

(2000) 12 P&amp;H CK 0144

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Civil Writ Petition No. 3025 of 2000

Kela Devi

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Dec. 5, 2000**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Representation of the People Act, 1951 - Section 33(4), 36, 36(8)

**Citation:** (2001) 2 RCR(Civil) 193**Hon'ble Judges:** V.S. Aggarwal, J; R.L. Anand, J**Bench:** Division Bench**Advocate:** Mr. S.C. Kapoor and Mr. Ashish Kapoor, for the Appellant; Ms. Ritu Bahri, DAG, Mr. Jitendera Chouhan and Mr. G.C. Gupta, for the Respondent

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**Judgement**

V.S. Aggarwal, J.

Petitioner Smt. Kela Deyi has invoked Articles 226 and 227 of the Constitution of India and prays for quashing of the order purported to have been passed by the Returning Officer for election of the Gram Panchayat Akbarpur Barota, Tehsil and Distt. Sonapat. By virtue of the same, the nomination papers of the petitioner for the post of Sarpanch had been rejected and respondent No. 5 Smt. Nirmala Devi was declared to be elected.

2. The relevant facts alleged are that the petitioner is a registered voter of village Akbarpur Barota and belongs to Scheduled Caste. The State Election Commission, Haryana, had issued a notification for holding the Gram Panchayat elections in the State of Haryana. Respondent No. 3 was appointed as a Returning Officer for the election of the Gram Panchayat as referred to above. The petitioner filed nomination papers on 28.2.2000. 1.3.2000 was fixed for scrutiny of nomination papers and 3.3.2000 was fixed for withdrawal of the nomination papers. The election, if necessary, was fixed to be held on 16.3.2000. The post of Sarpanch was reserved for

woman scheduled caste candidate.

3. The petitioner contends that she is a Banjara by Caste. It has been recognized by the Govt. of Haryana as Scheduled Caste. In the prospectus issued by the Directorate of Secondary Education Haryana, Banjara comes under the category of Scheduled Caste.

4. On 3.3.2000 the petitioner was allotted the symbol of "Cycle". After the grant of symbol, the petitioner was busy in her campaign. Suddenly on 5.3.2000 at about 2.00 p.m. one gentleman, who described himself to be the Returning Officer, informed that her nomination paper had been rejected. The petitioner had written a letter to respondent No. 3 requesting him to supply the copy of the order rejecting the nomination paper. It was written on the same application that Banjara is not a scheduled caste but a backward class. The petitioner states that the said order is illegal because, firstly, the petitioner is a scheduled caste and, secondly, once the symbol had been allotted and the date had been fixed for elections, nomination papers could not be rejected.

5. Needless to state that in the reply filed, the petition has been contested. In the reply filed by respondents No. 1 and 4, it has been pointed out that the scrutiny of the nomination papers is a part of the election process and election on the ground of rejection of nomination papers can be challenged only by filing election petition. It has further been pleaded that the office of Sarpanch of Gram Panchayat Akbarpur Barota was reserved for the women belonging to Scheduled Castes. The petitioner has filed one nomination paper and the other was filed by respondent No. 5. The scrutiny of the nomination papers was made on 1.3.2000 and the last date of withdrawal expired on 3.3.2000. It has been pleaded that the caste Banjara was once notified as a Scheduled Caste but subsequently the Chief Secretary to Government of Haryana clarified that the caste Banjara is not scheduled caste and it should be read as Bhanjra. Banjara is a Backward Class and not Scheduled Caste. Therefore, the nomination papers were rightly rejected.

6. In the separate reply filed by Shri Hukam Chand Khokhar, the Returning Officer for the abovesaid election of Gram Panchayat, almost identical pleas had been offered. It has been pleaded that nominations for the post of Sarpanch were received. Only two nomination papers were filed i.e. one by the petitioner and the other by respondent No. 5. The petitioner belongs to Banjara community. At the time of scrutiny, the Returning Officer found the nomination of both the candidates to be valid. But when this respondent went to the office of the Block Development and Panchayat Officer, he came to know that Banjara caste is a backward class and not scheduled caste and, therefore, the nomination papers of the petitioner were rejected. Respondent No. 5 also contested the petition.

7. On behalf of the petitioner, it has been urged vehemently that once the nomination papers had been accepted after scrutiny and the symbol had been

allotted, the same could not be rejected. The learned counsel strongly relied upon the decision of the Supreme Court in the case of [Samar Singh Vs. Kedar Nath alias K.N. Singh and Others,](#) . In the cited case, during the general elections held in the year 1984, Samar Singh had filed his nomination papers for contesting election to the Lok Sabha. His nomination papers were accepted and he was allotted the symbol. The elections took place and the respondent was declared elected. Samar Singh filed election petition challenging the election of the respondent. One of the grounds agitated was that the Returning Officer acted in violation of the proviso to Section 33(4) of the Representation of the People Act as he failed to correct entries in the appellant's nomination paper and list of contesting candidates with regard to the petitioner's name, as a result of which result of the election, was materially affected in so far as the returned candidate is concerned.

8. It was this fact which found favour with the Supreme Court and the Supreme Court held as under:-

"On behalf of the appellant an application was made before the Returning Officer on 1.11.1984 for correction of the appellant's name in the list of validly nominated candidates which was rejected by the returning officer. Once nomination paper was accepted and on scrutiny it was found to be valid and the list of contesting candidate was prepared in accordance with Section 36, the returning officer had no jurisdiction to make any correction therein, as neither the Act nor the Rules confer any such power on him. The proviso to Section 33(4) is the only provision which authorises the returning officer to ignore any inaccurate description or printing error and empowers him to permit correction of entries in the nomination paper and electoral roll relating to a candidate or his proposer when the nomination paper is presented before him, or at the time of scrutiny only and that too in the circumstances specified in the proviso. He has no jurisdiction to make any correction after the scrutiny of nomination paper is over and the list of validly nominated candidates had been prepared and notified u/s 36(8) of the Act."

It is abundantly clear from what has been reproduced above that it was in the peculiar facts that the entries were not corrected. The Supreme Court found that once the nomination paper was accepted and on scrutiny it was found to be valid, the Returning Officer had no jurisdiction to make any correction therein. Therefore, it is patent that it is confined to the peculiar facts of that case.

9. In fact, we deem it unnecessary to ponder further over this controversy and to decide the same because in the peculiar facts we find that even if it be taken that the petitioner's nomination paper could not be rejected after it was accepted, still it would be an exercise in futility.

10. But before explaining the said contention, one can refer to the basic fact as to whether the petitioner is a Scheduled Caste or not ?

11. On behalf of the petitioner, reliance is being placed on the copy of the Prospectus for Diploma in Education obtained from the Directorate of Secondary Education Haryana. Therein a list of Scheduled Castes candidates had been mentioned which reads as under:-

Annexure-III

1. Ad Dharmi	13. Bhogri, Djangri or Siggi	25. Od.
2. Balmiki, Chura Bhany	14. Dhanak	26. Pasi
3. Bangali	15. Dumna, Mahasha, or Doom	27. Oema
4. Barar, Burar Berar	16. Gagra	28. Pherara
5. Balwai	17. Gandhila, Gandhi	29. Sanhai
6. Bauria, Bawaria	18. Kabir Panlhi Julaha	30. Sanhoi
7. Bazigar	19. Khatik	31. Sansi, Bhedkut
8. Banjara	20. Kori, Koli	32. Sansoi
9. Chanal	21. Marija, Mureoha	33. Sapela
10. Dagi	22. Mazhabi	34. Sarera
11. Darain	23. Megh	35. Sikligar

12.	24. Not	36.
Delia,Dhaya		Sirkiband
Dhea.		
XX	XX	XX

Signature of Principal

Headmaster of the School/College (with Seal)"

12. The petitioner had also appended a Scheduled Caste Certificate from the City Magistrate, Sonapat, that she belongs to the Banjara Caste which is recognised as a Scheduled Caste.

13. If the matter had ended here, there was very little controversy. But it is not so. Subsequently, it appears that the list of Scheduled Castes in the State of Haryana had been published. Annexure R-1 is the letter dated 9.11.1994 from the Chief Secretary to Government of Haryana to different government departments in the State of Haryana. The list of Scheduled Castes and Backward Classes had been appended, so far as Scheduled Castes are concerned, the said list reads as under:-

1. Ad-Dharmi	13. Dhogri,Dhangari or Saggi.
2. Balmiki, Chum or Bhangi.	14. Dhanak
3. Bangali	15. Mahasha or Doom or Dumra.
4. Barar, Buraror.	16. Gagia
5. Balwal	17. Gandhila,Gandil Gandola.
6Bauria or Bawaria	18. Kabir Panthi or Julaha
7. Bajigar	19. Khatik
8. Dhanjara	20. Kori, Koli.

9.Chanal	21. -
10. Dagi	22. Madrabi
11. Datain	23. Megh
12. Daha,	24. Nat
Dhaya or	25. Od.
Dhea.	xx xx"

14. So far as Backward Classes are concerned, the list has also been appended and at serial No. 58 "Banzara" "Banjara" has been mentioned to be Backward Class. During the course of arguments, this fact was not controverted. We, therefore, hold that the petitioner is not a Scheduled Caste.

15. Once it is so held, it is patent that even if the writ petition is allowed on the contention raised by the petitioner, it will be of little use. The Court will not knowingly allow a petition with no result. The petitioner might again only contest to find that she was not eligible, particularly when it has been brought to the notice of this Court. We will, therefore, not go by the strict technicality in this regard.

16. The jurisdiction to grant a relief in a writ petition is discretionary. When the facts, as have been noticed, have come to light, we refuse to entertain the writ petition in favour of the petitioner. Reference with advantage can well be made to the observations of the Madhya Pradesh High Court in the case of [Abdul Gafoor Vs. State of M.P. and Another](#), wherein the Court held as under :-

"While the crucial problem here is whether in spite of the sequence of happenings set out above we can hold that the petitioner is still an Indian citizen. Three important special features must be touched upon to begin with. First, we have the thick cloud created by the petitioner himself and his prompters like the mysterious Babu butcher of Karachi obviously with the intention of concealing his movements. This alone might disentitle the petitioner to get the assistance of this Court under Article 226; a petitioner for an equitable relief cannot by throwing dust into every body's eyes and behaving with the clear intention that he should be able to indulge in some activities which he does not want others to know. The Courts in such circumstances can have no choice except to refuse the assistance."

17. The Supreme Court also in the case of [Rashbihari Panda etc. Vs. State of Orissa](#), refused to grant the relief and concluded as under :-

"During the pendency of these proceedings the entire year, for which the contracts were given has expired. The persons to whom the contracts were given are not before us, and we cannot declare the contracts which had been entered into by the Government for the sale of Kendu leaves for the year 1968 unlawful in these

proceedings. Counsel for the appellants agrees that it would be sufficient if it be directed that the tender for purchase of Kendu leaves be invited by the Government in the next season from all persons interested in the trade. We trust that in accepting tenders, the State Government will act in the interest of the general public and not of any class of traders so that in the next season the State may get the entire benefit of the monopoly in the trade in Kendu leaves and no disproportionate share thereof maybe diverted to any private agency. Subject to these observations we make no further order in the petitions out of which these appeals arise."

18. Pndential is the position herein. Once the petitioner is found to not a Scheduled Caste, we deem it unnecessary to go into the question whether her nomination papers were rejected validly or not. No useful purpose would be served in that exercise.

For that reason, the writ petition is dismissed.

19. Petition dismissed.