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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU

W.P.NO.25819 OF 2021

AND

W.M.P.NOS.27291 TO 27293 OF 2021

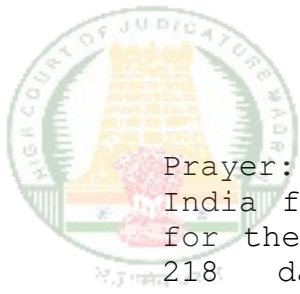
R.Parthiban

.. Petitioner

vs

1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Additional Chief Secretary
to Government, Municipal Administration
and Water Supply Department,
Secretariat, Fort St. George, Chennai 600 009.
3. The State Election Commissioner,
Tamil Nadu State Election Commission,
No.208/2, Jawaharlal Nehru Road,
Arumbakkam, Chennai 600 106.
4. The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai 600 003.
5. The District Collector,
Chennai Collectorate, No.62,
Rajaji Salai, 4th Floor, Beach Road,
George Town, Chennai 600 001.
6. The Chief Electoral Officer and
Principal Secretary to Government,
Public (Election) Department,
Secretariat, Fort St. George,
Chennai 600 009.

.. Respondents



Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to Tamil Nadu Government Gazette No. 218 dated 16.9.2016 passed in G. O. Ms. No. 126 Municipal Administration and Water Supply (Election) issued by the 2nd respondent and quash the same as illegal arbitrary and non-est in the eye of law and consequently direct the respondents to set-right the discrimination in allocating 50 % quota to men in the Chennai City Municipal Corporation as notified in the Tamil Nadu Government Gazette No. 228 dated 24.5.2019 and rectify the defect and re-allocate the correct 50 percent quota of wards to the women and men as per the Tamil Nadu Municipal Laws (Amendment) Act 2016 as published in Tamil Nadu Government Gazette Notification No.56, dated 27.02.2016 and publish the same prior to call for Election to the Chennai City Municipal Corporation.

For the Petitioner	:	Mr.S.Prabhakaran Senior Counsel for Mr.Raheemuddeen
For the Respondents	:	Mr.R.Shunmugasundaram Advocate General assisted by Mr.P.Muthukumar - SGP for RR 1, 2, 5 and 6
	:	Mrs.Karthikaa Ashok for R-4
	:	Mr.S.Sivashanmugam for R-3

ORDER

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

By this writ petition, a challenge is made to the Gazette Notification dated 16.09.2016 published by the second respondent to provide reservation of the seat in each zone treating it as unit for the Chennai City Municipal Corporation. The proviso was added under Rule 4 (3) of the Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Corporations (Delimitation of Wards or Divisions and Reservation) Rules, 1996.

2. Mr.S.Prabhakaran, learned senior counsel appearing for the petitioner submits that the Constitution of India provides for reservation of seats in the election of the Municipal Corporations as well as Municipalities. It has to be applied on the total seats of the Corporations/Municipalities. It cannot be with bifurcation of seats at the level of zone treating it as an



unit. Referring to the amendment made under Rule 4(3) to the Rules of 1996, learned senior counsel submits that while the respondents issued a notification to provide reservation of not less than 50% of the seats of the Corporations/Municipalities to women. The reservation could not have been provided by dividing corporation in zones. The petitioner is not challenging the reservation to the women, not less than 50% of the seats as is otherwise permissible as per the constitutional provision. However, by virtue of the notification under challenge, the respondents are determining the reservation in favour of the women, based on the number of seats in each zone, going against the provision of Constitution of India and the Chennai City Municipal Corporation Act, 1919 (in short "the Act of 1919"). The statement of the seats kept for different categories has been given.

3. The reservation in favour of the women should have been on the total number of seats of the corporation and not of the zone. In this case, the municipal corporation is having total of 200 seats, thus 100 seats would go to women. The reservation in favour of women to the extent of 100 seats would be as per the Act of 1919 and the Rules read with the constitutional provision.

4. The reservation has to be provided on the basis of the population and arranging it in descending order, to achieve 50% reservation in favour of the women. By virtue of the impugned Notification, the respondents are providing reservation to the women on each zone and if it is having odd number of wards then the reservation to the women goes over and above the 50% and to illustrate it, the learned senior counsel submits that if a zone consists of 15 seats/wards, then 8 seats/wards are given to the women while 7 seats/wards are kept for the rest of the categories including open category without maintaining it on the population of each category on total seats of the corporation. The object of the respondents is to provide reservation of 50% of seats in favour of the women while maintaining ratio for other categories also. Accordingly, the challenge is made to the notification dated 16.09.2016, as it offends the provision of the Constitution and also the Act of 1919.

5. The learned senior counsel for the petitioner has made reference to certain provisions of Part IX-A of the Constitution of India to show how reservation is to be provided. The Article 243-R showing the composition of the municipalities so also Article 243-S regarding constitution and composition of the Wards, Committees to indicate that the composition of the municipalities is depending on the seats and is not further divided into zones. A reference of Article 243-T regarding



reservation of seats has also been given. It is to emphasize that reservation in favour of Scheduled Castes, Scheduled Tribes and Other Backward Class apart from women is to be provided on the total seats of the municipality. The respondents were required to take into consideration the total seats of the municipality for providing reservation with rotation. The respondents, instead of providing reservation on the total seats of the municipality, have provided it on the total seats of the zone, which was evolved bifurcating municipal area for administrative convenience. The same is not permissible to provide reservation. The amendment to the rule offends the constitutional provision, and thus deserves to be struck down.

6. Mr.R.Shunmugasundaram, learned Advocate General, has contested the writ petition so as the learned counsel appearing for the Greater Chennai Corporation. It is submitted that as per Rule 4(3) of the Rules of 1996, reservation is to be given to the women not less than 50% of the seats, and by referring to the second proviso, which was inserted under Rule 4(3) by the impugned notification, it is submitted that in respect of the Chennai City Municipal Corporation, zone is to be taken as unit for the purpose of determination of reservation. It is for the reason that certain areas of Chennai City Municipal Corporation were not getting the representation of women as most of the seats were getting exhausted in the central part of the city leaving hardly any seat for women in the outer area. To have a balanced representation, the second proviso to Rule 4(3) was inserted. By virtue of the said proviso, now reservation would be provided on each zone. It would result in reservation in favour of the women even in the outer city of Chennai instead of concentrating it only in the central part of the city. It is only for the said purpose that the amendment was brought to provide adequate representation to the women. The prayer is accordingly not to interfere with the notification and permit the reservation carved out on the basis of the seats in each zone. The amendment is not otherwise hit by any of the provisions of the Constitution and accordingly, prayer is to dismiss the writ petition.

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

8. By the writ petition, challenge is made to the Gazette Notification dated 16.09.2016 adding a proviso under Rule 4(3) of the Rules of 1996. The amended provision is quoted herein for ready reference:

"Provided that, in respect of Chennai City Municipal Corporation, Zone shall be the unit for the



purposes of determining the reservation stipulated in sub-rule(3)."

9. The proviso added under Rule 4(3) allows the reservation on zone basis treating it to be the unit for the Chennai City Municipal Corporation and accordingly, other than the Chennai City Municipal Corporation, the reservation in favour of the candidates would be carved out on the total seats of the corporation and not by dividing it in zone. The division of the seats after carving out the zone has not been provided under the Constitution rather it makes a reference to the total seats of the Municipality for providing reservation. It may be for the administrative convenience that the Corporation may have divided areas into zones, but it cannot be applied for the purpose of reservation in view of the constitutional provision and for which, a useful reference of Articles 243-R and 243-T would be relevant and are quoted as hereunder:

243-R. Composition of Municipalities. - (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide-

(a) for the representation in a Municipality of-

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243-S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.

...

243-T. Reservation of Seats. - (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same



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proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes 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.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

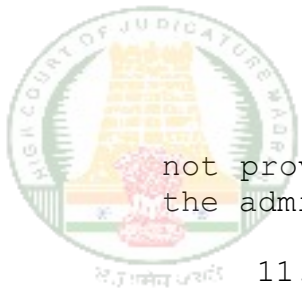
(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) 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.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens."

10. Article 243-R speaks about the seats in a municipality to be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for the said purpose, the Municipal area would be divided into territorial constituencies, to be known as wards. The provision aforesaid does not speak about the territorial constituencies of the wards to be determined zone-wise, rather composition of municipalities is by carving out the wards by dividing it into territorial constituencies and furthermore, Article 243-T speaks about the reservation of seats of the municipalities. It does



not provide for reservation of seats of each zone carved out for the administrative convenience of the corporation.

11. While framing the Rules of 1996, the respondents provided Rule 4 for reservation of seats for women in Town Panchayats and Municipalities, Third Grade Municipalities and Corporation. It is to be arranged in descending order based on the population of the women. The respondents are taking total seats of the Town Panchayats, Third Grade Municipalities, Municipalities and Corporation without its further division on zones. An exception has been carved out by the impugned notification for the Chennai City Municipal Corporation. The proviso under challenge not only offends the constitutional provision to provide reservation on total seats of the municipality after composition of the territories into wards but even discrimination between different municipal corporations. Say for municipal corporation in Coimbatore, the reservation in favour of the Scheduled Castes, Scheduled Tribes and women would be on the total seats and not in reference to the wards in every zone, while as an exception, the reservation for the Chennai City Municipal Corporation would be in reference to the wards in each zone. The consequence aforesaid has been demonstrated by learned counsel for the petitioner by way of a tabulation which shows that with the division of wards into zones, if particular zone involves odd number of wards, then the reservation in favour of the women would be in excess of 50%. For illustration, if a particular zone consists of 15 wards, 8 seats would go to women leaving 7 for others and with the aforesaid, if total reflection is seen, as against 200 wards of Chennai City Municipal Corporation, the reservation in favour of women would be of 105 seats out of 200 seats. The reservation has to be provided on total seats of the corporation and not of seats of a zone.

12. A reference to the Chennai City Municipal Corporation Act, 1919 would also be relevant. Section 5 of the Act of 1919 is quoted hereunder:

5. Constitution of the council.--- (1) The council shall consist of two councillors elected in the manner laid down in this Act.

(2) The following persons shall also be represented in the council, namely :--

(a) [Omitted by Tamil Nadu Act 3 of 1997]

(b) the members of the House of the people representing constituencies which comprise wholly or partly the area of the corporation and the members of the Council of States registered as electors within the area of the corporation ;



(c) all the members of the Tamil Nadu Legislative Assembly representing constituencies which comprise wholly or partly the area of the Corporation.

[(d) [Omitted by Tamil Nadu Act 22 of 1996].

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(2-A) The persons referred to in sub-section (2) shall be entitled to take part in the proceedings, but shall not have the right to vote in the meetings of the council.

(3) Seats shall be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in the council and the number of the 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 the council as the population of the Scheduled Castes in that city or of the Scheduled Tribes in that city bears to the total population of the city:

Provided that for the first election to the council to be held immediately after the commencement of the Tamil Nadu Municipal Corporation Laws (Amendment and Special Provision) Act, 1994 (Tamil Nadu Act 26 of 1994), the provisional population figures of the city as published in relation to 1991 census shall be deemed to be the population of the city as ascertained in that census.

(4) Seats shall be reserved for women belonging to the Scheduled Castes and the Scheduled Tribes, from among the seats reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes, which shall not be less than fifty per cent of the total number of seats reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes.

(4-A) [Inserted by Tamil Nadu Act 34 of 1995 and omitted by Tamil Nadu Act 17 of 1996]

(4-B) [Inserted by Tamil Nadu Act 34 of 1995 and omitted by Tamil Nadu Act 17 of 1996]

(5) Seats shall be reserved for women in the council and the number of seats reserved for women shall not be less than fifty per cent including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes of the total number of seats in the council.

(6) The reservation of seats under sub-section (3) and (4) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution."



13. The Act of 1919 also provides reservation to different categories on total seats of the municipality. It does not bifurcate the territorial constituencies into zone and total population of the city is to be taken into consideration for carving out the reservation in descending order. Thus, the proviso to the Rule under challenge even offends the statutory provisions. The reservation is to be provided keeping in view the proportionate population of each category, which includes even Scheduled Castes and Scheduled Tribes. Reservation of the seats of each zone thus violates the constitutional and statutory provisions. It is for the reason that as per the statutory as well as constitutional mandate, the population of the city has to be kept in mind for providing proportionate reservation to different categories which cannot be maintained if it is provided on total population of each zone. Thus, the proviso to rule even offends the provisions of the Act of 1919.

14. The object sought to be achieved, as submitted by the learned Advocate General is also not acceptable for the reason that if the population of the central part of the city shows and deserves reservation in favour of the women candidates, it has to be provided accordingly, leaving those areas which are not having proportionate population of women. The respondents took a decision to amend the rule to provide reservation in favour of the women even for those wards which do not have the proportionate population of women, rather of other category. The object carved out by the respondents is not falling within the framework of the Constitution which provides proportional reservation in favour of different categories and that is to be determined on total population of the city. If, for illustration, an outer area of Chennai City Municipal Corporation is not having the proportional population of women rather of other category, then such a ward is not required to be reserved for women and otherwise, it would affect the category having proportionate population to get reservation. In view of the above, we are not convinced with the object sought to be achieved by the respondents for bringing the amendment in the Rule. The amendment otherwise offends the constitutional and statutory provisions, thus, it deserves to be struck down. Accordingly, the Gazette Notification dated 16.09.2016 under challenge is held to be unconstitutional and is struck down.

15. The respondents may provide reservation as per Article 243-T of the Constitution read with Section 5 of the Act of 1919 and Rule 4 of the Rules of 1996. For maintaining the reservation of 50% seats in favour of the women candidates, the respondents would provide reservation on the total seats of the municipal corporation.



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With the aforesaid, the writ petition is disposed of. No costs. Consequently, W.M.P.Nos.27291 to 27293 of 2021 are closed.

Sd/-
Deputy Registrar (CS)

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Sub Assistant Registrar

sra

To:

1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Additional Chief Secretary
to Government, Municipal Administration
and Water Supply Department,
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6. The Chief Electoral Officer and
Principal Secretary to Government,
Public (Election) Department,
Secretariat, Fort St. George, Chennai 600 009.

+1cc to M/s.Karthikaa Ashok, Advocate, S.R.No.2351
+1cc to the Government Pleader, S.R.No.3093

W.P.No.25819 of 2021

NR(CO)
RLP(28/01/2022)