

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15435-2021

Date of decision: 13.08.2021

Seema Rani

....Petitioner

V/s.

The State of Haryana and others

.....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. S.K.Malik, Advocate for the petitioner.

Mr. Ankur Mittal, Addl.A.G., Haryana.

Ritu Bahri, J.

The petitioner is seeking writ of certiorari for quashing election/result dated 05.08.2021 (Annexure P-6) qua President of Municipal Committee Jakhal Mandi District Fatehabad vide which respondent No. 6-Kirti Goyal has been elected as President of Municipal Committee Jakhal Mandi.

The brief facts of the case are that Haryana Urban Local Bodies, Panchkula notified Jakhal Mandi as Municipal Committee and election schedule of the same was notified vide notification dated 16.05.2018 (Annexure P-1). Vide this notification, reservation of post of different Local Bodies were notified. The petitioner contested the election for Municipal Councillor in Municipal Committee Jakhal Mandi from General Female Seat i.e. ward No. 13 and she was elected unopposed. Private respondent No.6 also contested the election from open/unreserved category i.e. ward No. 4 and she was elected vide notification/result dated 27.12.2018 (Annexure P-2).

The grievance of the petitioner is that as per notification dated

16.05.2018 (Annexure P-1), the post of President was reserved for General (Women) and as per the notification/result dated 27.12.2018 (Annexure P-2), respondent No. 6-Kirti Goyal was elected from unreserved seat. Subsequently vide election/result dated 05.08.2021 (Annexure P-6), respondent No.6-Kirti Goyal was elected as President of Municipal Committee Jakhal Mandi. However, respondent No. 6 was ineligible as she contested from unreserved seat while the post of President was reserved for General (Women).

Learned counsel for the petitioner has argued that election of respondent No.6-Kirti Goyal is against the provisions of Haryana Municipal Act 1973. He refers to the notification issued by the Haryana Government Urban Local Bodies Department (Annexure P-1). He submitted that as per the provisions of Sections 5 and 7 of the Haryana Municipal Act, 1973 and sub-rule (4) of Rule-70 of the Haryana Municipal Elections Rules, 1978, the Committee consisting Director, Urban Local Bodies, Haryana and Deputy Commissioners concerned or their nominees held a meeting on 01.05.2018 and on the basis of maximum percentage of population and through draw of lots issued notification dated 16.05.2018 (Annexure P-1) as to how the office of President of the Municipalities shall be filled up from amongst the members belonging to General Category, Scheduled Caste, Backward Classes and Women. As per this notification (Annexure P-1) in Schedule III, the office of the President of Jakhal Mandi was to filled up from amongst the members belonging to **General category** and further the post of President shall be filled up from the **Women**. He further refers to the result (Annexure P-2) declared of the elected Members of the Municipal Committees in the General Election held on 16.12.2018. As per the above

said result (Annexure P-2), respondent No.6-Kirti Goyal was selected from an un-reserved category. The petitioner-Seema Rani was elected from a category reserved for General (Female). The petitioner sent notice dated 28.07.2021 (Annexure P-3), 02.08.2021 (Annexure P-4) and a representation dated 30.07.2021 (Annexure P-5) in which she made a request that in the Municipal Committee Jakhal Mandi only those candidates would be eligible to contest for the post of President who are elected from the wards reserved for General (Female) and the candidates elected from wards No. 3 and 4 i.e. Monika and Kirti Goyal are not eligible to participate for the post of President.

Learned counsel for the petitioner has further argued that despite making above said representations, election was conducted and respondent No.6 was elected as President Municipal Committee Jakhal Mandi vide election result dated 05.08.2021 (Annexure P-6) while she was not even eligible for contesting the post of President.

He refers to the Supreme Court judgment passed in ***Saraswati Devi V/s. Smt. Shanti Devi and others*** decided on 18.11.1996 (Annexure P-7) on the preposition that once the post of President by rotation has been reserved for a particular category only those members can contest for the post of President belonging to that particular category. He further argued that in the case before the Supreme Court, it was a post of President Loharu Municipal Committee which was subjected to double reservation of being available only to an elected member who is Scheduled Caste (Woman) and she must have been elected on the Scheduled Caste seat from the ward reserved for Scheduled Caste candidates. Only three wards namely 1, 4 and 5 were reserved for members belonging to Scheduled Castes. Out of these

three wards, ward No. 5 was reserved for the Scheduled Caste (Women). In the said elections, the appellant was elected from ward No. 5 reserved for Scheduled Castes (Women) while respondent No. 1 was declared elected from ward No. 11 which was reserved for General (Women). A candidate who had been elected from General category from ward No. 11 was not eligible to contest the election to the post of President. The Supreme Court further held that the scheme of reservation has been envisaged by Article 243(T) of the Constitution of India read with Section 10(5) read with Rule 70(4) of the Election Rules.

Heard learned counsel for the petitioner and perused the case file.

The above said judgment of the Supreme Court has again been considered by the Supreme Court in ***Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput*** 1998(3) S.C.T.2. In this case, the Supreme Court was examining the case of the election of the Gujarat Municipalities. As per Section 33(3) of the Gujarat Municipal Act, 1963, there was reservation of Scheduled Castes, Scheduled Tribes, Backward Class and women for office of President. One candidate who belonged to a backward class, had been elected to the Jambusar Municipality from an unreserved seat and he stood for election for the post of President of the Municipality which was reserved for a backward class candidate. The Supreme Court overruled the judgment of ***Saraswati Devi's case (supra)*** and held that the post of President was to be filled up by rotation and the candidate having been elected from an unreserved seat can stand for election for the post of President of the Municipality which was reserved for a backward class candidate. The idea was to promote weaker section of the society. The Supreme Court further

observed that neither the Act nor the Rules contain any provision that only members elected from the reserved seats will be eligible to stand for selection of the President. As per the roster the office is required to be filled by a person belonging to a particular category not from a particular post. In para Nos. 14 to 16, the Supreme Court observed as under:-

14. Neither the provisions of Article 243 T nor of Section 10(5) of the Haryana Act seem to suggest to us that Rule 70(4), which provides that offices of the President of municipalities must go on rotation to members belonging to specified categories, must necessarily mean "that the elected members concerned of the municipal committee must have got elected members concerned of the municipal committee must have got elected to the seats available to general category candidates or Scheduled Castes category candidate or Backward Classes category candidate or general women category candidates by rotation." There seems to be no warrant for such compartmentalisation and nor do the words of the act or the Rules indicate that the concept of rotation presupposes that for the contest of President it is to be from amongst the members elected from a particular category from the seats reserved for that category. This inference which is sought to be drawn does not flow from the plain language of Article 243 T or from the provisions of the Act or the Rules framed thereunder and it also does not promote the object of reservation. The legal provisions provide that office of the President of the municipality should go by rotation to members belonging to specific category and no more. These provisions do not provide that those members, though falling in the category of Scheduled Castes, Scheduled Tribes, backward Classes or women must be only those who have been elected from the seats reserved for that category of persons. Reservation is with reference to the category/caste to which the person belongs and not the nature of constituency from which he/she was elected.

15. The Act and the Rules provide for reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and women. No reservation or clarifications made ward wise. To put it differently all members of the Scheduled Castes, for example, will be regarded as belonging to one class irrespective of the fact whether they had been elected to a reserved seat or to a general seat. Similar is the position with regard to the backward classes, Scheduled Tribes and women. The law does not contemplate or provide for any further sub-classification of the type which has been suggested by the respondents. Just as all members of the municipality, irrespective of the fact whether they had been elected to a reserved seat or not, are eligible for election to the post of the President when it falls in the general category, similarly when as per the roster the President is to be one who, say, belongs to the category of Scheduled Caste then all members of the municipality who are Scheduled Caste, irrespective of the seat to which they had been elected, would be eligible to stand for election. Neither the Act nor the rules stipulate that it is only such a member who has been elected to the reserved seat who would be eligible to stand for election to the post of President when it is the turn of that category of candidate to become the President of the municipality.

16. In our opinion, therefore, the conclusion which was arrived at in Saraswati Devi's case did not flow from the language of the relevant provisions and, it is not consistent with the concept of reservation. With respect, it does not lay down the correct law.

Thereafter, the Supreme Court in *Bihari Lal Rada Vs. Anil Jain (Tinu) and others* 2009(1)R.C.R.(Civil) 944 was again examining a case where the post of President Municipal Council was reserved for the General Category candidate. The Supreme Court held that wherever the office of President Municipal Council was required to be filled up by a

member belonging to Scheduled Caste, Scheduled Tribe or Backward class, it would be enough if one belonged to one of those categories irrespective of the fact whether they had been elected from a general ward or a reserved ward. Likewise, the office of the President of a Municipality if not reserved or meant for General Category, all the candidates irrespective of their caste, class or community and irrespective of the fact whether they had been elected from a reserved ward or a general ward are entitled to seek election and contest to the office of the President of the Municipality. In para 30, the Supreme Court has observed as under:-

30. In our view, the question is no more in res integra but squarely covered by the decision of this Court reported in ***Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput & Anr. [1998 (1) SCC 285]***. In that case the appellant therein who belonged to Backward Class but had been elected to the Jambusar Municipality from an unreserved seat stood for election for the post of President of the Municipality which was reserved for a Backward Class candidate. The only question that had fallen for consideration in the said case was: Whether the appellant, who belongs to a Backward Class but had been elected to the Jambusar Municipality from an unreserved seat, could stand for election for the post of President of the Municipality which was reserved for a Backward Class candidate or whether the candidate for that post could only be a person who was elected to the Municipality from a seat which was reserved for the Backward Class? This court held:

“The idea of providing reservation for the benefit of the weaker sections of the society is not only to ensure their participation in the conduct of the affairs of the municipality but it is also an effort to improve their lot. The reservation ensures that the specified minimum number of persons belonging to that category become members of the municipality. If because of their popularity a larger number of Scheduled Castes,

Scheduled Tribes, Backward Classes or women get elected to the municipality than the number of reserved seats that would be welcome.

When the idea is to promote the weaker sections of the society, and to improve their lot, it would be a contradiction in terms if members belonging to that section are debarred from standing to the office of the President because such a candidate is popular enough to get elected from a general constituency. It is a fundamental principle of democratic election that a person who is more popular is elected, popularity being measured by the number of votes which the person gets. The language of various legal provisions do not in any way suggest, expressly or by necessary implication, that even though a person who belongs to a reserved category and is popular enough to get elected from a general constituency should be barred from contesting the election of the President when that office is to be filled only by a reserved category person.”

It was further observed:

“The Act and the Rules provide for reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and women. No reservation or classification is made ward-wise. To put it differently all members of the Scheduled Castes, for example, will be regarded as belonging to one class irrespective of the fact whether they had been elected to a reserved seat or to a general seat. Similar is the position with regard to the Backward Classes, Scheduled Tribes and women. The law does not contemplate or provide for any further sub-classification of the type which has been suggested by the respondents. Just as all members of the municipality, irrespective of the fact whether they had been elected to a reserved seat or not, are eligible for election to the post of the President when it falls in the general category, similarly when as per the roster the President is to be one who, say, belongs to the category of Scheduled Caste then all members of the municipality who are Scheduled Caste, irrespective of the seat to which they had

been elected, would be eligible to stand for election. Neither the Act nor the Rules stipulate that it is only such a member who has been elected to the reserved seat who would be eligible to stand for election to the post of President when it is the turn of that category of candidate to become the President of the municipality.” (Emphasis supplied)

In ***Gurmit Kaur Vs. State of Punjab and others*** 2008(9) R.C.R. (Civil) 139, a Division Bench was examining a letter dated 27.05.2008 vide which respondent authorities had clarified that in case the post of Sarpanch is reserved for the woman belonging to a Scheduled Caste category, then even a women belonging to Scheduled Caste but elected from General Category, can contest for the office of Sarpanch reserved for Scheduled Caste (Woman) provided that she produces a Scheduled Caste certificate to the Presiding Officer. The Writ Petition challenging the above said letter and election of respondent No.6 was dismissed.

In ***Ram Saini Vs. State of Punjab and others***, 2009(1)PLR 250, Division Bench of this Court held that a candidate who had been elected and declared as Panch from the seat reserved for General (Woman) was fully eligible to contest the election for the office of Sarpanch, which was reserved for General Category.

In ***Karnail Kaur Vs. The State of Punjab and others*** 2009(1) R.C.R. (Civil) 248, a Coordinate Bench of this Court was examining a case where the Scheduled Caste (Women) was elected as Panch of the Gram Panchayat against General Category seat. She was held to be eligible to contest for the post of Chairman reserved for Scheduled Caste (Women) after being elected as Panch of the Gram Panchayat Samiti against General Category seat.

In *Rameshwar Saini Vs. State of Haryana and others* 2011(4)

PLR 437, a Coordinate Bench of this Court while examining the election to the post of President of a Municipal Committee, held that a Backward class Women candidate who was elected as Municipal Councillor from a general seat is eligible to contest as President of the said Municipal Committee as long as she belongs to Backward Class and contesting the election from unreserved seat will not make her ineligible.

In the present case, learned counsel for the petitioner cannot take any benefit of Supreme Court judgment of *Saraswati Devi's case (supra)* (Annexure P-7) as this judgment has been overruled in *Kasambhai F. Ghanchi's case (supra)*.

In the facts of the present case as per notification dated 16.05.2018 (Annexure P-1), the post of President was reserved for General (Women) and as per the notification/result dated 27.12.2018 (Annexure P-2), respondent No. 6-Kirti Goyal was elected from unreserved seat for the post of President. She was eligible to contest the election for the post of President which was reserved for General (Women). The argument of learned counsel for the petitioner that Seema Rani being elected from a ward which was reserved for General Category (Women) and she was eligible to contest this election, is liable to be rejected keeping in view the detailed reasoning given by the Supreme Court followed by this Court. Both the petitioner and respondent No.6-Kirti Goyal belong to General Category and respondent No.6 though had contested from unreserved seat, was eligible to contest for the post of President of Municipal Committee Jakhal Mandi which was reserved for General Category (Women).

With the above observations, Civil Writ Petition is dismissed.

(RITU BAHRI)
JUDGE

13.08.2021
Divyanshi

(ARCHANA PURI)
JUDGE

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