

(2000) 08 AP CK 0085

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 2436 and 3120 of 2000

B. Rajesh Kumar

APPELLANT

Vs

State of A.P. and another

RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 23(1)
Constitution of India, 1950 — Article 14, 16, 243, 330, 332

Citation : AIR 2001 AP 76 : (2000) 5 ALD 339 : (2000) 5 ALT 504

Hon'ble Judges : T.Ch. Surya Rao, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. Taddi Nageswara Rao, for the Appellant; Government Pleader for GAD and HMA and Mr. V.V.P. Rao SC for SEC, for the Respondent

Judgement

T.Ch. Surya Rao, J

1. Both these writ petitions have been filed seeking a declaration that Section 23(1)(C)(i) the A.P. Municipalities Act, incorporated by means of Act 17 of 1994 is unconstitutional and null and void.

2. While in Writ Petition No.2436 of 2000, a further direction is sought, directing the first respondent State to provide 15% reservation to the offices of Chairpersons of the Municipalities to Scheduled Castes, in the other writ petition, a similar direction is sought for providing reservation of 6% to the Schedule Tribes.

3. Since the respondents are the same and in as much as common questions of law are involved in both the writ petitions, they can be disposed of together, albeit the writ petitioners are different.

4. The factual matrix, germane for effective adjudication of the contentious issue between the parties inter se may be stated thus:

Pursuant to the 73rd and 74th amendments to the Constitution of India, the A.P.

Panchayat Raj Act 13 of 1994 was enacted and the A.P. Municipalities Act, 1966 was suitably amended under Act 17 of 1994 by the first respondent-State Government, so as to bring them in conformity with the constitutional mandate under the said amendments. Section 23(1)(b) of the A.P. Municipalities Act was amended providing for reservation to the Scheduled caste and Scheduled Tribes, women and Backward classes. Under the un-amended provisions of the Section 23(1)(b) of the Act, 15% reservation in the offices of Chairpersons of Municipalities was provided for the Scheduled Castes and 6% reservation was provided for the Scheduled Tribes.

5. The percentage of reservation was fixed basing upon the ratio of the Scheduled Tribes and Scheduled Castes population in the State to the total population in the State as a whole. The population of the Scheduled Castes in the State is about 15% of the total population and the Scheduled Tribes population in the State is about 6% of the total population. However, under the amended provisions, reservation was fixed for the offices of chairpersons basing upon the ratio of Scheduled Tribes and Scheduled Castes population in the Municipalities of the State to the total population of the Municipalities of the State. In sequel thereto, as against the reservation at 6% and 15% respectively for the Scheduled Tribes and Scheduled Castes, the percentage of reservation was fixed under the amended provisions at below 2% for the Tribes and 10% for the Castes. As a result, out of 109 Municipalities in the State, 11 posts were allotted to the Scheduled Castes and 2 posts were reserved for the Scheduled Tribes by issuing G.O. Ms. No.71, MA, dated 5th February 2000.

6. The 73rd amendment to the Constitution of India has introduced Part IX into the Constitution, whereunder reservations have been provided to Scheduled Castes and Scheduled Tribes, Women, and Backward classes keeping in view the element of Social justice, and that under Article 243-D, the reservations to the elected offices of chairpersons of the Panchayat Raj institutions should be in the ratio of population of the Scheduled Tribes and Scheduled Castes as the case may be to the State's population.

7. However, under part IX-A introduced by 74th amendment to the Constitution of India, Article 243-T has been incorporated. As per this Article, the extent of reservation for Scheduled Tribes and Scheduled Castes, as the case may be shall be as provided by the State Legislature by law. But the State cannot exercise that power arbitrarily, but should exercise the power keeping in view the legislative policy consisting of the local bodies and reflected in Parts IX and IX-A of the Constitution of India. Particularly, when Section 23(1)(b) of the A.P. Municipalities Act, provided for reservation of 6% and 15% for the Scheduled Tribes and Scheduled Castes, under the amended provisions of Section 23(1)(c) (i) introduced by the Act 17 of 1994, the percentage of reservation cannot be reduced by fixing the ratio of the Tribes and castes in the State with that of the population of Tribes and castes respectively in the Municipal area, but not in the State. All that was required, in view of Part IX-A of the Constitution, was to

amend the Acts to include the reservation for women, to meet the mandate of 74th amendment. Therefore, Section 23(1)(c)(i) of the A.P. Municipalities Act as amended under Act 17 of 1994 is unconstitutional.

8. Both the writ petitions were resisted by the first respondent-State by filing counters. The plea inter alia in both the counters is one and the same in essence. Under Article 243-T of the Constitution, seats should be reserved for Scheduled Castes and 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 elections in that Municipality as the population of Scheduled Tribes and Scheduled Castes in the Municipal area, bears to the total population of that area, and such seats may be allotted by rotation to different constituencies in the Municipalities. Clause-4 of Article 243-T provides that the reservation to the Scheduled Tribes and Scheduled Castes and Women shall be in such a manner as the Legislature of a State may by law provide. In accordance with the said Constitutional mandate, the State Government passed Act 17 of 1994 suitably amending Section 23 of the A.P. Municipalities Act, 1965. The said amendment was in conformity with the Constitutional mandate under Article 243-T. Elections to Municipal Bodies were held during the month of March, 1995 and the principle for reserving the offices of Chairpersons of Scheduled Tribes and Scheduled Castes as embodied in the Act was followed. During the recent elections in the year, 2000, the same principle was followed by issuing G.O. Ms. No.71, MA, dated 5-2-2000. According to the statistics, the total number of Municipalities in the State are 109 and the total population of 109 Municipalities is 88,00,012. As against the same, the population of the Scheduled Castes in 109 Municipalities is 9,07,413. The proportion of SC population to the total population is thus 0.103115. Accordingly, the percentage of SC population to the total population is 10.31. The number of Municipalities for which the elections were proposed was 106. Therefore, the number of offices of Chairpersons to be reserved were 10.9286 or 11. Similarly in regard to the Scheduled Tribes, the ST. Population for 109 Municipalities is 1,76,440, and the proportion of ST population to the total population is 0.02 and the percentage of ST population to the total population is 2%. Out of 106 Municipalities for which elections were proposed for the year, 2000, the number of offices of the Chairpersons reserved were 2.12 or 2. The said reservation is in accordance with law passed by the State Government amending Section 23, by Act 17 of 1994, which in turn is in conformity with the Constitutional amendment, under Article 243-T, as introduced under Part IX-A of the Constitution. Therefore, there is no arbitrariness as alleged.

9. Having heard the arguments on either side and after having perused the relevant provisions under the A.P. Municipalities Act and the Constitution of India, the contentions issues between the parties inter se, to be adjudicated in these writ petitions are as to;

(1) Whether the Scheduled Castes and Scheduled Tribes residing in urban areas

are treated as a class different from the Scheduled Castes and Scheduled Tribes residing in rural areas for the purpose of providing reservation in respect of the offices of the Chairpersons in Municipalities in the State?

(2) Whether the provisions of Section 23(1)(c)(i) of the A.P. Municipalities Act are unconstitutional?

10. The main controversy is narrowed down and lies in a narrow compass. While it is the contention of the writ petitioners that reservation shall bear as nearly as may be, the same proportion to the total number of seats to be filled by direct elections in the Municipality, as the population of the Scheduled Castes and Scheduled Tribes in the State bears to the total population in the State; it is the contention of the first respondent-State that the population of the Scheduled Castes or the Scheduled Tribes as the case may be in the Municipalities of the State bears to the total population in the Municipalities of the State. The Statistical data furnished by the first respondent-State Government in its counters filed in both the writ petitions has not been controverted by the writ petitioners and therefore, the same can form the basis for adjudication of the contentious issue between the parties inter se.

11. It is expedient to advert to the relevant provisions under the Constitution of India in the first instance for brevity and better understanding of the matter, before adverting to the controversial provisions of Section 23(1)(c)(i) of the Act.

Article 243-D, provides for reservation of seats for the Gram panchayats and the same is extracted hereunder, in so far as it is relevant for the present purpose.

Article 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:

(5).....

(6).....

Article 243-T, which provides for reservation of seats to the Scheduled Tribes and Scheduled Castes in the Municipalities may be extracted hereunder insofar as is relevant thus:

Article 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).....

(3).....

(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

(6).....

12. In view of the arguments addressed by the learned Counsel appearing for the writ petitioners invoking equality clause under Article 14 of the Constitution of India, it is also expedient here to consider Articles 330 and 332 of the Constitution of India, which seek to provide reservation to Scheduled Tribes and Scheduled Castes in the House of the People and in the Legislative Assembly of the States respectively.

Article 330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People :--(1) Seats shall be reserved in the House of the People for--

(a) the Scheduled Castes;

(b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and

(c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State (or Union Territory) for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State (or Union Territory) in the House of the People as the population of the Scheduled Castes in the State (or Union Territory) or of the Scheduled Tribes in the State (or Union Territory) or part of the State (or Union Territory), as the case may be, in respect of which seats are so reserved, bears to the total population of the State (or Union Territory).

(3).....

Article 332 : Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States :--(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes (except the Scheduled Tribes in autonomous districts of Assam) in the Legislative Assembly of every State.

(2).....

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

13. The language used in Article 330, Clause-2 and Article 332 Clause-3 is in para materia. A perusal of both the provisions putting them in juxtaposition makes it obvious that the number of seats reserved for Scheduled Tribes and Scheduled Castes as the case may be, in any State for the House of the people or for the Legislative Assembly of that State, shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State in the House of the People/Legislative Assembly as the population of the Scheduled Tribes and Scheduled Castes in the State in respect of which seats are so reserved, bears to the population of the State. In other words, while fixing the number of seats to be reserved for the Scheduled Castes or Scheduled Tribes in the Legislative Assembly of any State or in the House of the people from that State, firstly there shall be a proportion between the total number of seats in the Assembly or allotted to that State in the House of the people as the case may be qua number of seats to be reserved for the Scheduled Castes or the Scheduled Tribes as the case may be and secondly the proportion between the population of the Scheduled Castes or the Scheduled Tribes as the case may be in the State qua the total population of the State and the former proportion shall bear to the latter proportion. However when comes to the local bodies a perusal of Article

243-D and Article 243-T shows that number of seats reserved for the Scheduled Castes or the Scheduled Tribes as the case may be having regard to the proportion in between the number of seats to be reserved and the total number of seats to be filled by direct election in the local bodies which proportion shall bear to the proportion between the Scheduled Castes or the Scheduled Tribes as the case may be in that panchayat area or the municipal area to the total population of that area. It is obvious thus that the State is taken as a unit for the purpose of fixing the number of seats to be reserved either to the Legislative Assemblies or to the House of-the People, whereas local area shall be taken into consideration for fixing the number of seats to be reserved for the Scheduled Castes or the Scheduled Tribes as the case may be in respect of the local bodies. Again reservation shall be made for women belonging to the Scheduled Castes or as the case may be Scheduled Tribes along with total number of seats reserved for them in the local bodies as can be seen from Article 243-D and 243-T and that is not very much germane for consideration in the context for adjudicating the crucial contentious issue. In respect of the offices of the Chairpersons in the local bodies again there shall be reservation for the Scheduled Castes or as the case may be Scheduled Tribes and under clause 4 of Article 243-D and clause 4 of Article 243-T it is mandated that the reservation shall be made in such a manner as the legislature of a State may by law provide. Therefore it is left to individual States to make an appropriate law fixing the number to be reserved for the offices of the Chairpersons. The first proviso added to clause 4 of Article 243-D ordains that in fixing the number of offices to be reserved for the Chairpersons in the panchayats the number of offices of Chairpersons for the Scheduled Castes and the Scheduled Tribes shall bear the same proportion to the total number of such offices in the panchayats which proportion shall again bear to the population of the Scheduled Castes or the Scheduled Tribes as the case may be in the State to the population of the State. A similar provision has not been incorporated under Article 243-T. In view of this conspicuous absence of a similar provision in Article 243-T providing reservation to the offices of the Chairpersons, there seems to be a discernible departure in regard to the reservation to the offices of the Chairpersons from that of the Gram Panchayats to the Municipalities in the State.

14. Undoubtedly, there has been a reduction in the percentage of seats reserved for Scheduled Tribes and Scheduled Castes as the case may be in the offices of Chairpersons to the Municipalities in the State from pre 1994 to post 1994 position. That is the reason why Section 23(1)(c)(i) which provides for the reservation to the offices of Chairpersons in the Municipalities in the State in favour of Scheduled Tribes and Scheduled Castes respectively in the State is now being questioned. Section 23 of the Act insofar is relevant for the present purposes may be extracted hereunder thus:

Section 23. Election to Chairperson:-

(1) (a).....

(b).....

(c) Out of the total number of offices of chairperson in the State, the Government shall, subject to such rules as may be prescribed, by notification reserve--

(i) such number of offices to the Scheduled Castes and Scheduled Tribes as may be determined subject to the condition that the number of offices so reserved shall bear, as nearly as may be, the same proportion to the total number of offices to be filled in the State as the population of the Scheduled Castes or Scheduled Tribes, as the case may be, in the Municipalities of the State bears to the total population in the Municipalities of the State and such offices may be allotted by rotation to different Municipalities in the State.

Pursuant to the said provision the State of Andhra Pradesh issued G.O. Ms. No.71, M.A., dated 5-2-2000 fixing the percentage of reservation as aforesaid. It is also expedient to read the unamended Section 23 of the Municipalities Act in juxtaposition with the amended provisions of Section 23 of the Act for better understanding of the matter.

Section 23 of the Act as existing prior to the advent of Act 17 of 1994 insofar as it is relevant, may be extracted hereunder thus:

23. Election of Chairman :

(1)(a).....

(b)

Provided.....

Provided further that six per cent of the total number of offices of Chairman of the Municipalities in the State shall be reserved by rotation for the members belonging to the Scheduled Tribes in the manner prescribed; so however that the Municipality in respect of which the office of the Chairman is so reserved shall, as far as practicable, be Municipality where the proportion of the population of the Municipality, is the largest.

15. Provided also that fifteen per cent of the total number of offices of Chairman of the municipalities in the State shall be reserved by rotation for the members belonging to the Scheduled Castes in the manner prescribed; so however, that the municipality in respect of which the office of Chairman is so reserved shall, as far as practicable, be the municipality, where the proportion of the population of women to the total population of the municipality is the largest.

16. If so read, keeping both the unamended and amended provisions in juxtaposition it is obvious that there has been reduction in the number of offices Chairpersons to be reserved for the Scheduled Castes and the Scheduled Tribes. But at the same time it is also manifest that Section 23(1)(c)(i) is enacted pursuant to the Constitutional mandate under Article 243-T. One shall not also be

oblivious of the fact that Section 23 of the Municipalities Act was enacted when there had been no Constitutional mandate in this regard.

17. The main thrust of the contention of the learned Counsel appearing for the writ petitioners seems to be that Section 23 (1)(c)(i) of the Act is in violation of Article 14 of the Constitution. On both the grounds of unreasonable classification and arbitrary exercise of power, Section 23 (1)(c)(i) is now being assailed. Inasmuch as, after the 73rd and 74th amendments to the Constitution of India, Parliament, State Legislature and Local bodies, according to the learned Counsel for the writ petitioners are placed similarly and the number of seats to be reserved in favour of the Scheduled Tribes or Scheduled Castes as the case may be shall be in proportion to the population of the tribes or castes as the case may be in the State qua the population of the people of the State. Therefore, it is the contention of the learned Counsel for the writ petitioners that when Scheduled Tribes or Castes have been taken into consideration for fixing the number of offices of Chairpersons to be reserved with reference to their population in the State, qua the entire population in the State in respect of Gram Panchayats, the Scheduled Tribes and Scheduled Castes cannot be treated as different class, when comes to the reservation and fixing the number of offices of Chairpersons of the Municipalities by fixing the proportion with reference to their population in that area, as against the total population in the State, which invariably results in the reduction of seats to be reserved. That is how, the learned Counsel for the petitioners seek to lay emphasis on the point, so as to buttress his contention that it is in violation of Article 14 of the Constitution of India. Similarly when the first respondent State has provided for reservation prior to 1994 amendment under Act 17 of 1994, at a percentage on par with the other local bodies, the State Legislature and the Parliament, fixing a different percentage more particularly refusing the same, in respect of the Municipalities as against the Gram Panchayats, the State Legislature and of the Parliament, is nothing, but arbitrary exercise of power by incorporating Section 23(1)(c)(i) in the Municipalities Act. As against the said contention, it is the contention of the learned Additional Advocate-General that Section 23(1)(c)(i) of the Act is not in violation of Article 243-T of the Constitution and on the other hand, it is in consonance with the said provision. Perhaps that is the reason why, the writ petitioners have not challenged Section 23(1)(c)(i) of the Act on the touchstone of Article 243-T, on the premise that it is in violation of the constitutional mandate. Collaterally the section is under challenge on the premise that it is in violation of Article 14 of the Constitution.

18. It is not the case of the writ petitioners that Section 23(1)(c)(i) is in violation of Article 243-T of the Constitution, which provides for the reservation to the Scheduled Castes and Scheduled Tribes in the State. Therefore, the legislative competence of the State is not in doubt.

19. It is obvious that there has been a departure in fixing the number, of offices of chairpersons, while providing for reservation to the Scheduled Castes, or as

the case may be the Tribes in the Municipalities, qua, the Gram Panchayats, when both come under the definition of local bodies. According to the learned Counsel for the petitioners, Scheduled Castes and Scheduled Tribes residing in municipal areas have thus been treated as a different class vis-a-vis their counter-parts in the rural areas and such classification among the Scheduled Castes and Scheduled Tribes in urban areas than their counter-parts in the rural areas when Scheduled Castes and Scheduled Tribes as a whole belonging to one class is unreasonable classification opposing the equality clause under Article 14 of the Constitution of India and the provision u/s 23 (1)(c)(i) in the A.P. Municipalities Act enabling the Government to fix number of offices to be reserved for Scheduled Castes and Scheduled Tribes in a different manner than that of gram panchayats under the Panchayat Raj Act is arbitrary. Reliance has been placed in this regard upon the judgments of the Apex Court in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, and *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . In the later judgment, a Constitution Bench of the Apex Court has laid down certain principles to be borne in mind in determining the validity of the statute on the ground of violation of Article 14. It is expedient here to extract the relevant passage thus:

"It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration."

20. The Apex Court has considered its former decision in *Chiranjitlal's case* (supra), in this case. In Para 12 of the said judgment, after having perused the relevant judgments decided earlier, including that of *Chiranjit Lal's case* referred to supra, the Court has held that a statute which may come up for consideration, on question of its validity under Article 14 of the Constitution may be placed in one or the other five classes enunciated in that paragraph. Out of the five classes, the first class is germane for consideration and may be extracted hereunder thus:

"A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court. In determining the validity or otherwise of such a statute the Court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out

of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things."

21. The learned Counsel for the petitioners further seeks to place reliance upon the decisions of the Apex Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *Paradise Printers and Others Vs. Union Territory of Chandigarh and Others*, to drive home the point that arbitrariness strikes at the root of the law made by the legislature. Relying upon the former two judgments, the Apex Court held in the later judgment as follows:

"Equality and arbitrariness are sworn enemies, one belongs to the rule of law in a republic, while the other to the whim or caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. This is more fundamental. Article 14 unlike other articles in Part III of the Constitution, is an injunction against the State that it shall not discriminate person to person unless the action is supported by well known principles".

22. There can be no disagreement with the well-settled legal principles enunciated by the Apex Court. The question is about the application of the said principles to the facts of the instant case. There is a presumption in favour of constitutionality of an enactment and the burden is upon him who attacks to show that there has been a clear transgression of the constitutional principles. It must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. In order to sustain the presumption of constitutionality the Court may take into consideration the matters of common knowledge, matters of common report, the history of the times, and may presume every State of facts which can be conceived existing at the time of Legislation. There is also a presumption in favour of good faith and knowledge of the existing conditions on the part of the Legislature. No mala fides have been attributed to the State Government in this regard.

23. Obviously population is the basis for fixing the reservation. The population of the Scheduled Castes or Scheduled Tribes in the local area shall be taken into consideration for fixing the number of seats in the local bodies. However when it comes to the fixation of number of offices of Chairpersons, the individual States are given the liberty to pass appropriate Legislations in regard thereto. The State is competent to legislate a law providing reservation for the offices of the Chairpersons in the panchayat or in the local bodies. But this power of the State Government to pass appropriate Legislation is circumscribed to some extent by adding a rider in the shape of a proviso appended under clause 4 of Article 243-

D. Significantly such restriction is not there when it comes to Article 243-T. It is altogether different when comes to the reservation in the Assembly or in the House of the People. Perhaps the Parliament in its wisdom thought it fit to fix the number of offices of Chairpersons to be reserved in respect of the municipalities with reference to the proportion to the offices of Chairpersons at each level to the proportion of total number of such offices and that proportion shall bear to the proportion of the population of the Scheduled Castes or as the case may be Scheduled Tribes in the Municipalities to the total population in the Municipalities of the State. Among the local bodies, there is a difference between the gram panchayats and the municipalities and that is the reason why each of these local bodies have been dealt separately under Articles 243-D and 243-T respectively. In the wake of these clear provisions in the Constitution which distinguishes the Scheduled Castes and Scheduled Tribes in the matter of reservation for the Legislative Assembly and the Parliament on one hand and in respect of number of seats in the local bodies on the other hand, what may apparently seem that Scheduled Castes and Scheduled Tribes in urban areas have been treated as a different class qua their counter-parts in rural population when comes to the question of reservation of offices of Chairpersons in municipalities in the State, on a prima facie consideration of the very basis for fixing the offices of Chairpersons to be reserved in municipalities in the State; on an intrinsic examination of the conspectus of various provisions of the Constitution referred to supra, the position seems to be otherwise.

24. It is not a legitimate question to be asked as to why there has been reduction in the number of offices of the Chairpersons of Gram Panchayats after the advent of Section 23(1)(c)(i) of the Act. The percentage of seats has obviously been reduced in the offices of Chairpersons of municipalities in the State after the enactment of Act 17 of 1994. But we cannot divorce that circumstance from the clear mandatory provisions of the Constitution and read it in isolation so as to cull out the clear discernable reduction in the number of offices of Chairpersons of municipalities in the State for the purpose of making out a case that Scheduled Castes or as the case may be Scheduled Tribes in the urban areas have been treated as a different class than their counter-parts in the rural areas and Act 17 of 1994 is arbitrary. Having due regard to Articles 243-D, 243-T, 330 and 332 of the Constitution it is difficult to accept the contentions that the State Government while enacting Section 23 (1)(c)(i) has treated the Scheduled Castes or as the case may be Scheduled Tribes in the urban areas as a different class. This Court can take note of the fact that rural population is more than the urban population. Similarly, this Court can also take note of the fact that among the Scheduled Castes and Scheduled Tribes, their population is more in rural areas than their population in urban areas, and that seems to be the underlying idea in the emission of necessary provision for fixing the number of the Chairpersons to be reserved in the municipalities. Therefore, having due regard to the said difference, taking the population of the Scheduled Castes or as the case may be Scheduled Tribes in the State in proportion to the total

population in the State for the purpose of providing reservation in number of offices of Chairpersons in the Gram Panchayats, there is a clear discernable differentia which has a reasonable relation to the object behind providing reservation. Inasmuch as the population of the Scheduled Castes or as the case may be Scheduled Tribes in the urban areas is less than their counter-parts in the rural areas, adopting a different basis for providing reservation in respect of number of offices of Chairpersons in the municipalities cannot be said to be bereft of any intelligible differentia. Under the circumstances, the contention that Scheduled Castes and Scheduled Tribes or urban areas have been treated as a different class among the equals namely their counter-parts in the rural population, is fallacious and cannot, therefore, be countenanced. Assuming for a moment that SCs. and STs., in municipal areas have been treated as a different class, a critical examination of the provisions, as afore-discussed, would clearly show that the absence of a necessary provision like the one incorporated under clause 4 of Article 243-D, in Article 243-T is based upon an intelligible differentia which makes the classification reasonable. We therefore see no legitimate basis for the contention that Section 23(1)(c)(i) of the Act is unconstitutional having been enacted treating the Scheduled Castes or as the case may be Scheduled Tribes of urban areas as a different class.

25. It is nobody's case that the very basis adopted by the provisions of Articles 243-D and 243-T in the matter of providing reservation of number of seats in the local bodies, in favour of Scheduled Castes or as the case may be Scheduled Tribes is unequal as they have been treated as a different class for providing reservation in the seats of the local bodies qua reservation in the Legislative Assembly of the State or Members of Parliament from that State. Section 23(1)(c)(i) of the Municipalities Act, since it is in consonance with the said provisions, has a rational relation to the objective sought to be achieved by a Constitutional mandate. By no stretch of imagination it can be said that Act 17 of 1994 was enacted so as to incorporate Section 23(1)(c)(i) into the Municipalities Act according to the whim or caprice of the State Government. To be an arbitrary act, the same must be unequal both according to political logic and constitutional law.

26. In fact, the Apex Court in *Venkateshwara Theatre Vs. State of Andhra Pradesh and Others*, and *Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others*, has indeed laid down twin tests to test any case on the touchstone of Article 14.. According to the said judgment the classification must satisfy two conditions viz., (1) it is founded on an intelligible differentia which distinguishes those that are kept together from others; (2) differentia must have a rational relation to the objective sought to be achieved by the Act. It is not legitimate to consider Section 23(1)(c)(i) by putting it in juxtaposition to the unamended Section 23 of the Act and taking note of the reduction in percentage of reservation in sequel thereto alone without addressing ourselves to the various provisions of the Constitution and the object behind in enacting those provisions as discussed elaborately supra. It is the contention of learned Counsel for the petitioners that the first proviso under clause 4 of Article 243-D of the

Constitution has been incorporated as a matter of guidance to enact the law and it is also equally a matter of guidance and the State shall make the law only in accordance with that under Article 243-D clause 4 and the legislature does not want to repeat the proviso under Article 243-T clause 4, and that does not mean that the State can pass a different law to the detriment of the interests of SCs. and STs., when it comes to Article 243-T, clause 4. The learned Counsel further contends that the object of Panchayat Raj Act and the two amendments to the Constitution incorporating Parts IX and IX-A are to provide the reservation and therefore, the object under Act 17 of 1994 shall have to be harmoniously construed, more particularly when the trend is to increase the representation of SCs. and STs., women and backward classes. Countering the said contentions, the learned Additional Advocate General contends that the object of the 73rd and 74th amendments is to provide a three tier system, but not providing the reservation and that fixing percentage of reservation is a political issue and that cannot be an issue with reference to which the validity of any act or a provision relevant for consideration in the context can be tested. We are not able to be persuaded by the contention of the learned Counsel for the petitioners that the proviso under clause 4 of Article 243-D is a matter of guidance and the same need not be repeated in Article 243-T clause 4. If at all Section 23 (1)(c)(i) were to be attacked, it is legitimate to attack Article 243-T in the first instance and without doing so, we are afraid, it is not open to the writ petitioners to isolate Section 23(1)(c)(i) from the Constitutional mandate under Article 243-T and then attack it collaterally on the premise that it is in violation of Article 14 of the Constitution of India. As discussed above, Section 23 (1)(c)(i) as emended under Act 17 of 1994 is in consonance with Article 243-T of the Constitution. For the foregoing reasons, we are of the considered view that it is not open to the petitioners to attack Section 23(1)(c)(i) of the Municipalities Act, 1965, on the premise that, it is in violation of Article 14 of the Constitution of India, when the said section has been enacted in consonance with the Legislative mandate under Article 243-T of the Constitution of India. For the reasons afore discussed it is difficult to arrive at a legitimate conclusion that Act 17 of 1994 has been enacted according to the whim or caprice of the State Government and is consequentially arbitrary. Therefore, both the writ petitions must fail.

27. In the result, both the writ petitions are dismissed. But in the circumstances, there shall be no order as to costs.