

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.21524 of 2016(O&M)

Date of decision: April 06, 2017

Naresh Kadyan

---Petitioner

Versus

State of Haryana and another

---Respondents

Coram: **Hon'ble Mr. Justice Rajesh Bindal**
 Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Ravi Sharma, Advocate
 for the petitioner.

HARINDER SINGH SIDHU, J.

The petitioner, who claims to be a registered voter of Gram Panchayat of village Siwan, Distt. Jhajjar and a social and animal welfare activist, has filed the present petition praying for quashing Section 8(2)(a) of the Haryana Panchayati Raj Act, 1994 (for short, 'the Act'). It is stated that this provision, as per which, the Sarpanch is to be directly elected by the voters of the Gram Sabha is contrary to the basic structure of the Constitution.

The impugned Section 8(2)(a) of the Act is reproduced below:

*“Section 8 Establishment and Constitution of Gram Panchayat- (1)
The Government may, by notification, establish a Gram Panchayat by name in every Sabha area.*

(2) Every Gram Panchayat shall consist of-

(a) Sarpanch who shall be elected by the Gram Sabha from amongst its voters, by Secret ballot;

(b) Six or twenty Panches from wards in a Panchayat area in the

manner prescribed;

(c) [-----]

(3) *All the above seats referred to on clause (b) of sub-section (2) shall be filled in by persons chosen by direct election from the wards in the Panchayat area and for this purpose each Panchayat area shall be divided into ward in such manner that the ratio between the population of each ward and the number of the seats of Panches allotted to it shall, so far as possible, be the same throughout the Panchayat area.”*

We repeatedly asked Ld. Counsel as to how a direct election to the post of Sarpanch is violative of the Basic Structure of the Constitution. He was not able to substantiate his plea.

Part IX of the Constitution by which 'Panchayats' were accorded Constitutional status as the third tier of Government was inserted by the Constitution (Seventy-Third Amendment) Act, 1992.

Articles 243B of the Constitution deals with the Constitution of Panchayats and is as under:

“243B. Constitution of Panchayats (1) *There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.*

(2) *Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.”*

As per this, every State is required to constitute Panchayats at village, intermediate and district level. However, in a State having population not exceeding twenty lakhs Panchayats at intermediate level may not be constituted.

Article 243C of the Constitution specifies the composition of Panchayats and is as under:

“243C. Composition of Panchayats.- (1) *Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:*

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) *All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.*

(3) *The Legislature of a State may, by law, provide for the representation—*

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within—

- (i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;*
- (ii) a Panchayat area at the district level, in Panchayat at the district level.*

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of—

- (a) a panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and*
- (b) a panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.”*

As per Article 243C(2) of the Constitution, all the seats in a Panchayat are to be filled by persons chosen by direct election from territorial constituencies in the Panchayat area. As per Article 243C(3) of the Constitution, the States are permitted to make law to provide for the representation of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level and of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level.

Article 234C(5) of the Constitution, is the specific provision, which deals with the elections of the Chairpersons of the Panchayats at different levels. As per Article 243C(5)(b) of the Constitution, the Chairperson of a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof. As per Article 243C(5)(a) of the Constitution, the

Chairperson of a panchayat at the village level shall be elected in such manner as

the Legislature of a State may, by law, provide.

Thus, election of Chairpersons of the Panchayats at the intermediate and district levels has to be an indirect election. They have to be elected by and from amongst the elected members thereof. They cannot be elected directly by the voters of the respective Panchayat area. But the manner of election of the Chairperson of the Panchayat at the village level is left to be regulated by law made by the State Legislature. Accordingly, it is open to the State legislature to provide for election of Chairperson at the village level to be either by direct election or by and from amongst the elected members (indirect election). By the impugned provision the Sarpanch (the Chairperson at the village level) is to be elected by the voters of the Gram Sabha. This is clearly permissible in terms of the provisions of Article 243C(5) of the Constitution.

Thus, there is no illegality in the impugned provision.

The petition is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 06, 2017
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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No