

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

CWP-23273-2022 (O&M)
Date of decision :21.02.2024

KEHAR SINGH RANA

...Petitioner

Versus

THE STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Govind Chauhan, Advocate
for the petitioner.

Mr. Naveen S. Bhardwaj, Addl. A.G., Haryana.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Kehar Singh Rana) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for quashing the order dated 21.09.2022 (Annexure P-1) passed by respondent No.2, whereby the seat of Sarpanch of Gram Panchayat, Kakeheri (respondent No.5) has been reserved for the Sarpanch belonging to Scheduled Castes; whereas the same is to be treated in the General Category, as the said reservation is against the mandatory provisions of Rules 5 and 6 of the Haryana Panchayati Raj Election Rules, 1994.

A further prayer has been made for quashing the order dated 06.10.2022 (Annexure P-7) passed by respondent No.2; whereby the representation moved by the petitioner to the said effect, has been rejected.

2. Briefly, the petitioner claims that he is a resident of Village Kakeheri, Block Siwan, District Kaithal and belongs to the general category.

The petitioner wanted to contest the elections of the Office of Sarpanch of Gram Panchayat Kakeheri, which were going to be held by the State Government under the provisions of the Haryana Panchyati Raj Act, 1994 (in short 'the 1994 Act').

3. It is the case of the petitioner that in accordance with the mandate of the provisions contained under Section 9 of the 1994 Act read with Rule 6 of the Election Rules, 1994; respondent No.2 (The Director General, Rural Development and Panchayats Department, Panchayat Bhawan) passed an order dated 21.09.2022 making various reservations of the seats for the Scheduled Castes Sarpanch in District Kaithal. Petitioner states that as per order dated 21.09.2022 (Annexure P-1), there are 44 Gram Panchayats in Block Siwan and according to the ratio of population of the Scheduled Castes in Block Siwan and the total population of the Gram Panchayats in the said Block, the percentage of Scheduled Caste population in the Block comes to 30.35%. Therefore, on the basis of the said percentage, 13 seats of Sarpanch have to be reserved for Scheduled Caste in the Block.

4. The sum and substance of the grievance raised by the petitioner, is contained in para Nos.9 to 12 of the writ petition, which reads as under :-

*“9. That as per Clause 1(6) of the impugned order, total 11 villages have been shown to be excluded as having population of 10% or less of Scheduled Castes in the Village concerned as per the Census-2011. However, it is submitted that in the said list of 11 villages, one village **Kakrala Anayat** has been excluded on the ground that it has S.C. Population of 10% and less as per the requirement of the statute on the basis of Census-2011. However, it is submitted that the said Village Kakrala Anayat has been wrongly excluded by respondent No.2 as*

the percentage of population of the said Village as per Census 2011 is more than 10% and not less as alleged i.e. 10.24%. This fact is apparent from the copy of the Census-2011 of the Village Kakrala Anayat which is mentioned at Sr. No.85 and the S.C. Population percentage comes to 10.24%. In this regard, a copy of the Census-2011 List and the details uploaded by the Department itself on the Internet giving the percentage of S.C. Population of Village Kakrala Anayat as per Census-2011 are being filed.

10. That thus, it is apparent that Gram Panchayat Kakrala Anayat was not liable to be excluded from the zone of consideration for reservation of office of S.C. Sarpanch. Moreover, the said Village Kakrala Anayat, respondent No.3 has never been reserved for the purpose of office of S.C. Sarpanch earlier and thus, having never been reserved, it was liable to be included in the List of Reservations at Sr. No.5 of the List of Gram Panchayats i.e. Numbering 13 whose offices of Sarpanch have been reserved for S.C. Sarpanch, as it would be indicated as "0" at Sr. No.5. This is apparent from (Annexure P-5) i.e. List of Reservation. Consequently, the Gram Panchayat Kakeheri to which the petitioner belongs and which is being indicated at Sr. No.13 would be omitted from the List of Gram Panchayats reserved for S.C. Sarpanch as only 13 Gram Panchayats have to be reserved as per the proportion of S.C. Population.

11. That thus, from the above, it is apparent that the Gram Panchayat Kakeheri to which the petitioner belongs has to be put in the General Category and not in the reserved category for S.C. Sarpanch and thus, the impugned order is liable to be set-aside.

12. That secondly, the impugned order (Annexure P-1) is liable to be set-aside, as in para 2 of the impugned order, it has been shown that Gram Panchayat

Kachi Pishol has been earlier reserved twice for S.C. Sarpanch and even Gram Panchayat Pishol has been reserved twice for S.C. Sarpanch.”

5. In view of the afore-said stand of the petitioner, he earlier filed **CWP No.23185 of 2022**, which came to be disposed of vide order dated 04.10.2022, passed by the Coordinate Bench of this Court by directing respondent No.2 herein to decide the representation submitted by the petitioner. Apparently, the afore-said representation submitted by the petitioner came to be rejected by respondent No.2 herein vide order dated 06.10.2022 (Annexure P-7).

6. In the present writ petition, a perusal of the order sheet would show that no formal notice of motion was issued; however, learned State counsel had sought time to file status report, which was filed on 10.11.2022 and the matter was listed for final arguments. The relevant extract of status report reads as under :-

“3. That reservation of seats of Scheduled Caste Sarpanch in block Siwan, District Kaithal was done in accordance with the provision of Section 9 of the Act of 1994 read with Rule 6 of Haryana Panchayati Raj Election Rules 1994 and as per the order of Director General vide letter no.DPH/ECA-2/117/2022 on dated 21/09/2022 which is annexed in the writ petition as Annexure (P-1). Reservation of offices of Sarpanches for Scheduled Castes have been made amongst the gram panchayats first having the largest maximum population of Scheduled Castes according to census 2011 and having been reserved earlier least number of time for Scheduled Castes after excluding the Gram Panchayats having 10% or less than 10% of Scheduled Castes population. The amended section 9(6) of Haryana Panchayati Raj Act, 1994 is reproduced as under.

4. That as per record in the block Siwan 13 panchayats have to be reserved for the Scheduled Castes and 4

panchayats since the year 1994, till date, have not been reserved for the Scheduled Castes and their population is more than 10%. In addition to this, there are 9 such panchayats which have been reserved for the scheduled castes from 1994, till today, for only one time and in the same, the population percentage of the scheduled castes is the maximum. Gram Panchayat Kakheri has also been reserved only for 1 time and the population of the scheduled castes in it is 23.76%. Gram Panchayat Kakheri is included in the said 9 Panchayats in which the population percentage of the scheduled castes is between 23.76% to 38.84% and they have been reserved only for one time. That as per record and order of Director General, Development and Panchayat Department, Haryana, Chandigarh, there are total 44 Gram Panchayats in block Siwan, District Kaithal and the details of gram panchayats excluding 11, the gram panchayats having 10% or less than 10% population is given as under :-

<i>Sr. No.</i>	<i>No. of times, the GP remained reserved for SC Sarpanch</i>	<i>Name of GP</i>	<i>Total Populati on</i>	<i>Scheduled Caste Population</i>	<i>Percentage of Scheduled caste Population in the GP</i>
<i>1</i>	<i>1</i>	<i>Andahli</i>	<i>1113</i>	<i>192</i>	<i>17.25</i>
<i>2</i>	<i>1</i>	<i>Atela</i>	<i>1625</i>	<i>500</i>	<i>30.77</i>
<i>3</i>	<i>2</i>	<i>Dharampura</i>	<i>1253</i>	<i>1201</i>	<i>95.85</i>
<i>4</i>	<i>1</i>	<i>Dohar</i>	<i>2590</i>	<i>494</i>	<i>19.07</i>
<i>5</i>	<i>1</i>	<i>Farsgnazra</i>	<i>1493</i>	<i>423</i>	<i>28.33</i>
<i>6</i>	<i>0</i>	<i>Gogh</i>	<i>530</i>	<i>80</i>	<i>15.09</i>
<i>7</i>	<i>1</i>	<i>Gohra</i>	<i>1210</i>	<i>470</i>	<i>38.84</i>
<i>8</i>	<i>1</i>	<i>Harnola</i>	<i>649</i>	<i>125</i>	<i>19.26</i>
<i>9</i>	<i>2</i>	<i>Janedpur</i>	<i>927</i>	<i>373</i>	<i>40.24</i>
<i>10</i>	<i>2</i>	<i>Kachi Pisol</i>	<i>928</i>	<i>405</i>	<i>43.64</i>
<i>11</i>	<i>1</i>	<i>Kakheri</i>	<i>4197</i>	<i>997</i>	<i>23.76</i>
<i>12</i>	<i>1</i>	<i>Kakrala Kuchiyan</i>	<i>980</i>	<i>180</i>	<i>18.37</i>
<i>13</i>	<i>0</i>	<i>Kakyor Mazra</i>	<i>1041</i>	<i>108</i>	<i>10.37</i>

14	2	Kanthali	2910	1544	53.06
15	1	Kasour	1552	316	20.36
16	1	Kawartaran	2899	833	28.73
17	1	Kheri Gulamali	4515	837	18.54
18	2	Kharaka	7057	3984	56.45
19	1	Ladana Chaku	3661	1073	29.31
20	0	Landekima	1512	159	10.52
21	1	Malikpur	2245	616	27.44
22	2	Nagal	1565	900	57.51
23	2	Pahadpur	1222	1050	85.92
24	1	Papsar	1039	183	17.61
25	1	Parbhawat	939	241	25.67
26	2	Pishol	890	257	28.88
27	1	Ramthali	2207	347	15.72
28	1	Rasulpur	2949	1034	35.06
29	1	Sair	2435	483	19.84
30	1	Sotha	2133	281	13.17
31	2	Tarawali	1868	1280	68.52
32	0	Theh Kharak	660	72	10.91
33	2	Urlana	2198	1298	59.05

5. That as per record and order of Director General, Development and Panchayat Department, Haryana, Chandigarh, the details of 13 Gram Panchayats are required to be reserved for Scheduled castes Sarpanch in accordance under Rule 6 of Haryana Panchayati Raj Election Rules, 1994. The following Gram Panchayat having been reserved least number of times so far and having maximum percentage of Scheduled Castes population and here by reserved for Scheduled castes Sarpanch. The list of 13 Gram Panchayat who are having the highest

population of scheduled castes have been reserved for scheduled castes Sarpanches.

Sr. No.	Number of times, The GP remained reserved for SC Sarpanch	Name of Gram Panchayat	Total Population	Scheduled Caste Population	Percentage of Scheduled Caste population in the Gram panchayat
1	0	Gogh	530	80	15.09
2	0	Theh Kharak	660	72	10.91
3	0	Lenderkima	1512	159	10.52
4	0	Kakyormajra	1041	108	10.37
5	1	Gohra	1210	470	38.84
6	1	Rasulpur	2949	1034	35.06
7	1	Atela	1625	500	30.77
8	1	Ladana Chakku	3661	1073	29.31
9	1	Kawaratan	2899	833	28.73
10	1	Fareshmajra	1493	423	28.33
11	1	Malikpur	2245	616	27.44
12	1	Parbhawat	939	241	25.67
13	1	Kakeheri	4197	997	23.76

6. That against the order of reservation of Director General Development & Panchayat Department Haryana dated 21.09.2022 the petitioner earlier filed CWP No.23185 of 2022 before the Honble High Court titled as Kehar Singh Rana V/s State of Haryana & others which was disposed off vide order dated 04.10.2022 with a direction to Respondent no.2-Director General Development & Panchayat Department, Haryana to

consider and decide the representation dated 29-09-2022 (Annexure P-6) (marked to the Deputy Commissioner, Kaithal) expeditiously in accordance with law by passing speaking order on 06.10.2022.

7. *That in compliance of the direction of Hon'ble High Court, respondent No.2-Director General Development & Panchayat Department, Haryana decided the representation of the petitioner on merits and order dated 21.09.2022 has been rightly passed vide order dated 06.10.2022 which is annexed in the writ petition as annexure (P-7).*

8. *That as the question regarding gram panchayat Kachi Pisol not having been reserved earlier is concerned as per the record of Gram Panchayat Block Siwan, the Gram Panchayat Kachi Pissol, which was earlier a part of Gram Panchayat Pissol and Gram Panchayat Pissol was reserved two times in the year 1995 & 2010. In this manner Kachi Pisol has also been considered to be reserved two times for the Scheduled Castes.*

9. *That as per the order of Director General Development & Panchayat Department Haryana and as per record in Gram Panchayat Kakarla Anayat the population of Scheduled Castes is 10.24% and the claim that it has not been reserved even once is not appropriate as per census 2011. Earlier Gram Panchayat Kakarla Anayat comprised of two village i.e. village Kakrala Anayat and Kakrala Kuchiyan the total population of Gram Panchayat Kakrala Anayat is 2090 and the population of Scheduled Castes is 214 in this the Abadi of two Gram Panchayats i.e. Gram Panchayat Kakrala Anayaat and Gram Panchayat Kakrala Kuchian is included. After bifurcation in the Gram Panchayat Kakrala Anayat in the year 2004 vide order dated 29-09-2004 and two Gram Panchayats namely Kakrala Anayat and Kakrala Kuchiya were formed. As per record, the total population of Gram Panchayat Kakrala Anayat is 1110 and Scheduled Castes population is 34 the percentage of Scheduled Castes is only 3.06 and in this manner*

the population of Scheduled Castes is less than 10% and due to that reason the same cannot be reserved. The remaining population is of Gram Panchayat Kakrala Kuchian, the percentage of Scheduled Castes is 18.37 and the population of Scheduled Caste is 180. Thereby this panchayat has been reserved once but the population of Scheduled Castes of Gram Panchayat Kakeheri is 23.76 percent and in this manner therefore Gram Panchayat Kakeheri is reserved for the Scheduled Castes.

10. That as per the report of District Revenue Officer, Kaithal vide letter no.8308 dated 13.10.2022 the hadbust number (69) of Kakrala Anayat & Kakrala Kuchian is the same according to the census of 2011 both the villages have been treated as one census unit and census is conducted on the basis of hadbust number (69), which is annexed with annexure (R-1). The Gram Panchayat of Kakrala Anayat is bifurcated by the order of Development & Panchayat Department Haryana Government on dated 29.09.2004. As per the wardbandi of Gram Panchayat Siwan on dated 17-04-2015, the total population of Kakrala Anayat is 1110 and population of scheduled caste is 34 and the total population of Kakrala Kuchiya is 980 and population of Scheduled Caste is 180. Thus the order passed by the authority concerned are legal and correct and based upon the provisions of law. It is therefore, respectfully prayed that in view of submission in the present status report, the writ petition filed by the petitioner may kindly be dismissed being devoid of merits.

11. That as per notification no.SEC/4E-II/2022/3064 dated 07-10-2022 of State Election Commission Haryana polling of Election held on 02.11.2022 under rule 24(2)(vi) in Gram Panchayats, in block Siwan, District Kaithal and the Sarpanch has been elected for the Gram Panchayat concerned.”

A perusal of the above extracted status report would show that
as per notification no. SEC/4E-II/2022/3064 dated 07.10.2022 of the State

Election Commission, Haryana polling of election held on 02.11.2022 under rule 24(2)(vi) in Gram Panchayats, in block Siwan, District Kaithal and the Sarpanch has been elected for the Gram Panchayat concerned.

7. Apparently, the scheme regarding reservation of the office of sarpanch for the Scheduled Castes in the Gram Panchayats within a block and the rotation thereof to different Gram Panchayats; is a complex process, which is discernible not only from the contents of the writ petition, but would also be apparent from the status report. The question arises if upon consideration of the respective claims of the parties, any adjustment is required to be made as regards reservation of the office of sarpanch for the Scheduled Castes in a particular Gram Panchayat within a block and/or as regards the rotation thereof to different Gram Panchayats. However, keeping in view the fact that the polling of election has already been held on 02.11.2022 in Gram Panchayats in block Siwan, District Kaithal and the Sarpanch has been elected for the Gram Panchayat concerned, any such adjustment would create an imbalance in the seats to be reserved as regards the office of sarpanch for the Scheduled Castes in the Gram Panchayats within a block.

8. Evidently, no interim relief/stay was granted in the instant petition as regards holding of elections of the block concerned.

9. The fact remains that there is no challenge to the validity of the provisions contained in the 1994 Act and also the Election Rules, framed thereunder. Further, the scheduled elections have already been held on 02.11.2022 as regards the Gram Panchayats in Block Siwan, District Kaithal and the Sarpanches have been elected for the Gram Panchayats concerned.

There is no challenge to the elections of the other Gram Panchayats within

the Block Siwan nor there is any interim direction/order, indicating that the elections to the other Gram Panchayats within the Block Siwan, would be subject to the final outcome of the present petition. Resultantly, no effective relief can be granted to the petitioner and at the cost of repetition, it is added that any attempt to change the reservation of the Office of the Sarpanch for the Scheduled Castes in the Gram Panchayat within a block and/or any rotation thereof to different Gram Panchayats within the block, shall upset the entire election process, which already stands concluded.

10. A somewhat similar issue was considered by the Hon'ble Supreme Court of India in *Arun S/o Shankar Dokhe v. State of Maharashtra, 2017(13) SCC 500*, wherein, the Hon'ble Supreme Court held as under:-

“4. We have heard the counsel for both sides at length. During the hearing, it was noticed that the scheme regarding rotation of seats reserved for women or backward class of citizens etc., is a very complex process. That is discernible from the relevant provisions regarding allotment and rotation of seats reserved for women. We are of the considered opinion that even if the Petitioners succeed in persuading us on merits, as the election process of phase one has concluded with declaration of results in respect of other Electoral Divisions, the same cannot be undermined. Any attempt to make adjustment even in respect of one constituency i.e. Electoral Division No.20 (Chande-Kasare), would create an imbalance in the ratio of seats to be reserved for the respective categories as mandated by the provisions of the 1961 Act and the 1996 Rules. Indeed, the Petitioners have invited our attention to the dichotomy in the provisions of the Act, in particular Section 12(2) (d), which postulates allotment of seats by rotation to different Electoral Divisions in a Zilla Parishad whereas the 1996

Rules provides for allocation of seats by drawing of lots. There appears to be some confusion if not conflict in the case of reconciling the mandate of reservation of seats for women in terms of Section 12(2) (d) and reservation of seats for women in reserved categories in terms of the Rules. The fact remains that the validity of provisions contained in the 1996 Rules has not been challenged in the writ petition. Further, the election schedule notified on 11.01.2017 by the State Election Commission has proceeded to its logical end in respect of all other Electoral Divisions of the concerned Zilla Parishad/Panchayat Samitis. There is no challenge to those elections nor those elections have been made subject to the outcome of the present Special Leave Petition. As a result, no effective relief can be granted to the petitioners.

5. As aforesaid, any attempt to do so would inevitably upset the ratio of reservation of seats for women in the other Electoral Divisions where the election process is complete. In other words, accepting the Petitioners' prayer in the writ petition at this stage would result in creating an imbalance in that ratio, which will be in violation of the letter and spirit of the law. For that reason, we decline to interfere in this petition and leave it open to the Petitioners to pursue any other remedy as may be permissible by law. The same will have to be decided in accordance with law. We make it clear that in the peculiar facts of the case on hand, we do not intend to express any view on the correctness of the issue canvassed before us by either side and we leave all questions open..."

11. Keeping in view the afore-mentioned facts and circumstances, we decline to interfere in this petition. However, we leave it open to the petitioner to pursue any other remedy as may be permissible to him under law, which will have to be decided in accordance with law. It is clarified that

we have not expressed any view on the correctness of the stand taken by the respective parties and all questions are left open.

- 12. Accordingly, the instant petition stands disposed of.
- 13. All pending application/s, if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

February 21, 2024

gurpreet

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No