
R.N.R.

Before Alok Singh, J.

JASBIR KAUR AND OTHERS—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No. 10451 of 2008

18th August, 2010

Constitution of India, 1950—Arts. 226 & 243-D—Election to Gram Panchayat—Reservation of two seats for women one each under reserved and general category—Two women candidates securing higher votes under General category than male candidate—Whether both women candidates securing higher votes can be declared elected—Held, yes—Reservation for women —Horizontal reservation—It cannot be said that only two women are to be elected and other female candidates despite of securing higher votes not to be elected because other posts shall be deemed having been reserved for male category—Petition allowed.

Held. that the reservation for women in all the categories shall be a horizontal reservation. If women candidates, contesting the election, secured higher votes than the male candidates they would be declared elected under that category. Meaning thereby, if one seat is reserved for women candidate in the general category and two women candidates

contested the election and both the women candidates secured higher votes out of total 7 candidates, then both the women should have been declared elected since there were 4 seats of Panches in General category. Likewise, under the scheduled caste category, three candidates were to be elected and six were contesting the election and out of six candidates, Jasbir Kaur and Ranjit Kaur secured highest votes, hence, both of them should have been declared elected. It cannot be said that in both the categories, only one-one woman is to be elected and other female candidate despite of securing higher votes shall not be elected because other posts shall be deemed having been reserved for the male category.

(Para 7)

R. S. Bains, Advocate, *for the Petitioners*

S. K. Bhanot, Addl. A.G., Punjab, *for respondents No. 1 to 5.*

Ram Vilas Gupta, Advocate, *for respondent Nos. 7 and 10.*

G. S. Sandhu, Advocate, *for respondent Nos, 6, 8, 9, 11 and 12.*

ALOK SINGH, J.

• (1) Present petition is filed invoking jurisdiction of this Court under Article 226 of the Constitution of India.

(2) In nutshell, the contention of the petitioners are that the petitioners are women voters of the Village Ambala Jattan. Petitioner Nos. 1 and 2 belong to Scheduled Caste category; whereas petitioner No. 3 belongs to General Category. As per Article 243-D of the Constitution of India, in every panchayat not less than 1/3rd of the total number of seats, shall be reserved for women belonging to every category. It is alleged by the petitioners that in the election of the Gram Panchayat, one seat for women was reserved in the General category and one seat was reserved under the scheduled caste category for the women. It is further alleged that all the petitioners filed their nomination papers for the post of Panch. For the election of the Panches for the village of Ambala Jattan, there were total seven posts for the panches and out of seven posts, 4 post were General and 3 post were for Scheduled Caste category and out of them, one was reserved for the General category woman and one was reserved for Scheduled Caste woman. It is alleged by

the petitioners that in the General category two women i.e. Gurmit Kaur and Kulwinder Kaur filed their nomination papers. It is alleged that there were total 7 candidates including Kulwinder Kaur and Gurmit Kaur for 4 posts. It is further alleged that for the post of Panch under the scheduled caste category, there were six candidates including three women Jasbir Kaur, Ranjit Kaur and Tej Kaur for 3 posts. The petitioners have given chart showing the total votes secured by each candidate under the general category and under the scheduled castes category:—

General category (Man & Woman)		Votes polled
1.	Sukhpal Singh	67
2.	Gursewak Singh	0
3.	Kulwinder Kaur	79
4.	Gurmit Kaur	140
5.	Jasbir Kaur	59
6.	Balwinder Singh	41
7.	Mohinder Singh	53
Scheduled Caste Category (Man & Women)		Votes Polled
1.	Sukhwinder Singh	26
2.	Surjit Singh	23
3.	Gurdeep Singh	26
4.	Jasbir Kaur	74
5.	Ranjit Kaur	111
6.	Tej Kaur	22

(3) According to the petitioners, reservations for the women under all the categories are horizontal reservation. It is alleged by the petitioners that although Kulwinder Kaur secured 79 votes and Gurmit Kaur secured 140 votes but by applying wrong formula only Gurmit Kaur was declared elected under the General category and Kulwinder Kaur was not declared

elected despite of the fact that she secured 79 votes (second highest votes) and instead of Kulwinder Kaur, Jasbir Singh, Mohinder Singh and Sukhpal Singh were declared elected. The case of the petitioners is that Kulwinder Kaur should have also been declared elected since she secured second highest votes and Mohinder Singh should not have been declared elected. Likewise, it is alleged by the petitioners that under the scheduled castes category, three female contested the election and as per the chart, Smt. Ranjit Kaur secured 111 votes and Jasbir Kaur secured 74 votes, while Tej Kaur secured 22 votes. The case of the petitioners is that Ranjit Kaur was declared elected however, Jasbir Kaur was not declared elected despite of the fact that she also secured second highest votes i.e. 74 votes. It is further alleged by the petitioner that Jasbir Singh should have also been declared elected and one person out of Sukhwinder Singh or Gurdeep Singh should not have been declared elected.

(4) Learned Additional Advocate General, Punjab, appearing for the respondents, argued that in both the categories General as well as Scheduled Castes, only one post was reserved for the women category, hence, other seats shall be deemed having been reserved for male category. Learned Additional Advocate General, further argued that once Gurmit Kaur was declared elected in the women category, hence Kulwinder Kaur was not rightly declared. It is further argued by the learned Addl. Advocate General that under the scheduled castes category since Ranjit Kaur was declared elected, hence there was no need to declare Jasbir Kaur despite of the fact that she secured second highest votes.

(5) The sole question involved in the present petition is about the interpretation of the reservation under the women category. Hon'ble Apex Court in the matter of **Rajesh Kumar Daria versus Rajasthan Public Service Commission and others (1)** had occasioned to deal with the horizontal reservation. Hon'ble Apex Court in paragraph Nos. 6, 7, 8 and 9 has held as under :—

“6. Before examining whether the reservation provision relating to women, had been correctly applied, it will be advantageous to refer to the nature of horizontal reservation and the manner of its application. In Indra Sawhney versus

Union of India [1992 Supp.(3)SCC 217], the principle of horizontal reservation was explained thus (Para 812):

“[All reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as vertical reservations’ and ‘horizontal reservations. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [(under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped (under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations-what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains and should remain the same.”

7. A provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in **Anil Kumar Gupta versus State of U.P.**[1955(5) SCC 173] thus :

“The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C.; the third step would be to find out how many candidates belonging to special reservations have been

selected on the above basis. If the quota fixed for horizontal reservations is already satisfied in case it is an overall horizontal reservation no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.)"

[Emphasis supplied]

8. We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC, should be : "For SC: 30 posts, of which 9 posts are for women." We find that many a time this is wrongly described thus : "For SC: 21 posts for men and 9 posts for women, in all 30 posts". Obviously, there is, and there can be, no reservation category of 'male' or 'men'.
9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped women etc., under Articles 16(1) or 15(3) are horizontal reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be

counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide-Indira Sawhney (*Supra*), **R. K. Sabharwal versus State of Punjab** (1995(2) SCC 745), **Union of India versus Virpal Singh Chauvvn** (1995 (6) SCC 684 and **Ritesh R. Sah versus Dr. Y. L. Yamul** (1996(3) SCC 253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (special) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example :

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates, contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if

the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates.[But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four.]”

(6) Ratio of the judgment of Rajesh Kumar Daria (*supra*) has been relied upon by the Apex Court in the case of Public Service Commission **Uttranchal versus Mamta Bisht** (2)

(7) Applying the ratio of the Apex court, it can safely be said that the reservation for women in all the category shall be a horizontal reservation. If women candidates, contesting the election, secured higher votes than the male candidates they would be declared elected under that category. Meaning thereby, if one seat is reserved for women candidate in the general category and two women candidates contested the election and both the women candidates secured higher votes out of total 7 candidates, then both the women should have been declared elected since there were 4 seats of Panches in General category. Likewise under the scheduled castes category, three candidates were to be elected and six were contesting the election and out of six candidates, Jasbir Kaur and Ranjit Kaur secured highest votes, hence, both of them should have been declared elected. It cannot be said that in both the categories, only one-one woman is to be elected and other female candidate despite of securing higher votes shall not be elected because other posts shall be deemed having been reserved for the male category. The policy of the Government as suggested by the learned Additional Advocate General Punjab, is totally against the dictum of the Apex Court in case of Rajesh Kumar Daria (*supra*).

(8) In view of the above finding, the result declared by the respondents does not stand in the scrutiny of law. The petition is allowed. Respondents are directed to declare the result as per the observations made herein above within ten days from today.
