

(1996) 11 SC CK 0005

In the Supreme Court Of India

Case No : Civil Appeal No. 14608 of 1996 (Arising out of S.L.P. (C) No. 12486 of 1996)

Saraswati Devi

APPELLANT

Vs

Smt. Shanti Devi and Others

RESPONDENT

Date of Decision : 18-11-1996

Acts Referred:

Constitution of India, 1950 — Article 243T
Haryana Municipal Act, 1973 — Section 10(5), 18, 278
Haryana Municipal Election Rules, 1978 — Rule 71(4)

Citation : (1996) 9 AD 15 : AIR 1997 SC 347 : (1997) AIRSCW 106 : (1996) 11 JT 23 : (1997) 116 PLR 421 : (1996) 8 SCALE 357 : (1997) 1 SCC 122 : (1996) 8 Supreme 512 : (1997) 1 UJ 399

Hon'ble Judges : S.B. Majmudar, J;A.S. Anand, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.B. Majmudar, J.—Leave granted.

2. By consent of learned advocates of parties the appeal was finally heard and is being disposed of by this judgment. The contesting parties are appellant on the one hand and Respondent No. 1 on the other. Both belong to Scheduled Castes. Their claim is centered round the chair of President of the Municipal Committee, Loharu in Haryana State. The grievance of the appellant against the order of the High Court in favour of respondent No. 1 can be better appreciated after looking at the relevant introductory facts.

3. The appellant as well as Respondent No. 1 are Scheduled Castes women. Elections were held to Loharu Municipal Committee. For the purpose of election of members of the Committee, Loharu Municipal area is divided into 11 wards. Out of these 11 wards three wards, namely, ward Nos. 1, 4 and 5 were reserved for members belonging to Scheduled Castes. Out of these three wards, ward No. 5 was reserved for the Scheduled Castes women and ward No. 2 was reserved

for backward classes, apart from the aforesaid reservations, ward nos. 8, 10 and 11 were reserved for general women. Elections to Loharu Municipal Committee were held on 29th December 1994 under the provisions of Haryana Municipal Act, 1973 ('the Act' for short). In the said elections the appellant was elected from ward No. 5 reserved for General women. After the said elections were over question arose about the election of President of the said Municipal Committee. As per Section 10 Sub-section (9) of the Act the offices of the President in the municipalities shall be filled up from amongst the members belonging to General category, Scheduled Castes, backward classes and women by rotation and by lots in the manner prescribed. Rule 70 Sub-rule (4) of Haryana Municipal Election Rules, 1978 ('Election Rules' for short) prescribes the manner in which the election to the office of President of municipality could be held. The local Government Department of Haryana vide its notification dated 20th January 1995 declared in terms of Rule 70(4) of the Election Rules that the seat of President, Municipal Committee, Loharu, inter alia, shall be filled up from amongst the members belonging to Scheduled Castes category. The said rule reads as under:

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 presidents 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 no 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 Director, Local Bodies and Deputy Commissioner 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 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.

The Respondent No. 1 contended that as she was also an elected member belonging to Scheduled Castes women category, she was entitled to contest for the president ship of the Municipality. In view of this claim of Respondent No. 1 the local Government Department of Haryana Government vide its order dated 11th February 1995 issued u/s 278 of the Act clarified that where there is a single member of Scheduled Caste category (man or woman) in a municipality elected from the Ward reserved and the Office of President is to be filled up from amongst the members belonging to Scheduled Caste Category, such single member (man or woman) belonging to Scheduled Caste Category shall be deemed to have been elected as President of such Municipality in the same manner as is provided for the members belonging to the Backward Classes under Sub-rule (4) or Rule of the Election Rules. This clarification put Respondent No. 1 out of contest for the president ship as she was elected member of the Municipal Committee not on a Scheduled Castes seat but on a seat available to General category women. Consequently, Respondent No. 1 filed a writ petition in the High Court of Punjab & Haryana for quashing the aforesaid Government Order dated 11th February 1995 and for a direction to admit her as a candidate to contest for the aforesaid office of President, Municipal Committee, Loharu. Pending this writ petition, the Local Government Department, Haryana Government vide its notification dated 25th May 1995 appointed the appellants President, Municipal Committee, Loharu as according to the State Government the post of President was by rotation reserved for a member who was elected in the category of Scheduled Castes women and as Respondent No. 1 did not belong to the said category there was only solitary candidate, namely, the appellant for president ship and that is how she was appointed as President of Municipal Committee, Loharu subject to the decision of the writ petition of Respondent No. 1.

4. A Division Bench of the High Court allowed the writ petition of Respondent No. 1 by the impugned order dated 7th May 1996. According to the High Court as there were two candidates in the field belonging to the category of Scheduled Castes women, election had to be held for the post of President and till election is held the appellant may continue as the President of the Municipal Committee. It is the aforesaid order of the High Court that has been brought in challenge by the appellant in the present appeal. Pending these proceedings status quo has continued and that is how the appellant is functioning as the President of the Municipal Committee.

5. The short question for our consideration is as to whether the Government Order taking the view that appellant is the sole candidate for the post of

President, Municipal Committee, Loharu and there is no question of any contest between the appellant and Respondent No. 1 for the said post, is justified in law or not. The relevant statutory provisions in this connection are required to be noted. By the 73rd amendment of the Constitution, the Parliament declared Municipalities to be the institutions of self-Government and at the same time provided, for constitutional reservation in favour of Scheduled Castes, Scheduled Tribes and women vide Article 243T of the Constitution of India. The said Article provides as under:

243T. Reservation of seats.- (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes 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 that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(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) ...

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manners as the Legislature of a State may, by law, provide.

(5) ...

(6) ...

As per sub-Article (4) Article 243T becomes, therefore, clear that 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 by an enactment may provide. The aforesaid constitutional mandate makes it very clear that such chairmanships of Municipalities would be made available by rotation as provided by the State Legislature to Scheduled Castes, Scheduled Tribes and women. Therefore, the category of women as contradistinguished from the category of Scheduled Castes and Scheduled Tribes would form a separate electoral division for the purpose of elections to the posts of Chairpersons of such Municipalities. By the aforesaid Act the Haryana State provided for the statutory procedure for such elections to the posts of Presidents of Municipal Committees. In this connection, the relevant statutory provisions are found in Sub-rule (4) of Rule 70 of the Election Rules and Sections 10(5) and 18 of the Act. While the relevant rule being Rule 70(4) is already extracted earlier, Sections 10(5) and 18 of the Act read as under:

10(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.

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 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, afresh 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) ...

On a combined reading of Article 243T of the Constitution of India, Sections 10(5) and 15 of the Act and Sub-rule (4) of Rule 70 of Election Rules, it becomes clear that the Parliament as well as the Legislature have enacted these provisions in order to provide for reservation of office of the President for members of Scheduled Casts, Scheduled Tribes, backward classes and women in rotation. A bare reading of Section 10(5) and Rule 70(4) shows that the offices of the Presidents are to be filled from amongst members belonging to different categories by rotation and by lots. 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 Castes 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 and 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 candidates by rotation. The very concept of rotation presupposes that for the contest of President ship once by rotation a reservation is made from members elected from a particular category only those members can contest for President ship. 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 woman she must have been elected in the Scheduled Castes 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 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 President ship of Loharu Municipality. Appellant is the sole candidate elected on the seat reserved for Scheduled Castes women. With respect it is not possible to agree with the reasoning of the High Court that the words 'members 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 of reservations envisaged by the Rule and has equated category with castes which is not contemplated by 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, therefore, 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.

6. In the result this appeal succeeds and is allowed. The judgment and order of the High Court are quashed and set aside. The writ petition filed by Respondent No. 1 stands dismissed. The appellant will be entitled to continue as the President of the Loharu Municipal Committee for her full term of office. In the facts and circumstances of the case there will be no order as to costs.