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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.1033 of 2022

and W.M.P.Nos.1098 and 1101 of 2022

Bahujan Samaj Party
Rep.by its State Secretary
A.C.Sathiyamoorthy
No.20/51, Venugopal Samy Street
Perambur, Chennai-11.

..

Petitioner

Vs.

1. The Additional Chief Secretary to Government
Municipal Administration and Water Supply
(Election) Department, Government of Tamil Nadu
Secretariat, Fort. St.George, Chennai-9.

2. Tamil Nadu State Election Commission
Rep.by its Tamil Nadu State Election Commissioner
No.208/2, Jawaharlal Nehru Road, Opp.to CMBT
Arumbakkam, Chennai-106.

3. The Director of Town Panchayat
Kuralagam, Chennai-104.

4. The Commissioner
Corporation of Chennai
Rippon Buildings, Chennai-3.

..

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned G.O.(Ms) No.10 dated 17.01.2022 issued by the first respondent and its consequential publication of Tamil Nadu Government Gazette No.42 dated 17.01.2022 and quash the same and consequently to direct the



first respondent to issue Government Order (G.O.) regarding the same.

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For the Petitioner : Mr.P.Vijendran

For the Respondents : Mr.R.Shanmugasundaram
Advocate General, assisted
by Mr.P.Muthukumar
Special Government Pleader
-for Respondents 1 to 3

Mr.S.Sivashanmugam
Standing Counsel - for R2

Mrs.Karthika Ashok,
Standing Counsel - for R4

ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

By this writ petition, challenge is made to G.O.(Ms) No.10 dated 17.01.2022 to reserve the post of Mayor for different Municipal Corporations. The petitioner has made challenge to the reservation of the post of Mayor for Avadi Municipal Corporation.

2. Learned counsel for the petitioner submits that the reservation to the wards of Municipal Corporation and the post Chairperson has to be provided as mandated by Article 243-T of the Constitution of India. Making specific reference to Article 243-T(4), he submits that the offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. He submits that to provide reservation to the post of Chairpersons in the Municipalities, no legislation was brought by the State and thereby, in the absence of it, reservation to the post of Mayor in question could not have been provided under the Tamil Nadu Town Panchayats, Municipalities and Corporations (Delimitation of Wards or Divisions and Reservation) Rules, 1996 (hereinafter referred to as 'Rules of 1996'). The Rules are framed in the administrative side thus cannot be considered to be the legislation of the State.



Thereby, unless there is a provision under the Act legislated by the State, reservation to the office of the Chairperson of the Municipalities could not have been provided by the G.O., under challenge.

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3. A reference of the Rules of 1996 was elaborately given. The respondents have issued the notification by referring to the Rules of 1996 to provide reservation to the post of Mayor of the Avadi Municipal Corporation. Therefore, the learned counsel for the petitioner submits that, in view of the fact that the Rules of 1996 could not have been given effect in absence of an Act in consonance to Article 243-T(4), the notification issued by the respondents deserves to be set aside.

4. The writ petition has been contested by the learned Advocate General appearing for the State of Tamil Nadu and even by the learned Standing Counsel appearing for the Corporation. It is submitted that the notification under challenge has been issued in consonance to the provisions of the Act as well as the Rules, however ignoring the provisions of the Act of 1994 referred in the notification, challenge is made only in reference to the Rules of 1996. Thus, the writ petition has been framed as if the notification has been issued only in reference to the Rules of 1996 without a provision for reservation under the Act as envisaged by the Constitution of India under Article 243-T(4).

5. Learned Advocate General as well as the learned counsel for the respondent Corporation submit that, the Act was amended by the Tamil Nadu Municipal Corporation Laws (Amendment and Special Provisions) Act, 1994 (hereinafter referred to as 'Act of 1994'). A reference of the said Act has been given in the impugned notification, but ignored conveniently by the petitioner, challenging the notification. Referring to Section 121 of the Amending Act of 1994, he submits that the provision exists for reservation for the post of Mayor, which is the nomenclature used for the post of Chairperson. Section 121 not only provides for reservation for the post of Mayor, but also provides as to how the reservation for the said post has to be given. Section 121 was subsequently amended and as per the amended provision, the reservation to the post of Mayor (Chairperson) is to be provided on the population of the different categories like Scheduled Castes, Scheduled Tribes arranging in descending order. The reservation therein is to apply for a period of ten years ie., to operate for two terms and thereupon to be rotated. Referring to the proviso under Rule 5 of the Rules of 1996 it is submitted that, if no election is held



for the post of Chairperson or no elections are held for the Municipal Corporation, then the subsequent election would be conducted based on the same reservation which would have operated in the elections not conducted.

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6. Referring to the facts of this case, it is submitted that the reservation to the post of Mayor was notified in the year 2016, but elections were not held. Therefore, the same reservation has been applied for the election now notified, which is in reference to the proviso added to the Rules of 1996. Elaborating the argument further, it is submitted that, insofar as the Avadi City Municipal Corporation is concerned, it was created by Act 24 of 2019. Section 2(2) provides for application of the provisions of the Coimbatore City Municipal Corporation Act, 1981 for all words and expressions used in the said Act ie., Avadi City Municipal Corporation Act, 2019 and thereby, effectively the provisions of the Act of 1981 pertaining to Coimbatore City Municipal Corporation Act have been made applicable for the words and expressions used under the Act of 2019. Section 5 of the Coimbatore City Municipal Corporation Act provides for the reservation as mandated under Article 243-T of the Constitution of India. In view of the above, the submission of the learned Advocate General and the learned counsel appearing for the respondent Corporation is that not only the legislation was brought by the State to provide for the reservation in favour of the Mayor (Chairperson), but even the manner in which the reservation has to be carved out. The reservation in favour of the Chairperson is not based on the Rules of 1996 alone, rather it is in reference to the Amending Act of 1994 read with Rules of 1996. Thus, the learned counsel for the respondents pray for the dismissal of the writ petition.

7. We have considered the rival submissions of the parties and scanned the matter carefully.

8. By this writ petition, a challenge is made to the notification dated 17.01.2022 and the Gazette Notification dated 17.01.2022 to provide the reservation to the post of Mayor (Chairperson) of the Municipal Corporations. The writ petition has been filed to challenge the reservation to the post of Mayor for Avadi Municipal Corporation. To analyze the argument of the learned counsel for the parties, we may first refer to Article 243-T of the Constitution of India, which is quoted hereunder.

"243-T. Reservation of seats.--(1) Seats shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipality and the number of seats so reserved





of Section 121 of the Tamil Nadu Municipal Corporation Laws (Amendment and Special Provisions) Act, 1994 reads as under.

"121. Reservation of Offices of Mayor for the members of the members of the scheduled castes or the scheduled tribes and for women.- Out of total number of offices of the Mayor in this State, one shall be reserved for the members belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be, and two shall be reserved for women:

Provided that the offices, of Mayor reserved under this section shall be allotted by rotation to different municipal corporations in the State in such manner as may be prescribed before the ordinary elections to the municipal corporations in the State"

11. Section 121 of the Act of 1994 was further amended. The amended provision reads as under.

"121. Reservation of Offices of Mayor for the members of the members of the scheduled castes or the scheduled tribes and for women.- (a) The offices of the Mayors of the Corporations in this State shall be reserved for the persons belonging to the Scheduled Castes or the Scheduled Tribes and the number of offices so reserved shall bear as nearly as may be, the same proportion to the total number of offices in all the Corporations in the State as the population of the Scheduled Castes in all the Corporations in the State or the Scheduled Tribes in all the Corporations in the State bears to the total population of all the Corporations in the State:

Provided that where no office of Mayor can be reserved for the persons belonging to the Scheduled Castes or the Scheduled Tribes based on the total percentage of population of the Scheduled Castes and the Scheduled Tribes in all the Corporations, one office of Mayor of a Corporation having the highest percentage of population of the Scheduled Castes and the Scheduled Tribes shall be reserved for women belonging to Scheduled Castes or Scheduled Tribes out of the total number of offices of Mayors reserved for women under clause (b);

(b) the offices of the Mayors in the State shall be reserved for women and the number of offices so reserved for women shall not be less than fifty per cent of the total number of offices of the Mayors in the State;



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Provided that the offices of the Mayors reserved under this Section shall be allotted by rotation to different Municipal Corporations in the State in such manner as may be prescribed before the ordinary elections to the Municipal Corporations in the State."

12. In pursuance of the above provisions, the Tamil Nadu Town Panchayats, Municipalities and Corporations (Delimitation of Wards or Divisions and Reservations) Rules, 1996 has been framed and Rule 5 of the said Rules provides as follows,

"5. Reservation of office of Chairman or Mayor in a Town Panchayat, Municipality or Corporation.--(1) The Government shall, by notification, reserve for persons belonging to Scheduled Castes and Scheduled Tribes and for women, the offices of Chairman of Town Panchayats, and Municipalities and the Mayor of Corporations required to be reserved under the Act, based on their highest percentage of population in the Town Panchayats, Municipalities and Corporations, as the case may be.

(2) The reservation so made shall be followed for two full terms of the offices of the Chairman of Town Panchayats and Municipalities and the Mayor of Corporations, namely ten years, and rotated thereafter at every ten years interval based on the next higher percentage of population of respective groups. The aforesaid two terms shall be applicable irrespective of the fact whether there has been any upgradation before completion of two full terms of the reservation for the local bodies concerned:

Provided that, where after completion of one full term, no ordinary election is held to the offices of the Chairman of Town Panchayats and Municipalities and the Mayor of Corporations before expiry of the ten year period, the reservation to such offices shall be rotated for the next ordinary election in such Town Panchayats, Municipalities and Corporations."

13. The Act of 1994 is a legislation of the State to provide reservation for the post of Chairperson. It further provides the manner of reservation. In view of the above, we are unable to accept the argument of the learned counsel for the petitioner that the Rules of 1996 have been invoked without substantive provision in the form of a Statute by the Legislature of the State, rather the Legislature of the State, by law, provided the provision for reservation to the post of Mayor and



further the manner of reservation. The Rules of 1996 are to be read with the provisions of the Amendment Act of 1994. A perusal of the Government Order and the Gazette Notification shows reference to the Amending and Special Act of 1994 and the Rules of 1996. The petitioner omitted to take note of the Act of 1994 referred in the Government Order under challenge, so as the Gazette Notification to challenge the Government Order only in reference to the Rules of 1996.

14. In view of the above, the challenge to the Government Order only on the ground that the reservation has been made without law legislated by the State cannot be accepted as otherwise it is without making research of the provisions of law by the State on the subject matter. The amended provision of Section 121 of the Amending and Special Act of 1994 not only provides for reservation to the post of Chairperson of the Municipal Corporations, but even the manner of reservation. As per the provisions aforesaid, the reservation to the post of Chairperson (Mayor) of all the Municipal Corporations of the State in favour of different categories has been carved.

15. Accordingly, we do not find any illegality in the Government Order dated 17.01.2022 as well as the Gazette Notification dated 17.01.2022 under challenge. Accordingly, W.P.No.1033 of 2022 is dismissed and W.M.P.Nos.1098 and 1101 of 2022 are also dismissed. However, there will be no order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

KST

To:

1. The Additional Chief Secretary to Government
Municipal Administration and Water Supply
(Election) Department, Government of Tamil Nadu
Secretariat, Fort. St.George, Chennai-9.
2. Tamil Nadu State Election Commission
Rep.by its Tamil Nadu State Election Commissioner
No.208/2, Jawaharlal Nehru Road, Opp.to CMBT
Arumbakkam, Chennai-106.



3. The Director of Town Panchayat
Kuralagam, Chennai-104.

4. The Commissioner
Corporation of Chennai
Rippon Buildings, Chennai-3.

+1cc to Mr.P.Vijendran, Advocate, S.R.No.5041

+1cc to M/s.Karthikaa Ashok, Advocate, S.R.No.5114

+1cc to the Government Pleader, SR.5708(21/03/2022)

W.P.No.1033 of 2022

NMI (CO)
CB(03/02/2022)