

Kasambahi F. Ghanchi vs Chandubhai D.Rajput & Ors on 25 November, 1997

Equivalent citations: AIR 1998 SUPREME COURT 815, 1998 (1) SCC 285, 1998 AIR SCW 535, 1997 (7) SCALE 248, (1998) 2 APLJ 7, (1998) 2 KER LT 28, (1997) 9 JT 419 (SC), (1998) 2 PUN LR 611, 1997 (9) JT 419, 1998 (2) REVLR 126, 1998 (119) PUN LR 611, (1998) 1 RECCIVR 211, (1998) 1 MAH LJ 1, (1998) 1 MPLJ 1, (1997) 10 SUPREME 234, (1997) 7 SCALE 248, (1998) 3 SCT 2, (1998) 8 SERVLR 150, (1998) 2 GUJ LR 1304, (1998) 1 BOM CR 679, 1998 (1) BOM LR 160, 1998 BOM LR 1 160

Bench: B.N. Kirpal, M. Jagannadha Rao

PETITIONER:

KASAMBAHI F. GHANCHI

Vs.

RESPONDENT:

CHANDUBHAI D.RAJPUT & ORS.

DATE OF JUDGMENT: 25/11/1997

BENCH:

B.N. KIRPAL, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

THE 25TH DAY OF NOVEMBER, 1997 Present:

Hon'ble the Chief Justice Hon'ble Mr.Justice B.N.Kirpal Hon'ble Mr.Justice M. Jagannadha Rao Soli J. Sorabjee, Sr. Adv., Y.N.Oza, Manoj Wad, Ms. J.S.Wad, and Yashank Adhyaru, Advs. with him for the appellant Pallav Siscedia, Anil Shrivastava, Ms. Sumita Hazarika Advs. for the Respondent No.1 Prashant Kumar, (Ms.Alka Aggarwal), Adv. for I.M.Nanavati, Advs for the Respondent No.2 J U D G M E N T /

O R D E R The following Judgment of the Court was delivered:

Verma, CJI:

The only question which arises for consideration in this appeals is whether the appellant, who belongs to a backward class but had been elected to the Jambusar municipality from an unreserved seat, could stand for election for the post of President of the Municipality which was reserved for a backward class candidate or whether the candidate for that post could only be a person who was elected to the municipality from a seat which was reserved for the backward class.

With a view to provide for setting up of democratic institutions at the grass root level, by virtue of 73rd Amendment to the Constitution, Part-IXA providing for establishment of the municipalities was incorporated in the Constitution. Article 243 Q, inter alia, provides for the setting up of municipalities in urban areas and Article 243- T requires all seats in the municipalities to be filled by persons chosen by direct election. For this purpose each municipal area is to be divided into territorial constituencies to be known as wards from where the election takes place. Reservation of seats for Scheduled Castes, Scheduled Tribes and women is required to be provided for by virtue of Article 243 T of the Constitution which reads as follows:

"243-T.- 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 Tribes in the municipal area bears may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality. (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may, by law, provide.

(5) The reservation of seats under Clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under Clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens."

The aforesaid article not only provides for reservation of seats for Scheduled Castes and Scheduled Tribes and women in the municipalities but also envisages that such reservation of seats shall be by rotation. In addition to reservation to the municipalities, sub-article (4) also contemplates the state Legislatures providing, by law made in this behalf, reservation for the Scheduled Castes, Scheduled Tribes and women to the post of chairperson in the municipalities. Further to the aforesaid reservation for Scheduled Castes, Scheduled Tribes and women, sub-article (6) of Article 243T empowers the State Legislatures to make provision for reservation of seats, in any municipality or offices of Chairperson in the municipalities, in favour of backward class citizens.

The Gujarat Municipal Act 1963 was amended by Act 17 of 1993 so as to bring it in conformity with the provisions of Part IXA of the Constitution. Section 6 of the Gujarat Municipal Act made provision for reservation of seats for Scheduled Castes, Scheduled Tribes, backward classes and women out of the total number of seats of Councillors in the municipalities. The relevant provisions of Section 6, namely, sub-sections (1), (2) and (3) are as follows:

"Municipality to consist of elected Councillors:

(1) Every municipality shall consist of elected councillors.

(2) The number of such councillors shall be

(a) 21 in the case of a nagar panchayat

(b) 27, if the population of the municipal borough exceeds 25,000 but does not exceed 50,000.

(c) 36, if the population of the municipal borough exceeds 50,000 but does not exceed 1,00,000,

(d) 42, if the population of the municipal borough exceeds 1,00,000 but does not exceed 2,00,000, and

(e) 51, if the population of the municipal borough exceeds 2,00,000.

(3) Out of the total number of seats of councillors in a municipality, there shall be reserved seats for Scheduled Castes, Scheduled Tribes, backward classes and women as follows, namely :-

(a) Seats shall be reserved by the State Government for the scheduled castes and the Scheduled Tribes in every municipality and the Scheduled Tribes in every

minicipality 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 that municipal area or of the Scheduled Tribes in that municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a municipality in the prescribed manner.

(b) One-third of the total number of seats reserved under clause (a) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(c) One-tenth of the total number of seats to be filled by direct election in every municipality shall be reserved for persons belonging to backward classes and one-third of the seats so reserved for backward classes shall be reserved for women belonging to the backward classes. Such seats may be allotted by rotation to different constituencies in the prescribed manner.

(d) One-third (including the number of seats reserved for women belonging to the Scheduled castes, the Scheduled Tribes and the backward classes) of the total number of seats to be filled by direct election in every municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a municipality in the prescribed manner.

(e) The reservation of seats under clauses (a), (b) and

(c) (other than the reservation for women) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India.

XXX XXX XXX Explanation :- For the purpose of this section:

"Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed to be Scheduled Castes in relation to the State of Gujarat under Article 341 of the Constitution of India. "Scheduled Tribes" means such tribes or tribal communities or parts of, or groups within such tribe or tribal communities as are deemed to be Scheduled Tribes in relation to the State of Gujarat under Article 342 of the Constitution of India, and "Backward Classes" means classes declared as Socially and Educationally Backward Classes by the state Government from time to time."

Chapter 3 of the Gujarat Municipalities Act contains provisions relating to Presidents and Councillors of the municipalities. Section 33 of the Gujarat Municipalities Act provides for the term of office of President and Vice President and reads as follows:

"Term of office of President and Vice-President:-

(1) (a) The term of office of the President shall be for a period of one year.

(b) Subject to the other provisions of this section, the President shall be eligible for re-election.

provided that the term of office of such president or vice-president shall be deemed to extend to and expire with the date on which his successor is elected.

(2) If during his term of office under sub-section (1), the president or vice-president ceases to be a councillor he shall vacate the office held by him.

(3) The office of the President in every municipality shall be reserved by the state Government for Scheduled Castes, Scheduled Tribes, backward classes and women in the prescribed manner. Such reservation shall be made as nearly as may be in the same proportion as is made under sub-section (3) of section 6 in their favour in the total number of seats to be filled in by direct election.

(4) On the expiry of the term of the office of the councillors of the Municipality, the current administrative duties of the office of the president and of the vice president of the Municipality shall be carried on by such officer of the state Government as it may by order specify in that behalf, until such time as a new president, vice-

president shall have been elected and shall have been elected and shall have taken over the charge of their duties."

It is in order to give effect to the provisions of article 243 T that the State Government, in exercise of the rule making powers conferred on it by Section 277 read with aforesaid sub-section (3) of Section 33 of the Gujarat Municipalities Act, 1963, framed the Gujarat Municipalities (Reservation of Scheduled Castes, Scheduled Tribes, Backward Class and women for office of President) Rules, 1994. Rules 2 and 3, which are relevant in the present case, are as follows:

"2 Reservation in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women:- The office of the President of a Municipality shall be reserved in favour of scheduled castes, Scheduled Tribes, Backward Classes and Women in accordance with the roster shown in Schedule.

3. Reservation to continue for casual vacancies:- If any election is be held for filling up a casual vacancy that has arisen in the office of the president, the reservation, if any, applicable for the office of the previous President (whose term has not been completed) shall continue for such election."

The Schedule to the Rules, envisaged by Rule 5, contains the roster and indicates in what manner the post of the President of the Municipality is to rotate amongst different categories of Councillors, namely, Scheduled Castes, Backward Class, women and general. In respect of Category A municipalities, roster point was worked out on the basis of Schedule Castes-1, Backward Class-1, Women-3 and General-5. On this basis, with regard to the Jambusar Municipality, with which we

are concerned in the present case, the office of the President in 1997 was required to be filled by backward class candidates.

The appellant, though belonging to backward class, had been elected to a ward which was in the general category in the general elections held on 28th December, 1994. Respondent No.1 was elected in a by-election held on 25th August, 1995 to one reserved seat for backward class category which had fallen vacant. As per the roster a person belonging to a backward class was to hold to office of the President of the Municipality for the term beginning in 1997. Anticipating that Councillors belonging to the backward classes, who may have been elected from the seats meant for general category, like the appellant herein, were also likely to contest in the election for President, respondent no.1 filed a writ petition in the Gujarat High Court. The claim of the said respondent no.1 was that those backward class members of the municipalities who had not been elected as members from the seats reserved in favour of backward classes were not entitled to contest the election for the office of President. In other words according to the said respondent it is only those backward class candidates who had been elected from the wards which had been reserved for backward classes who could stand for election for the post of President in the third year when as per the roster the office of President had to be filled by a backward class candidate.

The writ petition filed by the said respondent was dismissed but then an application for review was filed on the basis that the decision of the single judge was contrary to the judgment of this Court in the case of *Saraswati Devi Vs. Shanti Devi* (1997) 1 SCC 122. The review petition was allowed, the judgment dismissing the writ petition was recalled and thereafter the writ petition filed by the respondent no.1 was allowed holding that the appellant herein, who is the meantime had been elected as the President pursuant to the election which was held, could not have stood for election because he was not a member of the Municipality from a seat which was reserved in favour of the backward class as he had been elected to a seat falling in the general category. The Letters Patent Appeal filed by the appellant was dismissed. Both the Single Judge as well as the Division Bench decided against the appellant in view of the aforesaid decision of this Court in *Saraswati Devi's* case.

Mr. Soli J. Sorabjee, learned senior counsel for the appellant, submitted that the decision in *Saraswati Devi's* case requires reconsideration in as much as the said decision runs counter to the provisions of the Constitution and the Gujarat Municipalities Act and the rules framed thereunder. On behalf of the respondent, however, it was submitted that *Saraswati Devi's* case correctly interprets the relevant provision and there is no reason why the view taken therein should be departed from.

Before referring to *Saraswati Devi's* case, it will be appropriate to examine the provisions of the Constitution as well as the Act the Rules for their true import and effect. As is evident from the provisions quoted earlier the municipalities are required to be represented by members belonging to all sections of the society. Keeping in line with the Constitutional mandate there is now provision for reservation of seats in the municipalities in favour of the Scheduled Castes, Scheduled Tribes, Backward Classes and the women. In addition thereto the post of the President of the Municipality, which has a tenure of only one year, is to be filled by rotation from amongst the persons belonging to different classes. Though, the term of office is only for one year but Section 33 envisages that the

Provisions of sub-section (3) which provides for reservation of the office of the President to be filled by different categories by rotation. There is no indication or suggestion in Article 243 T or in the Act that in case the office of the President is required to be filled by a member who is a Scheduled Caste, Schedule Tribe, Backward Class or a woman, then only a member who has been elected from a reserved seat can stand for election. In other words, for the purpose of election to the post of President the reservation which is contemplated by the act is only to the effect that the person elected should belong to the category of Schedule Caste, Schedule Tribe, Backward Class or woman, as per the roster. Conceivably, as in the present case, an elected member may fall within two or more categories and, in this way, may be in a position to seek re-election as envisaged by Section 33 of the Gujarat Municipal Act. If this is not so, and with the category changing every year, as per the roster, Section 33 will become redundant. The legislative intent, therefore, clearly is that one person, whether elected from reserved or general seat, but who belongs to the category out of which the President is to be elected, can seek re-election as envisaged by Section 33 of the Act.

The rules framed under the Act also do not contain any provision that only members elected to the reserved seats will be eligible to stand for election of the President when, as per the roster, the office is required to be filled by a person belonging to a particular category.

By providing for the officer of the President to be filled from different categories of persons by rotation the effect is that, as per the roster point, the office of the President is required to be filled from a specified or particular class, e.g. the Scheduled Caste, or Scheduled Tribe or Backward class or woman, then all other members of the municipality who do not fall under that category, are all excluded from contesting the election. The eligibility, and corresponding exclusion, of others is determined on the basis of the candidate answering to the description of the category or caste for whom the post is reserved as per roster and not the nature of constituency from which the person is electe. For example when as per roster the candidate for the President's post has to be a Scheduled Caste then the Act and the Rules do not provide that it is only that Scheduled Caste candidate who has been elected from Scheduled Caste ward who can stand for election and the other Scheduled Castes candidates are not eligible even though they were popular enough to get elected from unreserved wards.

The idea of providing reservation for the benefit of the weaker sections of the society is not only to ensure their participation in the conduct of the affairs of the municipality but it is also can effort to improve their lot. The reservation ensures that the specified minimum number of persons belonging to that category become members of the municipality. If because of their popularity a larger number of Scheduled castes, Scheduled Tribes, Backward Classes or women get elected to the municipality than the number of reserved seats that would be welcome. When the idea is promote the weaker sections of the society, and to improve their lot, it would be a contradiction in terms if members belonging to that section are debarred from standing to the office of the President because such a candidate is popular enough to get elected from a general constituency. It is fundamental principle of democratic election that a person who is more popular is elected, popularity being measured by the number of votes which the person gets. The language of various legal provisions do not in any way suggest, expressly or by necessary implication, that even though a person who belongs to a reserved category and is popular enough to get elected from a general constituency should be barred

from contesting the election of the President when that office is to be filled only by a reserved category person.

In Saraswati Devi's case the appellant therein belonged to a Scheduled Caste category and had been elected as a member of the Loharu Municipality Committee from the ward reserved for Scheduled Caste woman while the respondent therein, who was also a Scheduled Caste woman, had been elected as a member of the general category. The office of the President, by virtue of the rotation, was required to be filled from amongst the members belonging to Scheduled Caste woman category. Saraswati Devi being the solitary candidate elected from the ward reserved for Scheduled Caste woman was declared as having been elected unopposed as President. This decision was challenged by Shanti Devi on the ground that she was also a Scheduled Caste woman, though elected to a seat reserved for general category and was entitled to contest the election for the President. The writ petition was allowed by the High Court who held that Shanti Devi was also entitled to contest the election to the post of the President even though she had been elected to a seat reserved for general category. In allowing the appeal filed by Saraswati Devi the court had to construe the provisions of Rule 70(4) of the Haryana Municipal Election Rules 1978 which, inter alia, provided that offices of the President in the municipalities shall be filled up from amongst the members belonging to the general category, Scheduled Castes, Backward Classes and women by rotation and that not less than one-third of the total number of offices of the President in the municipalities shall be reserved for women including the offices reserved for Scheduled Castes and Backward Classes women. It also provided that in case the office is required to be filled by woman of a reserved category but such women are not available, then the office of the President shall be filled up from the male member of the said reserved category. Section 10(5) of the relevant act provided that the offices of President in the municipalities shall be filled up from amongst the members belonging to general category, Scheduled Castes, Backward Classes and women by rotation and by lots in the manner prescribed. Interpreting these provisions it was observed at page 128 as follows:

"On a combined reading of Article 243 T of the Constitution of India, Sections 10(5) and 18 of the Act and sub-rule (4) of Rule 70 of Election Rules, it becomes clear that Parliament as well as the legislature have enacted these provisions in order to provide for reservation of office of the President for members of Scheduled castes, Scheduled Tribes, Backward Classes and women in rotation. A bare reading of section 10(5) and Rules 70(4) shows that the offices of the Presidents are to be filled from amongst members belonging to different categories by rotation and by lots. It is not disputed that the post of President of Loharu Municipal Committee at the relevant time was reserved for Scheduled Caste women. So far as the appellant is concerned, she has been elected from Ward No.5 on a seat reserved for Scheduled Caste women. Therefore, in that category she is the sole though by coincidence she also belongs to Scheduled Caste but she was not elected on a seat reserved for Scheduled Caste women, but on a seat reserved for General category women from Ward No.11 It is not in dispute that in that ward there were other contesting women, not belonging to General category. Therefore, respondent No.1 is a member who is elected on the seat earmarked for General category women; she cannot be said to be a member elected on a seat reserved for Scheduled Caste women. In Ward No.5 from where the

appellant contested, and only Scheduled Caste women could have contested and in that context the appellant emerged a Scheduled Caste and not belonging to the category of women to which Respondent No.1 belongs, Consequently both of them cannot be treated to form a part and parcel of the same category of seats on which they have got elected. It is true as contended by learned counsel for Respondent No.1 and which contention has appealed to the High Court that Rule 70(4) mandates that the offices of Presidents of the Municipalities shall be filled up from amongst the Municipalities shall be filled up from amongst the members belonging to the categories concerned mentioned in the Rule.

But the said phraseology does not imply that the members must belong to a particular caste like Scheduled Castes, Backward Classes etc. because the general words "members belonging to" are followed by different types of classes like General category, category of Scheduled Caste, category of Backward Classes and category of women as mentioned in the said Rule. It is obvious that General category has nothing to do with castes, similarly Backward Classes having nothing to do with castes and the category of women is also separately indicated. That is also not having any nexus with the castes. When the thrust of the Rule is that offices of the Presidents in Municipalities must go by rotation to members belonging to the specified categories, it would necessarily mean in the context of the parent Article 243 T of the Constitution of India and Section 10(5) of the Act that the elected members concerned of the Municipal Committee must have got elected on the seats available to General category candidates or Scheduled Castes category candidates or Backward Classes category candidates General women category candidates rotation. The very concept of rotation presupposes that for the context of Presidentship once by rotation a reservation is made for members elected from a particular category only those members can contest for Presidentship. As admittedly the post of President, Loharu Municipality is subjected to double reservation of being available only to an elected member who is a Scheduled Caste woman she must have been elected on the Scheduled Caste seat from the ward reserved for such Scheduled Caste candidates. As admittedly only three wards, namely, 1,4 and 5 are reserved for members belonging to Scheduled castes and even out of three wards only ward No.5 from which the appellant was elected was reserved for Scheduled Caste women and as President's post is reserved for being filled up by a member belonging to the category of Scheduled Caste women who has been elected on such a seat, Respondent 1 who is elected as a member not on any seat reserved for Scheduled Caste women but on a seat reserved for general category of women from Ward No.11 is obviously out of the arena of contest for the post of Presidentship of Loharu Municipality."

Neither the provisions of Article 243 T nor of Section 10(5) of the Haryana Act seem to suggest to us that Rule 70(4), which provides that offices of the President of municipalities must go on rotation to members belonging to specified categories, must necessarily mean "that the elected members concerned of the municipal committee must have got elected members concerned of the municipal committee must have got elected to the seats available to general category candidates or Scheduled

Castes category candidate or Backward Classes category candidate or general women category candidates by rotation." There seems to be no warrant for such compartmentalisation and nor do the words of the act or the Rules indicate that the concept of rotation presupposes that for the contest of President it is to be from amongst the members elected from a particular category from the seats reserved for that category. This inference which is sought to be drawn does not flow from the plain language of Article 243 T or from the provisions of the Act or the Rules framed thereunder and it also does not promote the object of reservation. The legal provisions provide that office of the President of the municipality should go by rotation to members belonging to specific category and no more. These provisions do not provide that those members, though falling in the category of Scheduled Castes, Scheduled Tribes, backward Classes or women must be only those who have been elected from the seats reserved for that category of persons. Reservation is with reference to the category/caste to which the person belongs and not the nature of constituency from which he/she was elected.

The Act and the Rules provide for reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and women. No reservation or clarifications made ward wise. To put it differently all members of the Scheduled Castes, for example, will be regarded as belonging to one class irrespective of the fact whether they had been elected to a reserved seat or to a general seat. Similar is the position with regard to the backward classes, Scheduled Tribes and women. The law does not contemplate or provide for any further sub-classification of the type which has been suggested by the respondents. Just as all members of the municipality, irrespective of the fact whether they had been elected to a reserved seat or not, are eligible for election to the post of the President when it falls in the general category, similarly when as per the roster the President is to be one who, say, belongs to the category of Scheduled Caste then all members of the municipality who are Scheduled Caste, irrespective of the seat to which they had been elected, would be eligible to stand for election. Neither the Act nor the rules stipulate that it is only such a member who has been elected to the reserved seat who would be eligible to stand for election to the post of President when it is the turn of that category of candidate to become the President of the municipality.

In our opinion, therefore, the conclusion which was arrived at in Saraswati Devi's case did not flow from the language of the relevant provisions and, it is not consistent with the concept of reservation. With respect, it does not lay down the correct law.

From the aforesaid discussion it follows that the appellant who belongs to the Backward Class was eligible to stand for the office of President even though he had been elected as a member of the municipality not from a reserved seat but from a general seat. As per the roster it is a Backward Class member who in the year 1997 is to be the President of the Jambusar Municipality. The appellant, who admittedly belongs to a Backward Class could not be regarded as being ineligible merely because he had not been elected to a seat which had been reserved for a Backward Class candidate.

Consequently his election as the President, on this ground, could not have been set aside.

For the aforesaid reasons the judgment of the High Court under appeal is set aside as the election of the appellant cannot, on this ground, be held to be invalid. Consequently, the writ petition filed by respondent no.1 stands dismissed. No order as to costs.