

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10615 OF 2022

Kiran Gulabrao Patil,
age 43 years, Occ. Agriculture,
R/o. Plot No.14, Sambhaji Nagar,
Dhule.

Petitioner

Versus

1. The State of Maharashtra,
Through it's Department of
Rural Development,
Mantralaya, Mumbai - 32.
2. The Principal Secretary,
Rural Development Department,
Government of Maharashtra,
Mantralaya, Mumbai - 32.
3. The Collector, Dhule
District Dhule.
4. The State Election Commission,
State of Maharashtra.

Respondents

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Mr. S. P Shah, Advocate for Petitioner
Mr. S.B. Yawalkar, AGP for respondent no.1 to 3
Mr. A.B. Kadethankar, Advocate for respondent no.4

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**WITH
CIVIL APPLICATION NO.17210 OF 2022
IN
WRIT PETITION NO.10615 OF 2022**

Ashwini Bhatu Pawar,
age 27 years, Occ. President
of Zilla Parishad Dhule,
R/o Shiwalaye, 10, Anmol Nagar,
Near Raju Gandhi High School,

Devpur, Dhule, Tq. & Dist. Dhule.

Applicant

Versus

1. Kiran Gulabrao Patil,
age 43 years, Occ. Agriculturist,
R/o Plot No.14, Sambhaji Nagar,
Dhule.

Respondent
(orig Petitioner)

2. The State of Maharashtra,
Through it's Department of
Rural Development,
Mantralaya, Mumbai - 32.

3. The Principal Secretary,
Rural Development Department,
Government of Maharashtra,
Mantralaya, Mumbai - 32.

4. The Collector,
Dhule, Dist. Dhule.

5. The State Election Commission,
State of Maharashtra.

Respondents.
(Resp No.2 to 5
orig. respondents)

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Mr. V.D. Hon Senior Counsel I/b Mr. D.S.Bagul, advocate
for applicant.

Mr. S.P. Shah, Advocate for respondent No.1.

Mr. S.B. Yawalkar, AGP for respondent nos.2 to 4.

Mr. A.B. Kadethankar, Advocate for respondent no.5.

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WITH

WRIT PETITION NO.12328 OF 2022

Shri Ajay s/o Mansing Rajput,
age 32 years, Occ. Labourer,
R/o Near Maruti Mandir, Junnar,
Dhule, Tq. & Dist Dhule.

Petitioner

Versus

1. The State of Maharashtra,
through it's Chief Secretary,
Rural Development Department,
Mantralaya, Mumbai - 32.
2. The Secretary,
Rural Development Department,
Mantralaya, Mumbai - 32.
3. The Collector, Dhule,
District Dhule.
4. The State Election Commission,
New Administrative Bhavan,
Hutatma Rajguru Chowk,
Madam Cama Road, Mumbai -32.
5. The Presiding Officer,
Dhule Zilla Parishad President/
Deputy President Election-2022
and Deputy Collector, Dhule
District Dhule. (deleted)
6. Smt. Ashwini Bhatu Pawar,
Age major, Occ. Household,
R/o Office of President,
Zilla Parishad, Dhule.
District Dhule. Respondents

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Mr. V.D.Sapkal, Senior Counsel i/b Mr. Y.B. Bolkar,
advocate for petitioner
Mr. S. B Yawalkar, AGP for Respondent nos. 1 to 3.
Mr. A.B. Kadethankar, Advocate for respondent no.4.
Mr. V.D. Hon, Senior Counsel i/b Mr. D.S. Bagul,
Advocate for respondent no.6.

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**CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.**

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Reserved on : 2nd March, 2023Pronounced on : 4th May, 2023

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JUDGMENT :- (PER S.G. CHAPALGAONKAR, J.)

1. Rule. Rule made returnable forthwith. Both the writ petitions are taken up together for final hearing at admission stage by consent of the parties.

2. The petitioners have approached this court under 226 of constitution of India raising common challenge to the order dated 30.9.2022 passed by the State of Maharashtra, thereby fixing the reservation to the seats of Presidents of respective Zilla Parishads for ensuing elections. The petitioners claim to be residents of Dhule and belong to the Backward Class. Broadly, the grounds of challenge to the impugned order can be summarized thus :-

- a] The impugned order restricts 20.58% of total seats for BCC reservation, although in light of the directions issued by the Supreme Court, 23.54% of total seats are required to be reserved. Consequently, 8 seats out of 34 seats of president available in the state ought to have been reserved for BCC (as against 7 seats earmarked).

As such, out of 8 seats available for BCC, 4 seats need to be reserved for BCC women (against 50% quota for women).

Instead, impugned order provides reservation of only 3 seats for BCC women.

- b] The reservation for women has been repeated at Sangli District though it could have been avoided by applying Rule.
- c] Impugned order is passed de hors mandate of relevant rules requiring draw of lots for fixing the reservation for BCC as well as Women in each category,

3. The contention of the petitioners is that Article 243-D of the Constitution of India provides for reservation of seats in Panchayats for Scheduled Castes and Scheduled Tribes in proportion to their population. Similarly, it enables reservation to BCC and Women. The Constitutional mandate has been carried forward under Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (for short referred to as 'Act of 1961'). Section 42 of the Act provides for reservation of seats of SC and ST in proportion to their population. It enables 27% reservation for BCC with provision of 50% reservation of all seats in such category for women. The reservation is to be applied by rotation. State Election Commission is empowered to issue guidelines for holding of the elections to Zilla Parishads and Panchayat Samitis in accordance with the reservations provided for the respective categories.

4. Petitioners further contend that Supreme Court of India in the matter of **K. Krishnamurthy [(2010) 7 SCC 202]** considered validity of the provisions of Section 42 of the Act of 1961 and declared it unconstitutional to the extent of providing for 27% reservation to BCC. The issue has been re-considered by the Supreme Court in Writ Petition No.841 of 2021 and SLP No.19756 of 2021. It is observed that unless the empirical data regarding BCC is collected, the reservation to BCC cannot be provisioned. In pursuance of such observations of the Supreme Court, the State of Maharashtra appointed a dedicated Commission (Banthia Commission) to study the status of BCC within the State. The report submitted by dedicated commission recommends reservation to BCC up to 27% so that total reservation (including reservation for SC & ST) does not exceed 50% of the total number of seats available. The Supreme Court permitted the State Election Commission to hold the elections of Panchayats in accordance with the recommendations of the Commission vide order dated 22.7.2022. The State Election Commission issued orders for holding the elections in deference to the directions given by the Supreme Court.

5. The State Government published impugned notification dated 30.9.2022 declaring number of seats of President of Zilla Parishad throughout the State to be reserved for each of the category i.e. Scheduled Caste, Scheduled Tribe, BCC and women. According to the petitioners the reservation so fixed under impugned Notification violates directions of the Supreme Court as well as the statutory provisions. The contention of the petitioners is that, there are total 34 Zilla Parishads within the State of Maharashtra. Total 9 seats are reserved for Scheduled Caste and Scheduled Tribe, whereas 7 seats are reserved for BCC (i.e. 20.58%). However, if BCC reservation is applied @ 23.54% in tune with population, 8 seats ought to have been allocated to BCC. Similarly, 4 seats ought to have been allocated to BCC women. The reservation for women at Sangli has been repeated which shows non-adherence to relevant Rules pertaining to rotation and allotment of seats.

6. According to the petitioners, the statutory scheme embodied under Rule 2-B and 2-C mandates for fixing the reservation by drawing the lots for BCC after fixation of reservation for SC and ST. However, under impugned order,

fixation has been done without drawing lots, which is contrary to the statutory mandate and guidelines issued by the Election Commission.

7. In response to the notice of this petition, the respondents no.1 to 3 filed affidavit-in-reply. The contention of the respondents is that in terms of the order dated 20 July 2022 passed by the Supreme Court of India in IA No.92695 of 2022 in SLP (C) No.19756 of 2021 and IA No.93235 of 2022 in SLP (C) No.238 of 2022 the steps are taken to complete the election process in accordance with the recommendations made by dedicated commission. The fixation of the reservation has been done in tune with the report of the Commission dated 7.7.2022. The percentage of reservation as well as the number of posts available for backward classes, Scheduled Castes and Scheduled Tribes has been indicated in report submitted by dedicated commission.

8. As per Section 42 of the Act of 1961, half of the posts are to be reserved for women. Half of the total number of offices of President falling for the backward classes, Scheduled Castes and Scheduled Tribes in Zilla Parishads are reserved for women. Relying upon the provisions contained under Rule 2-B

and 2-D of The Maharashtra Zilla Parishad (The President, Vice President and Chairmen of Subjects Committees) and Panchayat Samitis (Chairman and Deputy Chairman) Reservation of Offices and Election Rules, 1962, it is contended that the rotation of reservations has been applied and while rotating such offices for such category, in subsequent terms, offices already reserved in earlier terms for such category of women, are excluded with intention to rotate such reservation in all Zilla Parishad. It is further contention of the respondents that out of total 34 posts of Presidents, 4 seats fall for reservation of SC, 5 seats fall for reservation of ST and 7 seats fall for reservation of BCC. Reservation of 7 seats for BCC has been fixed in terms of recommendations of Dedicated Commission.

9. Respondents further contends that in order to avoid repetition, the reservations applied during earlier elections for particular Districts have been considered. Further, considering Rule 2-C of The Maharashtra Zilla Parishads (President, Vice President and Chairmen of Subjects Committees) and Panchayat Samitis (Chairman and Deputy Chairman) Reservation of Offices and Election Rules, 1962, the State

Government carried the exercise for fixing allotment and rotated the reservation after excluding the Districts which were reserved for BCC during earlier terms. Accordingly, final reservation has been fixed as per impugned notification.

10. Mr. S.P. Shah, learned advocate appearing for the petitioner in Writ Petition No.10615 of 2022 and Mr. V.D. Sapkal, learned Senior advocate i/b Advocate Mr. Y.B. Bolkar appearing for the petitioner in WP No.12328 of 2022 would submit that the respondent authorities are bound to fix the reservation by following due process of law. They would submit that the Rules regarding the rotation of the seats as well as the reservation for women have been blatantly violated by the respondents while fixing number of reserved seats for women and issuing the impugned order dated 30.9.2022. They would submit that at some places, there is repetition of reservation for women, which could have been avoided. They would point out that the respondents have failed to fix the reservation for BCC by drawing the lots. The procedure for drawing lots is completely ignored. The entire procedure has been flouted and the allotment of reservation has been done in arbitrary and capricious manner with intention to provide the

benefit to particular persons. On this count, they urge that notification is liable to be quashed and set aside.

11. Learned advocates appearing for the petitioner would rely upon the judgments delivered by the Supreme Court of India in the matter of **Vikas Kishanrao Gawali Vs. State of Maharashtra and others** reported in (2021) 6 Supreme Court Cases 73, **Seema Sarkar Vs. Executive Officer and others** reported in (2019) 6 Supreme Court Cases 559, **Bharti Reddy Vs. State of Karnataka and others** reported in (2018) 12 Supreme Court Cases 61, **Uday Khanderao Pawar and another Vs. State Election Commission, through its Commissioner and others** reported in 2006 SCC online Bom. 1732, **Prashant Banslal Bamb Vs. State of Maharashtra and others** reported in 2007 (4) MhLJ 341, **Vitthal Dattu Gore Vs. State of Maharashtra and others** reported in 2010 (1) MhLJ 739, **M. Abdul Azeez Vs. The State of Karnataka, by its Secretary, Urban Development Department and others** reported in ILR 2014 Kar. 1839, **State of Punjab and others Vs. Manjit Singh Sethi** reported in 2015 SCC online P&H 13156 and **Aboobacker Kanniyan Vs. Kerala State Election Commission and others** reported in 2020 SCC online Ker) 23472.

12. Mr. S.B. Yawalkar, learned AGP appearing for the State and Mr. V.D. Hon, learned Senior Counsel appearing for respondent no.6 intervenor would submit that the respondents have followed the due process of law and fixed the reservations with due adherence to the relevant provisions of the Act and the Rules. They would urge that the number of seats to be reserved for particular reservation category is fixed in view of the directions by the Supreme Court of India in the matter of **Rahul Ramesh Wagh Vs. State of Maharashtra** and report of dedicated commission. Petitioners having accepted the report of dedicated commission could not have challenged percentage of reservation for BCC and allotment of reservation for women. The literal meaning of the provisions cannot be considered in isolation. The object behind statutory scheme has to be given effect by adopting harmonious interpretation. It is their contention that while drawing the lots for offices of the Presidents, seats reserved for the particular category in earlier terms need to be excluded to avoid repetition. In support of the contentions, reliance has been placed on judgment of the Supreme Court of India in case of **Sanjay Ramdas Patil Vs. Sanjay and others** reported in (2021) 10 SCC 306, **State of UP and others Vs. Pradhan Sangh Kshettra Samiti Vs. Pradhan**

Sangh Kshetra Samiti and others reported in **1995 Supp. (2) Supreme Court Cases 305**, **Hem Raj Arya and ors. Vs. Election Commission, Delhi** reported in **(1995) SCC (Del) 10**, **Harmeet Singh Vs. Punjab State Election Commission and others** reported in **(2008) SCC P & H 786**, **Sameer Subhash Rajurkar Vs. The State of Maharashtra and others** reported in **(2020) SCC Bom. 675** and **West Bengal State Election Commission Vs. Arup Dey and others** reported in **(2022) SCC (Cal) 335**.

13. We have heard the learned advocates for respective parties and with their assistance perused the record.

14. Before we proceed to appreciate the arguments advanced by learned advocates, it is necessary to refer to the relevant Constitutional and Statutory provisions for deciding the contentious issue.

Article 243-D of the Constitution of India mandates for the reservation to the post of President of Zilla Parishads in accordance with the 73rd Constitutional amendment. Relevant portion of Article 243-D reads as under :-

243-D. Reservation of seats :-

(1) Seats shall be reserved for

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat 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 Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(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 Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.*

(4) *The offices of the Chairpersons in the Panchayats at the village or any other level 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:***

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(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 Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

15. The Constitutional scheme enabling reservation for backward classes on the post of President of Zilla Parishad has been brought in to effect through State Legislation i.e. Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961. Section 42 (4) of the Act of 1961 which provides for reservation of the offices of President for Scheduled Castes and Scheduled Tribes backward class of citizens and women. Sub-clause (c) of sub Section (4) provides reservation for women. The relevant provision of section 42 (4) of the Act of 1961 reads thus :-

42. Election Of President And Vice-President :-

(1)

(2)

(3)

(4) There shall be reservation in the office of the President in the Zilla Parishad for the members belonging to the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of citizens and women as follows :-

(a) the number of offices of Presidents to be reserved for the Scheduled Castes and the Scheduled Tribes in the Zilla Parishads shall bear as nearly as may be, the same proportion to the total number of such offices in the Zilla Parishads as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State [excluding the population of the Scheduled Tribes in a Zilla Parishad comprising

entirely the Scheduled Areas] bears to the total population of the State :

[Provided that, the office of the President of a Zilla Parishad comprising entirely the Scheduled Areas shall be reserved only for the persons belonging to the Scheduled Tribes:-

Provided further that, the office of the President of a Zilla Parishad falling only partially in the Scheduled Areas shall be reserved for the persons belonging to the Scheduled Tribes in accordance with the provisions of clause (a):

Provided also that one-half of the total number of offices so reserved shall be reserved for women belonging to the Schedule Castes or, as the case may be, the Scheduled Tribes :

Provided also that, in a Zilla Parishad in the Scheduled Areas where the population of the Scheduled Tribes is more than fifty per cent, of the total population, the office of the President shall be reserved only for the persons belonging to the Scheduled Tribes.

(b) the offices of Presidents to be reserved for persons belonging to the category of Backward Class of citizens shall be 27 per cent, of the total number of such offices in the Zilla Parishads :

Provided that, one-half of the offices so reserved shall be reserved for women belonging to the category of Backward Class of citizens;

- (c) one-half of total number of offices of Presidents (including the number of offices reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of citizens) in the Zilla Parishads shall be reserved for women.*

(6) The number of offices reserved as aforesaid shall be allotted by rotation to different Zilla Parishads in the prescribed manner.

- (7) The reservation of offices of Presidents (other than the reservation for women) shall cease to have effect on the expiration of the period*

16. In exercise of the powers conferred under the Act of 1961, the Maharashtra Zilla Parishads (President, Vice President and Chairmen of Subjects Committees) and Panchayat Samitis (Chairman and Deputy Chairman) (Reservation of Offices and Election) Rules, 1962 have been framed. Rule 2-C and 2-D of the rules deal with allotment and rotation of reservation of the offices of President of Zilla Parishad for Backward Class and women. Rule 2-C and 2-D read thus: -

“2-C. Power of the State Government to allot and rotate the reservation of offices of the President of Zilla Parishads for backward class -

(1) Subject to the provisions of clause (b) of sub-section (2) of Section 42 of the Act, the State Government shall, by order, in the Official Gazette allot, and rotate the reservation of offices of President of Zilla Parishads (for every term) for the persons belonging to the category of Backward Class of Citizens (including Vimukta Jatis and Nomadic Tribes) by drawing lots amongst the Zilla Parishads

Provided that while allotting such offices, the Scheduled Castes or the Scheduled Tribes shall be excluded:

2. Notwithstanding anything contained in sub-rule (1), while rotating such offices for the subsequent terms the Zilla Parishads where such Offices have been already reserved for earlier terms for the persons belonging to the category of

Backward Class of Citizens (including Vimukta Jatis and Nomadic Tribes) shall be excluded until in all Zilla Parishads, subject to the first proviso of sub-rule (I), reservation of offices is given by rotation.

2-D. Power of the State Government to allot and rotate the reservation of offices of the President of Zilla Parishads for women -

(1) Subject to the provisions of clause (c) of subsection (4) of Section 42 of the Act, the State Government shall, by order, in the Official Gazette allot and rotate the reservation of offices of Presidents of Zilla Parishads for women including the women belonging to the Scheduled Class, the Scheduled Tribes and the category of backward class of citizens (including Vimukta Jatis and Nomadic Tribes) by drawing lots amongst the Zilla Parishads in the State :

Provided that, the lots in respect of women belonging to the [the Scheduled Castes, the Scheduled Tribes] and the category of Backward Class of Citizens (including Vimukta Jatis and Nomadic Tribes) shall be drawn only among the Zilla Parishads where offices of Presidents are reserved for such Castes, Tribes or as the case may be, for the category of Backward Class of citizens (including Vimukta Jatis and Nomadic Tribes) :

(2) Notwithstanding anything contained in sub-rule

(1), while rotating such offices for women for such category in the subsequent terms, the Zilla Parishads where such offices have been already reserved in earlier terms for such category for women, shall be excluded until in all Zilla Parishad reservation of offices is given by rotation.

17. Pertinently, the Election Commission has issued the election order dated 22.7.2022 namely Zilla Parishad and

Panchayat Samitis General Election (Number of members, formation of Wards and Reservation) Amendment order, 2020. Perusal of clause nos.5 and 6 would show that the method for rotation of seats for backward class has been prescribed. It also stipulates that the seats which were reserved in earlier elections for the Scheduled Castes and Scheduled Tribes and women are to be excluded for the purpose of next lots.

18. In view of the aforesaid legal and factual position, we proceed to deal with the first objection of the petitioners to the impugned order dated 30.9.2022 passed by the State of Maharashtra. The contention of the petitioners is that, the impugned order restricts reservation to 20.58% of total seats for BCC, although, in light of the directions issued by the Supreme Court, it should be 23.54%. Since, total 34 seats of ZP President are available in the State, 8 seats ought to have been reserved for BCC and four seats out of BCC reservation ought to have been allotted to BCC women. Pertinently, the petitioners are relying upon the report dated 7.7.2022 submitted by dedicated Commission (Banthia Commission) to contend that 23.54% of total seats are required to be reserved for BCC. Admittedly, report of dedicated Commission was

placed for consideration before the Supreme Court. The State of Maharashtra had filed interim application before the supreme court seeking permission to proceed with the election process of the remaining local bodies on the basis of the report of the dedicated Commission dated 7.7.2022. The Supreme Court allowed prayer of the State of Maharashtra and permitted it to proceed with the election in accordance with the recommendations made by the dedicated Commission. The report of the dedicated Commission would show that on the basis of BCC population the number of seats of chairperson to be reserved for BCC in local bodies have been prescribed. The report recommends overall 23.2% reservation for the BCC with reservation of 7 seats of ZP president out of total 34 seats in state.

19. We have considered the submissions advanced on behalf of petitioners. After going through the pleadings in respective writ petitions, we could notice that in neither of these petitions raises any challenge to the report of the dedicated Commission, rather petitioners are relying upon the same. Allocation of 7 seats of presidents of Zilla Parishad for BCC as indicated in report cannot be objected in absence of challenge to the report.

The allocation of 7 seats of President of Zilla Parishad for BCC reservation under the impugned notification/order dated 30.9.2022 issued by State Government is based on report of dedicated commission. For the reasons stated above, we are not inclined to entertain first objection of the petitioners.

20. The second contention of the petitioners relates to the rotation of the reservation for women or non-observance of the mandate of the Rules requiring draw of lots while fixing the reservation for BCC women. Though, the petitioners have raised general challenge to the impugned order dated 30.9.2022, which relates to the entire State of Maharashtra, the thrust of the matter before us pertains to allocation of reservation of General Female to the seat of President, Zilla Parishad at Dhule. In both petitions, the petitioners are the residents of Dhule and mainly aggrieved with allocation of reservation for women to the seat of President of Dhule Zilla Parishad. In that view of the matter, it would be appropriate to deal with the challenge to the impugned order dated 30.9.2022 to that extent only. Pertinently, the petitioners are not espousing a public cause. Since they are the residents of

District Dhule, certainly they would have locus to challenge the reservation of seats at Dhule only.

21. Respondent nos.1 to 3 have filed affidavit-in-reply and put forth the explanation regarding manner of rotation applied while fixing the reservation. The allocation of reservation of Scheduled Castes has been done in descending order keeping in mind the population of Scheduled Castes compared to total population in the area of such Zilla Parishads. Under previous notification dated 4.12.2019 Solapur, Jalna, Osmanabad and Nagpur were considered for allotting reservation of scheduled castes. Therefore, considering percentage of the population in descending order, Scheduled Caste rotation has been applied. The Nandurbar, Raigad, Palghar, Hingoli and Nanded (page 122) were notified for the reservation of Scheduled Tribe as per notification dated 4.12.2019. In the year 2022, Nagpur, Ahmednagar, Bhandara, Palghar and Nandurbar are reserved for Scheduled Tribe category.

22. After allotment of reservation for Scheduled Castes and Scheduled Tribes, 9 Districts out of 34 have been excluded from consideration for rotating reservation of BCC. Under notification dated 4.12.2019, Thane, Sindhudurg, Sangli,

Kolhapur, Beed, Latur, Amrawati, Washim and Wardha seats were allocated for BCC reservation. Therefore, those Districts are excluded from consideration. As such, for current BCC reservations Raigad, Ratnagiri, Nasik, Jalgaon, Dhule, Pune, Satara, Solapur, Aurangabad, Jalna, Hingoli, Nanded, Osmanabad, Akola, Buldhana, Yavatmal, Gadchiroli and Gondiya i.e. total 18 Districts were available by rotation.

23. Out of the aforesaid 18 Districts, 7 seats for BCC reservation were to be identified. Therefore, by applying the exclusion theory, the Districts where for last three consecutive terms BCC reservation was not allotted, are identified at first place, those are Solapur, Jalna, Nanded and Gondiya. Out of remaining 14 Districts, Jalgaon, Dhule, Pune, Aurangabad, Osmanabad, Akola, Buldhana and Yavatmal were allotted BCC reservation during last two terms. Therefore, they were excluded from preference in the year 2022. The Hingoli District was reserved for women in last consecutive three terms, hence, excluded from consideration in allotment. Similarly, Raigad, Ragnagiri, Nasik, Satara and Gadchiroli were considered for allotment of BCC reservation. The Ratnagiri, Satara and Gadchiroli Districts were allotted BCC reservations

only twice during last nine terms. Hence, those Districts were considered fit for allotment of BCC reservation. Accordingly, 7 Districts Ratnagiri, Satara, Gadchiroli, Solapur, Jalna, Nanded and Gondiya are finally identified for BCC reservation

24. Since, 50% posts are to be reserved for women from BCC allotment, 3 seats (out of 7 seats available for BCC) have been reserved for the women. The districts Nanded and Gondiya had been previously reserved for 3 and 2 times respectively for women. Hence, those districts are excluded. Similarly, district Solapur and Jalna were allocated with the reservation for BCC women, hence, those are excluded. As such, districts Ratnagiri, Satara and Gadchiroli are identified as the districts, which were not reserved for BCC women during last three terms. Hence are considered fit for allotment of reservation of BCC Women.

25. While allotting reservation for general women (9 posts), the provisions of Rule 2-D of the Rules of 1962 have been considered for rotating the offices of the Zilla Parishad President. Offices reserved in earlier terms for women were excluded. As per the notification dated 4.12.2019, Jalgaon, Pune, Aurangabad, Buldhana, Yavatmal are already provided

reservation for last term to General Women. Therefore, those Districts were excluded from consideration for the year 2022. Similarly, Thane, Raigad, Sindhudurg and Washim were consecutively reserved for General Women during last 3 terms. Hence, they are excluded for the year 2022. Accordingly, Nasik, Dhule, Sangli, Kolhapur, Osmanabad, Latur, Amravati, Akola and Hingoli were identified for reservation of General Women. According to the respondents, they have followed entire procedure as per section 42 of the Act of 1961 and Rule 2-C & 2-D of the Rules of 1962. While applying rotation the seats already reserved in earlier terms are excluded. Thereafter, allotments are made as per rules.

26. Before we delve in to the correctness of rotation and allotment of reservation under impugned order dated 30.9.2022, it would be appropriate to refer to certain observations of the Supreme Court of India in the case of **Sanjay Ramdas Patil Vs. Sanjay and others reported in (2021) 10 SCC 306**. The observations in Paragraph no.30 of the judgment records thus :-

“30. It could thus be seen that it is more than well settled that it is the duty of the Court to construe the Statute as a whole and that one provision of the Act has to be construed with reference to other provisions so as to make a consistent

enactment of the whole Statute. It is the duty of the Court to avoid a head-on clash between two sections and construe the provisions which appear to be in conflict with each other in such a manner so as to harmonies them. It is further equally settled that while interpreting a particular statutory provision, it should not result into making the other provision a “useless lumber” or a “dead letter”. While construing the provisions, the Court will have to ascertain the intention of the lawmaking authority in the backdrop of dominant purpose and the underlying intendment of the Statute.

27. The mandate behind the Constitutional scheme under Article 243 D is to provide reservation to the seat of President of Zilla Parishad. Sub-clause (6) of Article 243-D enables the State to make provisions of reservation of the seats of Chairperson in Panchayats in favour of backward class of citizens. Section 42 of the Act of 1961 carries forward the purpose of constitutional mandate. Sub-section (6) of section 42 of Act provides that number of offices reserved shall be allotted by rotation to the Zilla Parishad in prescribed manner. The Maharashtra Zilla Parishads and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules, 1996 provides for manner of rotation of the seats. Rule 10 prescribes for manner of allotment and rotation of seats reserved for women. A combined reading of clause 2C and 2D of Rules of 1962 would show that while applying reservation for women, the offices reserved for the women in earlier terms

are required to be excluded until in all Zilla Parishads, reservation of the offices is given by the rotation.

28. If we consider the Rules in light of Legislative intent behind the Constitutional scheme, the rotation policy will have to be applied ensuring that reservations are not repeated in particular Zilla Parishads and must be rotated by excluding the Zilla Parishad, which during earlier elections were reserved for particular category until reservation to that category is rotated amongst all Zilla Parishads. It is also necessary to ensure that while drawing lots, the statutory scheme is made workable and not frustrated. It is trite that the Writ Court while examining allotment of reservation would ensure that the reservation is not thrust upon particular Zilla Parishad and all the Zilla Parishads will have rotation of reservation in office of President in accordance with the Rules of 1962. It is also trite that allotment of reservation is job of experts. Judicial review while entertaining the challenge would be limited to see that the process has been given effect in accordance with the Rules and the legislative intent behind providing for the reservation.

29. Keeping in mind the aforesaid legal proposition, we have examined the matter in hand.

30. The contention of petitioners that women reservation has been repeated twice at Sangali although that could have been avoided, cannot be accepted for the reason that under notification for the year 2019, the District Sangli was reserved for “OBC” women. Under the impugned notification, it has been allocated to “General” Female (women). The statutory scheme flowing from Rule 2C and 2D of Rules of 1962 provides for allotment of reservation to Scheduled Castes, Schedule Tribes and BCCs at first instance. The reservation for women, being horizontal, operates within the vertical reservation categories. It is, therefore, possible that at consecutive elections, seat of President is reserved for women at particular Zilla Parishad from different category. However, once vertical reservation category is found to be different, objection as to repetition of reservation for women for consecutive terms would not sustain.

31. The petitioners contend that the reservation for General Female has been wrongly clamped at Dhule. We have considered the submissions. We observe that in 2019 the seat of President of Zilla Parishad, Dhule was available to open/General. However, for ensuing elections of 2022, it has

been reserved for women (General). The allocation of seat for General may be repeated while drawing the allotments. Pertinently, rule of exclusion of the reserved seats in earlier terms would not apply when it comes to the allotment of seat for General, the 50% seats are unreserved and possibility of the availability of General seat in consecutive elections cannot be ruled out. Further, in the ensuing election, the seat of President, Zilla Parishad, Dhule is reserved for women (General). Therefore, there is no repetition of reservation as contended on behalf of the petitioners. The Scheme under Rule 2-C and 2-D of Rules of 1962 is applicable for rotation and allotment of reservation. It is expected that in case of reservation for women, the same seat shall not be repeated for women from the same category. We do not find any flaw in allotting the seat to female (General) at Dhule since such reservation was earlier provided long back in the year 2013.

32. The next contention raised by petitioners is that, respondents have failed to adhere to the rules regarding drawing of lots as prescribed in Rule 2-D of Rules 1962 while fixing reservation for BCC women. We have considered contentions of parties on this aspect. The rule 2-D(1)

prescribes for allotment and rotation of offices of presidents for Women by drawing lots among Zilla Parishads in the state. The proviso appended to rule 2-D(1) states that lots shall be drawn for Women among the seats reserved for that particular backward reservation category. In present case 7 offices of presidents are reserved for BCC as per report of dedicated commission out of 34 seats available in entire state. Further, 7 offices of Zilla Parishads President are identified for BCC reservation after following procedure prescribed under Rule 2-C of 1962 Rules. Since 50% of total seats are to be reserved for women as per Section 42(4)(C) of Act of 1961, the 3 seats out of 7 BCC seats are reserved for women. As per section 42(6) number of offices reserved, required to be allotted by rotation to different Zilla Parishads in prescribed manner. The rule 2-D of 1962 Rules prescribes manner of rotation and allotment of offices of presidents of Zilla Parishads for women. Rule 2-D (2) begins with non-obstacle clause, to prescribe that while rotating offices for women for such category in subsequent terms, the Zilla Parishads, where such offices have been already reserved in earlier terms for such category of women, shall be excluded until in all Zilla Parishads reservation is given by rotation. We have noticed that

respondents have taken care to exclude Zilla Parishads, where BCC Women reservation was applied in earlier elections. After excluding those Zilla Parishads, BCC women reservation has been fixed. We are of the view that after excluding Zilla Parishads reserved for BCC women in earlier elections, three Zilla Parishads are identified against three seats available for BCC women hence there was no requirement to draw the lots.

33. The enabling provision regarding drawing of lots can be resorted to when number of available seats for particular reservation category are less than number of seats available for distribution. Only when more Zilla Parishads are available for exercising choice as compared to number of seats reserved, the method of drawing lots can be resorted to. What we could notice in this case is that after excluding seats reserved for women in earlier elections, requisite number of seats could be identified without drawing lots. Pertinently, seats notified for reservation for particular category in impugned order shows that repetition of reservation at particular Zilla Parishad is avoided. It is trite law that if there is conflict in the provisions prescribing procedural part under rules, the rule that secures object of legislation will have to be followed. We have observed

conflict in application of rule 2-C & 2-D of 1962 Rules which prescribe exclusion of seats reserved in earlier elections while drawing lots. Rules do not prescribe as to how many earlier elections are to be considered for observing roster. In this case, roster for last six terms has been considered as indicated in reply affidavit filed by state. In that view of the matter, if basic object of legislation is fulfilled without material deviation from rules of procedure, this court would be slow in interfering the decision of state authorities.

34. This Court in the case of **Sameer Subhash Rajurkar Vs. State of Maharashtra and others reported in (2020) 5 MhLJ 455** observed in paragraph no.40 of the Judgment as under :-

“40. The power under [Article 226](#) of the Constitution of India is not intended to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view. The High Court, in exercise of powers under [Article 226](#) of the Constitution cannot make a roving enquiry and rope in all sorts of issues. The extra ordinary power under [Article 226](#) is to be invoked only where circumstances are exceptional and do warrant the exercise of such powers.

Scope for judicial review to challenge notification is narrow. The High Court, while exercising writ jurisdiction under [Article 226](#) of the Constitution of India, does not sit as an appellate authority. Role of High Court, in such matters under judicial review is limited to find whether the decision making process is adhered to and that there are any malafides while issuing draft notification and

absence of arbitrariness on the part of the Election Commission.”

35. Further the Division Bench of High Court of Calcutta in the matter of **West Bengal State Election Commission Vs. Arup Dey and others reported in AIR 2022 Cal 128** observed in paragraph no.21 as under :-

“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.”

36. Applying law as indicated in the judgments referred (supra), there is no reason to interfere in the impugned decision of the State Government. We find that the respondent State of Maharashtra has considered the rotation of reservations in tune with the statutory provisions. The allotment of reservations during last six terms has been considered as base while applying the rotation and care has been taken to avoid repetition of reservation for particular category in particular district. The categories having represented at such districts in

earlier elections are excluded from consideration under impugned notification for 2022 and the reservation has been spread over keeping in mind the legislative intent and procedure under the Rules regarding manner of rotation.

37. We find that there is no flaw that would require interference under Article 226 of the Constitution of India in the matter of allotment of reservation under impugned order dated 30.9.2022. Resultantly, the challenge in the Writ Petitions fails. Writ Petitions are accordingly dismissed. No order as to costs. Pending Civil Application stands disposed off.

(S.G. CHAPALGAONKAR)
JUDGE

(MANGESH S. PATIL)
JUDGE

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aaa/-