

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP Nos. 21840 of 2016
Date of decision: December 15, 2016**

Dr. Sat Pal Goyal

.....Petitioner

Vs.

UT of Chandigarh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. Mandeep K.Sajjan, Advocate and
Mr. J.S.Saggi, Advocate for the petitioner in CWP No.21840 of
2016.

Mr. H.S.Brar, Advocate and Mr. Jashandeep Singh Sandhu,
Advocate for the petitioner in CWP No.22072 of 2016.

Mr.Suvir Sehgal, Sr. Standing Counsel and
Mr. Vishal Sodhi, Advocate for the respondents-UT Chandigarh.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP Nos. 21840 and 22072 of 2016 as according to the learned counsel for the parties, the issue involved in both the petitions is identical. However, the facts are being extracted from Civil Writ Petition No. 21840 of 2016.

2. In Civil Writ Petition No. 21840 of 2016 filed by the petitioner Dr. Sat Pal Goyal under Articles 226/227 of the Constitution of India, challenge is to the notification dated 14.10.2016, Annexure P.8 issued by the State Election Commission, UT Chandigarh whereby Ward No. 23 has been reserved for Scheduled Caste candidate for the coming election of Municipal

Corporation, Chandigarh, 2016. Further prayer has been made for a direction to the respondents to hold the election for the post of Municipal Councillor of Ward No.23 for general category of Municipal Corporation, Chandigarh. In Civil Writ Petition No. 22072 of 2016, prayer has been made for quashing the notification dated 14.10.2016, Annexure P.6, issued by respondent No.4 whereby Ward No.9 of the Municipal Corporation, Chandigarh has been reserved for Women (general) in violation of Section 6(2) of the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 (in short, "the 1994 Act"). Prayer has also been made for a direction to respondent No.4 to re-determine the reservation for Ward No.9 as per notification dated 19.09.2016, Annexure P.5.

3. A few facts relevant for the decision of the controversy involved as narrated in Civil Writ Petition No.21840 of 2016 may be noticed. The petitioner is a permanent resident of Ram Darbar, Phase-II, Union Territory, Chandigarh. His name was duly entered in the Electoral Roll of Ward No.23 of the Municipal Corporation, Chandigarh at serial No. 218. He is an active social worker, President of Ram Darbar Agarwal Sabha, Senior Vice President of "Lok Jan Shakti Party", and Member of Food Corporation of India, Union Territory, Chandigarh. He is also doing various social works for the upliftment and welfare of the public. The Municipal Corporation, Chandigarh came into being in the Union Territory of Chandigarh under the Punjab Municipal Corporation Act, 1976 (in short, "the 1976 Act") as extended to the Union Territory, Chandigarh by the 1994 Act. There was an amendment in the Constitution i.e. 74th Amendment in 1992 whereby more powers and responsibilities were given to the Local Self Government Institution. By the said amendment, it was provided that some wards/constituencies should be reserved for the weaker sections of the

society i.e. for Scheduled Caste, women and backward class to the same proportion to the total number of seats to be filled by direct election and to be allotted by rotation to different constituencies in a Municipality/Corporation as per Article 243-T of the Constitution of India. The territorial area of Municipal Corporation, Chandigarh was divided into 20 wards. The method of reservation of wards for Scheduled Castes Community, SC Women and Women was adopted in the year 1996 i.e. first election after the 74th amendment and the following wards were reserved for these categories in the year 1996:-

Total Wards	Ward No. reserve for SC/SC Women	Reserve for Women
20	5,15,18-W.N.18 reserve for SCW	1,8,9,11,14 & 17

In the second election of Municipal Corporation Chandigarh in the year 2001, the following wards were reserved :-

Total Wards	Ward No. reserve for SC/SC Women	Reserve for Women
20	14,19 & 7 W.No. 7 reserve for SCW	2,5,6,13,15 & 16

Vide notification dated 19.09.2016, the number of wards of entire Municipal area of the said Corporation was increased from 20 to 26. The Department of Local Government, Chandigarh Administration further reserved five seats of Councillors for the members of Scheduled Castes (including two reserved for women Scheduled Castes candidates) and nine seats for women candidates (including two reserved for women belonging to the Scheduled Castes) vide notifications dated 25.09.2006. Thereafter, the Department of Local Government, Chandigarh Administration, issued a publication on 25.10.2016 whereby area of Municipal Corporation of Chandigarh was

divided into wards for the purpose of election of Councillors of Municipal Council, Chandigarh. As per sub Section (2) of Section 6 of the 1994 Act, the Administrator, UT, Chandigarh reserved following wards for the purpose of election of Municipal Council, Chandigarh held on 20.12.2006 and the result was duly notified on 23.12.2006 as under :-

Total Wards	Ward No. reserve for SC/SC Women	Reserve for Women
26	5,6,7,11 & 23 W.No. 5 &6 reserve for SCW	2,8,15,17,19,20 & 26

In the year 2011, the Local Government, Chandigarh Administration issued letter dated 14.10.2011, Annexure P.6-A for holding general election of Municipal Corporation, Chandigarh. The following wards were reserved for the purpose of election of Municipal Council, Chandigarh:-

Total Wards	Ward No. reserve for SC/SC Women	Reserve for Women
26	12,13,19,20 & 24 W.No. 12 & 24 reserve for SCW	1,4,7,9,14,21 & 23

According to the petitioner, for the last two elections i.e. 2006 and 2011, Ward No. 23 was reserved for Scheduled Castes and for Women. Earlier to the year 2006, the area of Ram Darbar, Phase-II was part of Ward No. 18, which was also reserved for women belonging to Scheduled Castes in the year 2001. As per rotation and in view of the Article 243-T of the Constitution of India, Ward No.23 should be reserved for general public in the year 2016 but the respondents have again reserved the said ward for Scheduled Caste community which is against the provisions of the 1994 Act and the Rules. The petitioner belongs to the general class of society. He is very keen to contest the election for this ward as he has done various development works in the area. The Petitioner made a representation on 10.10.2016, Annexure P.7 with a request to prepare the roster in view of the

provisions of the 1994 Act and the Rules but no action has been taken so far. Instead, the respondents issued list of reserved ward of Municipal Council of Municipal Corporation, Chandigarh on 14.10.2016 for the election of Municipal Council to be held in the second week of December. Hence, the instant writ petitions with the prayers as mentioned above.

4. In the written statement filed on behalf of the respondents, it has been inter alia stated that the petitions are not maintainable in view of the bar contained in Article 243ZG of the Constitution of India to interfere in the electoral matters by the courts with regard to validity of any law relating to the allocation of seats in any constituencies notwithstanding anything contained in the Constitution. The petitions cannot be entertained at this stage as the same would hamper the entire election process which has been issued by the State Election Commission vide notification dated 10.10.2016 for the contest of election of Municipal Corporation of Chandigarh by appointing the Returning Officers and the Assistant Returning Officers which is Scheduled to be held in the third week of December 2016. The Returning Officers have now prepared the list of polling stations of all the wards and the Election Observers have also been appointed. The petitioner has not challenged the method and manner issued by the Chandigarh Administration vide notification dated 19.09.2016 prescribing the criteria for reservation of seats for the Scheduled Caste and women under Section 6 of the 1994 Act. The said notification infact lays down the criteria or manner of the reservation of the seats on the basis of maximum percentage of population of Scheduled Castes as per the latest Census 2011 and therefore, in the absence of challenge to the notification, the present petitions are liable to be dismissed on this ground alone. The notification provided a fair criteria and manner to determine the reservation of seats for the candidates

belonging to Scheduled Caste and women for the different wards for adequate representation of the weaker sections of the society in accordance with the provisions of Article 243-T of the Constitution of India and Sections 5 and 6 of the 1994 Act. The notification further provides reservation of five wards for the Scheduled Castes candidates in the election of 2016 and determination of seats has been ordered to be carried out afresh on the basis of maximum percentage of Scheduled Castes population as shown in the latest census of 2011 of Chandigarh. Ward No. 23 has been reserved for the Scheduled Castes as compared to the last and previous election of Municipal Corporation of 2011 wherein the same was reserved for general category (women). Thus, there is appropriate provision for rotation of seats for the next election with the exclusion of earlier set of reserved ward/seats in the present notification dated 19.09.2016. Therefore, there is no infirmity or violation of any provision of the Constitution of India. On these premises, prayer for dismissal of the petition has been made.

5. The petitioner has filed replication to the written statement controverting the stand taken by the respondents and reiterating the averments made in the petition.

6. Learned counsel for the petitioners submitted that the action taken by the respondents in reserving Ward No.23 of the Municipal Corporation for Scheduled Caste candidate and Ward No.9 for Women (general) again is against the provisions of Article 243T of the Constitution of India and Section 6(2) of the 1994 Act. The respondents have failed to follow the policy of rotation. The concept of rotation cannot in any manner be termed to be subordinate to the reservation and both are an equally integral and important part of the Constitutional imperative of effective

devolution of democratic power to the urban level. Reliance was placed upon judgments in *Pawan Kumar and others vs. State of Haryana and others*, 2011(3) RCR (Civil) 172 (P&H), *State of Punjab and others vs. Manjit Singh Sethi*, 2015(3) PLJ 57 (P&H), *Dr. K.Krishna Murthy vs. Union of India*, (2010) 7 SCC 202 and *Pran Nath Bhatia vs. State of Punjab*, 1997(3) RCR (Civil) 228.

7. On the other hand, learned counsel for the respondents submitted that the petitions are not maintainable in view of bar to interference by courts in electoral matters under clauses (a) and (b) of Article 243ZG of the Constitution of India. The petitioners in both the writ petitions have not challenged the notification dated 19.9.2016 whereby criteria/method has been laid down for determination of seats for the Scheduled Castes and women. Once there is no challenge to the criteria, the challenge to the notification dated 14.10.2016 is immaterial. Great emphasis has been laid on the word 'population' occurring in Article 243T of the constitution of India and Section 6(2) of the 1994 Act justifying the compliance of policy of rotation. Reference was made to the judgments in *Inderjit vs. State of Punjab and Another*, 2012(3) RCR (Civil) 377, *Deepak Jain and others vs. State of Punjab and others*, 2012(5) RCR(Civil) 77, *Bhagwat Dayal vs. State of Punjab and others*, 2009(2) RCR (Civil) 545, *Anugrah Narain Singh vs. State of Uttar Pradesh*, 1996(6) SCC 303 and *Gurdeep Singh Dhillon vs. Satpal and Others*, 2006(10) SCC 616. *Vikas and others vs. State Election Commission and others*, 2012(188) DLT 390 (Delhi).

8. We have heard the learned counsel for the parties.

9. On the basis of submissions made by learned counsel for the parties, the following aspects emerge for consideration of this Court:-

- (i) Whether the notification dated 14.10.2016 is in violation of mandate of Article 243T of the Constitution of India read with Section 6(2) of the 1994 Act as it does not follow the rule of rotation for reservation of wards for Scheduled Castes and women?
- (ii) In view of Article 243ZG (b) of the Constitution of India, whether the writ petitions are maintainable?

10. Before adjudicating the first issue involved, it would be advantageous to re-produce the relevant statutory provisions:-

Article 243T of the Constitution of India

“243T. Reservation of seats

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

(2) 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.”

Sections 2(36A), 5 & 6 of the 1994 Act

“2(36A). “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.”

“5. Elected Councillors, mode of election and Associated Councillors - (1) Elected councillors shall be chosen by direct election on the basis of adult suffrage from various wards into which the city shall be divided in accordance with the provisions of this Act.

(2) the Government shall, from time to time by notification in the official gazette, fix the number of elected councillors for a corporation.

Provided that the total number of elected councillors for a Corporation shall in no case be less than twenty.

(3) The determination of number under sub section (2) shall not affect the then composition of the Corporation until the expiry of the term of office of the councillors then holding office.

(4) Out of the number of elected councillors determined under sub section (2), there shall be reservation of seats for members of Scheduled Castes and the number of seats to be so reserved for the members of Scheduled Castes shall, as nearly as a may be, bear the same ratio to the total number of elected councillors

as the population of Scheduled Castes bears to the total population of the city.

(5) Every member of the Punjab Legislative Assembly representing the constituency in which the city or any part thereof is situate shall be an associate councillor.

Provided that an associate councillor shall not be entitled to vote at, but shall, subject to the other provisions of this Act, have the right to speak in and otherwise take part in the proceedings of, and meeting of the Corporation or its committee of which he may be a member.

Explanation 1 - If the constituency of a member of the Punjab Legislative Assembly comprises more than one city he shall be an associate member in respect of the Corporation of each such city.

Explanation 2 - If any city falls in more than one constituency the members representing each such constituency shall be the associate members of the Corporation of such city.

Explanation 3 -A person who is elected as member of a Corporation shall not be considered to be an associate member if he is a member of Punjab Legislative Assembly at the time of his election or becomes such member at any time thereafter and such person shall have all the rights and be subject to all the liabilities of an elected member.”

“6. Reservation of seats for women, Scheduled Castes and backward classes— (1) Seats shall be reserved for women belonging to the Scheduled Castes, from amongst the seats reserved under sub-section (4) of section 5 for the Scheduled Castes, the number of such seats being determined by the Administrator by an order published in the Official Gazette, which shall not be less than one-third of the total number of seats reserved for the Scheduled Castes.

(2) Seats shall be reserved for women, the number of such seats being determined by an order published in the Official Gazette by the Administrator which shall not be less than one-third

(including the number of seats reserved for women belonging to the Scheduled Castes) of the total number of seats to be filled up by direct election:

Provided that the seats reserved for the Scheduled Castes or for women (including those belonging to the Scheduled Castes) ***shall be allotted by rotation to different wards in such a manner as the Administrator may, by order published in the official Gazette in this behalf, determine.***

(3) The reservation of seats under sub-section (4) of section 5 and under sub-section (1) of this section shall cease to have effect on the expiration of the period specified in article 334 of the Constitution.

(4) The Administrator may, if he considers it necessary, by an order published in the Official Gazette, direct that such number of seats as may be specified in the order shall be reserved in favour of backward classes of citizens:

Provided that, when a backward class is deleted by an order of the Administrator, the member elected from such class shall not cease to hold office merely as a result of such deletion and shall hold office as he would have held had the deletion not been made.”

11. According to Article 243T of the Constitution of India, seats shall be reserved for the Scheduled Castes and Scheduled Tribes in every municipality in 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 and 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. Under sub section (36A) of Section 2 of the 1994 Act, population has been elaborated to mean the population as ascertained on the basis of the last preceding census in respect of which the relevant figures have been published. Sub section (2) of Section 5 of the

1994 Act requires the government to fix the number of elected councillors for a corporation by publication of notification in the Official Gazette. Under sub section (4) thereof, out of total number of elected councillors as per sub section (2), there shall be reservation of seats for members of the Scheduled Castes and the number thereof shall be as nearly as may be, bear the same ratio to the total number of elected councillors as the population of Scheduled Castes bears to the total population of the city. Proviso to Section 6(2) of the 1994 Act prescribes that seats reserved for Scheduled Castes or for women shall be allotted by rotation to different wards in such a manner as the Administrator may by order published in Official Gazette in this behalf determine.

12. It is trite law that while interpreting provisions of a statute, it is to be read as it is without adding or subtracting any word therefrom. To put it differently, applying the rule of literal interpretation the statute is to be read without doing violence to the language of the statutory provision. On conjoint reading of the aforesaid Constitutional and Statutory provisions, it is crystal clear that reservation of seats for women, Scheduled Castes and Scheduled Tribes is mandatory. Further, the reservation for such categories shall be governed by principle of rotation to different constituencies in a municipality which shall be in a manner to be determined by the Administrator by an order published in the Official Gazette. The purpose behind rotational policy enshrined in Article 243T of the Constitution of India and also under Proviso to Section 6(2) of the 1994 Act is to safeguard against the possibility of a particular office being reserved in perpetuity. However, how many seats are rotated is left to the State to be decided by them as there may be situations where rotation of all the seats may not be feasible in the light of the population of the Scheduled Castes and Scheduled

Tribes being concentrated in a pocket of the municipality. There is no uniform or universal formula on the basis of which it could be held that while rotating the wards, it should be done with exactitude and precision. In other words, the intent behind Article 243T of the Constitution of India read with Section 6(2) of the 1994 Act is to provide reservation for women, Scheduled Castes and Scheduled Tribes in a municipality. However, proviso to Section 6(2) of the 1994 Act lays down that the seats reserved for the Scheduled Castes or for women (including the number of seats reserved for Scheduled Castes) shall be allotted by rotation to different wards in such a manner as the Administrator may determine. The former part of the proviso contains the word “shall” which means that there shall be reservation of wards for Scheduled Castes or women which is mandatory whereas the methodology to be adopted by the Administrator as provided there under may be in the manner to be determined by him. This clearly spells out that as to which seat is to be reserved is a matter of procedure and the manner of its determination would be provided by the Administrator.

13. In *Inderjit’s* case (supra), it was held by this Court that while rotating the wards, it is not necessary for the State Govt. to rotate the wards with exactitude. The State has to be given play in knee joints to adjust according to the requirements keeping in view the population of the BCs.SCs voters. Therefore, courts do not find any illegality in the process of notification for reserving wards. The relevant observations read thus:-

“21. The court also referred to the judgment in *Mohan Singh vs. International Airport Authority of India*, (1997) 9 SCC 132, wherein it was held to the following effect:-

“.....22. As mentioned above, the intention of Article 243T of the Constitution of India and Section 8 of the Act is to provide reservation for women, Scheduled

Castes and Backward Classes in a Municipality. As to which seats are reserved for them, is a matter of procedure and is directory. Therefore, while rotating the wards, it is not necessary for the State government to rotate the wards with exactitude. The State has to be given play in knees joints to adjust according to the requirements keeping in view the population of the Backward Classes/Scheduled Castes voters. Therefore, we do not find any illegality in the process of notification for reserving wards. The Division Bench of this Court in *Baldev Raj vs. State of Punjab*, ILR (2009) 1 P&H 355, has observed that only right of a citizen in the matter of election is to exercise franchise according to his free will and choice. This right of the appellant-petitioners remained intact irrespective of the fact that the ward in question has been reserved or deserved. Therefore, we do not find that any prejudice has been suffered by the appellant/petitioners by reserving Ward No.11 for a backward class candidate.”

14. In *Bhagwat Dayal's* case (supra), it was held that reservation of Ward No.2 for backward classes in successive three elections was on account of coincidence and on account of change of circumstances in each election. Though it may be advisable to rotate the ward but if by coincidence, the same ward happens to be reserved for backward classes, it cannot be found that such reservation of ward is illegal, unwarranted or unjust. In the said case, the wards were required to be reserved for backward class only by rotation. It was held thus:

“7. It may be a matter of coincidence that in the three successive elections of Municipal Council, Patran, Ward No.2 came to be reserved for Backward Classes. Election in the year 2000 was held after the Municipal limits were extended, whereas in the year 2004 the number of wards have been increased on account of increase in population. Such increase

in population and consequent change of wards is in terms of Rule 4 (ii) of the Rules. Therefore, the principle of rotation cannot be enforced in respect of reservation of Ward No.2 for the Backward Classes. The reservation of Ward No.2 for Backward Classes in successive three elections is on account of coincidence and on account of change of circumstances in each election. Though it may be advisable to rotate the Ward but if by coincidence the same ward happens to be reserved for Backward Classes, we cannot find that such reservation of ward is illegal, unwarranted or unjust.”

15. In *Vikas's* case (supra), the notifications issued reserving seats for Scheduled Castes candidates in the elections to the Municipal Corporation of Delhi were under challenge. It was held that when the exercise on the basis of 2011 census was not possible, determination of reserved seats on the basis of 2001 data was proper.

16. Principles governing interpretation are well settled that the statute should be read as it is and court cannot add words to a statute or read words into it which are not there. Reference may be made to the judgment in *Union of India & another Vs. Deoki Nandan Aggarwal*, 1992 Supp.(1) SCC 323 wherein it was observed by the Apex Court as under:-

“14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot re- write, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an

omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.....”

17. Further, in *Union of India & another Vs. Shardinu*, (2007) 6 SCC 276, it was recorded by the Supreme Court that the provisions of the statute have to be read as a whole and in its context. The court can interpret a law but cannot legislate. The relevant portion reads thus:-

“25. Our attention was also invited to a decision of this Court in *Padma Sundara Rao (Dead) & Ors. v. State of T.N. & Ors.* [(2002) 3 SCC 533]. Their Lordships held that casus omissus cannot be supplied by the Court. The provisions of the statute have to be read as a whole and in its context. When language of the provision is plain and unambiguous the question of supplying casus omissus does not arise. The Court can interpret a law but cannot legislate. Therefore, the submission of learned Addl. Solicitor General that since the contingency which has arisen in the present case was not foreseen by the draftsmen or by the Parliament, therefore, the casus omissus may be supplied by this Court i.e. since the incumbent has been facing the charge, his tenure should be cut short. We regret we cannot cure the lacunae by exercising the power under [Article 142](#) of the Constitution and uphold the order of termination especially when such contingency has not been made a ground for disqualification for holding the post. Therefore, the submission of learned Addl. Solicitor General cannot be accepted.”

18. Still further, Apex Court in *B.Premanand and others Vs. Mohan Koikal and others*, (2011) 4 SCC 266, observed that the statute should be read as it is without distorting or twisting its language following literal rule of interpretation as under:-

“24. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean.”

19. Having expounded the legal position as noticed above, necessarily, we advert to the facts involved in the present case. It appears to be a matter of coincidence that in the elections of 2006 and now scheduled on 18.12.2016, the reservation of wards for Scheduled castes and ward No.9 for women has been the same but it was pointed out by the learned counsel for the respondents that the reservation of wards in 2006 was done on the basis of Census of 2001 whereas fresh Census had taken place in 2011 and the reservation which has now been made is in terms of Section 5(4) of the

1994 Act, i.e., the number of seats to be reserved for the members of the Scheduled Castes bears the same ratio to the total number of elected councillors as the population of Scheduled Castes bears to the total population of the city. No infirmity could be noticed in the approach adopted by the respondents in reserving the wards. It is, however, observed that the respondents shall rotate the wards to be reserved for Scheduled Castes or women in the next election of Municipal Council but after latest fresh Census if by coincidence, it is so that same wards are again part of the reserved wards, it cannot be held to be illegal, invalid or unjust.

20. Examining the second issue, it would be appropriate to consider the scope of Article 243ZG(b) of the Constitution of India. Article 243ZG of the Constitution of India reads thus:-

“243ZG. Notwithstanding anything in this Constitution,—
(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;
(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

21. Learned counsel for the respondents very vociferously questioned the maintainability of these petitions in view of bar under Article 243ZG(b) of the Constitution of India. It was argued that under Section 20 of the 1994 Act, grounds for declaring election to be void have been prescribed. Laying emphasis on sub clause (iv) of clause (d) of sub section (1) of Section 20 of 1994 Act, it was urged that the question of reservation of seats would also be covered there under. For brevity, the relevant portion of Section 20 of 1994 Act is reproduced which is in the following terms:-

Grounds for declaring election to be void

Section 20(1) - Subject to the provisions of sub section (2),
if the prescribed authority is of the opinion –

(a) to (c) xxxxxxxx

(d) that the result of the election in so far as it concerns a
returned candidate, has been materially affected –

(i) to (iii) xxxxxxxxxx

(iv) by the non-compliance with the provisions of this
Act or of any rules or orders made there under,

such authority shall declare the election of the
returned candidate to be void.

22. On the other hand, learned counsel for the petitioners with great vehemence submitted that the petitioners have assailed the notification dated 14.10.2016 (Annexure P.8) which was issued much prior to the issuance of notification for holding of elections on 18.12.2016 by the respondent-Administration. Therefore, writ petition is maintainable as it does not challenge the election of any candidate after the issuance of notification for holding of elections.

23. In our opinion, the issue relating to reservation of the seat and the conduct of the election being in contravention of the reservation as provided under Article 243T of the Constitution of India read with Section 6(2) of the 1994 Act would be covered under Section 20(1)(d) (iv) of the 1994 Act and for that, remedy of election petition provided under the statute would be available to the petitioners.

24. Article 243ZG(b) of the Constitution of India postulates that notwithstanding anything contained in the Constitution, the remedy to challenge the election to any municipality is by way of an election petition only. The extent and scope of the embargo imposed on the jurisdiction of the

court under Article 243ZG has been considered in a catena of judgments. It has been laid down succinctly that bar under Article 243ZG(b) is an absolute bar.

25. In *Jaspal Singh Arora v. State of M.P. & Ors.*, 1998 (9) SCC 594, challenge in writ petition under Article 226 of the Constitution of India was to the election of the petitioner as the President of the Municipal Council. The petition was allowed setting aside the election of the petitioner. In paragraph 3 of this judgment, the Court observed:

"It is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by Courts in electoral matters contained under Article 243 ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243 ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition....."

26. In *Gurdeep Singh Dhillon's* case (supra), after quoting Article 243 ZG (b), the Court observed that the shortcut of filing the writ petition and invoking Constitutional jurisdiction of the High Court under Article 226/227 was not permissible and the only remedy available to challenge the election was by raising the election dispute under the local statute.

27. In the case of *Anugrah Narain Singh's* case (supra), while considering the import of the relevant provision, the Supreme Court had observed as under:-

“28. Therefore, so far as preparation of the electoral roll is concerned, there are sufficient safeguards in the Act against any abuse or misuse of power. In view of these provisions and particularly, in view of sub-section (6) of [Section 39](#) which provides for appeals in regard to inclusion, deletion or correction of names, there is hardly any scope for a Court to intervene and correct the electoral rolls under [Article 226](#) of the Constitution. In fact, if this is allowed to be done, every election will indefinitely be delayed and it will not be possible to comply with the mandate of the Constitution that every Municipality shall have a life-span of five years, or less, if dissolved earlier, and thereafter fresh elections will have to be held within the time specified in clause (3) of [Article 243-U...](#)”

28. A Full Bench of five Judges in *Prithvi Raj vs. State Election Commission and others*, AIR 2007 Punjab and Haryana 178 after elaborately appreciating the constitutional and statutory provisions on the subject had categorically laid down that any grievance which touches upon an ‘election’ would be justiciable for which election petition is the only remedy. Interference by the courts in the election matters would not be permissible once the election process has been set in motion. However, the power of the High Court under Article 226 of the Constitution of India is available where its exercise subserves the progress of the election, facilitates its completion and is exercised to further the election process. It was further observed that the statutory mandate to the authority under the statutory provisions is to conduct free and fair poll and in furtherance thereof and for achieving it, no restriction can be said to be existing for invoking extraordinary powers of the High Court under Article 226 of the Constitution of India. The relevant observations read as under:-

“22. The words used in Sub-clause (b) of [Article 243ZG](#), and Section 74 of the Election Commission Act, do not, by specific intent or necessary inference, place any embargo on or in any manner curtail a High Court's jurisdiction under [Article 226](#) of the Constitution. Neither [Article 243ZG](#) of the Constitution nor Section 74 of the Election Commission Act makes any reference to the High Court. However, where the cause placed before a High Court calls into question an "election," the High Court would in the exercise of judicial restraint, desist from exercising jurisdiction. This principle of judicial/ jurisdictional restraint, was propounded by the Apex Court in Ponnuswami's case (supra) and then followed and further explained in Mohinder Singh Gill's case (supra), while interpreting the provisions of [Article 329\(b\)](#) of the Constitution. The salutary object that underlines these judgments is the paramount need in a democracy, to ensure an expeditious conclusion of elections. It was therefore held that a High Court, would not entertain, a writ petition calling into question an "election". Another conclusion that flows from these judicial pronouncements, is that challenge to an election, though not barred, judicial review thereof would be postponed to the post election stage.

29. A Division Bench of this Court in ***Baldev Raj vs. State of Punjab***, (2009) ILR 1 (P&H) 355 was considering the challenge to the election on the following issues:-

- (a) de-limitation of municipal wards;
- (b) fixing the number of elected members in the Municipal council/corporation;
- (c) reservation for various reserved categories; and
- (d) allocation of wards to reserved categories.

After holding that reservation of seats for various reserved categories would also be a ground to challenge the election by an election petition, invoking

aid of Article 243ZG (b) of the Constitution of India, the writ petition was dismissed.

30. In **Deepak Jain's** case (supra), it was held by this Court that election disputes can be raised after completion of elections. It was observed thus:-

“6. This Court in **Lakhbir Singh Sehmees** case (supra) has considered the question as to when election process starts. This court has placed reliance upon Section 7-A of the Act. A Full Bench of this Court in **Prithvi Raj vs. State Election Commission, Punjab and others, AIR 2007 P&H 178** has held that the jurisdiction of this Court stands barred, when a notification under Section 13-A of the Punjab Municipal Act, 1911 is issued. Section 13-A of the Municipal Act, 1911 is *pari materia* to Section 7-A. Therefore, the writ petition after the publication of notification under Section 7-A of the Act is not maintainable.

7. The Supreme Court in **Anugrah Narain Singh's** case (supra) commented adversely when the High Court intervened in the election process when the same was underway. It observed:

35.Barely one week before the voting was scheduled to commence, the Court decided to intervene in the matter regardless of the repeated warnings given by this Court in a number of earlier decisions. The Court decided to intervene in the matter and stop the election process while it was nearing completion. In Lakshmi Charan case (1985) 4 SCC 689, it was held that the Court should not intervene even when the elections were imminent. Here, the election was well under way.”

The elections must be held on the due date. The elections are to be completed till the second week of June 2012. Any intervention at this stage, when the elections are imminent, shall disrupt the election process. The election disputes can be raised after completion of elections. Even if there is no ground to challenge

the rotation of wards by way of election petition, the petitioners can very well challenge the rotation of wards in any other appropriate forum including this Court in a writ petition after the elections are completed.”

31. In all fairness to learned counsel for the petitioners, we advert to the judgments relied upon by them. In *Manjit Singh's* case (supra), it was observed by this Court that neither the State Government nor the courts can add words to the provisions of the rules having force of law. In *Pran Nath Bhatia's* case (supra), it was held that embargo in Article 243ZG of the Constitution of India does not come into play if the writ petition is filed before issuance of notification of the election. In *Dr. K.Krishna Murthy's* case (supra), it was held by the Apex Court that reservation of seats and posts of Chairperson in favour of backward classes in Panchayat Samities and municipalities was constitutionally valid. If the State legislature makes excessive and disproportionate reservation, that can be challenged in the courts. The propositions of law expounded in these decisions are unexceptionable and well recognized. However, each case has to be decided on its own facts. In view of the factual and legal situation noticed above in the present cases, they do not advance the case of the petitioners.

32. Further, it may be noticed that in *Pawan Kumar's* case (supra), challenge was to the reservation of seats for Sarpanches (Scheduled Castes men and women) under the Haryana Panchayati Raj Act, 1994 in the Panchayati elections held in the year 2010. The following proviso was under consideration of the Division Bench:-

“Provided further that the number of offices of Sarpanches reserved under this subsection shall be rotated to different Gram Panchayats first having the largest maximum population of

Scheduled Castes and secondly having the second largest maximum population of such classes **and so on.”**

Interpreting the phraseology ‘and so on’ occurring there, it was in those circumstances held that as per the plain dictionary meaning, the necessary effect would be that rotation shall continue till the last Village where there would be even one Scheduled Caste Panch as per the proportion of Scheduled Castes to the general population. There is no such similar expression which falls for consideration in the present case.

33. Therefore, on the ground of maintainability of writ petition as well, we do not find any ground to interfere at this stage. No doubt, the issuance of notification dated 14.10.2016 specifying the wards reserved for Scheduled Castes and women could be a step towards holding of elections, whereas the election process would commence on the issuance of notification on 18.11.2016 fixing the date of election as 18.12.2016. However, we have opined against the petitioners on the merits of the controversy. Even otherwise, in view of various authoritative and binding precedents elaborated hereinbefore, it would be inappropriate to nullify the election process put in progress on 18.11.2016 in respect of the elections which are now scheduled for 18.12.2016. The majority members of the Constitution Bench of the Supreme Court in *Lakshmi Charan Sen and others vs. A.K.M.Hassan Uzzaman and others*, AIR 1985 SC 1233, inter alia had laid down that though High Court does not lack the jurisdiction to entertain the writ petition and also issue necessary directions, but at the same time, restraint should be exercised in invoking its jurisdiction under Article 226 of the Constitution of India to pass any interim order or otherwise which has the effect of postponing an election which is reasonably imminent and

would result in indefinite postponement of elections to legislative bodies.

The relevant observations read thus:-

“.....Secondly, though the High Court did not lack the jurisdiction to entertain the Writ Petition and to issue appropriate directions therein, no High Court in the exercise of its power under [Article 226](#) of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The High Courts must observe a self-imposed limitation on their power to act under [Article 226](#), by refusing to pass orders or given directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are a part of the process of 'election' within the meaning of [Article 329 \(b\)](#) of the Constitution. We will pronounce upon that question later in our judgment.”

34. As a result, viewed from any angle, the writ petitions are devoid of merit and, therefore, the same are dismissed.

(Ajay Kumar Mittal)
Judge

December 15, 2016
'gs'

(Sneh Prashar)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes

