
(1997) 02 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15511 of 1996

Ram Niwas and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-02-1997

Acts Referred:

Haryana Municipal Act, 1973 — Section 10(5)
Haryana Municipal Election Rules, 1978 — Rule 70

Citation : (1997) 116 PLR 426 : (1997) 2 RCR(Civil) 390

Hon'ble Judges : K.S. Kumaran, J; Ashok Bhan, J

Bench : Division Bench

Advocate : S.K. Bansal, for the Appellant; D.K. Khanna DAG, Hemant Kumar and C.B. Goel, for the Respondent

Judgement

Ashok Bhan, J.—Prayer made in this petition is for issuance of a writ of certiorari/ mandamus declaring the election of respondent No. 5 as president of Municipal Committee Kharkhoda, District Sonapat, being illegal and void with a direction to the respondent-authorities to hold fresh election to the office of President of the Committee in accordance with the rules.

2. Election to the Municipal Committee, Kharkhoda was held on 28.12.1994. 13 Members were elected to the Committee, whose names were notified by the State of Haryana on 23.1.1995. On 20.1.1995, Government issued a notification, Annexure P3, that the office of President of the Committee will be reserved for Scheduled Castes (Men). One Sant Lai, who was a Scheduled Caste and had contested the election from Ward No. 9 reversed for Scheduled Castes, was elected as president of the Committee. Sant Lal resigned from the office of president of the Committee on 5.6.1996. A meeting of the Members of the Committee was called for 10.7.1996 to elect a new president in place of Sant Lai. The meeting was thereafter adjourned to 22.7.1996. Smt. Devi Mehra, respondent No. 5, a Scheduled Caste who had contested the election from a ward meant for general category candidates was elected as president of the

Committee. Petitioners have challenged the election of respondent No. 5 on two grounds; (i) that a candidate who had contested the election from a ward meant for general category candidates although a Scheduled Caste, cannot be elected as President of the Municipal Committee where the post of President is reserved for Scheduled Castes, and (ii) that the office of President of the Municipal Committee, Kharkhoda was reserved for Scheduled Castes (Men) and, therefore, a Scheduled Caste women could not be elected as its president."

3. Notice of motion was issued, in response to which separate written statements have been filed on behalf of respondents 1 to 3, 5 and 6.

4. respondents have taken the stand that as respondent No. 5 was an elected member belonging to the Scheduled Castes, she was, therefore, entitled to contest the election for the post of President of the Municipal Committee; that it made no difference that respondent No. 5 had contested the election from a ward meant for general category candidates; that she was entitled to be elected as President of the Municipal Committee in her capacity as a Scheduled Caste and that there was no bar to the election of a Scheduled Caste (Woman) where the post of President was reserved for scheduled Castes (Men).

5. Counsel for the parties have been heard.

6. At the very outset, counsel for the petitioners gave up his contest on the second point i.e. a Scheduled Caste woman could not be elected as the President of the Municipal Committee where the post of president was reserved for Scheduled Castes (Men.).

7. By the 73rd Amendment of the Constitution, the Parliament declared the Municipalities to be the institutions of Self Government at the same time provided for constitutional reservation in favour of the Scheduled Castes, Scheduled Tribes and women, as per Articles 243T. In order to give effect to the constitutional mandate contained in Article 243T, the Haryana Municipal Act, 1973 (hereinafter referred to as "the Act") has been amended. Section 10(1) of the Amended Act provides for reservation for Scheduled Castes, Section 10(2) provides for reservation for women belonging to Scheduled Castes whereas Section 10(3) generally speaks for reservation for women including the women belonging to Scheduled Castes. Section 10(4) provides for reservation in favour of Backward Classes. Section 10(5) deals with filling up of the offices of presidents in the Municipalities from Scheduled Castes and women by rotation and by lots in the manner prescribed . Section 18 contains provisions for election of the presidents and Vice Presidents. Rule 70 of the Haryana Municipal Elections Rules, 1978 (here in after referred to as "the 1978 Rules") contains provisions of Oath of Allegiance and election of President etc. Subrule (4) of Rule 70 of the 1978 Rules lays down the mode of election of Presidents of the Municipalities.

8. Sections 10(5) and 18 of the Act and Rule 70(4) of the 1978 Rules are reproduced below for reference purpose:-

"10(5). The offices of presidents in the municipalities shall be reserved for the Scheduled Castes and women by rotation and by lots in the manner prescribed."

"18. Election of President and Vice-President. - (1) Every Municipal Committee or Municipal council shall, from time to time, elect one of its 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 councils shall be reserved for Scheduled Castes and women in accordance with 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 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 one year."

"Rule 70 (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 presidents 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 will be determined by draw of lots by a committee consisting of director, Local Bodies and 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:

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 the

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 Director, Local Bodies 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 Municipality reserved for the Backward classes."

9. On a combined reading of Article 243T; Sections 10(5) and 18 of the act and Rule 70(4) of the 1978 Rules, it becomes clear that the Parliament as well as the State Legislature have enacted these provisions in order to provide for reservation of the offices of Presidents for the Scheduled Castes, Scheduled Tribes and Backward Classes and women. A reading of Section 10(5) of the Act and Rule 70(4) of the 1978 Rules, shows that offices of the Presidents are to be filled up from amongst the members belonging to different categories by rotation and by lots.

10. The only question to be determined is as to whether a, Scheduled Caste candidate who has been elected from a ward meant for general category, could be elected as President of the Municipal Committee, where the office of the President has been reserved for scheduled Castes.

11. The point in issue stands concluded by a recent judgment of the Supreme Court in *Saraswati Devi Vs. Smt. Shanti Devi and Others*, in which it has been held that where a scheduled caste candidate has been elected from a ward meant for general category then he/she cannot be elected President of the Municipal Committee in which the office of President has been reserved for Scheduled Castes Candidates. It was held:-

" ... It is not disputed that the post of President of Loharu Municipal Committee at the relevant time was reserved for Scheduled Castes women. So far as the appellant is concerned, she has been elected from ward No. 5 on a seat reserved for Scheduled Castes women. Therefore, in that category she is the sole candidate. So far as Respondent No. 1 is concerned even though by coincidence she also belongs to Scheduled castes but she was not elected on a seat reserved for Scheduled Castes women, but on a seat reserved for General Category women from ward No. 11. It is not in dispute that in that ward there were other contesting women, not belonging to Scheduled Caste category, but also belonging to General category. Therefore, Respondent No. 1 is a member who is elected on the seat earmarked for General category women; she cannot be said to be a member elected on a seat reserved for Scheduled Castes women. In ward No. 5 from where the appellant contested, General category women would not have contested and only Scheduled Castes women could have contested in that context appellant emerged successful. Therefore, she must be held to be

belonging to category of Scheduled Castes and not belonging to Category of women to which Respondent No. 1 belongs. Consequently both of them cannot be treated to form a part and parcel of the same category of seats on which they have got elected. It is true as contended by learned counsel for Respondent No. 1. and which contention has appealed to the High Court that Rule 70(4) mandates that the offices of Presidents of the Municipalities shall be filled up from amongst the members belonging to the concerned categories mentioned in the Rule. But the said phraseology does not imply that the members must belong to a particular caste like Scheduled Castes, Backward Classes etc. because the general words "members belonging to" are followed by different types of classes like general category, category of Scheduled Castes, category of Backward Classes and category of women as mentioned in the said Rule. It is obvious that general category has nothing to do with castes. Similarly backward classes have nothing to do with castes and the category of women is also separately indicated. That is also not having any nexus with the castes. When the thrust of the Rule is that offices of the Presidents in Municipalities must go by rotation to members belonging to the specified categories, it would necessarily mean in the context of parent Article 243T of the Constitution of India and Section 10(5) of the Act that the concerned elected members of the Municipal Committee must have got elected on the seats available to general Category candidates or Scheduled Castes category candidates or Backward Classes category candidates or General women category candidate by rotation. The very concept of rotation presupposes that for the context of President-ship once by rotation a reservation is made from members elected from a particular category only those members elected from a particular category only those members can context for Presidentship. As admittedly the post of President, Loharu Municipality is subjected to double reservation of being available only to an elected member who is a Scheduled Caste women she must have been elected in the Scheduled Caste seat from the ward reserved for such Scheduled Castes candidates. As admittedly only three wards, namely, 1, 4 and 5 are reserved for members belonging to Scheduled Castes and even out of three wards only a ward No. 5 from which the appellant was elected was reserved for Scheduled Castes women and as President's post is reserved for being filled up by a member belonging to the category of Scheduled Castes women who has been elected on such a seat, the respondent No. 1 who is elected as a member not on any seat reserved for Scheduled Castes women but on a seat reserved for General category of women from ward No. 11 is obviously out of the arena of contest for the post of Presidentship of Loharu Municipality. Appellant is the sole candidate elected on a seat reserved for Scheduled Castes women. With respect it is not possible to agree with the reasoning of the High Court that the word "member belonging to" as employed in Rule 70(4) of the Election Rules would bring in all the elected members belonging to Scheduled Castes into one category to enable them to contest for the post of President. Such a reasoning would cut across the very scheme of reservation as envisaged by Article 243T of the Constitution of India and Section 10(5) read with Rule 70(4) of the Election Rules. The High Court with respect has not properly

appreciated the thrust of the provision regarding the categories or reservations envisaged by the Rule and has equated category with castes which is not contemplated the Act and the Election Rules. Consequently, # the decision rendered by the High Court on the construction of the aforesaid relevant provisions cannot be sustained. On the other hand the Government Notification and Clarification dated 11th February, 1995 get well sustained on the scheme of the Act and the Election Rules. It must, herefore, be held that as Respondent No. 1 and the appellant did not belong to the same category of candidates elected on the seats reserved for Scheduled Castes women even though both were women and belonged to Scheduled Castes; they represented separate electoral wards indicating non-competing groups or categories of membership and as both of them were not at par they could not contest on an equal footing for the post of President. As admittedly appellant was the sole returned candidate from the ward reserved for Scheduled castes women and as the post of President was also by rotation reserved only for a member belonging to Scheduled Castes women category she was the sole contestant for the said post and was rightly held to be entitled to be the President of Loharu Municipality."

12. The facts of the present case are similar to the facts of Saraswati Devi case (supra). The ratio of law laid down by their Lordships of the Supreme Court in Saraswati Devi's case (supra) is squarely applicable to the facts of the present case. As the petitioner had contested the election from a ward meant for general category, she could not be elected President of the Committee as that post had been reserved for a Scheduled caste candidate. Because the petitioner had not contested the election from a ward reserved for Scheduled Castes, she would not contest the election for the office of President of the Committee which was reserved for Scheduled Castes.

13. For the reasons stated above, we accept this petition and quash the election of respondent No. 5 as President of the Municipal Committee, Kharkhoda. Respondent-authorities are directed to hold a fresh election to the office of President of Municipal Committee, Kharkhoda in accordance with law, keeping in view the law laid down by their Lordships of the Supreme Court in Saraswati Devi's case. No costs.