

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NOS. 85/2021, 86/2021, 87/2021,
88/2021, 90/2021, 91/2021, 515 of 2021 (Filing), 524/2021
(Filing) and 525/2021 (Filing)

WRIT PETITION NO.85/2021

Romaldo Fernandes,
54 years of age,
Residing at H. No. 11,
Behind the Church,
Bamonsai, Sanguem,
Goa.

... Petitioner.

VERSUS

1. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim,
Goa.

2. The Director and Ex-Officio Additional
Secretary,
Municipal Administration/ Urban
Development,
Dempo Towers, Patto Plaza,
Goa.

3. The Goa State Election Commission,

Through the State Election Commissioner
Altinho, Panaji,
Goa.

... Respondents.

Mr. D. Lawande with Mr. Pradosh Dangu, Mr. Jay Mathew,
Mr. Gauravvardhan A. S. Nadkarni, Mr. A. Jamadar and Ms.
Akshaya Joglekar, Advocates for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. Pravin Faldessai,
Additional Government Advocate for the State – Respondent Nos. 1
and 2.

Mr. S. N. Joshi and Ms. S. Rawool, Advocates for the State Election
Commission – Respondent No.3.

WITH

WRIT PETITION NO.86/2021

Fouziya Imtiaz Shaikh,
47 years of age,
Residing at H. No. 29,
Bend wada, Sanguem,
Goa.

... Petitioner.

VERSUS

1. The State Of Goa,
Through its Chief Secretary,
Secretariat, Porvorim,
Goa.

2. The Director and Ex-Officio Additional
Secretary,
Municipal Administration/ Urban
Development,
The Department of Urban Development,
Dempo Towers, Patto Plaza,
Goa.

3. The Goa State Election Commission,
Through the State Election Commissioner
Altinho, Panaji,
Goa.

... Respondents.

Mr. D. Lawande with Mr. Pradosh Dangui, Mr. Jay Mathew, Mr.
Gauravvardhan A. S. Nadkarni, Mr. A. Jamadar and Ms. Akshaya
Joglekar, Advocates for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. Deep Shirodkar,
Additional Government Advocate for the State – Respondent Nos. 1
and 2.

Mr. S. N. Joshi and Ms. S. Rawool, Advocates for the State Election
Commission – Respondent No.3.

WITH

WRIT PETITION NO.87/2021

1. Smt. Shraddha S. Amonkar.
W/o Shri Sankalp Amonkar,
Indian National, major of age, Age 45 yrs
R/o 8/6, Swansea Housing
Board Colony, Baina,
Vasco-da-Gama, Goa.

2. Smt. Shanti Kanta Mandrekar,
W/o Shri Kanta Mandrekar,
Indian National, major of age, 46 yrs
R/o 217/D, near Prince Bakery,
Headland Sada,
Vasco-da-Gama, Goa.

... Petitioners.

VERSUS

1. The State Of Goa,
Through its Chief Secretary,
Having office at Secretariat,
Porvorim, Goa.

2. Director of Municipal Administration,
Urban Development Department,
Government of Goa,
Having Office at Collectorate Building,
Panaji, Goa.

... Respondents.

3. The Commissioner,
Goa State Election Commission,
Having Office at Altinho, Panaji, Goa.

Mr. S. S. Kantak, Senior Advocate with Mr. Abhijeet Kamat and
Mr. Preetam Talaulikar, Advocates for the Petitioners.

Mr. D. Pangam, Advocate General with Mr. Pravin Faldessai,
Additional Government Advocate for the State – Respondent Nos. 1
and 2.

Mr. S. N. Joshi and Ms. S. Rawool, Advocates for the State Election Commission – Respondent No.3.

WITH
WRIT PETITION NO.88/2021

1. Shri Michael John Carrasco,
Son of Lucas Carrasco, Age 60 yrs
Resident of House no.2(F)/1,
Karaswada, Near Church Side,
Mapusa, Bardez, Goa.

2. Shri Prabhakar Balkrishna Vernekar,
Son of Balkrishna Vernekar, Age 57 yrs
Resident of House no.202B,
Shelpem, Bardez,
Goa.

... Petitioners.

VERSUS

1. The State of Goa,
Through the Chief Secretary,
Having office at Secretariat,
Porvorim, Goa.

2. Director of Municipal Administration,
Urban Development Department,
Government of Goa,
Having Office at Patto,
Panaji, Goa.

3. The Commissioner,
Goa State Election Commission, .. Respondents
Having Office at Altinho, Panaji, Goa.
Mr. S. S. Kantak, Senior Advocate with Mr. Abhijeet Kamat and
Mr. Preetam Talaulikar, Advocates for the Petitioners.
Mr. D. Pangam, Advocate General with Mr. Shivdatt Munj,
Additional Government Advocate for the State – Respondent Nos. 1
and 2.
Mr. S. N. Joshi and Ms. S. Rawool, Advocates for the State Election
Commission – Respondent No.3.

WITH
WRIT PETITION NO.90/2021

Mr. Sayad Riaj
S/o Mr. Salia Sayyad, Aged 50 years,
Married
Indian National, R/o H.No 5, Muslimwada, ... Petitioner.
Sanguem, Goa 403704

VERSUS

1. Directorate Of Municipal Administration,
Urban Development Department
Panaji Goa.

2. The Commissioner
The Goa State Election Commission ... Respondents.

Altinho, Panaji Goa.

Mr. V. A. Lawande with Mr. Parimal Redkar, Advocates for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. Deep Shirodkar, Additional Government Advocate for the State – Respondent Nos. 1 and 3.

Mr. S. N. Joshi and Ms. S. Rawool, Advocates for the State Election Commission – Respondent No.2.

WITH
WRIT PETITION NO.91/2021

Gaurav Madkaikar,
35 years of age,
F-11, CD Country Side,
Munda, Fatorda,
Salcette,
Goa.

... Petitioner.

VERSUS

1. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim,
Goa.

2. The Director and Ex-Officio Additional
Secretary,

Municipal Administration/ Urban
Development,
The Department of Urban Development,
Dempo Towers, Patto Plaza,
Goa.

3. The Goa State Election Commission,
Through the State Election Commissioner
Altinho, Panaji,
Goa.

... Respondents.

Mr. D. Lawande with Mr. Pradosh Dangui, Mr. Jay Mathew, Mr.
Gauravvardhan A. S. Nadkarni and Ms. Akshaya Joglekar, Advocates
for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. Deep Shirodkar,
Additional Government Advocate for the State – Respondent Nos. 1
and 2.

Mr. S. N. Joshi and Ms. S. Rawool, Advocates for the State Election
Commission – Respondent No.3.

WITH

WRIT PETITION NO.515/2021 (F)

Gabriel Fernandes,
49 years of age, business,
residing at house no. 234,
Church road,
Bepquegal,
Curchorem, Goa.

... Petitioner.

VERSUS

1. State Of Goa,
Through its Chief Secretary,
Having his office at the Secretariat,
Porvorim, Goa.

2. Director of Municipal Administration,
Directorate of Municipal Administration,
Having his office at 1st floor, Dempo Towers,
EDC Patto Plaza,
Panaji, Goa.

3. Goa State Election Commission,
Through the Chief Election Commissioner,
Having his office next to BSNL tower,
Opposite Joggers' Park,
Altinho, ... Respondents.
Panaji, Goa.

Mr. Ashwin Ramani, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. P. Arolkar, Additional
Government Advocate for the State – Respondent Nos. 1 and 2.

Mr. S. N. Joshi and Ms. S. Rawool, Advocates for the State Election
Commission – Respondent No.3.

WITH

WRIT PETITION NO.524/2021 (F)

Manuel Xavier Eusebio Colaco
Son of late Lourence Piedade Colaco,
Indian National, Aged 65 Years,
Residing at House No. 4,
Cusmane,
Quepem-Goa.

... Petitioner.

VERSUS

1. State Of Goa
Through Chief Secretary,
Secretariat, Porvorim,
Bardez-Goa 40352.

2. State Election Commissioner
Through its Secretary,
Having Office at
Altinho, Panaji,
Goa. 403 001

3. Director of Municipal Administration,
Government of Goa,
Collectorate Building,
Panaji,
Goa. 403 001

4. Quepem Municipal Council,
Through its Chief Officer,
Quepem, Goa.

... Respondents.

Mr. C. A. Ferreira and Mr. Dhaval Zaveri, Advocates for the
Petitioner.

Mr. D. Pangam, Advocate General with Ms. Ankita Kamat,
Additional Government Advocate for the State.

Mr. S. N. Joshi and Ms. S. Rawool, Advocates for the State Election
Commission.

WITH
WRIT PETITION NO.525/2021 (F)

1. Mr. Damodar Babal Shirodkar,
Son of Late Baba Shirodkar,
Indian National, Age 54
Residing at Flat No. 8,
Building F,
Pratibha Housing Co-o Society,
Aquem Alto,
Margao-Goa 403 601.

2. Ms. Doris Teixeira,
Daughter of Late Felix Mascarenhas,
Indian National, Age 53
Residing at H. No. 457,
Pedda, Margao-Goa 403 601

... Petitioners.

VERSUS

1. State Of Goa,
Through Chief Secretary,
Secretariat, Porvorim,
Bardez-Goa 40352.

2. State Election Commissioner
Through its Secretary,
Having office at
Altinho Panaji,
Goa. 403 001

3. Director of Municipal Administration,
Government of Goa,
Collectorate Building,
Panaji,
Goa. 403 001

4. Margao Municipal Council,
Through its Chief Officer,
Margao, Goa. 403 601.

... Respondents.

Mr. C. A. Ferreira and Mr. Dhaval Zaveri, Advocates for the
Petitioners.

Mr. D. Pangam, Advocate General with Mr. Pravin Faldessai,
Additional Government Advocate for the State.

Mr. S. N. Joshi and Ms. S. Rawool, Advocates for the State Election
Commission.

Coram :- M. S. SONAK &

BHARATI DANGRE, JJ.

Reserved on : 24th February, 2021

Pronounced on : 1st March, 2021

JUDGMENT: (Per BHARATI DANGRE, J)

1. Elections are the central institution of democratic representative governance, since in the democratic setup, the authority of the Government derives solely from the concept of the governed. The principal mechanism for translating that consent into governmental authority is the holding of free and fair elections. Democratically elected nations burgeon on absolutely free and impartial elections and India being a colossal democracy demands such a process.

2. The Constitution Bench of the Apex Court in the celebrated case of 'Mohinder Singh Gill' has expressed a word of caution while entertaining any dispute involving and revolving around 'Election'. "Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituencies as a whole are on trial . Whichever way the lis terminates it affects the fate of the constituency and the citizens in general. A conscientious approach with over riding consideration

for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of over enthusiastic activist would do. The two extremes have to be avoided in dealing with the election disputes”.

The above observation serve as pharos while we proceed to deal with the Writ Petitions before us.

3. The datum point on which a group of petitions instituted before us, is the decision of the Goa State Election Commission (hereinafter referred as 'SEC') to conduct general elections in 11 Municipal Councils in the State of Goa, in consequence of the expiry of its term. By a Notification issued on 22/02/2021, by the Commissioner, SEC, in pursuance of Article 243ZA of the Constitution of India and Rule 4 of the Goa Municipalities Election Rules, 1969, has notified the general elections of the said Municipal Councils scheduled to be held on 20/03/2021. The Notification carves out the election programme for conduct of elections to the said Municipal Councils.

Anteriorly, since the term of 11 Municipal Councils namely Margao, Mormugao, Mapusa, Curchorem-Cacora, Quepem, Cuncolim, Canacona, Pernem, Bicholim, Sanguem and Valpoi was coming to an end on 04/11/2020, the elections were slated to be held in the month of October, 2020 and to be precise on 18/10/2020. The SEC, constituted under Section 237 of the Goa Panchayat Raj Act, exercising the power of superintendence and control of the conduct of all elections to the Council, on giving a thoughtful consideration to the pandemic of Covid in the entire State of Goa and taking into account that the 11 Municipal Councils are located at different geographical positions, postponed the general elections to the said Municipal Councils, by a further period of three months by issuing a Notification issued on 17/08/2020. Contemplating risk to the life of the people involved in the process, the Commission deemed it appropriate not to proceed with the election process of the Municipal Councils though their term which came to an end on 04/11/2020. By another Notification issued on 14/01/2021, the general elections were further postponed having regard to the prevailing scenario to the effect that the official responsible for conduct of elections are going to be amongst the officers who were engaged in the Management of

the Covid vaccination drive to be implemented in the State in the month of January/ February, 2021. Apart from this aspect, the concerns shown by the Government regarding the congregation of crowds during the campaign period and holding the elections together was also given a thoughtful consideration. Since the election process involves holding public meeting, public rallies, public procession during the campaign period and contemplating that enforcing the health protocol and regulating the number of participants would be a serious issue. By exercising the power conferred under Article 243K and 243ZA, the State Election Commission postponed the general elections of the 11 Municipal Councils along with the elections of the City Corporation of Panaji, 2021 and thereby elections of different Wards in different Panchayats of State for further period of three months i.e. till April 2021 or to the election date which may be determined by the Election Commission.

4. Prior to the declaration of the elections to the said Municipal Councils, the Director and ex-officio Additional Secretary (Municipal Administration)/ Urban Development, Goa, determined the reservation of seats in different Wards of Municipal

Councils and notified the same in its order dated 04/02/2021. The said order was issued in exercise of powers conferred on the Director, i.e. respondent no.2 under Sub Section 1 of Section 9 r/w. sub Section (1) of Section 10 of the Goa Municipalities Act, 1968.

5. Nine Writ Petitions came to be instituted before this Court, pursuant to the order passed on 04/02/2021 by the respondent no.2 posing a challenge to the determination of the reservation of seats in different Wards of Municipal Councils for the purpose ensuing Municipal elections. The said order reserved the seats for different categories being Scheduled Castes, Scheduled Tribes, Other Backward Classes and women and purported it to be complaint with the provisions contained in the Goa Municipalities Act, 1968. The aforesaid Writ Petitions were filed before this Court between 09/02/2021 to 12/02/2021 and came to be listed before the Division Bench on 15/02/2021, when notice came to be issued for final disposal, making it returnable on 22/02/2021. The learned counsel for the Petitioners submitted that this was on the understanding that up to 22nd February 2021, the Respondents will not declare the election schedule. However, on 22nd February 2021

itself when the matters were to be taken up for final disposal, the State Election Commission (SEC) declared the election schedule.

On the returnable date we heard the respective Counsel for the petitioners and the learned Advocate General. Mr. D. Pangam, learned Advocate General also submitted that the issuance of such election schedule will not be urged as a ground to deny any reliefs to the Petitioners if such reliefs are indeed found to be due. He, however, clarified that he would be submitting that this Court ought not to grant any reliefs to the Petitioners since, even on the date of the institution of the petitions, the elections to the Municipal Councils were quite imminent.

6. Since all the Writ Petitions involve a similar challenge to the action of the respondent No.2 in the matter of reservation of seats in different Wards of the Municipal Council, we are deciding the said Writ Petitions by this common Judgment.

7. Before advertng to the challenges raised cumulatively in all the petitions, we deem it appropriate to refer to the individual petition for identifying the precise challenge for reserving or not reserving a particular Ward in a Municipal Council. For sake of

convenience we are reproducing the reliefs sought in the respective petition and we are categorizing the petitions Municipal Council wise. This would give a conspectus about the Writ Petitions in brief

A) SANGUEM MUNICIPAL COUNCIL:

WP No. 85 of 2021, WP No.86/2021 and WP No.90/2021

Prayer clause in WP No. 85 of 2021-

“(a) That this Hon'ble Court be pleased to call for the records of the Impugned Order No.10/821/19/DMA/Election/5123 dated 04/02/2021 and after examining the validity, legality, correctness and propriety and the same be pleased to quash and set aside the same to the extent that it reserves Ward No.01 of the Sanguem Municipal Council for a Candidate from the ST Category.”

Prayer clause in WP No. 86 of 2021 -

“(a) That this Hon'ble Court be pleased to call for the records of the Impugned Order No.10/821/19/DMA/Election/5123 dated 04/02/2021 and after examining the validity, legality, correctness and propriety and the same be pleased to quash and set aside the same to the extent that it reserves Ward No.06 of the Sanguem Municipal Council for a Candidate from the OBC Category.”

Prayer clause in Writ Petition No.90 of 2021-

“(a) This Hon'ble Court be pleased to call from the respondent no.1 and 3 the records on the basis of which reserved categories in various wards were effected and after calling for the records.”

B) MARGAO MUNICIPAL COUNCIL:

WP No.91 of 2021, WP No.525/2021

Prayer clause in WP No.91 of 2021 -

“(a) That this Hon'ble Court be pleased to call for the records of the Impugned Order No.10/821/19/DMA/Election/5123 dated 04/02/2021 and after examining the validity, legality, correctness and propriety and the same be pleased to quash and set aside the same to the extent that it reserves Ward No.07 of the Margao Municipal Council for a Woman from the ST Category.”

Prayer clause in WP No. 525 of 2021-

“(a) For an appropriate Writ, Order or direction of Declaration that Goa Municipalities (Amendment) Act, 1968 (Goa Act 1 of 2021) published and notified vide Notification No. 7/2/2021-LA in Official Gazette under Series No. 45 dated 04/02/2021 at Annexure A to the Petition, is unconstitutional, Manifestly illegal and arbitrary.”

C) MAPUSA MUNICIPAL COUNCIL:

WP No.88 of 2021

Prayer clause in WP No.88 of 2021 -

“(a) Issue a Writ of Certiorari or any other writ in the nature of a certiorari quashing and setting aside the Impugned Order No. 10/821/19/DMA/Election/5123 dated 04/02/2021 as applicable to the Mapusa Municipal Council.”

D) MORMUGAO MUNICIPAL COUNCIL:

WP No.87 of 2021

Prayer clause in WP No.87 of 2021-

“(a) That this Hon'ble Court be pleased issue a Writ of Certiorari and any other writ in the nature of a certiorari quashing and setting aside the Impugned Order No. 10/821/19/DMA/Election/5123 dated 04/02/2021 as applicable to the Mormugao Municipal Council.”

E) QUEPEM MUNICIPAL COUNCIL:

WP No.515 of 2021, WP No.524 of 2021

Prayer clause in WP No.524 of 2021-

In the said Writ Petition the Goa Municipalities (Amendment) Act, 1968 is challenged but the said challenge is not pressed.

“B. Quash and set aside the order dated 04/02/2021 issued by by respondent no.3 purporting to exercise power under Section 9(1) of the said Act and determining the seats that are reserved for SC,ST and OBC of 11 Municipal Councils in pursuance of notice dated 06/01/2021 issued by respondent No.3 to the Mamlatdar to the extent of Ward No.5,6,8 and 9 as illegal, arbitrary and without jurisdiction and consequently quash and set aside the same.”

Prayer clause in WP No.515 of 2021-

“(b) direct that the seat for ward- Morailem be not reserved for the general elections to the Curchorem-Cacora Municipal Council.”

8. In support of the reliefs sought in the Writ Petitions, assailing the action of the respondent No.2 in providing reservation in the seats in different Wards of the Municipal Councils, we have heard the learned Senior Counsel Mr. S.S. Kantak, Advocate Mr. D. Lawande, Advocate Mr. V.A. Lawande, Advocate Mr. Ramani and Advocate Mr. C.A. Ferreira. We have also heard the learned

Advocate General Mr. D.J. Pangam along with Mr. P. Faldessai, Additional Government Advocate for the respondents No.1 and 2. Mr. S.N. Joshi represented the SEC in all the aforesaid petitions.

9. The learned Senior Counsel Mr. S.S. Kantak has premised his challenge to the reservation for women in Mormugao and Mapusa Municipal Council. He would submit that in terms of Article 243 T (3) of the Constitution of India, not less than 1/3rd of the total number of seats reserved under clause (1) of Article 243 shall be reserved for women belonging to the Scheduled Caste or as the case may be the Scheduled Tribes. Further he would urge that the said constitutional mandate is translated in the State legislation and sub-Section 1 of Section 9 of the Goa Municipalities Act, 1968 make it imperative to reserve not less than 1/3rd seats for women and by relying on the amended Section 9, which provide for 1/3rd of seats to be reserved for women and to be allotted by rotation in different Wards of the Municipal Council, he would submit that the impugned order is a clearly violative of the mandate of law. In Mapusa Municipal Council, out of 20 seats, according to Mr. Kantak minimum 7 seats ought to have been reserved for women but only 6 seats are reserved whereas in case of Mormugao where the

Municipal Council comprise of 25 seats, a minimum of 9 seats ought to have been reserved for women, instead only 8 seats are reserved. According to Shri Kantak the two petitioners in Writ Petition No.87/2021 are women and if 9 seats would have been reserved instead of 8, either of the petitioners would have been benefited. Inviting our attention to the reservation of seats in Mormugao Municipal Council election for the preceding year i.e. 2010 and 2015. Mr. Kantak would submit that there is repetition of reservation at three places i.e. in Ward No.8, Ward No.3 and in Ward No.22. This according to him is clear infraction of the rotation policy and the fundamental objectives enshrined in Section 9 and 10 of the Municipalities Act. Further the submission of the learned Senior Counsel is, the respondent No.2 has not adhered to any particular pattern or rational logic in applying the reservation and rotation to the reserved seats, resulting in an outcome which is erratic, haphazard and capricious.

Mr. D. Lawande representing the petitioner in Writ Petition Nos.85 and 86 of 2021, pertaining to Sanguem Municipal Council, invite our attention to the reservation for ST in Ward No.1 and to support his stands of high handedness, he asserts that the population of Scheduled Tribes in Ward no.1 is miniscule, being

0.23% and to be precise there is only one scheduled tribe voter in the said Ward, in contrast to Ward No.4, where the ST population is 235 out of 837 and in Ward no.10, it is 206 out of its total population of 681. In spite of its high concentration of population of ST category Ward No.10 is not reserved for the said category either in the year 2010, 2015 or in the year 2021. The submission is that though Ward no.4 had its reservation for ST in the year 2010, applying the parameter of concentration of population, Ward No.10 has missed the reservation. According to Mr. Lawande the quintessence of reservation for special classes as contemplated by the Constitution has been completely ignored. In respect of Ward no.6 of Sanguem Municipal Council, Mr. Lawande submits that the said Ward is reserved for OBC by the impugned order where the population of OBC is barely 4% whereas a Ward which has a population of 10% OBC has never been reserved for the said category. Ward no.8 remained unreserved in the election of 2010, 2015 and now it is reserved for women. Apart from this, according to him there is a clear violation of the principle of rotation which is pivotal to the constitutional mandate of reservation contained in Article 243 T governing the Municipal Councils and by not formulating any policy for determining the reservation and the

manner in which it is to be rotated, has resulted into an arbitrary action. The impugned order according to Mr. Lawande which has failed to adhere to the constitutional mandate providing for 1/3rd reservation for women candidate as well as providing reservation to SC, ST and OBC on the basis of concentration of the population in any Ward has been flouted and the entire exercise carried, culminating into the impugned order falls short of a bonafide reason or system.

Mr. C.A. Ferreira, assailing the reservation in Quepem Municipal Council, assertively submit that in absence of any policy for rotating the reserved seats, and leaving it to the whims and fancies of the respondent No.2, ex-facie cannot withstand the scrutiny of law as it fails to adhere to the mandate of law, both enshrined in the Constitution and the statute governing the Municipal elections. Therefore according to him the reservation provided in Ward nos.5, 6, 8 and 9 in absence of any reasonable principle of rotation and in ignorance of the distribution of population of the reserve category, smacks of arbitrariness and necessarily has to be thwarted. On similar lines is the challenge in two Writ Petition nos.90 and 91 of 2021 where Mr. V.A. Lawande questioned the opaqueness of the procedure adopted. Advocate Mr

Ramani who has assailed the action of the respondent no.2 in not reserving the Ward in Curchorem Municipal Council would strenuously urge that the impugned order frustrate the scheme contained in Section 9(2)(B) of the Goa Municipalities Act, 1968 which mandates rotation of the reserved seats to different Wards of the Council and he premise his attack on a larger plank being that the impugned order thwarts fundamental principle of the democracy to have free and fair election process.

10. Opposing the Writ Petitions, the learned Advocate General submit that perusal of the pleadings in each of the petitions do not demonstrate any right of the petitioner being infringed and since the right to contest the election neither being a fundamental right or common law right, but merely a statutory right, it must confine its limits within the statute. Painstakingly he has invited our attention to the pleadings in the writ petition and he would urge that none of the petitions have shown any prejudice caused by issuance of the impugned order and it is not the case that the right of a particular petitioner to contest the election is defeated. He states that, even if in this particular election a seat/Ward is reserved for a particular category, creating an inhibition to contest, it is always

open for him to contest on any other seat. The learned Advocate General is also extremely critical of the way in which the challenge is posed, by amending the writ petition and raising a challenge to the reservation for women. Broadly answering the challenge on the issue of concentration of population, according to the learned Advocate General the said principle is not mandatory and it being a directory, it was always within the powers of the respondent no.2 to exercise its discretion. The submission on behalf of the State as regards the absence of policy is that merely because there is no policy, it does not necessarily lead to arbitrariness, unless and until any particular instance is pinpointed. Responding to submission of the reservation to women, the learned Advocate General assertively states that if the reservation quantified result into a fraction, and if the rounding off is taken to be 1 seat, this addition of one seat will have a cascading effect and therefore the fraction has been ignored in Mormugao and Mapusa Municipal Council and this according to him is within legal parameters. As a last quiver in his armour, he expresses his deep concern on whether any interference is permissible at this stage, when the elections are imminent and this is the main issue according to him.

The learned Advocate General at the very outset clarified that he was not objecting to the maintainability of any of the petitions but he contended that since the election process was imminent, even on the date the petitions were instituted, this Court, ought not to grant the Petitioners any reliefs which might result in postponing the election process indefinitely.

11. Relying upon the catena of judgments determining the scope of interference in the matters of election, the learned Advocate General submit that any interference at this stage would further delay the election process and when electoral process is well under way and is scheduled to be completed before the extension to the municipal councils gets exhausted, by way of self imposed limitation, this Court would not interfere and in any case it is always permissible for the petitioners to mount an attack, after the election is over. For the aforesaid proposition he placed reliance on the judgment of the apex court in case of **Karnataka State Election Commission versus H.C. Yatheesh Kumar and others** [Civil Appeal No(s). 4523/2005], a recent division bench of this court in the case of **Dariba Jayram Kamble and others versus State Election Commission and others** [Writ Petition (ST) No.97253 of

2020] and **Lakshmi Charan Sen and others v/s. A.K.M. Hassan Uzzaman** [AIR 1985 SC 1233] The learned Advocate General also placed reliance on the judgment of the Division Bench of the Punjab and Haryana High Court which has deliberated on the aspect of rotation with reference to Article 243T of the Constitution of India and Section 6 of the State legislation and held that how many seats are to be 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 SC, ST being concentrated in the pocket of the Municipalities. He would attempt to draw parlance with said decision, where the High Court refused to entertain the Writ Petitions by following a principle of self restraint.

The submissions advanced by the learned Advocate General are to be considered in light of the affidavit filed in the respective petitions and the accompanying note dated 4th February 2021 of the Department of Urban Development reflecting the exercise undertaken, in furtherance of Section 9 and 10 of the Goa Municipality Act, 1968 while reserving various seats/wards in the 11 Municipal Councils.

12. Conjoint submission of the petitioners is that no criteria has been fixed by the respondent no.2 while reserving the Ward or rotating the reservation in the said Wards and which has been done in the haphazard manner without any reasonable principle being involved. This unfettered exercise of power by the Director according to the petitioners has resulted in an arbitrary action which is not only fundamentally erroneous but also flawed in the face of the provision enshrined in the Constitution and also in the State legislation.

According to the learned Advocate General the concept of arbitrariness is subjective and unless and until the arbitrariness is pointed out, an action cannot be thwarted down merely on the pretext that it is arbitrary. The emphasis of the learned Advocate General is on the wording applied in Section 10 being 'having regard to the concentration of the population', which according to him take away the binding effect and makes it directory. He further submits that if this aspect of population contemplated under Section 10 is over focused, the remaining portion of the said Section being of rotating the seats reserved for women from time to time in different wards of Municipal Council would lose its direction. The submission is that Section 9 and Section 10 of the Act should be

read harmoniously and construed as a scheme and when the Director has guided himself by both the provisions, it cannot be said that he has faulted.

13. Mr. Joshi, learned counsel appearing for the SEC admitted that there has been constitutional infraction on the part of the Director, in failing to reserve not less than one-third of the total number of seats in Mormugao and Mapusa Municipal Councils, in favour of women. On questioned whether the Commission has pointed out the flaw, his answer is in the negative. He submits that the issue of reservation is within the purview of the Directors and therefore, notwithstanding the constitutional or statutory infraction, the SEC is helpless and has no choice but to proceed with the elections based on the impugned order dated 4th February 2021 and since it is bestowed with a duty to conduct timely elections.

14. We have heard the respective counsel who have advanced their well articulated and eloquent submissions backed by the research. Apropos, we also have before us the noting of the Department of Urban Development which steer us to the procedure

adopted in determining the reservation of seats in different Wards of the Municipal Councils. The State is specific in its submissions that there is no fixed policy, but the provisions contained in Section 9 and 10 of the Goa Municipalities Act, act as sheet anchor in determining the reservation of seats, after delimitation.

15. Dealing with the two writ petitions of Mormugao and Mapusa Municipal Council, where the foremost challenge is to the percentage of reservation provided for women, being less than $1/3^{\text{rd}}$ of the total number of seats, as prescribed in Article 243T(3) of the Constitution and Section 9(1) of the Goa Municipalities Act, 1968. When the record is perused, it bear out that in Mormugao Municipal Council total number of seats to be filled in by direct election are 25. Of these seats, 8 seats have been reserved for women; which gets translated into 32%. As per the mandate prescribed, for reservation to women, the number of seats which would make up to $1/3^{\text{rd}}$ of 25 seats would be 8.33%. Arguments have been advanced before us on the adjustment of the fraction.

16. Pertinent to note that the noting itself provide solution, by enlisting the mechanism to be adopted which reflect, that since reservation for women is done by rotation and after delimitation done in 2015, rotation end up in three terms, commencing from 2015 and going to end in 2026. After charting the reservation which is already provided for women category in 2015 and 2021, the solution offered is the remaining Wards which are not reserved for women in the earlier two elections, may be reserved in 2026. Implicitly, the stand taken is that in order to complete the fraction, the seat would be rounded off in the three terms by rotation, in order to avoid excessive reservation to women and therefore the aforesaid solution.

We are afraid whether this would serve the intention of clause 3 of Article 243T as well as the mandate of the State Legislation, which, effectively read would mean that on constitution of a Municipal Council for every term, not less than $1/3^{\text{rd}}$ seats shall be reserved for women. The expression used in the Constitution as well as in the Municipalities Act, being "not less than" or "no less than", make it clear that even a fraction cannot be ignored because by ignoring the same, the reservation would be minimized than

1/3rd and if it is done so, it would amount to infraction of the constitutional mandate.

17. Reservation of seats for women in Panchayat and Municipalities which were introduced by the 73rd and 74th Amendment seeking to achieve an avowed purpose, to make women a part of the decision making and governance process, in a democracy governed by law. The reservation of seats provided under Article 243D and 243T of the Constitution ensure that women in India participate more in democratic set-up especially at the grassroot level. This reservation was viewed as an affirmative step in realm of women empowerment and we can take judicial note of the fact that the amendment has yielded its result. As *Charles Fourier* remarked, "*The extension of women's right is the basic principle of all social progress.*" The reservation for women in local self government are a measure of protective discrimination for the weaker section at local level and afford a chance to play leadership role in the third stratum of Government.

18. Keeping in mind the aforesaid philosophy in introducing reservation for women by the Constitution and subsequently in the State Legislation, we are of the firm opinion that the course adopted by the respondent no.2 violate the mandate of law. The solution offered by the respondent no.2 in taking forward the reservation and to be adjusted within the three terms, is also, according to us defeat the very purpose as the mandate contained in the first proviso appended to sub-section 1 of Section 9 which is to be followed in every Council which means, the Municipal Council constituted or deemed to be constituted under the Act for a Municipal area and as a body corporate with a prescribed tenure. The fraction even if it is created in calculating $1/3^{\text{rd}}$ reservation cannot be permitted to be rounded off towards the earlier denomination and the normal principle for rounding off, which is based on logic and common sense; "if part is one half or more, its value shall be increased to one and if less than one half the value shall be ignored", cannot be made applicable here.

In Ashok Maniklal Harkut Vs Collector, Amravati and others[1988 Mh.L.J.378], the Full Bench of this Court, in the context of provisions of Section 55(1) and 55(2) of the Maharashtra Municipalities Act held that a valid no-confidence motion must be

passed by not less than two-thirds of the total number of councilors was mandatory. The Full Bench held that the total number of votes must not be less than two-third though they may be more. The fraction cannot be ignored since if the fraction is ignored then the majority will be two-third of the councilors. Thus, where the total number of elected councilors at the time when the motion was moved 19, support of only 13 councilors, being less than two-third, was not sufficient to carry such a no-confidence motion.

The Hon'ble Apex Court has reiterated the view taken by Full Bench of this Court and in the case of **Ganesh Sukdev Gurule v/s. Tahsildar Sinnar & Ors** (2019) 3 SCC 211. The issue for deliberation before the Apex Court involved Section 35 of the Maharashtra Village Panchayats Act, 1959, which is a provision for no confidence motion and sub-section 3 of the said Section indicating the requirement of majority of not less than two third of total number of members who are for the time being entitled to sit and vote. Construing the phrase "not less than", Their Lordships of the Apex Court, dealing with the arguments that when the fraction arrived is 5.33, it should be rounded to 5 has held as under:

'12. The next submission pressed by the respondent is that for applying the principle of rounding off 5.33

votes have to be rounded as to five. Thus, five votes are sufficient to accept majority for the purpose of passing no-confidence motion. Whether 5.33 votes can be rounded up into 5 votes or requirement is at least six votes is the real issue. When there are clear words in the statute i.e. “not less two-third of the total number of members” applying the principle of rounding off, 5.33 votes cannot be treated as 5. Vote of a person cannot be expressed in fraction. When computation of a majority comes with fraction of a vote that fraction has to be treated as one vote, because votes cannot be expressed in fraction. The principle that figure less than .5 is to be ignored and figure more than .5 shall be treated as one, is not applicable in the statutory scheme as delineated by Section 35. Provision of Section 35(1) which provides for requirement for moving motion of no-confidence by not less than one-third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the Panchayat, is the same expression as used in sub-section(3). Obviously, requirement of not less than one-third number for moving motion has to be computed from total number of the members who are entitled to sit and vote. Thus, the same expression having been used in sub-section (3) of Section 35, both the expressions have to be given the same meaning. Thus, one-third of total number

of members who are entitled to sit and vote have to be determined on the strength of members entitled to vote at a particular time. The same meaning has also to be applied while computing two-third majority.'

In light of the aforesaid authoritative pronouncements, we find that the approach adopted by the respondent no.2 would stare in face of the constitutional mandate, reserving $1/3^{\text{rd}}$ seats for women and to this extent the impugned order dated 04.02.2021 is liable to be quashed. By the same reasoning, the impugned order which reserve 8 seats in Margao Municipal Council where the total number of seats to be filled in are 25, must also be quashed and set aside.

19. Since the notings of the Department are placed before us and we have perused the course adopted by the Director, preceding the impugned order. Even in Mapusa, the reservation for women has been flawed since out of 20 seats available to be filled in, 6 seats are reserved for women which amount to 30% and which is less than the prescribed $1/3^{\text{rd}}$ percentage and adopting the reasoning aforesaid, the number of seats reserved for women in Mapusa ought to have been 7. Same is the case in respect of Valpoi, Sanguem,

Pernem Municipal Council where 10 seats are available for election and 3 seats have been reserved for women, which amount to 30% of the total number of seats, whereas the reservation provided for women is $1/3^{\text{rd}}$ and 4 seats should have been gone to women, in each of the aforesaid Municipal Council. We have no petition assailing the reservation in Valpoi and Pernem, but there are 3 petitions pertaining to the reservation provided in Sanguem Municipal Council.

The Director has acted in breach of the Constitution as well as the statutory provision and the impugned order dated 04.02.2021 is therefore required to be quashed and set aside as not adhering to the mandate of law.

20. When the arguments were canvassed before us, the learned Advocate General had made it clear that he would not be opposing the relief sought in the petitions by advancing a submission that since the notification for election is issued, the petitions cannot be entertained. Instead, he has advanced his arguments by canvassing that imminence of the electoral process is a factor that must guide and govern the exercise of writ jurisdiction of

this Court while entertaining the petitions questioning any “election”, a widely construed term. He has rested his argument on the premise, the more imminent such process, the greater ought to be the reluctance of the High Court to interfere and to do anything which will postpone the process indefinitely.

The contention of the learned Advocate General deserves a rejection, at least, in the present cases, which challenge the impugned orders dated 04.02.2021. The constitution of the Council, which is blemished or is defecient on account of non adherence to the constitutional mandate and in particular, the mandate ensuing in part IXA of the Constitution, making imperative to reserve not less than 1/3rd of the total seats available in the Council or the provisions of Section 9 and 10 of the State Legislature would not justify us to accept the submission of the learned Advocate General that the election process is imminent, so there can be no intrusion at this point.

21. The principle of law laid down by the Apex Court in case of **N.P. Ponnuswami Vs. Returning Officer (AIR 1952 SC 64)**, a leading case in election law, revolve around the relevant

provisions in the Constitution, in form of a bar and deal with the scope amplitude and limitation imposed in the Constitution in election matters. The ratio laid down in the said decision and the Apex Court in its subsequent decisions have meaningfully interpreted the words “calling in question”. While interpreting the provisions of Article 329(b), the justification found in the verdict is preventing two attacks being mounted in election matter one at the stage when the election is in progress and one when it is over and another being the speed and promptitude in getting due representation for the electorals in the legislative body. In a subsequent Constitution Bench judgment in case of **Mohinder Singh Gill Vs. Chief Commissioner (1978 1 SCC 405)**, the term “calling in question” received a further connotation as under:

“What emerges from this perspicacious reasoning, if we may say so with great respect, is that any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. We should not slur over the quite essential observation “Anything done towards the completion of the election proceedings by no stretch of reasoning be described as questioning the election.” Likewise, it is fallacious to treat a single step taken in furtherance of election as equivalent to election.”

The Constitutional Bench formulated two type of challenges, first relating to the proceedings which interfere with the process of election and second which accelerates the completion of election and act in furtherance of election. Conveying that the embargo created in **Ponnuswami** (supra) is not absolute and would depend on the type of challenge raised to the process of election. This wider connotation, came to be further strengthened in case of **Election Commission of India Vs. Ashok Kumar & Others** (2000 8 SCC 216), in para 32, where it was clarified that the sum up of the conclusion is a restatement of the two Constitution Benches and has to be read in that spirit.

“For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the courts indulgence by filing a

petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”

22. The aforesaid conclusions are determinative of the factor whether the interference will have the effect of interrupting, obstructing or protracting the election proceedings or whether it sub-serves the election procedure or facilitate the completion of election and that would determine whether an 'election is called in question'. The principles to be followed from the aforesaid decision and which guide us is to the effect that any decision sought and rendered will not amount to calling in question an election, if it will foster the process of completion of election and if without interrupting, obstructing or delaying the progress of election. Judicial intervention is imminent for correcting or smoothing the election process by removing the obstacles therein, the writ Court shall not be overwhelmed by the non obstante clause, the underlining emphasis being on delaying, interrupting, protracting

or stalling the election proceedings. The courts can always examine any action which is motivated by extraneous reason and also as to whether it is derogating the germane objective. In the instant case, it is apparent that impugned action cannot stand to the test of fairness in action. In any case the impugned action cannot be countenanced as it would lead to invidious discrimination which need to be nipped in the bud, at this very stage, instead of permitting a Council to be born with flawed composition. The argument of election being imminent and therefore request to refrain ourselves from exercising the power of judicial review therefore require a rejection.

23. When our attention is invited to the action of the Director and on the conduct of the Election Commission as a mute spectator, which in fact was expected to act and live upto its role conferred by the constitution, ensuring free and fair elections, we are not expected to be oblivious to the situations which have been drawn to us. We do not appreciate the helplessness expressed by the State Election Commission, which is supposed to be an authority independent of the Government. If the illegality has been noticed

by the State Election Commission, we expect it to act with promptitude and issue appropriate directions to the Director to rectify the said action by ensuring that it follows the mandate of the constitution rather than to rush and issue the election schedule. Its power of superintendence over the “conduct of elections” is wide enough, which include the power to take all steps necessary for conduct of free and fair election. The silence on part of the constitutional functionary, according to us, is highly detrimental to the democratic concept of this country. We say nothing more.

24. The second ground on which the Petitioners have attacked the impugned order dated 4th February 2021 is that the allotment of reserved seats is based on no predetermined policy and the Director, taking undue advantage of the absence of policy has chosen to make allotment without the application of mind and in an arbitrary, whimsical and capricious manner. The Petitioners have contended that the allotment ignores the mandate of the Constitution as well as the said Act in matters of rotation of reserved seats as well as statutory command that the Director must have

regard to the concentration of population of SCs and STs in any particular wards.

Barely two months before, the Division Bench of this Court to presided by Hon'ble Justice M.S. Sonak dealt with a challenge to the Government notification reserving certain constituencies at Zilla Panchayat election which was earlier schedule on 22.02.2020, but thereafter again rescheduled to 12.12.2020. In the backdrop, challenge was also raised to the constitutional validity of some provisions of the Goa Panchayat Raj Act, 1994. The point for the challenge was the unfettered and uncanalised power to rotate reservations and the same being violative of mandate of Article 14 of the Constitution, is arbitrary. The challenge also focused on the vesting of such power and its resultant outcome where the Government was able to choose the constituencies for the reservations based upon their own whims and caprice rather than focusing upon the aspect of predictability and transparency, a sine qua non for free and fair election. The State had taken a similar stand, firstly, alleging that the challenge is barred under Article 243, once the election process has commenced and another submission is that mere absence of guidelines do not lead to arbitrariness unless and until it is particularly demonstrated.

The said argument of arbitrariness was extensively dealt with in the backdrop of the authorities, leading to a settled position of law that an unfettered discretion in the State was always frowned upon and violate Article 14 by mere absence of policy, is no ground to strike the impugned provisions, because it is not a matter where there are no guidelines. By relying upon the judgment of the Division Bench of the Karnataka High Court in the case of **G. Sangappa Vs. State of Karnataka and Others 2010 SCC Online Karnataka 2589**, which referred to the terminology used in context of reservation and gave the said terms its dictionary meaning; the act of rotating; rotary motion; a regular cycle of event in the set order or sequence. By making reference to the constitutional provision and by relying upon the affidavit filed in the said petition, it was held as under:

“70. Having said this, we feel that the absence of such policy, or guidelines at the present stage, is not a ground to strike down the impugned provisions, particularly because this is not a matter where the legislature has provided for no guidelines or no norms whatsoever. According to us, the real difficulty is in the matter of implementation of these norms or guidelines in their letter and spirit. Therefore, merely because on some occasions, the administrative action in pursuance of the statutory provisions may be arbitrary, that by itself is not a ground to strike down the statutory

provisions itself, particularly because the statutory provisions contain sufficient guidelines or norms, which, if adhered to, will rule out arbitrariness to a great extent.

71. The learned Advocate General has made a statement that the Government will, within a period of three months, formulate and publish the norms or guidelines for effective implementation of the rotation policy, envisaged in Article 243 D of the Constitution and Section 7 of the said Act. We accept this statement and direct the State Government to formulate such norms/guidelines as expeditiously as possible and, in any case, within a period of three months from today and to publish such norms, so that they are made known to the electorate. Subject to any challenges to such norms or guidelines, we further direct the Government to adhere to such norms or guidelines in the future, so that there is both, transparency and predictability in matters of implementation of the rotation policy, which is a constitutional, as well as statutory mandate.”

25. Absence of definite and certain policy of rotating the reserved seats would obviously inflict a corresponding detriment on some person by being susceptible to arbitrary use. Fairness in action is the benchmark in electoral matters. While scrutinizing validity of any affirmative action measure, standard of proportionality, fairness and equality should be the radicle basis and there is no place for capricious or preferential treatment within the electoral class. Any

treatment tantamounting to excluding other class would amount to arbitrariness in action. To achieve the avowed purpose of reservation within the constitutional and electoral dynamics, it is obligatory to have adequacy of representation of all classes as per the reservation policy uniformly followed. The constitutional Courts would act as watchdog and expected to be conscious about proper exercise of power to repel any impediment or detriment to any weaker section of class as an entailing consequence of decision taken.

26. We would have appreciated the submission advanced by the learned Advocate General that mere absence of policy would not lead to arbitrariness, albeit, we have before us instances as reflected in the Noting from where we have discerned that absence of policy has resulted into non discernable and non justifiable rotation of seats in different wards of respective Municipal Councils. The prescribed reservation of women as per the mandate is one such instance. Similar is the case in respect of the OBC reservations, though none of the petitioners before us raised the said ground before us, however, since we have perused the Noting, we are

enlisting it as one of the aspect demonstrating non application of mind and attitude towards flouting the mandate of the State legislation. The Goa Municipalities Act, prescribes reservation for other backward classes based on concentration of the population of the said class in a particular ward. By the (amendment) Act, 2016 clause (bb) of sub section 2 of Section 9 has prescribed 27% number of seats to be filled in the election of Municipal Council to the person belonging to other back ward classes and such seats are to be allotted by reservations to different wards in the Council. The Noting produced before us reflect that there was utter failure to adhere to the said the proportion and other Municipal Councils where 27% of seats are reserved for other backward classes, the proportion of reservation in other Municipal Council stood to the percentage of 20% being in Valpoi, Pernem and Sanguem. In the remaining Municipal Councils, the percentage of reserved seats for OBC vary from 21% to 25%.

Another instance of arbitrariness or non application of mind is the reservation in ward no. 1 in Sanguem Municipal Council; the ward is reserved for Scheduled Tribe category whereas the percentage of population in the Ward of ST is 0.23% and a specific averment is made in the petition, which is not denied is

there is only one voter belonging to the said category. If the respondent no. 2 would have paid attention to the wording applied in Section 10 “having regard to the concentration of the population” and given the said term significance as population of SC, ST and OBC, the said error was avoidable. By ignoring the concentration of the population, the situation that has arisen wherein ward no. 10 which has ST population of 206 as against total population of 681, by following cycle of rotation, since in the year 2010, ward no. 4 which had maximum ST population and it was reserved in the next election, according to us, the next highest population ward should have been reserved in the year 2013. The challenge to the reservation of the said provided in the year 2021 as arbitrary, justify the said accusation. The population criteria which would have provided a guiding factor for rotation of the reserved seats would have lead to some discernable policy has been completely brushed aside by urging before us that the population criteria is frivolous and we are also satisfied that the technical objection of the learned Advocate General that there are no pleadings to that effect or that there is no challenge to the reservation provided in ward no. 10 by the petitioner and therefore we should not examine as to what reservations was provided or whether it is right or wrong. The

absence of any known guidelines which would have afforded certainty both for the respondent no. 2 as well as to the voters, candidates contesting and all those who are interested in the process, and would have avoided such a hotchpotch. The learned Advocate General submit that even if there are certain minor irregularities in the process, they are not detrimental to the interest of the petitioners or do not affect the election to the municipal council.

27. The learned Advocate General, however, contended that criteria of concentration of population is not relevant and recognised norm for the Constitution of India and therefore, the Director was not bound to apply such norms whilst reserving seats. The learned Advocate General also submitted that the provisions of Section 10 are directory when it comes to having regard to the concentration of the population. He submitted that at times absurd results would ensue if the norm of concentration of population is required to be adhered to. He submits that such norms are inconsistent with the norms of rotation of reserved seats.

According to us, even though there is no reference to the concentration of population norm for reservation of seats in

particular wards provided in the Constitution, such requirement has been provided in Section 10(1) of the said Act of the Legislature of the State. The Director, who is an authority under the said Act, cannot refuse to apply such norms, which is statutorily prescribed. The Director, by ignoring such norms has acted arbitrarily and unreasonably. An absurd result has ensued on account of the Director ignoring these statutorily prescribed norms. In Sanguem, the constituency which has more than 30% ST population is left unreserved and constituency which has only 1 (one) ST member corresponding to 0.23% ST population is reserved for ST. In so far as Margao Municipal Council is concerned, the impugned order has flouted the principle of rotation of vacancy. In the instant case there does not appear to be a direct nexus with a legitimate electoral objective while arriving at the quantum and manner of reservation culled out. It is apparent that the impugned action of the Respondent No.2 is bereft of absolute clarity and tranferency and undue recourse being taken to absence of settled reservation policy. As per the factual matrix, borne out of record, elements of caprice and irrationality are manifestly writ large as because the action appears to be disproportionate and excursive even going by logic of the statistical data as well as the procedure applied for arriving at the

number of seats to be reserved and how they are to be rotated, without repetition. It is out and out case of manifest arbitrariness because it is directed in eliminating the valid and legal representation of a particular class on basis of illogical and formalistic notion which is in utter disregard to achieve the very object of appropriate representation.

28. The learned Advocate General would urge that the principle of rotation is only directory and he relied on two decisions of the High Court of Punjab and Haryana in support of this proposition. In the case of **Dr. Sat Pal Goyal Vs. UT of Chandigarh and others** in CWP No.21840 of 2016 decided on 15th December 2016, and **Inderjit Vs State of Punjab and another** in LPA No.1294 of 2010 decided on 15th February 2012.

The judgment in the case of **Inderjit** (supra) upset the finding rendered by the learned Single Judge on the ground that the State Government is required to fix the reservation based on the member of the seats after doing the exercise and on the basis of 2011 census the State Government had finalized and issued notification in 2018. However the learned Single Judge has held that

delimitation may not be exercised in the cycle of reservation. We fail to understand as to how the said judgment in any manner provide any support the stand of the State. In the judgment in the case of **Dr. Sat Pal Goyal** (supra), while dealing with Article 243T and Section 6 of the State legislation held that on conjoint reading of it, it is crystal clear that seats for SC, OBC is mandatory and it would govern the principles of rotation in the Municipal Council, which shall be determined by the Administrator. After noting that the purpose of the rotation is also to safeguard against the possibility serious objection being raised.

The Division Bench has made the following observation:

“How many seats however, 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 seats being concentrated in the 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.”

However the said judgment, in our view, do not give a complete free hand to the Director to do away with any policy for

rotating the seats based on some indiscernable principle. It is further more apparent, from the stand of the respondent, that no cogent or particular reason has been attributed for the impugned action to satiate any discernable principle emerging in order to satiate the test of fairness in action as well as reasonableness.

29. It is well settled that arbitrariness is antithesis of law, the Courts, moreso, the Constitutional Courts, cannot remain oblivious to fundamental principles governing the realm of reservation policy in election matters. The fundamental rights are concomitant to electoral rights and therefore, absence of a definite polity about reservation in election and rotation of seats to be reserved is per se unfathomable. In the instant case, malice in law and in fact can be discerned, obviously for the reason that in a multi party democracy, existence of reservation policy is a sine qua non to uphold constitutional policy. Absence of any certain policy for rotation of the seats to be reserved, intrinsically derogate the legitimate expectation enveloping the election laws which in turn accentuates the need for electoral reform such as a definite reservation policy for rotation in the instant case.

The pertinence of free and fair election stems from participation of all and sundry and as well as representation from the entire societal strata which has led to inculcation of definite reservation policy in election matters. Absence of such a policy would transgress upon the fundamental rights of certain class of voters/aspiring candidates, which is averse to a paramount for a democracy. In constitutional democracy, definite policy for reservation serve antidote to perineal marginalization of certain class of people which need to be obliterated in order to project a free and fair election process. Any demeanor to the contrary will smack of malafide and bordered on an element of mischief for the reason that it is axiomatic that existing electoral frame work does not get tainted with evil of non participation of all the classes. The apparent malignancy which is writ large in the instant case need to be cured as the computation made available for having 8 reserved seats cannot be countenanced more so, in the absence of any policy which can be relied upon to buttress the systematic sustenance of appropriate and perfect allocation of seats. It is also relevant to mention that in democratic set up multitude of voters if not informed about the polity and therefore in its absence, implementation of reservation policy sought to be pressed cannot be

upheld. The constitutional Courts cannot be reduced to mute spectators when the right to contest or to vote at a election, though a statutory right is said to be scuttled on the basis on uninformed reservation policy which can be capriciously utilized for ejection of eligible contestant, eventually causing a serious dent in the democratic principles governing election laws as well as edifice of democracy.

30. As far as Writ Petition No.515 of 2021 is concerned we must note that Curchorem Municipal Council is the only Municipal Council wherein the respondent No.2 has followed the percentage of reservation of women by apportioning it to 1/3rd of the total number of seats and in case of OBC category also it has provided clear cut 27% reservation. The challenge in the said petition is by the petitioner who is intending to contest election from the said Municipal Council. From Ward No.3 which has been reserved for OBC as per the impugned Notification. The submission of Mr. A. Ramani is that on delimitation, the Ward No.3 is nothing but Ward No.12 in the earlier election of 2015 and in that election also the said seat was reserved for OBC. We are unable to persuade ourselves

to accept the said submission. After the exercise of delimitation in the year 2021, the reservation and rotation is required to be made afresh and therefore in the absence of any date it is not possible for us to conclude that once again Ward No.12, in this new form being Ward No.3, is reserved.

31. Now we turn to the relief which the petitioners are entitled to. Once we have recorded that our interference in the process of election has necessitated on account of the flaws which defeat the constitutional mandate of reservation and rotation, our endeavour is to ensure that our decision to intervene do not cause any interruption or obstruction or in any way to protract the election procedure but on the contrary it subserve the progress of election and facilitates its completion. Amongst the 11 Municipal Councils whose process of reservation and rotation has been alleged to be flawed one, their term has already expired and it is being informed that its administration has been taken over by the body of Administrators. By the Notification published on 14/01/2021, the SEC has already postponed the elections for a period of three months i.e. till April 2021 or the election date which may be determined by the Commission. By passing the impugned order on

04/02/2021 the reservation has been determined by the respondent No.2 and on 22/02/2021 the election programme has been notified by the respondent No.3. On perusal of the said programme, it is apparent that it will consume a period of 22 days from the last date of filing of nomination till the declaration of result on 22/03/2021. Since the Municipal Councils are already under the management of the administrator and the time scheduled for completion of election has been extended by the election Commission till 14/04/2021, and since from the date of pronouncement of our judgment still there is a period of 45 days available, in our opinion on rectification of errors which amount to infringement the constitutional mandate not only qua the reservation to women but also other infractions which we have noticed, a fresh programme shall be notified. If the authorities move with lightning speed, which they are expected to, since in the exigency of the situation which prompted the SEC to be agile in issuing the Notification declaring the elections when the Writ Petitions were pending before the Court, challenging the impugned Notification, expecting the same promptitude by the election Commission and on behalf of the State Government to rectify its procedure, and ensure free and fair election which is a hallmark of democracy, we direct the respondent No.2 to

redetermine the reservation of seats in the Wards of the Municipal Council in the light of the observations made by us in the judgment. This exercise shall be undertaken within a period of 10 days from today, which will leave sufficient time for the SEC to notify the election programme and complete the election process before 15/04/2021, by adhering to all the necessary stages as prescribed under the Goa Municipalities Election Rules, 1969.

BHARATI H. DANGRE,J.

(Per M. S. SONAK,J.)

32. I agree with the reasoning and the conclusions recorded by my Sister, Hon'ble Smt. Justice Bharati Dangre. This is only to supplement the judgment and order made by her.

33. In all these writ petitions the challenge is to the order dated 4th February 2021 issued by the Director of Municipal Administration/Urban Development notifying the reserved seats for women (SC, ST, and OBC) for elections/by-elections of 11 Municipal Councils in the State of Goa.

34. Most of these petitions were instituted on 11th February 2021 and circulated on 15th February 2021. On this date, the Division Bench of this Court comprising of Hon'ble Shri Justice T.V. Nalawade and Hon'ble Smt. Justice Bharati Dangre, issued a notice for final disposal returnable on 22nd February 2021. The learned counsel for the Petitioners submitted that this was on the understanding that up to 22nd February 2021, the Respondents will not declare the election schedule.

35. However, on 22nd February 2021 itself when the matters were to be taken up for final disposal, the State Election Commission (SEC) declared the election schedule. Mr. Joshi, learned counsel for the SEC agreed that this ought not to have been done. Mr. D. Pangam, learned Advocate General also submitted that the issuance of such election schedule will not be urged as a ground to deny any reliefs to the Petitioners if such reliefs are indeed found to be due. He, however, clarified that he would be submitting that this Court ought not to grant any reliefs to the Petitioners since, even on the date of the institution of the petitions, the elections to the Municipal Councils were quite imminent.

36. True to his word, the learned Advocate General did not urge that the Petitioners be denied any reliefs on account of the declaration of election schedule by the SEC on 22nd February 2021. However, relying on several decisions of the Hon'ble Supreme Court and this Court, including the decision in *Lakshmi Charan Sen and Ors vs A.K.M. Hassan Uzzaman and Ors.*¹, he submitted that the imminence of the electoral process is a factor that must guide and govern the passing of orders in the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone the process indefinitely.

37. The learned Advocate General at the very outset clarified that he was not objecting to the maintainability of any of the petitions but he contended that since the election process was imminent, even on the date the petitions were instituted, this Court, ought not to grant the Petitioners any reliefs which might result in postponing the election process indefinitely.

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38. In Writ Petition Nos.87 and 88 of 2021 which concern the Mormugao Municipal Council and the Mapusa Municipal Council, the first and foremost challenge is that the percentage of reservation provided for women in both these Municipal Councils is less than one-third of the total number of seats to be filled by direct election in every Municipality and this, they contend, is in direct breach of the provisions contained in Article 243T(3) of the Constitution and Section 9(1) of the Goa Municipalities Act, 1968 (the said Act).

39. There is no dispute and the record bears out that in Mormugao Municipal Council the total number of seats to be filled by direct election amounts to 25. Out of these, only 8 seats have been reserved for women. The reservation of only 8 seats out of 25 seats certainly amounts to reservation of less than one-third of the total number of seats to be filled by direct election to the Mormugao Municipal Council. Consequently, the impugned order dated 4th February 2021, to the extent it provides for reservation for women less than one-third of the total number of seats to be filled by direct election, is *ultra vires*, the constitutional mandate to be found in Article 243T(3) of the Constitution. So also the impugned order is in direct contravention of the provisions of Section 9(1) of the said

Act which also provides that every Council no less than (1/3) seats shall be reserved for women.

40. Article 243-T(3) of the Constitution reads as follows :

“(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.”

41. Similarly, the first proviso to Section 9(1) of the said Act reads as follows:-

“(1) in every Council, no less than (1/3) seats shall be reserved for women”.

42. The crucial expression used in Article 243-T(3) of the Constitution is *“not less than one-third”*. Similarly, the crucial expression used in the first proviso to Section 9(1) of the said Act is *“no less than (1/3) seats”*.

43. The aforesaid crucial expressions make it clear that while reservation in favour of women can exceed one-third, under no circumstances can the same be less than one-third of the total number of seats to be filled by direct election in every Municipality.

44. Therefore, in so far as the Mormugao Municipal Council in which the total number of seats to be filled by direct election are 25, the Director was both constitutionally as well as statutorily bound to reserve at least nine seats for women, which, he has admittedly failed to.

45. The expressions “ *not less than*” or “*no less than*” admit of no ambiguity whatsoever. The expression makes it clear that even a fraction cannot be ignored because ignoring a fraction would render reservation as less than one-third when both constitutional, as well as the statutory mandate, is that the reservation shall not be less than one-third.

46. In *Ashok Maniklal Harkut Vs Collector, Amravati and others*², the Full Bench of this Court, in the context of

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provisions of Section 55(1) and 55(2) of the Maharashtra Municipalities Act held that a valid no-confidence motion must be passed by not less than two-thirds of the total number of councilors was mandatory. The Full Bench held that the total number of votes must not be less than two-third though they may be more. The fraction cannot be ignored since if the fraction is ignored then the majority will be two-third of the councilors. Thus, where the total number of elected councilors at the time when the motion was moved 19, support of only 13 councilors, being less than two-third, was not sufficient to carry such a no-confidence motion.

47. In *Ganesh Sukhdeo Gurule v. Tahsildar Sinnar*³ the Hon'ble Supreme Court in the context of provisions contained in Section 35(3) of the Maharashtra Village Panchayats Act, 1959 held that in construing the expression “*not less than two-third of the total members present*” if the computation of a majority comes with a fraction of a vote then such fraction needs to be treated as one vote because votes cannot be expressed in a fraction. The principle that a figure less than 0.5 has to be ignored and a figure of more than 0.5

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has to be treated as one, is not applicable when the Legislature has consciously used the expression “*not less than two-third*”.

48. Applying the principles laid down by the Full Bench and the Hon’ble Supreme Court to the position of reservation in Mormugao Municipal Council, it will have to be held that the reservation of only eight seats out of a total number of 25 seats in favour of women is a reservation which is less than one-third the total number of seats to be filled by direct election to the Mormugao Municipal Council. Similarly, the reservation of only six seats from out of a total number of 20 seats to be filled by direct election to the Mapusa Municipal Council amounts to a reservation less than one-third of the total number of seats to be filled by direct election. The Director has acted in breach of both constitutional as well as statutory provisions in failing to provide reservation of not less than one-third of the total number of seats, in favour of women, and to that extent the impugned order dated 4th February 2021 is required to be quashed and set aside.

49. Mr. Joshi, learned counsel appearing for the SEC admitted that there has been constitutional infraction on the part of the Director, in failing to reserve not less than one-third of the total

number of seats in Mormugao and Mapusa Municipal Councils, in favour of women. He, however, on instructions stated that the SEC is not concerned with the issue of reservation and therefore, notwithstanding the constitutional or statutory infraction, the SEC is quite helpless and will have no choice but to proceed with the elections based on the impugned order dated 4th February 2021 howsoever defective such order may be.

50. At least we did not hear any arguments from the learned Advocate General that there was no constitutional or statutory infraction on the part of the Director in reserving less than one-third of the total number of seats in favour of women. However, the learned Advocate General did urge the following:-

(a) Relying on Note dated 4th February 2021, which explains the decision-making process leading to the issuance of the impugned order dated 4th February 2021 by the Director. He submitted that the understanding of the Director was that constitutional mandate or statutory mandate to provide for reservation of not less than one-third of the total number of seats in favour of the women can be achieved over three election terms. He submitted that there was nothing unreasonable in the understanding of the Director and therefore,

the decision of the Director may not be interfered with;

(b) that since the grounds of infraction of provisions of Article 243-T(3) of the Constitution and Section 9(1) of the said Act were not raised in the original petitions but were raised only by amending the petitions, such grounds must be ignored. He submitted that there are no sufficient pleadings in support of such grounds and therefore, no relief based on such pleadings may be granted to the Petitioners;

(c) Without prejudice he submitted that this was a case of a very slight infraction and now that the election process is imminent, the same, ought to be overlooked or condoned.

51. The “*understanding*” of the Director of the constitutional provisions in Article 243-T or statutory provisions in Section 9 of the said Act can not be the basis for sustaining the impugned order. The understanding of the Director is far from reasonable contrary to what was contended by the learned Advocate General. Neither the Constitution nor the said Act gives the Director three election terms i.e. 15 years to comply with the constitutional and statutory mandate of reserving not less than one-

third of the total number of seats to be filled by direct election in “*every municipality*”. Both constitutional provisions as also statutory provisions make it abundantly clear that for each term the Municipality or Municipal Council, must have at least one -third women councilors, for a Municipality or Council to be regarded as a validly constituted Municipality or Council.

52. This understanding or theory of complying with the constitutional or statutory mandate in three installments spread over 15 years is some unique device adopted by the Director in a futile attempt to justify the gross constitutional and statutory infraction. Such a justification finds no basis either in the Constitution or the said Act. Such a justification is neither legal nor reasonable. Based on such a justification, there is no question of sustaining the order dated 4th February 2021.

53. The Director in his affidavit filed in Writ Petition No.88 of 2021 has offered yet another justification for his failure to reserve not less than one-third of the seats in favour of women. This justification is to be found in paragraphs 31, 32, and 33 of his affidavit dated 22nd February 2021, and these paragraphs are reproduced verbatim for convenience of reference.

“31. I say that, in the instant case, total number of Ward for Mapusa Municipal Constituency are 20. The 1/3rd fraction of 20 Wards for each election term comes to 6.66% i.e. 6 seats. Whereas, the 1/3rd of 20 wards for one rotation i.e. three election terms comes to 19.99% i.e. 20 seats.

32. I say that, since the total seats of reservation cannot exceed its mandated percentage, as that disturbs the entire reservation pattern, it is therefore impossible to accept the contention of the Petitioner that out of 20 seats minimum 7 seats ought to have been reserved for Women during each election term.

33. I say that, by doing so, the total number of seats for Women will be 21 in one Rotation which will exceed and violate the mandate of 1/3rd reservation which is 20 seats.”

54. From the aforesaid, it is apparent that the Director carries the impression that both the Constitution as well as the said Act provide that the reservation in favour of women must not exceed one-third the total number of seats, when in fact, both the Constitution as well as the said Act provide exactly opposite. The Director seems to hold the impression that reserving seven seats out of a total of 20 seats in Mapusa Municipal Council will “*exceed and violate the mandate of 1/3rd reservation which is 20 seats*”. Such

understanding or impression of the Director flies in the face of both Constitutional as well as statutory mandate that not less than one-third of seats must be reserved in favour of the women. This means that there can be no violation of both Constitutional as well as statutory mandate if reservation exceeds one-third but there will be a violation of both Constitutional as well as statutory mandate if the reservation is less than one-third.

55. Since the impugned order dated 4th February 2021 is based upon such a gross misunderstanding of the provisions of the Constitution and the said Act, the same, will have to be quashed and set aside. Accordingly, the first contention of the learned Advocate General that the understanding of the Director being reasonable in support of the impugned order dated 4th February 2021 will have to be rejected. No understanding which results in doing what the Constitution specifically prohibits can be held as reasonable understanding. Any order based upon such understanding is therefore ultimately vulnerable and will have to be quashed and set aside.

56. Second contention of the learned Advocate General based upon any lack of pleadings also deserves no acceptance

whatsoever. In this case, the Petitioners have pleaded about the constitutional and statutory mandate and further pointed out how this mandate has been flouted by the Director. There is no dispute whatsoever on the factual aspects. The entire argument is based on the impugned order dated 4th February 2021 as well as the Note of the Director produced on record by him under cover of an affidavit. Therefore, this is certainly not a case where the relief can be denied to the Petitioners on the ground of the absence of pleadings or grounds. The fact that such a ground was introduced by the amendment is no reason whatsoever to ignore such ground or deny relief based on such a ground.

57. The contention based on the imminence of election cannot be accepted at least in the facts of the present case. Even the decision of *A.K.M. Hassan Uzzaman* (supra) relied upon by the learned Advocate General holds that High Court ought to be reluctant to do anything or direct anything to be done which will postpone the election process indefinitely or create a situation in which the Government of State going to carry on *in accordance with the provisions of the Constitution*. The learned Advocate General correctly pointed out that these observations ought to apply in the case of Municipal or Panchayat elections as well. The

observations would then refer to the Government of a Municipal Council in accordance with provisions of the Constitution.

58. If the Municipal Council is to be constituted based on the impugned order dated 4th February 2021 then, such a council would not be a council as contemplated by various provisions in Part IXA of the Constitution. The council which would have less than one-third of women, will not be a council constituted in terms of Part IXA of the Constitution or the provisions of Sections 9 and 10 of the said Act. Therefore, to permit the Constitution of a council contrary to the provisions of Part IXA of the Constitution or Sections 9 and 10 of the said Act would amount to permitting the Respondents to contravene the provisions of the Constitution as well as the said Act.

59. In the aforesaid context, we do not appreciate the helplessness expressed by the SEC, which is supposed to be an authority independent of the Government of Goa. The fortuitous circumstance that the SEC is also the Law Secretary, Government of Goa is not sufficient circumstance to express helplessness in the wake of an unconstitutional and *ultra vires* order by the Director of Municipal Administration/Urban Development. According to us, it

was the duty of the SEC to require the Director to immediately rectify the impugned order and to provide for reservation of less than one-third of the seats in favour of women, rather than to rush and issue election schedule.

60. Mr. Joshi referred to the facts set out in the case of *Dnyaneshwar Narso Naik Vs State of Goa*, Writ Petition No.179 of 2020, and connected matters disposed of by judgment and order dated 11th December 2020. He submitted that in the said decision, it is documented how the SEC addressed several letters to the Government requesting the issuance of delimitation and reservation notifications well in time so that election could be held within prescribed period and manner in which such letters were ignored by the Government. He submitted that even if the SEC were to write to the Director to rectify his order and the Director was to refuse to take cognizance of the SEC's letters, the SEC, being helpless could be left with no option but to proceed with the election process. We do not think that this is a correct understanding of the provisions contained in Article 243-ZA of the Constitution which vests the superintendence, direction, and control of the preparation of electoral rolls for, and the conduct of, all elections to Municipalities

in the State Election Commission as referred to in Article 243-K of the Constitution.

61. In *Dnyaneshwar Narso Naik* (supra) we were constrained to deprecate the non-cooperation on the part of the State Government as also the failure on the part of the SEC to assert its independence and authority, in the matter of discharging its constitutional functions. We had pointed out that in a democracy, the people's right to have an independent SEC to ensure free, fair, and timely elections can neither be frustrated by the non-cooperation of the Government and the failure on the part of the SEC to assert its independence.

62. In *Kishansing Tomar Vs Municipal Corporation of the City of Ahmedabad and others*⁴, the Hon'ble Supreme Court has made it clear that all the State Governments must recognize the significance of the State Election Commission which is a constitutional body, and need to abide by the directions of the State Election Commission in the same manner in which they follow the directions of the Election Commission of India during the election

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of Parliament and State Legislatures. In this sense, it has been clarified that the State Election Commissioner enjoys the same status as the Election Commissioner of India when it comes to the domain of election to the Panchayats and Municipal Council in the State. Therefore, it is not expected of the SEC to express such helplessness when faced with orders of a Director, which are *ex facie*, unconstitutional, and *ultra vires* the provisions of the said Act.

63. The contention that the writ Court ought not to interfere with when the elections are imminent cannot be sole ground to defend an indefensible order or a patent infraction of the constitutional or statutory mandate. In this case, the learned Advocate General, apart from contending that “*understanding*” of the Director was not unreasonable, did not urge even a single contention in defence of the Director's failure to comply with the constitutional mandate in Article 243-T(3) or Section 9(1) of the said Act. Normally, at least plausible defence is put forth and the contention is that the detailed adjudication may be postponed until the conclusion of the election process. In this case, however, the only contention was that this Court should adopt hands-off doctrine because the elections were imminent. The “*hands-off doctrine*” has

been evolved not to legalize or immunize patently unconstitutional orders or to enable the parties to create a situation *fait accompli*.

64. The second ground on which the Petitioners have attacked the impugned order dated 4th February 2021 is that the allotment of reserved seats is based on no predetermined policy and the Director, taking undue advantage of the absence of policy has chosen to make allotment without the application of mind and in an arbitrary, whimsical and capricious manner. The Petitioners have contended that the allotment ignores the mandate of the Constitution as well as the said Act in matters of rotation of reserved seats as well as statutory command that the Director must have regard to the concentration of population of SCs and STs in any particular wards.

65. According to us, there is much substance in the contentions of the Petitioners based on this ground as well. For example, the Municipal Council of Sanguem comprises 10 seats, out of which only three have been reserved for women. This is in direct breach of constitutional as well as statutory mandate providing that not less than one-third of the seats should be reserved in favour of the women. This means that at least four seats ought to have been

reserved in favour of women. Though this was not one of the grounds specifically raised in Writ Petition No.85 of 2021, the order dated 4th February 2021, will have to be set aside on this ground as well.

66. Section 10 of the said Act in terms provides that the Director shall, by a like order, specify the wards in which seats are reserved for SC, ST, or OBC “*having regard to the concentration of the population*” of those Castes or Tribes, or as the case may be, of those class, in any particular wards.

67. The aforesaid means that whilst making the reservation, the Director, is statutorily bound to have regard to the concentration of population of ST, SC, and OBC in any particular wards.

68. Now the Petitioner in Writ Petition No.85 of 2021 has pleaded that the population of ST in ward No.4 of Sanguem Municipal Council is around 230 to 235 out of the total number of 837 voters. So also the population of ST in ward No.10 is 206 out of a total population of 681 or thereabouts. These averments in

paragraphs 18 and 19 have not been denied by filing an affidavit. Even the learned Advocate General in the course of his arguments did not dispute this figure.

69. Significantly, there are pleadings in Writ Petition No.85 of 2021 that the population of ST in ward No.1 of Sanguem Municipal Council is only 1 (one).

70. Despite the aforesaid uncontested population figures, the Director, in this case, has chosen to reserve ward No.1 for ST thereby totally ignoring the mandate of Section 10(1) of the said Act that the Director shall have regard to the concentration of population of ST in any particular ward. There is no explanation as to why the ward No.1, which has only 1 (one) ST member corresponding to 0.23% of the population has been reserved in favour of ST and why the ward No.10, which has an ST population of almost 30% has been left unreserved even though, in the election held in 2015, the ward No.10 was an unreserved ward.

71. The learned Advocate General, however, contended that the norms of concentration of population are not to be found in the Constitution of India and therefore, the Director was not bound to

apply such norms whilst reserving seats. The learned Advocate General also submitted that the provisions of Section 10 are Directory when it comes to having regard to the concentration of the population. He submitted that at times absurd results would ensue if the norm of concentration of population is required to be adhered to. He submits that such norms are inconsistent with the norms of rotation of reserved seats.

72. According to us, even though there is no reference to the concentration of population norm for reservation of seats in particular wards provided in the Constitution, such requirement has been provided in Section 10(1) of the said Act of the Legislature of the State. The Director, who is an authority under the said Act, cannot refuse to apply such norms, which is statutorily prescribed. The Director, by ignoring such norms has acted arbitrarily and unreasonably. An absurd result has ensued on account of the Director ignoring these statutorily prescribed norms. The constituency which has more than 30% ST population has left unreserved and constituency which has only 1 (one) ST member corresponding to 0.23% ST population is reserved for ST. The impugned order dated 4th February 2021 to the extent it reserves

ward No.1 for ST, is vitiated by arbitrariness, unreasonableness, and non application of mind.

73. Significantly, the Director, has placed on record his Noting dated 4th February 2021, to explain his decision-making process. Now if this Note is perused then the Director had, in fact, proposed that ward No.1 be retained as a general ward or unreserved ward. However, while issuing the impugned order dated 4th February 2021, ward No.1 has been indicated as a ward reserved for ST. There is no explanation whatsoever about such a switch by filing an affidavit or otherwise. The learned Advocate General faintly suggested that there is an error in the Noting. According to us, the error is possibly in not reserving ward No.10 which has ST population of almost 30% has reserved for ST and there is no error in proposing to retain the ward No.1 as a general ward because it has a population of only 1(one) ST member corresponding to 0.23% of the entire population of the said ward. The impugned order dated 4th February 2021 deserves to be set aside on this ground as well.

74. In so far as Margao Municipal Council is concerned, the impugned order has flouted the principle of rotation of vacancy. The learned Advocate General did try to urge that the principle of

rotation is only Directory and he relied on two decisions of the High Court of Punjab and Haryana in support of this proposition. In the case of *Sat Pal Goyal Vs, UT of Chandigarh and others* in CWP No.21840 of 2016 decided on 15th December 2016, and *Inderjit Vs State of Punjab and another* in LPA No.1294 of 2010 decided on 15th February 2012.

75. According to us, neither of the decisions lay down that the provisions relating to rotation of vacancy are only directory and can be breached with impunity. All that the decisions lay down is that the principle of rotation need not be adhered to, with precision or mathematical exactitude. This is far from stating that the principle of rotation is only directory or that the principle of rotation can be ignored at the whim or caprice of the Director. The principle of rotation is provided both in the Constitution as well as under the said Act and though, it may not be possible to apply such principle with precision or mathematical exactitude, the Director, cannot ignore such principle with impunity.

76. The impugned order dated 4th February 2021 reserves ward Nos.4 and 7 in favour of STs, even though these very wards were reserved for STs in the year 2015. The principle of rotation would

require that these wards are no longer reserved for ST in the election to be held in 2021. In the Noting, the Director has, contrary to his plea in the case of Sanguem Municipal Council stated that such repetition is because of the concentration of STs population in the said two wards. However, the very same Director in his affidavit filed in Writ Petition No.91 of 2021 (concerning Margao Municipal Council) has, in paragraphs 7 and 8 stated the following:-

“7. I say that the constitutional provisions dealing with reservation of seats do not mandate that the reservation has to be done only of those wards where the population of the particular class is high. Even under Section 9, there is no such mandate. I say that the contention of the Petitioner that the reservation has to be based on the concentration of the population in that particular ward is misconceived. I say that the Petitioner has taken contradictory pleas, one that the reservation has to be based on concentration of population in the ward and the other that there has to be rotation.

8. I say that the reference in Section 10 that while reserving the seats, the Director shall have regard to the concentration of population of that category in any particular wards is tried to be interpreted by the Petitioner to mean that the reservation has to be done of only those constituencies where the concentration of population of ST category is high. I say that such

contention is without any merit. If the same is accepted, then the same will mean that certain constituencies will always be reserved if the population of that category in those constituencies is high and certain constituencies can never be reserved if the population of ST persons in those constituencies is not as high as the others or is low. I say that such contention draws no support either from the Constitution or the said Act.”

77. The aforesaid means that there is a total disconnect between the noting prepared and relied upon by the Director and his affidavit dated 23rd February 2021. The noting refers to the concentration of ST population whereas the affidavit in terms states that there is no mandate to reserve seats for SC or ST merely because the population of SC or ST in those particular wards is high. The Director has gone to the extent of stating that the Petitioners' contention draws no support either from the Constitution or the said Act. In the affidavit, there is no explanation why the rotation mandate has been openly flouted.

78. Based on the disconnect between the affidavit filed by the Director and his Noting, the impugned order in so far as it reserves the ward Nos.4 and 7 in favour of ST, ignoring the mandate

of rotation of reserved seats, will have to be set aside. Besides, the impugned notification, in so far as it concerns Margao Municipal Council will also have to be set aside on account of the constitutional and statutory infraction of reserving less than one-third seats in favour of women.

79. The Director after having admitted that there was no policy based on which the reservation has been made or rotation policy implemented, appears to have regarded the absence of such policy as a licence to make reservations based on his whims and caprices. Different yardsticks have been applied in respect of different Municipal Councils. There is no uniform policy even for the implementation of the rotation mandate in the same councils. The entire exercise of making reservations to no less than 11 councils was completed by the Director in a single day i.e. 4th February 2021 and even the impugned order was issued on the same date. At least *prima facie*, even the amended provisions of section 9(2)(bb) of the said Act in relation to 27% reservations for OBCs appear to have been completely overlooked. The Noting that is a precursor for the issuance of the impugned order dated 4th February 2021 and was prepared on 4th February 2021 itself in a tearing hurry and soon thereafter Law Secretary who is holding the post of

SEC issued the election schedule on 22nd February 2021 even though, these petitions had already been instituted and were posted for final disposal on 22nd February 2021. Based upon these artificially created events, the entire defence was to press forth the hands-off doctrine and overlook the gross illegalities and the constitutional and statutory infraction by the Director.

80. For all the above reasons I concur and join my Sister, Hon'ble Smt. Justice Bharati Dangre in allowing all the writ petitions except Writ Petition No. 515 of 2021 and in issuing the operational directions.

M.S. SONAK,J.

81. In the wake of the above reasoning, we pass the following order:-

- (a) Writ Petition No. 515 of 2021 (filing) is dismissed.
- (b) Writ Petition No.85 of 2021, 86 of 2021, 87/2021, 88/2021, 90/2021, 91/2021, 524/2021 (Filing) and 525/2021 (Filing) are hereby allowed. The impugned

order dated 04/02/2021 issued by the Director and ex-officio Additional Secretary, Municipal Administrator/ Urban Development, Goa in so far as it concerned the Municipal Council of Sanguem, Mormugao, Mapusa, Margao and Quepem is quashed and set aside.

(c) By a Writ of Mandamus, we direct the Director and ex-officio Additional Secretary, Municipal Administrator/ Urban Development, Goa to issue fresh Notification under sub-section 1 of Section 9 r/w. Sub-section 1 of Section 10 of the Goa Municipalities Act, 1968 within a period of 10 days from today, thereby ensuring inter alia, reservation for women of not less than on-third of the total number of seats reserved for direct elections to the Municipal Councils.

(d) While exercising the power afresh and rectifying the gross illegalities pointed out in our judgment and order, the Director shall give due weightage to our observations made therein.

(e) The State Election Commission of Goa is directed to expeditiously notify the election programme, on the order for reservation of seats in the Municipal Councils being issued by the Director, Respondent No.2 and the State Election Commission shall align the schedule of election in a manner, to ensure its completion by fixing up its various stages as per the Goa Municipalities (Election) Rules, 1969 and the culmination of the process on or before 15th April, 2021.

(f) No order as to costs.

BHARATI DANGRE,J.

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82. At this stage, the learned Advocate General seeks stay of the impugned judgment and order in order to enable him to test the correctness of the decision before the Hon'ble Supreme Court and also since the programme of election is already declared on 22nd February, 2021 and it has advanced to the stage of filing of the nomination.

We have considered the said prayer and we deem it expedient to reject it, for more than one reason.

83. We have, in our detailed judgment pronounced today, deliberated extensively on the constitutional infraction and also principle of rotation amounting to arbitrariness set out in the State legislation and noting the said infraction, we are constrained to quash and set aside the impugned notification dated 4th February, 2021 issued by the director i.e. Respondent no.2.

84. We have also clarified that by interfering at this stage, not accepting the argument of the learned advocate general that the elections are imminent, we have ensured that the election programme which would be notified after rectifying the order issued by the Director thereby prescribing the reservation in different wards of the Municipal Councils, it is done with utmost promptitude, so that the entire election process is completed on or before 15th April, 2021. At this stage we have to adhere to it since we have noted that the respective Municipal Councils' term had come to an end and it is under the control of the body of Administrators, and the State Election Commission had granted extensions on two occasions with the outer line stipulated to be 15th April, 2021. In such circumstances, we have in no way interfered with or protracted the election process notified by the Election Commission, but on noting the infraction of the constitutional provision and of rotation policy, we are advancing the process in accordance with the mandate of law of the election in the wake of decision in 'Mohinder Singh Gill'.

In fact grant of any stay at this stage, as prayed by the learned Advocate General, would further delay the process. In such

circumstances, we are not inclined to accept the request made by the learned Advocate General for grant of stay and reject the same.

BHARATI DANGRE, J.

ssm/mv/at*/msr/ev

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M.S. SONAK, J.