
(2010) 09 P&H CK 0190
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3403 of 2010

Pawan Kumar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Constitution of India, 1950 — Article 16(4), 243, 243A, 243B, 243C
Haryana Panchayati Raj Act, 1994 — Section 120, 120(1), 120(2), 120(3), 120(4)

Citation : AIR 2011 P&H 102 : (2011) 3 RCR(Civil) 172

Hon'ble Judges : Mukul Mudgal, C.J.;Ajay Tewari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mukul Mudgal, C.J.—This judgment shall dispose of C.W.P Nos. 3403, 3004, 3290, 3628, 3729, 3781, 3858, 3976, 3979, 4017, 4056, 4084, 4143, 4154, 4575, 4582, 4691, 4900, 4989, 5103, 5341, 5488, 5496, 5519, 5524, 5533, 5680, 6752, 6817, 6818, 6819, 6890, 7212, 7515, 7525, 7529, 7533, 7541, 7542, 7552, 7553, 7554, 7555, 7561, 7590, 7616, 7714, 7737, 7739, 7960, 8054, 8061, 8196, 8241, 8246, 8295, 8312, 8319, 8323, 8334, 8340, 8428, 8482, 8484, 8512, 8542, 8543, 8593, 8633, 8641, 8645, 8653, 8682, 8974,, 9001, 9031, 9055, 9057, 9118, 9128, 9160, 9219, 9266, 9288, 9303, 9319, 9323, 9333, 9338, 9371, 9498, 9524, 9537, 9572, 9732, 9735, 9825, 9891, 9910, 10084, 10236, 10237, 10360, 10536, 11212, 11278, 11730, 11784, 12955, 13002, 13195, 13581, 13585, 13591, 13995 of 2010, as common questions of law and facts are involved therein. For the sake of convenience, facts are being extracted from CWP No. 3403 of 2010.

2. The petitioners have challenged the reservation of seats for Sarpanches (Scheduled Castes men and women) under the Haryana Panchayati Raj Act, 1994 in the Panchayati elections held in the year 2010.

3. The Parliament of India inserted Part IX of the Constitution by the 73rd Constitutional Amendment with the express purpose of strengthening and further

democraticising local self government at the rural level.

4. It is averred in the writ petition that as per respondent No. 4, out of 63 Gram Panchayats in Block Ladwa, 13 Gram Panchayats are to be reserved for Scheduled Castes and Scheduled Caste (Women). A copy of list of such villages as published in the local daily news paper is Annexure P-1. It is further averred that the offices of Sarpanches of the Gram Panchayats viz Bodla, Karami and Salempur were reserved for Scheduled Castes in the year 1994 and that of Untehari in the year 2000. The petitioners belong to these Gram Panchayats. The grouse of the petitioners is that as per list of Block Ladwa, the offices of Sarpanches of 27 Gram Panchayats from Sr. No. 3 to 29 have never been reserved for Scheduled Caste and Scheduled Caste (Women) since 1994, while the offices of Sarpanches of the Gram Panchayats of the petitioners have been repeatedly reserved.

5. The plea taken by the respondents is that reservation proceedings for reservation of offices of Sarpanches were conducted by respondent No. 4 in view of the census of 2001, as per which the percentage of population of Scheduled Caste was amongst the first highest in the Gram Panchayat/s of the petitioner/s and, thus, the offices of Sarpanches of the Gram Panchayats belonging to the petitioners were reserved for Scheduled Castes. Further, to a query sought by the Deputy Commissioner, Bhiwani, the Director of Panchayats, Haryana replied as under:

In view of the above mentioned provision of the Act, the reservation of seats under Sub-sections (1), (2), (3) and (5) of Sections 9, 59 and Sub-sections 1, 2, 3, 4 and 6 of Section 120 of the Act, 1994 *ibid*, shall have to be reviewed after every decennial census. Accordingly, the reservation of seats for women belonging to Scheduled Castes/General category may be allotted by rotation and by lots to different wards, reserved under Sub-section (1) of Sections 9, 59 and 120 after the decennial census i.e. 2001.

6. It is further mentioned in the reply that the Legal Remembrancer Haryana also opined to the above effect.

7. For the purpose of this petition, it would be appropriate to reproduce Articles 243, 243-A, 243-B, 243-C and 243-D of the Constitution, which read as under:

243.-Definitions.- In this Part, unless the context otherwise requires,--

(a) "district" means a district in a State;

(b) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;

(c) "intermediate level" means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;

(d) "Panchayat" means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;

(e) "Panchayat area" means the territorial area of a Panchayat;

(f) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published;

(g) "village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

243A. - Gram Sabha: A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may by law, provide.

243B. - Constitution of Panchayats (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not, exceeding twenty lakhs.

243C. - Composition of Panchayats (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats;

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation--

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) if the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such

Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within:

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chair person of--

(a) Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level, shall be elected by, and from amongst, the elected members thereof.

243D. - Reservation of seats (1) Seats shall be reserved for--

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat 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 that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging, to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by relation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level 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:

(emphasis supplied)

Provided that the number of offices of Chairpersons reserved for the Scheduled

Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes 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 Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(emphasis supplied)

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

8. As mandated by Article 243-D(4) of the Constitution, the State of Haryana enacted the Haryana Panchayati Raj Act, 1994 (for short 'the Act'). The relevant provisions of the Act are re-produced hereunder:

9. Reservation of seats in Gram Panchayat (1) Seats shall be reserved for the Scheduled Castes in every Gram Panchayat 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 election in that Panchayat as the population of the Scheduled Castes in the Panchayat 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 the total numbers 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 to different 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 Panchayat, shall be reserved for women and such seats may be allotted by rotation and by lots to different wards in a Panchayat except those falling under Sub-sections (1) and (2).

(4) The offices of the Sarpanches in the Gram Panchayat in a block shall be reserved for the Scheduled Castes and Women:

Provided that the number of offices of Sarpanches reserved for the Scheduled Castes in the Block shall bear, as may be, the same proportion to the total

number of such offices in the Block as the population to the Scheduled Castes 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 Sarpanches in the block shall be reserved for women including one-third offices of women Sarpanches from Scheduled Castes:

Provided further that the number of offices of Sarpanches reserved under this sub-section shall be rotated to different Gram Panchayats first having the largest maximum population of Schedule Castes and secondly having the second largest maximum population of such classes and so on.

(emphasis supplied)

(5) The reservation of the seats under Sub-sections (1) and (2) and the reservation of offices of Sarpanches (other than the reservation of women) under Sub-section (4) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India.

(6) Every Panchayat shall have one panch belonging to Backward Classes if their population is two percentum or more of the total population of the sabha area and such seat shall be allotted to such ward having maximum population of persons belonging to Backward Classes.

(7) Reservation of seats as mentioned in aforesaid sub-sections shall be reviewed after every decennial census.

(emphasis supplied)

Section 58 of the Act deals with number of members to be elected to Panchayat Samitis, while Sections 59 and 120 of the Act deal with reservation of seats for Scheduled Castes in Panchayat Samitis/Zila Parishads. With regard to Chairpersons of Panchayat Samitis/Zila Parishads also, provisions for reservation and rotation have been made which are analogous to those made for Chairpersons of Gram Panchayats.

9. The essence of the dispute raised in the present writ petition is the interplay between Sub-section (4) of Section 9 and Sub-section (7) of Section 9 of the Act. As per the petitioners, as a consequence of the interpretation put upon the said provisions by the State of Haryana what has happened is that some villages with size-able population of Scheduled Castes have never had the post of Sarpanch reserved, while in some villages the post of Sarpanch has been reserved successively for three elections. The aforesaid provision of the Act has been reproduced above.

10. Learned Counsel for the petitioners urge that third proviso to Sub-section (4) of Section 9 of the Act lays down that reservation for the post of Sarpanch has to be rotated among all the villages starting with the village which has the highest percentage of Scheduled Castes in the first election, the village with the second highest percentage in the second election, the village with the third highest

percentage in the third election and the village with fourth highest percentage in the fourth election `and so on". As per the learned Counsel, the phrase `and so on" necessarily implies that the rotation envisaged by the said proviso would continue till every village in the Block gets a Scheduled Caste Sarpanch.

11. Learned Advocate General Haryana Shri Hooda, however, urges that all the reservations provided in Section 9 of the Act would be subject to the provisions of Sub-section (7) of Section 9 of the Act. As per his plea, after every decennial census, the State would have to see which particular village has the highest percentage of Scheduled Caste persons and then the rotation would start again from that village. As per the learned Advocate General Haryana, even if this methodology results in a situation where in some villages reservation would occur time and time again, while there would be others where there would never be any reservation, it would be legal. He has relied upon the fact that there are certain Parliamentary Constituencies which have been continuously reserved for SC candidates ever since independence.

12. The argument of learned Advocate General, Haryana has been countered by learned Counsel for the petitioners by saying that it is not the rotation but the extent of reservation which has to be reviewed after every decennial census. Thus, if in the census of 1990, the percentage of Scheduled Castes in Block Ladwa was 15%, then 15% of the offices of Sarpanches would be reserved for Scheduled Castes. Further, if as a result of 2000 census, the percentage of Scheduled Castes in Block Ladwa went up to 18%, then 18% of the offices of Sarpanches would be reserved. Further, if as a result of 2010 census, the percentage of Scheduled Castes in Block Ladwa dropped to 16%, then 16% of the offices of Sarpanches would be reserved for Scheduled Castes. However, this would have no effect on the rotation. As per the learned Counsel, the rotation roster which came into operation in the 1994 elections would continue till all the Gram Panchayats were reserved at-least once. In support of this assertion, learned Counsel for the petitioners relies upon the stipulation in the Constitutional provision which is to the effect that `number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level". They argued that the concept of rotation cannot in any manner be termed to be subordinate to the concept of reservation and both are an equally integral and important part of the Constitutional imperative of effective devolution of democratic power to the village level. Therefore, the concept of rotation which in itself is an independent facet of affirmative action, cannot be so eroded as to be obliterated.

13. The phrase "and so on" is defined in the following dictionaries in the following manner

1) The Chambers Dictionary : And more of the same or the like; and the rest of it. 2) The Shorter Oxford English : An abbreviating phrase to Dictionary. avoid further description or enumeration of details.

14. Thus, as per the plain dictionary meaning, the necessary implication would be that rotation would continue till the last village where there would be even one Scheduled Caste Panch as per the proportion of Scheduled Castes to the general population.

15. Apart from this linguistic interpretation, the area is not virgin territory. The constitutional validity of Part IX of the Constitution was challenged before the Hon''ble Supreme Court in Dr. K. Krishna Murthy and Others Vs. Union of India (UOI) and Another, . In regard to the rotational policy, the Hon''ble Supreme Court held as follows:

5. The overarching scheme of Article 243-D and 243-T is to ensure the fair representation of social diversity in the composition of elected local bodies so as to contribute to the empowerment of the traditionally weaker sections in society. The preferred means for pursuing this policy is the reservation of seats and chairperson positions in favour of Scheduled Castes (SC), Scheduled Tribes (ST), women and backward class candidates. Article 243-D(1) and Article 243-T(1) are analogous since they lay down that the reservation of seats in favour of SC and ST candidates should be based on the proportion between the population belonging to these categories and the total population of the area in question. Needless to say, the State Governments are empowered to determine the extent of such reservations on the basis of empirical data such as population surveys among other methods, thereby being guided by the principle of "proportionate representation". Article 243-D(2) and Article 243-T(2) further provide that from among the pool of seats reserved for SC and ST candidates, at least one-third of such seats should be reserved for women belonging to those categories. Hence, there is an intersection between the reservations in favour of women on one hand and those in favour of SC/STs on the other hand.

With respect to reservations in favour of women, Article 243-D(3) and Article 243-T(3) lay down that at least one-third of the total number of seats in the local bodies should be reserved for women. On the face of it, this is an embodiment of the principle of 'adequate representation'. This idea comes into play when it is found that a particular section is inadequately represented in a certain domain and a specific threshold is provided to ensure that this section of the population comes to be adequately represented with the passage of time.

With regard to chairperson positions, Article 243-D(4) and Article 243-T(4) enable State legislatures to reserve these offices in favour of SC, ST and women candidates. In the case of panchayats, the first proviso to Article 243-D(4) states that the aggregate number of chairperson positions reserved in favour of SC and ST candidates in an entire state should be based on the proportion between the population belonging to these categories and the total population. With all the chairperson positions at each level of the panchayats in an entire State as the frame of reference, the second proviso to Article 243-D(4) states that one-third of these offices should be reserved for women. The third proviso to Article 243-D(4) lays down that the number of chairperson positions reserved under the said

clause would be allotted by rotation to different panchayats in each tier. This rotational policy is a safeguard against the possibility of a particular office being reserved in perpetuity. It is pertinent to note that unlike the reservation policy for panchayats, there are no comparable provisos to Article 243-T(4) for guiding the reservation of chairperson positions in Municipalities....

(emphasis supplied).

40. The main criticism against the reservation of chairperson positions in local self-government is that the same amounts to cent-per-cent reservation since they are akin to solitary posts. As mentioned earlier, the petitioners have relied upon some High Court decisions (See: Janardan Paswan and Others Vs. State of Bihar and Others, ; Krishna Kumar Mishra and Another Vs. State of Bihar and Others etc. etc., , wherein it had been held that reservations of Chairperson posts in Panchayats would not be permissible since the same was tantamount to the reservation of solitary seats. However, Article 243-D(4) provides a clear Constitutional basis for reserving the Chairperson positions in favour of SC and STs (in a proportionate manner) while also providing that one-third of all chairperson positions in each tier of the Panchayati Raj Institutions would be reserved in favour of women. As described earlier, the considerations behind the provisions of Article 243-D cannot be readily compared with those of Article 16(4) which is the basis for reservations in public employment. It is a settled principle in the domain of service law that single posts cannot be reserved under the scheme of Article 16(4) and the petitioners have rightly pointed out to some precedents in support of their contention. However, the same proposition cannot be readily extended to strike down reservations for chairperson positions in each tier of the three levels of Panchayati Raj Institutions in the entire State. Out of this pool of seats which is computed across panchayats in the whole state, the number of offices that are to be reserved in favour of Scheduled Castes and Scheduled Tribes is to be determined on the basis of the proportion between the population belonging to these categories and the total population of the State. This interpretation is clearly supported by a bare reading of the first proviso to Article 243-D(4). It would be worthwhile to re-examine the language of the said provision....

16. The Hon'ble Supreme Court further held as under:

41. As may be evident from the above-mentioned provision, when the frame of reference is the entire pool of chairperson positions computed across each tier of Panchayati Raj institutions in the entire state, the possibility of cent-per-cent reservation does not arise. For this purpose, a loose analogy can be drawn with reservations in favour of Scheduled Castes and Scheduled Tribes for the purpose of elections to the Lok Sabha and the respective Vidhan Sabhas. Before elections to these bodies, the Election Commission earmarks some electoral constituencies as those which are reserved for candidates belonging to the SC/ST categories. For the purpose of these reservations, the frame of reference is the total number of Lok Sabha or Vidhan Sabha seats in a State and not the single position of an

MP or MLA respectively. Coming back to the context of Chairperson positions in Panchayats, it is therefore permissible to reserve a certain number of these offices in favour of Scheduled Castes, Scheduled Tribes and women, provided that the same is done in accordance with the provisos to Article 243-D(4).

17. A combined reading of the extracted portions makes it clear that the principle of rotation has been super-scribed on the principle of reservation so as to obviate the possibility of the office of Sarpanch of a particular village either being reserved in perpetuity despite there being a size-able number of general category voters in the said village or, being not reserved in perpetuity despite there being a size-able percentage of SC persons in a village. Thus, in view of the authoritative pronouncement of the Hon''ble Supreme Court, the plea of the learned Counsel for the petitioners has to be accepted and it has to be held that the provisions of Sub-section (7) of Section 9 of the Act would apply to the extent of reservation and not to the concept of rotation.

18. Before parting with the judgment, two subsidiary arguments of learned Advocate General Haryana must be considered. The first relates to the fact that there are Parliamentary Constituencies/State Legislature Constituencies which have been reserved constantly since the first general elections. This argument can be dealt with simply by saying that there is no constitutional imperative of rotation for Parliamentary/State Legislature Constituencies. The second argument of learned Advocate General Haryana is that there are some villages which have negligible proportion of Scheduled Castes or even zero percent and, thus, it would be impossible to reserve the post of Sarpanch and, thus, the interpretation of the concept of rotation sought to be made by learned Counsel for the petitioners would not be possible. In this context, guidance may be had from Sub-section (1) of Section 9 of the Act. As per this sub-section, reservation would be on the same proportion as the population of Scheduled Castes bears to the population of general category voters. Consequently, if no post can be reserved for a Panch of Scheduled Caste in a particular village, obviously that village would have to be excluded from the principle of rotation.

19. In view of what has been said above, these writ petitions have to be allowed. However, the question arises as to whether the entire exercise of elections to the posts of Sarpanch which has been recently concluded by electing 6083 Sarpanches has to be set at naught. The principle of prospective operation of the law laid down in the judgment reported as *Yogendra Pal and others Vs. Municipality, Bhatinda and another*, is settled by the Hon''ble Supreme Court in the following terms:

... It is now well-settled by the decisions of this Court beginning with *I.C. Golak Nath v. State of Punjab* that the Court can mould the relief to meet the exigencies of the circumstances and also make the law laid down by it prospective in operation. We are informed that till date the Municipal Committees in both Punjab and Haryana States have similarly acquired lands for their respective town planning schemes and in many cases the schemes have also

been completed. It is only some of the landowners who had approached the courts and the decisions of the courts have become final in many of those cases. It would not, therefore, be in the public interest to unsettle the settled state of affairs. It would create total chaos and an unmanageable situation for the Municipal Committees if the said provisions of the respective statutes and the land acquisitions made thereunder are declared void with retrospective effect. We, therefore, propose to declare that the provisions concerned of the two enactments would be void from the date of this decision....

20. In view of the above statement of law by the Hon''ble Supreme Court, in our considered opinion setting aside the elections of 6083 Sarpanches may not be the appropriate consequential direction. While we have clarified the position in law as above, yet setting at naught the entire election at this stage would result in avoidable upheaval and huge administrative expenditure by unseating democratically elected Sarpanches. We cannot lose sight of the fact that the successful candidates in such cases have a popular mandate. Since rotation is a continuous process, it would be appropriate if the interpretation we have given is brought into force from the next Panchayat elections.

21. The writ petitions are allowed in the above terms with no order as to costs.