

Before M. M. Punchhi, J.

AMIN CHAND,—Petitioner

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 4342 of 1978.

February 26, 1982.

Punjab Gram Panchayat Act (IV of 1953)—Sections 6 and 13-B—Gram Panchayat Election Rules, 1960—Rules 6, 7 and 8—Constitution of India, 1950—Article 226—Petitioner elected as a Panch but not allowed to sit on his elected seat—Grievance made in a petition under Article 226—Remedy of an election petition under section 13-B—Whether an alternative remedy for the redress of such a grievance—Required number of elected Panches includes a member of a scheduled caste—Such person did not contest as a member of a scheduled caste—Special rules and procedure relating to the election of a scheduled caste member not followed—Member so elected—Whether could be regarded as a Panch belonging to the scheduled caste—Unsuccessful scheduled caste candidate—Whether could be declared elected in place of elected Panch securing the minimum of votes as envisaged in section 6(4-B).

Held, that section 13-B of the Punjab Gram Panchayat Act, 1952 postulates a grievance of the election petitioner seeking the election of a Sarpanch or a Panch duly elected, whose election cannot be called in question except by way of an election petition presented in accordance with the provisions of Chapter II-A of the Act. The writ petitioner nowhere challenges the election of the elected Panches and in sum and substance, his grievance is that he, too, along with others should have been declared elected and if without disturbing the elected results of the Panches, the petitioner can establish a legal right to be their associate as a Panch on account of his having been duly elected, the High Court would be failing in its duty in not granting him relief on bare technicalities. In our democratic set up elected offices are highly cherished and they cannot be withheld by passing the law creating them or by adopting courses which would defeat the purpose of those laws. (Para 9).

Held, that where an elected Panch is a member of a scheduled caste but is not so treated by the Returning Officer solely on the

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ground that he did not observe requirements of rule 6(3) of the Gram Panchayat Election Rules, 1960, requiring the nomination paper of a member of the scheduled caste to be accompanied by a declaration verified by a Magistrate etc., that the candidate is a member of the scheduled caste, specifying the particular caste to which the candidate belongs, the action of the Returning Officer is in contravention of the provisions of section 6 of the Act. It cannot be said that since the scheduled caste candidate did not comply with the rules, he must be treated to be not a scheduled caste candidate. No rule can run counter to the statute which must have prevalence over the former. Sub-section (4-B) of section 6 of the Act postulates that a Panch or two Panches, as the case may be, belonging to scheduled castes have to be discovered from amongst the successful candidates and, if they are not found, then one candidate or two candidates, as the case may be, belonging to the scheduled castes, securing the highest number of valid votes from amongst the scheduled caste candidates are deemed to have been elected as the last or the last two Panches. It is only after the election that search is to be made "whether out of the elected Panches, some body happens to be a scheduled caste Panch". The requirement of the rules that in the nomination papers the candidate must mention if he is a scheduled caste candidate so as to enable him to pay a lesser deposit fee is not an event for grounding that if at that stage some one is not treated or declared as a scheduled caste he ceases to be a scheduled caste altogether. This kind of reasoning runs counter to the language of section 6 of the Act, which comes to be applied only after the result of the elections so that female and scheduled caste candidates are found as deemingly elected. (Para 12).

Petition under Article 226/227 of the Constitution of India praying that :—

- (i) *Section 6 of the Punjab Gram Panchayat Act, 1952 be declared as ultra vires of the Constitution of India.*
- (ii) *The elections to the Gram Panchayat, Udanwal, Tahsil Batala, District Gurdaspur, be set aside;*
- (iii) *The Respondents be directed to demarcate the Sabha Area of Gram Sabha, Udanwal in accordance with the provisions of section 4 of the Gram Panchayat Act, 1952;*
- (iv) *the Respondents be directed to prepare the electoral roll afresh according to law and to hold fresh elections in the properly demarcated Gram Sabha area.*

(v) Or in the alternative the election of Respondent No. 10, Smt. Mayo, be ordered to be quashed and the petitioner be declared elected in her place and the election of the Sarpanch be ordered to be held afresh.

(vi) The costs, of the petition be awarded.

It is further prayed that a direction be issued to restrain the Panchayat to function during the pendency of the writ petition and further prayed that the requirements of advance notice be dispensed with.

Pawan Kumar Bansa!, Advocate, for the Petitioner.

Suresh Amba, Advocate, for A.G., Punjab.

H. L. Sarin, Senior Advocate and M. L. Sarin and R. L. Sarin, Advocates, for respondents Nos. 4, 6, 7, 9 and 10.

JUDGMENT

M. M. Punchhi, J. (Oral).

(1) The principal grievance of the petitioner, Amin Chand in this writ petition under Articles 226/227 of the Constitution of India is that he was elected as a Panch of Gram Sabha, Udanwal tehsil Batala, District Gurdaspur and yet he is not allowed to sit on his elected seat. And this grievance has been voiced in this manner.

(2) The petitioner is a voter and resident of village Udanwal. The Gram Sabha established for the village was to have a constituted Gram Panchayat, consisting of 5 Panches in accordance with section 6 of the Punjab Gram Panchayat Act, 1952 (hereafter referred to as the 'Act'). The Punjab Government issued notification on 27th July, 1978,—vide notification Annexure P-1, requiring that the Gram Panchayat Udanwal would have a total number of 5 Panches out of whom one should belong to the Scheduled Castes. The election for the Gram Panchayat took place on 23rd August, 1978. The petitioner contested the election as a Panch. The undisputed result of the election was as follows :—

(1) Pritam Singh, respondent No. 5 polled	..	61 votes.
(2) Inder Ram, respondent No. 6 polled	..	57 votes.
(3) Pal Singh, respondent No. 7 polled	..	50 votes.

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| (4) Jaswant Singh, respondent No. 8 polled | .. | 49 votes |
| (5) Amin Chand, petitioner polled | .. | 43 votes |
| (6) Smt. Shela, wife of Gian Singh, respondent No. 9, polled | .. | 35 votes |
| (7) Smt. Mayo wife of Nazar polled | ... | 21 votes |

(3) The Presiding Officer thereupon declared elected Sarvshri Pritam Singh, Inder Ram, Pal Singh and Jaswant Singh, respondents as Panches, as, according to him, neither of the 4 elected Panches belonged to the Scheduled Castes. In this manner, the petitioner, being the next elected Panch, had to suffer defeat in favour of a Scheduled Caste candidate, securing the highest number of valid votes in the election, though otherwise defeated. In this manner, Smt. Mayo, respondent No. 10, a Scheduled Caste candidate, came to be elected. Then, again, under the mandate of law, since 2 women were required to be elected and one had come to be elected as a substitute of the petitioner, the remaining woman Smt. Shela was held deemingly elected. Thus, in sum and substance, respondents 5 to 10 (6 persons) came to be elected as Panches of the Gram Panchayat to the exclusion of the petitioner. The roots of their elected offices are forthcoming in section 6 of the Act; the relevant portions of which may be reproduced here:—

6. *Constitution of Gram Panchayat and disqualification to the members thereof—*

- (1) Every Sabha shall, in the prescribed manner, elect from amongst its members a Gram Panchayat bearing the name of its Sabha consisting of such number of Panches, not being less than five and more than eleven, as the Government may determine taking into account the population of the Sabha area:

Provided that the number so determined shall be exclusive of the number of women Panches deemed to have been elected under sub-section (3) or co-opted under that sub-section.

* * * * *

- (4) If only one woman or no woman is elected as a Panch and the number of unsuccessful contesting women candidates is two or more, then one woman or two women, as the case may be, securing the highest number of valid votes from amongst unsuccessful women candidates shall be deemed to have elected as Panches:

Provided that if only one woman or no woman is deemed to have been elected then one woman or two women, as the case may be, shall be co-opted by the Gram Panchayat in the prescribed manner from amongst members of the Gram Sabha qualified to be elected as Panch.

(4-A) * * *

(4-B) If the required number of successful candidates does not include one or two Panches, as the case may be, belonging to Scheduled Castes, then one candidate or two candidates, as the case may be, belonging to Scheduled Castes, securing the highest number of valid votes from amongst the Scheduled Castes candidates shall be deemed to have been elected as the last or the last two Panches.

Provided that if requisite number of Panches belonging to Scheduled Castes as determined under sub-section (4-A) is not elected in the manner given above, the Gram Panchayat shall co-opt the requisite number in the prescribed from amongst members of the Gram Sabha belonging to Scheduled Castes qualified to be elected as Panch.

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(4) The petitioner bases his claim on the fact that Inder Ram respondent No. 6 is a member of the Scheduled Castes and as such he having been already elected, no displacement could be caused in the case of the petitioner as to his election, and in place thereof no occasion arose for Smt. Mayo to come as a Scheduled Caste elected Panch. Simultaneously, it is the conceded case of the petitioner that he does not challenge the election of respondents 5 to 10, otherwise, since both the female Panches are declared elected in accordance with sub-section (4) of section 6 of the Act as valid members of the Gram Panchayat. The dispute only figures around the substitution of the petitioner with the name of Smt. Mayo as Scheduled Caste candidate and the diminution of one elected seat.

(5) The petitioner contends that the Gram Panchayat should, in the instant case, consist of 7 members out of whom the 5th one should be the petitioner and the 6th and 7th members to be the two females, aforesaid, since Inder Ram as a Scheduled Caste

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candidate has already secured one of the first 5 seats. Principally on the aforesaid averments and the understanding of the law, the petitioner approached this Court by way of this petition. Along therewith, he challenged the demarcation of the Sabha area, as also the enlistment of some voters belonging to the adjoining village Shahpur Arian. He gave every detail thereto and lamented that the object of the Act had been frustrated by the introduction of voters who have no right to manage the affairs of the Gram Panchayat Udanwal. At the notice of motion stage, the returns as filed by the Officer on Special Duty (Election), Directorate of Panchayati Raj and Community Development, Punjab, Chandigarh and that of the Deputy Commissioner, Gurdaspur were deficient of material particulars as regards the challenge to the eligibility of the voters of the adjoining village (Shahpur Arian), to cast votes in the election of Gram Panchayat Udanwal. Since even upto the admission stage, the doubts had not been clarified, the petition came to be admitted.

(6) Respondent No. 2, the Deputy Commissioner, Gurdaspur and respondent No. 3, the Block Development and Panchayat Officer, Sri Hargobindpur through the Officer on Special Duty (Election) have filed returns. Similarly, respondents 4 and 7 have filed a joint return. Added to this is the joint return of respondents 6, 9 and 10. Only respondents 5 and 8 have not put in any return. Respondent No. 6 Inder Ram has not contested his being a member of a Scheduled Caste. He has not refuted the allegations made by the petitioner in paragraph 8 of the petition that he is a member of the Scheduled Caste. Such averment of the petitioner has been met by the Deputy Commissioner, Gurdaspur and the Officer on Special Duty (Election) by adopting similarity of defence. According to them, Inder Ram had not contested the election as such. There is no declaration in the nomination paper of Inder Ram that he belongs to the Scheduled Caste category. He deposited a security of Rs. 20/- as fixed for a non-Scheduled Caste candidate. Respondents No. 4 and 7 have averred that respondent Inder Ram had contested against an open seat and that he did not file along with his nomination papers the declaration verified by a Magistrate etc. that he was a member of the Scheduled Castes. It was further stated that since he made the full deposit as a candidate other than the Scheduled Caste candidate and was declared elected as such, he could be deemed not to have been elected as a member of a Scheduled Caste. On that reasoning, it was asserted that the Presiding Officer

had correctly declared Smt. Mayo respondent No. 10 as elected as she had contested the election as a member of the Scheduled Castes and was entitled to be elected in view of the sub-section (4-A) of section 6 of the Act.

(7) With regard to the other contentions raised by the petitioner that the voters' lists prepared for the election were not in accordance with law, all the returns filed by the respondents have controverted the allegations of the petitioner. Since no dispute has been raised before me with regard to that aspect of the matter, it is futile to carry the matter any further. In this situation, the preliminary objections raised by respondents 6, 9 and 10 in their return lose all significance except to the relevancy which pertains to the sole question raised.

(8) Second and the foremost objection raised by respondents No. 6, 9 and 10 is that an election petition was competent under section 13-B of the Act and the petitioner should have approached the prescribed authority for the purpose. This objection has also been taken by the other respondents. Reliance was placed on a Division Bench judgment in *Harsukhdev Singh v. State of Punjab*, (1) wherein the motion Bench took the view that section 13-B of the Act was a bar to the petitioner seeking to challenge the election of a Sarpanch of the village. In the same strain, decision in *Gurbakhsh Singh v. State of Punjab*, (2) was pressed into service that the election of a Sarpanch (or for that matter a Panch) cannot be challenged by way of a writ petition in view of the provisions of section 13-B of the Act, as the ordinary remedy by way of election petition is provided by the statute itself.

(9) The preliminary objection on account of alternative remedy, as raised above, appears to me totally misplaced and misfounded. Section 13-B of the Act postulates a grievance of the election petitioner, seeking the election of a Sarpanch or a Panch duly elected, whose election cannot be called in question except by way of an election petition, presented in accordance with the provisions of Chapter II-A of the Act. As has been noticed earlier, the petitioner nowhere challenges the election of respondents No. 5 to 10. In sum and substance, his grievance is that he, too, along with

(1) C.W. 678 of 1978 decided on 23-10-78.

(2) C.W. 4102 of 1978 decided on 19-11-1978.

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others should have been declared elected. All averments in the petition and the prayer contained therein is geared towards the end result and not towards its mechanics. And if without disturbing the elected results of respondents No. 5 to 10, the petitioner can establish a legal right to be their associate as a Panch on account of his having been duly elected, this Court would be failing in its duty in not granting him relief on bare technicalities. In our democratic set-up elected offices are highly cherished and they cannot be withheld by bypassing the law creating them or by adopting courses which would defeat the purpose of those laws.

(10) The next preliminary objection worth mentioning which is pressed into service is that the petitioner had made a misstatement in the writ petition, inasmuch he had stated that he had contested the election, but had nowhere stated that he had lost it. In the first place, the petitioner had clearly mentioned the declared result of the election showing the inevitable consequence that though he was a winning candidate, he was elbowed over to make way for Smt. Mayo. The preliminary objection, thus raised, is misfounded.

(11) The last preliminary objection which is raised is that the petitioner had nowhere stated as to what injustice or manifest injustice had been done to him or what prejudice had been caused to make a deposit of Rs. 10/- whereas others are required to make had not mentioned these facts, there was an intentional suppression of the material particulars in the writ petition. Shri Sarin, learned counsel for the respondents, pressing this objection, is emphatic that such an averment must have found way in the language of the petition. Injustice to a writ-petitioner is more a matter of substance than of form. If it is spelt out from the averments in the petition, the mere fact that it is not couched or clothed in ritual language is of no consequence. Now the petitioner is being denied an elected office and that *per se* is a case of injustice, if the elected office is rightfully due to him.

(12) It now requires to be considered, whether Inder Ram is a member of the Scheduled Castes. As said before, Inder Ram does not dispute it. The contesting respondents treat Inder Ram not to be a member of the Scheduled Castes solely on the ground that he did not observe the requirements of rule 6(3) of the Gram Panchayat Election. Rules, requiring nomination paper of a member of the Scheduled Castes to be accompanied by a declaration verified by a Magistrate etc., that the candidate is a member of the Scheduled

Castes, specifying the particular caste to which the candidate belongs. Rule 7 of the said Rules gives a concession of Rs. 10/- to a candidate belonging to Scheduled Castes, inasmuch he is required to make a deposit of Rs. 10 whereas others are required to make a deposit of Rs. 20/-. Form I appended to the rules in which the nomination paper is to be filled in, has a column of stating, whether the candidate is a member of the Scheduled Castes and the particular caste to which the candidate belongs. Under rule 8, scrutiny of nomination papers is required to be made by the Returning Officer who has also to examine the nomination papers at the appointed time. The objection raised to the nomination of any candidate are to be determined by the Enquiry Officer at the instance of an elector. He is required to give a statement of reasons rejecting or accepting the nomination paper. The procedure prescribed in the election rules has been pressed into service only to contend that since respondent No. 6 Inder Ram did not comply with the rules, he must be treated to be not a Scheduled Caste candidate. This defence appears to me to be totally hollow in the face of the specific mandate of section 6 of the Act. No rule can run counter to the language of a statute which must have prevalence over the former. Sub-section (4-B) of section 6 of the Act postulates that a Panch or two Panches, as the case may be, belonging to Scheduled Castes, have to be discovered from amongst the successful candidates and, if they are not found, then one candidate or two candidates, as the case may be, belonging to the Scheduled Castes, securing the highest number of valid votes from amongst the Scheduled Caste candidates are deemed to have been elected, as the last or the last two Panches. Incidentally, the present is a case providing for one Scheduled Caste Panch. It is only after the election that search is to be made, "Whether out of the elected Panches, some body happens to be a Scheduled Caste Panch." The requirement of the rules that in the nomination papers the candidate must mention if he is Scheduled Caste candidate so as to enable him to pay a lesser deposit fee is not an event for grounding that if at that stage some one is not treated or declared as a Scheduled Caste, he ceases to be a Scheduled Caste altogether. That seems to be stance of the respondents that if at the nomination stage. Inder Ram escaped being named as a Scheduled Caste, he could not be a Scheduled Caste ever. This kind of reasoning, as it appears to me runs counter to the language of section 6 of the Act, which comes to be applied only after the result of the elections so that female and Scheduled Caste candidates are found as deemingly elected.

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(13) Now applying the principles of section 6(1) of the Act to the present case, as also the requirement of notification Annexure P1, five Panches had to be elected. From the result taken note of earlier, the petitioner was an elected Panch straightaway. Now, out of those five, one had to be a Scheduled Caste. Inder Ram was a Scheduled Caste and he being there, the election of the first five, including the petitioner, was in order, in accordance with sub-section (4-B) of section 6 of the Act. Since it was a case of having one Scheduled Caste candidate, the question of Smt. Mayo being there as a Scheduled Caste candidate under sub-section (4-B) did not arise. All the same, since Smt. Mayo could not become a Panch on account of being a Scheduled Caste, she remained one of the two unsuccessful women-candidates under sub-section (4) of section 6 of the Act. That sub-section requires that two lady Panches can be held deemingly elected and if the unsuccessful contesting women candidates or two or more, than one woman or two women, as the case may be, securing the highest number of valid votes from amongst unsuccessful women-candidates shall be deemed to have been elected as Panches. Smt. Mayo could well be accommodated here, along with the other female Smt. Shela already accommodated under the said sub-section. The deemed election of these two lady Panches has, thus, to be now made in order, which is hereby done.

(14) As is plain, the exercise has been to reshuffle the cards. As a result, the petitioner is declared and placed as a Panch in the Gram Panchayat, but without disturbing the office of Panch or any of the other members of the Panchayat, respondents Nos. 5 to 10. Consequently, this petition is allowed to this limited extent that the election result stands modified/clarified that the petitioner, too, is an elected Panch of Gram Panchayat Udanwal. On other points, the petition fails. In the circumstances of the case, there would be no order as to costs.

N.K.S.

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THE STATE OF PUNJAB and another,—Appellants
versus
MEWA SINGH SONAR,—Respondent.
Letters Patent Appeal No. 31 of 1979.
March 3, 1982.

Punjab Civil Service Rules, Volume I, Part II—Rule 4(5)—Rules providing for suspension of a Government employee—No time limit