
Before N.K. Sodhi & N.K. Sud, JJ

DAYA SHANKAR,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.P.W. 7143 OF 2002

The 22nd April, 2003

Constitution of India, 1950—Art. 226—Haryana Municipal Corporation Act, 1994—S.11(8)—Haryana Municipal Corporation Election Rules, 1994—R1.71(6)—Election to office of Mayor of the Corporation—Post reserved for a backward class candidate—Candidate belongs to ‘Goswami’ caste—Haryana State not declaring Goswami caste a backward class—Not eligible to contest election for the post of Mayor—Merely because U.P. State from where the candidate migrated had declared Goswami as a backward class she cannot claim the benefits given to backward classes when Goswami caste has not been declared a backward class in Haryana State—Challenge to election without resorting remedy of filing an election petition—Existence of such a remedy not an absolute bar to the exercise of jurisdiction under Art. 226—Petition allowed while setting aside election of respondent as Mayor of the Corporation.

Held, that respondent No. 6 belongs to ‘Goswami’ caste which has not been declared a backward class in the State of Haryana. No such declaration/notification has been produced by any of the respondents. A certificate produced by respondents 2 and 6 has been issued by the Tehsildar Ghaziabad and even if the petitioner is a backward class in the State of U.P. she cannot be treated as a backward class in the State of Haryana because the State of Haryana has not declared ‘Goswami’ Caste as a backward class. The petitioner originally belongs to the State of U.P. but has now settled in Faridabad from where she contested election to the Corporation. When a resident of one State migrates to another, he does not carry with him the special rights or privileges granted to him in the original state specified for that State or area or part thereof. If that right is not given in the migrated State, he cannot claim the same merely because the State from where he has migrated had given those rights. Respondent No.

6 might have enjoyed the benefits given to backward classes in the State of U.P. when she was residing there but on her migration to the State of Haryana, she cannot claim the benefits given to backward classes when 'Goswami' caste has not been declared a backward class in the State to which she has migrated. Therefore, respondent No. 6 does not belong to a backward class in the State of Haryana and, thus, she was not eligible to contest for the post of Mayor of the Corporation which post was admittedly reserved for a backward class candidate. Her election is, therefore, liable to be set aside on this ground alone.

Deepak Sibal, Advocate, for the petitioner. Surya Kant,
Advocate General, Haryana with R.D. Sharma, AAG
Haryana for respondents 1 and 3 to 5

Narender Hooda, Advocate for respondent No. 2

Sanjeev Kaushik, Advocate for respondent No. 6.

JUDGMENT

N.K. SODHI, J:

(1) Challenge in this writ petition is to the election of respondent 6 as Mayor of the Municipal Corporation, Faridabad (for short the Corporation) on the ground that the post was reserved for backward class candidate and that the said respondent does not belong to that class.

(2) Petitioner belongs to Bairagi caste which has been declared as a backward class in the State of Haryana. He contested election to the Corporation held in March/April, 2000 from Ward No. 2 which was reserved for a backward class candidate and was declared elected. After the result of the elections was announced, one Devinder Bhadana was elected Mayor of the Corporation. His election was challenged by the petitioner by filing Civil Writ Petition 11831 of 2000 in this court which is still pending. During the pendency of that writ petition, Devinder Bhadana was voted out from the office through a motion of no confidence and in his place respondent No. 6 was elected Mayor of the Corporation. It is common case of the parties that by notification dated 1st May, 2000, the Governor of Haryana in exercise of the powers conferred by sub-section (8) of section 11 of the Haryana Municipal Corporation Act, 1994 (hereinafter referred to as the Act)

read with sub-rule (6) of Rule 71 of the Haryana Municipal Corporation Election Rules, 1994 (hereinafter called the Rules), specified that the office of Mayor in the Corporation shall be filled up from amongst the members belonging to backward classes elected in the elections held in April, 2000. As already observed, the only ground on which the election has been challenged before us is that respondent No. 6 does not belong to a backward class. She is "Goswami" by caste which, according to the petitioner, does not fall in the list of backward classes declared by the State Government and that she is a "Brahmin" and, therefore, not eligible to be elected Mayor of the Corporation. In the reply filed by the Corporation, the material facts as alleged by the petitioner have not been controverted. What is stated on behalf of the Corporation is that the election of respondent no. 6 as Mayor of the Corporation was unanimous and that the petitioner was present at the time of the election and he should have then raised an objection in this regard. It is pleaded that the petitioner is estopped by his own conduct from raising this plea in the writ petition. It is also pleaded that the petitioner has not exhausted the remedy of filing an election petition as provided in Rule 78 of the Rules and, therefore, according to the Corporation, the writ petition is liable to be dismissed. Respondent No. 6 has also contested the writ petition and she, too, has raised similar objections to the maintainability of the writ petition. She has also alleged that the petitioner does not belong to a backward class and, therefore, his writ petition is liable to be dismissed on this ground as well. The fact that Respondent No. 6 does not belong to a backward class has not been seriously disputed though she claims to be belonging to such a class on the basis of a certificate a copy of which is stated to have been appended to the written statement as Annexure R-6/2. Here it may be mentioned that no such certificate has been appended. Respondents 1, 3 and 5 have not chosen to file any reply.

(3) We have heard the learned counsel for the parties and are of the view that the writ petition deserves to succeed. It is common ground between the parties that Respondent No. 6 belongs to "Goswami" caste which has not been declared a backward class in the State of Haryana. No such declaration/notification has been produced by any of the respondents in this case. Respondents No. 2 and 6 have, however, produced at the time of arguments a photocopy of the "Other Backward Classes Certificate" issued by the Tehsildar Ghaziabad in the State of Uttar Pradesh certifying that Smt. Anita Goswami wife

of Krishan Goswami (Respondent No. 6 herein), resident of Village Sikri Khurd, District Ghaziabad in the State of U.P. belongs to "Gosain" community which is recognized as a backward class under Government of India, Ministry of Welfare Resolution No. 12011/68/95-8CC(C), dated September 10, 1995 published in the Gazette of India Extraordinary Part-I on September 13, 1995. The question that arises for our consideration is whether Respondent No. 6 could be said to be belonging to a backward class on the basis of the certificate now produced before us. Even if we accept the certificate at its face value, the answer to the question has to be in the negative. This certificate has been issued by the Tehsildar Ghaziabad and even if the petitioner is a backward class in the State of U.P., she cannot be treated as a backward class in the State of Haryana because the State of Haryana has not declared "Goswami" caste as a backward class. We were informed that the petitioner originally belongs to the State of U.P. but has now settled in Faridabad from where she contested election to the Corporation. It is by now well settled that when a resident of one State migrates to another, he does not carry with him the special rights or privileges granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State, he cannot claim the same merely because the State from where he has migrated had given those rights. Respondent No. 6 might have enjoyed the benefits given to backward classes in the State of U.P. when she was residing there but on her migration to the State of Haryana, she cannot claim the benefits given to backward classes when "Goswami" caste has not been declared a backward class in the State to which she has migrated. Reference in this regard may be made to the decision of a Constitution Bench of the Apex Court in *Marri Chandra Shekhar Rao versus The Dean, Seth G.S. Medical College and others* (1). We are, therefore, of the view that Respondent No. 6 does not belong to a backward class in the State of Haryana and, thus, she was not eligible to contest for the post of Mayor of the Corporation which post was admittedly reserved for a backward class candidate. Her election is, therefore, liable to be set aside on this ground alone.

(4) We may now deal with the preliminary objection taken by the respondents that the petitioner should have resorted to the

alternative remedy of filing an election petition before the Tribunal under Rule 78 of the Rules. It is true that an election petition is provided but the existence of such a remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution particularly when the election of Respondent No. 6 is patently contrary to the notification issued by the Governor of Haryana reserving the post of Mayor for a backward class candidate. The action of the respondents in allowing Respondent No. 6 to contest for the post when she did not belong to a backward class is clearly illegal and, therefore, in the exercise of our discretion, we have no hesitation to interfere in the matter notwithstanding that the alternative remedy has not been exhausted.

(5) The plea of Respondent No. 6 that the petitioner does not belong to a backward class, need not detain us. The fact that the petitioner belongs to a backward class has not been disputed by the Corporation and in any case, he contested as a Municipal Councillor from Ward No. 2 against a reserved seat meant for a backward class candidate. If he is not a backward class candidate, it is open to Respondent No. 6 or any other candidate to challenge his election in accordance with law. Moreover, the question whether petitioner is a backward class candidate or not, is not in issue before us in this writ petition and, therefore, we have no hesitation in rejecting the contention that the petition is not maintainable on this ground. We also find no merit in the contention of the Respondents that the petitioner is estopped from challenging the election of respondent No. 6 merely because he was present at the time when she was elected a Mayor of the Corporation. If she does not belong to a backward class, it is open to the petitioner as well as to any other member of the Corporation to challenge her election on that ground. The question of estoppel does not arise.

(6) In the result, the writ petition is allowed and the election of Respondent No. 6 as Mayor of the Corporation set aside, leaving the parties to bear their own costs.

R.N.R.