

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14959 of 2016 (O&M)

Date of Decision: 19.09.2017

Paramjit Singh & Ors.

... Petitioners

VS.

State of Punjab & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDHIR MITTAL**

Present: Mr. Karan Nehra, Advocate for the petitioners

Ms. Anu Pal, AAG Punjab

Mr. Ashok Singla, Advocate for respondents No.2&3

Mr. Aakash Singla, Advocate for respondent No.4

SURYA KANT, J. (Oral)

(1) The petitioners seek quashing of the memo dated 05.03.2015 (P4) whereby the State Government reserved the offices of Presidents of some of the Municipalities, after the elections of 123 Municipalities were held on 25.02.2015, to the extent it reserves the office of President of Municipal Council, Kapurthala for women including women members of Scheduled Castes. They also seek quashing of the order dated 16.05.2016 (P8) whereby the State Government has turned down their representation for de-reserving the post of President of Municipal Council, Kapurthala.

(2) The facts may be noticed briefly.

(3) The elections for 123 Municipalities in the State of Punjab were held on 25.02.2015. Three writ petitioners successfully contested the election from Wards No.29, 9 & 4, respectively of Municipal Council, Kapurthala and were declared elected as Councillors on 11.03.2015. Soon after the elections, the State Government passed the impugned order dated

were reserved for Scheduled Castes and Women including Women members of Scheduled Castes etc. Amongst the Class-I Municipalities, the post of President of Municipal Council, Kapurthala was reserved for women. The petitioners, who are aspirants to contest the election of President of their Municipalities, thus approached this Court by way of **CWP No.1107 of 2016 (Paramjit Singh & Ors. vs. State of Punjab & Ors.)** which was disposed of vide order dated 20.01.2016 in following terms:-

*“Since the petitioners have not questioned the vires of any provisions rather have alleged that reservation is being made contrary to the statutory provision and the Rules framed thereunder, we dispose of the writ petition without expressing any views on merit with a direction to respondents No.1 & 2 to call for the records and decide the petitioner’s objections-cum-representation as well as treat this writ petition as representation on their behalf and determine the issue in accordance with law as early as possible but well before the next election of the President of the Municipality. The judgement rendered by this Court in **LPA No.836 of 2015 (State of Punjab & Ors. vs. Manjit Singh Sethi)** and other connected matters decided on 04.08.2015 shall also be duly considered while deciding the representation.”*

(4) The State Government vide order dated 16.05.2016 (P8) rejected the petitioners’ representation observing as follows:-

“That during the above hearing, all the petitioners submitted their points in their joint submission before the hearing authority that (1) reservation, allotted to the post of President, should only be declared prior to the election and not thereafter; (2) in all the Municipalities, the reservation should be considered afresh on the same pattern as decided in L.P.A. No.836 of 2015 – Manjit

Singh Sethi vs. State of Punjab and Ors. – Reservation of Mayor, Municipal Corporation, S.A.S. Nagar Case and reservation to the post of President of their Municipal Council, Kapurthala be reconsidered; and (3) after the upgradation of Municipal Council, Hoshiarpur into Municipal Corporation, Hoshiarpur, the reservation should be started from No.1,2 and 3 onwards afresh.

7. *After minutely going through the three points of grievances of the petitioners, it is point-wise cleared that (1) reservation to the post of President is obviously declared before the President election and not before the General Election because as per law, the calculation of percentage is determined only after the exact number of the Municipalities going to election; (2) there is a separate Act namely Punjab Municipal Corporation Act, 1976 and also there is a amended Roaster u/s 6-A of the said Act, 1976 which applicable in the case of Municipal Corporations But there is another Act and Rules applicable in the case of Municipal Councils namely Punjab Municipal Act, 1911 and Determination of the number of Elected Members and Reservation of Offices of Presidents of Municipalities Rules, 1994 respectively in which there are provided fixed schedules which are in alphabetical and class-wise manner of the municipalities; and (3) the reservation already allotted to the Municipal Council, Kapurthala is justified as per law and cannot be start afresh from starting number 1, 2 and 3.”*

(5) Still aggrieved the petitioners have preferred this writ petition.

Legal Framework

(6) The affairs of the Municipalities including election are regulated under the provisions of Punjab Municipal Act, 1911. Its Section 8 provides reservation of seats according to which the State Government shall

by notification, reserve such number of seats for the Scheduled Castes as may be determined as per the criteria prescribed therein. Such reserved seats are to be allotted by rotation to different constituencies to be known as wards in the Municipalities. The provision further provides that one seat shall be reserved for Backward Classes which may be allotted by rotation to different constituencies and that not less than one-third of the total number of seats reserved for Scheduled Castes shall be further reserved for women belonging to Scheduled Castes.

(7) Section 8-A provides for reservation of offices of Presidents and it reads as follows:-

“Reservation of offices presidents - “Offices of Presidents of the Municipalities in the State shall be reserved by rotation in the prescribed manner in the following ratio, namely : -

- (a) five per cent for the Scheduled Castes;*
- (b) five per cent for women including women belonging to the Scheduled Castes; and*
- (c) two per cent for the Backward Classes.”*

(8) It may thus be seen that in terms of Section 8-A(b), five per cent offices of the Presidents are to be reserved for women including women belonging to Scheduled Castes and such reservation shall be on rotation basis.

(9) To give effect to the above-stated legislative policy, the State Government has formulated ‘Determination of the number of Elected members and Reservation of Offices of Presidents of Municipalities Rules, 1994’. Rule 5 of these Rules reads as follows:-

“5. Reservation of offices of Presidents.- (1) The reservation in the offices of the Presidents of the Municipalities in the State as laid down in Section 8-A of

the Act, shall be effected by rotation in alphabetical order as indicated in Schedules III, IV, V and VI.

(2) In the Municipalities specified in Schedule, offices of Presidents at serial Number 1, shall be reserved for the Scheduled Castes, Offices of the Presidents at serial Number 2 shall be reserved for women including women belonging to Scheduled Castes and offices of Presidents at serial Number 3 shall be reserved for Backward Classes.

(3) In the Municipalities specified in Schedule IV, V and VI, Offices of Presidents at serial numbers 1 and 2, shall be reserved for the Scheduled Castes. Offices of Presidents at Serial number 3 and 4, shall be reserved for women including women belonging to the Scheduled Castes and Offices of President at Serial No. 5 shall be reserved for the Backward Classes.

(4) In the second election the reservation of Offices of Presidents referred to in sub-rule (2), shall be given in the Municipalities specified in Schedule III at serial numbers 4 to 6. In the Municipalities specified in Schedule IV, referred to in sub-rule (3), the reservation of offices of Presidents shall be given at serial numbers 6 to 10. In the Municipalities specified in Schedules V and VI referred to in sub-rule (3), the reservation of Offices of Presidents at serial Number 4 and 5 shall be reserved for the Scheduled Castes. The offices of Presidents at serial Number 6 and 7 shall be reserved for women including the women belonging to the Scheduled Castes and the office of President at serial number 8 shall be reserved for the Backward Classes.

(5) The process of giving reservation specified in sub-rule (2), (3) and (4) shall continue for all further elections to the last serial number of the Municipalities

specified in Schedule III to VI. Thereafter, the rotation of reservation of offices of Presidents specified in sub-rule (2), (3) and (4) shall start afresh in the same order as provided in the preceding sub-rules.

Explanation.- The expression “second election” for the purposes of sub-rule (4) shall mean the general election held after the completion of normal duration of five years of a municipality.”

[emphasis applied]

(10) It may be seen that owing to the mandate of Section 8A, Rule 5(1) of the Rules explicitly provides that reservation in the offices of the Presidents of Municipalities shall be effected by rotation in alphabetical order as indicated in Schedules III, IV, V and VI. Sub-Rule (2) further provides that in the Municipalities specified in the Schedule, the offices of Presidents at Sr.No.1 shall be reserved for Scheduled Castes; at Sr.No.2 for ‘women’ including women belonging to Scheduled Castes and at Sr.No.3 it shall be reserved for Backward Classes. Sub-Rule (5) further contemplates that the process of giving reservation specified in Sub-Rule (2), (3) & (4) shall continue for all further elections to the last serial number of the Municipalities specified in Schedules III to VI. Thereafter, the rotation of reservation as specified in sub-Rule (2), (3) & (4) shall start afresh in the same order as is provided in the preceding sub-Rules. It is thus beyond any doubt that the Offices of the Presidents are to be reserved by rotation in alphabetical order and by following the order of precedence given in sub-Rule (2). This process shall continue for all the further elections also till it reaches to the last serial number of the Municipalities specified in Schedule III or IV.

(11) Schedule III contains names of 25 Municipalities of Class-I category and Municipal Council, Kapurthala is at Sr.No.11 in that Schedule. Applying the rotation system and the order of precedence given in sub-Rule (1) & (2) of Rule 5, it goes without saying that the Municipal Council, Kapurthala at Sr.No.11 would fall at No.2 in the fourth rotation and thus the office of its President has to be reserved for 'women' as per sub-Rule (2) of Rule 5 *ibid*.

What is the claim of petitioners?

(12) The petitioners' grievance is that after Section 8-A came into force in the year 1994 or the 1994 Rules which were notified on 17.11.1994, Schedule III of the 1994 Rules was substituted by Punjab Government notification dated 01.04.2006 and once Schedule III has been modified and a new Schedule came into place, sub-Rule (5) of Rule 5 comes to stand-still to the extent it provides that the process of giving reservation shall continue for all further elections to the last serial number of the Municipalities specified in Schedules III to VI. To say it differently, the petitioners contend that as soon as the new Schedule III came into force w.e.f. 01.04.2006, the rotation in alphabetical order as per Rule 5(1) will restart from Sr.No.1 and not from the stage of last elections. They urge that had the rotation system been applied in this manner, the Municipal Council, Kapurthala would not come at Sr.No.2 of the fourth rotation and thus the office of its President shall fall in the open category without any reservation. Strong reliance is placed on the observations made by a Division Bench of this Court in **State of Punjab & Ors. vs. Manjit Singh Sethi (LPA No.836 of 2015)** and other connected appeals decided on 04.08.2015.

(13) Before we advert further, it would be appropriate to explain **Manjit Singh Sethi** (supra) case which pertained to the elections of Mayor, Senior Deputy Mayor and Deputy Mayor of the Municipal Corporations. The election to those Offices is governed under a different Statute known as the Punjab Municipal Corporation Act, 1976. Though Section 6A of the Punjab Municipal Corporation Act, 1976 provides reservation for Scheduled Caste, Backward Classes and women including women belonging to Scheduled Caste in the same manner as is provided in Section 8-A of the 1911 Act but the provision in the “Reservation for Offices of Mayors of Corporations Rules, 1996” is altogether different. Rule 2(1) of these Rules provides that “*out of the hundred Offices of Mayors of the Corporations falling vacant in elections conducted from time to time, the Offices occurring at serial numbers 10, 36, 54, 77 and 93 shall be reserved for the members of the 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...*”. In the cited case, the Schedule appended with the Rules was amended on 01.06.2012, namely, before and after some of the elections for Municipal Corporations were held. Rule 2(1) whereunder specific roster points are reserved remained as such. It was in this backdrop that the Division Bench held that:-

“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 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.”

(14) The Court further held that:-

“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.”

(15) Having given our thoughtful consideration to the rival submissions, we are of the view that the view taken by this Court in **Manjit Singh Sethi's** case does not lend any support to the petitioners' case. This Court struck down the administrative decision of the State Government regarding reservation of offices of Mayors etc. as it was found that after the alterations done in the Schedule, the same had become unworkable and it defeated the mandate of Article 243T of the Constitution read with Section 6-A of the 1976 Act. The observations are thus contrary to what is sought to be propounded on behalf of the petitioners.

(16) In the case in hand, Rule 5 of the 1994 Rules is categorical in providing the manner in which reservation as mandated under Section 8-A

of the Act, is to be given effect. The effect and consequences of Rule 5 cannot be neutralized with the substitution of Schedule III of the Rules as the Schedule is merely a tool to implement the Rule. Rule 5 in its entirety must be allowed to operate in the manner as is contemplated therein so as to achieve the reservation guaranteed under Section 8-A of the Act. If the petitioners' plea that with every alteration in the Schedule should lead to a fresh start of the rotation system is accepted, it will give absolute and unguided powers to the executive to add or delete a Municipality in the Schedule III and thus keep the office of President in first three Municipalities reserved perpetually. Such a recourse will surely defeat the mandate of Section 8-A which unequivocally provides that the offices of Presidents of Municipalities shall be reserved by rotation. The modification in the Schedule cannot paralyse the principle of rotation embodied in Section 8-A of the Act.

(17) Suffice it to observe that an addition or deletion in Schedule III though may cause de-reservation or reservation of the office of President of a Municipality which as per the original Schedule might not have happened but nevertheless such incidental factor cannot undo the effect of statutory mandate of 'rotation' which is to be applied through Rule 5(2)&(5) of the 1994 Rules.

(18) There is, however, some merit in the submission of learned counsel for the petitioners that the State Government should not alter Schedule III of 1994 Rules after holding the elections of Municipalities. It is well advisable that the inclusion or exclusion from Class-I or any other category of Municipalities should take place before the elections are held so that it comes well in advance in public domain as which of the office of

President of a Municipality shall be reserved and for which category. While we are not inclined to issue any positive direction in this regard, we leave it to the State Government to examine this aspect of the matter and take an appropriate decision before the next elections. The suggested recourse will also be in conformity with the *dictum* in **People's Union for Civil Liberties & Anr. vs. Union of India & Anr. (2013) 10 SCC 1** where the Hon'ble Supreme Court held that decision taken by a voter after verifying the credentials of the candidate either to vote or not is a form of expression under Article 19(1)(a) of the Constitution and that denial of such effective right would amount to breach of Fundamental Right.

(19) For the reasons afore-stated, we do not find any merit in this writ petition and the same is accordingly dismissed.

(Surya Kant)
Judge

19.09.2017

vishal shonkar

(Sudhir Mittal)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
Yes