

**(1997) 04 BOM CK 0018**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 846 of 1997**

Parwatibai Molddewad

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

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**Date of Decision :** 30-04-1997

**Acts Referred:**

Constitution of India, 1950 — Article 226, 243  
Maharashtra Municipal Councils and Nagar Panchayats (Election of President) Rules, 1981 — Rule 2(A)  
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 — Section 10(5), 18, 51

**Citation :** (1997) 3 ALLMR 541 : (1998) 1 BomCR 31

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

**Bench :** Division Bench

**Advocate :** M.V. Deshpande, for the Appellant; S.K. Kadam, A.G.P. and S.B. Talekar, for the Respondent

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## Judgement

A.P. Shah, J.—The short question which falls for our determination in this writ petition under Article 226 of the Constitution of India is whether the respondent No. 4, who was elected from the ward reserved for general woman category, is entitled to contest the election to the post of President of the Municipal Council which is reserved for the category of Other Backward Class women.

2. The elections to the Municipal Council of Mukhed were held on 19th January, 1997. The Municipal Council of Mukhed consists of 17 councillors elected at the ward elections. Out of the 17 seats, only one seat is reserved for the category of Other Backward Class woman. The petitioner had contested the election from Ward No. 1, which was reserved for Other Backward Class woman and declared elected. The respondent No. 4 contested the election of Ward No. 13 which was reserved for general women and she was also declared elected.

3. Article 243-T of the Constitution provides for reservation of seats in self-governing institutions constituted under Article 243-O. Article 243-T(4) states that the offices of Chairpersons in the Municipalities shall be reserved for the

Scheduled Castes, the Scheduled Tribes and woman in such manner as the Legislature of a State may, by law, provide. Article 243-T(6) says that nothing in this part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of Backward Class of citizens. Accordingly, the Legislature of the State enacted necessary provisions by inserting the necessary amendments in the Maharashtra Municipalities Act, 1965 which is now named as Maharashtra Municipal Councils, Nagar Panchayats Act, 1965. Section 10 of the Act provides for division of Municipal area into wards and reservation of wards for woman, Scheduled Castes and Scheduled Tribes, and Other Backward Classes. Section 51-IA of the Act provides that the office of the President shall be reserved for the Scheduled Castes, the Scheduled Tribes, Women and the Backward Class of citizens in the prescribed manner.

4. The State Government has made necessary amendments to the Maharashtra Municipal Councils and Nagar Panchayats (President Election) Rules, 1981 laying down the manner of reservation to the post of President for woman, Scheduled Castes, Scheduled tribes and Other Backward Classes. Rule 2(a) of the amended rules provides that the Collector of each District shall, by order published in the Official Gazette, reserve for a period of 10 years, commencing from the first election of the President after the date of commencement of the Maharashtra Municipalities (President Election) (Amendment) Rules, 1995, the office of the President of each of the Municipal Council, or, as the case may be, Nagar Panchayat, in the District, for the Scheduled Castes, the Scheduled Tribes, the Backward Class of citizens and women as prescribed in sub-rules (2) to (5). Sub-rules (2) to (5) provide for reservation to the post of President by rotation. As per the order published by the Collector of Nanded District, the post of the President of Mukhed Municipal Council is reserved for the Other Backward Class women for the first year.

5. We proceed now to state the circumstances which led to this petition. It seems that the authorities by notice dated 2nd February, 1997 declared that the election to the post of President shall be held on 15th February, 1997. The nominations were to be filled on or before 14th February, 1997. As already indicated the petitioner was the only candidate who got elected from the reserved category of Other Backward Class woman. The petitioner filed her nomination for the post of President on 14th February, 1997. The respondent No. 4 also filed her nomination as an Other Backward Class candidate. It seems that the respondent No. 4 filed her caste certificate as belonging to "Kunbi" caste, which is notified as Other Backward Class category. At the time of scrutiny, the petitioner objected to the nomination of the respondent No. 4 on two grounds. Firstly, the petitioner submitted that the respondent No. 4 is elected from the ward which is reserved for general women and, therefore, she is not entitled to contest the election for the post of President. Secondly, the petitioner submitted that the respondent No. 4 does not belong to Kunbi caste and her caste certificate is false and bogus certificate. The Returning Officer accepted both the

nomination forms and thereafter voting took place and the respondent No. 4 was declared to be elected. The correctness of the decision of the Returning Officer accepting the nomination form of the respondent No. 4 is the principal point which is required to be decided in this petition.

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

"243-T Reservation of Seats:"

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of that Scheduled Tribes in the Municipal area bears to the total population of the area and such seats may be allotted by rotation to different constituencies in a Municipality.

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

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

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

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

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

It is clear that as per sub- Article (4) of Article 243-T, the offices of the Chairpersons in Municipalities shall be reserved for the Scheduled Castes, Scheduled Tribes and women in such manner as the State Legislature by an enactment may provide. The aforesaid constitutional mandate makes it very clear that such Chairmanship of Municipalities would be made available by rotation as provided by the State Legislature to Scheduled Castes, Scheduled Tribes and women. Sub-Article (6) says that nothing in this part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in favour of Backward Class of citizens.

7. As already indicated, section 51-1A provides for reservation of office of President by rotation for the Scheduled Castes, the Scheduled Tribes, women and the Backward Class of citizens. It is necessary to read here the relevant Rule 2-A which provides for reservation of officers of the President. Rule 2-A of the Rules reads as follows :

"2-A. Reservation of Officers of the President :

(1) The Collector of each District shall, by order published in the Official Gazette, reserve for a period of ten years, commencing from the first election of the President after the date of commencement of the Maharashtra Municipalities (President Election) (Amendment) Rules, 1995, the office of the President of each of the Municipal Council or, as the case may be Nagar Panchayat, in the District, for the Scheduled Castes, the Scheduled Tribes, Backward Class of Citizens and Women, as prescribed in sub-rules (2) to (5) (both inclusive).

(2) The order made under sub-section (1) shall indicate the year/years; for which the office of the President is to be reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Class of citizens and women.

(3) (a) The number of years for which the office of President is to be reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes shall bear, as nearly as may be, the same proportion to the ten years as the population of the Scheduled Castes or, as the case may be, Scheduled Tribes in the Municipal area bears to the total population of the Municipal area. In calculating the years for which office of the President is to be reserved for the Scheduled Castes, or, as the case may be, the Scheduled Tribes a fraction of a year below six months shall be ignored and a fraction of a year above six months shall be calculated as one year.

(b) One-third of the total number of years reserved under clause (a) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes:

Provided that where only one year is reserved for the Scheduled Castes or, as the case may be, Scheduled Tribes, then no year shall be reserved for the women belonging to the Scheduled Castes or, as the case may be, Scheduled Tribes and where only two years are reserved for the Scheduled Castes, or as the case may be, Scheduled Tribes, one of the two years shall be reserved for the women belonging to the Scheduled Castes or , as the case may be, Scheduled Tribes.

(4) The number of years for which the office of the President is to be reserved for the Backward Class of Citizens shall be three .

Provided that one year out of the years for which office of the President is to be reserved for the Backward Class of Citizens shall be reserved for the women belonging to the Backward Class of Citizens.

(5) The number of years for which the office of the President to be reserved for

women (including women belonging to the Scheduled Castes, Scheduled Tribes and Backward Class of Citizens) shall be three."

8. It is against this background of the scheme and object of the relevant provisions of the Act and the Rules, we will now consider the submissions advanced by the learned Advocates for the parties. It was argued on behalf of the petitioner that the post of President, which has been reserved for the Other Backward Class woman, can be filled in only by the councillor elected from the ward reserved for Other Backward Class woman. It was argued that the respondent No. 4 having not been elected from the ward reserved for the Other Backward Class woman, she is not eligible to contest the election for the post of President. Heavy reliance was placed upon the decision of the Supreme Court in *Saraswati Devi Vs. Smt. Shanti Devi and Others*, , Mr. Talekar for the respondent No. 4 however, submitted that the scheme of the Maharashtra Act is different and under the said scheme an Other Backward Class woman is entitled to contest the reserved post of President even if she was not elected from that category of ward election. It was, therefore, submitted by Mr. Talekar that the Returning Officer has rightly accepted the nomination of the respondent No. 4.

9. Now the central point involved in this petition is whether the respondent No. 4, who got elected from woman general category, is entitled to contest the election for the post of President which is reserved for the category of Other Backward Class women. According to the petitioner, the point is squarely covered by the decision of the Supreme Court in *Saraswatidevi's* case (*supra*). The petitioner contends that the provisions of the Maharashtra Act are in *pari materia* with the provisions of the Haryana Act with which the Supreme Court was dealing in *Saraswatidevi's* case. We find considerable substance in the contention of the petitioner. In our opinion, the law laid down by the Supreme Court in *Saraswatidevi's* case is squarely applicable to the present case. It will be convenient to note the facts in *Saraswatidevi's* case. It seems that the Local Government Department of Haryana Government vide its notification dated 20th January, 1995 declared in terms of Rule 70(4) of the Election Rules that the seat of President. Municipal Committee, Loharu, *inter alia*, shall be filled up from amongst the members belonging to Scheduled Castes category. The appellant as well as the respondent No. 1 before the Supreme Court were Scheduled Caste women. It seems that for election to the Municipal Committee, Loharu Municipal area was divided into 11 wards, out of which three were reserved for members belonging to Scheduled Castes. Out of these three wards, ward No. 5 was reserved for the Scheduled Caste women and ward No. 2 was reserved for Backward Classes. In the elections the appellant was elected from ward No. 5 reserved (or Scheduled Caste women while respondent No. 1 was declared elected from ward No. 11 which was reserved for general women. After the said elections were over, questions arose about the election of the President of the said Municipal Committee. It seems that the respondent No. 1 contended that as she was also elected member belonging to Scheduled Caste women category, she was entitled to contest for the Presidentship of the Municipality. In view of

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

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

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

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

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

11. Now reverting back to the provisions of the Maharashtra Act and the Rules framed thereunder, it is seen that the scheme for reservation provided therein is almost similar to the scheme under the Haryana Act. u/s 51-1A, there is reservation provided for different category of classes like the category of Scheduled Castes, the category of Scheduled Tribes, the category of women and the category of Backward Classes. It is deafly seen that the category of Backward Classes has nothing to do with the castes. Similarly, the category of women is also separately indicated. Thus these categories have no nexus with the castes. Thus the thrust of the rule is that the office of the President in the Municipal Councils must go by rotation to members belonging to specified categories. By necessary implication the concerned member of the Municipal Council must have got elected on the seat available to the category for which reservation has been made for President's posts. The concept of rotation clearly implies that for contesting the post of Presidents by rotation, reservation is made for members elected from a particular category and only those members can contest for Presidentship. Admittedly, as far as the petitioner is concerned, she has been elected from ward No. 1 which was reserved for the Other Backward Class women. Therefore, in that category, she is the sole candidate. So far as the respondent No. 4 is concerned, even though she claims to belong to the Other Backward Class, she was not elected on a seat reserved for Other Backward Class women, but on a seat reserved for general category of women from ward No. 13. It cannot be disputed that in that ward, there were other contesting women candidates, not belonging to Backward Class, but also belonging to general category. Therefore, the respondent No. 4 is a member who is elected on the seat earmarked for the general category of women; she cannot be said to be a member elected on a seat reserved for Backward Class women. In ward No. 1 from where the petitioner contested, the general category women could not have contested and only the Other Backward Class category could have contested and, therefore, she cannot be held to be belonging to category of Other Backward

Class women to which the petitioner belongs. Consequently both of them cannot be treated as belonging to same category of seats on which they have got elected. It is thus clearly seen that the respondent No. 4 was ineligible to contest the election of the President of Mukhed Municipal Council.

12. In the result, petition succeeds. The decision of the Returning Officer accepting the nomination form of the respondent No. 4 is hereby quashed and set aside. Since the petitioner was the only validly nominated candidate, she is declared as elected to the post of President of Municipal Council of Mukhed. Rule is made absolute accordingly.

13. Petition succeeds.