

*Before Satish Kumar Mittal & Jaswant Singh, JJ.*

**PARMJIT SINGH,—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

CWP No. 14927 of 2008

26th August, 2008

*Constitution of India, 1950—Art.226—Punjab Panchayati Raj Act, 1994—S.12—Punjab Reservation for the Offices of Sarpanches of Gram Panchayats and Chairmen and Vice-Chairmen of Panchayat Samitis and Zila Parishads Rules, 1994—Rl.6—A woman belonging to Scheduled Caste elected Panch against reserved seat of S.C. women—Whether eligible to contest election for post of Sarpanch against seat meant for Scheduled Caste Category—Held, yes— No prohibition from contesting election for post of Sarpanch against seat reserved for S.C. category merely on ground that she was elected as Panch from reserved seat of S.C. Women—Such prohibition violates Article 15—Petition dismissed.*

*Held*, that if the seat of Sarpanch of a village is reserved for Scheduled Caste, then both Men and Women belonging to Scheduled Castes category can contest the election for the said post because the eligibility is only “being a Scheduled Caste Panch” and not the nature of the constituency they represent as Panches. Further, if the seat of a Sarpanch of a village is reserved for Scheduled Caste (Women), then only women Panches belonging to Scheduled Caste can contest against the said seat because the eligibility is “being a Scheduled Caste as well as a Woman”.

(Para 7)

*Further held*, that Section 55 of the Punjab State Election Commission Act, 1994 provides that “For the avoidance of doubt, it is hereby declared that a member of the Scheduled Castes shall not be disqualified to hold a seat not reserved for members of those castes, if he is otherwise qualified to hold such seat under the Constitution of

India and this Act". These provisions have been made with regard to contesting of the election by the Scheduled Castes against the unreserved seat meant for General Category. These provisions declare that a member of the Scheduled Castes shall not be deemed to be disqualified to contest the election against the unreserved seats if he is otherwise qualified to hold such post under the Constitution of India or under this Act. On the same analogy a woman belonging to Scheduled Caste is fully eligible and qualified to hold the office of Sarpanch reserved for Scheduled Castes under the Act. She cannot be prohibited from contesting the election for the post of Sarpanch against the seat meant for Scheduled Castes category merely on the ground that she was elected as Panch from the reserved seat of scheduled Castes Women. Such prohibition would be violative of Article 15 of the Constitution of India which prohibits discrimination on the ground of sex. Article 15(3) provides that nothing in this article shall prevent the State from making any special provision for women and children. Keeping in view the said mandate, under Section 12 of the Act, special provision has been made with regard to minimum 1/3rd total reserved seats of Scheduled Castes for the office of Sarpanch in the district for women belonging to Scheduled Castes. Therefore, the contention of the petitioner that a member of the Scheduled Castes can only contest the election for the office of Sarpanch against the reserved seat for 'women' belonging to Scheduled castes and not the seat reserved for Scheduled Castes, cannot be accepted. Thus, respondent No. 5 though was elected to the office of Panch against the reserved category of Scheduled Castes Women was fully eligible to contest the election for the post of Sarpanch, which was reserved for Scheduled Castes category, being a 'woman' belonging to Scheduled Caste.

(Para 8)

D.S. Pheruman, Advocate, *for the petitioner*

**SATISH KUMAR MITTAL, J.**

(1) Whether a woman belonging to Scheduled Caste, who had contested and got elected as panch from the reserved seat for a Scheduled Caste (Women), is eligible to contest the election for the post of

Sarpanch, which is reserved for the Scheduled Castes Category, is the question which has been raised in this petition.

(2) In this case, seven Panches were to be elected for Gram Panchayat of Village Bhaini Matwa, Block and District Tarn Taran. Out of seven Panches,—*vide* notification issued under Section 11 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as ‘the Act’), four were reserved for General Category, one for General (Women), one for Scheduled Castes and one for Scheduled Caste (Women). The petitioner successfully contested the election of Panch against the reserved seat of Scheduled Caste and respondent No. 5 against the reserved seat of Scheduled Caste (Women), and their election as Panches was duly notified.

(3) As per Section 13-A of the Act, the Sarpanch is to be elected from amongst the Panches in the meeting of the Panches convened by the authorized officer by the Deputy Commissioner. Section 12 of the Act provides for reservation of seats for the office of Sarpanch. *Vide* notification dated 12th May, 2008 (Annexure P-5), the office of Sarpanch of village Gram Panchayat Bhaini Mattuan was reserved for Scheduled Castes category. The petitioner as well as respondent No. 5, both belonging to Scheduled Castes category, contested the election for the office of Sarpanch in which respondent No. 5 has been declared elected.

(4) In this petition, the petitioner is challenging the election of respondent No. 5 as Sarpanch of the aforesaid Gram Panchayat on the ground that respondent No. 5 was not eligible to contest the election of Sarpanch, which is reserved for Scheduled Castes and not for Scheduled Castes (Women) because respondent No. 5 was elected as Panch of the Gram Panchayat only against the reserved seat for Scheduled Caste (Women). According to the petitioner, he was the only eligible candidate for the office of Sarpanch of the Gram Panchayat because he was elected as a Panch from the reserved seat of Scheduled Castes, therefore, the petitioner should have been declared elected as Sarpanch of the Gram Panchayat of village Bhaini Mattuan as an uncontested candidate. In support of this contention, learned counsel for the petitioner, while relying upon the provisions of Section 12 of the Act as well as Rule 6 of the Punjab Reservation for the Offices of Sarpanches of Gram

Panchayats and Chairmen and Vice-Chairmen of Panchayat Samitis and Zila Parishads Rules, 1994 (hereinafter referred to as 'the Rules') submits that offices of Sarpanches of the Gram Panchayats in the district are to be reserved for Scheduled Castes category on the basis of population of the Scheduled Castes in the district, and 1/3rd office of such offices reserved for Scheduled Castes categories in the district are required to be reserved for women belonging to Scheduled Castes and thereafter it is to be reserved for General Category. Learned counsel further submits that Rule 6 of the Rules pertains to rotation of reservation and it provides that 1st reservation is required to be given to Scheduled Castes and 2nd reservation is to be given to women belonging to the Scheduled Castes and once these two reservations are completed then the 3rd reservation is required to be given to women general and thereafter it is to be kept open for General Category. By referring to these provisions, learned counsel submits that a woman belonging to Scheduled Caste, who has contested the election of Panch of the Gram Panchayat against the reserved seat for Scheduled Castes (Women), cannot change her category and contest the election for the office of Sarpanch, which has been reserved for Scheduled Castes only. Counsel contends that the petitioner was the only eligible candidate for the office of Sarpanch, which was reserved for Scheduled Castes, therefore, as per Section 54 of the Act, he should have been declared elected as an uncontested candidate.

(5) In our opinion, the aforesaid contention of the counsel for the petitioner cannot be accepted. Section 12 of the Act provides as under :—

**“12. Reservation of seats for the office of Sarpanch.—**

(1) Offices of Sarpanch of Gram Panchayats in the district shall be reserved for Scheduled Castes and the number of such offices shall bear, as nearly as may, the same proportion to the total number of offices of Sarpanches in the district as the population of Scheduled Castes in the district bears to the total population of the district :

[Provided that not less than one-third of the total number of offices of Sarpanch of Gram Panchayats in

the district shall be reserved under sub-section (1) shall be reserved for women belonging to the Scheduled Castes.]

- (2) Not less than one-third of the total number of offices of Sarpanches in the district shall be reserved for women including such offices, reserved for women belonging to Scheduled Castes under sub-section (1).
- (3) There shall be no reservation in the offices of Sarpanches for Backward Classes.
- (4) The offices reserved under this section shall be allotted by rotation to the different Gram Panchayats at the time of every general election in such manner as may be prescribed.

Explanation.—For the removal of doubts it is hereby declared that the principle of rotation for the purpose of reservation of offices under sections 2 and 12 shall commence from the first election to be held after the commencement of this Act.”

(6) A bare reading of sub-section (1) of the aforesaid provision makes it clear that the number of offices of Sarpanches of the Gram Panchayat in the district shall be reserved for Scheduled Castes proportionately to the population of the Scheduled Castes in the district. The proviso to this Section further provides that 1/3rd of the total number of offices of Sarpanches of Gram Panchayats in the district reserved for Scheduled Castes under sub-section (1) shall be reserved for women belonging to the Scheduled Castes. This sub-section provides for minimum 1/3rd of the total number of the offices of Sarpanches of the Gram Panchayats in the district reserved for Scheduled Castes to be reserved for women belonging to the Scheduled Castes. This Section does not prohibit that a woman belonging to Scheduled Caste cannot contest the election for the post of Sarpanch reserved for Scheduled Castes category.

(7) In our opinion, if the seat of Sarpanch of a village is reserved for Scheduled Caste then both men and Women belonging to Scheduled Castes category can contest the election for the said post because the eligibility is only “being a Scheduled Caste Panch” and not the nature of the constituency they represent as Panches. Further, if the seat of a Sarpanch of a village is reserved for Scheduled Caste (women), then only women Panches belonging to Scheduled Caste can contest against the said seat because the eligibility is “being a Scheduled Caste as well as a Woman”. In our opinion, neither the provisions of Section 12 of the Act nor Rule 6 of the Rules in any way advance the contention raised by the counsel for the petitioner.

(8) Section 55 of the Punjab State Election Commission Act, 1994 provides that “For the avoidance of doubt, it is hereby declared that a member of the Scheduled Castes shall not be disqualified to hold a seat not reserved for members of those castes, if he is otherwise qualified to hold such seat under the Constitution of India and this Act.” These provisions have been made with regard to contesting of the election by the Scheduled Castes against the unreserved seat meant for General Category. These provisions declare that a member of the Scheduled Castes shall not be deemed to be disqualified to contest the election against the unreserved seats if he is otherwise qualified to hold such post under the Constitution of India or under this Act. On the same analogy, a woman belonging to Scheduled Caste is fully eligible and qualified to hold the office of Sarpanch reserved for Scheduled Castes under the Act. She cannot be prohibited from contesting the election for the post of Sarpanch against the seat meant for Scheduled Castes category merely on the ground that she was elected as Panch from the reserved seat of Scheduled Castes Women. In our opinion, such prohibition would be violative of Article 15 of the Constitution of India which prohibits discrimination on the ground of sex. Article 15(3) provides that nothing in this article shall prevent the State from making any special provision for women and children. Keeping in view the said mandate, under Section 12 of the Act, special provision has been made with regard to minimum 1/3rd total reserved seats of Scheduled

Castes for the office of Sarpanch in the district for women belonging to Scheduled Castes. Therefore, the contention of the counsel for the petitioner that a member of the Scheduled Castes can only contest the election for the office of Sarpanch against the reserved seat for 'women' belonging to scheduled Castes and not the seat reserved for Scheduled Castes, cannot be accepted. Thus, in our opinion, respondent No. 5, though was elected to the office of Panch against the reserved category of Scheduled Castes Women, was fully eligible to contest the election for the post of Sarpanch, which was reserved for Scheduled Castes category, being a 'woman' belonging to Scheduled Caste.

(9) In view of the aforesaid, we do not find any merit in this petition and the same is hereby dismissed.

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**R.N.R.**

*Before Permod Kohli & Rakesh Kumar Garg, JJ.*

**BALDEV RAJ,—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

CWP No. 10349 of 2008

11th July, 2008

*Constitution of India, 1950—Arts. 226 & 243ZG(b)—Punjab Municipal Act, 1911—Ss. 3, 8, 12, 13 & 13-A—Determination of the number of Elected Members and Reservation of Offices of Presidents of Municipalities Rules, 1994—Rls. 3, 4, Schedules I and II—Delimitation of Wards of Municipalities Rules, 1972—Rls. 3 to 10—Petitioners seeking determination of delimitation, exclusion of names from voter list, non-preparation of proper and correct electoral rolls, non-reservation, wrong reservation of seats—Election schedule already notified and process of nomination commenced—Intervention of High Court in exercise of writ jurisdiction under Article 226 is improper—Any action of Court or any individual which may, by any means, hamper or obstruct democratic process*