

(2014) 01 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No's. 38256 of 2013, 39203 and 39629, 39421, 39786-789, 40835, 38713, 39015, 39941, 43581, 45374 and 45855-857, 38395-401, 38822, 38996, 39002, 39219, 39284-285, 39353, 39665-666, 40245-247, 41309, 41809 and 47293 of 2013 (LB-ELE)

M. Abdul Azeez and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226 243K 243-P(e) 243-T 243U
Karnataka Municipal Corporations Act, 1976 — Section 10 10(1A) 2 2(29) 23

Citation : (2014) 2 AKR 293 : (2014) ILR 1839 : (2014) 1 KarLJ 353

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, in W.P. Nos. 38256 and 38822/2013 assisted with Sri Devi Prasad Shetty in W.P. Nos. 38256, 38822 and 47293/2013, Sri B.M. Siddappa in W.P. Nos. 39203 and 39629/2013, Sri A.P. Patil in W.P. No. 39421/2013, Sri M.R. Rajagopal in W.P. Nos. 39786-39789/2013, Sri J.N. Naveen in W.P. No. 40835/2013, Sri A. Nagarajappa in W.P. No. 38713/2013, Sri Prakasha Hegde K. in W.P. No. 39015/2013, Sri M.G.S. Kamal for Kamal and Banu, in W.P. No. 39941/2013, Sri K. Ravishankar in W.P. No. 43581/2013, Sri V. Srinivas in W.P. Nos. 45374 and 45855-857/2013, Sri M. Dhyan Chinnappa in W.P. Nos. 38395-401/2013, Sri Nagarajappa A. in W.P. No. 38996/2013, Sri T.B. Sandesh in W.P. No. 39002/2013, Sri Adinarayanappa for A.N.N. Associates, in W.P. No. 39219/2013, Sri Ramesh Chandra in W.P. Nos. 39284-285/2013, Sri Naik N.R. in W.P. No. 39353/2013, Sri Nishanth A.V. in W.P. Nos. 39665-666/2013, Sri N.R. Naik in W.P. Nos. 40245-247/2013, Sri Desai Sharanabasappa Viranna in W.P. No. 41309/2013, Sri Subhash Kowdichar in W.P. No. 41809/2013, for the Appellant; Ravivarma Kumar, Advocate General A/w Sri D. Nagaraj, AGA, in W.P. Nos. 38996, 39015, 39665-666, 39941/2013, for R-1 in W.P. Nos. 38395-401/2013, for R-1 and R-2 in W.P. Nos. 38256, 40245-247, 40835, 43581, 45374, 45855-857/2013, for R-1 and R-3 in W.P. Nos. 38713, 38822, 39002, 39203, 39241, 39284-285, 39353, 39629, 39786-39789, 41809, 47293/2013, for R-1 and R-4 in W.P. Nos. 39219, 41309/2013, Sri S. Viswajith Shetty, Advocate for R-3, Sri A. Niranjana Kumar, Advocate for R-4, Sri P.S. Malipatil, Advocate for R-7, Sri I.G. Gachchinamath, Advocate for R-8, Sri H.C. Shivaramu, Advocate for R9, Sri K. Chandranath Ariga, Advocate for R-10, Notice

to R-5 Dispensed With V/o Dtd. 5.11.2013 and Served for R-6 in W.P. No. 38256/2013, Sri K.N. Panindra, Advocate for R-2, Sri G.R. Prakash, Advocate for R5 and R6, Served for R-4 in W.P. Nos. 39203 and 39629/2013, Sri Vijay Kumar Y.H., Advocate for R-5, Sri G.D. Aswathanarayana, Advocate for R-6 to R-9, Sri Subramanya R., Advocate for R10 to R-13, Notice to R-4 Dispensed With in W.P. No. 39421/2013, Sri A.V. Gangadarappa, Advocate for R4, R-2 and Served R-5 to R-31 in W.P. Nos. 39786-39789/2013, Sri Sandesh T.B., Advocate for R-4 in W.P. No. 38713/2013, Notice to R3 Dispensed with in W.P. Nos. 42581, 45374 and 45855-857/2013, Sri V. Srinivas, Advocate for R2-R5 in W.P. Nos. 38395-401/2013, R-4, R-5, R-6, R-7, R-8 and R-10 Served, Sri D.L. Jagadeesh, Advocate for R9 in W.P. No. 38822/2013, Notice to R-4 Dispensed with in W.P. No. 39002/2013, R-4 Served, Sri Adithya Sondhi, Advocate for R-5, Sri S.S. Halalli, Advocate for Proposed Respondent in I.A. No. 5/2013 in W.P. Nos. 39284-285/2013, Sri N. Ravindranath, Advocate FOR R4 in W.P. No. 39353/2013, Sri K.N. Rakshit, Advocate for R3 and R4 and R5 Served in W.P. Nos. 40245-247/2013, R-5 Served in W.P. No. 41309/2013, Sri M.A. Subramani, Advocate for R4 in W.P. No. 41809/2013 and Notice to R4 to R10 dispensed with W.P. No. 47293/2013, for the Respondent

Final Decision : Allowed

Judgement

H.G. Ramesh, J.—In these writ petitions, the challenge is to the following four notifications issued by the State Government allotting offices of Chairpersons and Vice Chairpersons to the various reserved categories in the Municipal Corporations, City Municipal Councils, Town Municipal Councils & Town Panchayats referred to therein. 1) Notification No. UDD 118 MLR 2013, Bangalore, dated 21.08.2013 issued in respect of Municipal Corporations,

2) Notification No. UDD 117 MLR 2013(1), Bangalore, dated 23.08.2013 issued in respect of City Municipal Councils,

3) Notification No. UDD 117 MLR 2013(2), Bangalore, dated 23.08.2013 issued in respect of Town Municipal Councils,

4) Notification No. UDD 117 MLR 2013(3), Bangalore, dated 23.08.2013 issued in respect of Town Panchayats.

In some of the writ petitions (W.P. Nos. 38395 to 38401 of 2013), the petitioners have prayed for a declaration that Rules 13 & 13A of the Karnataka Municipalities (President and Vice President) Election Rules, 1965 and the Guidelines issued by the State Government regarding reservation of offices of the Presidents and Vice Presidents of City Municipal Councils, Town Municipal Councils and Town Panchayats by rotation as per Government order No. UDD 73 MLR 2013, Bangalore, dated 04.05.2013 are ultra vires the Karnataka Municipalities Act, 1964. They have also prayed for a direction to the State Government to frame Rules to give effect to the principle of rotation envisaged in Section 42 of the Karnataka Municipalities Act, 1964. 2. As the question of law raised is the same in all these writ petitions they were heard together and are disposed of by this

common order.

3. The petitioners have challenged the aforesaid notifications on the sole ground that the allotments made under the notifications violate the principle of rotation provided under the provisions of the Karnataka Municipal Corporations Act, 1976 ("the Municipal Corporations Act" for short) and the Karnataka Municipalities Act, 1964 ("the Municipalities Act" for short), for reservation of offices of Chairpersons and Vice Chairpersons in the Municipalities of the State.

3.1 Learned Counsel for the petitioners submitted that the allotment of offices made in the impugned notifications is arbitrary and is violative of the principle of rotation provided under the two Municipal Acts referred to above. The Allotments are not rotated but are repeated. The principle of rotation is followed only in its breach and it is hardly followed in any of the previous terms also. They further submitted that the Rules also do not provide for rotation as mandated by the Legislature.

3.2 Learned Advocate General raised a preliminary objection regarding maintainability of these writ petitions on the ground that there is a bar under Article 243ZG of the Constitution of India to entertain these petitions and therefore, the writ petitions are liable to be dismissed. He referred to several judgments of the Supreme Court rendered in the context of Article 329(b) of the Constitution of India. He submitted that the petitioners have a statutory remedy under the respective Municipal Acts and the Rules made thereunder and hence, the petitioners can challenge the impugned notifications by filing an election petition before the Jurisdictional District Judge. He also submitted that repetition is not opposed to rotation and therefore, the impugned notifications do not warrant any interference by this Court.

4. This Court in a similar matter in H. Shivappa and Others Vs. State of Karnataka and Others, had an occasion to consider the very contentions now urged by the learned Advocate General regarding maintainability of the writ petitions. On a very detailed consideration of the matter, this Court rejected the said contentions and held that the writ petitions were maintainable. I am in respectful agreement with the said view. Suffice to refer to the following observations made therein:

35. It is in the light of such rival contentions, the preliminary objections that has been raised on behalf of the State with regard to the maintainability of the present writ petitions for examination in the exercise of writ jurisdiction is required to be considered.

36. If the Constitution provides an embargo for entertaining a writ petition by this Court in a situation mentioned therein, no further question arises, the matter ends there. There is no question of this Court looking into the matter any further irrespective of the irregularity or even illegality alleged in the petitions. The constitutional embargo acts as a threshold bar for entertaining a writ petition, provided it is there. The bar pleaded is in terms of Article 243-ZG(b) of the

Constitution of India, which reads as under:

243-ZG. Bar to interference by Courts in electoral matters--Notwithstanding anything in this Constitution.-

(a) xxx

(b) no election to any municipality shall be called in question except by an election petition prescribed to such authority and in such manner as is; provided for by or under any law made by the Legislature of a State

The bar is in respect of the examination of the question of elections to the Municipalities. It is to be noticed that the election to Municipalities is not the same as elections to the Chairpersons of the Municipalities, as indicated in Article 243-P(e) of the Constitution.

37. Even in Article 243-P(e) in fact a clear distinction has been maintained between a municipality and the Chairpersons of the municipality. Separate provisions providing for reservations have been made in Article 243-T for elections to the Municipalities and for elections to the posts of Chairpersons in the Municipalities. The word "municipality" does not automatically take in its fold the Chairpersons of the municipality. The bar contained in Article 243-ZG is in respect of the elections to any municipality and not elections to the Chairpersons of the Municipalities. The bar operates if it is actually so provided for and not by way of an analogy or by way of an extension, if one should understand the position on the settled principles of interpretation.

38. It is not possible to include the elections to the posts of Chairpersons to a municipality within the meaning of the word "municipality", as the provision is one which curtails the jurisdiction of the Courts, imposes fetters on the jurisdiction, until and unless the bar is express and unambiguous.

39. On a plain reading of Article 243-ZG(b) itself, it is obvious that elections to the posts of Chairpersons of a municipality do not find place in this Article. It is not a bar in respect of examination of the question arising in the context of elections to Chairpersons in Municipalities, by the Court.

40. In the absence of an express bar, the next stage is as to whether the Court can exercise its jurisdiction under Article 226 of the Constitution. It is no doubt true that under Article 226, where an alternative adequate remedy is provided for, the writ Court is rather slow in exercising jurisdiction, and in fact as a rule of practice such matters are relegated to be agitated before the very forum and in the manner provided for by the statute. Here again, on an examination of the provisions of Section 42(2-A) and 42(3) of the act read with the provisions of the Rules, it clearly indicates that the rule does not provide for agitating the questions such as the validity of notifications such as the one dated 1-9-2004, challenged in this batch of writ petitions and therefore the provisions cannot even be construed as one providing for an alternative remedy.

45. Even here, on the application of these five principles enumerated in para 32 of Ashok Kumar's case, I do not find the situation wherein this Court cannot entertain present writ petitions, inasmuch as the stage at which the petitioners have approached this Court was one prior to commencement of the electoral process. May be in some later petitions, the calendar of events had been issued, but the notification impugned herein itself is one which precedes the electoral process and in fact is not one which was a part of the process of election in the sense that whatever happened happens under the notification before the commencement of the electoral process and the impact is not one that begins or which surfaces for the first time during the electoral process.

46. Provision for reservation having already been made under the notification, it acts as a threshold bar on such persons who do not come within the scope of the reservation and therefore such persons are prevented from contesting the election itself and a person who has not contested an election, cannot by himself maintain an election petition, even in terms of Rule 15(1) of the Rules, as an election petition can be filed by a person who was himself a candidate in the election or by three or more Councilors joined together as petitioners and cannot be by a single person if the person himself was not a candidate in the elections. In most of the cases, the grievances of the petitioners in the present batch of writ petitions being that they are being deprived of an opportunity of even contesting the elections to the posts of Chairpersons of the Municipalities, the petitioners by themselves cannot maintain an election petition, in which event a provision like Rules 15, 16, 17 and 18 of the Rules can never be said to be an adequate or efficacious remedy to act as a bar to the exercise of writ jurisdiction. Even an examination of the relief that can be granted in terms of Rule 15(1) also clearly indicates that the Electoral Tribunal cannot grant any relief in favour of a person who is himself deprived of an opportunity to contest the elections due to the pattern of reservation being such and at the best if a petition was tenable, the election of the returned candidate can be questioned and nothing beyond.

47. The only other bar that had been pleaded by the learned Advocate General is in terms of the judgment of the Division bench in W.A. No. 3914 of 2004 and connected cases. Here again while the question is not free from doubt in the light of the observation contained in para 9 of the judgment, what is pointed out on behalf of the petitioners is that in terms of the judgment of the Division Bench in W.A. 4783 and 4784 of 2004 and connected cases, wherein it is expressly observed in para 4 of the judgment is thus:

...However, it is the contention of Sri. R.L. Patil, learned Counsel for the contesting respondents that in the remedy provided u/s 23 of the Karnataka Municipalities Act, the validity of the impugned notification cannot be gone into. We need not express any opinion on this contention placed before us at this stage. Suffice it to state that if the validity of the notification could not be gone into in an election petition to be filed u/s 23 of the Act, that question can be gone

into by this Court in the pending writ proceedings....

Is that if the validity of the impugned notification cannot be subject-matter of a petition in terms of Section 23 of the Act, that can be gone into by this Court even in a petition under Article 226 of the Constitution of India.

56. I find considerable force in the arguments advanced as above by the learned Counsel for the petitioners. In fact it is the shying away of the State from defending the correctness or legality of the impugned notification on the merits of the matter that has compelled this Court to examine the issues, more particularly when allegations are levelled against the State that the power to issue a notification of this nature is being misused and is being manipulated to favour persons belonging to its own political affiliations and to harm the interests of others belonging to other political parties. While the allegation is such, the validity of the notification is questioned on the premise that the same being in contravention of the statutory provisions and in the teeth of the constitutional provisions of Article 243-T of the Constitution of India itself. Accordingly, the contentions that these writ petitions should be dismissed in limine, as urged by the learned Advocate General on behalf of the State and other contesting parties, cannot be accepted.

(Underlining supplied)

5. In this context, it is also relevant to refer to the following observations made by a Division Bench of this Court in *L. Shivanna Vs. State of Karnataka*, :

23. ...To put it in a nut shell, our conclusion is - the doors of the High Court under Article 226 is closed if the doors of the Election Tribunal is open, and not closed if the doors of the Election Tribunal is not open....

6. In the light of the two judgments referred to above and as the Election Tribunal created under the two Municipal Acts cannot go into the validity of the notifications impugned herein, the contention of the learned Advocate General regarding maintainability of these writ petitions is rejected. The writ petitions are held maintainable.

7. The question that needs to be answered in these writ petitions is as to whether the allotment of offices made in the impugned notifications is violative of the principle of rotation mandated under the Municipal Corporations Act and the Municipalities Act?

8. To examine the question raised, it is necessary to notice the following provisions of the Municipal Corporations Act, the Municipalities Act and the relevant Rules framed under the said Acts:

8.1. The Karnataka Municipal Corporations Act, 1976:

Section 2(29). "Prescribed" means prescribed by rules made under this Act;

Section 10. Mayor and Deputy Mayor.--(1) Subject to the provisions of Sub-section (1-A), the Corporation shall, at its first meeting after a general election of Councillors and at its first meeting in the same month in each year thereafter, elect--

(a) one of its Councillors referred to in clause (a) of Sub-section (1) of section 7 to be the Mayor, and

(b) one other Councilor referred to in clause (a) of Sub-section (1) of section 7 to be the Deputy Mayor.

(1A) There shall be reserved by the Government in the prescribed manner.--

(a) such number of offices of Mayor and Deputy Mayor in the State, for the persons belonging to the Scheduled Castes and Scheduled Tribes and the number of such offices shall bear as nearly as may be, the same proportion to the total number of offices in the State as the population of Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State;

(b) such number of offices of Mayor and Deputy Mayor in the State which shall as nearly as may be, one-third of the total number of offices of the Mayor and Deputy Mayor in the State for the persons belonging to the Backward Classes: Provided that out of the offices reserved under this clause eighty percent of the total number of such offices shall be reserved for the persons falling under category "A" and the remaining twenty percent of the offices shall be reserved for the persons falling under category "B":

Provided further that if no person falling under category "A" is available, the offices reserved for that. category shall also be filled by the persons falling under category "B" and vice-versa.

Provided also that the number of offices of Mayor and Deputy Mayor reserved for the Backward Classes under this clause shall be so determined that the total number of offices of Mayor and Deputy Mayor reserved for the Scheduled Castes and the Scheduled Tribes under clause (a) and the Backward Classes under this clause shall not exceed fifty percent of the total number of offices of Mayor and Deputy Mayor of the City Corporations in the State.

(c) not more than fifty percent of the total number of offices of Mayor and Deputy Mayor in the State from each of the categories reserved for persons belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and those which are non-reserved for women:

Provided that the offices reserved under this subsection shall be allotted by rotation in the prescribed manner.

Explanation.- For the removal of doubts it is hereby declared that the principle of rotation for purposes of reservation of offices under this sub-section shall commence from the first ordinary election to be held after the first day of June 1994.

(2) The Mayor or the Deputy Mayor shall hold office for one year from the date of his election and shall, notwithstanding the expiry of the said period, continue in office till his successor is elected, provided that in the meantime he does not cease to be a Councillor.

8.2. The Karnataka Municipal Corporations (Election) Rules, 1979:

Rule 73-A. Reservation of offices of Mayor and Deputy Mayor--(1) Reservation of offices of Mayor and Deputy Mayor in the State for different categories in accordance with Sub-section (1-A) of Section 10 shall be as specified in the table below.--

(2) The offices of Mayor and Deputy Mayor reserved for Scheduled Caste and Scheduled Tribe in the State shall be allotted by the Government to the Corporation having the highest percentage of population belonging to the Scheduled Caste and Scheduled Tribe with reference to the total population of the city:

Provided that both the offices of Mayor and Deputy Mayor in any Corporation shall not be allotted in favour of the category of Scheduled Castes only.

(3) The Offices of Mayor and Deputy Mayor of the Corporation reserved for Backward Classes and those of unreserved category shall be allotted by the Government to Corporations taking into consideration such factors as the Government, may deem fit.

(4) The offices of Mayor and Deputy Mayor reserved for Women in each category referred to in sub-rule (1) shall be allotted by the Government to the Corporation taking into consideration such factors as the Government may deem fit: Provided that both the offices of Mayor and Deputy Mayor of the Corporation may not be reserved for Women.

(5) The offices of the Mayor and Deputy Mayor in the City Corporations of the State to Scheduled Caste/Scheduled Tribes/Women, and Backward Classes for the subsequent terms be determined by the Government from time to time by taking into consideration such factors as deem fit:

Provided that if the reservation worked out to any category is less than 0.5%, then no offices of Mayor and Deputy Mayor be reserved to such category.

8.3. The Karnataka Municipalities Act, 1964:

Section 2: "prescribed" means prescribed by rules made by the Government under this Act;

Section 42. President and Vice-President.--(1) For every municipal council, there shall be a President and a Vice-President.

(2) Subject to the provisions of Sub-section (2-A) the Councillors shall at the first

meeting of the Municipal Council after the general election and at a subsequent meeting held immediately before the expiry of term of office of the President and Vice-president choose two members from amongst the elected councillors to be respectively President and Vice-President and so often as there is a casual vacancy in the office of the President, or Vice-President shall choose another member from amongst the elected councillors to be the President or Vice-president, as the case may be.

(2-A) There shall be reserved by the Government in the prescribed manner.--

(a) such number of offices of President and Vice-President in the State for the persons belonging to the Scheduled Castes and Scheduled Tribes and the number of such offices bearing as nearly as may be the same proportion to the total number of offices in the State 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;

(b) such number of offices of President and Vice-president in the State which shall as nearly as may be one-third of the total number of offices of President and Vice-President in the State for the persons belonging to the Backward Classes;

Provided that out of the offices reserved under this clause, eighty percent of the total number of such offices shall be reserved for the persons falling under category "A" and the remaining twenty percent of the offices shall be reserved for the persons falling under category "B":

Provided further that if no person falling under category "A" is available, offices reserved for that category shall also be filled by the persons falling under category "B" and vice versa:

Provided also that the number of offices of President and Vice-President reserved for the backward classes under this clause shall be so determined that the total number of offices of President and Vice-President reserved for the Scheduled Castes and the Scheduled Tribes and the Backward Classes under this clause shall not exceed fifty percent of the total number of offices of President and Vice-President of the Municipal Councils in the State.

(c) not more than fifty percent of the total number of offices of the President and Vice-President in the State from each of the categories, reserved for persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes and those which are non-reserved, for women:

Provided that the offices reserved under this subsection shall be allotted by rotation in the prescribed manner to different municipal councils. Explanation-- For the removal of doubts it is hereby declared that the principle of rotation for the purpose of reservation of offices under this sub-section shall commence from the first ordinary election to be held after the first day of June, 1994;

(3) The election of the President or the Vice-President and the filling up of vacancies in the said offices and the determination of disputes relating to such election shall be in accordance with such rules as may be prescribed: Provided that the authority to determine such election disputes shall be such judicial officer as may be prescribed.

8.4. The Karnataka Municipalities (President & Vice President) Election Rules, 1965:

Rule 13. Reservation of Offices of President and Vice-President--(1) Reservation of offices of President and Vice-President of the City Municipal Council, town Municipal Councils and Town Panchayats for different categories in accordance with Sub-section (2-A) of Section 42 read with Section 353 shall be specified as in the tables below.--

(2) The offices of President reserved for Schedules Tribes shall be allotted by the Government to the Municipal Councils, or as the case may be, Town Panchayats having the highest percentage of population belonging to the Schedules Tribes with reference to the total population of the municipal area. The same procedure shall be followed by the government for allotting to the Municipal Councils, or as the case may be, Town Panchayats the same number of offices of Vice-President for members belonging to the Scheduled Tribes but excluding the Municipal Councils, or as the case may be, Town Panchayats in which the office of President have been already allotted to them.

(3) The offices of President and Vice-President of Municipal Councils or as the case may be, Town Panchayats in the State shall be allotted by the Government for members belonging to the Scheduled Castes in the same manner as specified in sub-rule (1): Provided that both the offices of President and Vice President in any Municipal Council, or as the case may be, Town Panchayats shall not be allotted in favour of the category of Scheduled Castes and Scheduled Tribes only:

Provided further that if the reservation worked out to any category is less than 0.5% no offices of President and Vice-President be reserved to such category.

(4) The offices of President and Vice-President of the Municipal Councils, or as the case may be, Town Panchayats, reserved for Backward Classes and those of unreserved category, shall be allotted by the Government taking into consideration such factors as the Government may deem fit.

(5) The offices of President and Vice-President reserved for women for each category referred in sub-rule (1) shall be allotted by the Government to the Municipal Councils, or as the case may be, Town Panchayats taking into consideration such factors as the Government may deem fit.

Provided that both the offices of President and Vice-president of the Municipal Council, or as the case may be, Town Panchayats shall not be reserved for

women.

(6)...(Omitted)

Rule 13-A. Rotation of offices- (1) Subject to sub-rule (1) of Rule 13, the offices of President and Vice-President of the City Municipal Councils, Town Municipal Councils and Town Panchayats in the State shall be rotated to the different categories from term to term. Explanation.- For the purpose of reservation of offices by rotation the cycle of rotation shall commence from first term after first ordinary election held after First day of June, 1994 and completed when all the categories are represented in all City Municipal Councils, Town Municipal Councils and Town Panchayats as the case may be. Thereafter a fresh cycle of rotation shall commence.

(2) The office of the President and Vice-President of City Municipal Councils, Town Municipal Councils and Town Panchayats reserved for Scheduled Caste, Scheduled Caste-Woman, Scheduled Tribe, Scheduled Tribe-Woman, Backward Class-Category A, Backward Class Category A-Woman, Backward Class-Category B, Backward Class Category B-Woman, General-Woman in the previous terms shall as far as possible be not allotted to the same category in the succeeding term until the cycle of rotation is completed in respect of such category.

(3) Both the office of the President and Vice-President of the City Municipal Councils, Town Municipal Councils or Town Panchayats, as the case may be, shall not be allotted in favour of the same category of Scheduled Castes, Scheduled Tribes, Backward Class and Woman and in case of an office of President is allotted to the category of Scheduled Castes, the Office of the Vice-President shall not be allotted to the Category of Scheduled Tribes but shall be allotted to the next in rotation in the cycle of rotation and vice versa.

(4) The Offices reserved for persons belonging to Scheduled Castes and Scheduled Tribes shall be allotted by rotation to the City Municipal Council, Town Municipal Council and Town Panchayat having the next higher percentage of population in which the offices have not been allotted to them in the previous terms.

(5) The Government shall prepare and maintain separate registers of offices of president and vice-president of City Municipal Councils, Town Municipal Councils and Town Panchayats allotted to different categories in Form A

(6) The Government shall prepare and maintain separate registers of offices of President and Vice-President allotted by reservation for each category in different City Municipal Councils, Town Municipal Councils and Town Panchayats in Form B

9. It is also relevant to refer to the following Articles of the Constitution of India:

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

of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipality area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

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

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

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

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

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

243U. Duration of Municipalities, etc.--

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer: Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1)

(3) An election to Constitute a Municipality shall be completed,-

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution: Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for

which the dissolved Municipality would have continued under clause (1) had it not been so dissolved.

243ZA. Elections to the Municipalities. -

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2) Subject to provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

243ZG. Bar to interference by courts in electoral matters.--

Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243ZA shall not be called in question in any Court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

10. The meaning of the principle of rotation in the context of the above referred proviso to Sub-section (1A) of Section 10 of the Municipal Corporations Act and the proviso to Sub-section (2A) of Section 42 of the Municipalities Act needs to be stated to answer the question raised in these writ petitions. It is also submitted by the learned Counsel on both sides that there is no judgment by this Court on the interpretation of the word "rotation" occurring in both the above provisos.

10.1 Both the above provisos which are similarly worded state that allotment of the offices of Chairpersons and Vice Chairpersons reserved in the Municipalities of the State shall be allotted to the reserved categories by rotation in the prescribed manner. Though both the provisos are quoted above, for convenience, the proviso under the Municipalities Act is extracted below:

Provided that the offices reserved under this sub-section shall be allotted by rotation in the prescribed manner to different municipal councils. Explanation-- For the removal of doubts it is hereby declared that the principle of rotation for the purpose of reservation of offices under this sub-section shall commence from the first ordinary election to be held after the first day of June, 1994;

Rotation means something which moves in a circular order. "Rotate" means to cause to turn in a circle. The principle of rotation, in the context of the above two provisos, means that the offices reserved for each of the reserved categories requires to be allotted by rotation in a circular order among the Municipalities of a particular kind till the said category is represented in all the Municipalities of

that kind and allotment to the said category cannot be repeated in any Municipality till a cycle of rotation is completed. When a particular reserved category is represented in all the Municipalities of a particular kind, it would complete one cycle of rotation for that category and thereafter, a fresh cycle of rotation for that category shall commence. Every reserved category has to have an independent cycle of rotation. Every such cycle shall be independent of its previous or the succeeding cycle. Before completion of one cycle of rotation for a reserved category as explained above, if allotment to that category is repeated in any Municipality, it would be violative of the principle of rotation and such an allotment is illegal and is liable to be set aside. This is the principle of rotation intended by the Legislature under the two provisos referred to above. The object of rotation is to provide representation to each of the reserved categories to the offices of Chairpersons and Vice Chairpersons in all the municipalities. I may add that to complete a Cycle of rotation in respect of a particular reserved category, it may take only one circular movement or several circular movements among the municipalities of a particular kind like CMCs, TMCs etc. depending upon the total number of offices reserved for that category in the State and the number of municipalities of that kind in the State. Several circular movements may become necessary due to several other reasons also. For eg., during a circular movement, when no candidate belonging to a particular reserved category is available in a municipality, then the allotment shall go to the next municipality in line in the circular order. Another example is, when a rule requires that both the offices in a Municipality shall not be allotted to the same category There may be many such valid reasons for bypassing a Municipality and to go to the next in line available in the circular order or to go to a previous one which was bypassed earlier for any valid reason. This all depends upon the order of rotation laid down by the Rules framed in this behalf by the State Government. But under no circumstance, "repetition" is permissible i.e. allotment of the office for the same reserved category for the second time in a Municipality before commencement of afresh cycle of rotation. Any "repetition" would be contrary to the principle of rotation. However, in respect of the category of Backward classes, this principle of rotation is subject to the following proviso which is incorporated in both the Municipal Acts:

Provided further that if no person falling under category "A" is available, offices reserved for that category shall also be filled by the persons falling under category "B" and vice versa;

10.2 The following example would illustrate the principle of rotation:

If the office of President in a City Municipal Council is allotted to a particular reserved category, the said office cannot be allotted for the second time to the said category in that Municipal Council before completion of a cycle of rotation for that category i.e. till the said category is allotted the office of President in all the other City Municipal Councils once.

11. An elementary test to find out as to whether the principle of rotation is

violated or not, is to examine as to whether any allotment to a reserved category is repeated in any Municipality before commencement of a fresh cycle of rotation for that category. If there is any allotment to any reserved category for the second time in a Municipality before completion of a cycle of rotation or before commencement of a fresh cycle of rotation for that category, it would be a clear violation of the principle of rotation.

12. The principle of rotation as explained above is not followed by the State Government while making allotments in the impugned notifications. Allotments made to several reserved categories in a large number of municipalities are "repetitions". What is "repetition" is already explained above. It is also not the case of the State Government that there are no "repetitions" in the allotments made in the impugned notifications.

13. The Rules framed by the State Government under both the Municipal Acts do not provide for the principle of rotation as explained above. This is evident by the very allotments made in the impugned notifications. The State Government is duty bound to amend the existing rules or to frame new rules to give effect to the principle of rotation which is the mandate of the Legislature.

14. The State Government appears to be under an erroneous impression that whatever it provides under the rules would become the principle of rotation. The Government is empowered by the legislature under the two provisos referred to above to frame Rules to give effect to the principle of rotation as explained above being what the legislature intended by "rotation". The Rule making power given to the Government is not to frame its own policy of rotation as is done under Rule 73-A(5) of the Karnataka Municipal Corporations (Election) Rules, 1979. The said sub-rule reads as follows:

73-A(5) The offices of the Mayor and Deputy Mayor in the City Corporations of the State to Scheduled Caste/Scheduled Tribes/Women, and Backward Classes for the subsequent terms be determined by the Government from time to time by taking into consideration such factors as deem fit:

Provided that if the reservation worked out to any category is less than 0.5%, then no offices of Mayor and Deputy Mayor be reserved to such category.

Under no circumstance, the Rules can permit "repetition". If any Rule permits or enables repetition, that Rule is ultra vires the principle of rotation and hence ultra vires the Parent Act. The Rules, to be valid, should be framed in such a way that there shall be no scope for "repetition".

15. The State Government has acted against the principle of rotation in making the allotments in the impugned notifications resulting in violation of Article 243U of the Constitution of India.

16. The State Government shall now give effect to the principle of rotation as explained above by strictly avoiding "repetition" of allotments to any reserved category by taking into consideration all the previous allotments made in each of

the Municipalities as any contravention of the principle of rotation would be violative of the legislative mandate contained in Section 42(2A) of the Karnataka Municipalities Act and Section 10(1A) of the Municipal Corporations Act. In the result, I make the following order:

(i) the allotment of offices of Chairpersons and Vice Chairpersons to the various reserved categories in the Municipal Corporations, City Municipal Councils, Town Municipal Councils & Town Panchayats, made in the impugned notifications to the extent they are "repetitions" (what is "repetition" is explained above) are set aside. In other words, only such of those allotments which are "repetitions" are set aside; the State Government shall redo such allotments by strictly avoiding "repetitions". This shall be done expeditiously and in any event within two months from today;

(ii) the State Government is also at liberty to redo all the allotments made in the impugned notifications in conformity with the principle of rotation as explained above within two months from today;

(iii) if there is any non compliance of this order by the State Government, it is needless to state that the party aggrieved is at liberty to move this Court on the contempt side in accordance with law.

The writ petitions are allowed in the above terms with no order as to costs.