
(2008) 11 P&H CK 0135
In the Punjab And Haryana At Chandigarh

Manoj and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Constitution of India, 1950 — Article 15, 226, 227, 243O, 334

Citation : (2009) 153 PLR 45

Hon'ble Judges : Satish Kumar Mittal, J; Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioners, who are 2 Municipal councillors of Municipal Council, Bhiwani, have filed this petition under Articles 226 and 227 of the Constitution of India for setting aside the election of Smt. Sewa Devi (respondent No. 3 herein) as President of the Municipal Council, Bhiwani.

2. In the present case, the office of the President of the Municipal Council, Bhiwani was reserved for General category. Earlier one Sh. Nand Lai Chawla was elected as President of the Municipal Council, Bhiwani. Unfortunately, he was murdered. Therefore, fresh election to the office of President of the Municipal Council was called for. Additional Deputy Commissioner, Bhiwani was authorized by the Deputy Commissioner, Bhiwani to convene and conduct meeting of the members of the Municipal Council, Bhiwani under Rule 70(1)(b) of the Haryana Municipal Election Rules, 1978 (hereinafter referred to as "the Election Rules"), for the purpose of election of the office of President of the Municipal Council. The Additional Deputy Commissioner fixed 6.8.2008 as the date of the said meeting for election of the office of President. In the said meeting, which was attended by 30 elected Municipal councillors and 1 nominated Councilor, Smt. Sewa Devi (respondent No. 3) was elected as President of the Municipal Council, as out of 30 elected Councilors, 7 Councilors, including the petitioners, walked out from the said meeting and the remaining 23 elected councillors participated, out of whom 22 had cast their votes in favour of, respondent No. 3.

3. Now, the petitioners have filed this petition for setting aside the election of respondent No. 3 as President of the Municipal Council, Bhiwani, on the ground that she was elected as a Municipal Councilor from the seat reserved for the category of "women", therefore, she was not eligible to contest the election of the office of President of the Municipal Council, which has been reserved for General category.

4. In support of his contention, learned Counsel for the petitioners referred to sub Section (5) of Section 10 of the Haryana Municipal Act, 1973 (hereinafter referred to as "the Act"), which provides that the offices 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. He further submits that the General, Scheduled Castes, Backward Classes and Women are the separate categories, therefore, a Councilor elected in a category can be elected as the President of the Municipal Committee/Council, reserved for that category. Learned Counsel further referred to second proviso to Section 18 of the Act, which provides that if the office of President is vacated during his tenure on account of his death, resignation or no confidence motion, a fresh election for the remainder of the period shall be held from the same category. Learned Counsel also referred to Rule 70(4) of the Election Rules and submitted that if a Municipal Councilor elected from the seat reserved for "women" category, is permitted to contest the election of the President reserved for "General" category, then it will disturb the percentage of the office of President fixed under Sub-rule (4) for different categories.

5. While referring the aforesaid provisions, learned Counsel submits that the office of President of Municipal Council, Bhiwani has been reserved" for General category, therefore, a person elected as Municipal Councilor only from General category is eligible to contest the election of the office of President. He further submits that earlier Shri Nand Lai Chawla was elected as President, because he was elected as Municipal Councilor from the seat reserved for General category and after his death, a Municipal Councilor elected from the General category should have been permitted to contest the election of the office of President. Respondent No. 3, who was elected as Municipal Councilor from the reserved category of "women" cannot be treated as Councilor belonging to the General category, therefore, her election as President is liable to be set aside. In support of his contention, learned Counsel for the petitioners has relied upon a Division Bench decision of this Court in Anil Jain (Tinu) v. State of Haryana and Ors. L.P.A. No. 66 of 2007, decided on 31.7.2008.

6. After hearing counsel for the petitioners, we do not find any substance in the contention raised by. him.

7. In view of Clause (b) of Article 243-O of the Constitution of India and Rule 74 of the Election Rules, no election of the returned candidate either as a Councilor of a Municipal Council or to the office of President or Vice President can be

questioned, except by filing an election petition presented under Rule 75 of the Election Rules, which is to be decided by the Election Tribunal to be appointed by the State Government u/s 265 of the Act.

8. Even on merits, the contention raised by learned Counsel for the petitioners is not tenable. To appreciate the contention, Sections 10 and 18 of the Act and Rule 70(4) of the Election Rules are reproduced below:

10. Reservation of seats.- (1) Seats shall be reserved for the Scheduled Castes 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 a municipality as the population of the Scheduled Castes in the municipal area bears to the total population of that area and such seats may be allotted to such wards having maximum population of persons belonging to Scheduled Castes.

(2) Not less than one-third of total number of seats reserved under Sub-section (1) shall be reserved for women belonging to the Scheduled Castes and such seats may be allotted by rotation and by lots amongst the wards reserved under Sub-section (1).

(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 in every municipality, shall be reserved for women and such seats may be allotted by rotation and by lots to different constituencies in the municipality except those falling under sub-sections (1), (2) and (4).

(4) [Two seats in every committee] shall be reserved for the persons belonging to Backward Classes which shall be allotted in such territorial constituencies as having maximum population of persons belonging to Backward Classes.

(5) the offices 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.

(6) The reservation of seats under Sub-sections (1) and (2) and the reservation of office of the president other than the reservation for women under Sub-section (4), shall cease to have effect on the expiration of the period specified under Article 334 of the Constitution of India.

(7) The reservation of seats under Sub-sections (1), (2), (4) and (5) shall be reviewed after every decennial census.

(8) The reservation as enumerated in this section shall be given effect to through notification issued at the time of each election.

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

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

70. Oath of allegiance and election of President etc.- (1) to (3) x x x.

(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 Classes and women by rotation which will be determined in the manner as detailed below:

Provided that the number of offices 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 Classes 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 State Election Commissioner, Haryana and the 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. In case a women of the reserved category is elected subsequently, then the office of the President shall be deemed to have been vacated and the elected woman shall be elected as President in accordance with the provisions of the these rules. Provided further that the number of offices of the president for Scheduled Castes and Backward Classes shall be determined on basis of their population and shall rotate to different municipalities firstly, having largest population of Scheduled Castes, secondly, from the remaining municipalities having largest population of Backward Classes and they rotate in the subsequent terms of offices of die municipalities having their 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 State Election Commissioner, Haryana and Deputy Commissioner of district concerned or his nominee:

Provided further that in case of office of the 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 committee reserved for the Backward Classes.

9. A perusal of Section 10 of the Act reveals that Sub-section (1) provides that seats shall be reserved for the Scheduled Castes in every municipality and the number of seats shall be reserved keeping in view the population of the Scheduled Castes in the municipal area and such seats may be allotted to such wards having maximum population of persons belonging to Scheduled Castes. Sub-section (2) provides that not less than one third of total number of seats reserved for Scheduled Castes shall be reserved for women belonging to the Scheduled Castes. Sub-section (3) provides that not less than one third of the total number of seats to be filled by direct election in every municipality shall be reserved for women. One third include the number of seats reserved for women belonging to the Scheduled Castes. It has been further provided that such seats may be allotted by rotation and by lots to different constituencies in the municipality except those falling under Sub-sections (1), (2) and (4) Sub-section (4) provides that two seats in every committee shall be reserved for the persons belonging to Backward Classes and those seats shall be allotted in such territorial constituencies as having maximum population of persons belonging to Backward Classes. Sub-section (5) provides that the offices 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.

10. Second proviso to Section 18 of the Act provides 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.

11. In second proviso to Sub-rule (4) of Rule 70 of the Election Rules, it has been provided 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 Classes women. The words "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" mean that in case, the office of President is reserved for a Scheduled Caste woman and no Scheduled Caste woman is available, then in that situation, the office of the President shall be filled up from the male member of the Scheduled Caste category. Similarly, in case, the office of President is reserved for a

Backward Class woman and no woman of that category is available, then the office of the President shall be filled up the male member of the Backward Class category. Similarly, in case, the office of President is reserved for a woman (General) and no woman (General) is available, then the office of the President shall be filled up from the male member of the General category. This proviso does not provide that a woman, though fully eligible to contest the election of the office of President from General category, if she was elected as Municipal Councilor from the seat reserved for category of "women", can be prohibited from contesting to the election of the office of President, which is reserved for General category, only on the ground that she was elected as Councilor from the reserve category of women. In our opinion, if a woman Municipal Councilor is permitted to contest the election of the office of President, which is reserved for General category, then it will not disturb the percentage of the office of President reserved for General category, because the aforesaid provisions do not fix any percentage for the General category.

12. The aforesaid provisions do not provide that if the office of President is reserved for a particular category, then only the person who is elected as a Municipal Councilor from the said category is eligible to contest the election of President. Respondent No. 3 belongs neither to Scheduled Caste nor to Backward Class. She belongs to General category, but elected as Municipal Councilor from the seat reserved for Women. In our opinion, she cannot be debarred from contesting the election of the office of President, which is reserved for General category, only on the ground that she is a woman and has been elected as Municipal Councilor from the seat reserved for women. In *Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput and Others*, , the question came up for consideration before the Supreme Court was: Whether a candidate belonging to Backward Class, who was elected as Municipal Councilor from the General seat, was eligible to contest the election of the office of President of the Municipal Council, which was reserved for Backward Class? It was held that such candidate was eligible to contest the election of President of the Municipality, which was reserved for Backward Class category, while making the following observations:

The Act and the Rules provide for reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and women. No reservation or classification is made ward-wise. To put it differently all members of the Scheduled Castes, for example, will be regarded as belonging to one class irrespective of the fact whether they had been elected to a reserved seat or to a general seat. Similar is the position with regard to the Backward Classes, Scheduled Tribes and women. The law does not contemplate or provide for any further sub-classification of the type which has been suggested by the respondents. Just as all members of the municipality, irrespective of the fact whether they had been elected to a reserved seat or not, are eligible for election to the post of the President when it falls in the general category, similarly, when as per the roster the President is to be one who, say, belongs to the category of Scheduled caste then all members of the municipality who are Scheduled Caste, irrespective of the seat to which they had

been elected, would be eligible to stand for election. Neither the Act nor the rules stipulate that it is only such a member who has been elected to the reserved seat who would be eligible to stand for election to the post of President when it is the turn of that category of candidate to become the President of the municipality.

(Ephphasis added)

13. Undisputedly, every women is eligible to contest the election of a seat of Municipal Council, which is reserved for General category. It is also not disputed that a woman Municipal Councilor can contest the election of the office of President which is reserved for General category. The contention of the learned Counsel for the petitioners is that since respondent No. 3 was elected as Municipal Councilor from the seat reserved for the category of women, therefore, she cannot be permitted to contest the election of the office of President, which is reserved for General category. In our opinion, a woman Councilor cannot be prohibited from contesting the election of the office of President, merely on the ground that she was elected as Councilor from the seat reserved for the category of women, as such prohibition would be violative of Article 15 of the Constitution of India, which prohibits discrimination on the ground of sex.

14. The Division Bench judgment of this Court in Anil Jain (Tinu)'s case, relied upon by learned Counsel for the petitioners, is not applicable to the facts of the present case. In that case, the only question for consideration was whether a candidate elected as Councilor from the Backward Class category can be elected to the office of President, reserved for General category. In that case, it was held as under:

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 provisions, referred to herein before and lead to a violation of the roster calculated under the third proviso to Rule 70(4) of the Rules.

15. In the present case, if a woman, who has been elected as Councilor from the reserve category of women, is permitted to contest the election of the President, reserved for General category, then it will not disturb the number of offices reserved for the category of women. As far as the reservation of the seats of Presidents in case of Scheduled Caste and Backward Class categories is concerned, the same has been made u/s 10 of the Act read with Rule 70(4) of the Election Rules, on the basis of percentage of population of that category in that area. However, as far as reservation for women is concerned, the minimum 1/3rd seats of the Presidents of the Municipalities has been reserved for women.

The said reservation is the minimum reservation, but there can be more Presidents of the Municipal Committees from the women category. Therefore, if a woman elected from the reserve category of women is permitted to contest the election of the President reserved for General category, then it will not violate the principle of the reservation.

16. A similar question with regard to the election of Sarpanch of the Gram Panchayat came up for consideration before this Court in Rami Saini v. State of Punjab and Ors. C.W.P. No. 12199 of 2008 decided on 3.9.2008 where it was held that a Panch elected from the seat reserved for General (Women) was fully eligible to contest the election for the office of Sarpanch, which was reserved for General category.

17. In view of the above, we are of the opinion that respondent No. 3, who was elected as Councilor from the reserved category of women, was fully eligible to contest the election for the office of the President, which was reserved for General category.

18. Thus, we do not find any merit in this petition and the same is hereby dismissed.

Sd/- Jaswant Singh, J.