

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

1. Date of decision: 16.09.2022
CWP No.40421 of 2018

Harmandeep Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

2. CWP No.40436 of 2018

Dara Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Jatinder Singh Gill, Advocate,
for the petitioner (in CWP-40421-2018).

Mr. Ashutosh Hoshiarpuri, Advocate,
for the petitioner (in CWP-40436-2018).

Ms. Anu Pal, DAG, Punjab.

Ritu Bahri, J. (oral)

This judgment shall dispose of CWP-40421-2018 and CWP-40436-2018 together as common questions of law and facts are involved in both the petitions. For reference, facts are taken from CWP-40421-2018.

Petitioners are seeking quashing of the notification dated 06.12.2018 (Annexure P-4) issued by respondent No.2-Deputy

Commissioner, Gurdaspur, whereby post of Sarpanch in village Harchowal

has been reserved for the Scheduled Caste category. A further prayer has been made for quashing of the order dated 21.12.2018 (Annexure P-9), whereby respondent No.2 has modified his earlier order dated 18.12.2018 (Annexure P-8) and allowed the election to the office of Sarpanch.

Earlier, the petitioner (in CWP-40421-2018) had approached this Court by filing CWP-32115-2018 challenging the notification dated 06.12.2018. The said petition was disposed of by this Court vide order dated 15.12.2018 (Annexure P-7) by giving direction to respondent No.2 to take a decision on the representation filed by the petitioner. Pursuant to the said order, the petitioner was called for personal and thereafter, order dated 18.12.2018 (Annexure P-8) was passed by the Deputy Commissioner, Gurdaspur-respondent No.2. A perusal of the order dated 18.12.2018 (Annexure P-8) shows that petitioner-Harmandeep Singh had appeared and submitted his written statement requesting that the seat of Sarpanch should be changed and reserved for General category instead of SC category.

Case of the petitioner (in CWP-40421-2018) was that in his village, population of General category is more than 90%. As per the report of the Block Development and Panchayat Officer, Qadian (which was verified by the SDM concerned), the population of General category in village Harchowal was shown as 83.69%, whereas the population of BC was 14.46%. As per Reservation Rule No.3 (3), the population of BC is also to be included in the General population. Therefore, the population of General category in village Harchowal, is 98.16%. The Block Development and Panchayat Officer (BDPO), Qadian, in his report, did not cover the population of BC category. In this backdrop, the seat of Sarpanch of village

Harchowal has been reserved for SC. In the above said order, it was further

observed that in case, the population of BC is included in the General category population, then the population of General category would be increased to 90%. In that eventuality, the seat could be reserved for General category. But, the BDPO, Qadian has not included the BC population into the General category and due this reason, the seat has been reserved for SC category. It was further observed that since Code of Conduct was issued w.e.f. 07.12.2018 and process of nomination papers was going on, reservation on the seat of Sarpanch was not possible. With these observations, the process of election in respect of Gram Panchayat, Harchowal, was kept on hold by the Deputy Commissioner, Gurdaspur. The order dated 18.12.2018 (Annexure P-8) was forwarded by respondent No.2 to the State Election Commission, Punjab-respondent No.4. However, the State Election Commission, Punjab, sent a letter to the Deputy Commissioner, Gurdaspur, asking as to under what provision, he had stayed the election. Thereafter, the Deputy Commissioner, Gurdaspur, vide order dated 21.12.2018 (Annexure P-9), modified his earlier order dated 18.12.2018 (Annexure P-8) and directed that the process of election to the post of Sarpanch in respect of village Harchowal, would continue as per the original notification dated 15.12.2018. Aggrieved by the above said order, the present petitions have been filed challenging the notification dated 06.12.2018 (Annexure P-4) and order dated 21.12.2018 (Annexure P-9).

Upon notice, reply dated 29.04.2019 on behalf of respondent Nos. 1 to 3, by way of affidavit of Block Development and Panchayat Officer, Qadian, Tehsil Batala, District Gurdaspur, has been filed, wherein it is reiterated that population of General category, in village Harchowal, is

the post of Sarpanch from the Scheduled Caste category. Report submitted by the BDPO, Qadian, has been annexed as Annexure R-3/1T.

Thereafter, replication to the written statement of respondent Nos. 1 to 3 has been filed by the petitioner, wherein specific stand has been taken that at the time of determining the population of General category, population of the Backward Class (BC) in village Harchowal has not been included in the population of General category.

Mr. Jatinder Singh Gill, learned counsel for the petitioner, has argued that the remedy of election petition is not available to the petitioner because as per Section 89 of the Punjab State Election Commission Act, 1994, wrongful reservation of an office/seat is not a ground to declare the election void. The election can only be challenged before the Election Commission in case there is violation or non compliance with the provisions of the Constitution of India or this Act. The petitioner is alleging violation of Panchayati Raj Rules, 1994, as amended in 2018 and these rules have not been framed under the Punjab State Election Commission Act, 1994. The rules have been framed under the Punjab Panchayati Raj Act, 1994. Hence, election petition is not to be filed for challenging violation of the Punjab Panchayati Raj Act, 1994. He further argued that the Election Tribunal cannot examine the impugned notifications. Once the elections are held in terms of the impugned notification(s), there is no scope to set aside the election of selected candidate and only the High Court can examine this issue while exercising powers under Article 226 of the Constitution of India. Learned counsel for the petitioner has referred to the judgment passed by the Division Bench of this Court in **Deepak Jain and others vs. State of**

issue of rotation of wards cannot be examined by the Election Commission and it can only be challenged by way of a writ petition, even after completion of the election.

Learned counsel for the petitioner further argued that the writ petition may not be maintainable after publication of the notification, but after completion of election, the notification can be challenged before the Court. He has referred another judgment passed by the Division Bench of this Court in **Des Raj vs. Surjit Kaur**, 2001 (2) RCR (Civil) 305. In that case, the Election Tribunal had set aside the election of an elected candidate, as a particular seat had been reserved for a male candidate. The notification was not challenged by anyone and after completion of entire process, the election was set aside by the Tribunal. It was held that the Election Tribunal can only examine any election on the grounds mentioned in Section 89 of the Act of 1994. It cannot set aside the election, which is conducted as per notification issued by the Government, meaning thereby notification issued by the Government cannot be examined by the Election Tribunal.

Mr. Gill has further argued that as per the aforesaid judgments, the election petition is not appropriate remedy to challenge the notification. The only remedy available is to file a petition challenging the impugned notification.

Learned State counsel, on the other hand, has referred to the decision given by Hon'ble the Supreme Court in **Mohinder Singh Gill and another vs. Chief Election Commission and others**, 1978 (1) SCC 405, wherein it has been held that Section 100 of the Representation of People

legal or factual and offers complete relief to the petitioner(s). She further states that election has already been completed and there is no cause of action left in the present petitions to challenge the impugned notification.

Stand taken by the respondents in their reply dated 29.04.2019, is that as per notification dated 27.08.2018 (Annexure P-3), the Punjab Government has made amendment in the Punjab Reservation for the Offices of Sarpanches of Gram Panchayats and Chairmen and Vice-Chairmen of Panchayat Samitis and Zila Parishads Rules, 1994. As per the said rules, where a Gram Panchayat has ninety per cent (90%) or more General Category population, the office of the Sarpanch of such Gram Panchayat shall be reserved for the woman or kept for a General Category persons, as the case may be. As per report (Annexure R-3/1T) prepared by the respondents, the population of General category is 83.69%, which is less than 90%. Hence, there was no illegality in reserving the post of Sarpanch from the Scheduled Caste category. It is further stated that pursuant to the notification dated 06.12.2018 (Annexure P-4) issued by respondent No.2-Deputy Commissioner, Gurdaspur, the election has already taken place and the Sarpanch had been elected. Therefore, these petitions have been rendered infructuous.

In **Deepak Jain's** case (supra), Division Bench of this Court had not examined the notification whereby post of Sarpanch had been reserved. It was held that there was no ground to intervene in the election process once the same has started. The petitioners could challenge the rotation of wards by filing a writ petition after the elections are complete. In para nos.6 and 7 of the judgment, it was observed as under:-

the question as to when election process starts. This Court has placed reliance upon Section 7A of the Act. A Full Bench of this Court in ***Prithvi Raj v. State Election Commission, Punjab and others, AIR 2007 Punjab and Haryana 178*** has held that the jurisdiction of this Court stands barred, when a notification under Section 13A of the Punjab Municipal Act, 1911 is issued. Section 13A of the Municipal Act, 1911 is pari materia to Section 7A. Therefore, the writ petition after the publication of notification under Section 7A of the Act is not maintainable.

7. The Supreme Court in Anugrah Narain Singhs The Supreme Court in ***Anugrah Narain Singh's*** case (supra) commented adversely when the High Court intervened in the election process when the same was underway. It observed:

35.Barely one week before the voting was scheduled to commence, the Court decided to intervene in the matter regardless of the repeated warnings given by this Court in a number of earlier decisions. The Court decided to intervene in the matter and stop the election process while it was nearing completion. In Lakshmi Charan case (1985) 4 SCC 689, it was held that the Court should not intervene even when the elections were imminent. Here, the election was well under way.”

The elections must be held on the due date. The elections are to completed till the second week of June 2012. Any intervention at this stage, when the elections are imminent, shall disrupt the election process. The election disputes can be raised after completion of elections. Even if there is no ground to challenge the rotation of wards by way of election petition, the petitioners can very well challenge the rotation of wards in any other appropriate forum including this Court in a writ petition after the elections are completed.”

In the present case, the respondents have placed on record report (Annexure R-3/1T), which shows that population of General category in village Harchowal is 83.69% and this calculation has been done as per the census of 2011.

Since, the election has already been completed, the present petitions i.e. CWP No.40421 and 40436 of 2018 are dismissed. However,

liberty is granted to the petitioner(s) to challenge the rotation of wards, if the calculation of population as per report (Annexure R-3/1T) is not correct.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

16.09.2022
ajp

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