporation SAS Nagar, Mohali.

8. The admitted position regarding the earmarked vacancies falling for reservation for the office of Chairperson/Mayor of Municipal Corporations amongst Scheduled Caste, Women and Backward Class as per the Schedule of 1996 Corporation Rules, as amended from time to time are as under:-

The admitted position is that as per the amendment to the 1996 Corporation Rules vide Notification dated 1.6.2012, the reservation points (named as roster points) to be filled up from the respective reserved categories has remained the same till now as per amendment under 2007 Rules.

9. There is no dispute that the following Municipal Corporations in the State of Punjab have been constituted on the dates as mentioned below:-

10. It is also not in dispute that after the promulgation of 1996 Corporation Rules till the recently held elections on 22.2.2015 for Municipal Corporations, 22 vacancies for election to the office of Mayor of a Municipal Corporation have fallen vacant. The position regarding election to the various Municipal Corporations in various year is as under:-

11. That after the elections have been conducted, and the councillors elected on 25.02.2015 and notified to the six stated Municipal Corporations impugned letter dated 5.3.2015 (P-4) has been issued whereby according to the provisions contained in the Schedule under Rule 2 of the Municipal Corporation Rules 1996 (as amended on 01.06.2012), the office of Mayor for different categories have been reserved as under:-

(a) M.C. Bathinda:- Scheduled Caste

(b) M.C. SAS Nagar Mohali:- Women

12. It also cannot be disputed that the Municipal Corporation, Bathinda was upgraded/constituted on 10.04.2003 and the first election for same was held in the year 2008 although it could have been very well held in the general elections conducted in the year 2007 for the four Municipal Corporations. It also cannot be disputed that at the time of general elections 2007 and elections for Bathinda Municipal Corporation conducted in the year 2008, as per the amended Schedule w.e.f. 19.07.2007, the reservation for the office of Mayor against the 10th reserved point was meant for Scheduled Castes and assigned to MC, Bathinda. The said reservation made for Scheduled Castes and assigned to MC, Bathinda was, however, never implemented. The said illegality was never challenged till the filing of the CWP No. 24010 of 2014 Amandeep Singh Sohi Vs. State of Punjab before this Court after a delay of 6/7 years, seeking the implementation of the mandate of the Constitution providing for reservation. The said writ petition was disposed of vide order dated 25.11.2014 to decide the pending representation of the petitioner therein.

It appears that vide letter dated 5.3.2015 (P-4) reservation meant for Scheduled Caste category against reserved point no. 10 has now been assigned to MC, Bathinda by adopting a carry forward formula, although in law, in the prima facie opinion of this Court, roster point 10 would deem to have been exhausted at that stage and there being no provisions for carrying forward of any roster point, the reservation meant for scheduled caste against reserved point 10 could not now be assigned to any Municipality, however, since the same is not the subject matter of challenge before this Court, the question is not being gone into.

13. It is apparent that in the elections held in February 2015, the vacancies from roster point 17 to 22 of the Schedule as per amendment in the year 2012 were to be filled up, by placing the Municipal Corporations facing elections in some inter se order for identifying the Municipal Corporations falling under reservation category against roster point no. 17, since the amended Schedule is silent in that regard.

As per the stand of the respondents in the written statement, for reserving the office of Mayor falling at roster point no. 17 newly constituted Municipal Corporations were placed in order of their Constitution and SAS Nagar, Mohali coming at Sr. No. 17, the office of Mayor of Municipal Corporation, SAS Nagar, Mohali was decided to be reserved for Women as under:-

CONTENTIONS and CONCLUSION

14. Learned Counsel for the petitioners has raised two fold arguments. Firstly, it is submitted that the 17th Vacancy/Roster Point reserved for "Women Category" to be filled up for the office of Mayor of a Municipal Corporation, cannot be assigned to Municipal Corporation, SAS Nagar, Mohali as per hitherto followed criteria under the Corporation Rules 1996 (as amended from time to time) by inter se placement of corporation facing general elections in an alphabetic order.

It is further added for the sake of arguments that even if the date of incorporation of a Municipal Corporation is adopted as the alternative criteria, even then MC, Bathinda amongst six corporations being established prior to SAS Nagar, Mohali would fall on the 17th Vacancy reserved for category of women.

The second argument is that the action of assigning the 17th vacancy to SAS Nagar, Mohali for Women suffers from vice of arbitrariness and thus violative of Article 14 of the Constitution as the said assignment is motivated and has been made on a cooked up criterion as an afterthought pursuant to the complete knowledge and analysis of the elected councillors of the ruling party after the declaration of the result of the elections to the six municipal corporations. It is in this background contended that as per settled law the Executive action has to be rationale, reasonable, fair and above all uniform and thus the letter dated 5.3.2015 (P-4) assigning the Municipal Corporation, SAS Nagar, Mohali to be reserved for Women category against the roster point 17 is liable to be set aside.

On the other hand learned Advocate General, Punjab submits that the logic behind assigning the 17th roster point to SAS Nagar, Mohali is based on first placing the newly constituted corporation as per their individual dates of establishment above the already existing Municipal Corporations of Bathinda since 2003. The said logic cannot be considered as perverse or even unreasonable warranting interference by this Court.

15. After hearing learned Counsel for the parties and perusing the paper book it is apparent that the point involved for determination is extremely short i.e. whether in the facts of the case the 17th vacancy reserved for "women category" for filling up the office of Mayor of Municipal Corporation can be assigned to Municipal Corporation, SAS Nagar, Mohali. The answer, in the considered opinion of this Court is in the "negative".

16. The method of implementing the reservation for the office of Mayors of Corporation amongst the categories is provided in the schedule appended to Rule 2(2) of 1996 Corporation Rules. In the said Schedule at the time of enforcing of the 1996 Corporation Rules, there were 3 existing Municipal Corporations, namely, Amritsar, Jalandhar and Ludhiana. They were placed in a block of three and in inter se order probably in a alphabetic manner since concededly the date of creation of Municipal Corporation of Jalandhar is later than Ludhiana. That Block was rotated over a running roster of 100 vacancies, and the reserved points earmarked as identified under Rule 2(1) of the 1996 Corporation Rules. Thus the corporations by name came to be assigned against various reserved points, as is apparent from the reproduction of the Schedule in para 3 here above. The first election after the enforcement of the 1996 Corporation Rules were held to the three municipal corporations on 28.05.1997.

The 4th Municipal Corporation, Patiala was upgraded/constituted on 24.09.1997 and the Schedule appended to Rule 2(2) was thus amended vide Notification dated 29.04.1999 (Annexure R-2 with the written statement). The MC, Patiala in

the existing Block was put at number 4 keeping in view the date of its creation, and the block rotated over the roster of 100 vacancies thereby again assigning the Municipal Corporations by name against roster points as is explicit from the reading of amended schedule reproduced in para 4 here above. The second general election after the enforcement of the 1996 Corporation Rules were held to the four municipal corporations on 27.04.2002.

The 5th Municipal Corporation, namely, Bathinda was upgraded/constituted on 10.04.2003 and the Schedule appended to Rule 2(2) was thus amended vide Notification dated 19.07.2007. The MC, Bathinda in the existing block was put at number 5 keeping in view the date of its creation, and the block rotated over the roster of 100 vacancies thereby again assigning the Municipal Corporations by name against roster points as is clear from the para 5 here above. The third general election after the enforcement of the 1996 Corporation Rules were held to the four municipal corporations, namely, Amritsar, Jalandhar, Ludhiana and Patiala on 8.8.2007 and Bathinda in the year 2008.

It is further apparent that the 10th vacancy reserved for schedule caste was assigned to MC, Bathinda, however, for the reasons best known to the authorities, the said reservation was not implemented.

Subsequently, four more Municipal Corporations were upgraded/created i.e. SAS Nagar, Mohali on 19.01.2011 and Moga, Pathankot and Phagwara on 26.7.2011 necessitating the amended vide notification dated 1.6.2012 to the Schedule. However, the amended Schedule now provided roster points earmarked for various reserved categories instead of placing the corporations by name on that roster of 100 vacancies. This recourse was adopted to obviate the repeated amendments to the Schedule required due to creation of new corporations. After the amendment, elections were held on 10.06.2012 to the previously existing Amritsar, Jalandhar, Ludhiana and Patiala corporations on expiry of their 5 years term.

Thereafter the Municipal Corporation, Hoshiarpur has been upgraded/created on 17.09.2013 and the elections to six Municipal Corporations have been held on 22.02.2015. The said Municipal Corporations are Bathinda, SAS Nagar, Mohali, Moga, Pathankot and Hoshiarpur. It is not in dispute that the 17th vacancy for filling up office of Mayor has fallen for consideration in these elections.

The dispute of assigning the 17th vacancy to a Municipal Corporation has occurred because of the amended Schedule since 1.6.2012 being silent on assignment of a Municipal Corporation by name designed to obviate the necessity of repeated amendments due to upgradation/constitution of new corporation and their consequent inclusion as the constitution of Hoshiarpur would have required. The said assignment has been effected by the impugned Executive decision dated 5.3.2015 (P-4).

17. On a careful and close examination of the methodology envisaged for implementation of the reservation policy by rotation as per the original Schedule

under the 1996 Corporation Rules and as amended in 1997 and 2007, it becomes evident that to the initial Block of Amritsar, Jalandhar and Ludhiana, all the subsequent Municipal Corporations have to be inter se placed keeping in view the respective dates of upgradation/creation and then the such Block rotated over a running roster of 100 vacancies thereby to identify the names of Municipal Corporations falling against different reserved points on the running roster. In the considered opinion of the Court, the contemplated scheme of implementation of the aforesaid reservation by rotation does not admit any other interpretation. Even the case of the respondent-State is that a nameless Schedule had been provided at the time of amendment in the year 2012 with a view only to obviate the necessity of repeated amendments in the light of incorporation of new Municipal Corporations, and thus in effect conceding that the existing criteria of inter se placement of Municipal Corporations had to continue. Therefore, the position of the running roster as per Schedule, after creation of Municipal Corporation, Hoshiarpur on 17.09.2013, at the time of elections in February 2015 would be as under:-

From the above, it thus transpires that the reservation for Women category against the 17th roster point for election for the office of Mayor would have to be assigned to Municipal Corporation, Moga and not to SAS Nagar, Mohali.

18. The argument on behalf of the petitioners that the reservation had to be implemented by placing the Municipal Corporations in a alphabetic order is thus misconceived, although at the initial stage while formulating a Block for reservation it appears that the three Municipal Corporations of Amritsar, Jalandhar and Ludhiana were placed in a alphabetic order, however, the subsequent implementation as per amended schedule does not support that plea. Similarly, the criteria adopted by the State for inter se placement of the six Municipal Corporations facing elections in February 2015, on the running roster as per their stand is without precedence, as revealed from operation of the roster in the previous elections held as per the Schedule operating at the relevant time. The said criteria was not followed even while conducting elections to the four Municipal Corporations in the year 2012 on the basis of the nameless amended Schedule in the year 2012 (as operating now), otherwise Patiala would have been placed above Amritsar, Jalandhar and Ludhiana, although it would have made no difference to the outcome as no reserve point had fallen for consideration. The adoption of such a criteria after the declaration of the result of the elected councillors to the six municipal corporations on 26.02.2015, as is reflected from the record produced in Court, lends atleast to the inference that the same is liable to abuse of discretion by adopting pick and choose method suiting the ruling party. The Government to show bona fides and transparency for maintaining the purity of elections should have formulated the criteria prior to the declaration of results Therefore, the facts cumulatively taken, the plea of the respondents that the adopted criteria of inter se placement is reasonable and thus implementing the reservation policy is declared illegal.

19. In view of the aforesaid discussion, the aforesaid three writ petitions are allowed. The reservation for the office of "Mayor" for Municipal Corporation, SAS Nagar, Mohali from the category of "Women" as per impugned letter dated 5.3.2015 is set aside.

It is further clarified that the intervening period since the interim order dated 10.03.2015 of stay of conduct of elections for the office of Mayor, SAS Nagar, Mohali till obtaining of the certified copy of this order shall be excluded for the purpose of time period provided for convening of such a meeting under Section 38 Sub Section 2 of the Punjab Municipal Corporation Act, 1976.