

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

**SAVINDER KAUR AND OTHERS,—Petitioners**

*versus*

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

CWP No. 11373 of 2008

10th September, 2008

*Constitution of India, 1950—Art. 226 & 243-D—Punjab Panchayati Raj Act, 1994—S.12—Punjab Reservation for the Offices of Sarpanches of Gram Panchayats and Chairmen and Vice-Chairmen of Panchayat Samities and Zila Parishads Rules, 1994—Rl. 6—Government changing reservation for office of Sarpanch of Gram Panchayat from Women to Scheduled Caste—Neither provisions of S.12 of 1994 Act nor Rule 3 of 1994 Rules provide that office of Sarpanch in a village is to be reserved for S.C. or S.C. (Women) or Women where population of said category is more—S.12(4) of 1994 Act provides that offices reserved shall be allotted by rotation of different Gram Panchayats at time of every general election in such manner as may be prescribed—Corrigendum reducing reservation of Women from 1/3rd to total members violates Section 12 & Clause (4) of Art.243-D—Petition allowed, corrigendum changing category from Women to S.C. quashed.*

*Held*, that by the impugned corrigendum, one office of the Woman reserved for Women has been substituted by the category of Scheduled Caste. By this change, the number of reservation of the Women has been reduced from one third of the total members, i.e. from 31 to 30. This change not only violates Section 12 of the Act read with Rule 3 of the the Rules, but also clause (4) of Article 243D of the Constitution of India. Therefore, the action of respondent No. 3 in changing the category from Women to Scheduled Caste by the impugned corrigendum is not only illegal and violative but also wholly without jurisdiction. The justification given by respondent No. 3 in this regard is not tenable. In the written statement, it has been stated that the said corrigendum was issued for correcting the mistake committed earlier.

But it appears that there was no mistake illegality or error in the reservation made in the earlier notification and the impugned corrigendum has been issued illegally by the Deputy Commissioner, Amritsar under political pressure and with intention to give benefit to some persons of village Hair where the reservation has been changed from the category of Scheduled Caste to Genral.

(Para 15)

T.P. Singh, Advocate *for the Petitioner.*

N.S. Virk, Additional A.G., Punjab, *for the respondents.*

**SATISH KUMAR MITTAL, J.**

(1) Six out of seven elected members of Gram Panchayat of Village Rampura, Block Verka, District Amritsar, have filed this writ petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the corrigendum, dated 23rd June, 2008 (published in the Punjab Government Gazette, dated 24th June, 2008). issued by the Deputy Commissioner, Amritsar (respondent No. 3 herein), whereby the reservation for the office of Sarpanch of Gram Panchayat of Village Rampura, Block Verka has been changed from 'Women' to 'Scheduled Caste', being illegal, arbitrary and *mala fide* ; with a further prayer for issuing direction to the respondents to hold the election for the office of Sarpanch of the said Gram Panchayat after restoring the office of Sarpanch to the category of 'Women', which was so reserved in the previous Notification, dated 8th May, 2008 published in the Punjab Government Gazette, dated 14th May, 2008.

(2) Village Rampura falls in Block Verka (District Amritsar) which consists of 94 villages, including village Hair. As per notification issued under Section 10 of the Punjab Panchayati Raj Act (hereinafter referred to as 'the Act'), Gram Panchayat of Village Rampura consists of seven Members (Panches). *Vide* notification, dated 12th February, 2008 issued under Section 11 of the Act, out of seven seats of Panches, two seats were reserved for General Category, one seat for Scheduled Caste (Woman), three seats for Scheduled Castes and one seat for

Woman, *vide* notification, dated 8th May, 2008 issued by the Deputy Commissioner (as published in the Punjab Government Gazette, dated 14th May, 2008), the Offices of Sarpanchs of all the 94 villages of Block Verka were reserved for different categories for block-wise as per the provisions of Section 12 of the Act read with Rule 3 of the Punjab Reservation for the Offices of Sarpanches of Gram Panchayats and Chairmen and Vice-Chairmen of Panchayats Samitis and Zila Parishads Rules, 1994 (hereinafter referred to as 'the Rules'). As per this notification, the office of Sarpanch of village Rampura, Block Verka has been reserved for the category of 'Woman' and the office of Sarpanch of village Hair was reserved for the category of 'Scheduled Caste'. Thereafter, the election of the Gram Panchayat of village Rampura was held on 26th May, 2008. The six petitioners along with one Lat Singh were elected as Panches of the Gram Panchayat.

(3) As per Section 13-A of the Act, after notification of the election of Panches, the Deputy Commissioner is required to authorize any officer or official of the State Government for convening the first meeting of the Gram Panchayat for the election of Sarpanch amongst the Members of the Gram Panchayat as per the reservation notified under Section 12 of the Act. Suddenly before convening of the first meeting and the election of the Sarpanch, on 23rd June, 2008, Deputy Commissioner, Amritsar (respondent No. 3 herein) issued a corrigendum (published in Punjab Government Gazette, dated 24th June, 2008) under Section 12 of the Act read with Rule 3 of the Rules changing the reservation of the office of village Rampura from the category of 'Women' to Scheduled Caste'. *Vide* this notification, the office of Sarpanch of village Hair has also been changed from 'Scheduled Caste' to 'General Category'. Immediately, on 4th July, 2008, the petitioners filed this petition challenging the said action of the Deputy Commissioner, being illegal, arbitrary and *mala fide*.

(4) After notice of motion, on 14th July, 2008, the following interim order was passed by this Court :—

“In the meanwhile, the constitution of the Panchayat and the election of the Sarpanch shall be subject to the final decision of this petition.”

(5) In the written statement filed on behalf of respondents No.3 and 4, the respondents have not disputed the aforesaid factual position, but denied, that the said corrigendum was issued illegally and arbitrarily or at the instance of the Minister of the Punjab Government. In para 10 of the written statement, it has been stated that the impugned corrigendum was issued by respondent No. 3 on the recommendation of the District Development and Panchayat Officer, Amritsar (respondent No. 4 herein), copy of which has been annexed as Annexure R-1, In Annexure R-1, it has been stated that the residents of village Hair Hadbast No. 347 had made the request for changing the reservation of the office of Sarpanch from Scheduled Caste to General on the ground that the population of Scheduled Castes in the village was less. Accepting the said request, the recommendation was made for changing the reservation of office of Sarpanch of Village Gram Panchayat Hair from Scheduled Caste to General. Regarding village Rampura, it has been stated that the office of Sarpanch of this village was changed from Women to Scheduled Caste as Scheduled Castes population in the village was more, though nobody from village Rampura had made any request for change of the office of Sarpanch.

(6) It is the case of the petitioners that the reservation of the offices of Sarpanches of the villages falling in Block Verka, *vide* notification, dated 8th May, 2008 was correctly made as per the amended sub-rule (3) of the Rules and also as per the roster prepared by the Deputy Commissioner Block-wise. He submits that in the year 1998 the office of Sarpanch in village Rampura was reserved for the category of Scheduled Caste and in the year 2003, it was reserved for General Category, therefore, this time the office was rightly reserved for the category of Women. Learned counsel further submits that a perusal of the notification, dated 8th May, 2008 shows that first 26 villages (from serial No. 1 to 26) in block Verka were reserved for Scheduled Castes and thereafter villages from serial Nos. 27 to 39 were reserved for Scheduled Caste (Women) and villages from serial Nos. 40 to 58, except serial No. 50, were reserved for the category of Women. Village Hair is at serial No. 13, which was reserved for Scheduled Caste and village Rampura is at serial No. 56, which was reserved for Women. The said reservation of the offices of Sarpanches

was made block-wise in consonance with Section 12 of the Act and in view of the amended Rules (as out of 94 villages falling in Block Verka, 31 Offices of Sarpanches have been reserved for Women [including Scheduled Castes (Women)]. But, subsequently the Deputy Commissioner at the behest of a local Minister, has illegally changed the reservation of the office of the Sarpanch,—*vide* impugned corrigendum which actually has resulted into reduction of seats of reserved categories of Women from 1/3rd, which is in violation of Section 12(3) of the Act.

(7) Learned counsel submitted that the office of Sarpanch of village Hair was never reserved for the category of Scheduled Caste except by notification, dated 8th May, 2008. Therefore, the same was rightly reserved by the Deputy Commissioner by rotation for the category of Scheduled Castes, but,—*vide* impugned corrigendum, in order to give under benefit to some persons of village Hair, Deputy Commissioner, Amritsar has changed the category of the office of Sarpanch of the said village from Scheduled Caste to General without any justification. Learned counsel further submitted that after the election of Panches was over, the Deputy Commissioner was having no jurisdiction to change the reservation of the office of only two villages without there being any mistake in the reservation notified earlier. Learned counsel submitted that the impugned action of the respondents is totally illegal, arbitrary, without jurisdiction and in violation of Section 12(3) of the Act and Article 243D(4) of the Constitution of India.

(8) Counsel for the respondents, while referring to the reasons given in the written statement, has tried to justify the impugned corrigendum being legal and valid and the same being issued as per the provisions of the Act and the Rules made thereunder.

(9) After hearing the counsel for the parties and perusing the record of the case, we are of the opinion that this writ petition deserves to be allowed and the impugned corrigendum is liable to be quashed.

(10) Article 243D of the Constitution of India provides that in every Panchayat the seats shall be reserved for (1) the Scheduled Castes; and (b) the Scheduled Tribes, and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of the seats to be filled by direct election in that Panchayat

as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat. Clause (2) provides that not less than one-third of the total number of seats under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be the Scheduled Tribes, Clause (3) further provides that not less than one-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat. Clause (4) further provides that the offices of the Chairpersons in the Panchayats at the village or any other level shall be served for Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislative of a State may, by law, provide. Proviso to this clause provides that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women and that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(11) In view of the aforesaid provisions, the State of Punjab has enacted the Punjab Panchayati Raj Act, 1994. Section 12 of the Act provides for reservation of seats for the office of Sarpanch, which reads 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.”

State of Punjab has also framed the Rules for the reservation of Offices of Sarpanches in order to implement the reservations contained in Section 12 of the Act. Rule 3 of the Rules which provides for reservation of the seats of the Offices of Sarpanches, is reproduced hereunder :—

- “3. Reservation of seats for the offices of Sarpanches. (Sections 12 and 107)-(1) The Deputy Commissioner shall, by notification in the official Gazette, reserve the offices of the Sarpanches of Gram Panchayats for the persons belonging to Scheduled Castes (including one-third women belonging to Scheduled Castes) in the same proportion as the population of the Scheduled Castes in the district bears to the total population of the district. The offices of Sarpanches of Gram Panchayats shall be reserved as per the roster prepared by the Deputy Commissioner.
- (2) One-third offices of the Sarpanches (including those reserved for women belonging to the Scheduled Castes) shall be reserved for the women. The reservation shall be operated as per the roster prepared by the Deputy Commissioner.

(3) The roster referred in sub-rules (1) and (2) shall be prepared block-wise by the Deputy Commissioner.

(12) A bare perusal of the aforesaid provisions reveals that the Offices of Sarpanches of the Gram Panchayat in the district shall be reserved for Scheduled Castes in accordance with the population of the Scheduled Castes in the district. These provisions further provide that 1/3rd members of the total members of the offices of Sarpanches in the district shall be reserved for women, including offices reserved for women belonging to Scheduled Castes. Sub-section (4) of Section 12 of the Act provides that the reservation for the offices of Sarpanches shall be allotted by rotation to different Gram Panchayats in such manner as may be prescribed. Sub-rule (2) of Rule 3 of the Rules provides that 1/3rd of the offices of Sarpanches (including those reserved for women belonging to Scheduled Castes) shall be reserved for women. The reservation shall be operated as per the roster prepared by the Deputy Commissioner. Sub-rule(3) provides that the roster referred in sub-rules (1) and (2) shall be prepared block-wise by the Deputy Commissioner.

(13) According to the aforesaid provisions, the Deputy Commissioner made the reservations for the offices of Sarpanches of the Gram Panchayat in block Verka which consists of 94 villages. A perusal of the notification, dated 8th May, 2008 reveals that out of 94 offices of Gram Panchayats, 39 offices of the Sarpanches of the Gram Panchayats have been reserved for Scheduled Castes, including 13 offices for Scheduled Castes (Women), which is one-third of the total reservation of the Scheduled Castes. 18 offices of the Sarpanches of the Gram Panchayats of Block Verka from serial Nos. 40 to 58 except serial No. 50, have been reserved for the category of Women. Thus, one-third of the total offices of the Sarpanches of Gram Panchayats in Block Verka, i.e. 31 have been reserved for Scheduled Castes (Women) and Women. The remaining 39 offices of the Gram Panchayats have been reserved for General Category. Thus, the reservation made for 94 villages was perfectly in consonance with the Act and the Rules.

(14) In the present case, it has not been disputed that in the year 1998, the office of Sarpanch of Village Rampura was reserved for



Scheduled Caste and in the year 2003 it was reserved for General Category. Therefore, in the present election, keeping in view the principle of rotation, this office was reserved for Women. It is also not disputed in the written statement that office of Sarpanch in village Hair was never reserved either for Scheduled Caste category or for Scheduled Caste (Women) or Women. However, this year, as per the roster, the said village has been reserved for the Scheduled Caste. In view of these facts, we are of the opinion that the Deputy Commissioner (respondent No. 3) was not justified to issue the impugned corrigendum vide notification, dated 23rd June, 2008 changing the reservation of the office of Sarpanch of village Rampura from woman to Scheduled Caste and the office of Sarpanch of village Hair from the category of Scheduled Caste to General. In the written statement, it has been stated that the said change has been made solely on the basis of the recommendation made by the District Development and Panchayat Officer, Amritsar, who had requested that the office of Sarpanch of village Hair should be reserved for General Category as the population of the Scheduled Castes in the said village is less whereas office of Sarpanch of village Rampura should be changed from Women to Scheduled Caste as the population of Scheduled Castes in that village is more. Neither any provision of Section 12 of the Act nor Rule 3 of the Rules provide that the office of Sarpanch in a village is to be reserved for Scheduled Caste or Scheduled Caste (Woman) or Women where the population of the said category is more. Sub-section (4) of Section 12 of the Act only provides that the offices reserved under this section shall be allotted by rotation to different Gram Panchayats at the time of every general election in such manner as may be prescribed. Sub-rule(1) of Rule 3 of the Rules provides that the Deputy Commissioner shall, by notification in the official Gazette, reserve the offices of the Sarpanches of Gram Panchayats for the persons belonging to Scheduled Castes (including one-third women belonging to Scheduled Castes) in the same proportion as the population of the Scheduled Castes in the district bears to the total population of the district. The offices of Sarpanches of Gram Panchayats shall be reserved as per the roster prepared by the Deputy Commissioner. Sub-rule (2) further provides that one-third offices of the Sarpanches (including those reserved for women belonging to Scheduled Castes) shall be reserved for the women. The reservation

shall be operated as per the roster prepared by the Deputy Commissioner and sub-rule(3) provides that the roster referred in sub-rules(1) and (2) shall be prepared block-wise by the Deputy Commissioner. Thus, in the Rules no where it is provided that an office of Sarpanch of a village Gram Panchayat is to be reserved for a particular category where the population of that category is more in the village. Vide earlier notification, dated 8th May, 2008, 31 offices of the Sarpanches of different Gram Panchayats of Block Verka have been reserved for Scheduled Castes (Women) and Women from serial Nos. 27 to 58, which is one-third of the total offices of the Sarpanches of the said Block i.e. 94. Out of this 31 offices of the Sarpanches include 13 Scheduled Castes (Women) and 18 Women. Thus, the reservation was made as per the roster prepared by the Deputy Commissioner. It is not the case of the respondents that in the roster there was any mistake committed by the Deputy Commissioner. Even if the reservation of the office of Sarpanch of Garm Panchayat of village Hair was to be changed from Scheduled Caste to General, then in that situation the office of Sarpanch of Scheduled Caste should have been given to a village in which the post of Sarpanch was reserved for General Category. There was no reason to *inter-se* change the reservation of office of Sarpanch of Village Gram Panchayat Rampura to Scheduled Caste, which was reserved for Women. By the impugned corrigendum, not only the percentage of reservation of the office of Women has been reduced, but the percentage of reservation of Scheduled Castes has also been reduced, resulting in change of ratio.

(15) By the impugned corrigendum, one office of the Woman reserved for Women has been substituted by the category of Scheduled Caste. By this change, the number of reservation of the Women has been reduced from one-third of the total members, i.e. from 31 to 30. This change not only violates Section 12 of the Act read with Rule 3 of the Rules, but also clause(4) of Article 243D of the Constitution of India. Therefore, the action of respondent No. 3 in changing the category from Women to Scheduled Caste by the impugned corrigendum is not only illegal and violative but also wholly without jurisdiction. The jurisdiction given by respondent No. 3 in this regard is not tenable. In the written statement, it has been stated that the said corrigendum was issued for correcting the mistake committed earlier. But, it appears that there was

no mistake, illegality or error in the reservation made in the earlier notification and the impugned corrigendum has been issued illegally by the Deputy Commissioner, Amritsar under political pressure and with intention to give benefit to some persons of village Hair where the reservation has been changed from the category of Scheduled Caste to General.

(16) In view of the above, this petition is allowed and the impugned corrigendum, dated 23rd June, 2008, so far as it relates to Gram Panchayat of Village Rampura, is quashed and the respondents are directed to conduct the election in accordance with law of the said Village Gram Panchayat as per the reservation made,—*vide* notification, dated 8th May, 2008.

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**R.N.R.**

***Before Hemant Gupta & Kanwaljit Singh Ahluwalia, JJ.***

**UNION TERRITORY, CHANDIGARH,—*Petitioner***

*versus*

**PERMANENT LOK ADALAT AND ANOTHER,—*Respondents***

C.W.P. No. 181 of 2008

18th September, 2008

***Constitution of India, 1950—Arts. 39-A & 226—Legal Services Authorities Act, 1987-S. 22—Jurisdiction of Permanent Lok Adalat—Permanent Lok Adalat ordering incorporation of name as owner of industrial plot—Dispute regarding title of plot—Civil Courts passing numerous decrees for & against parties—Permanent Lok Adalats having jurisdiction in respect of public utility services—Public utility service does not include property disputes—Dispute regarding title of property is beyond scope of Permanent Lok Adalat—Order passed by Permanent Lok Adalat set aside while granting liberty to seek remedy from an appropriate forum.***

***Held,*** that the Act has been enacted as an alternative dispute resolution for resolving the disputes in a spirit of conciliation outside