

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1803 of 2015**

1. Smt. Pushpa Gendare W/o Shri R.K. Gendare, Aged About 35 Years R/o Quarter No. BMY, Charoda, Police Station, Bhilai-3, District Durg, (Chhattisgarh)

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh)
2. The Director/Prescribed Authority, Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, (Chhattisgarh)
3. The Collector, Durg, District Durg, (Chhattisgarh)
4. The Municipal Corporation, Bhilai- Charoda, Through The Commissioner, District Durg, (Chhattisgarh)
5. The State Election Commission, Through: The Secretary, Shastri Chowk, Old Mantralaya Parisar, Raipur, District Raipur, (Chhattisgarh)

---- **Respondent**

For Petitioner	Shri Prateek Sharma, Advocate
For Respondent/State	Shri Shashank Thakur, Govt. Advocate
For Respondent No.4	Shri Arun Sao, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****13/05/2016**

1. The petitioner, who is a voter of the Municipal Corporation, Bhilai-Charoda and belongs to Scheduled Caste (Woman) Category, has called in question the

legality and validity of the notification dated 27.08.2015 (Annexure-P-1), whereby acting under sub-rule (3) of Rule 9 of the Chhattisgarh Municipalities (Reservation of Office of Mayor and President) Rules, 1999 (henceforth 'the Rules, 1999'), the State Government has reserved the post of Mayor of Municipal Corporation, Bhilai-Charoda for the candidates belonging to the Scheduled Caste Category. The petitioner claims that the said post should have been reserved for Scheduled Caste (woman) category.

2. Brief facts, necessary to be referred for determination of the issue involved in the present writ petition, are that by notification dated 08.06.2015 issued under Section 7 of the Chhattisgarh Municipalities Act, 1956 (for short 'the Act, 1956') the State Government established and constituted the Municipal Corporation, Bhilai-Charoda in Durg District. Prior to the notification, there existed a Municipal Council, Bhilai-Charoda, therefore, the entire area comprising within the boundaries of existing Municipal Council, Bhilai-Charoda were included in the boundaries of the Municipal Corporation, Bhilai-Charoda.
3. For holding election of the newly constituted Municipal Corporation, the State Government initiated the process of reservation of the post of Mayor for which the Director, Department of Urban Administration and Development was appointed as Prescribed Authority in accordance with

the provisions contained in the Rules, 1999. By the impugned notification, the post of Mayor of Municipal Corporation, Bhilai-Charoda was eventually reserved for Scheduled Caste Category, which is under assail in this petition.

4. It is the case of the petitioner that as per 2011 census, the population of members belonging to Scheduled Caste category in all the Corporation area comes to 451763, which comes to 12.54% of the total population of the Municipal Corporations of the State. As per Rule 5 of the Rules, 1999, the percentage of Scheduled Caste population i.e. 12.54% was divided by 100 and multiplied by 13, which comes to 1.630, which being more than $1\frac{1}{2}$, it is to be rounded off as 2 in terms of sub-rule (5) of Rule 5 of the Rules, 1999. Based on this calculation, 2 posts were required to be reserved for Scheduled Caste category and as per Rule 5 (3), 1 post is required to be reserved for Scheduled Caste (woman) category.
5. Based on the above facts, learned counsel for the petitioner would argue that not reserving the post of Mayor of Municipal Corporation, Bhilai-Charoda for Scheduled Caste (woman) category affects the petitioner's right to contest the election from the said category and moreover the reservation has not been made in accordance with the Rules, therefore, the impugned notification deserves to be quashed.

6. Per contra, learned counsel appearing for the State would argue that prior to the constitution of the Municipal Corporation, Bhilai-Charoda there were 12 Municipal Corporations in the State for which process for reservation was completed before the election held in 2014, out of those 12 Corporations, 1 post of Mayor was reserved for Scheduled Caste, 1 post for Scheduled Tribe Category and 3 posts were reserved for Other Backward Class category, whereas 7 posts were Unreserved. Out of 5 seats reserved for SC/ST/OBC category, 1 seat was reserved for woman category belonging to OBC and out of 7 seats belonging to Unreserved category, 3 posts were reserved for General (women) Unreserved Category. It is, thus, argued that out of 12 Corporations, 4 posts of Mayor being already reserved for women, it satisfies the requirement of sub-rule (4) of Rule 5. Thus, there was no need for reserving any further post of Mayor for woman category candidate.
7. Before proceeding to deal with the submissions made by the learned counsel appearing for the parties, the relevant provisions under the Act, 1956 and the Rules, 1999 are necessary to be referred.
8. Section 11-A of the Act, 1956 makes provision of reservation of the office of the Mayor. The said provision is reproduced hereunder for ready reference :

11.A Reservation of the office of the Mayor.--

(1) Out of the total number of offices of Mayors of Corporations in the State, such number of offices of Mayors shall be reserved for scheduled Caste and Scheduled Tribes, as shall bear the same proportion, as nearly as possible, as the population of each of these categories within the limits of all the Municipal Corporations in the State bears to the total population within such limits.

(2) As nearly as possible, twenty five percent of the total number of offices of Mayors shall be reserved for Other Backward classes.

(3) As nearly as possible one-third of the total number of offices of Mayor reserved under sub-sections (1) and (2) shall be reserved for women belonging to the Scheduled Castes, Scheduled Tribes or Other backward Classes as the case may be.

(4) As nearly as possible one-third (including the number of offices reserved for women belonging to the Scheduled Castes, Scheduled Tribes or Other Backward Classes) of the total number of offices shall be reserved for women.

(5) The aforesaid reservation shall be made in such manner as may be prescribed.

(6) The reservation of offices of Mayors under sub-sections (1), (2), and (3) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India.

Explanation:-In this section and in Section 11, the expression "Scheduled Castes", "Scheduled Tribes" and "Other Backward Classes" shall have the same meaning as assigned to them, in the Chhattisgarh Lok Seva (Anussuchit Jatiyon, Ansuchit Janjatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (No.21 of 1994).

9. Rule 5 of the Rules, 1999 prescribes the procedure of reservation in the Municipal Corporations, Municipal Councils and the Nagar Panchayats, as the case may be, whereas Rule 8 prescribes the procedure for reservation in newly constituted municipalities and Rule 9 speaks about the process of reservation.
10. Rules 5, 8 & 9 of the Rules, 1999 are reproduced hereunder for ready reference :

5. Procedure of reservation.--(1) Such number of offices shall be reserved for Scheduled Castes and Scheduled Tribes as shall bear the same proportion, as nearly as may be, as the population of each of these categories, within the limits of all the Municipal Corporations, all Municipal Councils and all Nagar Panchayats as the case may be in the State bears to the total population within such limits. Such offices shall be reserved in descending order in those Municipalities in which the percentage of population of Scheduled Castes or Scheduled Tribes, as the case may be, is highest in their total population.

Explanation.--If there is any Municipality where the percentage of population of both the Scheduled Castes and Scheduled Tribes is highest in their category, then reservation shall be made for such Category whose percentage is higher in that Municipality.

(2) Leaving the Municipality where reservation has been made for Scheduled Castes, Scheduled Tribes, as the case may be, under sub-rule (1), lot of the names of the remaining Municipalities shall be drawn and as nearly as possible, one-fourth of the total offices shall be reserved for Other Backward Classes.

(3) Out of the offices reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes under sub-rule (1) and (2) as the case may be, as nearly as may be one-third offices shall be reserved for women of the aforesaid categories by drawing of lots.

(4) As nearly as may be one-third [including the number of offices reserves for women belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes under sub-rule (3)] of the total number of seats, shall be reserved for women by drawing of lot of the names of unreserved Municipalities.

(5) While Calculating under sub-rules (1), (2), (3) and (4) the fraction less than half shall be ignored and fraction of half and more than half shall be counted as one.

8. Procedure for reservation in newly constituted Municipalities.--If after reservation in accordance with rule 5 or 6, as the case may be, a new Municipality is constituted, then the number of seats to be reserved in all the Municipalities in the State, including such newly constituted Municipalities, in accordance with the provision of rule 5 or 6, as the case may be, for the members of the Scheduled Castes, Scheduled Tribes, Other Backward Classes and women exceeds the number of reservation already made previously for these categories shall be subtracted from the aforesaid number and reservation equal to the number so arrived shall be made to the concerned categories in the newly constituted Municipality.

Provided that if seat has already been reserved in any newly constituted Municipality but election has not been held or action for reservation has not been taken, then in both the situation, action shall be taken for reservation of seats in accordance with the provisions of rule 5 or 6, as the case may be, in all the Municipalities in the State including the newly constituted Municipality.

Provided further that if, for any season election of any Municipality is not held along with the general election, then reservation made as above shall be deemed to be applicable to the election of such Municipality to be held afterwards.

9. Process of reservation.--(1) The Prescribed authority shall publish a notice of the date, place and time of the making reservation in such Hindi newspaper having circulation in the areas of the Municipalities.

(2) The prescribed authority shall record the process adopted for reservation in writing and keep a register permanently in which it shall be mentioned that when and in which Municipality the offices of Chairperson have been reserved for which category so that at the time of drawing lot for the subsequent reservation, rotation system may be adopted.

(3) Immediately after making the reservation of the offices of Chairpersons, the prescribed authority shall send the information to this effect to the State Government and the State Government shall publish such information in the Madhya Pradesh (Chhattisgarh) Gazette and shall also be pasted on the notice Boards of the offices of the Collector and the office of the Municipality and a copy of the same shall be send to the State Election Commission.

11. Article 243T of the Constitution of India, which is included in Part IXA concerning municipalities also provides for reservation of seats. The said provision is also reproduced hereunder for ready reference :

243T. Reservation of seats.—(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the

Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) 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.

12. As is apparent from the material available on record, out of 12 Municipal Corporations in the State, the reservation made in the year 2014 was as follows :

Category	Total posts of Mayor	Reserved for Open Category	Reserved for Women Category
General	07	04	03
OBC	03	02	01
SC	01	01	-
ST	01	01	-
TOTAL	12	08	04

13. After constitution of the Municipal Corporation, Bhilai-Charoda and the impugned notification reserving the post of Mayor of the said Corporation for Scheduled Caste (open) category, the reservation position for all 13 Municipal Corporations is as follows :

Category	Total posts of Mayor	Reserved for Open Category	Reserved for Women Category
General	07	04	03
OBC	03	02	01
SC	02	02	-
ST	01	01	-
TOTAL	13	09	04

14. The above categorisation would make it clear that out of 13 posts of Mayor, at present 6 posts are reserved for SC/ST/OBC category and the post reserved for woman candidate amongst the reserved category post of Mayor is

only 1 seat for OBC (woman) category. Out of 7 remaining posts falling in the General category, 3 posts are reserved for women (General), therefore, total number of posts reserved for women comes to 4, out of 13 posts of Mayor in the State.

15. Article 243T (4) & (6) enables the State Legislature to provide the manner in which the offices of Chairpersons shall be reserved for SC, ST or OBC category. Exercising the said enabling provision, the State Government has enacted the Section 11-A of the Act, 1956 and the Rules, 1999.
16. Under Section 11-A the offices of Mayors of Corporations shall be reserved for scheduled Caste and Scheduled Tribes category in the same proportion, as nearly as possible, as the population of each of these categories within the limits of all the Municipal Corporations in the State bears to the total population within such limits. It also provides for reservation of twenty five percent of the total number of offices of Mayors for Other Backward classes. Under sub-section (3) of Section 11-A of the Act, 1956 one-third of the total number of offices of Mayor reserved under sub-sections (1) and (2) shall be reserved for women belonging to the Scheduled Castes, Scheduled Tribes or Other backward Classes as the case may be. Similar provision has been made under Rule 5 (3) of the Rules, 1999.

17. Applying the mandate of Section 11-A (3) and Rule 5 (3), the State Government is obligated to reserve, as nearly as possible one-third of the total number of offices of Mayor reserved for SC/ST/OBC category for the women belonging to such category.
18. In the case at hand, the total number of reserved posts of Mayor, including the newly constituted Municipal Corporation, Bhilai-Charoda, is 6 out of 13, however, while making reservation for women the State Government has reserved only 1 post out of 6 reserved posts whereas the law mandates that as nearly as possible one-third of the total number of office of Mayors shall be reserved for women, therefore, out of 6 posts at least 2 posts of Mayor ought to be reserved for the women category candidates, out of reserved posts for SC/ST/OBC.
19. Considering the issue from another angle, Section 11-A (4) of the Act, 1956 provides that as nearly as possible one-third (including the number of offices reserved for women belonging to the Scheduled Castes, Scheduled Tribes or Other Backward Classes) of the total number of offices shall be reserved for women. Similar provision is made under Rule 5 (4) of the Rules, 1999. This provision is about total number of seats for women including reserved and general category posts of Mayor. At present out of 13 posts of Mayor only 4 posts are reserved for

women category. The figure one-third out of 13 posts would come to 4.33. Since Rule 5 (5) provides that while calculating under sub-rules (1), (2), (3) and (4) the fraction less than half shall be ignored and fraction of half and more than half shall be counted as one, the figure can be rounded off as 4.

20. The extent of reservation as mandated under Section 11-A (4) would, thus, not violate the provision, however, the provisions contained under Section 11-A (3) and 11-A (4) has to be read harmoniously so that the benefit of reservation belonging to the women category is not defeated.
21. The effect of sub-sections (3) & (4) of Section 11-A of the Act, 1956 appears at variance if not in contradistinction. If sub-section (4) has accorded primacy over sub-section (3), the action of the respondent State would have to be sustained whereas if sub-section (3) is accorded primacy, the post of Mayor of Municipal Corporation, Bhilai-Charoda, ought to be reserved for SC (woman) category. Faced with this anomalous situation, this Court has to fall back and take shelter of the settled principles of interpretation of statute concerning the rule of harmonious construction.
22. In **Tahsildar Singh and another v. State of U.P.**¹, the Supreme Court has considered the material principles of

1 AIR 1959 SC 1012

statutory interpretation to say that the intention should not be attributed to the legislature to give with one hand and take away with another. It is held thus in para 14 :

14....."The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail."

Unless the words are clear, the Court should not so construe the proviso as to attribute an intention to the legislature to give with one hand and take away with another. To put it in other words, a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two.

23. The Supreme Court in **Madanlal Fakirchand Dudhediya v. Shree Changdeo Sugar Mills Ltd. and Others**², has held that the first rule of construction which is elementary, is that the words used in the section must be given their plain grammatical meaning. Since the Supreme Court was dealing with two sub-sections (like this Court is dealing in the present case), it was further observed that two sub-sections must be construed as a whole "each portion throwing light, if need be, on the rest." The two sub-sections must be read as parts of an integral whole and

2 AIR 1962 SC 1543

as being inter-dependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided. It was further held in para 22 that the Court cannot rewrite the two subsections, which the Court cannot legitimately do, particularly when on the alternative construction it is found that there is no repugnance between the two subsections.

24. The Supreme Court in **D. Sanjeevayya v. Election Tribunal, Andhra Pradesh and Others**³, has held that it is a well-settled rule of construction that the provisions of a statute should be so read as to harmonise with one another and the provisions of one section cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. The Supreme Court quoted Crawford's Statutory Construction in para 4 thus :

'4....."Hence the court should, when it seeks the legislative intent, construe all of the constituents parts of the statute together, and seek to ascertain the legislative intention from the whole act, considering every provision thereof in the light of the general purpose and object of the act itself, and endeavouring to make every part effective, harmonious, and sensible. This means, of course, that the court should attempt to avoid

3 AIR 1967 SC 1211

absurd consequences in any part of the statute and refuse to regard any word, phrase, clause or sentence superfluous, unless such a result is clearly unavoidable."

25. In **British Airways PLC. v. Union of India and Others**⁴, the Supreme Court again considered the principle of harmonious construction in interpreting the statute to observe thus at para 8 :

8. While interpreting a statute the court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation.

26. The principles of construction of a statutory provision and the intention of the legislature is, thus, settled that when

4 (2002) 2 SCC 95

there appears some conflict or difficulty in giving effect to the provisions contained in two sub-sections of a Section, Court should make effort to reconcile and harmonise the provisions so that what is given by the legislature by one hand and is not taken away with another hand.

27. The provisions falling for consideration as contained in sub-sections (3) & (4) of Section 11-A of the Act, 1956 are, thus, required to be harmonised and reconciled. Moreover, the provisions contained in sub-section (3) of Section 11-A is like special provision relating to reservation of post of Mayor in favour of SC/ST/OBC (woman) category whereas the provision contained in sub-section (4) is a general provision concerning reservation for women in all the categories including general category posts.

28. In **South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivandrum and another**⁵, it is held that a special provision should be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply. This principle emanates from Latin maxim '*Generalia specialibus non derogant*'. The said principle has been considered by the Supreme Court in **The U.P. State Electricity Board and Another v. Hari Shankar Jain and Others**⁶, and held thus in paras 8 & 9 :

5 AIR 1964 SC 207

6 (1978) 4 SCC 16

8. The maxim "*Generalia specialibus non derogant*" is quite well known. The rule flowing from the maxim has been explained in *Mary Seward v. The owner of the "Vera Cruz"* as follows:

"Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words without any indication of a particular intention to do so".

The question in *Seward v. Vera Cruz* was whether Section 7 of the Admiralty Court Act of 1861, which gave jurisdiction to that Court-over "any claim for damage done by any ship" also gave jurisdiction over claims for loss of life which would otherwise come under the Fatal Accidents Act. It was held that the general words of Section 7 of the Admiralty Court Act did not exclude the applicability of the Fatal Accidents Act and therefore, the Admiralty Court had no jurisdiction to entertain a claim for damages for loss of life.

9. The reason for the rule that a general provision should yield to a specific provision is this: In passing a Special Act, Parliament devotes its entire consideration to a particular subject. When a General Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former Special Act unless it appears that the Special Act again received consideration from Parliament. Vide *London and Blackwall Railway v. Lighthouse District board of Works and Thorpe v. Adams*. In *J. K. Cotton*

Spinning & Weaving Mills Co. Ltd. v. State of U.P., this Court observed (at p. 1174):

"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect".

29. Thus, under the twin canons of principles of interpretation, one relating of harmonious construction and the other *Generalia specialibus non derogant* the irresistible conclusion is that provisions contained in sub-section (3) relating to reservation of the office of Mayor for woman category SC/ST/OBC being special provision and sub-section (4) of Section 11-A of the Act, 1956 being a general provision relating to reservation of post of Mayor for woman belonging to all the posts, hence, there is no escape, but to conclude that provisions contained in sub-section (4) of Section 11-A must yield to provisions contained in sub-section (3), therefore, even if the extent of reservation for women made in the general provision contained in sub-section (4) has already been attained, the special provision for reservation of post of Mayor for women category belonging to SC/ST/OBC has to be given

effect to so that the legislative intent in making special provision is given effect to in its letter and spirit.

30. Highlighting the object of reservation for women candidates in local bodies and testing the constitutionality of increase in its percentage, the High Court of Madhya Pradesh in **Ashok Kumar Malpani & Anr. v. State of M.P. & Ors.**⁷, has held thus in paras 89, 90, 92, 93, 94, 97, 101, 102 & 103 :

89. While dealing with the conception of reservation for seats for women the based facet of gender justice cannot be marginalized. The conception of gender justice may at a glance look slightly paradoxical but, on a studied scrutiny, it would be clearly manifest that ramification of the said concept is of enormous magnitude inasmuch as it encapsules as all-embracing and illimitable canvas. One may conceive the notion that if the term 'justice' is suffixed to the term 'gender', it may invite the wrath of dichotomy but when there is focus on the essential requisites and intrinsic features of the idea and also on the subtleties and niceties of the concretized spectrums, the whole issue becomes comprehensive and clear as noon day. The essence rings like a bell. The quintessence does not seem to be elusive like building a castle in Spain. Our Constitution, the Fountain Head of all laws, is gender sensitive. Jurists have gone to the extent of saying that it is a great codified, compassionate, moving and Organic law. To have a wholesome understanding of the conceptual eventuality of gender justice, one is required to have a rational approach,

⁷ AIR 2010 MP 64 = 2009 (IV) MPJR 179

ability of ratiocination and understanding of the pragmatic and ground realities of life. Because law is not alien to life and life, if appropriately put, is not absolute logic.

90. The issue of gender justice has been gaining ground in many nations and in many an area for some centuries. Though the traditional view of gender injustice has been given quite a quietus and treated as an event of bygone days, yet the malady still remains, sometimes pouncing with ungenerous monstrosity given a free play. The gender equality is the call of the day and attempts are to be made to achieve satisfactory results. There has to be gender synthesization and while saying so let it not be understood, that gloss is put on the said terms.

92. In this regard, we may refer to what had been said by Swami Vivekananad:-

“Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind.”

93. In *Madhu Kishwar v. State of Bihar* AIR 1996 SC 1864, the Apex Court had observed thus:-

“Indian women have suffered and are suffering discrimination in silence. Self sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.”

94. In the national policy for empowerment of women, while

dealing with the concept of decision-making, it has been expressed thus :

“Women's equality in power sharing and active participation in decision making, including decision making in political process at all levels will be ensured for the achievement of the goals of empowerment. All measures will be taken to guarantee women equal access to and full participation in decision making bodies at every level, including the legislative, executive, judicial, corporate, statutory bodies, as also the advisory Commissions, Committees, Boards, Trusts etc. Affirmative action such as reservations/quotas, including in higher legislative bodies, will be considered whenever necessary on a time bound basis. Women-friendly personnel policies will also be drawn up to encourage women to participate effectively in the developmental process.”

97. The legislation, in our considered opinion, is a real deep inroad into encouraging the participation of women in the decision making process at the ground level of democracy. Women in India are required to participate more in a democratic set-up especially in the ground democratic polity. Not for nothing, it has been said "educate a man and you educate an individual; educate a woman and you educate a family”.

101. At this juncture, it would not be inappropriate to state here that if the dynamics of women reservation are understood in proper perspective, it would be quite clear that the number of women representatives at various

layers of democratic setup is really quite low.

102. It would not be inapposite to state that women have entered into the Indian Panchayat Raj Institutions by virtue of the Constitutional Amendment but their active participation in the decision making process in actuality remains at abysmal level. It is because their interest in the democratic set up of election has still not been accentuated for the simple reason that they have to negotiate and wrestle with the powerful members of the society. The submission of the learned counsel for the petitioners is that women are contesting in the election is of utmost significance and that would irrefragably exposit that they are conscious and there is no justification to marginalise the equality clause. At one point, the U.N. Secretary General, Kofi Annan, has stated 'Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.' We are of the view that participation in the election and losing the same can never be equated with the decision making process. One can only be a party to the decision making process when one is on the floor of the House as a representative and that is how the recognition of decision making process can be conferred on women. As the affidavit filed by the State would show their success in the election process is extremely low, we are disposed to think, the reservation, an act of special affirmation and a protective discrimination, is a warrant which has been done by the State Legislature in its wisdom. Therefore, the submission that such reservation is not necessary and, in fact, does tantamount to reverse reservation do not deserve acceptance.

103. It cannot be totally ostracised from the compartment of equality that unless law assists women in an accentuated manner, the basic tenet of the concept of equality would not be achieved and women will be put in the category of non-achievers.

31. As a consequence of the discussions made in the preceding paragraphs, this Court would conclude that by not reserving the seat of Mayor of Municipal Corporation, Bhilai-Charoda for Scheduled Caste (Woman) Category, the respondent State has acted in violation of the legislative mandate under sub-section (3) of Section 11-A of the Act, 1956 and sub-rule (3) of Rule 5 of the Rules, 1999, therefore, the impugned notification dated 27.08.2015 (Annexure – P/1) deserves to be and is hereby quashed. The respondents are directed to reserve the post of Mayor, Municipal Corporation, Bhilai-Charoda for Scheduled Caste (Woman) Category and proceed to hold the elections accordingly.
32. As an upshot, the writ petition is allowed, leaving the parties to bear their own costs.

Sd/-
Judge
Prashant Kumar Mishra

Gowri