

(2021) 01 SHI CK 0057

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 6351 Of 2020

Nirmal Singh

APPELLANT

Vs

State Of Himachal Pradesh & Ors

RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:

Himachal Pradesh Panchayati Raj (Elections) Rules, 1994 — Rule 2(b), 28, 28(8), 84(4), 87, 87(4)

Himachal Pradesh Panchayati Raj Act, 1994 — Section 2(3), 125

Citation : (2021) 01 SHI CK 0057

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Vikram Thakur, Ashok Sharma, Vinod Thakur, Vikas Rathore, Shiv Pal Manhans, Nand Lal Thakur, Bhupinder Thakur, Seema Sharma, Yudhvir Singh Thakur, Ajeet Singh Saklani

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Petitioner has laid challenge to the notification dated 11.12.2020 issued by the respondents under Section 125 of Himachal Pradesh Panchayati Raj

Act readwith Rule 87 of Himachal Pradesh Panchayati Raj (Elections) Rules, 1994, to the extent it reflects Gram Panchayat Kalujhinda, Development

Block Dharampur, District Solan as reserved for women belonging to Scheduled Caste category. Petitioner prays for issuance of direction to the

respondents for reserving the post of Pradhan in Gram Panchayat, Kalujhinda for Scheduled Tribe category.

2. Learned Advocate General submitted that Census population data 2011, is the basis for ensuing 2020-2021 elections to various Panchayati Raj

Institutions in the State. Total population percentage of Scheduled Tribes of Gram

Panchayat, Kalujhinda is 27.28%. However, total Scheduled Tribe population percentage of the block comes out as 2.83% as per 2011 census. The percentage of Scheduled Tribe population being less than the minimum required limit of 5% prescribed under Rule 87(4) of H.P. Panchayati Raj (Elections) Rules, therefore, the office in question cannot be reserved for Scheduled Tribe category. Rule 87(4) of Panchayati Raj (Elections) Rules reads as under:

87(4) If the number of offices to be reserved for the members of Scheduled Castes or Scheduled Tribes is more than one, then the Gram

Sabha having the next highest percentage or population of Scheduled Castes and Scheduled Tribes, shall be reserved for the members of

the Scheduled Castes and Scheduled Tribes, as the case may be, and so on:

Provided that if the total population of Scheduled Castes or Scheduled Tribes in a Block is less than 5% of the total population, then no

office shall be reserved.

3. Learned Counsel for the petitioner half heartedly tried to rebut the above argument by submitting that under Rule 28(8) of H.P. Panchayati Raj

(Elections) Rules, limit of 5% of the total population has to be construed in the constituency and not in the Block. The Rule reads as under:

28(8) The Constituencies reserved for Scheduled Castes and Scheduled Tribes and women belonging to Scheduled Castes and Scheduled Tribes

and women belonging to general category on the basis of percentage of population shall be rotated after every five years from the date of first

election. At the time of next election, the constituency/constituencies having the next highest percentage of population shall be reserved for members

of Scheduled Castes and Scheduled Tribes including women belonging to Scheduled Castes and Scheduled Tribes and women belonging to general

category and so on for subsequent elections:

Provided that the reservation for a particular category shall not be repeated unless all other constituencies are covered by rotation:

Provided further that the reservation for a particular category shall not be rotated in such a constituency where the population of that category is less

than 5% of the total population of that constituency.

4. Second proviso to Rule 28(8) uses the word "constituency" whereas in proviso to Rule 87(4), the word "Block" has been used. The

word "constituency" has been defined in Section 2(b) of the H.P. Panchayati Raj (Elections) Rules as: -

"(b) "Constituency" means a territorial constituency of a Gram Sabha, Panchayat Samiti or Zila Parishad, as the case may, for the

representation of which a member is to be elected or has been elected and in relation to Pradhan or Up-Pradhan of a Gram Panchayat, shall mean the

whole of Gram Sabha area"

The word "Block" as per Section 2(3) of the H.P. Panchayati Raj Act means such areas in a district as may be, declared by the

Government to be a Block".

The word has to be understood in the relevant context. We are concerned here with the elections to the post of Pradhan in a Gram Panchayat. For

elections in Gram Panchayat, it is the "Block", which will be the relevant factor for determining the eligibility of the Gram Panchayat for

purposes of providing reservation and not the "Constituency". Therefore, it is the proviso to Sub Rule 4 of Rule 87 of the Himachal Pradesh

Panchayati Raj (Elections) Rules, which will govern the field in respect of determination of eligibility of a Gram Panchayat for the purpose of

reservation and not Rule 28. Total Scheduled Tribe population percentage of Gram Panchayat Kalujhinda as per 2011 population census is 27.28% but

the Scheduled Tribe population percentage of the Block being admittedly less than 5% of the total population, therefore, by application of Rule 87(4) of

H.P. Panchayati Raj (Election) Rules, 1994, the seat in question could not be reserved for Scheduled Tribe category. Prayer of the petitioner for

reserving the Gram Panchayat in question for members of Scheduled Tribes, therefore, cannot be accepted.

No other point was urged. Finding no merit in the writ petition, the same is accordingly dismissed. All the pending application(s), if any, shall also stand

disposed of.