

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP No. 10760 of 2005

Date of Decision: March 17, 2009

Bhagwat Dayal

..... Petitioner

versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.S.THAKUR,CHIEF JUSTICE
HON'BLE MR. JUSTICE HEMANT GUPTA**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. S.P. Jain, Senior Advocate with
Mr. Dheeraj Jain, Advocate for the petitioner.

Ms. Madhu Dayal, Additional Advocate General, Punjab

Mr. A.P.S. Mann, Advocate for respondent No.2

HEMANT GUPTA, J.

The challenge in the present writ petition is to the reservation of Ward No. 2 for Backward Classes for the third time in succession.

The petitioner, a resident of Ward No. 2 of Municipal Council, Patran, has invoked the writ jurisdiction of this Court to challenge the

reservation of Ward No.2 for Backward Classes in the election held in the years 1994, 2000 and again in the year 2005. It is averred that the urban area of Municipal Council, Patran, was divided into 13 wards and Ward No.2 was reserved for Backward Classes in the year 1994 and 2000 and after the delimitation of wards in the year 2005, Ward No.2 has been again reserved for Backward Classes. It is contended that such reservation is against Article 243T of the Constitution of India and section 8(1)(b) of the Punjab Municipal Act, 1911 (hereinafter to be referred as “the Act”).

In reply, it has been pointed out that in the year 1994, the population of Backward Classes was not calculated separately but with the consent of Delimitation Board, Ward No.2 was reserved for Backward Classes. In the year 2000, the Municipal limits were extended and Ward No.2 was kept reserved for Backward Classes. Now delimitation of wards has been done as per Census figure 2001 and on account of maximum population of Backward Classes residing in Ward No.2, the said Ward has been reserved for Backward Classes. The respondents have relied upon proviso inserted in clause (f) of Rule 6 of the Delimitation of Wards of Municipalities Rules, 1972 (hereinafter to be referred as “the Rules”) vide Delimitation of Wards of Municipalities (First Amendment) Rules, 2003, dated 7.2.2003 wherein the principle of rotation was not made applicable where delimitation of wards of a Municipality has been done under the provisions of clause (ii) of Rule 4 of the aforesaid Rules.

Before considering the respective contentions, reproduction of certain statutory provisions is relevant:-

Article 243T of Constitution of India

“ 243T. Reservation of seats - (1) Seats shall be reserved for

the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) to (6) xx xx xx xx xx”.

The Punjab Municipal Act, 1911

“ **8. Reservation of Seats** - (1) In every Municipality, out of the total number of elected members determined under subsection (3) of Section 12, the State Government shall, by notification, reserve -

- (a) such number of seats for the Scheduled Castes as may be determined by the State Government subject to the condition that the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality, as the population of the Scheduled Castes, in the Municipal areas bears to the total population of that area, and, such seats may be allotted by rotation to different constituencies to be known as wards in the Municipality;

- (b) one seat for the Backward Classes, and, such a seat may be allotted by rotation to different constituencies to be known as wards in the Municipalities.

(2) and (3) xx xx xx xx”

Delimitation of Wards of Municipalities Rules, 1972

“4. It shall be the duty of the Board

- (i) to divide the Municipality into such number of wards as may be necessary having regard to the number of elected members determined by the State Government for the Municipality and the number of seats reserved for members of the Scheduled Castes, Backward Classes and Women.
- (ii) to re-adjust the wards as and when the limits of the Municipality are altered or there is increase in population of the Municipality or there is abnormal variation in population/ or voting figures of some of the wards of the Municipality, which requires such re-adjustment.

6. The following principles shall be observed by the Board in the Delimitation of Wards of a Municipality, namely :-

(a) to (e) xx xx xx xx xx

- (f) In every Municipality, the Delimitation Board while drafting the Scheme for Delimitation of Wards, shall allot numbers to all wards having due regard to the principle of contiguity.

Provided that the principle of rotation shall not be applicable where delimitation of wards of a Municipality has been done under the provisions of clause (ii) of Rule 4 of the Rules

Explanation: In this rule, the expression “population” mean the population as ascertain locally through the staff deputed by the Director by going from door to door in the Municipality”.

Mr. Sidhu, learned Additional Advocate General, Punjab, has produced the record of delimitation of wards and reservation of seats for the backward classes. It shows that vide notification dated 14.06.2004, the number of wards were increased to 15 on the basis of population as per 2001 Census figure. The total population of urban area of Municipal Council, Patran, was found to be 22175 necessitating 15 wards. The said notification increasing the number of wards is not in dispute in the present writ petition.

The argument of learned counsel for the petitioner that wards are required to be reserved for Backward Classes by rotation in terms of Article 243T of the Constitution is not tenable. In fact, Article 243T of the Constitution deals with reservation of wards for Scheduled Castes and Scheduled Tribes and not to Backward Classes. It is only section 8(1)(b) of the Act which contemplates reservation of wards by rotation in respect of Backward Classes. The reservation of wards is regulated by Rules. Rule 4 (ii) of the Rules enjoins the duty of the Delimitation Board to readjust the ward as and when the limits of the Municipality are altered or there is increase in the population of the Municipality etc. As mentioned earlier,

increase of wards on account of increase in population on the basis of 2001 census by way of notification dated 14.06.2004 is not in dispute. In the year 2003, a proviso has been inserted to Rule 6 (f) of the Rules to the effect that the principle of rotation shall not be applicable where delimitation of wards of a Municipality has been done under clause (ii) of Rule 4 of the Rules.

It may be a matter of coincidence that in the three successive elections of Municipal Council, Patran, Ward No.2 came to be reserved for Backward Classes. Election in the year 2000 was held after the Municipal limits were extended, whereas in the year 2004 the number of wards have been increased on account of increase in population. Such increase in population and consequent change of wards is in terms of Rule 4 (ii) of the Rules. Therefore, the principle of rotation cannot be enforced in respect of reservation of Ward No.2 for the Backward Classes. The reservation of Ward No.2 for Backward Classes in successive three elections is on account of coincidence and on account of change of circumstances in each election. Though it may be advisable to rotate the Ward but if by coincidence the same ward happens to be reserved for Backward Classes, we cannot find that such reservation of ward is illegal, unwarranted or unjust.

Consequently, we do not find any merit in the present writ petition. The same is dismissed. The respondents are directed to conduct the election of Municipal Council, Patran, as expeditiously as possible, preferably within a period of three months from today.

(T.S. THAKUR)
CHIEF JUSTICE

(HEMANT GUPTA)
JUDGE

March 17, 2009
khushbir