

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 19568 of 2018

Date of Decision: 13.09.2018

Gurmeet Singh

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Dr. Surya Parkash, Advocate
for the petitioner(s).

Mr. Sunil Kumar Vashisth, Deputy Advocate
General, Haryana for respondents No.1 to 4.

Mr. Sant Kashyap, Advocate
for respondent No.5.

Shekher Dhawan, J.

Present writ petition is for quashing the impugned letter/order dated 07.06.2018 (Annexure P13), wherein respondent No.2-Deputy Commissioner, Panchkula has again passed the same order, which was quashed by the co-ordinate Bench of this Court on 15.09.2015 (Annexure P8) in case ***Balbir Singh v. State of Haryana and Others (CWP-16762-2015)*** and order dated 02.02.2017 (Annexure P12) passed in case ***Tarsem Singh v. State of Haryana and Others (CWP-4576-2016)***.

Petitioner, who is resident of village Kiratpur, Block Pinjore, Tehsil Kalka, District Panchkula has filed the writ petition under Article 226/227 of the Constitution of India on the ground that there are brick kilns

where the migrant labourers from the States of Bihar & Uttar Pradesh come every year to work. In the 2011 census, total population of the village was recorded as 1996. The population of scheduled caste was wrongly recorded as 230. The migrant labourers of Bihar and Uttar Pradesh were also included in the population of the village as scheduled caste and their population was wrongly shown as 11.15% of the population. Article 341 of the Constitution of India and Sections 2(xiv), 2(lviii), 9, 162, 163, 167 & 168 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as “the Act”) are reproduced as under:-

“Article 341 of the Constitution of India: Scheduled Castes:

(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

The Haryana Panchayati Raj Act, 1994:

Section 2 (xlv) "population" means the population as

ascertained at the last preceding census of which the relevant figures have been published ;

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Section 2 (lviii) “Scheduled Castes” means such castes, races or tribes or parts of or groups within, such castes, races or tribes as are deemed to be Scheduled Castes in relation to the State of Haryana under article 341 of the Constitution of India.

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Section 9: Reservation of seats in Gram Panchayat:

(1) Seats shall be reserved for the Scheduled Castes in every Gram Panchayat 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 election in that Panchayat as the population of the Scheduled Castes in the Panchayat area bears to the total population of that area and such seats may be allotted to such wards having maximum population of persons belonging to Scheduled Castes.

(2) Not less than one-third of the total number of seats reserved under sub-section (1) shall be reserved for women belonging to the Scheduled Castes and such seats may be allotted by rotation and by lots to different wards reserved under sub-section (1).

(3) Not less than one-third (including the numbers of seats reserved for women belonging to the Scheduled Castes) 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 and by lots to different wards in a Panchayat except those falling under sub-section (1) and (2).

(4) *The offices of the Sarpanches in the Gram Panchayat in a block shall be reserved for the Scheduled Castes and Women :*

Provided that the number of offices of Sarpanches reserved for the Scheduled Castes in the Block shall bear, as may be, the same proportion to the total number of such offices in the Block as the population of the Scheduled Castes in the State bears to the total population of the State;

Provided further that not less than one-third of the total number of offices of Sarpanches in the block shall be reserved for women including one-third offices of women Sarpanches from Scheduled Castes;

Provided further that the number of offices of Sarpanches reserved under this sub-section shall be rotated to different Gram Panchayats first having the largest maximum population of Scheduled Castes and secondly having the second largest maximum population of such classes and so on.

(5) *The reservation of the seats under sub-section (1) and (2) and the reservation of office of Sarpanches (other than the reservation of women) under sub-section (4) shall cease to have effect on the expiration of the period specified in article 334 of the Constitution of India.*

(6) *Every Panchayat shall have one Panch belonging to Backward Classes if their population is two percentum or more of the total population of the sabha area and such seat shall be allotted to such ward having maximum population of persons belonging to Backward Classes.*

(7) *Reservation of seats as mentioned in aforesaid sub-sections shall be reviewed after every decennial census.*

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Section 162: Electoral Division: *Every sabha area, block and district shall be divided into wards as referred in sections 8(3), 58(2) and 119(b) of this Act.*

Section 163: List of voters for every electoral division: *For every electoral division, there shall be a list of voters which shall be prepared and maintained in accordance with the provisions of this Act under the superintendence, direction and control of the State Election Commission.*

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Section 167: Name of person not to be included in the list of voters for more than one electoral division: *No person shall be entitled to have his name included in the list of voters for more than one electoral division of the same Gram Panchayat, Panchayat Samiti or Zila Parishad.*

Section 168: Name of person not to be included in the list of voters more than once: *No person shall be entitled to have his name included in the list of voters for any electoral division*

more than once.”

As per petitioner, reservation of the seats as per sub-Sections (1) & (2) of Section 9 of the Act and the reservation of the office of Sarpanches under sub-Section (4) thereto shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India. Every Panchayat shall have one Panch belonging to backward classes if their population is 2% or more of the total population, reservation of the seats shall be reviewed after every census.

The matter in controversy remained under challenge. Sarpanch and other inhabitants of the village submitted a representation on 30.03.2015 to the official respondents against the proposed reservation. Respondent No.3 sought clarification vide letter dated 28.04.2015 (Annexure P2) and reported that the total population of the panchayat is 1454 and total population of the scheduled caste is 0.061% and as per census of 2011, the population is shown as 230, which was living in a brick kiln having no voter card or ration card. Sarpanch of the village again represented to respondent No.3 against the wrong reservation of the post of Sarpanch of village Kiratpur, for scheduled caste as they were migrant labourers. Sarpanch submitted a representation on 07.05.2015. On 19.05.2015, respondent No.4 held the draw for reservation for the post of Sarpanch in Pinjore block and the same was challenged by way of appeal by the residents of the village through Sarpanch. Respondent No.2 called a report from the Tehsildar Kalka, who had submitted his reported that there were only 13 scheduled castes of permanent families in the village and remaining 314 are those who are temporary migrants working on the brick kilns as labourers. Despite

the said report, respondent No.2 dismissed the appeal on 11.06.2015.

The above decisions dated 19.05.2015 and 11.06.2015 were challenged before this Court in CWP-16762-2015. This Court directed respondent No.2 to consider the entire matter in accordance with law and pass order within 15 days, vide order dated 15.09.2015 (Annexure P8). However, respondent No.2 again passed the same order.

Petitioner and other residents of the village came to know about passing of order dated 11.06.2015 and on 01.01.2016, they had sent a legal notice as well as representation to respondent No.2 taking the same pleas that migrant labourers, working on the brick kiln, were not to be taken into consideration as they were not having voter card and ration card. Respondent No.2 issued letter dated 07.06.2018 for filling up the vacant posts of Sarpanches and Panches and the said order is illegal, unconstitutional and against the law settled by this Court and as such present writ petition before this Court.

Having issued notice of motion, respondent-State put their appearance and filed an affidavit of respondent No.3 on behalf of respondents No.2 to 4 taking the plea that present writ petition is not maintainable as petitioner has not approached this Court with clean hands and the matter in controversy has already been decided in ***COCP-3016-2017 in CWP-4576-2016*** titled as ***“Tarsem Singh v. Gauri Prashar Joshi”***. Petitioner has concealed the material facts and as such present writ petition is not maintainable.

As per respondents, Principal Secretary to Government of Haryana, Development & Panchayats Department, on 31.05.2018 passed the

following order:-

“I have gone through all the orders passed in this matter as well as provisions of Haryana Panchayati Raj Act, 1994 and after consultation with the State Election Commissioner, I am left with no option but to keep the post of Sarpanch of Gram Panchayat Kiratpur reserved for scheduled caste (Women). Keeping in view the figures of population as published in 2011 census. Hence, the Gram Panchayat Kiratpur is reserved for Scheduled Caste (Women). Further process for election be initiated.”

As per deponent, the Deputy Commissioner, Panchkula constituted a committee to conduct fresh detailed survey vide letter dated 05.04.2017 (Annexure R4) and report was submitted by the committee on 22.11.2017 (Annexure R5) and all the facts were brought to the notice of this Court in COCP-3016-2017. After disposal of the said COCP, Principal Secretary, Development & Panchayats Department passed the order dated 31.05.2018.

As per deponent, State Election Commission, vide letter dated 25.07.2018 (Annexure R8) issued election programme for election of vacancies and on 08.08.2018 issued the time schedule for the conduct of bye-election to fill up the vacant seats of Panches, Sarpanches, Panchayat Samitis and in compliance of the notification, Deputy Commissioner, Panchkula issued letter dated 10.08.2018 (Annexure R11) to the office of the deponent. Vide letter dated 16.08.2018 (Annexure R12), State Election Commission issued re-scheduled programme for bye-election. The

respondents prayed that present writ petition is liable to be dismissed on the principle of *res judicata* under Section 11, Part-I of the Code of Civil Procedure as the matter has already been adjudicated vide CWP-4576-2016 and the election process has already been initiated.

Having considered the submissions made by learned counsel for the parties and appraisal of the case, this Court is of the considered view that the matter in controversy revolves around the reservation for the post of Sarpanch/Panches on the basis of the population of the scheduled caste category. The matter in controversy has already been decided by this Court in COCP-3016-2017 In CWP-4576-2016 by the co-ordinate Bench of this Court and the following order was passed:-

“The present contempt has been filed alleging that the order dated 2.2.2017 has been violated inasmuch as while conducting a fresh survey the temporary/migrant labourers belonging to Scheduled Caste Category of other States have been included in the population of Gram Panchayat, Kiratpur so as to form the basis for reservation of the office of Sarpanch.

Upon notice replies have been filed.

In compliance of the order dated 16.1.2018 Ms.Richa Rathi, SDM Panchkula and Ms.Martina Mahajan, BDPO,Pinjore are also present.

It has been shown that as per the definition of population engrafted in Section 2 Clause (xliv) read with Section 9 of the Haryana Panchayati Raj Act,1994 (for short the Act), the survey is to be effected by calculating the

population of Scheduled Castes based on the last CENSUS. In compliance of the directions passed by this Court, a fresh detailed survey has been undertaken by specifying the population category-wise. It has nowhere been shown by the counsel for the petitioner that a deviation from the definition of “Population” as per provisions of the Act can be made by introducing the element of migrant labourers or any other temporary resident of village being not registered voters of the constituency, although the plea appears to be worth consideration by the authorities of the Government.

As far as the present contempt is concerned this Court finds that there is no willful disobedience. However, the Secretary, Panchayat, Government of Haryana as well as State Election Commissioner, Haryana, in consultation, are directed to look into the aspect raised in the present contempt and as explained to SDM, Panchkula.”

As per view taken by this Court earlier in COCP-3016-2017 and CWP-4576-2016, the definition of “population” is to be seen in view of Section 2(xliv) read with Section 9 of the Act and that survey is to be made on the basis of last census, the authorities have already considered that fact. The matter has also been looked into at the level of Principal Secretary to Government of Haryana, Development & Panchayats Department on 31.05.2018 vide Annexure R3 and relevant portion thereof has been reproduced in the earlier part of this judgment.

Otherwise also, the election process has already been initiated

and at the time of arguments, learned State counsel pointed out that the election has already been held and as such present writ petition is not maintainable.

In view of above, present writ petition is not maintainable on the principle of *res judicata* and the fact that election has already been held, the same stands dismissed.

(Shekher Dhawan)
Judge

September 13, 2018
“DK”

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No