

S-
*
+

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1710/2017

Reserved on : 17th March, 2017

Date of decision: 23rd March, 2017

SUBHASH SONI

..... Petitioner

Through: Mr. Puneet Singh Bindra, Mr. Aslam Ahmed & Mr. Sumanta Kumar, Advocates

versus

UOI AND ORS

..... Respondents

Through: Mr. Sumeet Pushkarna, Standing Counsel with Mr. Siddhartha Nagpal, Advocates for State Election Commission with Mr. Girish Pandey, Deputy Secretary

Mr. S.K. Sethi & Ms. Dolly, Advocates for respondent No.2

Mr. G.D. Mishra, Advocate for EDMC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.:

For detailed order see W.P. (C) No. 1291/2017, *We the Citizens through Its Secretary Vs. Union of India & Ors.*, pronounced today.


(SANJIV KHANNA)
JUDGE


(CHANDER SHEKHAR)
JUDGE

MARCH 23rd, 2017/NA

13

\$~
*
+

IN THE HIGH COURT OF DELHI AT NEW DELHI
WRIT PETITION (CIVIL) NO. 1291/2017

Reserved on : 17th March, 2017
Date of decision: 23rd March, 2017

WE THE CITIZENS THROUGH ITS SECRETARY..... Petitioner.

Through: Mr. Barun Kumar Sinha, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rishabh Sahu & Mr. Sameer
Sharma, Advocates for respondent No.1

Mr. Sanjoy Ghose, ASC with Mr. Rishabh Jaitley,
Advocate for respondent No.2

Mr. Sumeet Pushkarna, Standing Counsel with
Mr. Siddhartha Nagpal, Advocates for State
Election Commission with Mr. Girish Pandey,
Deputy Secretary.

Mr. Rakesh Mittal, Advocate for SDMC

Mr. G.D. Mishra, Advocate for EDMC

W.P.(C) 1632/2017

SOMA RANI

..... Petitioner

Through: Mr. Rakesh Khanna, Senior Advocate
with Mr. Sunil Nagar, Mr. Vijay Kasana & Ms. S.
Bushra Kazim, Advocates

versus

STATE ELECTION COMMISSION AND ORS Respondents

Through: Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Siddhartha Nagpal, Advocates
for State Election Commission with Mr. Girish
Pandey, Deputy Secretary.

Mr. Sanjoy Ghose, ASC with Mr. Rishabh Jaitley,
Advocate for GNCTD.

Mr. Kavindra Gill, Advocate for respondent No.3

14

W.P.(C) 1710/2017

SUBHASH SONI

..... Petitioner

Through: Mr. Puneet Singh Bindra, Mr. Aslam Ahmed & Mr. Sumanta Kumar, Advocates

versus

UOI AND ORS

..... Respondents

Through: Mr. Sumeet Pushkarna, Standing Counsel with Mr. Siddhartha Nagpal, Advocates for State Election Commission with Mr. Girish Pandey, Deputy Secretary
Mr. S.K. Sethi & Ms. Dolly, Advocates for respondent No.2
Mr. G.D. Mishra, Advocate for EDMC

W.P.(C) 1670/2017

M. NAGARAJAN

..... Petitioner

Through: Mr. A. Maitri & Ms. Radhika Chandrashekhar, Advocates

versus

STATE ELECTION COMMISSION & ORS

..... Respondents

Through: Mr. Sumeet Pushkarna, Standing Counsel with Mr. Siddhartha Nagpal, Advocates for State Election Commission with Mr. Girish Pandey, Deputy Secretary.
Mr. Sanjoy Ghose, ASC with Mr. Rishabh Jaitley, Advocate for GNCTD

W.P.(C) 1906/2017

RANVIR VATS

..... Petitioner

Through: Mr. Sanjeev Kumar, Advocate
versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Arun Kumar, Advocate for respondent No.1
Mr. G.D. Mishra, Advocate for EDMC
Mr. Rakesh Mittal, Advocate for SDMC
Mr. Sanjoy Ghose, ASC with Mr. Rishabh Jaitley, Advocate for GNCTD

15

W.P.(C) 1978/2017

HINDU-MUSLIM JAN KALYAN SAMITI (REGD)..... Petitioner

Through: Mr. Alok Shukla, Advocate

versus

THE COMMISSIONER STATE ELECTION COMMISSION NCT
OF DELHI AND ORS Respondents

Through: Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Siddhartha Nagpal, Advocates
for State Election Commission with Mr. Girish
Pandey, Deputy Secretary.

Mr. Uttam Dutt & Mr. Tarun Sharma, Advocates
for respondent Nos.2 & 3.

Ms. Namisha Gupta, Advocate for respondent
No.4.

Mr. Sanjoy Ghose, ASC with Mr. Rishabh Jaitley,
Advocate for GNCTD

W.P.(C) 2017/2017

SANJEET SINGH DABAS

..... Petitioner

Through: Mr. Yudhvir Singh Chauhan,
Advocate

versus

STATE ELECTION COMMISSION AND ANR Respondents

Through: Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Siddhartha Nagpal, Advocates
for State Election Commission with Mr. Girish
Pandey, Deputy Secretary

Mr. Sumit K. Batra & Mr. Kapil Choudhary,
Advocates for respondent No.2

W.P.(C) 2106/2017

HARISH CHANDRA DHUPAR

..... Petitioner

Through: Mr. G.D. Parashar & Ms. Parul
Singh, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

14

Through: Mr. Nirvikar Verma, Advocate for
respondent No.1.

Mr. N.S. Arora, Advocate for respondent No.2

Mr. G.D. Mishra, Advocate for EDMC

Mr. Rakesh Mittal, Advocate for SDMC

W.P.(C) 2184/2017

AJAY JUYAL

..... Petitioner

Through: Mr. Mukesh Rana, Ms. Mansi Bajaj
Ms. Aarti Bhalla & Ms. Jayashree, Advocates

versus

STATE ELECTION COMMISSION (NCT OF DELHI)

..... Respondent

Through: Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Siddhartha Nagpal, Advocates
for State Election Commission with Mr. Girish
Pandey, Deputy Secretary

W.P.(C) 2189/2017

RAKESH KUMAR

..... Petitioner

Through: Mr. Alind Srivastava, Mr. Sudeep
Dey & Mr. Abhinav Kumar, Advocates

versus

STATE ELECTION COMMISSION AND ORS

..... Respondents

Through: Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Siddhartha Nagpal, Advocates
for State Election Commission with Mr. Girish
Pandey, Deputy Secretary

Mr. Shatrajit Banerji, Adv. for respondent No.2

Ms. Poonam Kumari, Adv. for respondent No.3

W.P.(C) 2194/2017

RINKU KUMAR

..... Petitioner

Through: Mr. G.K. Kaushik & Mr. Sanjeev
Behl, Advocates

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. T.P. Singh & Mr. Sahaj Garg, Advocates
for respondent No.1

Mr. Sumeet Pushkarna, Standing Counsel with
Mr. Siddhartha Nagpal, Advocates for State
Election Commission with Mr. Girish Pandey,
Deputy Secretary

W.P.(C) 2299/2017

BHUPENDER SINGH CHAUHAN Petitioner

Through: Mr. R.K. Gupta, Advocate

versus

GOVT OF NCT OF DELHI AND ANR Respondents

Through: Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Siddhartha Nagpal, Advocates
for State Election Commission with Mr. Girish
Pandey, Deputy Secretary

Mr. Sanjoy Ghose, ASC with Mr. Rishabh Jaitley,
Advocate for GNCTD

W.P.(C) 2300/2017

MOHIT SINGH Petitioner

Through: Mr. Amit & Mr. Arvind Singh,
Advocates

versus

GOVERNMENT OF DELHI AND ANR Respondents

Through: Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Siddhartha Nagpal, Advocates
for State Election Commission with Mr. Girish
Pandey, Deputy Secretary

Mr. Ankur Chibber, Advocate.

W.P.(C) 2440/2017

HARSH VARDHAN TYAGI Petitioner

Through Mr. Siddharth, Advocate.

versus

STATE ELECTION COMMISSION & ORS Respondents

Through Mr. Sumeet Pushkarna, Standing

Counsel with Mr. Siddhartha Nagpal, Advocates for State Election Commission with Mr. Girish Pandey, Deputy Secretary.
Mr. Sanjay Dewan, Advocate for respondent No.2.
Mr. Suresh Chandra Sati, Central Government Pleader.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.:

Rule DB.

2. In view of the urgency expressed, with the consent of the parties we have treated W.P. (C) No. 1291/2017, *We the Citizen Through Secretary Vs. Union of India & Ors.*, as the lead case. The respondent, The State Election Commission (SEC, for short) has filed reply/counter affidavit in this writ petition, which was circulated and furnished to the counsel for the petitioners in other writ petitions.
3. Keeping in view the similarity of the issues involved, this common judgment would dispose of the aforesaid writ petitions.
4. Elections to the South Delhi Municipal Corporation (SDMC), North Delhi Municipal Corporation (NDMC) and East Delhi Municipal Corporation (EDMC) are to be held in April, 2017.
5. As per Section 3 (6) of the Delhi Municipal Corporation Act, 1957 (Act, for short), upon completion of each census after establishment of the Corporation(s), the number of seats on the basis of population of the area of the Corporation(s) is to be ascertained and determined by the Central

19

Government by a notification in the Official Gazette. The said section also stipulates that the number of seats reserved for the members of Scheduled Castes shall, as nearly as may be bear the same ratio to the total number of seats as the population of Scheduled Castes bears to the total population of Delhi. The first proviso to the section, however, stipulates that the total number of seats in the Corporations shall not exceed the figure of 272.

6. In view of the new census data for 2011, the aforesaid exercise was undertaken by the SEC at the request of the Government of the National Capital Territory of Delhi vide the order of the Lieutenant Governor No.F7(55)DLB/2015/PT-1/4276-82 dated 18th September, 2015. This notification had stipulated that the SEC shall have the power to call for population data as per 2011 Census, census maps, census details of Enumerated Blocks with figures of total population and Scheduled Castes population for the said purpose from the Director of Census Operations Delhi, and take assistance from Geospatial, Delhi and others. The SEC was to prepare a draft delimitation order for all the three Corporations showing the number and extent of wards in each Corporation, maps of each ward indicating clearly boundaries on the North, West, East and South of each ward. It was mandated that wide publicity, for inviting objections and suggestions to the draft delimitation order, be given through press and media. Thereafter, the final delimitation order shall be sent to the Government for approval and publication in the Official Gazette. The wards upon delimitation, it was prescribed, should be within one Assembly Constituency and not cross it.

7. To undertake this onerous and immense exercise, services of

Geospatial, Delhi for satellite mapping and digitization and grouping of wards into Enumerated Block groups were availed. This digitized data, after recheck, was analyzed to finalize the ward boundaries. These boundaries were compared with the boundaries of the Assembly Constituencies, to ensure that the ward boundaries did not extend to two Assembly Constituencies.

8. On the basis of data and details furnished by Geospatial Delhi and after consultation with the public, Resident Welfare Associations, etc. the proposed draft delimitation was prepared containing Corporation-wise Enumerated Blocks data, Corporation-wise localities/colonies and the ward maps with population figures and data. The details with regard to principles of delimitation were adumbrated. Copy of this proposed draft was supplied to the Members of Parliament, Members of Legislative Assembly and Councillors. Consultations/meetings were held with the different stakeholders.

9. Consequent to the said deliberations, the first draft delimitation order was put up on the website, www.sec.delhigovt.nic.in, on 9th September, 2016. Simultaneously, advertisements were placed in 9 newspapers in four different languages on 10th September, 2016, inviting the public to log on to the website and give their comments and objections. Draft order was also sent to the elected representatives for inviting their suggestions and objections.

10. By 24th September, 2016, more than 700 recommendations/suggestions were received, which were examined and studied with reference to the guidelines or principles fixed by the SEC.

11. On 24th October, 2016, a meeting was held with the Commissioners and Town Planners of the three Corporations to discuss demarcation of boundaries of the wards, how municipal services would be provided as per the new delimitation of wards, how to treat un-demarcated areas, like green-belt etc. Discrepancies pointed out in the feedback were corrected.

12. After due analysis and deliberation, three delimitation orders with regard to each Municipal Corporation dated 13th January, 2017 were published by the Lieutenant Governor, under section 3 and 5 of the Act. The orders recount that the Government had assigned the work of delimitation of wards in the three Corporations as per the provisions of different sub-sections of Sections 3 and 5 of the Act to the SEC. As per the guidelines, all wards had to be demarcated within one Assembly Constituency. In terms of power conferred by the Central Government under sub-section (6) of Section 3 and sub-section (2) of Section 5, the Lieutenant Governor notified 104 wards each in NDMC and SDMC and 64 wards in EDMC. The said notification had assigned new ward numbers, new ward names etc. The area or demarcation of each ward was fixed. Each ward has a population of about 60,000, with variation between 10,000 to 15,000 persons.

13. Thereafter, on 3rd February, 2017, the SEC held another meeting with members of different political parties, officers, etc. on the question of reservation of different wards for women and Scheduled Castes. By the notification dated 6th February, 2017 published in the Delhi Gazette, the SEC, on the basis of the 2011 Census, has computed and fixed the reserved seats for each Corporation as under:-

22

Name of M.C.	Population	S.C. Population	Percentage	No. of seats in a	No. of Seats reserved for
North Delhi	6254758	1212172	19.38%	104	20
South Delhi	6214059	879053	14.15%	104	15
East Delhi	3949846	654998	16.58%	64	11

This notification also gives the name of the wards, their population, Scheduled Castes population, their percentage, and number of seats reserved.

14. On the question of reservation of seats/wards, the notification dated 6th February, 2017 had stipulated:-

“AND WHEREAS, now as per the Delimitation Order No. F.7(55)DLB/2015/Pt. I/202, 203 & 204 dated, 13/01/2017 which is based on Census 2011, the number of wards in each Assembly Constituency have changed and the Election Commission has decided to adopt the seat reservation for Scheduled Castes on the basis of highest percentage of Scheduled Castes population in a ward within the Corporation in a descending order. Thus within the Corporation the wards with the highest percentage of Scheduled Castes population will be reserved to the numbers as specified above. The Analogy adopted is the same as used while reserving Scheduled Caste seats for assembly constituencies in Delhi.”

Thus for reservation for Scheduled Castes highest percentage of Scheduled Castes in the ward within the Corporation in descending order, was taken as the basis. Wards within each Corporation area with the highest percentage of Scheduled Castes population in the descending order were reserved.

15. With regard to reservation for women, both in General seats and the seats reserved for Scheduled Castes, this notification dated 6th February, 2017 provides as under:-

“NOW, THEREFORE, in exercise of the powers as delegated by Central Government and the Government of National Capital Territory of Delhi as delegated to the Election Commission of the National Capital Territory of Delhi as detailed in the preceding paras and all other enabling provisions, I, **S. K. Srivastava,** Election Commissioner, do hereby reserve the Wards in the above-noted three Corporations for the specified categories as under:-

(a) For the purpose of reservation of seats for the above-mentioned categories, the wards with highest percentage of Scheduled Castes, in descending order, in each Corporation have been taken to the numbers as required to be reserved. In pursuance of the provisions of sub-section (7) of sec.3 of the said Act, seats to be reserved for women belonging to Scheduled Castes, from among the seats reserved for the Scheduled Castes should not be less than one half of the total number of seats reserved for the Scheduled Castes. Thus 1st, 3rd, 5th numbers taken for Scheduled Castes Women seats and rest for Scheduled Castes seats.

(b) For reservation of Wards for women and General categories, as per provision of Sub – Section (8) of Section 3 *ibid*, lists of remaining wards [after deduction of Wards reserved for S.C. (W) and S.Cs] in sequence of serial numbers of wards in each Corporation has been taken into consideration. In every such list, every 1st, 3rd, 5th Ward and so on, taken as reserved for ‘Women’, as it should not be less than one half of the total number of remaining seats and every 2nd, 4th, 6th Ward and so on, taken as ‘General’.

Consequent to the procedure adopted for reservation of Wards as indicated above, the reservation of Wards in each of the three Municipal Corporations, for specified categories in consecutive serial order, is detailed in Annexure I, II & III.

Annexure I, relating to NDMC reads:-

“North Delhi Municipal Corporation

(i) Total Wards – 104.

(ii) Seats reserved for Scheduled Castes, as per the highest percentage of Scheduled Castes population, in descending order, are :--

Ward Numbers - 94, 45, 55, 56, 47, 91, 46, 54, 48, 69, 49, 76, 13, 74, 37, 83, 4, 92, 82 and 95 = **Total – 20 Wards.**

(iii) Seats reserved for Scheduled Castes as per chronological list of wards of the North Delhi Municipal Corporation: -

Ward Numbers - 4, 13, 37, 45, 46, 47, 48, 49, 54, 55, 56, 69, 74, 76, 82, 83, 91, 92, 94 and 95 = **Total – 20 Wards.**

(iv) **Scheduled Castes (Women) seats: -**

Ward Numbers - 4, 37, 46, 48, 54, 56, 74, 82, 91 and 94 = **Total – 10 Wards.** (1st, 3rd, 5th numbers taken for Scheduled Castes Women seats and so on).

(v) **Scheduled Castes seats: -**

Ward Numbers - 13, 45, 47, 49, 55, 69, 76, 83, 92 and 95 = **Total – 10 Wards.** (2nd, 4th, 6th numbers taken for Scheduled Castes seats and so on).

(vi) **Remaining seats: -**

Ward Numbers - 1, 2, 7, 8, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 40, 41, 42, 43, 44, 50, 51, 52, 53, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 71, 72, 73, 75, 77, 78, 79, 80, 81, 84, 85, 86, 87, 88, 89, 90, 93, 96, 97, 98, 99, 100, 101, 102, 103 and 104 = **Wards. (Total Wards 104 – SC reserved Wards 20 = 84 Wards**

(vii) **Women seats: -**

Ward Numbers - 1, 3, 6, 8, 10, 12, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 38, 40, 42, 44, 51, 53, 58, 60, 62, 64, 66, 68, 71, 73, 77, 79, 81, 85, 87, 89, 93, 97, 99, 101 and 103 = **Total – 42 Wards.** (1st, 3rd, 5th numbers taken for Women seats and so on).

27

(viii) General seats: -

Ward Numbers - 2, 5, 7, 9, 11, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 39, 41, 43, 50, 52, 57, 59, 61, 63, 65, 67, 70, 72, 75, 78, 80, 84, 86, 88, 90, 96, 98, 100, 102 and 104 = **Total - 42 Wards.** (2nd, 4th, 6th numbers taken for General seats and so on).

SUMMARY: -

SC (Women) = 10 seats, SC = 10 seats = Total = 20 wards.
Women = 42, General = 42, Total = 84 Wards
20 Wards reserved for SC (Women) and SCs and 84 Wards for women & General category = Total 104 wards."

(Similar Annexures were issued for the SDMC and EDMC)

16. The said notification, as recorded above, refers to new ward numbers in the three Corporations, with ward name and whether the said ward would be reserved for Women, Scheduled Caste, Scheduled Caste (Women) or would be open to all. Noticeably, women candidates can apply for General seats and Scheduled Caste (women) candidates can stand for Scheduled Caste seats. Scheduled Castes male and female candidates can also stand for General seats.

17. The petitioners have primarily challenged the notification dated 6th February, 2017, on the following grounds:-

(i) The criteria for reservation of Scheduled Castes wards on the basis of highest percentage of Scheduled Castes population in a ward in descending order is contrary to the criteria which was adopted in the elections held in 2007 and 2012 and approved by a single Judge of this Court in *Ramesh Dutta Vs. The State Election Commission*, 144 (2007) DLT 286 and by a

Division Bench in *Vikas & Ors. Vs. State Election Commission & Ors.*, 188 (2012) DLT 390 (DB).

(ii) The reservation of wards for Scheduled Castes and women fall foul and are contrary to Article 243T of the Constitution and the fourth proviso to sub-section (6) to Section 3, proviso to sub-section (8) to section 3 and clause (e), sub-section (2) to Section 5 of the Act. These clauses relate to rotation of the reserved seats for the Scheduled Castes and women in different wards.

(iii) The SEC has violated the undertaking and directions recorded in the judgment in the case of *Vikas* (supra) that there would be rotation of the reserved wards.

We have deliberately not expounded and elaborated on the different facets and aspects of the contentions raised to avoid prolixity as these have been examined below.

18. In order to decide the present lis, we would like to first reproduce Article 243T of the Constitution and sub-sections (5), (6) (7) and (8) to Section 3 of the Act and Section 5 (1) and 5 (2) of the Act, which are as under:-

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

27

(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.

XXXX

Delhi Municipal Corporation Act, 1957

3. Establishment of Corporations

(5) The total number of seats of councilors and the number of seats reserved for the members of the Scheduled Castes in each Corporation, shall, at the time of establishment of such Corporation, be as determined by the Government by notification in the Official Gazette.

(6) Upon the completion of each census after the establishment of a Corporation the number of seats shall be on the basis of the

population of the area of the Corporation as ascertained at that census and shall be determined by the Central Government by notification in the Official Gazette and the number of seats to be reserved for the members of the Scheduled Castes shall, as nearly as may be, bear the same ratio to the total number of seats as the population of Scheduled Castes bears to the total population of Delhi:

Provided that the total number of seats in all the Corporations in Delhi shall in no case be more than two hundred and seventy-two and the number of seats in each Corporation shall be determined by the Government at the time of establishment of such Corporations:

Provided further that for the first election to the Corporations to be held immediately after the commencement of the Delhi Municipal Corporation (Amendment) Act, 2011, the population figures of every such Corporation as published in relation to 2011 census shall be deemed to be the population thereof as ascertained in that census:

Provided also that the seats reserved for the Scheduled Castes may be allotted by rotation to different wards in such manner as the Central Government may, by order published in the Official Gazette, direct.

(7) Seats shall be reserved for women belonging to the Scheduled Castes, from among the seats reserved for the Scheduled Castes, the number of such seats being determined by the Government by order published in the Official Gazette which shall not be less than one-half of the total number of seats reserved for the Scheduled Castes.

(8) Seats shall be reserved for women, the number of such seats being determined by order published in the Official Gazette by the Government which shall not be less than the one-half of total number of seats other than those reserved for the Scheduled Castes:

30

Provided that such seats reserved for women shall be allotted by rotation to different wards in such manner as the Government may, by order published in the Official Gazette, direct in this behalf

XXXX

5. Delimitation of wards. —

(1) For the purposes of election of councillors, the area of a corporation shall be divided into single-member wards in such manner that the population of each of the wards, shall, so far as practicable, be the same throughout the area of the corporation.

(2) The Government shall, by order in the Official Gazette, determine, —

(a) the number of wards;

(b) the extent of each ward;

(c) the wards in which seats shall be reserved for the Scheduled Castes;

(d) the wards in which seats shall be reserved for women; and

(e) the manner in which seats shall be rotated under sub-section (6) and (8) of section 3.”

19. Article 243T of the Constitution provides that in every municipality, seats would be reserved for Scheduled Castes (and Scheduled Tribes) and the number of seats so reserved shall be in the same proportion as the population of the Scheduled Castes (or Scheduled Tribes) in the Municipal area. The extent and proportionality of reservation is with reference to the Municipal area and not the ward in the Municipal area. The provision does not make reference to the Parliamentary or Assembly Constituency/ies.

Clause (1) of Article 243T further states that such seats would be allocated by rotation to different constituencies, i.e. wards in the Municipality. Clauses (2) and (3) to Article 243T stipulates reservations for women in the General seats and the seats reserved for Scheduled Castes, etc., which shall not be less than one-third of the total number of seats in General and the reserved category. We are not concerned with the other clauses of Article 243T.

20. Sub-section (5) to Section 3 of the Act states that the total number of seats of Councillors and the number of seats reserved for the members of the Scheduled Castes in the three Corporations shall be at the time of establishment of the Corporation(s) determined by the Government by notification in the Official Gazette. This clause would not be applicable as we are not dealing with the position at the time of establishment of the three Corporations. Sub-section (6) would be applicable in the present case. The said sub-section stipulates that on completion of every census after establishment of a Corporation, the number of seats to be reserved for members of Scheduled Castes shall, as nearly as may be, bear the same ratio to the total number of seats as the population of Scheduled Castes bears to the total population of Delhi. Again sub-section (6) refers to the total population of Delhi and the proportion and ratio of Scheduled Castes to the total population. It does not mention or refer to the Assembly Constituencies or the wards. First proviso stipulates that number of seats or wards in all the three Corporations shall not exceed 272 and the number of seats in each Corporation shall be determined by the Government at the time of establishment of the Corporation. We are not concerned with the second and third provisos in the present case, though we may notice that the third

32 ✓

proviso states that for the first election to be held of the Corporation after commencement of Delhi Municipal Corporation (Amendment) Act, 2011, the population figures in the 2001 Census shall be the basis. The fourth proviso stipulates that the seats reserved for Scheduled Castes may be allotted by rotation to different wards in such manner as the Central Government may, by order published in the Official Gazette, direct. This proviso thus states that that seats/wards reserved for Scheduled Castes may be rotated, and, in the manner as is determined by the Central Government by an order to be published in the Official Gazette. Sub-sections (7) and (8) relate to reservation of women in Scheduled Caste seats and General seats, which shall not be less than one-half of the total number of seats reserved for Scheduled Castes and the General candidates, respectively. The seats so reserved will be determined by the Government by an order published in the Official Gazette. Proviso to sub-section (8) states that the seats reserved for women shall be allotted by rotation to different wards in such manner as the Government may state, by order published in the Official Gazette.

21. Section 5 of the Act states that for the purpose of Councillors, the area of Corporation will be divided in single-member wards in such manner that the population of each ward as far as practicable should be the same throughout the area of that Corporation. This ensures that every Councillor elected from a particular ward in the Corporation is the representative of and is elected by equal number of persons or population. Therefore, demarcation exercise whenever undertaken, which is required and mandated under sub-section (6) to Section 3 on completion of each census, should ensure that each ward consists of equal number of people/population. In other words, on delimitation being undertaken, the area and size of the ward

can undergo a change. Dependant on increase or decrease in the size of the population in the earlier ward/wards, area of the ward need not be the same after the delimitation. Sub-section (2) to Section 5 is of some importance and states that the delimitation exercise shall determine number of wards; area of wards; the wards in which seats shall be reserved for the Scheduled Castes; wards in which seats shall be reserved for women and; the manner in which seats will be rotated under sub-sections (6) and (8) of Section 3. Thus every time delimitation is undertaken, the wards, their size and number, and the wards reserved for Scheduled Castes and women have to be specified and indicated.

22. The Act, therefore, provides for three kinds of reservations. Reservation for Scheduled Castes; reservation for women in the General category, which cannot be less than 50% of the total seats for General category and reservation of seats for women in Scheduled Castes category which cannot be less than 50% of the seats reserved for Scheduled Castes.

23. In the present cases, there is no dispute or challenge as to the percentage of seats which have to be reserved for Scheduled Castes in the three Corporations. It is undisputed that 20, 15 and 11 seats out of 104, 104 and 64 seats have to be reserved for Scheduled Castes in NDMC, SDMC and EDMC, respectively. The dispute and the issue raised is pertaining to which ward should be declared as reserved for Scheduled Castes and for women.

Reservation of Wards for Schedule Castes

24. We would first take up the issue with regard to reservation of wards for Scheduled Castes. As noticed above, the notification dated 6th February,

34

2017, reserves wards based upon the highest percentage of Scheduled Castes population in the wards in the descending order in each of the three Corporations.

25. If we examine the said basis or precept for reservation, it is *per se* and *ex facie* reasonable and fair. In fact, it would be in consonance with the principles of reservation applicable to the Assembly Constituency in terms of Section 38 of the Government of National Capital Territory of Delhi Act, 1991. The said Section states that reservation of Assembly Constituencies for Scheduled Castes shall be on the basis of the Scheduled Castes' population in a particular constituency. In other words, Assembly Constituencies with the highest Scheduled Caste population would be given preference for reservation over those with lower proportion. The contention of the petitioner, however, is that this principle or precept is different from the principle or precept which was adopted for reservation of Scheduled Caste wards in the 2007 and 2012 notifications. In the 2007 notification, the criteria adopted was with reference to the highest number of Scheduled Castes population in the Assembly Constituency in the descending order with a further stipulation that two wards in each Assembly Constituency/segments would be reserved for Scheduled Castes. In the 2012 notification, the reservation was again based upon ratio of the Scheduled Castes population in each Assembly Constituency in descending order, subject to reservation of only one ward with highest Scheduled Caste population in each Assembly segment.

26. It may be interesting to note that the precept or criteria adopted by the 2007 and 2012 notifications was challenged in this Court primarily on the ground that the ratio of the Scheduled Castes population in the Assembly

37

segments was not rational and a reasonable basis as election of the Councillors was ward-wise. Assembly Segments or Constituencies were not relevant for election from the wards to the Corporations. Another contention raised was regarding rotation of the reserved seats for it was alleged that the 2012 notification had failed to give full and fair recognition to rotation of seats as required by Article 243T of the Constitution and the fourth proviso to sub-section (6) to Section 3 and proviso to sub-section (8) to section 3 of the Act.

27. The writ petitions challenging the 2007 and 2012 notifications were dismissed for several reasons, but primarily on the ground that it was not for the Court or the petitioners therein to fix a parameter or criteria to decide which ward should be reserved for Scheduled Castes or women. The contention that the reservation based upon the percentage of Scheduled Castes population in the Assembly Segment or Constituency was irrational and illogical was rejected for reasons set out in the two judgments. The said judgments, however, do not hold that the ratio of the population in Assembly Segments or Constituency would be the right or the only method or criteria to determine or decide which ward should be reserved for Scheduled Castes. This is not the ratio of the said decisions as was contended by the petitioners. The principle or percept to be applied for determining which ward/seat should be reserved is for the Government to decide. Courts do not test the wisdom of the authorities or appropriateness of the criteria adopted while exercising the limited power of judicial review in such matters. Comparative merit of the options available cannot be made the subject matter of judicial review. The precept or the principle applied in the notification can be challenged on the grounds and reasons as were

36

enunciated and settled in *Hem Raj Arya and Ors. Vs. Election Commission, Delhi & Ors.* 1995 (32) DRJ 231, which had dealt with the 1993/1994 notification and had upheld the same, recording the following ratio:-

“(14) We are of the view that since no malafides on the part of the respondents have been pleaded or proved in adopting the stated method of reservation of seats, it is not for this Court to go into the minute details of the manner of reservation particularly when the Court is neither conceived with any statutory formula which had to be applied to test the correctness of the method adopted nor any precise fool proof mathematical formula can be spelt out for the said purpose. The method adopted for reservation of wards cannot be struck down merely because another method would be more fairer, scientific or logical. The court should interfere only if the impugned action is patently arbitrary, unconsciously unfair, discriminatory or malafide, which as already noted, is neither pleaded nor proved. In that view of the matter we do not find any ground to interfere. There is no merit in the petition and the same is accordingly dismissed. No costs.”

28. This principle was reiterated by a single Judge in the case of *Ramesh Dutta* (supra) in the following words:-

“38. Accordingly, I hold that these writ petitions are maintainable. I also hold that there is no statutory requirement for disclosing the manner of allotment of seats reserved for the Scheduled Castes or women in the notifications issued under Section 5(2) of The DMC Act. However, such a manner must be discernible from the records of the Central Government (including its delegates). The manner must be reasonable and not arbitrary or discriminatory or mala fide. The manner indicated in the present case of identifying seats reserved for scheduled castes based on the twin criteria of ranking seats in decreasing proportion of population and limiting them to not more than two per assembly segments cannot be interfered with as it is neither arbitrary nor discriminatory nor malafide. Even

37

the criterion of allotting every third seat from the list of wards arranged as per the serial numbers of the wards for women cannot be questioned. However, as indicated above, the impugned notification of 17.02.2007 has gone wrong in not uniformly applying these criteria. The same is, therefore, set aside."

29. Similarly, in *Vikas* (supra), a Division Bench of this Court had held that the SEC had carried out a considered exercise, which by no stretch of imagination can be said to be irrational or arbitrary. The methodology adopted cannot be struck down. When the methodology adopted by the SEC cannot be faulted, there would be no merit in the challenge. It was pertinently observed:-

"37. It is our view that the SEC has carried out a considered exercise which by no stretch of imagination can be said to be irrational or arbitrary so that it would fall foul of *Ramesh Dutta's* case (supra) It has already been explained that the methodology adopted in *Ramesh Dutta's* case (supra) for the elections in the year 2007 alone was not to be implemented for all future elections and that the exercise then carried out was rational and reasonable though there may have been flaws in the implementation aspect. The SEC was, thus, within its right to adopt a modified formula."

30. We would now deal with the contention of the petitioners that the SEC has violated the principle of rotation of Scheduled Castes seats as stipulated by the fourth proviso to sub-section (6) to Section 3 of the Act and Article 234T of the Constitution. The petitioners submit that in five Assembly Constituencies/Segments in the three Corporations, three or more wards are reserved for the Scheduled Castes as per the 6th February, 2017 notification. Our attention was specifically drawn to the Assembly Constituency Sultanpur Majra, which has Scheduled Castes population of

44.36% and all four wards in the said Assembly Constituency have been reserved. It was highlighted that in Sultanpur Majra Assembly Constituency there is not even a single ward in which a General candidate can contest the Municipal elections. Thus, no one from 55.64% of the total population in this Constituency can stand for election in any of the wards. Another chart filed before us indicates that as per the 6th February, 2017 notification, 20 seats/wards reserved for Scheduled Castes in NDMC would fall in 14 Assembly Constituencies, 15 reserved seats/wards for Scheduled Castes in SDMC would fall in 10 Assembly Constituencies and 11 seats reserved for Scheduled Castes in EDMC would fall in 5 Assembly Constituencies. In other words, 46 seats/wards reserved for Scheduled Castes under the three Corporations would fall in 29 Assembly Constituencies. Reference was made to the 2012 notification, wherein 46 reserved seats for Scheduled Castes were falling in 46 different Assembly Constituencies.

31. We do not find any merit in the said contentions. The core of the contention raised by the petitioners is with reference to the Assembly Constituency or Segments. We are not dealing with elections to the Delhi Legislative Assembly and, therefore, if the SEC has not adopted and applied and taken the Assembly Constituency/Segments as the basis, they cannot be faulted. The fact that in the 2007 and 2012 notifications, percentage of population in Assembly Segments and reservation based upon one or two wards in Assembly Segments was followed cannot be a justification or ground to strike down the 6th February, 2017 notification. In fact, it has been urged and argued with merit that the 6th February, 2017 notification is an improvement and refinement over the 2007 and 2012 notifications. Each ward is a distinct and a separate area from which a Councillor is elected.

39

This is the unit with which we are concerned. Population in the ward and the percentage of the Scheduled Castes population in the ward is a better and more satisfactory method to determine which of the wards should be reserved. Reservation based upon the population of Scheduled Castes in the Assembly Segment may have been upheld in the litigations in 2007 and 2012, but this does not mean that there could not be any third or a better method of reservation. There is no embargo or bar in Article 243T or the Act which prohibits or bars the authorities from engaging themselves and undertaking an exercise to improve and better upon the earlier principle/criteria. We can and would appreciate every attempt to evolve and improve the reservation criteria.

32. The SEC has given good and valid reasons as to why they have now adopted the principle of Scheduled Caste population in the wards in descending order to reserve the wards for Scheduled Castes candidates and not follow the earlier criteria of the Schedule Caste population in the Assembly Constituency. In the 2007 and 2012 elections, there were four (4) wards in each of the 69 Assembly Constituencies/Segments. Thus, the number of wards in each Assembly Constituency was identical i.e. four (4). Population of each ward was 40,000. This is not the position after the delimitation order dated 17th January, 2017. The numbers of wards in each Assembly Constituency vary between 3 to 7 and are not uniformly four (4) in number. Each ward today has a population of approximately 60,000. Earlier the population of each ward was about 40,000. The area of each earlier ward had to be re-drawn and increased or decreased, for growth of population in the old wards was not uniform and was different. This exercise was undertaken based upon the 2011 Census and with the help and

40

assistance of data, satellite maps etc. provided by Geospatial, Delhi. Therefore, the ward area in 90% of the wards has undergone a change. Further, the serial number given to the wards has also changed. New numbers have been given, as per the criteria noted below. This aspect would be of significance when we examine the question of rotation of wards for reservation for Scheduled Castes or women.

33. Coming to mandate of rotation, we feel that the said principle is not violated by the 6th February, 2017 notification. Whenever a delimitation exercise is carried out in terms of sub-section (2) to Section 5, the wards change and the reserved wards have to be specified. Sub-section 6 to Section 3 of the Act mandates delimitation exercise after every census. This delimitation must account for shift and movement of Schedule Caste population from one ward to the other. In the present delimitation exercise, a new and different criteria was rationally applied to demarcate the wards, and also to identify the reserved wards for the Scheduled Castes. We do not think that there is any bar or prohibition in the Act or Article 243T of the Constitution on adopting or applying a new method to identify which ward should be reserved.

34. As already held above, there can be always improvement on the earlier principle or precept. Further, it would be incorrect to hold that there is no rotation of the Scheduled Castes wards or there has been bunching. The argument of bunching is fallacious for the reason it proceeds as if the Assembly Constituency is the defining criteria. This is not correct and is not mandated by the High Court in *Ramesh Dutta* (supra) or *Vikas* (supra). Further, as noticed above, the reserved seats in the three Corporations are spread over 29 different Assembly Segments. In fact, in the 2007 election,

41

the reserved seats for the Scheduled Castes would have been spread and divided in only 23 Assembly Segments. (In 2007, two seats/wards in each Assembly Segment with the highest Scheduled Caste population in descending order were reserved).

35. There is a distinction between Section 5 (2) and sub-sections (6) and (8) of Section 3 of the Act. Section 5 (2) deals with the notification which is issued after delimitation exercise is undertaken. On each occasion when delimitation exercise is undertaken, clauses (c) and (d) to sub-section 2 to section 5 requires that reservation of wards for Scheduled Castes and women should be made. Clause (e) of sub-section (2) to Section 5 of the Act states that at the time of delimitation exercise, the authorities will also prescribe the method of rotation in future elections till another delimitation exercise is undertaken or otherwise changes are made. Principle of rotation would only apply after the first election is held post the delimitation order.

36. We would accept the argument that while conducting the delimitation exercise and fixing the reserved wards, the authorities should take into account and consider the wards or seats which were earlier reserved, for this is the intent behind Article 243T and sub-sections (6) and (8) of Section 3, and Section 5 (2) of the Act. The provision requires that there should be shift or change of the reserved wards and these should not remain static. This aspect has been duly accounted for and taken into consideration in the delimitation order dated 6th February, 2017 under Section 5(2) of the Act.

37. In view of the aforesaid discussion, we reject the challenge made by the petitioners to the notification dated 6th February, 2017, reserving different wards on the basis of percentage of Scheduled Castes population in the wards in descending order. This test/criteria cannot be faulted and struck

42

down. It is an improvement and refinement on the earlier criteria, which had taken Assembly Constituencies/Segments as the basis.

Separate Notifications

38. One of the petitioners had raised the contention that two separate notifications cannot be issued under Section 5 (2) dealing with clauses (a) and (b) and then clauses (c) and (d). It was urged that the notification dated 13th January, 2017 deals with clauses (a) and (b) of Section 5 (2), whereas the notification dated 6th February, 2017 deals with clauses (c) and (d) of Section 5 (2) of the Act. The contention is only to be noted and rejected. There is no such stipulation in sub-section (2) to Section 5 and we would not like to infer any such restriction. Section 6 of the Act empowers the Corporation with the previous approval of the Government from time to time by order in the Official Gazette, to alter or amend any order made under Section 5.

Violation of the directions and statements recorded in *Vikas* (supra)

39. Similarly, we would reject the contention based upon the statement made by the Standing Counsel of the Government of NCT of Delhi as recorded in the judgment in *Vikas* (supra). The relevant portion of the judgment to which our reference was drawn, reads:-

“31. We had posed a specific query to learned counsel for the SEC as to whether in future apart from rotation of seats for women, it was envisaged that there would also be rotation of seats reserved for SC category. Learned Standing Counsel for the GNCTD, Mr. Najmi Waziri, appearing on behalf of the SEC categorically stated in the affirmative. We may note at this stage that the plea of the petitioners that if data of 2011 is available, the next election would be held on the basis of Census of 2011 and, thus, different population ratios in different Assembly Constituencies/wards may come into play but

that, in our considered view, is a different matter....

XXXXXX

38. In the present election we face a prospect of three separate Municipal Corporations. The wards have been divided between the three Corporations. Different possibilities were examined as to how best the reservations policy could be implemented keeping in mind the twin principle, i.e, areas where there is a greater population of SC should be reserved seats/wards and each Assembly should not have more than two reserved wards. It is nobody's case that the second objective has not been achieved. In so far as the first objective is concerned, there are cases where a particular ward having a greater percentage of SC population would have been reserved while another ward having more SC population has not been reserved but that is on account of a changed formula where a larger spread of population has been taken into account, i.e, the population of SC in an Assembly segment to arrange the constituency in a descending order on the basis of the SC population. Such SC population for an Assembly segment is in turn based on the totalling of the SC and the total population for each ward. Thus, the ward remains the unit and it is not as if the Assembly segment has become a unit. However, in order to achieve a greater spread, the methodology under challenge has been adopted. We may also note another aspect arising from the rotation of seats which will take place not only of the women candidates but also of the SC candidates as has been assured by the counsel for the SEC before us qua the future elections. These would be in consonance with the 4th proviso to sub-section (6) to Section 3 of the said Act. Print outs of the slides annexed to the counter affidavit giving different options for reservation seek to conclude that the first system achieved the twin objective of spreading the reserved seats throughout the Corporation jurisdiction for SC and women while on the other hand the second system ensures that only those wards having highest SC population can be reserved in AC and specific Corporation while the third system leads to bunching of SC seats."

The statements recorded have not been violated, for there is rotation of seat

as the area of wards has undergone a change. Physical demarcation of about 90% wards has been modified or changed. Further, the statement would not bar or prohibit the authorities from undertaking the delimitation exercise in terms of sub-section (6) to Section 3 and Section 5 of the Act. Paragraph 31 of the judgment in the case of *Vikas* (supra) notices and acknowledges that the next elections, due in 2017 would be on the basis of Census of 2011 and thus different population ratios in wards or assembly constituency, as the case may be, would come into play and this would be a different matter. Paragraph 38 acknowledges and accepts the argument raised by the SEC, when challenge was made to the 2012 notification on the ground that it had applied the formula of Scheduled Caste population in the Assembly Segment and not the Scheduled Caste population in the ward. In this context, it was observed that there would be rotation of seats not only for women candidates, but also for the Scheduled Caste candidates in the future elections, for which assurance was given by the SEC. These paragraphs do not take the matter forward and would not help us in deciding the present controversy in favour of the petitioners.

40. However, it would be for the authorities to consider notifying the method or manner of rotation of seats in terms of clause (e) to Section 5(2), when they carry out a delimitation exercise and issue a notification for reservations of wards/seats for Scheduled Castes as well as women candidates. If the manner and method of rotation is specified, it would possibly prevent disputes and controversies of this nature and would ensure that there is proper rotation of reserved seats, which should be encouraged and is required under Article 243T as well as sub-sections (6) and (8) to Section 3

45

and, Section 5 (2) of the Act. The method indicated is not final and can be always modified and changed, if required, as is permitted and allowed by Section 6 of the Act.

Violation of the Notification dated 18th September, 2015.

41. Counsel for Soma Rani in W.P. (C) No. 1632/2017 had submitted that as per notification dated 18th September, 2015 boundary of a ward in a Corporation should be carved within the boundary of the relevant Assembly Constituency and should not cross it. It was submitted that in respect of eight wards, namely, 30-N Bawana, 31-N Pooth Kalan, 37-N Nilothi, 40-N Nithari, 51-N Nihal Vihar, 52-S Mahavir Enclave, 5-E Dallupura and 8-E Kalyanpuri 1 there is violation as vide de-limitation exercise, the ward boundaries have crossed into two Assembly Constituencies. We do not find any merit in the said contention. Paragraph 8(v) in the said writ petition would indicate that Assembly Constituencies in which the wards were located have changed. The de-limitation notification does not violate the order dated 18th September, 2015 that the boundary of the ward in the Corporation should be within the boundary of one legislative constituency. Area of each ward as demarcated in the de-limitation exercise does not fall within the two Assembly Constituencies. The notification dated 18th September, 2015 had not stipulated or stated that the area of the wards cannot be shifted or made part of an area under another Assembly Constituency. It is accepted that the petitioner Soma Rani did not file any objection when the draft de-limitation list was published inviting suggestions and objections from the public on 9th September, 2016. As noted above, almost 700 objections/suggestions were received and were taken into consideration before the final de-limitation order dated 13th

January, 2017 was published. We should not permit the petitioner- Soma Rani- to raise objections of this nature as she had failed to respond or make any suggestion when the de-limitation exercise was in progress and opportunity was given to the public to raise objections.

RESERVATION FOR WOMEN

42. Not less than 50% seats in both General and those reserved for Scheduled Castes have to be reserved for women. As per the proviso to sub-section (8) to Section 3, General seats reserved for women should be rotated in different wards in a manner as the Government, by an order published in the Official Gazette, may decide.

43. Grievance of some of the petitioners is that the seats/wards in the General and Scheduled Castes category, which were earlier reserved for women in 2007 and 2012, should have been rotated and not reserved for women candidates. In other words, the wards/seats earlier reserved for women should have been specifically made open to all candidates. In particular, our attention was drawn to the 27th January, 2012 notification in respect of reservation of seats for women to point out that in this election seats at Serial Nos. 1, 3, 5 and so on (odd) were reserved for women in the Scheduled Castes category and seat Nos. 2, 4, 6 and so on (even) were reserved for Scheduled Castes. Similarly, in the General list, every first, third and fifth (odd) were reserved for women and every second, fourth and sixth (even) ward was taken as General wards. The said odd/even table has been followed in the notification dated 6th February, 2017 as the first, third and fifth number in Scheduled Caste reserved wards are reserved as Scheduled Caste women's seats and every first, third and fifth ward in General/Open category are reserved for women.

44. We do not find any merit in the said contention for several reasons. As per the Act, not less than 50% of the wards have to be reserved for women in both General and Scheduled Caste categories. Accordingly 45 wards, out of 89 General wards, have been reserved for women in SDMC, 27 out of 53 General wards have been reserved for women in EDMC, and 42 out of 84 General wards have been reserved for women in NDMC. Similarly, out of 20 seats reserved for the Scheduled Castes in NDMC, 10 seats have been reserved for SC women, out of 15 reserved seats for the Scheduled Castes in SDMC, 8 have been reserved for SC women and out of 11 reserved seats for the Scheduled Castes in EDMC, 6 have been reserved for SC women. The contention of the petitioner relying upon mere serial number and then referring to the notification dated 27th January, 2012 and 6th February, 2017 overlooks the fact that the ward numbers have undergone a change. The ward numbers, which were allocated and to which reference is made in the notification dated 27th January, 2012 are not in the same serialim in the notification dated 6th February, 2017. The new ward numbers have been given on the basis of satellite imaging and demarcation exercise undertaken by the SEC with the 2011 Census data and help and assistance of Geospatial, Delhi. There is one ward for 60,000 persons. Earlier each ward was for 40,000 persons. Delimitation has resulted in change of actual physical boundaries in 90% of the wards, compared to the wards in the election held in 2012. Further, the number of wards in each constituency has undergone a change in 50% of the Assembly Constituencies. Earlier there were four in each Constituency. Now the number of wards varies between 3 to 7. New ward numbers have been awarded with reference to

48

number of wards in each Assembly Constituency by giving numbers in seriatim in the clock-wise direction. This pattern has been uniformly followed. The petitioners could not controvert or challenge the aforesaid factual facets.

45. In the aforesaid light, it is apparent to us that mere reference to even or odd numbers in the General category and the Scheduled Castes category for reservation of women does not mitigate against rotation, for the ward numbers themselves have undergone a change and are not identical to the 2012 notification. The SEC has also justified and given the reason why they have taken odd number for reservation of women. Not less than 50% of the wards have to be reserved for women in the two categories.

46. Counsel appearing for the petitioner Ramvir Vats in Writ Petition (C) No. 1906/2017 had submitted that total of 114 wards in the General category were reserved in the 2012 and 2017 elections in the three Corporations. There is rotation or change in wards reserved for women in General category in 51 wards, whereas there is no change or rotation in 63 wards. In 2007 elections 33% seats were reserved for women. 34 General wards reserved in 2007 have continued to remain reserved for women in 2017 elections.

47. The aforesaid data would show that there has been rotation of seats reserved for women in the General category though all seats/wards reserved in the last election for women in the General category, if we go by the names of wards, have not been de-reserved or made open to all. However, this would not, in our opinion, be good and sufficient reason to quash the notification dated 6th February, 2017. Firstly, the ward areas have undergone a change and mere reference to the ward names would be

deceptive, when we decide the question of rotation of wards reserved for women. The argument loses much of its force as the area of 90% of the wards has undergone a change. De-limitation exercise was carried out with twin-fold criteria and objective. Each ward should have a population of about 60000 and the ward should be located within one Assembly Constituency and not overlap. When the said intricate and tricky exercise was undertaken, there were number of options available to the SEC to demarcate wards which would be reserved for women. Each option had positive and negative facets. The selection of the option was after an elaborate exercise with discussion and consultation with the stakeholders, i.e. political parties, members of the public etc., who were asked for their suggestions.

48. It may be true that in some cases like Dabri Ward No. 305, there is no change in the ward limits/area and the ward was also earlier reserved for women in the 2012 elections as is the case set up by Harsh Vardhan Tyagi in Writ Petition (C) No. 2440/2017. The reason is that a new criteria or method for reservation has been followed vide notification dated 6th February, 2017. When the new method was applied, it is possible that some wards, which were earlier reserved and had not undergone a change in area/demarcation would remain reserved for women. This by itself would not be a ground to strike down the notification. The requirement in law is to reserve not less than 50% seats for women. If this is the position, then some wards which were reserved earlier would continue to remain reserved even in the second election. The SEC has not followed the criteria of complete rotation of wards, i.e. the wards which were earlier reserved for women being de-reserved now and the wards unreserved becoming reserved for

50

women. They have followed a different criteria, which we find is just, fair and reasonable. The notification dated 16th February, 2017 cannot be faulted and rejected on the said test.

49. One can always argue that a better or more appropriate method could have been adopted for reservation of wards for women keeping in mind rotation of seats. However, each method or criteria adopted would have its advantages and drawbacks. Sometimes what is perceived as a better option may have and create difficulties and problems on implementation. These are complex and difficult matters in which the 'experts' have to be given latitude and play in the joints. In the present case, the aforesaid exercise was carried out after wide discussion and consultation with the representatives of recognised political parties and others. The political parties have not thought it appropriate to challenge and question the notification dated 6th February, 2017. Clearly they are satisfied with the reservation formula, including the rotation of seats reserved for women. It will not be appropriate and proper to question the reservation notification and the precept or criteria prescribed, at the behest of handful of persons, who at best claim that they have a better or more logical method of reservation for women as it would result in rotation of a higher number of seats. It could be wrong and fallacious to accept the said submission.

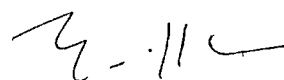
50. Thus, we conclude that based upon 2011 Census data and the responses and suggestions made, a change was made in the criteria for identifying wards which should be reserved for Scheduled Castes. The criteria applied is that the highest proportion of population in the ward within the geographical area of the ^{corporation} ~~population~~, should be reserved. This list of wards was made in descending order. To ensure that not less than 50%

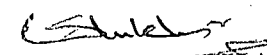
51

wards in the three Corporations are reserved for women in the Scheduled Castes and General categories, wards at Serial No. 1, 3, 5 and so on (odd) ^{are} reserved. The requirement of rotation is not violated, for the area of the wards in 90% of the wards and ward numbers have undergone a change. The mandate of Section 5(2) of the Act has been followed.

51. In view of the aforesaid position, we do not find any merit in the present writ petition for we find that the SEC has followed a rational criterion in the de-limitation exercise in reservation of wards for the Scheduled Caste population as well as for women candidates in both General wards and wards reserved for Scheduled Castes. The criterion adopted is after wide consultation and discussion with the stakeholders, including political parties and members of the public. There is no violation of the principle of rotation of seats as stipulated in sub-section (6) and (8) of Sections 3 and sub-section (2) to Section 5 of the Act and Article 243T of the Constitution.

52. With the aforesaid observations, the writ petitions are dismissed, without any order as to costs.


(SANJIV KHANNA)
JUDGE


(CHANDER-SHEKHAR)
JUDGE

MARCH 23rd, 2017 NA/ssn