

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 192 OF 2021

MR. RAMKRISHNA RAUT,
Indian National, aged about
52 years, s/o. Babaji Raut,
r/o. H. No. 153/B, Indira
Nagar, Karaswaddo, 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. M. Correia,
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. M. Correia, 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) reserving one seat i.e. Ward No.3 for the purpose of the ensuing municipal elections to the Mapusa Municipal Council (MMC).

3. The petitioner has pleaded that in terms of the 2011 census, which is the latest census, the total population of Scheduled Tribes in the MMC area was only 154 representing 0.3851% of the total population. Based on these statistics, Mr. Panandikar, the learned counsel for the petitioner contends that reservation of one seat for the ST category amounts to reservation of 0.077th of a seat (7.7/100th) of a seat in favour of the ST category. He submits that this is absurd, unconstitutional, and unreasonable since, according to him, such a minuscule fraction ought to have been ignored by the Director.

4. Mr. Panandikar submits that there is no requirement either

under Article 243T of the Constitution or Section 9 of the Goa Municipalities Act, 1968 (said Act) that at least one seat has to be reserved for ST, even though, the population of ST in the council may be minuscule. He submits that the expression “*as nearly as may be*” vests a discretion in the Director to determine whether or not reservation in favour of ST category was at all necessary. He submits that such discretion has been exercised arbitrarily and without application of mind by the Director while issuing the impugned notification. For this, Mr. Panandikar relies on ***R. C. Poudyal v. Union of India and others – 1994 Supp (1) SCC 324.***

5. Mr. Panandikar also submits that normally a fraction of less than half or 0.5 is to be ignored and a fraction above half or 0.5 can be rounded off to one. He submits that this is what is held by the Full Bench of this Court in ***Jayram Tolaji Shinde and another v. Secretary, Urban Development Department, Mumbai, and others – 2010 (3) Mh.L.J. 465.*** He submits that applying this principle the fraction of 0.077 was required to be ignored by the Director but the Director, by issuing the impugned notification has rounded off this fraction to one and thereby reserved one seat for the ST category, which is patently arbitrary and unconstitutional. He submits that this is an additional ground to set aside the impugned notification.

6. Mr. D. Pangam, learned Advocate General submits that even if

the statistics relied upon by the petitioner are to be accepted, there is no legal infirmity in the impugned notification reserving one seat for the ST category. He submits that the mandate of Article 243T is quite clear, that seats have to be reserved for SC and ST categories in every municipality. He submits that this is also import of the provisions in Section 9 of the said Act. He submits that only one seat has been reserved for the ST category and such reservation is quite consistent with the provisions of Article 243T of the Constitution and Section 9 of the said Act. He submits that this Court, as well as the Hon'ble Supreme Court, have already held that in such matters fractions cannot be ignored particularly because the said Act has made specific provisions, when, fractions were intended to be ignored. He submits that there is no such provision for ignoring fractions when it comes to Section 9 of the said Act. He, therefore, submits that this petition may be dismissed.

7. We have considered the rival contentions in the context of the material placed before us as also the provisions of the Constitution and the said Act.

8. There is no dispute that out of the 20 wards comprising MMC, only one ward i.e. Ward no.3 has been reserved for the ST category. Also, it is not even the case of the petitioner that there is no ST population whatsoever in the MMC area or that the Director

should have reserved some ward, other than Ward no.3 for ST category because the population of ST in such other ward is significantly higher than the population of ST in Ward no.3. The petitioner's only contention is that since the population of ST is hardly 0.3859% of the total population in the MMC area, the Director should have provided no reservation whatsoever for the ST category.

9. Now Article 243T of the Constitution provides that seats shall be reserved for SC and ST categories in every municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that municipality as the population of SC in the municipal area or of the ST in the municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a municipality.

10. To the same effect are the provisions in Section 9(2) of the said Act which provides that in every council, seats shall also be reserved for SC and ST categories and other backward classes.

11. Since, it is not even the case of the petitioner that there is no population of ST in the municipal area, we see no legal infirmity in the Director reserving one out of the 20 seats in MMC, for the ST

category. Such reservation aligns with the provisions of Article 243T of the Constitution and Section 9 of the said Act.

12. Mr. Panandikar however referred to Section 9(2)(b) of the said Act as amended in the year 2016 to submit that where the population of ST is quite small, there is no obligation on the Director to reserve any seat for the ST category.

13. Section 9(2)(b) of the said Act, as amended reads as follows:-

“(b) the number of seats, if any, to be reserved for the Scheduled Castes or Scheduled Tribes so that such number shall bear, as nearly as may be, the same proportion to the number of elected Councillors as the population of the Scheduled Castes or of the Scheduled Tribes in the municipal area bears to the total population of that area and not less than one-third of such seats shall be reserved for women and such seats shall be allotted by rotation to different wards in the Council.”

14. There is nothing in the aforesaid provision which supports the proposition put forth by Mr. Panandikar. The aforesaid provision, only provides that the number of seats, if any, to be reserved for SC and ST categories must bear, as nearly as may be, the same proportion of the number of elected councilors as the population of SC and STs in the municipal area bears to the total population of that area. Based upon this provision, therefore, it cannot be said that any fraction could have been ignored by the Director or that the Director

has acted arbitrarily in reserving one seat out of the 20 seats in favour of the ST category.

15. Although, it is true that both Article 243T of the Constitution and Section 9(2)(b) of the said Act uses the expression “*as nearly as may be*”, this is only to indicate that there need not be any mathematical precision in such matters but by and large, the population figures of SC and ST categories must be taken into account for determining the number of seats to be reserved for these categories.

16. In *R. C. Poudyal (supra)* relied upon by the learned counsel for the petitioner the Hon'ble Supreme Court has explained that the words “*as nearly as may be*” indicated that even in the matter of reservation of seats for SC and ST categories it would be permissible to have deviation to some extent from the requirement that the number of seats reserved for SC and ST in the Legislative Assembly of any State shall bear the same proportion to the total number of seats as the population of the SC or the ST in the State in respect of which seats are so reserved, bears to the total population of the State. The only limitation on such deviation is that it must not be to such an extent as to result in tilting the balance in favour of the SC or the ST for whom the seats are reserved and thereby convert a minority into a majority. This would adversely affect the democratic

functioning of the legislature in the State.

17. As noted earlier, in the present case, only one seat out of the 20 seats at the MMC, has been reserved for ST. Therefore, there is no issue of converting a minority into a majority and thereby adversely affecting the democratic functioning of the MMC. Therefore, *R. C. Poudyal (supra)* does not support the proposition advanced by Mr. Panandikar in support of the petition.

18. In *Ronaldo Fernandes v. State of Goa and others – Writ Petition No.85/2021 and connected matters decided on 01.03.2021*, the Division Bench of this Court, relying on the Full Bench in *Ashok Maniklal Harkut v. Collector, Amravati and others – 1988 Mh.L.J. 378* and the decision of the Hon'ble Supreme Court in *Ganesh Sukdev Gurule v. Tahsildar Sinnar and others – (2019) 3 SCC 211*, has held that there is no question of ignoring fractions, particularly when the statute in question has clearly provided where and under what circumstances fractions can be ignored or rounded off.

19. The decision in *Ronaldo Fernandes (supra)* and connected matters was upheld by the Hon'ble Supreme Court in Civil Appeal No.881/2021 and connected appeals on 12.03.2021. The Hon'ble Supreme Court also upheld the contention of Mr. Ninad Laud, the

learned counsel appearing on behalf of the intervenors that there were several provisions in the said Act which specifically provided when fractions were to be ignored or taken into account. He had submitted that such a provision for ignoring of a fraction is conspicuous by its absence in Sections 9 and 10 of the said Act and therefore, the constitutional mandate that is contained in Article 243T of the Constitution of India was required to be followed.

20. The ruling in *Jayram Shinde (supra)* does not lay down some blanket proposition that fractions of less than 0.5 have to be invariably ignored or that fractions above 0.5 have to be invariably rounded off to one. The Full Bench has held that the issue of ignoring a fraction or rounding off a fraction will have to be decided, having regard to the principle of “*relative strength*” as well as the expression “*as nearly as may be*” appearing in Section 31A of the Bombay Provincial Municipal Corporation Act, 1949. The Full Bench was not even remotely concerned with the issue of interpretation of the provisions of Article 243T of the Constitution or the provisions similar to those found in Sections 9 and 10 of the said Act with which we are presently concerned.

21. Having regard to the provisions of Article 243T of the Constitution and Sections 9 and 10 of the said Act, we do not think that the Director has committed any error in reserving one seat out of

the total of 20 seats at MMC in favour of ST category. The circumstance that the population of ST in the MMC area is quite small, does not mean that they are not entitled to reservation of even one seat so that their interests are adequately represented in the governance of the MMC. This is therefore not a case of manifest arbitrariness or non-application of mind as contended by the petitioner.

22. 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.

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

M. S. SONAK, J.

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CHIEF JUSTICE