

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Appellate Side)

M.A.T 364 of 2020

With

I.A. CAN 1 of 2020 (Old CAN 2425 of 2020)

I.A. CAN 2 of 2022

The West Bengal State Election Commission

Vs.

Arup Dey & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Kausik Chanda

For the Appellant	: Mr. Jayanta Kr. Mitra, Sr. Adv. Mr. Jishnu Saha, Sr. Adv. Mr. Sonal Sinha, Adv. Mr. Avishek Prasad, Adv.
For the Respondent No.1/ Writ petitioner	: Mr. Bikash Ranjan Bhattacharyya, Sr. Adv. Mr. Anindya Lahiri, Adv. Mr. Samrat Dey Paul, Adv.
For the State	: Mr. S. N. Mukherjee, Ld. AG. Mr. Anirban Roy, Ld. GP. Md. T. M. Siddiqui, Adv. Mr. Debasis Ghosh, Adv.
Heard On	: 31.01.2022, 11.02.2022 & 16.02.2022
CAV On	: 16.02.2022
Judgment On	: 23.02.2022

Arijit Banerjee, J.:

1. The issue involved in this matter pertains to the 2020 Municipal General Election in South Dumdum Municipality which is scheduled to be held sometime later this month. Ward no. 29 in South Dum Dum Municipality has been reserved for general category woman candidate. It is not in dispute that the same Ward was reserved for women in the last municipal election also which was held in 2015. The contention of the writ petitioner before the Learned Single Judge was that there cannot be reservation of a particular constituency for women for two consecutive terms. Reservation, if any, must be by rotation. The case of the writ petitioner is summarised in Paragraph 23 of the writ petition which reads as follows:-

“The petitioner states that the Ward no. 29 was reserved for general category woman candidate for the 2015 Municipal Election. Section 29 Sub-Section (3) of the West Bengal Municipal Act, 1994, inter Alia specifies that not less than one-third of the total number of seats will be reserved for woman, “and such seats may be allotted by rotation to different constituencies of that Municipality by the Commission.” This being the substantive section purports and intends that the same Ward should not be reserved for two consecutive terms for woman candidate. If the same Ward of the Municipality is reserved for woman for terms the consecutive intention of the legislature including “by rotation” in substantive the statute will be lost and not achieved. Therefore, by

reserving the Ward No. 29 for general woman category candidates for consecutive terms would be contrary to Section 29(3) of the West Bengal Municipal Act, 1994, and as such should be de-reserved so that the petitioner, being a general category male candidate may contest the ensuing Municipal Election from Ward no. 29.”

2. After recording the arguments for the respective parties, the Learned Single Judge concluded as follows:-

“Petitioner’s challenge is that reservation for women has to be given by rotation. Ward no. 29 was reserved for women on elections held in year 2015. It is again being reserved for women. The basis of reservations for both, the elections held and to be held, is population figures from Census, 2011. There has been no change in number of seats nor number of constituencies. As such, the working of the mechanism provided by the rules, it not allowing for deviation from the roster provided in the Second Schedule, if correctly applied, cannot yield application of different continuous seat serial numbers in the same Municipality on the same number of seats and constituencies, to same Ward in consecutive second term election. It appears, the Commission has proceeded erroneously. More so, because Court understands, reservation for women in elections is to be 1/3rd of all seats taken together. The Second Schedule makes it clear that it provides for manner of reservation going on total number of seats, from which reservation shall be made on continuous seat serial numbers, as

to be applied to Scheduled Castes, Scheduled Tribes and general category, for reserving seats for women by rotation.

The challenge succeeds. Order dated 10th February, 2020 is set aside and quashed. The Commission will forthwith work out the reservation and issue draft by order and thereupon final order.”

3. The West Bengal State Election Commission has assailed the aforesaid order in this appeal.

4. Appearing in support of the appeal, Mr. J. K. Mitra, Learned Senior Advocate, drew our attention to Article 243-T of the Constitution of India which provides for reservation of seats for Scheduled Caste, Scheduled Tribes and women in a Municipality. Effect has been given to this Article by Section 29 of the West Bengal Municipal Elections Act, 1994. The relevant sub-sections of Section 29 provides as follows:-

“(1) If any Municipal Electoral Registration Officer, Assistant Municipal Electoral Registration Officer or other person required by or under this Act to perform any official duty in connection with the preparation, revision or correction of an electoral roll or inclusion or exclusion of any entry in or from such electoral roll is, without reasonable cause, guilty of any act or commission in breach of such official duty, he shall be punishable with fine which may extend to five hundred rupees.

(2) No suit or other legal proceeding shall lie against any such officer or other person for damages in respect of any such act or omission as aforesaid.

(3) No Court shall take cognizance of any offence punishable under sub-section (1) unless there is a complaint made by an order of, or under the authority from, the Commission.”

5. Mr. Mitra submitted that the reservation for Schedule Castes and Schedule Tribes as well as general category women has to be in the manner as may be prescribed. He said that the manner has been prescribed in the West Bengal Municipal Elections (Reservation of Seats) Rules, 1994 (in short ‘the Rules’). He said that the Election Commission has merely applied the formula prescribed in the Rules and Schedules thereto. Applying such formula, Ward no. 29 has fallen for reservation for women. The Election Commission has no discretion in the matter. It merely followed the prescribed manner for reservation.

6. In order to demonstrate that the Election Commission has merely applied the statutory formula, Mr. Mitra took us through a report in the form of an affidavit filed by the General Secretary of the State Election Commission affirmed on an unspecified day of March, 2021. The report is comprehensive and it would be best if we reproduce the relevant portion of such report:-

“(A) In the order of the West Bengal State Election Commission issued vide no. 1094-SEC/1E-92/2018 (Pt.-I) dated 24.12.2019, schedule of publication of the draft of the order under Rule 3 of the West Bengal Municipal election (Reservation of Seats) Rules, 1994 (henceforth referred to as the said Rules) is mentioned as follows:

Sl. No.	Activity	Timeline
1.	Date for publication of the draft of the Order under Rule 3 of the said Rule in Form - A	17 th January, 2020
2.	Period for submission of claims and objections by any person affected, if any, against the draft publication	From 17.01.2020 to 30.01.2020
3.	Date for publication of the order under Rule 3 of the said rules in Form B	10 th February, 2020

(B) In the said order, it has further been communicated that

- (i) The roster for the 2nd term of elections has to be followed for determining the reservation of seats in the ensuing election to South Dum Dum Municipality.
- (ii) The Schedule Caste/ Scheduled Tribe population or the total population in the Municipal body shall be determined on the basis of Census, 2011 of which relevant figures have published.

(C) Now, in order to publish the draft order of reservation of seats in Form-A under Rule 3 of the said Rules, the following census data is being followed for the reservation of seats:

Population data as per Census, 2011	
Total Population	4,03,316
Total ST Population	3812
% of ST Population	0.95
Total SC Population	42,718
% of SC Population	10.59

(D)Ward wise figures of total population and that of SC/ST
are as follows:

Table -1

CENSUS POPULATION DATA, 2011 of SOUTH DUM DUM MUNICIPALITY (WARD WISE)					
Ward No.	Population	Total SC Population	% of SC Population	Total ST population	% of ST population
1.	14632	6103	41.71	238	1.63
2.	11882	3697	31.11	99	0.83
3.	14369	5476	38.11	59	0.41
4.	9386	1348	14.36	182	1.94
5.	13013	1658	12.74	117	0.90
6.	11961	2747	22.97	169	1.41
7.	9757	924	9.47	71	0.73
8.	11207	787	7.02	95	0.85
9.	10691	1092	10.21	193	1.81
10.	12842	2066	16.09	61	0.48
11.	16466	2079	12.63	279	1.69
12.	11528	1068	13.95	151	1.31
13.	8804	521	5.92	33	0.37
14.	9367	482	5.15	68	0.73
15.	5821	149	2.56	18	0.31
16.	1667	39	0.84	8	0.17
17.	13753	608	4.48	32	0.34
18.	9595	298	3.11	40	0.42
19.	11425	565	4.95	51	0.45
20.	11402	574	5.03	73	0.64
21.	12158	730	6.00	18	0.15
22.	12232	258	2.11	967	7.91
23.	10340	568	5.49	18	0.17
24.	8364	188	2.25	29	0.35

25.	7826	357	4.56	245	3.13
26.	8078	477	5.90	24	0.30
27.	14489	1729	11.93	49	0.34
28.	10439	696	6.67	75	0.72
29.	19826	137	0.69	41	0.21
30.	13626	80	0.59	11	0.08
31.	13704	904	6.60	175	1.28
32.	10701	2285	21.35	66	0.62
33.	15530	277	1.78	25	0.16
34.	10564	356	3.37	19	0.18
35.	13051	855	6.55	13	0.10
Total	403316	42718	10.59	3812	0.95

(E) Reservation of Seats for Scheduled Tribes:

In terms of Rule 3(1)(a)(iii) of the said Rules (Page No. 60 of Municipal Election Manual 2019 (hereinafter referred to as the Manual), ST population shall not be taken into account for the purpose of reservation, since ST population in the Municipality is less than 1 %.

(F) Reservation of Seats for Scheduled Caste:

As per Rule 3(1)(a) of the said Rules (Page No. 60 of the Manual), the reserved seats shall bear the same proportion to the number of the members to be elected to the Municipality as the population of the Scheduled Caste, or the Schedule Tribes as the case may be, in the Municipal area bears to the total population of the Municipality. Thus the number of seats reserved for SC will be calculated in the following manner:-

- (i) Percentage of the SC population in South Dum Dum Municipality 10.59% and,
- (ii) Total number of constituencies i.e. Wards in South Dum Dum Municipality = 35
- (iii) Hence, total number of SC seats to be reserved = $35 \times 10.59/100 = 3.7$ i.e., 4 (being more than 3.5)
- (iv) As per principle as laid down in Rule 3(2)(a) of the said Rules (page no. 62 of the Manual), seats/constituencies having SC population not less than half of the total SC percentage shall only be considered for SC reservation.
- (v) Therefore, in the instant case, the Wards having SC percentage more than or equal to 5.3 ($10.59/2 = 5.29 = 5.3$ (rounded off)) falls into the zone of consideration for SC reservation.
- (vi) In terms of Rule 3 (3)(a) of the said Rules (Page No. 65 of the Manual), the constituencies available for reservation by rotation is to be arranged in descending order of the percentage of the Scheduled Caste population, i.e., constituency having the highest percentage shall come at the top of the list.
- (vii) Now the roster for the 2nd term of First Schedule for reservation among 4 seats (page No. 70 of the Manual) of General Election (i.e roster nos. 2,5,8,11) shall have to be applied for reserving seats for

Scheduled Caste. Details are given below in Table 2
below:

Table- 2

Ward No.	Population	Total SC Population	% of SC population	Additional Continuous SL. No.	2 nd Term Status	1 st Term status	Remarks
1	14632	6103	41.71	1		SC	In Zone of Consideration>+5.3
3	14369	5476	38.11	2	SC		
2	11882	3697	31.11	3			
6	11961	2747	22.97	4		SC	
32	10701	2285	21.35	5	SC		
10	12842	2066	16.09	6			
4	9386	1348	14.36	7		SC	
12	11528	1608	13.95	8	SC		
5	13013	1658	12.74	9			
11	16466	2079	12.63	10		SC	
27	14489	1729	11.93	11	SC		
9	10691	1092	10.21	12			
7	9757	924	9.47	13			
8	11207	787	7.02	14			
28	10439	696	6.67	15			
31	13704	904	6.60	16			
35	13051	855	6.55	17			
21	12158	730	6.00	18			
13	8804	521	5.92	19			
26	8078	477	5.90	20			
23	10340	586	5.45	21			
14	9367	482	5.15	NOT IN ZONE OF CONSIDERATION (being less than 5.3%)			
20	11402	574	5.03				
19	11425	565	4.97				
25	7826	357	4.56				

17	13573	608	4.48		
34	10564	356	3.37		
18	9595	298	3.11		
15	5821	149	2.56		
24	8364	188	2.25		
22	12232	258	2.11		
33	15530	277	1.78		
16	4667	39	0.84		
29	19826	137	0.69		
30	13626	80	0.59		

(viii) Thus, the Ward numbers 3,32,12 & 27 (against additional continuous serial nos. 2,5,8,11) shall be reserved for Scheduled Caste.

(G) Therefore, in the instant case, the SC/ST reservation position out of 35 Wards are identified as follows:

Table -3

Total number of Wards: 35, SC seats -4, ST Seats -Nil

Ward no	Reserved for SC	Reserved for ST
3	SC	-
12	SC	-
27	SC	-
32	SC	-

(H) To reserve seats for women among those which have been reserved for SC/ST, procedure to be followed is as Per Rule 3(1)(b) of the said Rules (Page no. 61 of the Manual). For this SC/ST reserved seats are to be taken into account together as

per Rule 3(1)(b) proviso of the said Rules. Not less than one third of these seats are to be taken collectively for reservation of SC/ST Women. (vide Rule 3(1)(b)(i) & 3(1A) (i) of the said Rules, Page no. 61 of the Manual). In the instant case, the number of such seats is 4 (vide Table – 3 above).

- (i) Therefore, the number of seats to be reserved as SC/ST women is $4/3 + 1.33$, i.e., 2 (Since not less than $1/3^{\text{rd}}$ is to be reserved hence has to be more than 1.33)
- (ii) Now, these Wards are to be arranged in ascending order with the Ward having lowest Ward number on the top of the list and they are to be assigned an additional set of continuous serial numbers so that reservation may be made to match such continuous Serial numbers with identical serial numbers in the roster (Rule 3(1A) (iii) of the said Rules, Page no. 62 of the Manual).

Table - 4

Ward No.	Category	Sl. No. /Roster No.
3	SC	1
12	SC	2
27	SC	3
32	SC	4

- (iii) Now, the table containing roster at the Second Schedule (Page No. 71 of the Manual) of the said Rule

is to be consulted. The relevant cell of Second Schedule will be that for 2nd term and among four seats. Thus, serial nos. 2 & 1 i.e. Ward nos. 3 & 12 are selected for SC (Woman). Details of SC reservation including women reservation thus arrived are given bellow in Table -5:

Table- 5

Ward No.	Reservation Status
3	SC(W)
12	SC(W)
27	SC
32	SC

(I) Now, the process of reservation of General (Women) is to be taken up.

(i) The Total number of seats to be reserved for women is not less than one third of total number of Wards (vide Rule 3(1)(b) of the said Rules on Page No. 61 of the Manual). In the instant case, there are 35 Wards. Therefore, total no. of seats to be reserved for Women are $35/3 = 11.66$, i.e., 12 (again more than $1/3^{\text{rd}}$ is to be taken)

(ii) Two seats have already been reserved for SC (Woman), therefore, number of seats to be reserved for General (woman) = $(12-2)$, i.e. 10 (vide Rule 3(1A) (ii) of the said Rules, Page No. 62 of the Manual)

(iii) Now, the seats to be taken up for consideration of reservation of woman (General) will be those which are not reserved as SC/ST. These Wards are to be arranged in ascending order with the Ward having lowest number on the top of the list and they will have to be assigned an additional set of continuous Serial Numbers so that reservation may be made to match such continuous serial Numbers with identical serial numbers in the roster (vide Rule 3(1A) (iii) of the said Rules, Page No. 62 of the Manual).

Ward No.	Sl. No. Roster No.	Reservation Status
1	1	-
2	2	Woman (General)
4	3	-
5	4	-
6	5	Woman (General)
7	6	-
8	7	-
9	8	-
10	9	-
11	10	-
13	11	Woman (General)
14	12	-
15	13	-
16	14	Woman (General)
17	15	-
18	16	-
19	17	Woman (General)
20	18	-

21	19	-
22	20	Woman (General)
23	21	-
24	22	-
25	23	Woman (General)
26	24	-
28	25	-
29	26	Woman (General)
30	27	-
31	28	-
33	29	Woman (General)
34	30	-
35	31	-

(iv) Thus, Ward numbers 2,6,9,13,16,19,22,25,29 & 33
shall be reserved as Woman (General).”

7. Learned Senior Counsel submitted that though Ward nos. 2 and 29 were also reserved for women in the previous election, there is no provision to exclude the seats in the present election on the ground that they were previously reserved for women.

8. Appearing for the State, Learned Advocate General supported the State Election Commission. He submitted that the Rules prescribe the manner in which reservation has to be made and the same have been scrupulously adhered to. If the same has resulted in reservation of a constituency for women which in the earlier election also had been reserved for women, the same cannot be helped. The rotation is determined by the Election Commission by applying statutory formula. The Election

Commission is an expert body and the courts would be slow to interfere with its decision.

9. Appearing for the writ petitioner / Respondent no. 1, Mr. Anindya Lahiri, Learned Advocate, led by Mr. Bikash Ranjan Bhattacharyya, Learned Senior Advocate, submitted that the Commission has erred in applying sub-rule 1A under rule 3 of the 1994 Rules in deciding which constituencies are to be reserved for women. The Rule that should have been applied is sub-rule 3 under rule 3. Rule 3 in so far as the same is relevant is reproduced hereunder :-

“(1) The prescribed authority shall, by an order in Form B after previous publication in Form A, determine - (a) the number of the Scheduled Castes and the Schedules Tribes members to be elected from among the members determined under the Howrah Municipal Corporation Act, 1980 (West Ben. Act LVIII of 1980), the Calcutta Municipal Corporation Act, 1980 (West Ben. Act LIX of 1980), [the West Bengal Municipal Corporation Act, 2006 (West Ben. Act XXXIX of 2006)], and the West Bengal Municipal Act, 1993 (West Ben. Act XXII of 1993), which shall bear, as nearly as may be, the same proportion to the number of the members to be elected to the Municipality as the population of the Schedules Castes, or the Scheduled Tribes as the case may be, in the Municipal area bears to the total population of the Municipality:

Provided that-

- (i) The number of the Schedules Castes or the Schedules Tribes or the total population in a Municipality shall be

determined on the basis of the last preceding census of which the relevant figures have been published;

- (ii) When the census figures are not available for any area of a Municipality, the prescribed authority shall, subject to such order of the Commission as may be made in this behalf, determine the number of the Schedules Castes or the Scheduled Tribes or the total population on the basis of any other authenticated record maintained by any office or organisation of any department of the State Government or, where no such record is available, on the basis of a local enquiry, which may include house to house enumeration, caused by it for the purpose as aforesaid after consulting, where necessary, any portion of the census report, electoral roll of the West Bengal Legislative Assembly or any other authenticated record that may be of assistance;
- (iii) When it is ascertained from the available records that the population of the Schedules Castes or the Scheduled Tribes, as the case may be, is less than one per cent of the total population in a Municipality, such population of the Schedules Castes or the Scheduled Tribes in respect of such Municipality shall not be taken into account for the purpose of this sub-rule:

Provided that where the percentage of population of such Scheduled Castes or the Scheduled Tribes is one per cent or above but the number of seats in proportion to the total seats in

Municipality becomes less than one, the matter shall be forthwith brought to the notice of the Commission who shall issue instruction in such case.

- (iv) The prescribed authority shall, by an order in writing, record, before publication of the draft of the order in Form A the procedure adopted, the records and documents relied upon and the findings made for the purpose of determination of the number of the Scheduled Castes and the Scheduled Tribes members.

Explanation I. - An authenticated record maintained by any department shall be a record authenticated by the senior officer of the department posted in any office or organisation under the department located in the district.

Explanation II.- For the purpose of determination of the number of seats to be reserved under this rule all figures for calculation shall be taken up to first place of decimal raising the figure by one when the digit in the second place of decimal is not less than five and, for final stage of calculation for arriving at the number of seats to be reserved, the whole number obtained shall be raised by one if the digit at the first place of decimal is not less than five while ignoring any digit below five at the first place of decimal;

- (b) the number of women members to be elected so as to constitute-

(i) not less than one-third of the Scheduled Castes and the Scheduled Tribes members determined under clause (a);

(ii) not less than one-third of the total number of members to be elected to the Municipality including the number determined under sub-clause (i) of this clause, and then declare the number of women members for constituencies not reserved under clause (a):

Provided that the total number of the Scheduled Castes and the Schedule tribes members determined under Clause (a) shall be taken into account while determining the total number of women members among them.

[1A Identification and declaration of seats to be reserved for women under sub-section (2) and sub-section (3) of section 29 shall be made separately in accordance with the roster as specified in the Second Schedule in the manner as follows:-

(i) not less than one-third seats from amongst the seats reserved for the Schedule Castes and the Scheduled Tribes taken up collectively shall be declared reserved for women belonging to Scheduled Castes or the Scheduled Tribes, as the case may be;

(ii) the number of seats declared under clause (i) shall be taken apart from the total number of seats to be reserved for women under sub - rule (1) and the seats matching the resultant number shall be identified and

declared for reservation for women from amongst the seats not reserved under sub-section (1) of Section 29; and (iii) for the purpose of reservation of seats in accordance with the roster as specified in the Second Schedule, all the seats available for reservation shall be arranged in the ascending order of their assigned Ward number with the Ward having lowest number on the top of the list and an additional set of continuous serial numbers shall be given to them so that reservation may be made to match such continuous serial numbers with identical serial numbers in the roster’.

(2) The prescribed authority shall, by an order in Form B after previous publication in Form A, declared –

(a) such member of constituencies to be reserved by rotation for the Scheduled Castes or the Scheduled tribes from amongst the constituencies, each constituency having such population of the Scheduled castes or the Scheduled Tribes as bears to the total population in that constituency not less than half of the proportion, as may be determined under clause (a) of sub-rule (1);

Provided that-

(i) The proportion of the population of the Scheduled Castes or the Scheduled Tribes as aforesaid shall be determined on the basis of the last preceding census of which the relevant figures have been published;

- (ii) When the census figures are not available for any constituency or for any portion of any constituency, the prescribed authority shall, subject to such order of the Commission as may be made in this behalf, determine the proportion which the population of the Scheduled Castes or the Scheduled Tribes bears to the total population on the basis of any other authenticated record maintained by any office or organisation of any department of the State Government or, where no such record is available, on the basis of a local enquiry, which may include house to house enumeration, caused by it for the purpose after consulting, where necessary, any portion of the census report, electoral roll of the West Bengal Legislative Assembly or any other authenticated record of any other department of the State Government that may be of assistance;
- (iii) the constituencies available for reservation by rotation shall be arranged in the ascending order of the serial numbers of such constituencies and formed into two groups having all the odd numbers of the constituencies in the first group and all the even numbers of the constituencies in the second group; in case the constituencies available comprise only odd or only even numbers, there shall be formed a single group and, in

every such case, the group shall be formed maintaining the ascending order of the serial numbers;

- (iv) for the first term of election among every three consecutive terms, constituencies shall be reserved commencing from the first group and then from the second group, if necessary, or from the single group, as the case may be, beginning in any such case from the lowest serial number in order to reach the number determined under clause (a) of sub-rule (1);
- (v) for the second and the third term of election, the same procedure shall be followed except that reservation shall be made after excluding the constituencies reserved in earlier term or terms of election and, in the event of the shortfall of the required number of constituencies, constituencies beginning from the lowest serial number of the group shall be reserved, notwithstanding that such constituencies were reserved in any earlier term;
- (vi) if, following the principle of rotation, any constituency is selected in any term of election for reservation for both the Scheduled castes and Scheduled Tribes, preference shall be given to the reservation for the Scheduled Tribes and, thereafter, reservation for the Scheduled Castes shall be made of the constituency coming next in order;
- (vii) if the number of constituencies determined for reservation under this clause for the Scheduled Castes or the

Scheduled Tribes is less than the number of seats for the Scheduled Castes or the Scheduled Tribes as the case may be, as determined under clause (a) of sub-rule (1), the Commission may, by an order, determine the constituencies to be reserved for the Scheduled Castes or the Scheduled Tribes, as the case may be, taking into consideration the concentration of population of the Scheduled Castes or the Scheduled Tribes in the remaining constituencies;

(viii) the prescribed authority shall, by an order in writing, record, before the publication of the draft of the order in Form A the procedure adopted, the records and documents relied upon and the findings made for the purpose of declaration of the constituencies reserved for the Scheduled Castes or the Scheduled Tribes;

(b) such number of constituencies reserved for women as is equal to the number of members determined under clause (b) of sub-rule (1):

Provided that such declaration of constituencies shall be made separately in respect of the women to be elected as determined under sub-clause (i), and sub-clause (ii), of clause (b) of sub-rule (1):

Provided further that such declaration of constituencies shall be made in accordance with the roster as specified in the [Second Schedule]:

Provided also that in case the number of constituency determined under sub-clause (i), or sub-clause (ii), of clause (b) of sub-rule (1) is one only, that constituency shall be reserved for women for the first term of election and there shall be no reservation for the second and the third term of election:

[Provided also that reservation of seats for women from the first term under sub-rule (3) shall start from the first term mentioned in the Second Schedule.]

[(3) Notwithstanding anything contained in sub-rule (2), in the case of the Municipalities where the first municipal general election shall be held after bringing this sub-rule into force, and where municipal general elections have been held after making reservation of seats for the Scheduled Castes, Scheduled Tribes and women as per the provisions of sub-rule (2) of this rule and three consecutive terms have been completed, in the next term, succeeding the third term of the said three consecutive terms, for reservation of seats for Scheduled Castes, Scheduled Tribes and women the procedure as enumerated in sub-rule (1) and sub-rule (2) shall be followed excepting the procedures laid down in proviso (iii), (iv), (v) and (Vi) of sub-rule (2), and for the procedures enumerated in proviso (iii), (iv), (v) and (vi) of sub-rule (2), the following procedure shall be followed in these cases:

(a) after the percentage of the Scheduled Castes or the Scheduled Tribes population in the total population is

determined and the constituencies eligible for reservation are identified, two separate lists, one for the Scheduled Castes and the other for the Scheduled Tribes shall be prepared in the descending order of the percentage of the Scheduled castes or the Scheduled Tribes population, constituency having the highest percentage coming at the top of the list;

(b) for the first term of election among three consecutive terms, the lists referred to in clause (a) shall be taken up separately and such number of seats as may be determined under sub-rule (1) shall be reserved for the Scheduled Castes or the Scheduled Tribes in accordance with the roster as specified in the First Schedule. For the purpose of reservation of constituencies in accordance with such roster, all the constituencies occurring in the list shall be with the Ward having highest percentage of the Scheduled Castes or the Scheduled Tribes population on the top of the list, and an additional set of continuous serial numbers shall be assigned in ascending order so that reservation may be made to match such serial number with identical number in the roster;

Provided that if, on any occasion, the total number of seats required to be reserved for the first term of election are not attained in accordance with the roster for the first term of election, the remaining number of seats shall be reserved from the roster specified for the second term of election;

(c) for the second and third term of election, the same procedure shall be followed in accordance with the roster specified in the First Schedule respectively for the second and the third term of election:

Provided that if for the second or the third term of election, the total number of seats to be reserved are not attained in accordance with the roster respectively for the second or the third term of election after leaving aside the seats already reserved in the preceding term of election. If any, the remaining number of seats shall be reserved from the roster specified for the third or the first term of election, as the case may be.”

10. Mr. Lahiri submitted that if Rule 3(3) is applied, Ward no. 29 cannot be reserved for women, since in the last election also that Ward was reserved for women.

11. Mr. Lahiri placed a note before us, showing the writ petitioner's version of applying the statutory formula for reservation. There is no difference between the Election Commission's calculation and the writ petitioner's calculation insofar as reservation of Scheduled Caste (including women) candidates are concerned. According to both calculations Ward nos. 3, 12, 27 and 32 are to be reserved for Scheduled Caste candidates. Out of the 4 Wards, Ward nos. 3 and 12 are to be reserved for women candidates belonging to scheduled caste. Insofar as the calculation for reservation for women (general) is concerned, the State Election Commission and the writ petitioner have arrived at substantially same conclusion. The only

difference is that according to Mr. Lahiri although applying the relevant roster, Ward no. 29 falls for reservation, yet, this Ward has to be skipped because this Ward was reserved for women (general) in the last election.

12. In reply, Mr Jayanta Mitra and Learned Advocate General submitted that Rule 3(3) pertains to only schedule casts/ schedule tribes. Rule 3(1A) has no limiting Wards. It is framed specifically for reservation for women who belong to Schedule Caste or Schedule Tribe or general unreserved category. It was also pointed out that the specific case of the writ petitioner in the writ petition is that Rule 3(3) of the 1994 Rules will not be applicable.

13. We have given our anxious consideration of the rival contentions of the parties.

14. Section 29 of the 1994 Act provides for reservation of seats for women candidates and candidates belonging to Scheduled Castes and Scheduled Tribes. Such reservation is to be done “in such manner as may be prescribed”. The manner is prescribed in the 1994 Rules. The relevant Rule is Rule 3 which has been substantially and to the extent relevant, extracted above. This Rule has to be read with the Schedules to the Rules. Rule 3 read with the Schedules thereto, prescribe a rather complex mechanism for reservation of seats for candidates belonging to reserved category and unreserved category. First, the Wards that have to be reserved for Scheduled Castes / Scheduled Tribes will have to be determined. Then the Wards which are to be reserved for women candidates in the Schedule Castes / Scheduled Tribes category will have to be determined. Thereafter the Wards to be reserved for women (General Category) would fall for determination.

The remaining seats would be available to male candidates (General and Reserved Category) for contesting.

15. The formula prescribed by Rule 3 has been applied by the Election Commission. We are satisfied that Rule 3 has been scrupulously adhered to in determining the seats that are to be reserved for Scheduled Castes (including Women) and Women (General Category). By due application of the formula prescribed, if Ward no. 29 falls for reservation for women (general), then, the Election Commission can hardly be faulted or criticised. The Election Commission has no discretion in the matter. It has to mechanically apply the prescribed formula. Whatever the result is, has to be accepted as it flows from the application of a statutorily prescribed formula. There may be inherent lacuna in the formula prescribed which has resulted in reservation of Ward no. 29 for women for two consecutive terms. However, the Rules are not under challenge.

16. We are also of the view that for ascertaining the seats that are to be reserved for women (both Scheduled Caste and General), it is sub-rule 1A of Rule 3 which is applicable and not sub-rule 3 of Rule 3. Sub-rule 3(c) along with the proviso thereto, in our opinion, applies to reservation for SC and ST candidates (including women) only and not relevant for reservation of Women (General Category). It is pertinent to note that sub-rule 3(c) mandates that for the second term of election (it is not in dispute that the upcoming election is for the second term), the roster specified in the First Schedule to the Rules shall be followed. The First Schedule is captioned **“Roster for reservation of seats for the Schedule Castes and Schedule Tribes by Rotation”**.

17. Sub-rule 1A does not prescribe any restriction to the effect that a seat that was reserved for women in one election, cannot be reserved for women in the next election.

18. It is also pertinent to note that Ward no. 2 was reserved for General Category Women in the 2015 elections and has been proposed to be reserved for General Category Women in the upcoming elections this year. However, the writ petitioner has made no grievance in respect thereof.

19. Most importantly, from a bare perusal of the writ petition it would appear that the writ petitioner approached the Learned Single Judge with the case that Rule 3(1A) of the 1994 Rules will apply for reservation of seats for women and not Rule 3(3). Such being the stand of the writ petitioner in the writ petition, they cannot now be heard to argue to the contrary. However, in any event, we have recorded our opinion above that Rule 3 (1A) of the 1994 Rules will apply for reservation for Women (both reserved and general) and the Election Commission has correctly applied the prescribe formula.

20. It is pertinent to note that both sub-rule 1A and sub-rule 3 under Rule 3 of the 1994 Rules were introduced by amendment by the same Notification dated 25.11.2009. A harmonious construction has to be given to the 2 sub-rules which will not make nonsense of the two sub-rules or either of them and will ensure that both are given effect to. As indicated above, in our view sub-rules 1A and 3 operate in different spheres. Sub-rule 1A operates for reservation for Women candidates in general. Sub-rule 3 operates in respect of the municipalities mentioned therein for reservation of

seats for Scheduled Castes and Scheduled Tribes candidates including Women.

21. We are also of the view that the Election Commission which is an expert body has interpreted and applied the relevant Rules for reserving seats for Scheduled Caste and women candidates. Such exercise ought not to be lightly interfered with. We find no such error in the decision of the Election Commission as regards reservation of seats for women candidates as would make such decision perverse or vitiate such decision for any other reason. On the contrary, we are satisfied that the relevant Rules have been followed, the proper formula has been applied and the correct procedure has been adopted for reservation of seats for women (general) for the ensuing Municipal Elections for South Dum Dum Municipality.

22. We are unable to agree with the conclusion reached by the Learned Single Judge in the order under challenge before us. Of course, the Learned Judge did not have the advantage of having the report of the Election Commission before His Lordship from which we have liberally extracted above. The judgment and order under appeal is set aside. The appeal is allowed. The interim order restraining holding of election in Ward no. 29 is vacated.

23. The appeal and the connected application are accordingly disposed of.

24. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)

