

(1997) 04 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 1478 of 1997

Abdul Rashid Khan Mamoo

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 28-04-1997

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 19(1A)

Constitution of India, 1950 — Article 226, 243

Maharashtra Municipal Corporations Offices of (Reservation of Mayor) Rules, 1994 — Rule 3, 5

Citation : (1998) 1 ALLMR 74 : (1998) 1 BomCR 41 : (1997) 3 MhLj 180

Hon'ble Judges : B.H. Marlapalle, J;A.P. Shah, J

Bench : Division Bench

Advocate : P.M. Shah, S.B. Talekar, for the Appellant; A.M. Kanade, GP, S.C. Bora, Zia-Ul-Mustafa, Suresh Kulkarni and P.V. Mandlik, for the Respondent

Judgement

A.P. Shah, J.—This petition under Article 226 of the Constitution of India raises an important question of law in the matter of reservation of the offices of Mayor in the Municipal Corporations in the State of Maharashtra u/s 19(1A) of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter called the Act) read with the Maharashtra Municipal Corporations (Reservation of Offices of Mayor) Rules, 1994.

2. The elections to the Municipal Corporation of Aurangabad were held on 16th April, 1995. The Municipal Corporation of Aurangabad consists of 82 Councillors elected at the ward elections. Out of 82 seats, only one seat of Councillor being ward No. 55, Kotwalpura, was reserved for Scheduled Tribes. The petitioner had contested the elections and got elected from ward No. 55 which was reserved for the candidate of Scheduled Tribe. The respondent No. 5 was elected from ward No. 56, which was a general category ward and the respondent No. 6 was elected from ward No. 53, which was reserved for woman (general).

3. Article 243-T of the Constitution provides for reservation of seats in self-

governing institutions constituted under Article 243-O. Article 243-T(4) states that the offices of Chairperson in Municipalities shall be reserved for the Scheduled Castes, Scheduled Tribes and women in such manner as the Legislature of the State may, by law, provide. Accordingly, the Legislature of the State amended the Bombay Provincial Municipal Corporations Act, 1949. By the said amendment, section 5-A, providing for reservation of seats at elections of the Municipal Corporations and section 19(1-A) providing for reservation for the offices of the Mayor in the Corporation, came to be inserted by the Maharashtra Act No. 41 of 1994. Section 19(1-A) reads as follows:

"19(1 -A) There shall be reservation for the offices of the Mayor in the Corporation, by rotation, for Scheduled Castes, Scheduled Tribes, Woman and the Backward Class of Citizen, in the prescribed manner."

4. The State Government framed Rules in exercise of powers conferred by section 19(1-A) of the Act known as "The Maharashtra Municipal Corporations (Reservation of Offices of Mayor) Rules, 1994". Under the said Rules, the offices of Mayor in Municipal Corporations in the State are required to be reserved by rotation and by drawing lots each year. The meeting to draw lots for the purpose of reservation of offices of Mayor by rotation was held in the office of the Minister of State for Urban Development Department on 23rd October, 1996. By the lots drawn in the said meeting, only one post was reserved for Scheduled Tribes in the year 1997 in the Municipal Corporations in Maharashtra, which went to Municipal Corporation of Aurangabad.

5. It seems that the Deputy Secretary, Urban, Rural and Water Conservation Department, Mantralaya had issued certain directions to all the Collectors in Maharashtra informing that the members belonging to Scheduled Castes, Scheduled Tribes, even if elected on general seats, were eligible for the post of President of the Zilla Parishads or Sabhapati of the Panchayat Samiti. However, the directions contained in the said letter dated 12th March, 1997, issued by the Deputy Secretary came to be stayed by this Court in Writ Petition No. 977 of 1997.

6. At this point it is necessary to state that in the meanwhile the Supreme Court had an occasion to consider the effect of Article 243-T(4) in the context of similar provisions of the Haryana Municipalities Act and the Rules framed thereunder in *Saraswati Devi Vs. Smt. Shanti Devi and Others*, . The Supreme Court held that when a seat of President of the Municipal Council was reserved by rotation for members belonging to the scheduled castes women category, a candidate elected from the ward reserved for scheduled caste woman shall be entitled to contest for the Presidentship and the candidate elected from general category is not entitled to contest such election even if she happens to be a Scheduled Caste woman.

7. Thereafter, the Secretary to Urban Development Department, Mantralaya, issued a circular dated 5th March, 1997 informing all the offices of the Municipal

Corporations that whenever the office of the Mayor was reserved either for Scheduled Castes or Scheduled Tribes, care should be taken to see that the candidates who were elected on seats reserved for such category alone were eligible and would be considered for election to the office of the Mayor. The office translation of the said circular dated 5th March, 1997 reads thus:

"As per Article 243-T of the Constitution, the seats of Mayor are kept reserved for persons belonging to Scheduled Caste, Scheduled Tribes, Other Backward Class and for women. The Government of Maharashtra has prescribed some Rules in this regard. And every year, the reservation for the seats of Mayor is declared by conducting draw of lots.

2. In the case of *Saraswatidevi v. Smt. Shanti Devi and others*, (Civil Appeal No. 14608/1996), the Supreme Court has given a decision on 18th November 1996 in respect of reservation of the seats for Mayor of Municipal Council. As the meaning of Article 243-T of the Constitution is construed in this decision and hence that decision can ordinarily be applied to the reservation of Mayors' seats in Maharashtra. (The copy of said decision has been submitted on 1st March, 1997). As per the said decision, only that person can fill in the nomination form for the seat of Mayor who has been elected from such ward, which is reserved for that particular class. That means, if the seat of Mayor is reserved for Scheduled Caste, then the candidate should get elected from such ward, which is reserved for Scheduled Caste. If the seat is reserved for woman candidate, then it is necessary for her that she should get elected from (any ward) which is reserved for women candidates.

3. It is my request to take due care and to see that the provisions of Constitution in respect of elections for Mayor's seat are being implemented properly."

8. We proceed now to state the circumstances which finally led to this petition. It seems that the Municipal Corporation of Aurangabad issued an election programme for election of the Mayor on 9th April, 1997. As per the election programme, nomination forms were to be submitted during the period between 12th April, 1997 and 16th April, 1997, where as the last date for withdrawal of the nomination was 19th April, 1997. The Municipal Secretary, Municipal Corporation, Aurangabad convened a special meeting on 19th April, 1997 at 11:00 a.m. for holding elections to the post of Mayor. Item No. 1 of the agenda specifically provided that the office of the Mayor was to be filled in from candidates elected on seats reserved for Scheduled Tribes.

9. As already indicated, the petitioner was the only candidate who got elected from the reserved category for Scheduled Tribes in as much as there was only one ward reserved for the Scheduled Tribe candidate. It seems that despite the directive issued by the Secretary, Municipal Administration, the Municipal Secretary started distributing nomination forms to all such members who had asked for it. The petitioner filed an objection petition stating that he alone is eligible for contesting the election of the Mayor as a candidate returned from the

Scheduled Tribe constituency. It seems that the scrutiny of the nomination papers was fixed at 6:00 p.m. on 16th April, 1997. At the time of scrutiny it transpired that along with the petitioner two other Councillors viz., the respondent Nos. 5 and 6 filed their nomination papers for the post of Mayor. It is an admitted position that the respondent No. 5 was elected from ward of general category and as far as the respondent No. 6 is concerned, she was elected from the ward which was reserved for woman general category. The petitioner objected to the nomination of the respondent Nos. 5 and 6 mainly on the ground that no candidate other than him was elected on the seat reserved for the Scheduled Tribe and therefore the nomination forms submitted by the two other Councillors should not be accepted.

10. It is necessary to state here that the petitioner also raised objection to the nomination form of the respondent Nos. 5 and 6 on the ground that they do not belong to Scheduled Tribe. It seems that both the respondent Nos. 5 and 6 filed their nomination papers as belonging to Thakur community which is notified as a Scheduled Tribe under the Presidential notification. In his objection petition the petitioner contended that the respondent No. 5 belongs to Mali community which is notified as other Backward Class in the State of Maharashtra. In order to support his objection, the petitioner produced documentary evidence. He pointed out that in the past the respondent No. 5 had applied for caste certificate as belonging to Mali community and in fact a caste certificate to that effect was granted to the respondent No. 5 by the competent authority. The petitioner produced certified copies of the caste certificate issued to the respondent No. 5 along with the application made by the respondent No. 5 in that behalf and other supporting documents like the affidavit and the caste certificate of the near relation relied upon by the respondent No. 5 for obtaining the caste certificate as Mali. It may be stated here that before this Court the petitioner has also produced the nomination paper filed by the respondent No. 5 in the ward elections in April 1995 wherein he had mentioned his caste as Mali. The petitioner also questioned the validity of the caste certificate granted to the respondent No. 6 on the ground that the caste certificate is bogus and fraudulent. The petitioner pointed out that the respondent No. 6 although married had managed to obtain the caste certificate in her maiden name on 31st December, 1991.

11. On perusing the original record which was produced before us by the Corporation, it is seen that as soon as the objection petition was filed by the petitioner, the Municipal Secretary approached the Mayor of the Municipal Corporation for his advise. Thereafter, it seems that a rather unusual course was followed by the Municipal Secretary and the Mayor and an opinion of the Government Pleader, High Court was sought. Since as per the agenda the post of the Mayor was to be filled in by a Councillor who has been elected from the ward reserved for Scheduled Tribe, there was hardly any scope for such consultation with the Government Pleader and particularly in view of the directions given by the Secretary that candidates elected from the Scheduled Tribe constituency

were eligible for Mayorship. It seems that the Government Pleader forwarded a written opinion that under the scheme envisaged by the Maharashtra Act and the Rules, a Councillor belonging to Scheduled Tribe is entitled to contest for the post of Mayor, even though he has not been elected from the reserved category for Scheduled Tribe. The petitioner has alleged that this exercise was undertaken because the ruling Shiv Sena and BJP combine had majority in the House and they wanted to see that the post of Mayor does not go to the petitioner who was elected to the Corporation as an independent candidate. Be that as it may, the outcome of the advice received from the Government Pleader was that the Municipal Secretary accepted the nomination papers of all the three candidates namely, the petitioner and the respondent Nos. 5 and 6. The correctness of this decision is the principal point which is required to be decided in this petition.

12. Now it is both convenient and advisable to read at this stage Article 243-T of the Constitution as inserted by the 73rd Amendment to the Constitution. "243-T Reservation of seats:

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same 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 manners 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 Citizen."

It is clear that as per sub-Article (4) of Article 243-T, the offices of the Chairpersons in Municipalities shall be reserved for the Scheduled Castes,

Scheduled Tribes and women in such manner as the State Legislature by an enactment may provide. The aforesaid Constitutional mandate makes it very clear that such Chairmanship of Municipalities would be made available by rotation as provided by the State Legislature to Scheduled Castes, Scheduled Tribes and women. Sub-Article (6) says that 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 favour of Backward Class of Citizen.

13. We have already noted that the State Legislature has effected necessary amendments in the principal Act and also framed Rules to carry out the Constitutional mandate of Article 243-T. As already indicated, section 19(1-A) provides for reservation to the post of Mayor in the Corporation, by rotation, for Scheduled Castes, Scheduled tribes, women and the Backward Classes of Citizen. Now it is necessary to read here the Rules framed by the State Government prescribing the manner of reservation for the Mayor's post.

"3. Reservation of Offices for the election of Mayor.

(1) The State Government shall, by notification in the Official Gazette, specify the number of offices of Mayors in the Municipal Corporations in the State to be reserved for the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of Citizen and women (including the women belonging to the category of Backward Class of Citizen on the following principles, -

(a) The number of offices of the Mayor to be so reserved for the Scheduled Castes and Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of such offices in the Corporations in the State as the population of the Scheduled Castes and Scheduled Tribes in the Municipal Corporation areas bears to the total population of all the Municipal Corporation Areas.

(b) As nearly as may be, twenty-seven per cent of the total number of offices of the Mayors in the State shall be reserved for the Backward Class of Citizen:

Provided that, one-third of the offices so reserved shall be reserved for women belonging to the category of Backward Class of Citizen.

(c) One-third of the total number of offices of Mayors (including the number of offices reserved for women belonging to the category of Backward Class of Citizen) in the Corporations in the State shall be reserved for women.

(2) The State Government shall, by notification in the Official Gazette, allot the offices of Mayors to be reserved for the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of Citizen and women and as specified under sub-rule (1), as follows:

(a) One office of the Mayor every year shall be reserved for the Scheduled Castes by drawing lots.

(b) One office of Mayor in every block of three years shall be reserved for the

Scheduled Tribes:

Provided that, while drawing lots for the subsequent block of three years, the office of the Mayor reserved for such Tribe, in earlier block of three years, shall be excluded from draw of lots.

(c) Three offices of Mayor shall be reserved for the category of the Backward Class of Citizen by drawing lots.

(d) After drawing lots for the offices of Mayor to be reserved as mentioned in Clauses (a), (b) and (c) above, the State Government shall allot, one-third of the remaining offices of Mayor, to the women by drawing lots:

Provided that ---

(a) the lots in respect of the women belonging to the category of Backward Class of Citizen shall be drawn only among the offices of Mayors reserved for such category of Backward Class of Citizens.

(b) while rotating such offices in the subsequent elections the Corporation where such offices were already reserved in earlier elections for women (including the women belonging to the category of Backward Class of Citizens) shall be excluded while in all such Corporations reservation of officers is given by rotation.

(c) the offices of Mayor to be so reserved shall be rotated, in the subsequent terms of the offices of Mayor to such Corporations, in which no reservation has been made in previous terms, until such reservations are given by rotation to each of the Corporations in the State.

(d) While specifying the offices of Mayor to be reserved for the Scheduled Castes and Scheduled Tribes the Corporations in which no reservation during the ward elections has been provided for the Scheduled Castes or as the case may be, the Scheduled Tribes, shall not be considered.

4. Preparation of Roster for Reservation.

Roster shall be prepared by the State Government for a period of every one year for reservation of offices of Mayors of all the Corporations in the State for the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of Citizens and women:

Provided that, the State Government shall review the number of offices to be reserved, whenever a new Corporation is constituted or population figures are published after every census and accordingly prepare a new Roster.

5. Power of the State Government in the event of casual vacancy.

When an office of Mayor is reserved for any particular castes, or a category it shall continue to be reserved for the full term of that office :

Provided that, in a Corporation in which only one seat is reserved for that

particular Caste, Tribe or the category of Backward Class of Citizens and office of Mayor has been allotted to that particular Castes, Tribe or Category, the office of Mayor, in the event of such vacancy, shall be allotted to any other Caste, Tribe or the category as the State Government may determine."

14. It is against this background of the scheme and object of the relevant provisions of the Act and the Rules, we must now consider the submissions advanced by the learned Advocates for the parties. It was argued on behalf of the petitioner that the post of Mayor, which has been reserved for the Scheduled Tribe, can be filled in only by the Councillor elected from the ward reserved for Scheduled Tribe candidate. It was argued that the respondent Nos. 5 and 6 having not been elected from the ward reserved for Scheduled Tribe, they are not eligible to contest the election for the post of Mayor. Heavy reliance was placed upon the decision of the Supreme Court in *Saraswatidevi's* case (*supra*), Mr. Kanade, learned Government Pleader made a categorical statement before us that the State Government is of the opinion that only the Councillors who got themselves elected from the Scheduled Tribe category in the ward elections are eligible to contest the election to the post of Mayor, which is reserved for Scheduled Tribe. Mr. Kanade fairly conceded that although at one stage he had given advice that the scheme under the Maharashtra Act is different than the Haryana Act which was considered by the Supreme Court, now he has instructions to make a statement before the Court that the post has been rightly reserved for a candidate elected from the category Scheduled Tribe. Mr. Mustafa for respondent No. 5, Mr. Bora for respondent Nos. 3 and 7 and Mr. Shah for the intervenor, however, submitted that the scheme of the Maharashtra Act is different and under the said scheme, a candidate belonging to Scheduled Tribe and Scheduled Caste is entitled to contest the reserved post of Mayor even if he was not elected from that category at ward elections. It was, therefore, submitted by them that the Municipal Secretary has rightly accepted the nominations of all the three candidates.

15. Now the central point round which the controversy between the parties has raged is this: Whether the respondent Nos. 5 and 6, who were elected from the general women category, respectively, are entitled to contest the election for the post of Mayor, which is reserved for Scheduled Tribe. According to the petitioner, the point is squarely covered by the decision of the Supreme Court in *Saraswatidevi's* case. The petitioner contends that the provisions of the Maharashtra Act are in *pari materia* with the provisions of the Haryana Act and, therefore, the post of Mayor can be filled in only from the candidates elected from the Scheduled Tribe category. Even the State Government has accepted the interpretation of the Supreme Court as can be seen from the circular dated 5th March, 1997 issued by the Secretary to Urban Development Department. It is, therefore, necessary to examine the decision of the Supreme Court in some what detailed manner. It seems that in pursuance of the mandate given by Article 243-T, the Haryana State Legislature enacted necessary provisions for reservation to the posts of President of Municipal Committees. Section 10(5) of the Haryana

Municipalities Act, which is relevant for our purpose reads as follows :

"10(5) The offices of Presidents in the Municipalities shall be filled up from amongst the members belonging to the general category, Scheduled Castes, Backward Classes and women by rotation and by lots in the manner prescribed."

Section 18 then provides as follows :

"Election of President and Vice-President -

(1) Every Municipal Committee or Municipal Council shall, from time to time, elect one of its members to be President for such period as may be prescribed, and the member so elected shall become President of the Municipal Committee or Municipal Council;

Provided that the office of the President in Municipal Committee and Municipal Councils shall be reserved for Scheduled Castes and women in accordance with the provisions made in section 10.

.....

16. Rule 70 sub-rule (4) of the Haryana Municipal Election Rules, 1978 prescribes the manner in which election to the office of the President of Municipalities could be held.

"70(4) The offices of the Presidents in the Municipalities shall be filled up from amongst the members belonging to the general category, Scheduled Castes, Backward Classes and women by rotation which will be determined in the manner as detailed below:

....

17. Now adverting to the facts which gave rise to the appeal before the Supreme Court in Saraswatidevi's case, it is seen that the Local Government Department of Haryana Government vide its notification dated 20th January, 1995 declared in terms of Rule 70(4) of the Election Rules that the seat of President, Municipal Committee, Loharu, inter alia, shall be filled up from amongst the members belonging to Scheduled Castes category. The appellant as well as the respondent No. 1 before the Supreme Court were Scheduled Caste women. It seems that for election to the Municipal Committee, Loharu Municipal area was divided into 11 wards, out of which three wards were reserved for members belonging to Scheduled Castes. Out of these three wards, Ward No. 5 was reserved for the Scheduled Caste women and Ward No. 2 was reserved for Backward Classes. In the elections the appellant was elected from Ward No. 5 reserved for Scheduled Caste women while respondent No. 1 was declared elected from Ward No. 11 which was reserved for general women. After the said elections were over, questions arose about the election of the President of the said Municipal Committee. It seems that the respondent No. 1 contended that as she was also elected member belonging to Scheduled Caste women category, she was entitled to contest for the Presidentship of the Municipality. In view of this claim of the

respondent No. 1, the Local Government Department of Haryana Government vide its order dated 11th February, 1995 issued u/s 278 of the Haryana Act clarified that where there is a single member of Scheduled Caste category (man or woman) in a Municipality elected from the ward reserved and the office of the President is to be filled up from amongst the members belonging to Scheduled Caste category, such single member (man or woman) belonging to Scheduled Caste category shall be deemed to have been elected as President of such Municipalities in the same manner as is provided for the members belonging to the Backward Classes under sub-rule (4) of Rule 70 of the Election Rules. The respondent No. 1 filed a writ petition in the High Court of Punjab and Haryana for quashing the aforesaid Government order dated 11th February, 1995 and for a direction to admit her as a candidate to contest for the office of President, Municipal Committee. The Division Bench of the Punjab and Haryana High Court allowed the writ petition of the respondent No. 1. According to the Division Bench, as there were two candidates in the field belonging to the category of Scheduled Castes women, election had to be held for the post of President. The appellant then approached the Supreme Court by way of an appeal.

18. After examining the provisions of Article 243-T and the scheme of the Haryana Act and the Rules, the Supreme Court observed :

"On a combined reading of Art. 243-T of the Constitution of India, sections 10(5) and 18 of the Act and sub-rule (4) of Rule 70 of Election Rules, it becomes clear that the Parliament as well as the Legislature have enacted these provisions in order to provide for reservation of office of the President for members of Scheduled Castes, Scheduled Tribes, Backward Classes and women in rotation. A bare reading of section 10(5) and Rule 70(4) shows that the offices of the Presidents are to be filled from amongst members belonging to different categories by rotation and by lots. It is not disputed that the post of President of Loharu Municipal Committee at the relevant time was reserved for Scheduled Castes women. So far as the appellant is concerned, she has been elected from Ward No. 5 on a seat reserved for Scheduled Caste women. Therefore, in that category she is the sole candidate. So far as respondent No. 1 is concerned even though by coincidence she belongs to Scheduled Castes but she was not elected on a seat reserved for Scheduled Caste women, but on a seat reserved for General category women from Ward No. 11. It is not in dispute that in that ward there were other contesting women, not belonging to Scheduled Castes category, but also belonging to General Category. Therefore, respondent No. 1 is a member who is elected on the seat earmarked for General category women; she cannot be said to be a member elected on a seat reserved for Scheduled Castes women. In Ward No. 5 from where the appellant contested, General category women could not have contested and only Scheduled Castes women could have contested and in that context appellant emerged successful. Therefore, she must be held to be belonging to category of Scheduled Castes and not belonging to category of women to which respondent No. 1 belongs. Consequently both of them cannot be treated to form a part and parcel of the same category of seats

on which they have got elected. It is true as contended by learned Counsel for respondent No. 1 and which contention has appealed to the High Court that Rule 70(4) mandates that the offices of Presidents of the Municipalities shall be filled up from amongst the members belonging to the concerned categories mentioned in the Rule. But the said phraseology does not imply that the members must belong to a particular caste like Scheduled Castes, Backward Classes, because the general word "members belonging to" are followed by different types of classes like General category, category of Scheduled Castes, category of Backward Classes and category of women as mentioned in the said Rule. It is obvious that general category has nothing to do with castes. Similarly Backward Classes has nothing to do with castes and the category of women is also separately indicated. That is also not having any nexus with the castes. When the thrust of the Rule is that offices of the Presidents in Municipalities must go by rotation to members belonging to specified categories, it would necessarily mean in the context of parent Article 243-T of the Constitution of India and section 10(5) of the Act that the concerned elected members of the Municipal Committee must have got elected on the seats available to General category candidates or Scheduled Castes category candidates or Backward Classes category candidates or General women category candidates by rotation. The very concept of rotation presupposes that for the contest of Presidentship once by rotation a reservation is made for members elected from a particular category only those members can contest for Presidentship. As admittedly the post of President, Loharu Municipality is subjected to double reservation of being available only to an elected member who is a Scheduled Caste woman she must have been elected on the Scheduled Castes seat from the ward reserved for such Scheduled Castes candidates. As admittedly only three wards, namely, 1, 4 and 5 are reserved for such members belonging to Scheduled Castes and even out of three wards only Ward No. 5 from which the appellant was elected was reserved for Scheduled Castes women and as President's post is reserved for being filled up by a member belonging to the category of Scheduled Castes women who has been elected on such a seat, the respondent No. 1 who is elected as a member not on any seat reserved for Scheduled Castes women but on a seat reserved for General category of women from Ward No. 11 is obviously out of the arena of contest for the post of Presidentship of Loharu Municipality. Appellant is the sole candidate elected on the seat reserved for Scheduled Castes women. With respect it is not possible to agree with the reasoning of the High Court that the words "members belonging to" as employed in Rule 70(4) of the Election Rules would bring in all the elected members belonging to Scheduled Castes into one category to enable them to contest for the post of President. Such a reasoning would cut across the very scheme of reservation as envisaged by Art. 243-T of the Constitution of India and section 10(5) read with Rule 70(4) of the Election Rules. The High Court with respect has not properly appreciated the thrust of the provision regarding the categories of reservations envisaged by the Rules and has equated category with castes which is not contemplated by the Act and the Election Rules. Consequently, the decision rendered by the High Court on the

construction of the aforesaid relevant provisions cannot be sustained. On the other hand the Government Notification and Clarification dated 11th February, 1995 get well sustained on the scheme of the Act and the Election Rules. It must, therefore, be held that as respondent No. 1 and the appellant did not belong to the same category of candidates elected on the seats reserved for Scheduled Castes women even though both were women and belonged to Scheduled Castes; they represented separate electoral wards indicating non-competing groups or categories of membership and as both of them were not at par they could not contest on an equal footing for the post of President. As admittedly appellant was the sole returned candidate from the ward reserved for Scheduled Castes women and as the post of President was also by rotation reserved only for a member belonging to Scheduled Castes Women category she was the sole contestant for the said post and was rightly held to be entitled to be the President of Loharu Municipality."

19. The short question is whether the Supreme Court decision in *Saraswatidevi's* case is applicable to the scheme of reservation framed by the State of Maharashtra. Section 19(1-A) of the Act provides for reservation to the offices of Mayor in the Corporations by rotation for Scheduled Castes, Scheduled Tribes, women and the Backward Class of Citizens in the prescribed manner. Thus, there is reservation provided for different category of classes like the category of Scheduled Castes, category of Scheduled Tribes, category of women and category of Backward Classes as mentioned in section 19(1-A) and Rule 3 of the Rules. It is clearly seen that the category of Backward Classes has nothing to do with the castes. Similarly, category of women is also separately indicated. Those categories have no nexus with the castes. When the thrust of the Rule is that the offices of the Mayor in the Corporation must go by rotation to members belonging to specified categories, it would necessarily mean that the concerned elected member of the Municipal Corporation must have got elected on the seat available to the category for which the reservation has been made for Mayor's post. The concept of rotation clearly implies that for the contest of Mayorship by rotation, a reservation is made for members elected from a particular category and only those members can contest for Mayorship. This position is further amplified by Clause (d) of the second proviso to sub-rule (2) of Rule 3. The said Clause 3 provides that while specifying the offices of Mayor to be reserved for the Scheduled Castes and Scheduled Tribes, the Corporation in which no reservation during the ward elections has been provided for the Scheduled Castes or the Scheduled Tribes, shall not be considered. Apart from Rule 3, the provisions contained in Rule 5 further supports this position. Rule 5 which deals with the power of the State Government in the event of casual vacancy, provides that in case of vacancy such post will be allotted only to the caste, tribe or category as determined by the State Government. On a combined reading of Rule 3 and the provisions of section 19(1 -A), it is clear that a candidate who has not got elected from the category for which the Mayor's post is reserved, is not eligible to contest for the said post.

20. In view of the foregoing discussion, we are of the opinion, that the circular issued by the State Government is in consonance with the scheme of section 19(1-A) and the Rules. The Municipal Secretary has rightly reserved the post of the Mayor for the Scheduled Tribes to be filled in from amongst the candidates elected from the category reserved for the Scheduled Tribes. We find some substance in the grievance made by the petitioner that the decision to accept the nomination papers of the respondent Nos. 5 and 6 was politically motivated. It seems that the present Mayor, who is required to act as the Presiding Officer in the meeting, belongs to the ruling Shiv Sena BJP combine which has majority in the House. The respondent Nos. 5 and 6 also belong to the ruling Shiv Sena, BJP combine. In our opinion, the exercise undertaken by the Mayor and the Municipal Secretary for obtaining the opinion of the Government Pleader was not warranted in the circumstances of the case. The instructions contained in the circular of the State Government were very clear. In fact agenda was framed in pursuance of the instructions contained in the said circular. Under these circumstances, the decision of the Mayor/Municipal Secretary to accept the nomination papers of the respondent Nos. 5 and 6 cannot be sustained in law.

21. We proceed now to consider the allegation of the petitioner that the caste certificates produced by the respondent Nos. 5 and 6 are false and bogus certificates. The preamble to the Constitution promises to every citizen, social and economic justice, equality of status and opportunity of bearing the dignity of individual. Article 243-T of the Constitution is enacted with the avowed object of securing the guarantee given by the Constitution to the Citizen, particularly of the Scheduled Castes and Scheduled Tribes. These communities are kept away from the main stream of national life and, therefore, the reservation has been uniformly made applicable by virtue of Article 243-T in all the Municipalities. Unfortunately, it has come to our notice that this policy has been exploited by some unscrupulous people who are falsely claiming class status in order to set up their claim to the posts reserved for these classes. We have come across a number of matters where we find that false certificates have been procured for the purposes of elections in Municipal Councils and other local bodies. In some cases we even noticed that forged certificates are produced with a view to gain access to the Chairmanship. We are constrained to observe that the authorities are issuing caste certificates in a casual manner without even taking care to verify whether the claim is supported by the necessary evidence of caste. The case of the respondent No. 5 is a classic example of cavalier manner in which caste certificates are issued by the authorities. The petitioner has produced on record evidence to show that in the past the respondent No. 5 had claimed himself as a member of Mali Community which is notified as other Backward Class in the State of Maharashtra. The original application made by the respondent No. 5 for issuing a caste certificate as Mali is supported by the school leaving certificate of the respondent No. 5 and the caste certificate of one Seema Kacchwa. However, now the respondent No. 5 is trying to disown this record claiming that he has never made such application. Even the nomination paper

filed by the respondent No. 5 in the ward election mentions his caste as Mali. Again this position is tried to be contradicted by the respondent No. 5 by saying that the word "Mali" has been subsequently inserted in the nomination paper in order to create evidence against him. At least prima facie we are not satisfied with the explanation given by the respondent No. 5. In our opinion, the matter requires deeper investigation and appropriate directions will have to be issued to the Collector to ascertain as to how these two sets of different caste certificates were issued in favour of one person. It is also required to be noted that the application which was made by the respondent No. 5 for issuance of caste certificate as Thakur was not supported by any evidence. He had simply relied upon his own affidavit and a school leaving certificate. In the school leaving certificate the caste of the respondent No. 5 was mentioned as Hindu. Despite this position, the concerned Tahsildar has chosen to issue the caste certificate in favour of the respondent No. 5. Same is the case of the respondent No. 6. She is also unable to produce any record showing her caste as Thakur. She has obtained a caste certificate in her maiden name although she was married several years before the application was made. Mr. Kanade, learned Government Pleader is unable to explain as to how the caste certificates were issued in favour of the respondent Nos. 5 and 6 in the absence of any evidence. It seems that the State Government has issued G.R. laying down guidelines in the matter of issuing caste certificates. However, it is required to be stated that the concerned authorities have failed to follow the guidelines before issuing caste certificates in favour of the respondent Nos. 5 and 6. It is also required to be stated that in spite of the repeated opportunities given to the respondent Nos. 5 and 6, no documentary evidence is forthcoming to establish their caste claim as Thakur. At one stage we were inclined to set aside these caste certificates but we refrained from doing so since we feel that it is desirable to refer their cases to the Scrutiny Committee which has been constituted by the State Government in the light of the Supreme Court decision in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, . Needless to mention that if the Scrutiny Committee finds that a false claim has been set up by the respondent No. 5 or by the respondent No. 6, the Scrutiny Committee may also consider whether criminal prosecution is required to be initiated against them.

22. In the result, the petition succeeds. The decision of the Mayor/Municipal Secretary accepting the nomination forms of the respondent Nos. 5 and 6 is hereby quashed and set aside. The Municipal Corporation is directed to convene the meeting within 10 days from today for election of the Mayor. Needless to mention that since there is only one validly nominated candidate viz., the petitioner, he shall be liable to be declared as elected to the post of Mayor.

The caste certificates of the respondent Nos. 5 and 6 are hereby referred to the Scrutiny Committee i.e., the respondent No. 8 for verification of their caste claim in accordance with law. The respondent Nos. 5 and 6 are directed to appear before the Scrutiny Committee on 12th May, 1997. The Committee shall decide the claim of the respondent Nos. 5 and 6 within three months from today. The

Collector, Aurangabad is directed to hold an inquiry as to how two different caste certificates were issued to the respondent No. 5 by the Executive Magistrate, Aurangabad and made a report to this Court within two months from today for further action in the matter.

Mr. Bora applies for stay of our judgment. Application is rejected.

Office is directed to issue certified copy of this judgment forthwith.

23. Petition allowed.