

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

Reserved on: 10.12.2018

CWP No.24433 of 2018 (O&M)

Date of decision: December 19, 2018

Harjinder Singh

.....Petitioner

Versus

State of Haryana and others

....Respondents

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

Present: Mr. S. S. Sahu, Advocate for the petitioner.

Mr. Vivek Saini, DAG Haryana.

HARNARESH SINGH GILL, J

By the present writ petition, the petitioner-Harjinder Singh has put to challenge the judgment dated 20.08.2018 (Annexure P-4) passed by the learned Additional Civil Judge (Sr. Div.)-cum-Presiding Officer, Election Tribunal, Ratia, in case CIS No.: EP 11 of 2016, by which the election Tribunal allowed the election petition that was filed by respondent No.8 and set aside the election of the petitioner who is elected Municipal Councilor from Ward No.1, which was reserved for OBC Category.

FACTS

2. In the election to the Municipal Committee, Ratia, Haryana that was held on 22.05.2016, the petitioner contested that election from

Ward No.1, which was reserved for OBC Category. The petitioner belonged to OBC Category being 'Rai Sikh' and as such had filed his nomination paper on 11.05.2016. He was declared elected on 22.05.2016. His election was put to challenge by respondent No.8 by filing an election petition before the Presiding Officer, Election Tribunal, Ratia. *Inter-alia*, the ground for challenge to election petition was that the petitioner did not belong to OBC Category, but belonged to Scheduled Caste since his caste was inserted in the notification by the Government of India/Government of Haryana on 30.06.2016, which was the final notification. According to respondent No.8, a preliminary notification was issued on 09.05.2016 proposing to declare the caste of the petitioner as Scheduled Caste and therefore, the petitioner was deemed to be the Scheduled Caste on that date, namely 09.05.2016; and therefore, to contest thereafter, could not have filed his nomination as candidate belonging to OBC Category. The petitioner appeared before the election Tribunal and filed his written statement and opposed the election petition. The petitioner submitted that he belonged to OBC atleast on the date of his election, result of which was declared on 22.05.2016. He was at no fault if his caste 'Rai Sikh' was included thereafter, as Scheduled Caste and at any rate, preliminary notification on 09.05.2016 did not amount to change of his status as Scheduled Caste from OBC. No fault therefore, can be found out with his election and the election Tribunal committed an error in setting aside his election.

ARGUMENTS

3. In support of the election petition, learned counsel for the petitioner vehemently argued that the fact that the petitioner belonged to 'Rai Sikh' is not in dispute and further fact that 'Rai Sikh' has been since beginning included as OBC is also not in dispute. When the election to Ward No.1, Municipal Committee, Ratia was declared, reserved for OBC Category, the petitioner filed his nomination on 11.05.2016 as he belonged to OBC. It was argued that the preliminary notification dated 09.05.2016 cannot decide the fate of the petitioner as there was no finality to the said notification proposing to bring the caste of the petitioner from OBC to Scheduled Caste. He, therefore, submitted that the election Tribunal made an error of law in assuming that the petitioner belonged to Scheduled Caste as on 09.05.2016, namely, the date of preliminary notification. He, therefore, prayed for setting aside the decision of the election Tribunal.

4. *Per contra*, learned State counsel for respondents No.1 to 3 vehemently opposed the writ petition and submitted that the petitioner very well knew about the factum of preliminary notification dated 09.05.2016 by which 'Rai Sikh' Caste was proposed to be declared as Scheduled Caste. Therefore, the petitioner was prevented from filing his nomination form as OBC Category candidate to contest after the preliminary notification dated 09.05.2016. The election Tribunal has rightly held that he did not belong to OBC and had no legal right to be a Councilor from Ward No.1 in OBC Category. He, therefore, prayed for dismissal of the writ petition.

CONSIDERATION

5. We have heard learned counsel for the rival parties at length. The facts as stated are not in dispute. The notification dated 09.05.2016 indeed was preliminary notification proposing to bring 'Rai Sikh' Caste from OBC to Scheduled Caste. However, that was merely proposal which on the date of filing of the nomination by the petitioner as well as the result by which he was declared elected from Ward No.1 reserved for OBC Category, on 22.05.2016, would not clothe him with the status of Scheduled Caste. The reason is that it was only the final notification dated 30.06.2016 which would decide the caste of the petitioner prospectively on the date of final notification dated 30.06.2016. This is clear from the reading of preliminary notification dated 09.05.2016 wherein, it is stated "It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.....". It is thus, clear that even the final notification dated 30.06.2016 declaring 'Rai Sikh' Caste as Scheduled Caste had not come into operation and consequently, the petitioner was not Scheduled Caste when his result as councilor from Ward No.1 was declared on 22.05.2016. To put in other words, the petitioner remained OBC Category candidate from Ward No.1 as on 22.05.2016. It is thus, clear that the status of the petitioner as Scheduled Caste changed only after 30.06.2016.

6. The next question is whether the election Tribunal could have the power to set aside the election of the petitioner on the ground that after 30.06.2016, he ceased to be the OBC. The answer has to be in the

negative. It is well settled legal position that the elections are governed by the statutory law and the rules and therefore, in the absence of any power or authority in the election Tribunal to declare so, namely that the petitioner would not be able to act as Councilor after 30.06.2016 from Ward No.1 because his Caste was changed to Scheduled Caste w.e.f. 30.06.2016, we are, therefore, of the firm opinion that the election Tribunal did not have any power or authority to make a declaration that the petitioner could not hold the post of Councilor from Ward No.1 elected under OBC Category for want of authority in law. In the result, the writ petition must succeed. Hence, we make the following order:-

ORDER

- (i) **CWP No.24433 of 2018** is allowed;
- (ii) The impugned judgment dated 20.08.2018 (Annexure P-4) passed by the learned Additional Civil Judge (Sr. Div.)-cum-Presiding Officer, Election Tribunal, Ratia, in case CIS No.: EP 11 of 2016, is quashed and set aside;
- (iii) No order as to costs.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

December 19, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No