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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 02.02.2022**

+ **W.P.(C) 1892/2022 & CM APPLs. 5458-59/2022**

PANKAJ SHARMA

..... Petitioner

Through: Mr. Navin Kumar Jha & Mr. Manish
Bhardwaj, Advs.

versus

STATE ELECTION COMMISSION

..... Respondent

Through: Mr. Sumeet Pushkarna, Mr. Devanshu
Lahiry, Advs. with Mr. Sandeep
Mishra (Secretary) & Mr. P.K. Goel
(Dy. Secy.)

+ **W.P.(C) 2027/2022 & CM APPLs. 5791-92/2022**

MANOJ KUMAR JHA

..... Petitioner

Through: Mr. Arun Maitri, Adv.

versus

STATE ELECTION COMMISSION & ORS.

..... Respondents

Through: Mr. Sumeet Pushkarna, Mr. Devanshu
Lahiry, Advs. with Mr. Sandeep
Mishra (Secy.) & Mr. P.K. Goel (Dy.
Secretary) for R-1.
Mr. Sameer Vashisht, ASC (Civil),
GNCTD with Ms. Sanjana Nangia,
Adv. for R-3/GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH



J U D G M E N T

: **VIPIN SANGHI, J** (ORAL)

1. These two writ petitions have been preferred to assail, and seek the setting aside of the reservation order bearing No. F.4(101)/SEC/LAW/2022/3309 dated 25.01.2022 issued by the State Election Commission, NCT of Delhi & U.T. Chandigarh.
2. At the outset, we may observe that Mr. Pushkarna, who appears for the respondent-State Election Commission (*hereinafter referred to as "SEC"*), informs us, on instructions, that the impugned order dated 25.01.2022 has been duly gazetted in the Gazette of Delhi.
3. The challenge to the reservation order dated 25.01.2022 in these petitions is, firstly, premised on the assumed lack of competence in the SEC to issue the said order dealing with the aspect of reservation of the seats/wards for the Scheduled Caste candidates and for women candidates in the wards/seats of the three Municipal Corporations of Delhi. The second challenge is to the rotation of the reserved seats for the Scheduled Caste and women category candidates.
4. So far as it is relevant, the impugned reservation order reads as follows:

"To be published in Extra Ordinary Gazette of Delhi Govt (Part IV)
STATE ELECTION COMMISSION,
NCT OF DELHI & U.T. CHANDIGARH,
NIGAM BHAWAN, KASHMERE GATE, DELHI.

No. F.4(101)/SEC/LAW/2022/3309

Dated: - 25.01.2022

ORDER



WHEREAS the Delhi Municipal Corporation Act, 1957 was amended by the “The Delhi Municipal Corporation (Amendment) Act, 2011” vide Government of Delhi (Department of Law, Justice and Legislative Affairs’ Notification No. F.14(12)LA/2011/Law/260 dated the 29th December, 2011;

AND WHEREAS the Central Government, Ministry of Home Affairs, New Delhi, had delegated their powers under the fourth proviso to sub-sections (6), (7) and (8) of section 3 of the Delhi Municipal Corporation Act, 1957 vide Notification No. U.14011/187/93-Delhi dated 14th December, 1993 and the powers under the provisions of clauses (c), (d) and (e) of sub-section (2) of section 5 of the aforesaid Act were delegate to the Election Commission of the National Territory of Delhi vide Notification No. U. 14011/187/93-Delhi dated the 2nd March, 1994. Further consequent to the amendment of the said Act, the Government of the National Capital Territory of Delhi delegated their powers under provisions of sub-section (5), (7) and (8) of section 3 and clauses (c), (d) and (e) of sub-section (2) of section 5 of the aforesaid Act to the Election Commission of the National Capital Territory of Delhi vide their notification No. F.13(20)/UD/MB/2012/1103 dated the 24th January, 2012;

AND WHEREAS as per amended aforesaid Act, now there are three Municipal Corporations in the National Capital Territory of Delhi viz. North Delhi Municipal Corporation, South Delhi Municipal Corporation and East Delhi Municipal Corporation;

AND WHEREAS in the three Municipal Corporations of Delhi, there a total of 272 wards – 104 wards in North Delhi Municipal Corporation, 104 wards in South Delhi Municipal Corporation and 64 wards in East Delhi Municipal Corporation as per Delimitation Order No. F.7(55)/DLB/2015/Pt.1/2012, 203 and 204 respectively all dated 13th January, 2017;

AND WHEREAS as per provisions of sub-section (6) of section 3 of the said Act, the number of seats to be reserved for the members of Scheduled Castes shall as nearly as may be, bear the same ratio to the total number of seats as the population of



Scheduled Castes bears to the total population of the respective Corporation as per Census 2011;

AND WHEREAS the population (census 2011), Scheduled Castes population percentage of Scheduled Castes (S.Cs) population, total number of seats in the three Corporations, number of seats to be reserved for the Scheduled Castes (S.Cs) as per percentage of Scheduled Castes (S.Cs) population are given below:-

<i>Name of M.C</i>	<i>Population</i>	<i>SC Population</i>	<i>Percentage</i>	<i>No. of seats</i>	<i>SC Seats</i>
<i>North Delhi</i>	6254758	1212172	19.38%	104	20
<i>South Delhi</i>	6214059	879053	14.15%	104	15
<i>East Delhi</i>	3949846	654998	16.58%	64	11

AND WHEREAS sub-section (7) of section 3 of the said Act provides that seats shall be reserved for women belonging to Scheduled Castes, from among the seats reserved for the Scheduled Castes, and the number of such seats being determined by the Election Commission which shall not be less than one half of the total number of seats reserve for the Scheduled Castes. As such, the number of seats to be reserved for Scheduled Castes Women would be 10 in North Delhi Municipal Corporation, 8 in South Delhi Municipal Corporation and 6 in East Delhi Municipal Corporation being not less than one-half of the total number of reserved seats for Scheduled Castes in the above-mentioned Corporations.

AND WHEREAS sub-section (8) of section 3 of the said Act provides that number of seats reserved for women shall not be less than one half of the total number of seats other than those reserved for the Scheduled Castes. Now, the number of seats reserved for women shall be 42 in North Delhi Municipal Corporation out of



84, 89 and 53 seats respectively after deduction of seats reserved for members of the Scheduled Castes, in the respective Corporations.

On last occasion in 2017, the Election Commission had decided vide Notification No. F.4 (11)/OSD.I/EGAL/sec/2017/5838 DATED THE 6th February, 2017, that wards of a Corporation of Delhi should be reserved on the basis of highest percentage of population of Scheduled Castes in a ward in descending order of percentage of SC population to the quantum shown in the table given in preceding para.

AND WHEREAS as per provision of clause (e) of sub-section (2) of section 5 of the Delhi Municipal Corporation Act, 1957 as amended, the existing reservation of seats for above said categories of persons have to be rotated to reserve new wards as far as practicable;

NOW, THEREFORE, in exercise of the powers as delegated by the Central Government and the Government of National Capital Territory of Delhi as delegated to the Election Commission of the National Capital Territory of Delhi, as detailed in the preceding paras and all other enabling provisions, I, S. K. Srivastava, State Election Commissioner, do hereby de-reserve the existing wards of three Municipal Corporations of Delhi and reserve new wards on rotation of wards for reservation for specified categories of persons, for the next general elections to be held in April, 2022 as under:-

(a) For the purpose of rotation of reservation of wards for the above-mentioned categories, the wards with highest percentage of Scheduled Castes, in descending order, in each Corporation next to the last ward reserved for that category in 2017 have been taken to the prescribed number in further descending order of percentage of population for the members of the Scheduled Castes as required to be reserved in pursuance of the provisions of sub-section (6) of section 3 of the said Act. Out of these reserved seats for members of the Scheduled Castes, the seats to be reserved for women belonging to



Scheduled Castes, which number should not be less than 50% of the total seats reserved for SC category, as prescribed under the provisions of sub-section (7) of section 3 of the aforesaid Act. Thus, out of the sequential order of serial numbers of the wards in each Corporation, reserved for the members of scheduled castes, 1st, 3^r, 5th and so on wards numbers have been reserved for Scheduled Castes Women and 2nd, 4th, 6th, and so on reserved for Scheduled Castes as per details given hereafter and in Annexures A, B & C and Annexures A-1, B-1 and C-1.

(b) For reservation of wards for women and general categories, as per provision of sub-section (8) of section 3 read with clause (e) of section 5 of the Delhi Municipal Corporation Act, 1957 as amended, lists of remaining wards (after deduction of wards reserved for Scheduled Castes and Scheduled Castes Women) in sequence of serial numbers of wards in each Corporation have been taken into consideration and are reserved for those specified categories by rotation. Details are given hereafter and in Annexure A, B and C and Annexure A-1, B-1 and C-1 respectively for each of the three Municipal Corporations viz. North Delhi, South Delhi and East Delhi....”

5. The submission of learned counsel Mr. Jha, who appears for the petitioner in W.P. (C) 1892/2022, is that the delegation of power—either by the Central Government, or by the State Government upon the SEC, referred to in the impugned reservation order is illegal inasmuch, as, according to him, the legislative powers in relation to, inter alia, “*the constitution and powers of municipal corporations*”, is with the State Legislature under Entry 5 of List-II of the 7th Schedule, and, therefore, in relation to the National Capital Territory of Delhi, only the Legislative Assembly of the NCT of Delhi is competent to issue an order for reservation for Scheduled Caste, or for women candidates. Neither the Central Government, nor the GNCTD



are competent to issue such an order.

6. In so far as the challenge to the reservation of particular seats/wards for Scheduled Caste and women candidates by rotation is concerned, the challenge is laid on the premise that the last general Census was held in the year 2011, and thereafter, the Census has not been held – on account of the pandemic, which should have been held in the year 2021. Thus, without having the latest Census figures with regard to the demographic distribution of population i.e. the percentage of population of the Scheduled Castes in every ward/seat within the Municipal Corporations, the respondent, in any event, could not have resorted to rotation of the reserved seats/wards, as has been sought to be done by the impugned reservation order.

7. Mr. Maitri, learned counsel for the petitioner in W.P. (C) 2027/2022, has relied on Section 9 (1) (c) of the Delimitation Act, 2002 to submit that it is for the Delimitation Commission, on the basis of the Census conducted, to delimit the constituencies, and in that process, identify the constituencies in which the seats are reserved for the Scheduled Castes in different parts of the State.

8. On the other hand, Mr. Pushkarna, who appears on advance notice on behalf of the SEC, has firstly argued that the issues raised in the present writ petition are covered by the earlier judgement of this Court in ***“We The Citizens Through Its Secretary vs. Union of India & Ors.”*** W.P. (C) 1291/2017, and several other connected writ petitions, decided on 23.03.2017. He submits that the argument premised on the aforesaid provision of the Delimitation Act, in any event, is misplaced inasmuch, as, the said Act has no application to municipal elections, with which we are concerned. In this regard, he has referred to the Preamble of the



Delimitation Act, 2002, which reads follows:

*“An Act to provide for the readjustment of the allocation of seats in the **House of the People to the States**, the total number of seats in the **Legislative Assembly of each State**, the division of each State and each Union territory having a **Legislative Assembly** into territorial constituencies for elections to the **House of the People and Legislative Assemblies of the States and Union territories and for matters connected therewith.**”* (emphasis supplied)

9. Mr. Pushkarna, further, submits that so far as delimitation for the purpose of municipal election is concerned, the same is specifically provided for under Section 5 of the Delhi Municipal Corporation Act, 1957 (The Act for short). He further submits that on the aspect of delegation of the powers by the Central Government and the GNCTD to the SEC, and the competence of the SEC to issue the impugned order, the ground has not been substantially raised in the writ petition being W.P. (C) 1892/2022. The only averment contained in the grounds of the writ petition is the following:

“(C) Because the Respondent Commission is not competent to issue the impugned Order whereby the reserved seats in the three Municipal Corporations are sought to be rotated. The delegation of power under the impugned Order/Notification dated 25.01.2022 is unconstitutional, as the State Election Commission is an autonomous body under the provisions of the Constitution. Further, in terms of the amended Delhi Municipal Corporation Act 1957 the Government is empowered to rotate the reserved seats. However, the concerned provision of the Delhi Municipal Corporation Act 1957 does not manifest the difference between the Government and the Assembly as the word “State Legislature” is specifically provided in Article 243T of the Constitution.”

10. We may now take note of Section 3 of the Act.



11. Section 3 (1) of the Act talks about the establishment of the three Municipal Corporations by the Government, by notification in the Official Gazette. The three Corporations are charged with the municipal Government of Delhi. Section 3(3)(a) states that a Corporation shall be composed of Councillors, and Section 3(4) states that Councillors shall be chosen by direct election on the basis of adult suffrage from various wards into which Delhi shall be divided in accordance with the provisions of the Act. Section 3 (5), *inter alia*, provides that the total number of seats of councillors, and the number of seats reserved for the members of the Scheduled Castes in each Corporation shall, at the time of establishment of such Corporations, be as determined by the Government, by notification in the Official Gazette. Section 3 (6) to Section 3 (8) are relevant, and we reproduce the said provisions hereunder:

“3. Establishment of the Corporation

(1).....

(2).....

(6) Upon the completion of each census after the establishment of [a Corporation] the number of seats shall be on the basis of the population of [the area of the Corporation] as ascertained at that census and shall be determined by the Central Government by notification in the Official Gazette and the number of seats to be reserved for the members of the Scheduled Castes shall, as nearly as may be, bear the same ratio to the total number of seats as the population of Scheduled Castes bears to the total population of Delhi:

Provided that the total number of seats in all the Corporations in Delhi shall in no case be more than two hundred and seventy-two and the number of seats in each Corporation shall be determined by the Government at the time of establishment of such Corporations:



Provided further that the determination of seats as aforesaid shall not affect the then composition of [a Corporation] until the expiry of the duration of [a Corporation]:

Provided also that for the first election to the Corporations to be held immediately after the commencement of the Delhi Municipal Corporation (Amendment) Act, 2011, the population figures of every such Corporation as published in relation to 2001 census shall be deemed to be the population thereof as ascertained in that census:

Provided also that the seats reserved for the Scheduled Castes may be allotted by rotation to different wards in such manner as the Central Government may, by order published in the Official Gazette, direct.

(7) Seats shall be reserved for women belonging to the Scheduled Castes, from among the seats reserved for the Scheduled Castes, the number of such seats being determined by the [Government] by order published in the Official Gazette which shall not be less than [one-half] of the total number of seats reserved for the Scheduled Castes.

(8) Seats shall be reserved for women, the number of such seats being determined by order published in the Official Gazette by the [Government] which shall not be less than the [one-half] of total number of seats other than those reserved for the Scheduled Castes:

Provided that such seats reserved for women shall be allotted by rotation to different wards in such manner as the [Government] may, by order published in the Official Gazette, direct in this behalf." (emphasis supplied)

12. From the aforesaid provisions it would, firstly, be seen that the aspects of reservations for the Scheduled Castes – i.e. the number of seats to be reserved; and the particular seats to be reserved, falls within the domain of



the Central Government, whereas, the aspect of reservations for Women (both – belonging to the Scheduled Castes, and the those not belonging to the Scheduled Castes) fall within the domain of the Government i.e. GNCTD. Secondly, it would be seen that in so far as the aspect of determination of the number of seats to be reserved for the Scheduled Castes is concerned, the determination of the said number is to depend upon the latest Census report, which is available at the time when the elections are due. It is on the basis of the percentage of the Scheduled Caste population—as ascertained by the Census, that the Central Government, by the notification in the Official Gazette would determine the number of seats to be reserved for the members of the Scheduled Castes, such that, the number of reserved seats shall bear the same ratio to the total number of seats, as the population of Scheduled Castes bears to the total population of Delhi, as nearly as may be.

13. Thus, the Census figures with regard to the percentage of Scheduled Castes population—in the overall population, are relevant, for determination of the number of seats to be reserved for the Scheduled Castes in the Municipal Corporation.

14. In respect of the first election of the three Corporations, held immediately after the trifurcation of the Delhi Municipal Corporations by the Delhi Municipal Corporation (Amendment) Act, 2011, the third proviso stipulated that the population figures of every such Corporation—as published in relation to the 2001 Census, shall be deemed to be the population thereof, as ascertained in that Census.

15. Having scrutinised the aforesaid provision, we also find that the census figures with regard to the population of Delhi really have no role to



play when it comes to identification of the particular seats/wards which may be reserved for the Scheduled Castes, or women. Once the number of seats/wards reserved for the Scheduled Castes in each municipality is determined, (on the basis of the census figures – which would also indicate the percentage of Scheduled Castes within the area of the three Municipal Corporations of Delhi), it is left to the competent Government to specify – by an “Order”, as to which of the seats/wards in each municipality may be reserved for the Scheduled Castes & women. The last proviso to Section 3 (6) is relevant, which provides “*that the seats reserved for the Scheduled Castes may be allotted by rotation to different wards in such manner as the Central Government may, by order published in the Official Gazette, direct*”. (emphasis supplied)

16. Firstly, for the purpose of rotation of the reserved seats, the aforesaid provision does not seek to place any reliance on the latest available census figures – unlike for the purpose of determining the number of seats that may be reserved for the Scheduled Castes. Secondly, the very fact that the seats/wards reserved for Scheduled Castes, or women – as the case may be, may be rotated, itself shows that such rotation is not necessarily dependent upon the Scheduled Castes population in any given ward/seat. If only the seats with the highest population of Scheduled Castes could be reserved for the Scheduled Castes, the same would have been so provided in the opening clause of Section 3 (6) itself, where the same talks of the number of seats to be reserved for the Scheduled Castes being determined and notified by the Central Government.

17. The root of Section 3 (6) to Section 3 (8) of the Act is found in Article 243T of the Constitution of India, which reads as follows:



“243T. 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 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.” (emphasis supplied)*

18. A reading of Article 243T (1) shows that reservation for the Scheduled Castes and the Scheduled Tribes in every Municipality is constitutionally mandated. The extent of reservation is also mandated by providing that 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 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.*”

19. In so far as Delhi is concerned, since there are no notified Scheduled Tribes, we are concerned with the seats reserved only for Scheduled Castes. Article 243T (1) also shows that the flexibility of rotation is provided under the Constitutional scheme. As already noticed above, the power to issue an order, *inter alia* for the purpose of rotation of the seats reserved for the Scheduled Castes in different wards, is vested by Section 3 (6) upon the Central Government.

20. A perusal of the impugned order itself shows that it recites the source of authority under which the SEC is purporting to act as the delegate of the Central Government vis-a-vis exercise of the powers vested in the Central Government by Section 3(6) of the Act. Pertinently, there is no challenge to the said delegation, which was made vide the Notification No. U.14011/187/93-Delhi dated 14.12.1993. With the amendment of the Act by the Delhi Municipal Corporation Act, 2011, the power to issue an order under Section 3(7) and 3(8) – which respectively deal with the aspect of reservation of seats for the Scheduled Caste women, and women generally, stood vested in the GNCTD. The GNCTD delegated its powers to issue orders under Section 3(5), 3(7) and 3(8) vide Notification No. F.13(20)/UD/MB/2012/1103 dated the 24th January, 2012.

21. We may now turn to Section 5 of the Delhi Municipal Corporation Act, 1957, which deals with the aspect of delimitation of wards, and the said



Section reads as follows:

“5. Delimitation of wards

(1) For the purposes of election of councillors, [the area of a Corporation] shall be divided into single-member wards in such manner that the population of each of the wards shall, so far as practicable, be the same throughout [the area of that corporation].

(2) The [Government] shall, by order in the Official Gazette, determine,—

(a) the number of wards;

(b) the extent of each ward;

(c) the wards in which seats shall be reserved for the Scheduled Castes;

(d) the wards in which seats shall be reserved for women; and

(e) the manner in which seats shall be rotated under sub-sections

(6) and (8) of section 3.” (emphasis supplied)

22. Section 5 (2) empowers the “Government”—which is defined in Section 2 (21A) of the Delhi Municipal Corporation Act, 1957 to mean the Government of the National Capital Territory of Delhi (GNCTD), to determine, by an “order” published in the Official Gazette, *inter alia*, the wards in which the seats shall be reserved for the Scheduled Castes, and “*the manner in which seats shall be rotated under sub-sections (6) and (8) of section 3.*”

23. Coming back to the impugned order, we find that the same recites the delegation of power upon the SEC for exercise of power under provisions of Clauses (c), (d) and (e) of sub-section (2) of Section 5 of the Act, vide the Notification No. U. 14011/187/93-Delhi dated 2nd March, 1994. Further, consequent to the amendment of the Delhi Municipal Corporation Act, the GNCTD delegated their powers under sub-section (5), (7) and (8) of Section 3 and clauses (c), (d) and (e) of sub-section (2) of Section 5 upon the SEC vide their Notification No. F.13(20)/UD/MB/2012/1103 dated the



24.01.2012.

24. Once again, we may observe that there is no challenge in either of these petitions to the said notifications of delegation of powers. Neither of these notifications –by which powers have been delegated, either by the Central Government, or by the GNCTD upon the SEC, have even been placed on record.

25. In fact, in W.P. (C) 1982/2022, the SEC is the only party impleaded as a respondent, and neither the Central Government, nor the GNCTD has been arrayed as the party respondents. Thus, the argument sought to be advanced by Mr. Jha with regard to the lack of competence – in either the Central Government, or the GNCTD, to delegate their respective powers, either under Section 3, or under Section 5 of the Act does not appear to carry any weight or seriousness. We, therefore, reject the said submission.

26. In any event, once the Act, in terms, empowers the Central Government–under Section 3(6), and the GNCTD–under Section 3(5),3(7), 3(8), and Section 5(2) to issue orders for the enumerated purposes, it is not for the petitioner to contend that–either the Central Government, or the GNCTD, does not have the statutory power and mandate to issue relevant orders under the said provisions. There is no basis to claim that these powers could not be exercised by, or delegated by the Central Government, or the GNCTD, as the case may be. There is no challenge to either of these statutory provisions in the present writ petitions on any ground whatsoever.

27. At this stage, we may take note of the submission of Mr. Jha that the respondent, in any event, should not have undertaken the exercise of rotation, since the respondent does not have the latest Census figures, as the 2021 Census is not conducted.



28. The issue is not whether the respondent should, or should not, have implemented the scheme of rotation, which is also envisaged under Article 243T of the Constitution of India, as well as Sections 3(6) and Section 3(8) of the Act. The question is: Whether the respondent-SEC has the authority to undertake the said exercise of rotation. Despite our repeated questioning as to where is the prohibition against the SEC, to implement the Constitutional/Statutory mandate of rotation of reserved seats/wards, there is no answer forthcoming.

29. The rotation of the reserved seats for Scheduled Castes springs from the concept of Fraternity enshrined in the Preamble to the Constitution, the purpose of which is to assure the dignity of individual and the unity and integrity of the nation. The Supreme Court, *in Indira Sawhney and Others v. Union of India and Others*, 1992 Supp (3) SCC 217, while examining, in detail, the rationale for granting reservation for the Scheduled Castes, Scheduled Tribes and other Backward Classes, also observed that reservations seek to achieve the constitutional goal of equality and fraternity. The Rajasthan High Court, in *Rajasthan State Electricity Board and Others v. Sultan Mohd.*, 1999 SCC Online Raj 734 has dwelt with the concept of Fraternity in the following words:

“The expression “fraternity” has not been defined in the Constitution but it appears that this expression is wide enough to include every bond of unity between two or more human beings, whether the bond, is temporary or it is permanent, whether it is contractual or sacramental; whether it is voluntary or commanded by law. Suffice it to say that fraternity referred to in the preamble to the Constitution of India, refers to human bonds among the people as well as the bonds between the sovereign and the subjects. The bond of fraternity, not only binds the parties to it, it creates mutuality of interaction and



shifting of certain responsibilities according to the nature and form of the bond. Whatever may or may not be the obligation of the parties on account of the bond of fraternity between them, one thing is very obvious that unless the parties to the bond of fraternity would not honour, protect and enforce the rights of other parties to the bond, the bond of fraternity cannot survive. The duty to honour, protect and enforce the rights of other parties, is, therefore, inevitable if the bond of fraternity does exist. It is this bond of fraternity which characterises humanity and distinguishes it from those species who lack this bond. Fraternity, in our opinion, imposes a duty on every party, to honour, protect and enforce the rights of the other parties to the bond and this appears to be at the root of the maxim that wherever there is a right there must be a corresponding duty on some other fellow and there must be a remedy available for enforcing the right. The bond of fraternity which exists between the sovereign and subjects, makes it obligatory on the part of sovereign to enforce the rule of law and to administer justice to all citizens by honouring their rights and by taking appropriate steps to protect and enforce the same even if the citizen does not ask for it..... Since the Constitution of India aims at promoting the bonds of fraternity and integrity of the Nation, we feel that unless in exceptional cases, there is a just cause for not honouring and protecting the rights of others, it should be deemed to be a constitutional duty of the State and its agencies as well as of every citizen to honour and protect the rights of others, in order the bond of fraternity may not be destroyed and the object of promoting the bond of fraternity may be fulfilled. It goes without saying, that an attitude of indifference with reluctance to honour and protect the rights of others, who are re-lated by some bond of fraternity, particularly those who are dependant on the State, its various organs and the rest of the society for the protection of rights, lives and liberties and for justice, would be incompatible with the noble ideals for which the Constitution of India has been enacted.”

30. The grievance of the petitioners—that by de-reserving the earlier reserved seats/wards for the Scheduled Castes, and reserving other



seats/wards, wherein the population of the Scheduled Castes is lesser in terms of percentage, the right of the petitioners to offer their candidatures from such constituency (which are now reserved for the Scheduled Castes) as a general candidate is affected, is completely misplaced. In our view, there is a fundamental flaw in the said argument and approach of the petitioners. The petitioners seem to think that the Scheduled Caste population is entitled to vote and elect only a Scheduled Caste candidate, or that a Scheduled Caste candidate could not be made to represent the interests of the people in a seat/ward, where their population is relatively less. Similarly, the petitioners seem to think that a non-Scheduled Caste candidate cannot represent from a ward/seat, where the population percentage of Scheduled Castes is relatively high. The aforesaid approach of the petitioners strikes at the root of the concept of fraternity enshrined in our Constitution.

31. The submission of Mr. Jha that the reservation notification/, or an order for rotation could be issued only by the State Legislative Assembly, is completely misplaced. Section 3(5) to 3(8), and Section 5(2) of the Act does not require the making of a law – either for the purpose of specifying the number of seats/ wards reserved for the Scheduled Castes in the municipal corporation, or; which would stand reserved for the Women, or; for the purpose of rotation of the reserved seats. The role of the Legislative Assemble is only to make laws within the scope of its authority under the Constitution. All that is required is that the competent government should issue an order/ notification for the stated purpose.

32. The “Order”/ “Notification” that the competent government issues, either under Section 3(5) to 3(8), or under Section 5(2) of the Act is only an



executive order of the concerned Government.

33. The Act consciously uses the expression “Order”/ “Notification” in Sections 3 and 5 of the Act. Therefore, the submission that the Legislative Assembly of Delhi should have issued the “Order”/ “Notification” has no merit. Being an executive order/ Notification, it is open to the concerned government to delegate its powers which, in the present case, have been delegated upon the State Election Commission. The petitioners, apart from claiming that such powers could not be delegated, do not state as to what is the legal objection to such delegation. We, therefore, do not find any merit in this submission either. We may only hasten to add that the executive powers of the government are co-extensive with the legislative fields carved out in the relevant lists under Seventh Schedule of the Constitution. In **Rai Sahib Ram Jawaya Kapur & Ors. v. State of Punjab**, AIR 1955 SC 549, the Supreme Court has, inter alia, held:

“7. Article 73 of the Constitution relates to the executive powers of the Union, while the corresponding provision in regard to the executive powers of a State is contained in Article 162. The provisions of these articles are analogous to those of Sections 8 and 49(2) respectively of the Government of India Act, 1935 and lay down the rule of distribution of executive powers between the Union and the States, following, the same analogy as is provided in regard to the distribution of legislative powers between them. Article 162, with which we are directly concerned in this case, lays down:

“Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws:

Provided that in any matter with respect to which the legislature of a State and Parliament have power to make



laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.”

Thus under this article the executive authority of the State is exclusive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself or in any law passed by Parliament. Similarly, Article 73 provides that the executive powers of the Union shall extend to matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on clause (1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to the State it would be open to Parliament to provide that in exceptional cases the executive power of the Union shall extend to these matters also. Neither of these articles contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean, as Mr Pathak seems to suggest, that it is only when Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Article 172 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies Article 73 of the Constitution. These provisions of the Constitution therefore do not lend any support to Mr Pathak's contention.



12. *It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws.*

13. *The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the*



carrying on or supervision of the general administration of the State.”

34. We may now draw our attention to the judgement rendered by the Division Bench of this Court in ***“We The Citizens Through Its Secretary”*** (*supra*).

35. The Division Bench noted that the challenges raised in the said petition was to the notification dated 06.02.2017, which was a similar reservation order issued by the SEC for the purpose of providing reservation of seats/wards for the Scheduled Castes, women candidates within Scheduled Castes, and the women candidates generally.

36. The first ground of challenge, taken note of in paragraph-17 of the said judgement, was that the criteria for reservation of Scheduled Castes wards—on the basis of highest percentage of Scheduled Castes population in a ward, in descending order, is contrary to the criteria which was adopted in the elections held in 2007 and 2012.

37. The next ground taken was that the reservation of wards for Scheduled Castes and women fell foul of, and were contrary to, Article 243T of the Constitution of India.

38. We may note that the grievance now raised by the petitioners in the present writ petitions, is to say that the reservation for Scheduled Castes should be restricted, only in respect of wards, where their population is the highest.

39. The Division Bench considered the constitutional scheme contained, *inter alia*, in Article 243T of the Constitution of India, and Sections 3 and 5 of the Act. The Division Bench also took notice of the fact that Article 243T deals with Municipalities, and not Parliamentary or Assembly



constituencies.

40. The scheme of reservation, in respect of seats/wards provided under the Act, was taken note of in paragraph -22 in the following words:

“22. The Act, therefore, provides for three kinds of reservations. Reservation for Scheduled Castes; reservation for women in the General category, which cannot be less than 50% of the total seats for General category and reservation of seats for women in Scheduled Castes category which cannot be less than 50% of the seats reserved for Scheduled Castes.”

41. The Division Bench observed that the notification dated 06.02.2017 reserved wards based upon the highest percentage of Scheduled Castes population in the wards in the descending order in each of the three Corporations.

42. We may observe that with a view to implementing the scheme of reservation and rotation, the respondent-SEC has now reserved, in the same manner, seats/wards which have descending population of Scheduled Castes, after exclusion of those seats/wards which have been reserved in the previous election.

43. In paras-27, 28 and 29, the Division Bench observed the following:

“27. The writ petitions challenging the 2007 and 2012 notifications were dismissed for several reasons, but primarily on the ground that it was not for the Court or the petitioners therein to fix a parameter or criteria to decide which ward should be reserved for Scheduled Castes or women. The contention that the reservation based upon the percentage of Scheduled Castes population in the Assembly Segment or Constituency was irrational and illogical was rejected for reasons set out in the two judgments. The said judgments, however, do not hold that the ratio of the population in Assembly Segments or Constituency would be the right or the only method or criteria to determine or decide which ward



*should be reserved for Scheduled Castes. This is not the ratio of the said decisions as was contended by the petitioners. **The principle or percept to be applied for determining which ward/seat should be reserved is for the Government to decide Courts do not test the wisdom of the authorities or appropriateness of the criteria adopted while exercising the limited power of judicial review in such matters. Comparative merit of the options available cannot be made the subject matter of judicial review. The precept or the principle applied in the notification can be challenged on the grounds and reasons as were enunciated and settled in Hem Raj Arya and Ors. Vs. Election Commission, Delhi & Ors. 1995 (32) DRJ 231***”, which had dealt with the 1993/1994 notification and had upheld the same, recording the following ratio:-

*“(14) We are of the view that since no malafides on the part of the respondents have been pleaded or proved in adopting the stated method of reservation of seats, it is not for this Court to go into the minute details of the manner of reservation particularly when the Court is neither conceived with any statutory formula which had to be applied to test the correctness of the method adopted nor any precise fool proof mathematical formula can be spelt out for the said purpose. The method adopted for reservation of wards cannot be struck down merely because another method would be more fairer, scientific or logical. **The court should interfere only if the impugned action is patently arbitrary, unconsciously unfair, discriminatory or malafide, which as already noted, is neither pleaded nor proved.** In that view of the matter we do not find any ground to interfere. There is no merit in the petition and the same is accordingly dismissed. No costs.”*

28. This principle was reiterated by a single Judge in the case of **Ramesh Dutta** (supra) in the following words:-

*“38. Accordingly, I hold that these writ petitions are maintainable. I also hold that **there is no statutory requirement for disclosing the manner of allotment of***



seats reserved for the Scheduled Castes or women in the notifications issued under Section 5(2) of The DMC Act. However, such a manner must be discernible from the records of the Central Government (including its delegates). The manner must be reasonable and not arbitrary or discriminatory or mala fide. The manner indicated in the present case of identifying seats reserved for scheduled castes based on the twin criteria of ranking seats in decreasing proportion of population and limiting them to not more than two per assembly segments cannot be interfered with as it is neither arbitrary nor discriminatory nor mala fide. Even the criterion of allotting every third seat from the list of wards arranged as per the serial numbers of the wards for women cannot be questioned. However, as indicated above, the impugned notification of 17.02.2007 has gone wrong in not uniformly applying these criteria. The same is, therefore, set aside.”

29. Similarly, in *Vikas* (supra), a Division Bench of this Court had held that the SEC had carried out a considered exercise, which by no stretch of imagination can be said to be irrational or arbitrary. The methodology adopted cannot be struck down. When the methodology adopted by the SEC cannot be faulted, there would be no merit in the challenge. It was pertinently observed:-

“37. It is our view that the SEC has carried out a considered exercise which by no stretch of imagination can be said to be irrational or arbitrary so that it would fall foul of Ramesh Dutta’s case (supra) It has already been explained that the methodology adopted in Ramesh Dutta’s case (supra) for the elections in the year 2007 alone was not to be implemented for all future elections and that the exercise then carried out was rational and reasonable though there may have been flaws in the implementation aspect. The SEC was, thus, within its right to adopt a modified formula.” (emphasis supplied)



44. The Division Bench also observed that there is no embargo or bar under Article 243T of the Constitution, or the Act which prohibits or bars the authorities from engaging themselves and undertaking an exercise to improve and better upon the earlier principle/criteria, in relation to the method of grant of reservation of seats/wards for municipal elections. The Division Bench noted the reasons provided by the SEC to be good and valid, for the principle adopted by it for granting reservation of seats/wards for Scheduled Castes, which was the identification of the seats/wards on the basis of descending order of population of Scheduled Castes in constituencies within each municipality. Essentially, the same principle has been applied even while issuing the present reservation order, while also is implementing the Constitutional policy of rotation.

45. The Division Bench observed in *“We The Citizens Through Its Secretary”* (supra), that it is not for the Courts to interfere with the criteria adopted by the competent authority in this regard. Since, there is no prohibition in law pointed out by the petitioners to the implementation of the policy of rotation, the challenge raised by the petitioners is bound to fail. Pertinently, the petitioners have not been able to point out any arbitrariness, or lack of application of mind on the part of the SEC, either in the matter of determination of the number of reserved seats for Scheduled Castes or women candidates—which is based on the latest Census figures available (sine no Census was conducted in 2021 due to the pandemic), or in the matter of identification of the seats/wards which may be reserved for the Scheduled Caste/women candidates.

46. We may also take note of the observations made by the Division



Bench in para-40 of the aforesaid decision, which reads as follows:

“40. However, it would be for the authorities to consider notifying the method or manner of rotation of seats in terms of clause (e) to Section 5(2), when they carry out a delimitation exercise and issue a notification for reservations of wards/seats for Scheduled Castes as well as women candidates. If the manner and method of rotation is specified, it would possibly prevent disputes and controversies of this nature and would ensure that there is proper rotation of reserved seats, which should be encouraged and is required under Article 243T as well as sub-sections (6) and (8) to Section 3 and, Section 5 (2) of the Act. The method indicated is not final and can be always modified and changed, if required, as is permitted and allowed by Section 6 of the Act.”

47. So far as the submission of Maitri founded upon Section 9(1)(c) of the Delimitation Act, 2002 is concerned, the same appears to be completely misplaced in the light of the preamble to the Delimitation Act, 2002.

48. We may also notice the judgment of the Supreme Court in **Meghraj Kothari v. Delimitation Commission and Others**, (1967) 1 SCR 400 and in, particular, the following extract from paragraph 9 thereof, which reads as follows:

“9. The preamble to the Delimitation Commission Act, 1962 shows there is an Act to provide for the readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State, the division of each State into territorial constituencies for elections to the House of the People and Legislative Assemblies of the States and for matters connected therewith.”

49. Therefore, we reject the submission of Mr. Maitri premised on Section 9(1)(c).

50. For all the aforesaid reasons, we do not find any merit in either of



these petitions. Accordingly, we dismiss the same in the aforesaid terms.

VIPIN SANGHI, J

JASMEET SINGH, J

FEBRUARY 2, 2022
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