

(2015) 08 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : LPA Nos. 836, 837, 845 of 2015 (O&M) and CWP No. 10442 of 2015 (O&M)

State of Punjab and Others

APPELLANT

Vs

Manjit Singh Sethi and Others

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Constitution of India, 1950 — Article 243T, 334
Criminal Procedure Code, 1973 (CrPC) — Section 467, 468

Citation : (2015) 3 RCR(Civil) 951

Hon'ble Judges : Hemant Gupta, J; Lisa Gill, J

Bench : Division Bench

Advocate : Kamal Sehgal, Additional A.G., for the Appellant; D.S. Patwalia, Senior Advocate and Salil Sablok, Advocates for the Respondent

Judgement

Hemant Gupta, J—This order shall dispose of Letters Patent Appeals under Clause X of the Letters Patent bearing Nos. 836, 837 and 845 of 2015 preferred against the common judgment passed by the learned Single Judge of this Court on 20.04.2015. This order shall also dispose of CWP No. 10442 of 2015 wherein the petitioner has invoked the writ jurisdiction of this Court claiming a writ of mandamus for directing the respondents to convene a meeting for the election of Mayor, Senior Deputy Mayor and Deputy Mayor of the Municipal Corporation, Mohali.

2. However, for the facility of reference, the facts are being taken from LPA No. 836 of 2015 wherein the challenge is to the order passed by learned Single Bench of this Court on 20.04.2015 whereby the writ petitions were allowed and the reservation for the post of Mayor from the category of Women of the Municipal Corporation, S.A.S. Nagar, Mohali, was set aside.

3. The Municipal Corporations in the State of Punjab are constituted under Punjab Municipal Corporation Act, 1976 (for short "the 1976 Corporation Act"). Section 6-A prescribing the reservation of the post of Chairperson was inserted in

the 1976 Corporation Act after Chapter IX-A inserted vide 74th amendment in the Constitution of India. The relevant Article 243T contemplating reservation for the office of Chairman of the Municipality for the Scheduled Castes, Scheduled Tribes and Women reads 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) 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 Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) 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 of a State may, by law, provide.

(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 Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens."

4. In pursuance of provisions of sub-clause (4) of Article 243T, Section 6-A was inserted in the 1976 Corporation Act, which reads as under:-

"6-A. Reservation for the Offices of Chairperson

Offices of Mayors of Corporations shall be reserved by rotation in the prescribed manner for the members of the Scheduled Castes, Backward Classes and Women in the following ratio, namely:-

(a) five per cent for Scheduled Castes;

(b) two per cent for Backward Classes; and

(c) five per cent for women including women belonging to the Scheduled Castes.

XXXXX XXXXX

Section 2: Definitions - In this Act, unless the context otherwise requires,-

(1) xxxx xxxxx

(37) "prescribed" means prescribed by rules made under this Act;

xxxx xxxxx"

5. In terms of provisions of Section 6-A, the State Government has prescribed manner of reservation for the offices of Mayors of the Corporations for members of Scheduled Castes, Backward Classes and Women by publishing the "Reservation for the Offices of Mayors of Corporations Rules, 1996" (for short "the Rules"). At the time of framing the Rules, there were only three Municipal Corporations i.e. Amritsar, Jalandhar and Ludhiana. Rule 2 of the Rules prescribes that the offices occurring at Serial Nos. 10, 32, 51, 70 and 95 shall be reserved for the members of Scheduled Castes and the offices occurring at Serial Nos. 14, 34, 53, 75 and 93 shall be reserved for the women including the women belonging to Scheduled Castes whereas offices occurring at Serial Nos. 18 and 77 shall be reserved for the members of Backward Classes. Such Rule was amended on 29.04.1999 wherein the offices occurring at Serial Nos. 13, 36, 54, 79 and 94 were ordered to be reserved for the members of the Scheduled Castes; offices occurring at Serial Nos. 18, 37, 59, 81 and 100 to be reserved for women including women belonging to the Scheduled Castes whereas the offices occurring at Serial Nos. 23 and 76 were ordered to be reserved for the members of the Backward Classes. The said Rule 2 (1) was substituted on 29.04.1999 after the Municipal Corporation, Patiala was established. Subsequently, Municipal Corporation, Bathinda was established on 10.4.2003. The earmarked vacancies falling for reservation for the office of Chairperson/Mayor of Municipal Corporations amongst Scheduled Castes, Women and Backward Classes as per the Schedule of the Rules, as amended from time to time prior to 1.6.2012 are as under:-

6. The Rules were again amended on 20.7.2007 to reserve offices at Serial No. 10, 36, 54, 77 and 93 for the members of Scheduled Castes; offices occurring at Serial Nos. 17, 43, 64, 85 and 96 for women including women belonging to Scheduled Castes and offices occurring at Serial Nos. 24 and 81 for the members of the Backward Classes. The amended Rule 2(1) reads as under:

"2. (1) Out of the hundred offices of Mayors of the Corporations falling vacant in elections conducted from time to time shall be reserved for the members of the Scheduled Castes and the offices occurring at serial numbers 10, 36, 54, 77 and 93 shall be reserved for the members of Scheduled Castes, and the offices occurring at serial numbers 17, 43, 64, 85 and 96 shall be reserved for women including women belonging to the Scheduled Castes. Similarly, the offices occurring at Serial numbers 24 & 81 shall be reserved for the members of the Backward Classes".

7. It was on 19.01.2011, the Municipal Corporation, S.A.S. Nagar, Mohali was constituted. Municipal Corporations, Moga, Pathankot and Phagwara were constituted on 26.07.2011, whereas, the Municipal Corporation Hoshiarpur was constituted on 17.9.2013. It is on 01.06.2012, said Rule was again amended so as to substitute Schedule as provided in Rule 2(2) of the Rules. The same reads as under:-

"2. In the Reservation for the Offices of Mayors of Corporations Rules, 1996, for the existing Schedule, the following Schedule shall be substituted, namely:-

8. By virtue of amendment made on 01.06.2012, it was the Schedule alone, which was substituted. As a consequence thereof, the offices occurring at Serial No. 10, 36, 54, 77 and 93 are reserved for the members of Scheduled Castes; offices occurring at Serial Nos. 17, 43, 64, 85 and 96 are reserved for women including women belonging to Scheduled Castes whereas offices occurring at Serial Nos. 24 and 81 are reserved for the members of Backward Classes and all other offices are meant for General Category. But which of the Municipal Corporations would fall at the numbers mentioned in Rule 2(1), is not specified in the Schedule. The Schedule is to the effect that the offices are meant for General or reserved for the Scheduled Castes, Women and Backward Classes. But how the reservation will be rotated from amongst the Municipal Corporations, is not specified.

9. The learned Single Judge noticed that the elections for six Municipal Corporations of Pathankot, Phagwara, Hoshiarpur, SAS Nagar (Mohali), Moga and Bathinda were held on 22.02.2015 and the result declared on 26.02.2015. It has also been found that on 05.03.2015 vide Annexure P-4 Office of Mayor of Municipal Corporation, Bathinda, was reserved for Scheduled Castes and that of S.A.S. Nagar, Mohali for Women. The first election of Bathinda was held in the year 2008. As per the Schedule amended on 19.07.2007, the 10th reserved point was meant for Bathinda, but was not reserved for the members of Scheduled Castes but such reservation was never challenged till the filing of CWP No. 24010 of 2014 titled Amandeep Singh Sohi v. State of Punjab, which was decided on 25.11.2014 directing to decide the representation of the petitioner therein.

10. The learned Single Judge found that the methodology envisaged for implementation of the reservation policy for rotation as per original Schedule under the Rules indicates that the initial Block of Amritsar, Jalandhar and Ludhiana and all the subsequent Municipal Corporations have to be inter se placed keeping in view the respective dates of upgradation/creation and then such Block rotated over a running roster of 100 vacancies thereby to identify the names of Municipal Corporations falling under different reserved points on the running roster. Thus, it was found that 17th roster point for election for the office of Mayor would have to be assigned to Municipal Corporation, Moga and not to SAS Nagar, Mohali.

11. The learned Single Judge rejected an argument raised by the petitioners that the reservation has to be implemented by placing the Municipal Corporations in an alphabetical order, as misconceived. Consequently, reservation for the office of Mayor for Municipal Corporation, S.A.S. Nagar, Mohali for the category of women was set aside.

12. The entire basis of the arguments raised by the State is based upon the roster framed prior to 01.06.2012, the same being said to be in continuation of the earlier rosters. The said argument is not tenable as there is no reference in Rule 2 or the Schedule that the present roster is in continuation of the earlier rosters. The argument that after every General election, Municipal Corporation elections are placed in order of their election due dates or where the election due dates are common, the Corporation which put election in English alphabetical order cannot be made out as none of such conditions find mention in the Rules or the Schedule attached. The finding recorded by the learned Single Judge that the initial block of Amritsar, Jalandhar & Ludhiana and all the subsequent Municipal Corporations, have to be inter-se placed keeping in view the respective up-gradation / creation and then such Block rotated over a running roster of 100 vacancies, is also not sustainable. The arguments raised or the finding returned in fact adds words to the Rules, which is impermissible. The roster framed prior to 01.06.2012 cannot be extended to the elections to be conducted thereafter in the absence of any provisions in the Rule or the Schedule appended to Rules. The earlier reservation as per the original Rules framed in the year 1996 or later amended on 29.04.1999 ceases to be effective after the same were substituted on 19.07.2007. The Rule 2(1) as substituted has not been amended in the year 2012 when only Schedule was substituted.

13. We find that the Schedule framed on 01.06.2012 cannot be substituted or interpreted by the State Government or by the Courts in any other manner than as apparent from the reading of the Rules. Neither the State Government nor the Courts can add words to the provisions of the Rules having force of law. A Constitution Bench judgment reported as *Mrs. Sarah Mathew Vs. The Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and Others*, (2013) 12 AD 1 : AIR 2014 SC 448 : (2014) CriLJ 586 : (2013) 15 JT 97 : (2014) 1 RCR(Criminal) 590 : (2013) 14 SCALE 404 : (2014) 2 SCC 62 held as under:-

"45. It is argued that a legislative *casus omissus* cannot be supplied by judicial interpretation. It is submitted that to read Section 468 Cr.PC to mean that the period of limitation as period within which a complaint/charge-sheet is to be filed, would amount to adding words to Sections 467 and 468. It is further submitted that if the legislature has left a lacuna, it is not open to the court to fill it on some presumed intention of the legislature. Reliance is placed on *Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others*, AIR 2003 SC 2434 : (2003) 2 CTC 564 : (2003) 4 JT 225 : (2003) 4 SCALE 241 : (2003) 6 SCC 659 : (2003) 3 SCR 762 : (2003) 2 UJ 1102 : (2003) AIRSCW 2445 : (2003) 3 Supreme 729 , *Bharat Aluminium Company and Others Vs.*

Kaiser Aluminium Technical Service, Inc. and Others etc. etc., (2012) 3 ARBLR 515 : (2012) 110 CLA 293 : (2012) 4 ComplJ 345 : (2012) 5 CTC 615 : (2012) 9 JT 27 : (2012) 9 JT 105 : (2013) 1 RCR(Civil) 1 : (2012) 8 SCALE 333 : (2012) 9 SCC 552 and several other judgments of this Court where doctrine of casus omissus is discussed. In our opinion, there is no scope for application of doctrine of casus omissus to this case. It is not possible to hold that the legislature has omitted to incorporate something which this Court is trying to supply. The primary purpose of construction of the statute is to ascertain the intention of the legislature and then give effect to that intention. After ascertaining the legislative intention as reflected in the Forty-second Report of the Law Commission and the Report of the JPC, this Court is only harmoniously construing the provisions of Chapter XXXVI along with other relevant provisions of the Criminal Procedure Code to give effect to the legislative intent and to ensure that its interpretation does not lead to any absurdity. It is not possible to say that the legislature has kept a lacuna which we are trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. The authorities cited on doctrine of casus omissus are, therefore, not relevant for the present case."

14. In terms of Rule 2(2) of the Rules, the Municipal Corporations at Serial Nos. 10, 17, 24, 36, 43, 54, 64, 77, 81, 85, 93 and 96 are reserved either for the Scheduled Castes, Women or Backward Classes candidates, but which of the Municipal Corporations will fall at Serial No. 10 or 17 or thereafter has been left undetermined. In terms of Article 243T of the Constitution, the offices of Chairpersons of the Municipalities are required to be reserved for the Scheduled Castes, Scheduled Tribes and Women in a manner as the Legislature of a State may, by law, provide.

15. In terms of the said Constitutional mandate, the State Government has incorporated Section 6-A in the 1976 Corporation Act but the rotation of the office of the Mayor has been left to be determined in a prescribed manner i.e. in terms of the Rules made. In terms of such statutory provisions, the State Government has framed a roster as substituted on 01.06.2012 which does not prescribe as to which of the Municipal Corporations will fall for the reserved categories.

16. Therefore, we find that the Schedule framed is un-workable and defeats the mandate of Article 243T of the Constitution and Section 6-A of the 1976 Corporation Act. Since the reservation is not proper, the only option is to consider the post for General Category. The reservation has to be provided. It cannot be inferred. The process of reservation of the offices of the Chairpersons is, thus, illegal and unwarranted.

17. Thus, we find that the communication dated 05.03.2015 reserving office of the Chairperson, Municipal Corporation, S.A.S. Nagar, Mohali, as reserved for Women, is wholly illegal and unjustified. Though, we agree with the conclusion of learned Single Bench that the communication dated 05.03.2015 is illegal, but quash the same on the grounds which are other than the one recorded by the

learned Single Bench.

18. In view of the above, we do not find any merit in all the three Letters Patent Appeals and the same are dismissed.

19. Now coming to CWP No. 10442 of 2015. The petitioner has sought direction to the State Government for conducting the elections to the posts of Mayor, Senior Deputy Mayor and Deputy Mayor, which are not being conducted even after the elections to the Municipal Corporation, were conducted in the month of February, 2015.

20. Vide the above order, the reservation to the post of Mayor of the Municipal Corporation, S.A.S. Nagar, Mohali is found to be unjustified. Therefore, there is no reason as to why Municipal Corporation, S.A.S. Nagar, Mohali, is deprived of its office bearers even after almost more than 5 months of the declaration of the result.

21. Consequently, CWP No. 10442 of 2015 is allowed and we direct the State Government to conduct elections for the posts of Mayor, Senior Deputy Mayor and Deputy Mayor at the earliest but not later than 15 days from today.