

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

Reserved on: 06.12.2018

CWP No.14629 of 2018 (O&M)

Date of decision: December 11, 2018

Surender

.....Petitioner

Versus

Civil Judge (Senior Division), Palwal-cum-Election Tribunal,
Palwal and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Sharad Mehta, Advocate for the petitioner.

Mr. Vivek Saini, DAG Haryana.

Mr. Johan Kumar, Advocate for respondent No.5.

A.B. CHAUDHARI, J

By the present petition, the petitioner-Surender has put to challenge the judgment dated 14.05.2018 passed by the Civil Judge (Senior Division), Palwal in case CIS No. EP 10-2016, by which the learned trial Court allowed the petition filed by respondent No.5 and set aside the election of the petitioner as elected Gram Panchayat Sarpanch held on 10.01.2016 with a further direction to conduct fresh election to the post of Sarpanch.

FACTS

2. Respondent No.5-Radha Rani @ Radha filed an election petition under Section 176 (4)(aa)(I) of the Haryana Panchayati Raj Act, 1994

challenging the election of Sarpanch of Gram Panchayat Galipur held on 10.01.2016, in which the petitioner-Surender was elected as Sarpanch in the reserved post for Scheduled Caste. According to respondent No.5, the petitioner above named does not belong to Scheduled Caste, but belongs to some other Backward Class and therefore, he not being Scheduled Caste was not entitled to even contest the election to the post of Sarpanch reserved for Scheduled Caste. According to her, the certificates obtained by the petitioner are all false and bogus, fabricated and forged. The petitioner filed written statement in response to the election petition and asserted that he was Scheduled Caste belonging to 'Sirkiband' Caste listed at Sr. No.37 in the list of Scheduled Castes. The certificate issued by the authorities clearly indicated that he belongs to the said Caste and therefore, he being Scheduled Caste was entitled to hold the post. The parties went to election Tribunal and examined respective witnesses. The election Tribunal finally found that the claim of the petitioner to be belonging to Scheduled Caste 'Sirkiband' was invalid as he did not belong to 'Sirkiband' and as such, declared his election as invalid and illegal. Hence, this petition.

3. In support of the writ petition, learned Senior counsel for the petitioner vehemently argued that there are various documents on record duly proved showing that the petitioner did belong to 'Sirkiband' Caste, which is admittedly a Scheduled Caste, vide Annexure P-2, his own certificate and the certificates of his relatives which have been shown at Annexure P-5 in which their Caste has been shown as 'Sirkiband' and before the names of some of the relatives 'Sirkiband' along with 'Gawar'. He submitted that the majority of his relatives indicated in Annexure P-5 have

been shown to be belonging to 'Sirkiband' which is a Scheduled Caste. According to him, merely because 'Gawar' has been added after the Caste 'Sirkiband', the petitioner cannot lose the status of Scheduled Caste. He, therefore, submitted that the election Tribunal committed a serious error in ignoring various documents of his relatives and blood relatives (Annexure P-5) so also Annexure P-6 relating to his uncle which clearly show his Caste as 'Sirkiband' issued by the Sub-Divisional Officer (Civil), Palwal, on 23.09.1986. Learned Senior counsel also submitted that the election Tribunal ought to have recorded the finding that initial burden to prove was on respondent No.5 who did not discharge the same and therefore, the election petition should have been dismissed. He then submitted that the certificates of Scheduled Caste issued to his relatives were issued by the competent authority and therefore, there is no reason why the certificates should not have been accepted. At any rate, in the alternative, he contended that the election petition should be remanded back for holding further enquiry particularly in relation to the Caste that is in question.

4. *Per contra*, learned counsel for respondent No.5 vehemently opposed the petition and argued that the blood relatives of the petitioner as is seen from the documents belong to 'Gawar' Caste, which is other Backward Class and not the Scheduled Caste. According to him, large number of certificates of his blood relatives have been filed and proved on record before the election Tribunal which clearly show their Caste as 'Gawar' which is not a Scheduled Caste. The election Tribunal has discussed the evidence documentary as well as oral and the finding of fact should not be disturbed by this Court. He prayed for dismissal of the writ petition.

CONSIDERATION

5. We have heard learned counsel for the rival parties for quite some time. We have perused the impugned judgment and the reasons recorded by the learned trial Court. We have seen all the documents filed by the petitioner as well as respondent No.5. The submission made by the learned Senior counsel for the petitioner that 'Sirkiband' having been mentioned in the certificates, though, some time along with 'Gawar' would be good enough to hold the petitioner to be belonging to 'Sirkiband' Scheduled Caste, does not appeal to us. The Caste 'Sirkiband' has been declared as Scheduled Caste in the Scheduled Caste order and no other Caste like 'Sirkiband Gawar'. In fact, there is no such Caste like 'Sirkiband Gawar'. The Constitution Bench of the Apex Court in the case of **State of Maharashtra** versus **Milind**, 2001 (1) SCC4, declared the law that addition or deletion of any word in the Caste declared as per Scheduled Caste or Scheduled Tribunal order, by any authority or the Court, is wholly impermissible.

Following the said decision of the Apex Court, we will have to reject the submission made by the learned Senior counsel for the petitioner to that effect. Therefore, the Caste 'Sirkiband' being Scheduled Caste, there is no question of adding 'Gawar' along with it.

6. The next question that falls for consideration is about the finding of fact recorded by the election Tribunal that the petitioner does not belong to 'Sirkiband' Scheduled Caste and therefore, was disqualified for contesting the election to the post of Sarpanch. At the outset, we reproduce the following chart for brevity which describes the particulars against the names

of the blood relatives of the petitioner regarding the Caste in the relevant documents:-

Exhibit	Name(s) and relation of the blood relative(s)	Caste mentioned in the document(s)
Ex.PW2/1	Sunil, Real Brother	“Gawar”
Ex.PW3/1	Surinder (Petitioner himself)	“Gawar”
Ex.P/1	Jagbir, Father	“Gawar”
Ex.2 & 3	Girraj Singh, Real Uncle (Tau)	“Gawar”
Ex.P4	Petitioner himself, Admission Register of the petitioner	“Gawar”
Ex.P6	Petitioner himself, Admission withdrawal register of Govt. Primary School	“Gawar”
Ex.P7	Petitioner himself, Govt. School record	“Gawar”, Sirkiband”
Ex.P8	Sunil and Surjeet, Real Brothers	“Gawar”
Ex.P9 & P10	Seema, Real Sister	“Gawar”
Ex.P11 & P12	Bhagat Singh, Cousin Brother	“Gawar”

7. Perusal of the above chart clearly shows that the blood relatives of the petitioner are 'Gawar' by Caste as indicated in the aforesaid documentary evidence. Therefore, it is clear that none of the above blood relatives belong the Caste 'Sirkiband' Scheduled Caste mentioned against their names in the documents. It is true that some of the certificates including the one of his uncle indicate the Caste as 'Sirkiband'. But then majority of the blood relatives have been shown to be belonging to 'Gawar' Caste. The petitioner does not have any document with him prior to declaration of the list of Scheduled Caste. His heavy reliance placed on certificate dated 23.09.1986 (Annexure P-6) of his uncle would not help him as the certificate was issued by the Sub Divisional Officer (Civil), Palwal on the report of Tehsildar, Palwal, but then the said certificate also show that his Caste is mentioned as 'Sirkiband Gawar'. The said certificate of his uncle is therefore,

liable to be rejected as evidence or the claim that he belongs to 'Sirkiband' because there is no Caste as 'Sirkiband (Gawar)'.

8. The finding of facts recorded by the learned trial Court have been seen by us besides the fact that we have already pointed out the documentary evidence showing that the blood relatives of the petitioner belong to 'Gawar'. We agree with the finding of fact recorded by the learned election Tribunal. There is no need for us to dilate any further in the extraordinary writ jurisdiction. In the result, the petition is bereft of any merit. Hence, we make the following order:-

ORDER

- (i) **CWP No.14629 of 2018** stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

December 11, 2018
mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**