

(2002) 06 MP CK 0014
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2634 of 1999

Ram Dayal Prajapati

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 37
Madhya Pradesh Municipalities (the Conduct of Business of the Mayor-in-Council/
President-in-Council and the powers and Functions of the Authorities) Rules, 1998 —
Rule 3(2)

Citation : AIR 2003 MP 171 : (2002) ILR (MP) 589

Hon'ble Judges : Dipak Misra, J;Ajit Singh, J

Bench : Division Bench

Advocate : N.S. Kale and A. Bhowmik, for the Appellant; S.K. Seth, Addl
Advocate Gen and A.K. Mishra, for the Respondent

Judgement

Dipak Misra, J.

1.By this writ petition preferred under Article 226 of the Constitution of India the petitioner, a Municipal Councillor of the Municipal Corporation, Bhopal has prayed for declaration of Rule 3(2) of Madhya Pradesh Municipalities (the Conduct of Business of the Mayor-in-Council/President-in-Council and the powers and Functions of the Authorities) Rules, 1998 (hereinafter referred to as "the Rules") as ultra vires the Section 37 of M.P. Municipal Corporation Act, 1956 (Act of 23 of 1956) (for brevity "the Act") and further to quash the said Rule by issue of appropriate writ, order or direction.

2. The facts exposited in the petition are that the petitioner is a Municipal Councillor of Bhopal Municipal Council. The State Government amended the act by the Madhya Pradesh Nagarpalik Vidhi (Sanshodhan) Adhiniyam, 1998 (Act No. 20 of 1998). By virtue of the said amendment Section 37 was substituted. The substituted provision deals with constitution of Mayor-in-Council. It is putforth in the petition that the State Government in exercise of power conferred by Section

37 of the amended Act has enacted the rule 3 which deals with the constitution of Mayor-in-Council and Sub-rule (2) of the said rule provides the manner of constitution. It is urged in the petition that the said Sub-rule (2) is beyond the scope and ambit of Section 37 of the Act and, therefore, it is ultra vires. It is averred in the petition that Section 37 of the Act does not contemplate for any reservation of seats in Mayor-in-Council and Sub-section (7) of the said provision empowers the State Government to prescribe the function and conduct of business. Reference has been made to Section 37(2) of the Act which deals with the constitution of Mayor-in-Council. It is contended in the petition that the constitution of the body cannot be redefined in the Rule by taking shelter under the rule making power and as the same has been done it amounts to transgression of the enactment thereby making the Rule vulnerable inasmuch as the Rule creates a fetter in the power of the Mayor which has been vested in him by the Act.

3. A return has been filed by the answering respondents 1 to 3 contending, inter alia, that the Act provides for direct election of councillors and for this purpose the reservation of the seats has already been provided u/s 11 of the Act. It is put forth that in view of the reservation of the seats for the purpose of the election of the Councillors to represent the reserved wards the same has been given effect to. It is pleaded that in place of standing committees, Mayor-in-Council has been introduced. The Rule is sought to be supported by highlighting that Section 11 lays down that the councillors elected against the reserved seat are bound to be there and to ensure their minimum representation in the Mayor-in-Council, provisions have been incorporated in the Rules in question. Justification has been given in respect of the reservation of SC, ST and OBC and woman categories indicating that the same subserves the purpose of the Act.

4. We have heard Mr. N. S. Kale, learned senior counsel along with Mr. A. Bhowmik for the petitioner and Mr. S. K. Seth, learned Additional Advocate General for the respondents 1 to 3 and Mr. A. K. Mishra, learned counsel for the respondent No. 4, the Commissioner. Municipal Corporation Bhopal.

5. It is submitted by Mr. Kale, learned senior counsel for the petitioner that Section 37 confers power on the Mayor, who is directly elected to constitute the Mayor-in-Council from amongst the members elected Councillors and in view of such conferral of power he has the discretion to choose such member from among the elected councillors and there can not be an imposition of any rider or qualifier. It is his further submission that when such riders have been engrafted in the rule the same nullifies the discretionary power of the Mayor which is impermissible inasmuch as the main section is silent in that regard, The learned senior counsel has further canvassed that Sub-section (3) of Section 37 lays down that the members of the Mayor-in-Council shall hold the office during the pleasure of the Mayor and when doctrine of pleasure is attracted, the Mayor is free to choose from among the elected councillors and the concept of reservation which has been introduced in the Rule mars and destroys the basic effect of the

provision thereby rendering it ultra vires. It is argued by him that Section 37 is a complete code in itself as it effectively deals with every facet of the Mayor-in-Council including making of a provision/prescription for carrying out the conduct and business of the Mayor-in-Council and in view of the same making a provision providing certain reservations for the purpose of constitution of the Mayor-in-Council trespasses the rule making power of the State Government. It is proposed that the Rule is excessive in its import and thereby incurs the vice of unconstitutionality being beyond the parent provision.

6. Mr. S. K. Seth, learned Additional Advocate General, in his turn, has contended that source of power to make a particular rule is not to be confined and constrained to Section 37 of the Act but all the provisions are to be read to understand and appreciate the scheme of the Act. Cavassed Mr. Seth, that Rule making power has been conferred on the executive u/s 433 of the Act to carry out the purposes of the Act and making the provision as has been made under Sub-rule (2) of Rule 3 is in the nature of enlivening of the provisions of the Act and to add spark of light to the said provision to achieve the desired purpose in a democratic set up and hence, it cannot be said that the Rule in question is ultra vires. It is his further submission that while appreciating the basis of framing of rule the concept of purposeful interpretation, wholesome understanding of the Statute, the goal which is sought to be achieved by such a Rule and intendment of the Rule making authority are also to be gathered and if they are tested in such touch-stone the rule in question withstand scrutiny and would not invite the wrath of law for being lanced. The learned Additional Advocate General has placed reliance on the decisions rendered in the cases of *The Quarry Owners Association Vs. The State of Bihar and Others*, , *Kunj Behari Lal Butail and Others Vs. State of H.P. and Others*, , *Bhatia International Vs. Bulk Trading S.A. and Another*,), *Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others*,), *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*,). The learned counsel of the State has also drawn our attention to the various provisions of the Act which shall be referred to at a later stage.

7. Mr. A. K. Mishra, learned counsel appearing for the respondent No. 4 while adopting the argument putforth by Mr. Seth has contended that the discretion conferred on the Mayor has not been curtailed by the Rule under assail but on the contrary the said Rule enables the Mayor to exercise his discretion in essential propriety as needed under the Act. To elaborate the proponement of Mr. Mishra is that the discretion has been guided by the Rule keeping in view the provisions of the Act and Mayor has been made the protagonist to achieve the said purpose.

8. Before we enter into the controversy whether Sub-rule (2) of Rule 3 of the Rules runs counter to the main Act thereby giving rise to transgression, we think it apposite to refer to certain decisions how a Rule, a delegated piece of the Legislation, is to be scrutinised when the constitutional validity of it is in question. In the case of *Supreme Court Employees Supreme Court Employees*"

Welfare Association and Others Vs. Union of India (UOI) and Another, the Apex Court held as under (Para 62):

"A delegated legislation or a subordinate legislation must conform exactly to the power granted."

Again their Lordships in paragraph 98 of the aforesaid judgment held as under :

"98. Rules made under Article 146 being subordinate legislation do not partake of the character of ordinances which are legislation in the true sense for the limit period of their operation : K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, ; A.K. Roy and Others Vs. Union of India (UOI) and Others, ; and, R.K. Garg and Others Vs. Union of India (UOI) and Others, . While ordinances cannot perhaps be questioned on any ground which is not relevant to the validity of legislation, it is not so in the case of rules made by virtue of power granted under the Constitution which are, as stated above, liable to be declared void for any of the reasons for which instruments made virtue of delegation by Acts of Parliament can be declared void. Rules, whether made under the Constitution or a statute, must be intra vires the parent law under which power has been delegated. They must also be in harmony with the provisions of the Constitution and other laws. If they do not tend in some degree to the accomplishment of the objects for which power has been delegated to the authority Courts will declare them to be unreasonable and, therefore, void."

9. In the case of General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, the Apex Court expressed the view as under (Para 14) :--

".....Before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void."

10. In this context we may refer to the decision rendered in the case of Afzal Ullah Vs. The State of Uttar Pradesh, wherein the Constitution Bench while dealing with the validity of bye-laws under the Uttar Pradesh Municipalities Act in Paragraph 14 placed reliance on the decision rendered in the case of P. Balakotaiah Vs. The Union of India (UOI) and Others, and held as under :

"(14) It is true that the preamble to the bye-laws refers to Clauses (a), (b) and (c) and j (d) of Section 298 and these clauses undoubtedly are inapplicable; but once it is shown that the impugned bye-laws are within the competence of respondent No. 2, the fact that the preamble to the bye-laws mentions clauses which are not relevant, would not affect the validity of the bye-laws. The validity of the bye-laws must be tested by reference to the question as to whether the Board had the power to make those bye-laws. If the power is otherwise established, the fact that the source of the power has been incorrectly or

inaccurately indicated in the preamble to the bye-laws, would not make the bye-laws invalid."

11. In the case of *Gopal Narain Vs. State of Uttar Pradesh and Another*, another Constitution Bench expressed the view that if the source of power is relatable to the enactment then imposition of a tax cannot be declared to be *intra vires*.

12. In the case of *Hukam Chand etc. Vs. Union of India (UOI) and Others*, in Paragraph 6 of the judgment a three Judge Bench speaking through H. R. Khanna, J. laid down as under (Para 6) :

"Unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law making body is bound by the terms of its delegated or derived authority and that Court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled."

13. In the case of *State of M.P. Vs. Mahalaxmi Fabric Mills Limited and others*, in Paragraph 25 while dealing with the validity of the notification and adoption of colourable device a three Judge Bench of the Apex Court ruled thus (Para 25) :

"Notification is not colourable device on the ground that the Notification is issued not for the purpose of development of mineral as contemplated by Section 9 (3) but entirely for a collateral purpose of compensating the State Governments for the loss of cess revenue and for swelling their coffers. What is to be noticed is that the mineral belongs to the State, and so, if the Central Government has taken into consideration the fact that the State revenues are required to be re-compensated on account of the loss suffered by them in their abortive efforts to escalate the royalty, it cannot be considered to be an irrelevant consideration. It clearly appeared that after 10 years from 1981 during which the royalty rates remained static there was a crying need of the day for the Central Government to exercise its power u/s 9 (3) and to revise upward the royalty rates in conformity with the rising prices of the minerals around as mentioned in the counter and for which there was a strong representation by various State Governments to the Central Government. In this context, the notification cannot be said to be colourable device and it was issued for extraneous purpose."

14. In the case of *Additional District Magistrate (Rev.) Delhi Admn v. Siri Ram*. AIR 2000 SC 2143 it has been stated that it is a well recognised principle of statute that conferment of rule making power by an Act does not enable the rule making authority to make rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

15. In the case of *Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.*, it was laid down that if a delegated legislation creates a legal fiction which is

beyond the scope of principal Act the same has to be regarded as ultra vires.

16. From the aforesaid decisions it becomes manifest that a rule has to conform to the provision of the statute and it should not travel beyond the rule making power of the authority framing the rule there should not be any inconsistency between Act and rules. Repugnancy is inconceivable.

17. The present Rule is to be tested on the touchstone of the aforesaid exposition of law and we may hasten to state that we will notice a few citations at the relevant juncture as most of the decisions relate how interpretation of statutory provisions are to be made. The learned Deputy Advocate General has laid immense emphasis on the duty of the Court to understand a provision the statute has to be read in a purposeful manner, we will dwell upon it at a later stage.

18. The gravamen of submission of Mr. Kale is that the rule in question is beyond the enabling Section that is viz Section 37 of the Act. To appreciate the aforesaid submission it is appropriate to reproduce Section 37 of the Act :

"37. Constitution of Mayor-in-Council. (1) There shall be a Mayor-in-Council for every Corporation which shall be constituted by the Mayor from amongst the elected Councillors within seven days from the date of election of Speaker u/s 18.

(2) The Mayor-in-Council shall consist of the Mayor and ten members, in every corporation.

(3) The members of the Mayor-in-Council shall hold office during the pleasure of the Mayor.

(4) Each corporation shall have such departments as may be prescribed and member of the Mayor-in-Council may be made incharge of such department as may deem fit by the Mayor.

(5) The Mayor shall be the ex officio Chairman of the Mayor-in-Council and shall preside over the meetings of the Mayor-in-Council, if present. In the absence of the Mayor, the members present in the meeting shall choose one of them to preside over the meetings.

(6) Notwithstanding anything contained in this Act, the Mayor-in-Council, Mayor and the members shall exercise such powers and perform such functions as may be prescribed.

(7) The functions and the conduct of business of the Mayor-in-Council shall be such as may be prescribed.

(8) In case the office of the Mayor is declared vacant under this Act, the Councillor nominated by the Government under Sub-section (2) of Section 21 to perform the duties of the Mayor or a person who is elected for the office of the Mayor, as the case may be, either allow the existing members of the Mayor-in-Council to continue or appoint new members in place of them from amongst the

elected Councillors."

The aforesaid Section provides that the Mayor shall constitute the Mayor-in-Council from amongst the elected councillors within seven days from the date of election of Speaker and the council shall consist of the Mayor and ten members and they shall hold the office during the pleasure of the Mayor.

19. Rule 3 which is the subject matter of challenge reads as under :

"3. Constitution of Mayor-in-Council.--(1) In every Municipal Corporation the Mayor-in-Council shall consist of Mayor and ten Members. (2) All the ten members, as described in Sub-Rule (1) shall be taken by the Mayor from the elected Councillors of the Corporation in which atleast two members from women category, at least two members from other Backward Classes, and atleast one member from Scheduled Caste or Scheduled Tribe category shall be necessary to include. Simultaneously the Speaker shall also be included as one of the members. All these members may remain as members of the Mayor-in-Council during the pleasure of the Mayor."

20. On a bare glance at the rule, it rings as a bell that the number provided under the Act, concept of elected councillors and their holding of office during the pleasure of the Mayor have been kept absolutely intact. What is highlighted by Mr. Kale is that in the rule while speaking about the elected councillor of the council there is mention of choosing at least two members from women category, at least two members from other backward Classes and one member from Scheduled Caste or Scheduled Tribe categories. A Himalyan complaint has been raised by the learned senior counsel that by such incorporation the power of the Mayor, an elected person has been abrogated in contravention of the law which finds place in the main Section. To appreciate the aforesaid submission we are obligated to scan the certain provisions of the Act. Section 6 of the Act deals with the Municipal Authorities charged with the execution of this Act. The said provision reads as under :

"6. Municipal authorities charged with the execution of this Act. The Municipal authorities charged with carrying out the provisions of this Act shall be-

- (a) the Corporation;
- (b) the Mayor-in-Council
- (c) the Mayor;
- (d) the Commissioner."

21. Section 7 deals with the constitution of Municipal Corporation. Sections 9 provides for composition of Municipal Corporation. The said provision stipulates that the Municipal Corporation shall consist of a Mayor who shall be elected by direct election from the Municipal area. It also includes that the councillors shall be elected by direct election from the wards. Quite apart from the above there is provision for nomination. We are presently not concerned with the said facet.

Section 10 deals with the determination of number and extent of wards and conduct of elections. Section 11 deals with the reservation of seats. That being the rock of proponent we think it appropriate to reproduce it in entirety.

"11. Reservation of seats.-- (1) Out of the total number of wards determined under Sub-section (1) of Section 10, such number of seats shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipal Corporation as bears, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the Municipal Corporation as the population of the Scheduled Castes or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such wards shall be those in which the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, is most concentrated.

(2) As nearly as possible twenty five per cent. of the total number of wards shall be reserved for other backward classes in such Municipal Corporation, where fifty percent, or less seats are reserved for Scheduled Castes and Scheduled Tribes, and such seats shall be allotted by rotation to different wards in such manner as may be prescribed :--

Provided that if from any wards so reserved no nomination paper is filed for election, as a Councillor, by any member of the backward classes, then the Collector shall be competent to declare it as unreserved.

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

(4) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and other backward classes), of the total number of seats to be filled by direct election in every Municipal Corporation shall be reserved for women and such seats shall be allotted by rotation to different wards in a Municipal Corporation in such manner as may be prescribed.

(5) The reservation of seats under Sub-sections (1), (2) and (3) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India.

Explanation.-- In this section "other backward classes" means category of persons belonging to backward classes as notified by the State Government."

22. On a scanning of Section 11 it is quite clear that there has to be reservation of seats for Scheduled Castes, Scheduled Tribes. Other Backward Classes and women. And there is further reservation for women belonging to "Scheduled Castes, Scheduled Tribes and Other Backward Classes.

23. Section 11-A deals with the reservation of the office of the Mayor. The aforesaid provision lays down that out of total number of offices of Mayors of

Corporations in the State, such number of offices of Mayors shall be reserved for Scheduled Castes and Scheduled Tribes as shall bear the same proportion as nearly as possible, as the population of each of these categories within the limits of all the Municipal Corporations in the State bears to the total population within such limits. Section 16 deals with the qualification for election as Mayor or Councillor. Sub-section (2) of the said Section provides that no person who is a candidate for any one ward shall be a candidate for any other ward. The purpose of referring to the aforesaid provisions in detail is to show that the Act makes ample provisions for reservation and also lays down that even the post of Mayor of the certain Municipal Corporations are to be reserved. Thus, the word "reserved" becomes the narrow of the entire statute. That being the backbone, the question that falls for adjudication what could be the quintessential power of the rule making authority. Section 433 deals with the power of State Government to make rules. The said provision reads as under :--

"433. Power of State Government to make rules.-

(1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for the following matters namely :--

(a) the manner of making applications for permission to borrow money; the enquiries to be made in relation to loans and the manner of conducting such enquiries; the inspection of any works carried out by means of loans and the utilisation of unexpanded balances of loans, etc.;

(b) the returns, statements and reports to be submitted by the Corporation;

(c) any other matter which is to be or may be prescribed."

Mr. S. K. Seth, learned Additional Advocate General has submitted that the said section empowers the State Government to make rules and Sub-section (2) (c) stipulates that any other matter which is to be or may be prescribed.

24. In this context we may profitable refer to the Article 243T of the Constitution. The same occurs in Part IX-A of the Constitution which deals with the Municipalities. If the provisions of the Act and the Constitution are read together the question that requires to be determined is whether making of provisions in the Rules amounts to marring of discretionary power of the Chairman or repugnant to the said statute. To understand the scheme of an Act and various provisions, the Court is required to appreciate the intendment of the Legislature. In this context Mr. Seth has drawn our attention to the decision rendered in the case of Bhatia International Vs. Bulk Trading S.A. and Another, . In paragraph 15 of the aforesaid judgment it has been expressed as under :--

"The conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the

Court has to choose that interpretation which represents the true intention of the legislature. If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results."

25. The learned counsel for the State has also placed reliance on the decision rendered in the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, wherein the Apex Court expressed the view as under (Para 11):

".....The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid. "Judge Learned Hand said, "but words must be construed with some Imagination of the purposes which lie behind them" (see *Lenigh Valley Coal Co. v. Yensavage* 218 FR 547). The view was reiterated in *Union of India v. Filip Tiago De Gama of Vadem Vasco De Gama* AIR 1990 SC 981."

26. Mr. Seth has also commanded us to the decision rendered in the case of Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others, to highlight that intendment of the enactment has to be seen.

27. In this context it is profitable to refer to the decision rendered in the case of Kunj Behari Lal Butail and Others Vs. State of H.P. and Others, wherein in Paragraph 13 their Lordships have held as under :

"13. It is very common for the legislature to provide for a general rule making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see If the rules framed satisfy the test. of having been so framed as to fall within the scope of such general power confirmed. If the rule making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act....."

28. Mr. Seth has also drawn inspiration from some observations made by Apex Court in the case of The Quarry Owners Association Vs. The State of Bihar and Others, wherein their Lordships observed as under (Para 31) :--

".....This dynamism is the cause of saving many statutes of it being declared void. it dissolves the on slaught of any right and literal interpretation, it gives full thrust and satisfaction to achieve the objectivity which the legislature intended. Whenever there are two possible interpretations, its true meaning and Legislature's intention has to be gathered, from the "Preamble", Statement of

Objects and Reasons and other provisions of the same statute. In order to find true meaning of any word or what the Legislature intended, one has to go to the principle enunciated in Heydons case which laid down the following principle as early in the sixteenth century. (1) What was the law before making of the Act; (2) What was the mischief or defect for which the law did not provide; (3) what is the remedy that the Act has provided; and (4) What is the reason of the remedy. The Court must adopt that construction which suppresses the mischief and advances the remedy."

29. From the aforesaid exposition of law it is clear as day that many a facet is to be looked into. Cogitation on a narrow sphere is not warranted. In the case at hand it is perceivable that the Constitutional philosophy and the intendment of the State Legislature make it abundantly clear that there has to be reservation. Section 6 which has been reproduced above shows that the Mayor-in-Council is constituted for carrying out the execution of the Act. The Rules have been framed in exercise of powers conferred under Sections 37 and 73 read with Section 433 of the Act. If the Rules are read in a purposive manner it is quite clear that the Mayor-in-Council has financial powers and certain other powers which have been vested in the Corporation under Sections 61, 62, 137, 138, 176 and 189. In view of this there remains no scintilla of doubt that the Mayor-in-Council is a smaller unit of Municipal Corporation. It is submitted by Mr. Seth that the reservation of the member of the Council which finds place in Sub-rule (2) of Rule 3 of the Rules is in proportion to the reservation which finds place in Section 11 qua the Corporation. The concept of reservation finds place in Article 243T of the Constitution, the provision which we have already referred to. We may also, at this juncture, profitably refer to Article 15(4) of the Constitution. It reads as under :--

"15(4). Nothing in this article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

The said Article confers power on the State to make special provision for Scheduled Castes and Scheduled Tribes. If the legislative will is perceived from all angles we find the concept of reservation which have been encapsuled in Sub-rule (2) of Rule 3 of the Rules can not be regarded as an encroachment. There is neither any inconsistency with the provision of parent Act nor repugnancy thereto. By no stretch of imagination it can be said that the said rule supplants any provision of the Act by abrogating the essential feature. The concept of annihilation of legislative intendment is not attracted. If we are permitted to say so the said rule in fact supplements the working of the Act and acts as a catalyst for the effective carrying out the purpose of the Act and translates the quiddity of the statute. It is submitted by Mr. Kale that the doctrine of pleasure is attracted in regard to exercise of discretion. On a reading of concern Sections we find that doctrine of pleasure is attracted as far as term of the member is concerned. A

member of the Mayor-in-Council shall hold the office during the pleasure of the Mayor and that power has not been taken away. Thus, the aforesaid submission is not of much assistance to Mr. Kale.

30. In view of our preceding analysis we experience no difficulty in holding that Sub-rule (2) of Rule 3 is intra vires and does not offend any of the provisions of the Act.

31. Ex consequenti, the writ petition, being sans merit, stands dismissed without any order as to costs.