
(2008) 09 P&H CK 0021
In the Punjab And Haryana At Chandigarh

Savinder Kaur and Others	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 243D

Citation : (2009) 1 ILR (P&H) 414 : (2009) 153 PLR 262 : (2009) 1 RCR(Civil) 213

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—Six out of seven elected members of Gram Panchayat of Village Rampura Block Verka, District Amritsar, have

filed this writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the

corrigendum dated 23.6.2008 (published in the Punjab Government Gazette dated 24.6.2008), issued by the Deputy Commissioner, Amritsar

(respondent No. 3 herein), whereby the reservation for the office of Sarpanch of Gram Panchayat of village Rampura, Block Verka has been

changed from "Women" to "Scheduled Caste", being illegal, arbitrary and mala fide, with a further prayer for issuing direction to the respondents

to hold the election for the office of Sarpanch of the said Gram Panchayat after restoring the office of Sarpanch to the category of "Women which

was so reserved in the previous Notification dated 8.5.2008 published in the Punjab Government Gazette dated 14.5.2008.

2. Village Rampura falls in Block Verka (District Amritsar) which consists of 94 villages, including village Hair. As per notification issued u/s 10 of

the Punjab Panchayati Raj Act (hereinafter referred to as "the Act), Gram Panchayat of village Rampura consists of seven Members (Panches).

Vide notification dated 12.2.2008 issued u/s 11 of the Act, out of seven seats of Panches two seats were reserved for General Category, one seat

for Scheduled Caste (Woman), three seats for Scheduled Castes and one seat for Woman. Vide notification dated 8.5.2008 issued by the Deputy

Commissioner (as published in the Punjab Government Gazette dated 14.5.2008) the offices of Sarpanches of all the 94 villages of Block Verka

were reserved for different categories for block-wise as per the provisions of Section 12 of the Act read with Rule 3 of the Punjab Reservation for

the offices of Sarpanches of Gram Panchayats and Chairman and Vice Chairman of Panchayat Samitis and Zila Parishads Rules, 1994 (hereinafter

referred to as "the Rules). As per this notification, the Office of Sarpanch of village Rampura, Block Verka has been reserved for the category of

"Women" and the office of Sarpanch of village Hair was reserved for the category of "Scheduled Caste. Thereafter, the election of the Gram

Panchayat of village Rampura was held on 26.5.2008. The six petitioners along with one Lat Singh were elected as Panches of the Gram

Panchayat.

3. As per Section 13-A of the Act, after notification of the election of Panches, the Deputy Commissioner is required to authorize any officer or

official of the State Government for convening the first meeting of the Gram Panchayat for the election of Sarpanch amongst the members of the

Gram Panchayat as per the reservation notified u/s 12 of the Act. Suddenly before convening of the first meeting and the election of the Sarpanch

on 23.6.2008, Deputy Commissioner, Amritsar (respondent No. 3 herein) issued a corrigendum (published in the Punjab Government Gazette

dated 24.6.2008) u/s 12 of the Act read with Rule 3 of the Rules changing the reservation of the office of the village Rampura from the category of

"women" to "Scheduled Caste". Vide this notification, the office of Sarpanch of village Hair has also been changed from "Scheduled Caste to

"general Category". Immediately, on 4.7.2008 the petitioners filed this petition challenging the said action of the Deputy Commissioner, being

illegal, arbitrary and mala fide.

4. After notice of motion, on 14.7.2008, the following interim order was passed

by this Court:

In the meanwhile, the constitution of the Panchayat and the election of the Sarpanch shall be subject to the final decision of this petition.

5. In the written statement filed on behalf of respondent No. 3 and 4, the respondents have not disputed the aforesaid factual position, but denied

that the said corrigendum was issued illegally and arbitrarily or at the instance of the Minister of the Punjab Government. In para 10 of the written

statement, it has been stated that the impugned corrigendum was issued by respondent No. 3 on the recommendation of the District Development

and Panchayat Officer, Amritsar (respondent No. 4 herein), copy of which has been annexed as Annexure R-1. In Annexure R-1 it has been stated

that the residents of village Hair Hadbast No. 347 had made the request for changing the reservation of the office of Sarpanch from Scheduled

Caste to General on the ground that the population of Scheduled Castes in the village was less. Accepting the said request, the recommendation

was made for changing the reservation of office of Sarpanch of Village Gram Panchayat Hair from Scheduled Caste to General. Regarding village

Rampura it has been stated that the office of Sarpanch of this village was changed from Women to Scheduled Caste as Scheduled Caste

population in the village was more, though nobody from village Rampura had made any request for change of the office of Sarpanch.

6. It is the case of the petitioners that the reservation of the offices of Sarpanches of the villages falling in Block Verka, vide notification dated

8.5.2008 was correctly made as per the amended Sub-rule (3) of the Rules and also as per the roster prepared by the Deputy Commissioner

block-wise. He submits that in the year 1998 the office of Sarpanch in village Rampura was reserved for the category of Scheduled Caste and in

the year 2003, it was reserved for General Category, therefore, this time the office was rightly reserved for the category of Women. Learned

Counsel further submits that a perusal of the notification dated 8.5.2008 shows that the first 26 villages (from serial No. 1 to 26) in block Verka

were reserved for Scheduled Castes and thereafter villages from serial Nos. 27 to 39 were reserved for Scheduled Castes (Women) and villages

from serial Nos. 40 to 58, except serial No. 50, were reserved for the category of Women. Village Hair is at serial No. 13, which was reserved

for Women. The said reservation of the offices of Sarpanch was made block-wise in consonance with Section 12 of the Act and in view of the

amended Rules (as out of 94 villages falling in Block Verka, 31 offices of Sarpanches have been reserved for Women (including Scheduled Castes

(Women). But, subsequently the Deputy Commissioner at the behest of a local Minister, has illegally changed the reservation of the office of the

Sarpanch vide impugned corrigendum which actually has resulted into reduction of seats of reserved categories of Women from 1/3rd, which is in

violation of Section 12(3) of the Act.

7. Learned Counsel submitted that the office of Sarpanch of village Hair was never reserved for the category of Scheduled Caste except by

notification dated 8.5.2008. Therefore, the same was rightly reserved by the Deputy Commissioner by rotation for the category of Scheduled

Castes, but vide impugned corrigendum, in order to give undue benefit to some persons of village Hair, Deputy Commissioner, Amritsar has

changed the category of the office of Sarpanch of the said village from Scheduled Caste to General without any justification. Learned Counsel

further submitted that after the election of Panches was over, the Deputy Commissioner was having no jurisdiction to change the reservation of the

office of only two villages without there being any mistake in the reservation notified earlier. Learned Counsel submitted that the impugned action of

the respondents is totally illegal, arbitrary, without jurisdiction and in violation of Section 12(3) of the Act and Article 243D(4) of the Constitution

of India.

8. Counsel for the respondents, while referring to the reasons given in the written statement, has tried to justify the impugned corrigendum being

legal and valid and the same being issued as per the provisions of the Act and the Rules made thereunder.

9. After hearing the counsel for the parties and perusing the record of the case, we are of the opinion that this writ petition deserves to be allowed

and the impugned corrigendum is liable to be quashed.

10. Article 243D of the Constitution of India provides that in every Panchayat the seats shall be reserved for (1) the Scheduled Castes and (b) the

Scheduled Tribes, and the number of seats so reserved shall be 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 bears to the total population of that area and

such seats may be allotted by rotation to different constituencies in a Panchayat. Clause (2) provides that not less than one-third of the total number

of seats under Clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. Clause

(3) further provides that not less than one-third 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 to different constituencies in a Panchayat. Clause (4) further provides that the offices of the

Chairpersons in the Panchayats at the village or any other level shall be reserved for Scheduled Castes, the Scheduled Tribes and women in such

manner as the Legislature of a State may, by law, provide. Proviso to this clause provides 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 and that the number of offices reserved under this clause shall be

allotted by rotation to different Panchayats at each level.

11. In view of the aforesaid provisions, the State of Punjab has enacted the Punjab Panchayati Raj Act, 1994. Section 12 of the Act provides for

reservation of seats for the office of Sarpanch, which reads as under:

12. Reservation of seats for the office of Sarpanch- (1) Offices of Sarpanch of Gram Panchayats in the district shall be reserved for Scheduled

Castes and the number of such offices shall bear, as nearly as may, the same proportion to the total number of offices of Sarpanch in the district as

the population of Scheduled Castes in the district bears to the total population of the district.

[Provided that not less than one-third of the total number of offices of Sarpanch of Gram Panchayats in the district shall be reserved under Sub-

section (1) shall be reserved for women belonging to the Scheduled Castes].

(2) Not less than one-third of the total number of offices of Sarpanches in the district shall be reserved for women including such offices, reserved

for women belonging to Scheduled Castes under Sub-section (1).

(3) There shall be no reservation in the office of Sarpanches for Backward Classes.

(4) The offices reserved under this Section shall be allotted by rotation to the

different Gram Panchayats at the time of every general election in such manner as may be prescribed.

Explanation.- For the removal of doubts it is hereby declared that the principle of rotation for the purpose of reservation of offices under Sections

2 and 12 shall commence from the first election to be held after the commencement of this Act.

State of Punjab has also framed the Rules for the reservation of offices of Sarpanchs in order to implement the reservations contained in Section 12

of the Act. Rule 3 of the Rules which provides for reservation of the seats of the Offices of Sarpanches is reproduced hereunder:

3. Reservation of seats for the offices of Sarpanches, (Sections 12 and 107).- (1) The Deputy Commissioner shall, by notification in the official

Gazette, reserve the offices of the Sarpanches of Gram Panchayats for the persons belonging to Scheduled Castes (including one-third women

belonging to Scheduled Castes) in the same proportion as the population of the Scheduled Castes in the district bears to the total population of the

district. The offices of Sarpanches of Gram Panchayats shall be reserved as per roster prepared by the Deputy Commissioner.

(2) One-third offices of the Sarpanches, (including those reserved for women belonging to Scheduled Castes) shall be reserved for the women.

The reservation shall be operated as per the roster prepared by the Deputy Commissioner.

(3) The roster referred in sub-rules (1) and (2) shall be prepared block-wise by the Deputy Commissioner.

12. A bare perusal of the aforesaid provisions reveals that the Offices of Sarpanches of the Gram Panchayat in the district shall be reserved for

Scheduled Castes in accordance with the population of the Scheduled Castes in the district. These provisions further provides that 1/3rd members

of the total members of the offices of Sarpanches in the district shall be reserved for women, including offices reserved for women belonging to

Scheduled Castes. Sub-section (4) of Section 12 of the Act provides that the reservation for the offices of Sarpanches shall be allotted by rotation

to different Gram Panchayats in such manner as may be prescribed. Sub-rule (2) of Rule 3 of the Rules provides that 1/3rd of the offices of

Sarpanches (including those reserved for women belonging to Scheduled Castes)

shall be reserved for women. The reservation shall be operated as per the roster prepared by the Deputy Commissioner. Sub-rule (3) provides that the roster referred in Sub-rule (1) and (2) shall be prepared block-wise by the Deputy Commissioner.

13. According to the aforesaid provisions, the Deputy Commissioner Commissioner made the reservations for the offices of Sarpanches of the Gram Panchayat in block Verka which consists of 94 villages. A perusal of the notification dated 8.5.2008 reveals that out of 94 offices of Gram Panchayats, 39 offices of the Sarpanches of the Gram Panchayats have been reserved for Scheduled Castes, including 13 offices for Scheduled Castes (Women), which is one-third of the total reservation of the Scheduled Castes. 18 offices of the Sarpanches of the Gram Panchayats of Block Verka from Serial Nos. 40 to 58, except serial No. 50, have been reserved for the category of women. Thus, one-third of the total offices of the Sarpanches of Gram Panchayats in Block Verka, i.e. 31 have been reserved for Scheduled Castes (Women) and Women. The remaining 39 offices of the Gram Panchayats have been reserved for General Category. Thus, the reservation made for 94 villages was perfectly in consonance with the Act and the Rules.

14. In the present case, it has not been disputed that in the year 1998, the office of Sarpanch of Village Rampura was reserved for Scheduled Caste and in the year 2003 it was reserved for General Category. Therefore, in the present election, keeping in view the principle of rotation, this office was reserved for Women. It is also not disputed in the written statement that office of Sarpanch in village Hair was never reserved either for Scheduled Caste category or for Scheduled Castes (Woman) or Women. However, this year, as per the roster, the said village has been reserved for the Scheduled Caste. In view of these facts, we are of the opinion that the Deputy Commissioner (respondent No. 3) was not justified to issue the impugned corrigendum vide notification dated 23.6.2008 changing the reservation of the office of Sarpanch of village Rampura from Women to Scheduled Caste and the office of Sarpanch of village Hair from the category of Scheduled Caste to General. In the written statement, it has been stated that the said change has been made solely on the basis of recommendation made by the District Development and Panchayat Officer,

Amritsar, who had requested that the office of Sarpanch of village Hair should be reserved for General Category as the population of the

Scheduled Castes in the said village is less whereas office of Sarpanch of village Rampura should be changed from Women to Scheduled Castes

as the population of Scheduled Castes in that village is more. Neither any provisions of Section 12 of the Act nor Rule 3 of the Rules provide that

the office of Sarpanch in a village is to be reserved for Scheduled Caste or Scheduled Caste (Women) or Women where the population of the said

category is more. Sub-section (4) of Section 12 of the Act only provides that the offices reserved under this section shall be allotted by rotation to

different Gram Panchayat at the time of every general election in such manner as may be prescribed. Sub-rule (1) of Rule 3 of the Rules provides

that the Deputy Commissioner shall, by notification in the official Gazette, reserve the offices of the Sarpanches of Gram Panchayats for the

persons belonging to Scheduled Castes (including one-third women belonging to Scheduled Castes) in the same proportion as the population of

the Scheduled Castes in the district bears to the total population of the district. The offices of Sarpanches of Gram Panchayats shall be reserved as

per the roster prepared by the Deputy Commissioner. Sub-rule (2) further provides that one-third offices of the Sarpanches (including those

reserved for women belonging to Scheduled Castes) shall be reserved for the women. The reservation shall be prepared as per the roster

prepared by the Deputy Commissioner and Sub-rule (3) provides that the roster referred in sub-rules (1) and (2) shall be prepared block-wise by

the Deputy Commissioner. Thus, in the Rules no where it is provided that an office of Sarpanch of a village Gram Panchayat is to be reserved for a

particular category where the population of that category is more in the village. Vide earlier notification dated 8.5.2008, 31 offices of the

Sarpanches of different Gram Panchayats of Block Verka have been reserved for Scheduled Castes (Women) and Women from serial Nos. 27 to

58, which is one-third of the total offices of the Sarpanches of the said Block i.e. 94. Out of this 31 offices of the Sarpanches include 13

Scheduled Castes (Women) and 18 Women. Thus, the reservation was made as per the roster prepared by the Deputy Commissioner. It is not

the case of the respondents that in the roster there was any mistake committed by the Deputy Commissioner. Even if the reservation of the office of

Sarpanch of Gram Panchayat of village Hair was to be changed from Scheduled Castes to General, then in that situation the office of Sarpanch of

Scheduled Caste should have been given to a village in which the post of Sarpanch was reserved for General Category. There was no reason to

inter se change the reservation of office of Sarpanch of Village Gram Panchayat Rampura to Scheduled Caste, which was reserved for Women.

By the impugned corrigendum not only the percentage of reservation of the office of Women has been reduced, by the percentage of the

reservation of the Scheduled Castes has also been reduced, resulting in change of ratio.

15. By the impugned corrigendum, one office of the Women reserved for women has been substituted by the category of Scheduled Caste. By this

change, the number of reservation of the Women has been reduced from one-third of the total members, i.e. from 31 to 30. This change not only

violates Section 12 of the Act read with Rule 3 of the Rules, but also Clause (4) of Article 243D of the Constitution of India.

16. Therefore, the action of respondent No. 3 in changing the category from Women to Scheduled Caste by the impugned corrigendum is not only

illegal and violative but also wholly without jurisdiction. The justification given by respondent No. 3 in this regard is not tenable. In the written

statement, it has been stated that the said corrigendum was issued for correcting the mistake committed earlier. But, it appears that there was no

mistake, illegality or error in the reservation made in the earlier notification and the impugned corrigendum has been issued illegally by the Deputy

Commissioner, Amritsar under political pressure and with intention to give benefit to some persons of village Hair where the reservation has been

changed from the category of Scheduled Caste to General.

17. In view of the above, this petition is allowed and the impugned corrigendum 23.6.2008 so far as it relates to Gram Panchayat of Village

Rampura, is quashed and the respondents are directed to conduct the election in accordance with law of the said Village Gram Panchayat as per

the reservation made vide notification dated 8.5.2008.