

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-25712-2019 (O & M)

Date of decision: 16.12.2019

Sukhwinder Kaur

.... Petitioner(s)

V/s

State of Punjab and ors.

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Jatinder Pal Singh, Advocate, for the petitioner.

Mr. I.P.S. Doabia, Addl.A.G., Punjab.

Mr. R.K. Girdhar, Advocate, for respondent No.5.

RAJAN GUPTA, J. (Oral)

Present petition has been filed by the petitioner-Sukhwinder Kaur, who lost the election for the post of Chairman to Panchayat Samiti, Kotkapura, District Faridkot. She has also sought a writ in the nature of certiorari for quashing the election of Manpreet Kaur (respondent No.5 herein) as Chairman, Panchayat Samiti, Kotkapura.

On 22.09.2018, petitioner was elected as a Member of Panchayat Samiti, Kotkapura, District Faridkot from Zone No.04 (Phide Kalan) in general election of 2018.

The undisputed facts are that vide letter No.D.P.E./1720 dated 13.08.2019 addressed to all Deputy Commissioners across State, instructions were issued for election of Chairman and Vice-Chairman of the Panchayat Samitis in view of provisions of Punjab Panchayati Raj Act, 1994 (for short 'the Act'). Vide letter dated 26.08.2019, the date of election was extended

till 07.09.2019. Vide letter dated 27.08.2019, Deputy Commissioner, Faridkot appointed Sub-Divisional Magistrate, Kotkapura as the Convener/Presiding Officer for election of Chairman and Vice-Chairman of Panchayat Samiti. As a consequence, said officer issued notices to the members calling upon them to attend the meeting on 03.09.2019. As per the petitioner, she alongwith eight members, who were supporting her, went to attend the meeting. However, the same could not take place for want of quorum. As a result, on 04.09.2019, Sub-Divisional Magistrate called the meeting for election of Chairman and Vice-Chairman of Panchayat Samiti wherein all sixteen members were present alongwith local MLA Kultar Singh Sandhwan. Name of the petitioner was proposed by Sukhjot Kaur from Zone 14 for the post of Chairman and was seconded by another member. Likewise, name of respondent No.5-Manpreet Kaur was proposed by one Jasdeep Kaur from Zone 15 and was seconded by another member of Panchayat Samiti. Thus, only two members i.e. Sukhwinder Kaur and Manpreet Kaur (respondent No.5 herein) were in the fray for being elected to the post of Chairman in the election. Respondent No.5-Manpreet Kaur won by one vote, ratio being 8:9. This has given rise to this contentious issue as to whether the local MLA could have participated in the election.

Learned counsel for the petitioner has referred to the provisions of Section 99(2) of the Punjab Panchayati Raj Act, 1994. During the course of proceedings, Mr. Doabia, learned State counsel has produced the original copy of the Gazette whereby the Act was notified. Section 99(2) reproduced therein reads as under:-

“Section 99(2) The members of the Panchayat Samiti whether or not chosen by direct election from territorial constituencies in the Panchayat Samiti shall have the right to vote in the meetings of the Panchayat Samiti.”

Though, learned counsel for the petitioner has disputed the wording of the aforesaid Section. As per him, the official website give a different version of the Section. However, this court has no option but to rely on the official information. The Section has even been reproduced by the State in Para 06 of its reply which has been filed by way of affidavit of Raminder Kaur Butter, Additional Director Panchayats, Department of Rural Development and Panchayat, Vikas Bhawan, SAS Nagar.

As per the aforesaid Section, members of the Panchayat Samiti whether or not chosen by direct election from the territorial constituencies in the Panchayat Samiti would have the right to vote in the meeting of the Panchayat Samiti. Needless to observe that the meeting to elect a member of Panchayat Samiti being a crucial meeting, the local MLA would have a right to participate. In case, he exercises this discretion, needless to say that his vote would be counted. This is exactly what has happened in the instant election. However, this court deems it necessary to deal with the arguments raised by the counsel for the petitioner in context of Article 243(C) of the Constitution of India. Referring to Clause (5)(b) thereof, he has submitted that a Panchayat at intermediate level or district level would be elected by and from amongst the elected members thereof. As per him, the local MLA would have no right to vote in view of this clear provision in the Constitution. Argument has been rebutted by Mr. Doabia, learned counsel

representing the State. According to him, as per Article 243(C)(3) the legislature of the State may, by law, provide for the representation of the Chairperson 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. According to him, in view of this enabling power, the State has enacted Section 99(2) of the Punjab Panchayati Raj Act, 1994, which clearly provides that members of Panchayat Samiti whether or not chosen by a direct election from territorial constituencies in the Panchayat Samiti would have a right to vote in the meeting of the Panchayats. Conjoint reading of all the clauses of Article 243(C) leaves no room for doubt in our mind that there has been no violation of the provisions of the Constitution of India. Even otherwise, petitioner has posed no challenge to *vires* of Section 99(2) in this writ petition.

Another contention raised by learned counsel for the petitioner is that Section 99 (2) has to be read in light of Section 105 as well as Section 112 of the Punjab Panchayati Raj Act, 1994 and Rule 45 of the Punjab Panchayat Election Rules 1994.

We have gone through the said provisions as well. We feel that there would have been a necessity to refer to other provisions of the Act and the Rules, had there been any ambiguity in Section 99(2) of the Act. Finding that Section 99(2) contains enough clarity on the issue of election of Chairperson, we do not find any ground to interfere in the writ jurisdiction. In the end, we have also noticed the plea of the State counsel that the petitioner has failed to avail the remedy of election petition which originates

from Article 243-O (b) of the Constitution. However, we do not deem it fit to express any opinion on this issue. Dismissed.

During the course of arguments, learned counsel for the petitioner has also referred to the judgment in ‘*Seema Sarkar versus Executive Officer and others, 2019(6) SCC 559*’ in support of his plea. However, we do not find it applicable to the facts of the given case.

Dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

December 16, 2019
sukhpreet

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

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(Sukhpreet Kaur)
Secretary
E. Code 4756
16.12.2019

Superintendent (Computer Branch)