

**(2021) 02 J&K CK 0037**

**In the Jammu And Kashmir High Court**

**Case No :** Writ Petition (C) No. 64 Of 2021, CM No. 309, 680, 683, 693, 695, 962, 963 Of 2021

Nadeem Sharief And Others

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

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**Date of Decision :** 25-02-2021

**Acts Referred:**

Jammu And Kashmir District Development Council ( Reservation Of Offices Of Chairpersons) Rules, 2021 — Rule 2, 4, 4(1), 4(2)  
Jammu And Kashmir Panchayati Raj Rules, 1996 — Rule 108A(3), 108A(3A), 108A(3B), 108A(3C), 108A(3D), 108A(3E), 108A(3F)

**Citation :** (2021) 02 J&K CK 0037

**Hon'ble Judges :** Rajnesh Oswal, J

**Bench :** Single Bench

**Advocate :** Gagan Basotra, Navdeep Kour, H. A. Siddiqui, Aseem Sawhney

**Final Decision :** Dismissed

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## **Judgement**

1. The present writ petition has been filed by the petitioners with the following reliefs:

(a) Issue an appropriate order, writ or direction in the nature of mandamus to quash J&K District Development Council (Reservation of Offices of

Chairpersons) Rules, 2021 to the extent of Rule 4(1) providing for allotment of seats to different District Development Councils on the basis of total

population of Schedule Castes and Schedule Tribes in such District Development Councils in descending order and Rule 4 (2) whereby the allocation

of seats of Chairperson to be reserved for women shall be made on three point roaster system after arranging then alphabetically i.e.

(iv) Open

(v) Open

(vi) Women

(b) Issue an appropriate order, writ or direction in the nature of mandamus commanding the respondents to provide reservation of women to the seats

of Chairperson on a three point roster system after arranging them alphabetically with reservation of women commencing from roster point 1

instead 3 in accordance with Rule 3(F) of S.O. 330 dated 24.10.2020, with a further direction, to provide allotment of seats to be reserved for SC and

ST category to Chairperson of the District Development Council on the basis of proportion of SC and ST population to the total population of the

constituency in descending order.

2. That the petitioners are aggrieved of the notification vide S.O 13 dated 11.01.2021 and has sought its quashment to the extent of Rule 4(1) providing

for allotments of seats to different District Development Councils on the basis of population of Schedule castes and Schedule Tribes in such District

Development Councils in descending order and Rule 4(2) whereby the allocation of sets of Chairperson to be reserved for Women shall be made on

the basis of three point roster system after arranging them alphabetically i.e. (i) Open, (ii) Open and (iii) Women; on the ground that the above Rules

are in contravention to the notification issued vide SO 330 dated 24.10.2020 whereby J&K Panchayati Raj Rules 1996, were amended inter alia

providing reservation to the allocation of constituencies to be reserved for Women and also for Scheduled Castes and Scheduled Tribes allotted to

different territorial constituencies on the basis of proportion of Scheduled Castes and Scheduled Tribes population to the total population of the

constituency in descending order. Roster point is also contrary to roster fixed vide S.O. 330 dated 24.10.2020.

3. The respondents have filed the response in which they have stated that Sub-Rule 3(F) of 108A of the Jammu and Kashmir Panchayati Raj Rules,

1996 has been deleted vide S.O. 24 of 2021 dated 22.01.2021 as such, the present petition has been rendered infructuous. It is further stated that

proper representation has been provided to all the reserved categories i.e. Scheduled Castes, Scheduled Tribes and Women and fair method has been

adopted so that these categories get proper representation in the Panchayati Raj System and also that S.O. 13 of 2021 is in consonance with the

provisions of the constitution. It is also the contention of the respondents that

S.O. 330 dated 24.10.2020 has been issued by the Government for prescribing rules relating the procedure for reservation of seats for Scheduled Castes, Scheduled Tribes and Women for elections to the seats of members of District Development Councils whereas S.O. 13 dated 11.01.2021 has been issued by the Government prescribing procedure for reservation for Scheduled Castes, Scheduled Tribes and Women for elections to the seats of Chairpersons of District Development Councils, those are two separate and distinct elections and therefore, Government is empowered to prescribe reservation procedure for the two elections as has been done in all previous elections. It is also stated that the reservation by rotation as has been prescribed is inherently just and fair in application as every possible seat would get reserved over the years for different categories in different elections like Scheduled Castes, Scheduled Tribes and Women on the basis of population and roaster and therefore, candidates would get the opportunity to contest on a reserved or an open seat on rotational basis over the years. The respondents have also filed a supplementary affidavit by stating that during the pendency of the petition subsequent to reply filed by them, Election Authority/Chief Electoral Officer to the Union Territory of Jammu and Kashmir has issued notification No. EA/Pyt/2021/15 dated 25.01.2021 by virtue of which objections have been invited from the interested persons to the proposed reservation to the office of Chairman/Chairperson of District Development Council. The said notification was published in the newspapers as well on 26.01.2021 and present petition would not lie as the petitioner has the ample opportunity to file the petition to raise their objections before the Election Authority. The respondents have also placed on record the order dated 01-02-2021 issued by State Election Commissioner notifying the allotment/reservation of seats of Chairpersons of District Development Councils for Scheduled Caste, Scheduled Tribe and Women in 20 districts of UT of J&K.

4. The petitioners have not disputed the issuance of notification dated 25.01.2021 as well as notification dated 01.02.2021 and rather placed on record a copy of the notification dated 25.01.2021 issued by State Election Commission.

5. Mr Gagan Basotra Learned Senior Counsel candidly admitted that vide SO 24 dated 22.01.2021, the sub-rule (3F) of Rule 108-A of the JK Panchayati Raj Rules has been deleted but he vehemently argued that the Rule

4(1) of SO 13 dated 11.11.2021 is still in existence that runs contrary to the Rule 3(B) appended to rule 108-A of JK Panchayati Raj Rules 1996. Mr Basotra Learned Senior Counsel also made an attempt to expand the scope of the writ petition by throwing challenge to Rule 4(2) SO 13 dated 11.01.2021 on the grounds those have never been pleaded in the writ petition as such the same cannot be considered when the foundation for the same has not been laid in the writ petition. Reliance is placed upon the decision of Apex Court in case titled Union of India v. Dinesh Prasad reported in (2012) 12 SCC 63 and relevant para is extracted as under:

“20. In our view, the learned Single Judge was clearly in error in allowing such argument. Firstly, the argument was raised without any foundation in the writ petition. No plea of actual or likelihood of bias was raised in the writ petition. There was also no plea taken in the writ petition that he was denied fair trial in the course of Summary Court Martial. Secondly, and more importantly, the learned Single Judge overlooked and ignored the statutory provisions referred to hereinabove. The Division Bench also failed in considering the matter in right perspective and in light of the provisions in the Army Act and the Army Rules.”

6. Per contra, Mr. H. A. Siddiqui, learned Sr. AAG has vehemently argued that one relief sought by the petitioners has become infructuous due to issuance of SO 24 dated 22.01.2021 and so far as the other issue regarding the reservation provided to Scheduled Castes, Scheduled Tribes, raised by the petitioners is concerned, the said issue does not arise at all because SO 13 dated 11.01.2021 has been issued only for the purpose of providing reservation of offices of chairpersons of District Development Councils. He has further argued that pursuant to the notification dated 01.02.2021, elections in some of District Development Councils have already been held.

7. Heard and perused the record.

8. By virtue of S.O 330 dated 24.10.2020, the sub-rules (3A) (3B) (3C) (3D) (3E) and (3F) were inserted after sub rule (3) of Rule 108-A. Rule 108-

A was inserted in J&K Panchayati Raj Rules by virtue of SO 316 dated 17.10.2020. Rule 108-A of S.O. 316 reads as under:-

“108-A Delimitation of Constituencies of a District Development Council:-

(1) The Deputy Commissioner shall divide the District Development Council area into fourteen single member territorial constituencies provided that

the ratio between population of the territorial area of a constituency and the number of seats in the District Development Council shall, so far as

practicable, be the same throughout the area of the District Development Council.

(2) While delimiting the constituencies of the District Development Council, Halqa Panchayat shall be a unit. The constituencies shall be delimited

from the map of the District Development Council area starting from North towards East and ending towards South to West and every constituency

shall be assigned a serial number and a name. The name of the constituency may be assigned on the name of a Block having the largest population in

that constituency. Thereafter, the constituencies shall be arranged alphabetically on the name of such constituencies.

(3) While delimiting the constituencies, the Deputy Commissioner shall determine the number of constituencies to be reserved for Scheduled Castes,

Scheduled Tribes and women in every constituency of District Development Council in accordance with the provisions of the Act and distribute seats

reserved for Scheduled Castes, Scheduled Tribes as far as practicable in those areas in a District Development Council where the proportion of their

population to the population in total is comparatively large.

(4) The Deputy Commissioner shall cause to public a proposal for delimitation of constituencies by dividing a District Development Council area into

single member constituencies and also indicate the territorial limit of each such constituency and shall keep the proposal open for inspection in the

office of Halqa Panchayat, Block Development Council and District Development Council falling within the District and by affixing a copy of such

proposal at two conspicuous places within each Halqa Panchayat area for inviting public objections thereon.

(5) The Deputy Commissioner on receipt of objections, if any, under sub rule (4) shall forward the same to the Director, Rural Development

concerned who shall place the proposal along with objections received before the Election Authority. The Election Authority shall thereon inquire or

cause an inquiry to be made and dispose of the objections. Thereafter Election Authority shall issue final order of delimitation after recording in brief

the reasons for acceptance or rejection of such objections.

Sub-Rules 3B, 3C and 3F inserted to Rule 108-A vide S.O. 330 dated 24.10.2020 read as under:

(3B) The number of seats reserved for Scheduled Tribe and Scheduled Caste as provided in Rule 3A shall be allotted to different territorial

constituencies on the basis of proportion of Scheduled Tribe and Scheduled Caste population to total population of the constituency in descending

order, that is, from amongst the territorial constituencies in the District Development Council, the territorial constituency having the largest proportion

of the Scheduled Tribes population shall be allotted to them and the territorial constituencies having the largest proportion of Scheduled Caste

population shall be allotted to them. In the subsequent elections, the allotment shall be made in the aforesaid manner so that as far as may be

practicable, the territorial constituency reserved for the Scheduled Tribes in the previous election shall not be allotted to Scheduled Tribes, and the

territorial constituency reserved for the Scheduled Castes shall not be allotted to the Scheduled Castes.â??

(3C) The allocation of constituencies to be reserved for Women shall be made on a three point roster system for each category separately of

Women (Open category), Women (Scheduled Caste Category) and Women (Scheduled Tribe category). The roster points shall be as under:

(i) Seat reserved for Women

(ii) Open Seat; and

(iii) Open Seat.

(3F) The roster for women as prescribed in rule 3C and 3D shall also be applicable to the elections of the Chairpersons of District Development

Councils.

Rule 4 of J&K District Development Council ( Reservation of Offices of Chairpersons) Rules, 2021 issued vide S.O. 13 dated 11.01.2021 reads as

under:

4. Allotment of seats to be reserved:-(1) The number of seats of Chairpersons to be reserved for Scheduled Castes and Scheduled Tribes as provided

in rule 2 shall be allotted to different District Development Councils on the basis of population of Scheduled Castes and Scheduled Tribes in such

District Development Councils in the descending order, i.e. from amongst all the District Development Councils in the Union territory, the District

Development Council having the largest population of Scheduled Tribes shall be allotted to the Scheduled Tribes Category and the District

Development Council having the largest population of the Scheduled Castes population shall be allotted to Scheduled Castes Category.

(2) The allocation of seats of Chairperson to be reserved for women be made on a three point roster system after arranging them alphabetically. The

roster point shall be taken as under:-

(i) open

(ii) open

(iii) Women

9. A perusal of rule 108-A would reveal that it provides for delimitation of constituencies for the purpose of election to District Development Councils

and SO 330 dated 24-10-2020 inserted the sub-rules (supra) that provided for the reservation to the Scheduled Caste and Scheduled Tribe and Women

for the purpose of election to the District Development Councils except sub-rule(3F) that provided, that the roster for women as prescribed in rule 3C

and 3D shall also be applicable to elections to the Chairpersons of District Development Councils.

10. During the pendency of the present writ petition, the respondents have issued S.O. No. 24 dated 22.01.2021 by virtue of which Sub Rule (3F) of

Rule 108 A of the Jammu and Kashmir Panchayati Raj Rules, 1996 has been omitted so the challenge thrown to Rule 4(2) of SO 13 of 11.01.2021

being contrary to sub rule (3F) of Rule 108-A becomes inconsequential and meaningless particularly when the S.O. 24 dated 22.01.2021 remains

unchallenged.

11. So the only issue that remains for consideration of this Court is with regard to the allotment/reservation of the seats for Schedule Tribes and

Schedule Caste category to the Chairman/Chairperson of the District Development Council. The precise case of the petitioners is that the Rule 4(1) of

S.O. 13 dated 11.01.2021 issued by the respondents is contrary to the Rule 3(B) of the S.O. 330 dated 24.10.2020 as Rule 3(B) provides for that

number of seats reserved for Scheduled Castes and Scheduled Tribes as provided under Rule 3(A) shall be reserved on the basis of proportion of

population of Scheduled Castes and Scheduled Tribes vis-a-vis total population of the constituency where as Rule 4(1) reveals that number of seats of

Chairpersons to be reserved for Scheduled Castes and Scheduled Tribes as provided in Rule 2 shall be on the basis of the population of Scheduled

Castes and Scheduled Tribes in each District Development Councils meaning thereby that the District Development Council having largest population

of Scheduled Castes and Scheduled Tribes shall be reserved for the candidate belonging to Scheduled Castes and Scheduled Tribes category as the

case may be. This issue too is without any legal basis because as already stated that the Rule-108-A of CHAPTER VIII-A to which sub-rules (3A)

(3B) (3C) (3D) (3E) and (3F) have been appended/added/inserted deals with the delimitation of constituencies of a District Development Council and

election of members of District Development Councils. Chapter VIII-B deals with the election of Chairperson and Vice-Chairperson and the S.O 13

dated 11.01.2021 provides for reservation to Scheduled Castes, Scheduled Tribes and Women to the offices of Chairpersons of the District

Development Councils. So both S.O.330 of 24.10.2020 and S.O. 13 of 11.01.2021 operate in different fields because S.O 330 of 24.10.2020 deals with

the election/reservation of seats for SCs, STs and Women for members of District Development Councils and S.O. 13 of 11.01.2021 deals with the

election/reservation for SCs, STs and Women for offices of Chairpersons of District Development Councils.

12. Viewed thus, this petition has no merit and is dismissed.