

RESERVED ON : 20.12.2016
PRONOUNCED ON : 04..01.2017

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 04..01..2017

CORAM:

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos. 36467 & 36797 of 2006 & 30652 of 2016
W.P.Nos.36467 & 36797 of 2006

1. Thol.Thirumavalavan
S/o.Thoikappiyan
16, Chinnaya Street,
Opposite to Kamarajar Memorial,
T.Nagar,Chennai 600 017.
 2. D.Ravikumar, M.L.A.,
S/o.V. Duraisamy
No.62, Kaliyamman Koil Street,
Manganampattu, Kollidam 609 102.
 3. Rameshnathan
S/o. Arumainathan
56/52, Vivekandnda Nagar,
Marakkanam Road,
Tindivanam - 2.
- ...Petitioners in both W.Ps.

-VS-

- 1.The State of Tamil Nadu
Rep.by its Secretary to Government,
Municipal Administration and Water
Supply Department, Fort St. George,
Chennai 600 009.
2. The State Election Commissioner,
Tamil Nadu State Election Commission,
Chennai. ...Respondents in both W.Ps.

W.P.No.30652 of 2016 :

Thol.Thirumavalavan
S/o.Thoikappiyan
16, Chinnaya Street,
Opposite to Kamarajar Memorial,
T.Nagar,Chennai 600 017. ..Petitioner

-Vs -

1.The State of Tamil Nadu
Rep.by its Secretary to Government,
Municipal Administration and Water
Supply Department, Fort St. George,
Chennai 600 009.

2. The State Election Commissioner,
Tamil Nadu State Election Commission,
Chennai.

3.The Principal Secretary to Government
Rural Development and Panchayat Raj Department,
Government of Tamil Nadu, Fort St. George,
Chennai 600 009.

(R3 impleaded as per order dated 15.11.2016
By CJ & MSJ in WMP.No.36817 of 2016 in
W.P.No.30652 of 2016)

... Respondents

PRAYER IN W.P.No.36467 of 2006 :

Writ petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to provide proportionate reservation in the post of Chairman of Town Panchayats by allotting the reserved posts to every Block taking into consideration the population of SCs/STs. in all the Town Panchayats in every such Block and proportionate reservation for the post of Chairman of Municipal Councils by allotting the reserved posts to every District taking into consideration the population of SCs/STs in all the Municipalities in every such District, and to further provide for proportionate reservation in the post of Vice Chairman in the Town Panchayats and Vice Chairman in Municipality Councils in Tamilnadu in favour of SCs/STs. and Women in the same manner.

PRAYER IN W.P.No.36797 of 2006

Writ petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records relating to G.O.Ms.No.88, Municipal Administration and Water Supply (Election) dated 07.09.2006 in so far as Salem Municipal Corporation is reserved for SC (Women), quash the same and direct the respondents to treat the post of office of Mayor of Chennai City Municipal Corporation as reserved for SC (General) and to provide proportionate reservation to the office of the Deputy Mayor of City Municipal Corporation for SC/ST and women.

PRAYER IN W.P.No.30652 of 2016

Writ petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to provide proportionate reservation in the post of Vice President in Village Panchayats, Vice Chairman in the

Panchayat Unions and Vice Chairman in District Panchayats in favour of SC/STs. And reservation for Women in one third of the said posts in Tamil Nadu.

For Petitioners in
all three writ petitions : Mr.P.V.S.Giridhar
for M/s. Giridhar and Sai
For Respondent-1 in : Mr.R.Muthukumaraswamy,
W.P.Nos.36467 & 36797/06 Advocate General,
Assisted by
& for R1 & R3 in Mr.M.K.Subramanian, GP- R1
W.P.No.30652 of 2016
For Respondent -2 in
all W.Ps. : Mr.B.Neducheizian

COMMON ORDER

(Delivered by M.Sundar,J.)

1. We propose to dispose off these three writ petitions by this common order. These three writ petitions raise an issue touching upon two most discussed and oft debated aspects of our democracy namely 'local self governance' and 'reservation'. The common issue is 'reservation for certain specific offices in elected local bodies.'

2. We consider it relevant to set out the case details in brief, for a better appreciation of our judgement.

3. CASE DETAILS

a) There are three writ petitioners. First writ petitioner is Thol Thirumavalavan, General Secretary of Viduthalai Siruthaigal Katchi ('VCK' for brevity). It is averred that VCK is a political party registered with the Election Commission of India and State Election Commission. It is further averred that VCK was formed with the objective of protecting the rights and advancing the interests of the oppressed sections of the society including people belonging to the Scheduled Caste ('SC' for brevity) and Scheduled Tribes ('ST' for brevity).

b) The second petitioner is D.Ravikumar who was a member of VCK and was also an elected Member of Legislative Assembly (MLA).

c) The third petitioner is Rameshnathan. It is averred that he is advisor of an organisation in the name of Human Rights Forum for Dalit Liberation (HRFDL for the sake of brevity).

d) All the three are writ petitioners in W.P.No.36467/2006 (hereinafter 'first writ petition' for convenience and clarity) and also W.P.No.36797/2006 (hereinafter 'second writ petition' for the sake of convenience and clarity). In

W.P.No.30652/2016(hereinafter 'third writ petition' for the sake of convenience and clarity) Thol. Thirumavalavan is the lone writ petitioner.

e) First writ petition has been filed with a prayer inter-alia to mandamus the respondent State to provide reservation by allotting reserved posts to every block in the local bodies proportionate to the population of SCs and STs, and provide for proportionate reservation in the posts of Vice Chairmen in Town Panchayats and Municipality Councils. The prayer in the first writ petition ad-verbatim has been extracted supra.

f) The second writ petition has been filed seeking inter-alia issue of a writ of Certiorified mandamus assailing GO 88 dated 7.9.2006 regarding reservation touching upon the offices of mayor and Deputy Mayor of Salem Corporation. The prayer in the second writ petition ad-verbatim has also extracted supra.

g) The third writ petition has been filed with a prayer inter-alia to mandamus the respondent State to provide reservation for the posts of Vice Presidents' and Vice Chairmen in village Panchayats, Panchayat unions and District Panchayats across the State. In other words, the writ petitioners plea is that this Court should mandamus the respondent State to provide for reservation in the following three offices:

- (a) Vice President in Panchayats
- (b) Vice Chairman in Panyachat Unions
- (c) Vice Chairman in District Panchayats

The prayer in the third writ petition ad-verbatim has also been extracted supra.

h) The respondent State has filed a counter affidavit dated 14.07.2016 sworn to by the Deputy Secretary to the Government, Municipal Administration and Water Supply Department in the second writ petition and another counter affidavit dated 16.11.2016 sworn to by the Joint Secretary to the Government, Rural Development and Panchayat Raj Department in the third writ petition. State has not disputed the bonafides of these public interest litigants. State has also not disputed the various averments made by each of the writ petitioners about themselves. In other words, State has not disputed the locus or bonafides of the writ petitioners, but has proceeded to meet the matter on merits.

i) Mr. P.V.S.Giridhar, Learned Counsel appeared for the writ petitioners in all the three writ petitions. Learned Advocate General Mr.R.Muthukumaraswamy and Mr.B.Nedunchezian, learned counsel appeared for the State of Tamilnadu and State Election Commission respectively in all the three writ petitions.

4. DISCUSSION

i) At the hearing, it was agreed by all the Learned Counsel that the third writ petition shall be treated as the lead matter and that discussion and decision in the same shall

decide the fate of the first and second writ petitions.

ii) Therefore, we take up the third writ petition for discussion.

iii) The sheet anchor submission of the writ petitioners turns on Articles 243-D and 243-T of the Constitution of India ('COI' for the sake of brevity). It is the case of the writ petitioners that in the light of the avowed objectives with which Parts IX and IX- A were introduced into the COI, this Court should read into Articles 243-D and 243-T to mean that there should be reservation for the offices of Vice Presidents in Village Panchayats and Vice Chairmen in Panchayat Unions as well as District Panchayats proportionate to the SC,ST population. Per contra, crux and gravamen of the case of the State is that the existing reservations in the offices of local bodies have been made in accordance with the Constitutional mandate and in accordance with the relevant Statutes and the Rules thereunder. Stating so and giving elaborate details of the relevant provisions of the Statute and Rules thereunder State would contend that there is no ground much less a compelling ground for reading into the above said Constitutional provisions as the existing reservation is in accordance with the Constitutional mandate. State would also emphatically contend that there is no ambiguity whatsoever in the above mentioned provisions of COI warranting the invocation of 'reading into' principle.

iv) State Election Commission seeks discharge from the array of respondents by relying on Article 243-K of COI, Section 239 of Tamilnadu Panchayats Act and other provisions. It is the case of the State Election Commission that reservation is a matter vested with the Government and therefore they have to be discharged.

v) This takes us to a detailed discussion of the rival submissions.

vi) Part IX of COI captioned 'The Panchayats' (consisting of Article 243 and 243-A to 243-O) and Part IX-A of COI captioned 'The Municipalities' (consisting of Articles 243-P to 243-ZT) were inserted by the 73rd and 74th amendments to COI on and with effect from 01.06.1993.

vii) Articles 243-D and 243-T which are most relevant may be usefully extracted.

Article 243-D reads as follows:

"Reservation of seats : (1) Seats shall be reserved for

(a) the Schedule Castes: and

(b) the Schedule Tribes,

in every Panchayat 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 Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats

may be allotted by rotation to different constituencies in a Panchayat.

(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 Schedule 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 Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level 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: Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: Provided further that not less than one third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(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 Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens"

Article 243-T reads as follows

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 the Chairpersons in the Panchayats at the village or any other level 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: Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: Provided further that not less than one third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level

(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 Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

viii) Section 57 of the Tamilnadu Panchayats Act, 1994 (Tamilnadu act 21 of 1994) (hereinafter referred to as 'Panchayats Act' for brevity) which provides for reservation of seats in the offices of President, Chairman etc., and Rule 6 of Tamilnadu Panchayats (reservation of seats and rotation of reserved seats) Rules 1995 (hereinafter 'Panchayat reservation rules' for brevity) may also be usefully extracted infra. The same read as follows :

57. Reservation of seats.- (1) Seats shall be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in every Panchayat Union Council 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 Panchayat Union Council as the population of the Scheduled Castes in that Panchayat Union area or of the

Scheduled Tribes in that Village Panchayat area bears to the total population of that area. Provided that for the first election for the Panchayat Union Council to be held immediately after the commencement of this Act, the provisional population figures of the Panchayat Union as published in relation to 1991 census shall be deemed to be the population of that Panchayat Union. (2) Seats shall be reserved for women belonging to the Scheduled Castes and the Scheduled Tribes from among the seats reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes which shall not be less than one-third of the total number of seats reserved for the persons belonging to Scheduled Castes and Scheduled Tribes. 1 [***] (3) Seats shall be reserved for women in the Panchayat Union Council and the number of seats reserved for women shall be, as nearly as may be, one-third 2 [including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes] of the total number of seats in the Panchayat Union Council: Provided that such seats reserved for women shall be allotted by rotation to different wards in such a manner as the Inspector may, by notification, direct. (4) The reservation of seats under subsection (1) and (2) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution.

Reservation of seats in respect of offices of Chairmen of Panchayat Union Councils and District Panchayats :- (1) Seats shall be reserved in the Offices of Presidents of Village Panchayats, Chairmen of Panchayat Union Councils and Chairmen of District Panchayats for persons belonging to Scheduled Castes and Scheduled Tribes. The total number of seats in the offices so reserved shall bear as nearly as may be, the same proportion to the total number of officers in the Panchayats at each level in the State as the population of the Scheduled Castes and the Scheduled Tribes in the State bear the total population of the State:

(1-A) The Offices of the Chairmen of District Panchayats reserved under sub-rule (1) shall be allotted to districts taking into consideration, the population of the Scheduled Castes and Scheduled Tribes in every district in such a manner that the total number of offices so allotted, does not exceed the total number of the offices reserved under sub-rule (1).

(1-B) The Offices of the Chairmen of Panchayat Union Councils reserved under sub-rule (1), shall be allotted to every district taking into consideration the population of the Scheduled Castes and the Scheduled Tribes in every such district, in such a manner that the total number of offices so allotted to the Panchayat Union Councils in all district, does not exceed the total number of the offices reserved under sub-rules (1).

(1-C) The Offices of the Presidents of Village Panchayats reserved under sub-rule (1), shall be allotted to every Panchayat Union taking into consideration the population of the Scheduled Castes and Scheduled Tribes in every such Panchayat Union, in such a manner that the total number of

offices so allotted to the Village Panchayats in all Panchayat Union, does not exceed the total number of the offices reserved under sub-rule (1).

(3) Of the total number of offices of Presidents of Village Panchayats, Chairmen of Panchayat Union Councils and Chairmen of District Panchayats, not less than one-third shall be reserved for women including the offices reserved for women belonging to the Scheduled castes, Scheduled Tribes.

ix) A plain and conceptus reading of the above extracted Articles of COI, section/provision of Panchayats Act and Rule of Panchayat reservation rules would make it clear that seats have been reserved for the offices of Presidents' of Village Panchayats, Chairmen of Panchayat Union Councils and Chairmen of District Panchayats for persons belonging to SC and ST and that the total number of seats in the offices so reserved are as nearly as possible in the same proportion to the total number of offices in Panchayats in each level in the State as the population of SCs and STs in the State bear to the total population of the State.

x) This takes us to the question as to whether there should be further reservation for the offices of Vice Presidents and Vice Chairmen also.

xi) Section 2(3) of the Panchayats Act defines Chairman and Section 52 of Panchayats Act enumerates the functions of the Chairman. Section 54 of Panchayats Act deals with devolution of functions of Chairmen to Vice Chairmen. The relevant provisions (Section 2(3) and Section 52 and Section 54) read as follows :

"2. Definitions - In this Act, unless the context otherwise requires :-

(1)

(2)

(3) "Chairman" means the Chairman of a Panchayat Union Council or a District Panchayat, as the case may be;

Section 52 of Panchayats Act :

"52. Functions of the Chairman. - The Chairman shall - (a) convene the meetings of the Panchayat Union Council, and (b) discharge all the duties specifically imposed and exercise all the powers conferred on the Chairman by this Act and the rules made thereunder. (2) The Chairman shall have full access to all the records of the Panchayat Union Council and no official correspondence between the Council and the Government shall be conducted except through the Chairman. The Chairman shall be bound to transmit communications addressed through him by the Commissioner to the Government or by the Government to the Commissioner."

"54. Devolution and delegation of Chairman's functions and filling up of vacancies in the office of Chairman.- (1) When the office of Chairman is vacant, the ViceChairman shall

exercise the functions of the Chairman until a new Chairman assumes office."

xii) Critical to the discussion now in hand is that the term Vice Chairman and the functions of the Vice Chairman have not been defined or enumerated though Section 49 of the Panchayats Act mandates that there shall be a Chairman and a Vice Chairman for Panchayat Union Council. There is only a provision providing for devolution and delegation of the Chairman's functions wherein and whereby the Vice Chairman shall exercise the functions of the Chairman when the office of the Chairman is vacant, until and upto assumption of office by a new Chairman.

xiii) We have taken the case of Chairman and Vice Chairman of a Panchayat Union Council for the purpose of close scrutiny with clarity. Same is the case with President and Vice President vide Sections 226, 46 and 48 of The Panchayats Act and the same read as follows:

"226. Limitation for recovery of dues.- No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any tax or other sum due to 122 a Panchayat under this Act or any rule, bye-law, regulation or order made under it after the expiration of a period of six years from the date on which distraint might first have been made, a suit might first have been instituted or prosecution might first have been commenced, as the case may be, in respect of such tax or sum.

46. Functions of the President.- (1) The President shall, - 1 [(a) convene the meetings of the Village Panchayat and of the Grama Sabha]; (b) have full access to the records of the Village Panchayat; (c) discharge all the duties specifically imposed and exercise all the powers conferred on the President by this Act. 32 2 [(d) execute or implement all schemes, programmes or activities as may be entrusted to village panchayat from time to time.] (2) No official correspondence between the Village Panchayat and the Government shall be conducted except through the President. The President shall be bound to transmit communications addressed through him by the Executive Authority to the Government or by the Government to the Executive Authority.

48. Delegation of functions of President.- Subject to such restrictions and control as may be prescribed, the President may by an order in writing delegate any of his 33 functions as such to the Vice-President and in the absence of the Vice-President to any other member, provided that the exercise or discharge of any functions so delegated shall be subject to such further restrictions and conditions as may be laid down by the President and shall also be subject to his control and revision: Provided that he shall not delegate any functions which the Village Panchayat expressly prohibits him to delegate."

xiv) This takes us to a very interesting aspect of the discussion.

xv) As stated supra, Section 54 of the Panchayats Act deals with devolution and delegation of the Chairman's functions and filling up of vacancies in the office of the Chairman. Equally and in parimateria is Section 47 of the Panchayats Act which deals with devolution and delegation of the functions of the President and filling up of the vacancies in the office of the President.

xvi) Section 54 has already been extracted supra.

xvii) A close look up of Section 54(2) throws up the interesting aspect of this discussion.

xviii) Section 54(2) of the Panchayats Act reads as follows:

54. Devolution and delegation of Chairman's functions and filling up of vacancies in the office of the Chairman:

(1).....

(2) When the office of Chairman is vacant and there is either a vacancy in the office of Vice-Chairman, or the Vice-Chairman has been continuously absent from jurisdiction for more than thirty days or is incapacitated and until a new Chairman or Vice-Chairman is elected and assumes office, or the Vice-Chairman returns to jurisdiction or recovers from his incapacity, as the case may be, the Revenue Divisional Officer shall, notwithstanding anything contained in this Act, or in the rules or notifications issued thereunder, be ex officio member and Chairman of the Panchayat Union Council.

xix) A scrutiny of subsection 2 of Section 54 of Panchayats Act extracted supra would show that when the office of the Chairman and Vice Chairman are vacant or when the Office of the Chairman is vacant and Vice Chairman is incapacitated/outside the jurisdiction for more than thirty days, until a new Chairman or Vice Chairman is elected or until Vice Chairman recovers from such incapacity or returns to the jurisdiction, the Revenue Divisional Officer ('RDO' for brevity) shall be ex-officio member and Chairman of the Panchayat Union Council. There can be no two ways about the fact that the RDO is a regular Government servant of the State, on the pay rolls of the State.

xx) If the argument of the writ petitioner for implied reservations/extended reservations for the office of the Vice Chairmen is acceded to, it will, as a matter of fact, as a corollary/axiom lead to reservation being sought for in the office of RDO also besides the reservation at point of recruitment/promotion. This is not only impermissible but obviously impracticable and unworkable too. In our considered opinion, this leads us to a preposterous proposition.

xxi) Be that as it may, Learned Counsel Mr. P.V.S. Giridhar would draw our attention to Sections 17 and 18 of the General Clauses Act, 1897 ('GC Act' for brevity) which deals with

substitution of functionaries and successors respectively and urge us to read the reservations provided for (mandated) in Articles 243-D and 243-T of COI to mean and include Vice Presidents and Vice Chairmen though there is no reference to such offices in the said Articles. In an attempt to buttress this argument and advance it as a proposition, Learned Counsel leaned on Article 367 of COI also. Broadly speaking Article 367 deals with the applicability of the provisions of GC Act for interpretation of various provisions of COI.

xxii) Though the above argument appears attractive in first blush, on a close and careful scrutiny it becomes clear that it does not further the case of the writ petitioners as in our view there is no ambiguity in the language of Articles 243-D and 243-T, for pressing into service Article 367 and GC Act, particularly as the Learned Counsel wants us to read into the said Articles. Notwithstanding we proceed to this argument on a demurer also by looking into Sections 17 and 18 of GC Act. While Section 17 states that a person executing the functions of an office for the time being should mention the title of the officer who is executing the functions at present or that of the officer by whom the functions are commonly executed (all this for the purpose of indicating the application of a Law), section 18 lays down that the successors of any functionaries shall express their relation to the functionaries for the purpose of indicating the relation of a law to the successors. In any event Section 18 deals with functionaries having perpetual succession. A combined reading of the provisions of Panchayat Act dealing with the definitions of President and Chairman as well as devolution of their functions (extracted and dealt with supra) would make it clear that neither substitution nor succession which Sections 17 and 18 of GC Act deal with would apply to the instant case particularly because the Vice Presidents and Vice Chairmen who statutorily do not have any specific functions do not become Presidents and Chairmen in their absence but only perform their functions temporarily in their absence and that too only until a new incumbent comes in. Therefore the argument advanced by the writ petitioners relying on GC Act do not pass the test of applicability to case on hand even when tested on a demurer. Be that as it may, in this context we are inclined to accept and sustain the submissions of the Learned Advocate General that it is impermissible to amend or read into the above said Articles of COI when they are plain and unambiguous, the language employed being the determinant qua legislative intent.

xxiii) Another limb of the submission of the writ petitioners, is that it will lead to asymmetry if there is no reservation for Vice Presidents and Vice Chairmen also. In response to this argument, it was pointed out by the Learned Advocate General on behalf of the State that while the President/Chairman are elected directly by the people, the Vice President/Vice Chairman are elected indirectly from amongst the elected members/councillors and there is already

reservation provided for election of councillors/members. We find this argument on behalf of the State to be very logical as providing reservation for Vice Presidents and Vice Chairmen also will not only shrink the choice of the electorate (members/councillors) but will also result in a double/successive reservation for the same office which will lead to asymmetry. Therefore in this view of the matter, we have no hesitation in holding that providing for reservation for Vice Presidents and Vice Chairmen also when reservation has already been provided (proportionate to the SC, ST population) for the electorate which elects them (members/councillors) would lead to a huge asymmetry which is impermissible.

xxiv) Though the above said asymmetry is obvious and visible, in an attempt to make this discussion as exhaustive and as comprehensive as possible we posed a specific and pointed query to the writ petitioners as to whether they can think of any methodology for providing reservation for offices of Vice Presidents and Vice Chairmen also, without such asymmetry setting in.

xxv) The writ petitioners' answer to the above pointed and specific query from us is interesting and intriguing.

xxvi) Learned counsel for writ petitioners, while not disputing the resultant asymmetry would only say that the methodology and modalities have to be worked out by the Government/State.

xxvii) From the above said specific query and the above said answer of the writ petitioners, what we deduce as a legal answer is, Judiciary exercising State powers would read into the relevant Articles of Parts IX and IX-A of COI and provide for Reservation for the offices of Vice Presidents and Vice Chairmen and thereafter, the Legislature and Executive (also exercising State powers) would device the modalities and methodologies to eliminate the asymmetries that would result from such a reading into relevant Articles of COI. Such a submission in our considered opinion does not stand a moments scrutiny. We say so, more because, the writ petitioners themselves, (in response to specific queries regarding methodologies for avoiding resultant asymmetry) have not been able to even think of a possible methodology, but would merely say that we should leave to the Legislature and Executive.

xxviii) The above convinces us that even according to the writ petitioners the asymmetry resulting from reading into relevant Articles of COI is not only unavoidable, but also incapable of elimination.

xxiv) All that have been set out supra in the preceding paragraphs, turns the drift of the discussion back towards the plea for reading into (bordering on amending) Articles 243-D and 243-F of COI. In the course of the hearings, we wanted the

Learned Counsel on both sides to examine the Lok Sabha and Rajya Sabha debates and the reports of the Joint Committee on the Constitutional Bill, all pertaining to the 73rd and 74th amendments to COI (hereinafter 'said debates' and 'reports' for brevity) to ascertain the legislative intent qua reservation for Vice Presidents and Vice Chairmen. After so examining, Learned Counsel for writ petitioners as well as the Learned Advocate General submitted that the said debates and reports are completely silent on this aspect. Learned Counsel for writ petitioners even filed the relevant extracts of the said debates and reports, drew our attention and took us through the same. Learned Counsel for writ petitioners submitted that reservation for Vice Presidents'/Vice Chairmen has not been discussed and shot down as a consequence of which there is no impediment in this court providing for reservation for those offices as it would not run contrary to the legislative intent. We are unable to persuade ourselves to agree. We are of the considered view that the complete absence of any reference to these offices (Vice Presidents/Vice Chairmen) in the debates and reports would only mean that the legislative intent flowing from legislative wisdom did not consider it necessary to even take it up for discussion obviously because it is not necessary and also because of the asymmetry which it will cause in the scheme of things.

5. CASE LAWS:

a) As there are no direct case laws on the points canvassed in the instant writ petitions, we have set out our discussion on the rival submissions supra.

b) Be that as it may, we deal with the case laws cited by both sides at the Bar. The citations referred to with the relevant paragraphs, cited at the hearings by the Bar are as follows :
Writ Petitioners' side:

(i) M.Pentiah and others -vs- Muddala Veeramllappa and others (AIR 1961 SC 1107) Para 6:

"Before we consider this argument in some detail, it will be convenient at this stage to notice some of the well established rules of Construction which would help us to steer clear of the complications created by the Act. Maxwell " On the Interpretation of Statutes", 10th Edn., says at p. 7 thus:

"..... if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result." It is said in Craies on Statute Law, 5th Edn., at p. 82-"Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided."

Lord Davey in *Canada Sugar Refining Co. v. R.* provides another useful guide of correct perspective to such a problem in the following words:

" Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

(ii) *Fazlunbi vs. K.Khader Vali and another* (Crl.Appeal No.156 of 1980, dated 08.05.1980) (AIR 1980 SC 1730) Para 13 :

" Even the literal and the purposive approaches may sometimes concur, once we grasp the social dynamics of interpretation, will serve the cause of truth and justice. We are reminded of Lord, Denning's fascinating reference in his "The Discipline of the Law" to Portia's plea for the pound of flesh but not a drop of blood; The traditional English view is yielding to the pressure of the modern European view (which is also the American view) expressed by Denning in delightful diction as

"the 'schematic and teleological' method of interpretation. It is not really so alarming as it sounds. All it means is that the judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design of purpose which lies behind it. When they come upon a situation which is to their minds within the spirit-but not the letter-of the legislation, they solve the problem by looking at the design and purpose of the legislature-at the effect which it was sought to achieve. They then interpret the legislation so as to produce the unashamedly, without hesitation. They ask simply: What is the sensible way of dealing with this situation so as to give effect to the presumed purpose of the legislation? They lay down the law accordingly. If you study the decisions of the European Court, you will see that they do it every day. To our eyes-shortsighted by tradition-it is legislation, pure and simple. But, to their eyes, it is fulfilling the true role of the courts. They are giving effect to what the legislature intended, or may be presumed to have intended. I see nothing wrong in this Quite the contrary. "

(iii) *Lalit Mohan Pandey vs Pooran Singh and Others* (2004 (6) SCC 626) Paras 62 to 68 :

"62. It must also be borne in mind that elector's votes are not to be wasted. The possibility of a tie would be very high if strict interpretation of the rule is resorted to. For proper construction of a statute the Courts must also take into consideration the social milieu. The courts cannot ignore that local, caste and political affinity play a major role in our electoral system.

63. It is furthermore that unreasonable result or result which create uncertainty has to be eschewed.

64. In *Mahadeo Oil Mills and Others Vs. Sub-Divisional Magistrate Araria and Others* [AIR 1978 Patna 86], it was held:

It was stated in this way by Parke B.: 'It is a very useful

rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.' 'If', said Brett L.J. 'the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable though not its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning.'

65. Even a construction which would make the provisions more effective and workable must be adopted and to see if it is possible to be done without doing too much violence of the language used.

66. Every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

67. This would be more so if literal construction of a particular clause leads to manifestly absurdity or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in *Artemiou v. Procopiou* [1966 1 QB 878] "is not to be imputed to a statute if there some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result: we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction.

HOW SHOULD WE INTERPRET?

68. Interpretation of a provision as regard electoral process framed to make certain conditions requires construction of principles having regard to the backdrop thereof."

(iv) K.Krishna Murthy(Dr.) and Others vs. Union of India and another (2010 (7) SCC 102) Paras 51 & 74:

"51. Before addressing the contentious issues, it is necessary to examine the overarching considerations behind the provisions for reservations in elected local bodies. At the outset, we are in agreement with Shri Rajeev Dhavan's suggestion that the principles that have been evolved for conferring the reservation benefits contemplated by Articles 15(4) and 16(4) cannot be mechanically applied in the context of reservations enabled by Article 243-D and 243-T. In this respect, we endorse the proposition that Article 243-D and 243-T form a distinct and independent constitutional

basis for reservations in local self-government institutions, the nature and purpose of which is different from the reservation policies designed to improve access to higher education and public employment, as contemplated under Article 15(4) and 16(4) respectively.

74. The offices of chairpersons in Panchayats and Municipalities are reserved as a measure of protective discrimination, so as to enable the weaker sections to assert their voice against entrenched interests at the local level. The patterns of disadvantage and discrimination faced by persons belonging to the weaker sections are more pervasive at the local level. Unlike elected representatives in the Lok Sabha and the Vidhan Sabha who can fall back on the support of mainstream political parties as well as media scrutiny as a safeguard against marginalization and unjust discrimination, elected representatives from the disadvantaged sections may have no such support-structures at the local level. In this respect, the Union Parliament thought it fit to enable reservations of Chairperson positions in order to ensure that not only are the weaker sections adequately represented in the domain of local self-government, but that they also get a chance to play leadership roles."

(v) Whether -vs- State (Civil Application No.17902 of 2011 dated 16.12.2011) Para 15 :

"15. From the aforesaid, it is clear that the constitution initially did not grant reservation at the grass root level of Village Panchayat or in Municipalities. However, when it was realized that the local bodies have become weak and ineffective for various reasons, the Constitution was amended by the Constitution (73rd Amendment) Act 1992 and the reservation with regard to Panchayats came into force w.e.f. 24.04.1993. There is a marked difference between Article 243 D and Article 330 of the Constitution. Article 243 D uses the expression that "seat shall be reserved for the Schedule Caste and the Schedule Tribes in every Panchayat". We do not find any such expression having been used in Article 330 of the Constitution of India. The Constitution of India provide for reservation of seats in Parliament as well as Legislative Assemblies, but and states that seat shall be reserved to the proportion of the total number of seats allotted to the State whereas in the village Panchayats, the seats are to be reserved for Schedule Caste and Schedule Tribes in 'every Panchayat' which means that one seat has to be reserved for Schedule Caste and Schedule Tribe in every Panchayat. The expression 'every' under Article 243-D has been intentionally used by the Constitution with an object to give reservation to the scheduled caste/scheduled tribe. The language embodied in Section 243 D of the Constitution was lifted from the Constitution and was incorporated in Section 9 (5)

(a) (i) of the Gujarat Panchayats Act. We find that in this case, no seat has been reserved for Schedule Caste candidate which is contrary to the Constitutional mandate under Article

243 D of the Constitution. Therefore, the bar of Article 243 D of the Constitution would not apply to the facts of the instant case as the Court would be fully justified in interfering in the election matter where the scheme of elections provided under the Constitution is being flagrantly violated."

On State's side:

(i) Union of India & Anr. Vs Kartick Chandra Mandal 7 Anr. (2010(2) SCC 422

" Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to the recent decision of this Court in Ansal Properties and Industries Limited v. State of Haryana (2009) 3 SCC 553]. "

(ii) Union of India (Uoi)-Vs- Sankachand Himatlal Sheth and Anr. (1977 AIR SC 2328)

11. The normal rule of interpretation is that the words used by the legislature are generally a safe-guide to its intention. Lord Reid in Westminster Bank Ltd., v. Zang (1966) A.C.182, observed that "no principle in interpretation of statutes is more firmly settled than the rule that the Court must deduce the intention of Parliament from the words used in the Act. "Applying such a rule, this Court observed in S.Narayanaswami v. G.Pannerselvam, that 'where the statute's meaning is clear and explicit, words cannot be interpolated". What is true of the interpretation of an ordinary statute is not any the less true in the case of a constitutional provision and the same rule applies equally to both. But if the words of an instrument are ambiguous in the sense that they can reasonably bear more than one meaning, that is to say, if the words are semantically ambiguous, or if a provision, if read literally, is patently incompatible with the other provisions of that instrument, the court would be justified in construing the words in a manner which will make the particular provision purposeful."

(iii) Sri Ram ram Narain Medhi vs. The State of Bombay (AIR 1959 SC 457)

" 38. If the language of the enactment is clear and unambiguous it would not be legitimate for the Courts to add any words thereof and evolve therefrom some sense which may be said to carry out the supposed intentions of the legislature. The intention of the Legislature is to be gathered only from the words used by its and not such liberties can be taken by the Courts for effectuating a supposed intention of the Legislature. There is no warrant at all, in our opinion, for adding these words to the plan terms of Art. 31A(1)(A) and the words 'extinguishment or modification of any such rights must

be understood in their plain grammatical sense without any limitation of the type suggested by the petitioners."

c) With regard to the case laws cited on the side of the writ petitioners, the three case laws namely M.Pentiah's case, Fazlunbi's case and Lalit Mohan's case are with regard to interpretation of Statutes and principles of statutory interpretation. The principles of statutory interpretation are far too well settled. We are not embarking on a detailed discussion on the same. We are also conscious of the fact that we are dealing with interpretation of laws touching upon electoral polity, but as we have no shred of doubt in our mind that the language of Articles 243-D and 243-T of COI pertaining for reservation to the posts of Chairmen and Presidents are so clear and unambiguous even on a plain reading that there is no need to deploy these tools of statutory interpretation.

d) With regard to the fourth and fifth case laws relied on by the writ petitioners namely, Dr.Krishnamurthy's case and Whether's case the same have been pressed into service by the writ petitioners, in an attempt to drive home the sanctity and solemnity attached to reservations provided in Articles 243-D & 243-T of COI. These two case laws were also pressed into service for driving home the distinction between the principles of reservation adumbrated in Articles 15(4), 16(4) and the reservation provided for in Articles 243-D and 243-T. These case laws have been pressed into service to emphasis that while the reservations provided in the earlier are enabling the reservations provided in the latter are mandatory. There is no dispute about the solemnity of the reservations or the mandatory nature of the same. We also do not have any doubt in our mind about the solemn egalitarian goal behind such reservations. Those are not in the realm of dispute in the instant case because the case on hand raises only the question as to whether this Court should read into such mandatory reservations and provide for implied reservations/extended reservations to offices which have not been mentioned therein also. Therefore, we hold that all the five case laws cited on the side of the writ petitioners are inapplicable to the issue on hand in the instant case and consequently do not further the case of the writ petitioners. We have no hesitation in saying so.

e) The three case laws that have been relied on by the learned Advocate General appearing on behalf of the State, namely, Union of India vs. Kartick's case, Union of India vs. Sankalchand's case and Sri Ram Ram Narain Medhi's case also touch upon the principles of interpretation of Statutes. While the first case law has been relied on to emphasise that the Court cannot read into a statutory provision which is plain and unambiguous, the second case law has been pressed into service to drive home the point that the Court must deduce the intention of Parliament from the words/language used in the Act. The third case law also has been relied upon

for the proposition that the intention of the legislature has to be gathered only from the words/language used by it and no liberties can be taken by the Courts for effectuating a supposed intention of the Legislature.

f) The one line of common thread in the three case laws is that the language employed in a Statute is the determinative factor of the legislative intent.

g) We respectfully agree that the above principles of Statutory interpretation which are sanctus cannot be disputed. As relevant provisions of COI adumbrated in Parts IX and IX-A of COI are so unambiguous that even on a plain reading, the legislative intent is more than obvious and does not warrant invocation of the reading into principle. Moreover, we have already set out supra that we asked for Lok Sabha and Rajya Sabha debates preceding/touching upon the 73rd and 74th amendments to COI. We also had the benefit of seeing extracts of the Joint Committee reports, as stated supra. The fact that there is no shred of discussion about providing reservations for offices of Vice Presidents and Vice Chairmen in local bodies, makes it indisputably clear that the legislative intent and legislative/Parliamentary wisdom is not in favour of providing Reservation to the offices of the Vice Presidents and Vice Chairmen in local bodies.

6. CONCLUSION

To summarise/crystallise and to put it succinctly we are unable to accede to the prayer of the writ petitioner for the following reasons :

(i) Plain language of the relevant provisions of COI are clear and unambiguous, not warranting invocation of any reading into principle.

(ii) The office of Vice President and Vice Chairman have not been defined and their functions have not been adumbrated in the statute in contradistinction to the office and functions of President and Chairman which are defined and enumerated in the statute.

(iii) As the Vice President/Vice Chairman are elected from amongst the electees (unlike President/Chairman who are directly elected by the citizenry) and as reservation proportionate to the SC ST population has already been provided for the electees, it would lead to a double reservation resulting in asymmetry.

(iv) Such asymmetry is incapable of elimination.

(v) Such asymmetry can lead to reservation (posting only SC/ST appointees at the level of RDOs), which is impermissible and unworkable.

(vi) There is no mention about reservation for Vice Presidents'/Vice Chairmen in the debates in the Lok Sabha and Rajya Sabha as well as the report of the joint committee all pertaining to the 73rd and 74th amendments to COI leading to the indisputable inference that the legislative wisdom and

intent was not in favour of providing reservation for SC ST qua the office of Vice President/Vice Chairman.

(vii) Vice Chairmen/Vice Presidents do not become Chairmen/Presidents. They only discharge the functions temporarily, when there is a vacancy and that too until the new incumbent assumes office.

(viii) Therefore, the third writ petition which has been argued as the lead matter namely, W.P.No.30652 of 2016 fails and is dismissed.

(xi) As already set out, it was agreed at the Bar that the third writ petition will be treated as the lead matter and the outcome in the same shall decide the fate of first and second writ petitions.

(x) Therefore, the first and second writ petitions namely, W.P.Nos.36467 of 2006 & W.P.No.36797 of 2006 also fail and are dismissed.

(xi) It would be relevant to record that it was agreed at the Bar that the fate of the lead matter would decide the fate of other two also as all the three writ petitions turn on interpretation of reservations provided for certain offices in the local bodies, in Parts IX and IX-A of the COI.

(xii) In the light of such an understanding on which the three writ petitions were argued, we have refrained from discussing the factual details of the first and second writ petitions namely, W.P.No.36467 of 2006 and 36797 of 2006. More so as the lead matter alone was argued on the above understanding.

7. Therefore, all the three writ petitions namely W.P.Nos.36467 of 2006, W.P.No.36797 of 2006 and W.P.30652 of 2016 fail and are dismissed.

8. Considering the nature of the matter, parties are left to bear their respective costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

TO

1. The Secretary to Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai 600 009.

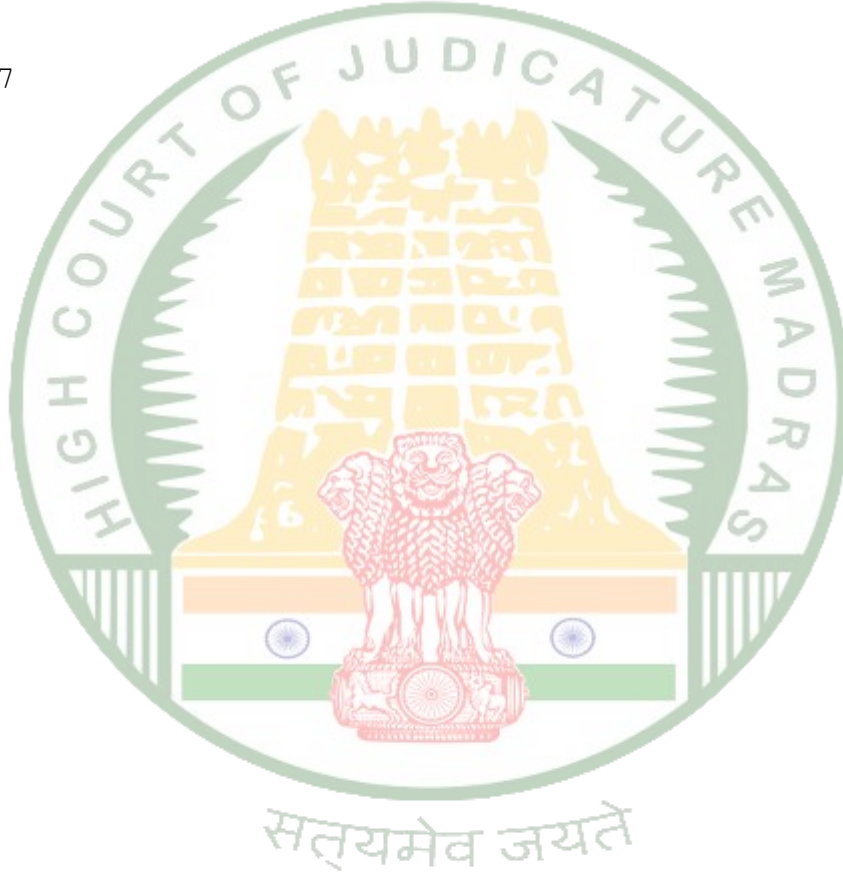
2. The State Election Commissioner,
Tamil Nadu State Election Commission,
Chennai.

3. The Principal Secretary to Government
Rural Development and Panchayat Raj Department,
Government of Tamil Nadu, Fort St. George,
Chennai 600 009.

+ 1 cc to M/s. Giridhar & Sai, Advocate Sr.648

W.P.Nos. 36467 & 36797 of 2006
& 30652 of 2016

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