

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 191 OF 2021

MR. SARFRAJ HUDDAR,
Indian National, aged about
34 years, s/o. Gaibu Huddar,
r/o. H. No. 351, Shetye Waddo,
Duler, Mapusa - Goa.

... Petitioner

VERSUS

1. DIRECTOR - DEPARTMENT
OF URBAN DEVELOPMENT
(MUNICIPAL ADMINISTRATION),
Government of Goa,
Having office at 1st Floor,
Dempo Tower, Panaji - Goa.

2. THE GOA STATE ELECTION
COMMISSION, Through the
Commissioner, Having office at
Altinho, Panaji - Goa.

... Respondents

Mr. G. Panandikar, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General along with Ms. A. Kamat,
Additional Government Advocate for Resp.-State.

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

***Coram : DIPANKAR DATTA, CJ., &
M. S. SONAK, J.***

Date: 23rd March 2021.

ORAL ORDER: (Per M.S. Sonak, J.)

Heard Mr. G. Panandikar for the Petitioner, Mr. D. Pangam learned Advocate General who appears with Ms. A. Kamat, Additional Government Advocate for the State, and Mr. S. N. Joshi for the State Election Commission.

2. The challenge in this petition is to the notification dated 15.03.2021 issued by the Director and Ex-Officio Additional Secretary (Municipal Administration/Urban Development) under Sections 9 and 10 of the Goa Municipalities Act, 1968 (said Act) determining the seats to be reserved for Women, Scheduled Caste, Scheduled Tribe and Other Backward Classes in different wards of the municipal council only for the purpose of the ensuing municipal elections. In this petition, the challenge to this notification is restricted to the determination of reserved seats to the various wards of the Mapusa Municipal Council (MMC).

3. The petitioner has, in para 5 of the petition pleaded that for the elections held in the year 2015, immediately before the elections now proposed to be held, ward nos.2, 4, 5, 15, and 19 were reserved for the OBCs and in these elections ward nos.1, 6, 7, 10, 12 and 17 have been reserved for OBCs.

4. Mr. Panandikar, learned counsel for the petitioner contends that the reservations now made by the impugned notification dated 15.03.2021 are arbitrary and lack both logic. He submits that there is no policy formulated by the Director of Municipal Administration/Urban Development and therefore, reservations now made are manifestly arbitrary. He submits that the Director has failed to ascertain the concentration of the population of OBCs in the 20 wards of the MMC. He submits that no proper census or survey was undertaken to determine the population of OBCs in the MMC and therefore, the reservations made without adverting to these factors, are arbitrary, whimsical, and without any rational basis. He submits that there is no policy even when it comes to the rotation of reserved seats. This has again resulted in manifest arbitrariness. For all these reasons he submits that the impugned notification is liable to be set aside.

5. Mr. D. Pangam, learned Advocate General defends the impugned notification by pointing out that the earlier notification was struck down by this Court by its judgment and order dated 01.03.2021 in Writ Petition No.85/2021 and connected matters. He points out that this decision was subsequently upheld by the Hon'ble Supreme Court in Civil Appeal No.881/2021 and connected matters decided on 12.03.2021. He submits that the Director has now issued the impugned notification, in terms of the decisions of this Court

and the Hon'ble Supreme Court. He submits that by following the policy of rotation, most of the wards which were reserved for the year 2015, have now been excluded. He submits that the pleadings in the petition make out no case of any arbitrariness and therefore, this Court may not interfere with the impugned order in the facts and circumstances of the present case.

6. We have considered the rival contentions in the context of the pleadings in the petition and reservations made by the impugned notification. According to us, though it may be true that no policy as such may have been placed on record by the Director when it comes to rotation of reserved seats, no case of any manifest arbitrariness has been made out by the petitioner to warrant interference with the impugned notification.

7. The record indicates that for the 2015 elections, ward nos.2, 4, 5, 15, and 19 were reserved. This time, by following the policy of rotation, these wards have been de-reserved and instead, wards no.1, 6, 7, 12, and 17 have been reserved. The petitioner has not placed on record any material to indicate any breach of any statutory provision or the constitutional provisions when it comes to reservations. The petitioner has also not demonstrated how, if at all, the aspect of concentration of population has been disregarded by the Director. Based on the pleadings, therefore, we are not satisfied that any case of

manifest arbitrariness has been made out by the petitioner, in the present matter.

8. Earlier, this Court had struck down notifications reserving seats *inter alia* because the rotation policy was either not followed or followed without any application of mind to the relevant considerations. This decision was upheld by the Hon'ble Supreme Court. This time the Director has corrected the errors pointed out. As between one or more legitimate options available to the Director, if he chooses one of them, no question of arbitrariness is involved. The population concentration has not been ignored and at the same time reservations, to the extent possible, have not been repeated.

9. For all the aforesaid reasons, we are satisfied that no case has been made out to interfere with the impugned notification on the grounds urged in this petition. This petition is therefore liable to be dismissed and is hereby dismissed.

10. In the facts of the present case, however, there shall be no order as to costs.

M. S. SONAK, J.

CHIEF JUSTICE