

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

1. CWP No. 21691-2021

Shiv Kumar

...Petitioner

versus

Chief Electoral Officer & others

...Respondents

2. CWP No. 21936-2021

Shakeel Mohamad

...Petitioner

versus

Chief Electoral Officer & others

...Respondents

Date of decision : 23.11.2021

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Shiv Kumar, petitioner in person in CWP No. 21691-2021 and
for the petitioner in CWP No. 21936-2021

Mr. Chetan Mittal, Sr. Advocate with
Mr. Anil Mehta, Advocate and Mr. Mayank Sharma, Advocate
for respondent Nos. 1 to 3.

Mr. Naman Jain, Advocate
for respondent No. 4-Municipal Corporation, Chandigarh

Mr. Gaurav Chopra, Sr. Advocate with
Mr. Anurag Chopra, Advocate and Mr. Rishabh Bajaj, Advocate
for respondent No. 5

RITU BAHRI, J.

C.M. No. 17479-2021 in CWP No. 21691-2021

Application is allowed as prayed for.

Accordingly, affidavit of Nitin Kumar Yadav, IAS, Secretary,

Local Government, U.T. Chandigarh along with Annexure R-3/1 to R-3/8

are taken on record.

CWP No. 21691 and 21936 of 2021

Issue notice of motion.

On asking of the Court, Mr. Anil Mehta, Advocate and Mr. Naman Jain, Advocate, accepts notice on behalf of respondent Nos. 1 to 3 and respondent No. 4 respectively.

C.M. No. 16997-2021 in CWP No. 21691-2021

Issue notice of the application.

On asking of the Court, Mr. Shiv Kumar, Advocate, Mr. Anil Mehta, Advocate and Mr. Naman Jain, Advocate, accepts notice on behalf of petitioner, respondent Nos. 1 to 3 and respondent No. 4 respectively.

The present application is allowed subject to all just exceptions and accordingly, the applicant is impleaded as respondent No. 5 in the present petition i.e CWP No. 21691-2021. Amended memo of parties is taken on record.

CWP No. 21691 and 21936 of 2021

This order shall dispose of the above two writ petitions as common question of facts are involved in the above petitions wherein petitioners have filed the petitions under Articles 226/227 of the Constitution of India for issuance of writ of certiorari/mandamus for setting aside order dated 19.10.2021 (Annexure P-8 in both the petitions) passed by respondent No. 2 with regard to reservation of wards for Scheduled Caste and Women Candidates for the election of Councillors of Municipal Corporation, Chandigarh. Further prayer of the petitioners is for issuance of direction to respondent Nos. 1 and 2 to reconsider the reservation of wards

after excluding the population of the colonies not existing presently/demolished/ partly demolished and to issue fresh order for reservation of 7 wards.

For facility of reference, the facts are being taken from CWP No. 21691-2021.

Brief facts of the case are that petitioner-Shiv Kumar is a resident of Sector 42, Chandigarh and is registered voter in ward No. 24. Copy of voter card of the petitioner is Annexure P-1. Respondent No. 3 issued a notification dated 25.10.2006 (Annexure P-2) whereby 26 Nos. of wards were determined. Subsequently, respondent No. 3, vide notification dated 30.12.2020 (Annexure P-3) again determined the wards of the Municipal Area of Municipal Corporation, Chandigarh for the purpose of election of Councillors. Accordingly, the wards of Municipal Area were increased from 26 to 35. Another notification No. 4719 dated 28.04.2021 (Annexure P-4) was issued by respondent No. 3, whereby number of wards were fixed to 35. Vide notification No. 4733 dated 28.04.2021 (Annexure P-5), 07 seats were reserved for members of Scheduled Caste to be filled by direct election. Vide notification No. 4740 dated 28.04.2021 (Annexure P-6), 12 number of seats were fixed of Councillors reserved for women (including the number of seats reserved for women belonging to Scheduled Castes) to be filled by direct election.

Vide notification No. 9577 dated 27.08.2021 (Annexure P-7), the Administrator passed an order to determine the manner in which the reservation of seats belonging to candidates of Scheduled Castes and

Women will be done for the upcoming Municipal Elections 2021. The

operative part of the order reads as under:-

“1. The reservation of Seven wards for Scheduled Caste candidates for the upcoming general election to the Corporation shall be made afresh on the basis of Maximum percentage of scheduled caste population as shown in the latest Census of 2011 and defined in Sub Section (36A) of Section 2 of the Punjab Municipal Corporation Act, 1976 as extended to UT of Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act. 1994. Those wards which have the maximum percentage of Scheduled Castes as per the population Census 2011 shall be reserved for scheduled caste candidates for the upcoming election of the Councillors of the Municipal Corporation of Chandigarh. During the next election, another Seven wards with the next largest percentage of Scheduled Caste population would be reserved and this process would continue till the time all the wards are reserved for Scheduled Caste candidates by way of rotation on the basis of latest census figures.

2 The determination of Twelve wards reserved for women shall be made through draw of lots. The wards reserved for women during the ensuing elections of the Municipal Councillors shall be excluded from the draw which will be held for determining wards during the next elections and this process of exclusion would continue till such time as the total number of Thirty Five Wards have been fully reserved for women in rotation.

3. The wards of Scheduled Caste Women Three out of the Seven wards to be reserved for Scheduled Caste would be determined by a public draw of lots.

Thus, as per the above order, the ward which have the maximum percentage of Scheduled Caste, as per the population census, 2011, shall be reserved for Scheduled Caste candidates for the upcoming elections of the Councillors of Municipal Corporation of Chandigarh. During the next election, another 7 wards with next largest percentage of Scheduled Caste population would be reserved and this process would continue till the time all the wards are reserved for Scheduled Caste candidates by way of rotation on the basis of latest census figures.

Vide order dated 19.10.2021 (Annexure P-8), Ward Nos. 7, 16,

19, 24, 26, 28 & 31 were declared to have been reserved for Scheduled Caste. The percentage of scheduled caste population in the following 7 wards is as under:-

<i>Ward No.</i>	<i>Percentage of Scheduled Caste Population</i>
7	24.52%
16	71%
19	39.68%
24	23.96%
26	50.55%
28	26.24%
31	29.99%

Thereafter, Shiromani Akali Dal through its president requested to inform the area wise population relied upon while determining the 7 wards reserved for scheduled caste candidates, vide request dated 20.10.2021 (Annexure P-9). In response to the above letter, respondent No. 2, vide letter dated 22.10.2021 (Annexure P-10) informed the population of entire wards but did not disclose the area wise population in each ward. Again Shiromani Akali Dal, vide letter dated 21.10.2021 (Annexure P-11) requested respondent No. 2 to inform about the area wise population relied upon reservation of Ward No. 24 and 31 kept reserved for scheduled caste. Vide letter dated 21.10.2021 (Annexure P-12), petitioner also requested respondent No. 2 to inform about the area wise population relied upon reservation of Ward No. 24 and 31 kept reserved for scheduled caste. Hence the present writ petition.

On notice of the petition, affidavit of Nitin Kumar Yadav, IAS, Secretary, Local Government, U.T. Chandigarh along with Annexure R-3/1 to R-3/8 have been filed on behalf of respondent Nos. 1 to 3. In the affidavit, it has been stated that after the delimitation of wards in the year

2006, in the year 2018, the remaining 13 villages were also merged in the corporation by extending the Municipal limits, as per notification dated 30.11.2018 (Annexure R-3/1). After merger of the above said 13 villages in the Municipal Limits of Chandigarh, a letter dated 25.03.2019 (Annexure R-3/2) was issued by the office of Principal Secretary, Local Government to the office of Deputy Commissioner, U.T. Chandigarh, whereby a request was made to send the draft proposal for delimitation of wards in accordance with the information based on the last Census Report.

In pursuance to the above mentioned letter dated 25.03.2019, a Delimitation Committee was formed vide official order dated 15.10.2020 (Annexure R-3/3) to increase the number of wards of the Municipal Corporation in an equitable and practicable manner (as provided under Section 8 of the Act). The Deputy Commissioner, UT Chandigarh was designated as the Chairperson of the committee constituted for Delimitation of Wards.

In furtherance to this, objections/representations were invited from the public regarding the proposed Delimitation of Wards and in pursuance to that total around 171 objections were submitted. In the meeting of the Delimitation Committee as held on 22.12.2020, the above-mentioned all the objections were heard and settled and the draft proposal was sent back to the Tehsildar concerned to incorporate all the valid objections and changes. It is also decided vide the same meeting dated 22.12.2020 that revised draft scheme (including changes as suggested) presented before the committee for 35 wards fulfills the provision as provided in the Municipal Act and also in accordance with the provision of

the Order dated 15.10.2020. A copy of the Minutes of meeting dated 22.12.2020 alongwith the Report of Tehsildar is annexed as Annexure R-3/4.

After the finalization of the delimitation (Ward-bandi), considering the Census data of year 2011 (as provided in the Act) total ward-wise Scheduled Caste population of the Municipal Corporation, Chandigarh was taken into consideration and after taking percentage ratio of the Scheduled Caste population out of the total population, 7 wards were reserved for Scheduled Caste candidates. A copy of the sheet depicting the ward wise breakage of the population alongwith Scheduled Caste population of each ward along with methodology of SC Reservation and notification (P-8) is annexed as Annexure R-3/5.

Thereafter, in consonance with provisions of Section 6 of the Act, Twelve wards have been reserved for women candidates by way of draw of lots. A copy of the order dated 27.08.2021 vide which the wards have been reserved for women candidates only is annexed as Annexure R-3/6.

Further with regard to the issue raised by the petitioner pertaining to the population of Ward 15 consisting of Sarangpur and Rehabilitation Colony, Dhanas, it was submitted that these areas in these wards were proposed to be included in the delimitation exercise of 2020. Earlier, Sarangpur was not the part of Municipal Corporation Chandigarh and was only included when several villages were merged with Municipal Corporation, Chandigarh in 2018. According to the data of Census 2011, village Sarangpur had a total population of 3468 with a total SC population

of 742. While the Rehabilitation Colony, Dhanas was established after Census of 2011, there is an absence of Census data for this area, therefore, for a realistic approach, the available electoral data was referred to assess the population of this ward. A copy of the estimated ward-wise electoral count till 01.01.2021 is annexed as Annexure R-3/7.

As per copy of minutes of meeting dated 04.12.2020 (Annexure R-3/8), the shifting out of population to rehabilitation colony was also taken into consideration in the meeting of delimitation committee. As per the Municipal Act and available data, the preceding census is the only source to determine the caste-wise population of the wards.

Learned counsel for the petitioner contends that in his ward, one seat should have been reserved for SC category, keeping in view the population of Scheduled Caste community.

On the other hand, Mr. Gaurav Chopra, learned senior counsel for respondent No. 5 has argued that latest population data based in the electoral roll should be taken into account for reference and the right of vote in original ward of respondent No. 5 where he was earlier residing, cannot be taken away and his vote in Dhanas should be made basis for reserving the ward.

Mr. Chetan Mittal, learned senior counsel for U.T. Chandigarh has argued that as far as delimitation process is concerned, it has attained finality, as after issuance of notification dated 30.11.2018 (Annexure R-3/1), 13 villages have been added in the Municipal Limits of Chandigarh and thereafter, the process of delimitation of wards were carried out, as per a letter dated 25.03.2019 (Annexure R-3/2). After forming delimitation

committee by designating the Deputy Commissioner, U.T. Chandigarh, objections/representations were invited from the public regarding the proposed Delimitation of Wards. Total 171 objections were submitted and the same were heard and settled and the draft proposal was sent back to the tehsildar concerned to incorporate all the valid objections and changes. In the meeting dated 22.12.2020 (R-3/4), revised draft scheme was presented before the committee for 35 wards. The process of delimitation is not in dispute in the above writ petitions.

Learned senior counsel has further argued that for the purpose of delimitation, there is no dispute and for notifying 35 wards, 2011 census was made the basis after reserving the wards and after taking the percentage ratio of Scheduled Caste population Out of total population; 07 wards were reserved for Scheduled Caste candidates. Reference has been made to sheet depicting the ward wise breakage of the population alongwith Scheduled Caste population of each ward along with methodology of SC Reservation and notification (R-3/5) whereby as per 2011 Census, the Scheduled Caste population has been given of each ward.

Learned senior counsel has further argued that with regard to the issue raised by the petitioner pertaining to the population of Ward 15 consisting of Sarangpur and Rehabilitation Colony, Dhanas, these areas in this ward were proposed to be included in the delimitation exercise of 2020. Earlier, Sarangpur was not part of Municipal Corporation, Chandigarh and was only included when several villages were merged with Municipal Corporation, Chandigarh in the year 2018. As per data of Census, 2011, the village Sarangpur had a total population of 3468 with a total SC population

of 742. Some of the candidates residing in colony have been shifted and they can exercise their right to vote in the colony where they have been shifted. For reservation of seats in the Municipal Corporation, the data of latest Census i.e Census 2011 could only be considered. The claim of the petitioner that the population has not been evenly distributed while allocating the wards, is against records and misleading. Even if voter count of Ward No. 15 as of today is 27778, that cannot be made basis to revise the reservation of wards. 2011 census has rightly been followed.

We have heard learned counsel for the parties at length and pursued the record.

At the very outset, reference can be made to Section 5 (4) of the *the Punjab Municipal Corporation Act, 1976* as extended to UT of Chandigarh by the Punjab Municipal Corporation Law (Extension to Chandigarh) Act 1994 (for short 'Act of 1994'), which reads as under:-

(4) Out of the number of elected councillors determined under Sub Section (2), there shall be reservation of seats for members of Scheduled Castes and the number of seats to be so reserved for the members of Scheduled Castes shall, as nearly as may be, bear the same ratio to the total number of elected councillors as the population of Scheduled Castes bears to the total population of the city.

As per the above Section, the reservation of seats for Scheduled Caste has to be at the same ratio to the total number of elected Councillors to the total population of the city.

The petitioner in the present case is not disputing the number of 07 wards reserved for Scheduled Caste candidates. The only grievance of the petitioner is that he has been shifted from one ward to the other and his

place of habitation has been excluded from being a reserved ward for Scheduled Caste category candidate despite the fact that the population as of today, has not been considered while determining the selection of ward towards the reserved category. In consonance with provisions of Section 6 of the Act of 1994, 12 wards have been reserved for women candidates by way of draw of lots, as per order dated 27.08.2021 (Annexure R-3/6).

Reference at this stage can be made to page No. 21 of the paper book whereby in an affidavit filed by Nitin Kumar Yadav, IAS, draft proposed list of wards with area of Municipal Corporation Chandigarh has been given (Annexure R-3/4) whereby in Wards No. 3 the total population is 33859 and the Scheduled caste population is 6566. The Madrasi Colony, Sector 26 has been demolished in the year 2014 but the voters of Madrasi Colony has been included in this ward wherein the total population has been shown as 9158 and Scheduled Caste Population has been shown as 1886. Similarly in ward No. 15, the total population of Sarangpur Rehabilitation colony has been shown as 3468 and Scheduled Caste Population has been shown as 742 despite the fact that Sarangpur Rehabilitation colony was established after Census-2011. In ward No. 29, the total population of Sector 56 (LBS colony) has been shown as 4738 and Scheduled Caste Population has been shown as 1537 despite the fact that Sector 56, LBS Colony has been demolished in the year 2016.

For the purpose of delimitation, the Census of 2011 was rightly made the basis and delimitation has been carried out after inviting objections/representations. Reference at this stage can further be made to

Section 2 (36-A) of the Act of 1994, which is reproduced as under:-

“2 Definitions-In this Act, unless the context otherwise requires.

(36-A) “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.”

The petitioner cannot take the benefit of the voters population as is existing today in village Sarangpur for the purpose of reservation, as the Census of 2011 has been made the basis, as per Act of 1994. As per this Act, the department is bound to take into consideration the preceding census i.e census of the year 2011. As per estimated ward-wise electoral count till 01.01.2021, the voters of Ward No. 15 have been increased to 27778, but it cannot be made basis for carving out seats reserved for Scheduled Caste candidate now, even if the petitioner and respondent No. 5 have been shifted from one ward to another. The department has rightly taken into consideration the the preceding census of 2011 for calculation of seats reserved for Scheduled Caste Candidates. The wards of Municipal Area were rightly increased from 26 to 35 after including 13 villages of Municipal Area, as per notification dated 30.11.2018 (Annexure R-3/1). The delimitation has been carried out after following due process of law by inviting objections/representations.

Similar issue has been considered by this Court in a case of ***Munshi Ram vs. State of Haryana and others***, passed in CWP No. 6950-2020, decided on 02.11.2021, wherein petitioner was seeking direction to the respondents to carry out demarcation of the wards for Panchayat Elections in village Budheri, Tehsil and District Bhiwani as per Rule 5 of Haryana Panchayati Raj Election Rules, 1994, by reserving ward for

Scheduled Caste in the village. The petition was dismissed and the operative part of the judgment reads as under:-

“In the present case, as per census-2011, total population of village Budheri was 1159, out of which, 72 persons belonged to the Scheduled Caste community. Hence, population of Scheduled Caste comes to about 6.21% of the total population. As per Section 9 (2) of the Act, number of seats reserved for the Scheduled Caste shall bear, as nearly as may be, the same proportion to the total number of seats in that Gram Panchayat. This ratio comes to about 0.43% of the total seven wards of the said village. If the ratio of Scheduled Caste population exceeds or equals to 0.50% of the total seats, then one ward of the post of Panch can be reserved for SC community.

Reservation, in the present case, has been carried out as per census-2011 by following due procedure, as laid down in Section 9 (2) of the Haryana Panchayat Raj Act. The fraction of percentage of SC population has to be above 0.50%. Moreover, the population of only Ward No.6, as reflected in Annexure P-9, cannot be made basis for reserving one ward of the post of Panch for SC category. After hearing learned counsel for the parties and going through the contents of the petition, we are of the view that the wardbandi has been rightly carried out by taking the percentage of SC population in village Budheri keeping in view the census- 2011 data as reflected in Annexure P-9. No ground is made out for giving any direction to the respondents.”

In the facts of the present case also, the census of 2011 has been made the basis for reserving the wards for Schedule Caste candidate. The shifting of Scheduled Caste candidate now from one ward to the other cannot give fresh cause of action, as per Act of 1994. As per information

placed on record depicting the ward wise breakage of the population alongwith Scheduled Caste population of each ward along with methodology of SC Reservation and notification (Annexure R-3/5), after considering the census data of the year 2011, the total ward-wise scheduled caste population was taken into consideration and after taking percentage ratio of the Scheduled Caste population out of the total population, 07 wards were reserved for Scheduled Caste candidates. Annexure R-3/7 is the tentative voters list till 01.01.2021 and this cannot be made basis for reassessing the wards, which has rightly been done as per census of 2011 after following due process of law, with the delimitation process attained finality.

No merits.

Dismissed.

(RITU BAHRI)
JUDGE

23.11.2021

G Arora

(KARAMJIT SINGH)
JUDGE

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