

(2021) 05 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No.14440 Of 2019

Sanjay S/O Sudhakar Jadhav

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 07-05-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227, 243T, 243Q, 243Q(1)(c), 334
Maharashtra Municipal Corporations (Reservation Of Offices Of Mayor) Rules, 1994 — Rule 3
Maharashtra Municipal Corporations (Reservation Of Offices Of Mayors) Rules, 2006 — Rule 3, 3(1)
Bombay Provincial Municipal Corporation Act, 1949 — Section 19, 19(1A)

Citation : (2021) 05 BOM CK 0010

Hon'ble Judges : Ujjal Bhuyan, J;M. G. Sewlikar, J

Bench : Division Bench

Advocate : P. R. Katneshwarkar, Yogesh B. Bolkar, Vishnu B. Madan Patil, M. A. Deshpande, Ajit B. Kadethankar, Amol S. Sawant

Final Decision : Disposed Of

Judgement

Ujjal Bhuyan, J

1. Heard Mr. Katneshwarkar, learned counsel for the petitioner; Mrs. M. A. Deshpande, learned Additional Government Pleader for respondent

Nos.1 to 4; Mr. A. B. Kadethankar, learned counsel for respondent No.5; and Mr. Amol Sawant, learned counsel for respondent No.6.

2. This matter was heard on 05.05.2021 and today is fixed for delivery of judgment.

3. By fling this petition under Articles 226 and 227 of the Constitution of India, petitioner seeks quashing of notification dated 27.11.2019 issued by the

Government of Maharashtra in the Urban Development Department in respect of Dhule Municipal Corporation at Sr. No.22 of the schedule thereto

and further seeks a direction to the respondents to reserve the office of Mayor in the Dhule Municipal Corporation for scheduled caste category.

4. Facts are not in dispute and lies within a narrow compass. However for a proper adjudication of the lis those are briefly narrated hereunder.

5. Petitioner belongs to the scheduled caste category and his caste certificate was validated by the caste scrutiny committee. He is a social worker as

well as a political activist having been elected as Councillor of Dhule Municipal Corporation for several terms.

6. Elections to the Dhule Municipal Corporation were held on 09.10.2018. Dhule Municipal Corporation comprises of 74 Councillors. The category

wise breakup of the 74 seats are as under :-

5 seats â?" to be elected from scheduled caste category/ scheduled caste women category.

7 seats â?" to be elected from scheduled tribe category/scheduled tribe women category.

20 seats â?" to be elected from backward class category/ backward class women category.

42 seats â?" to be elected from general category/general women category.

7. Though belonging to the scheduled caste, petitioner contested the election from ward No.15-C which was earmarked for the general category and

got elected as a candidate belonging to the Bharatiya Janata Party. Petitioner has stated that he is an aspirant for the office of Mayor of Dhule

Municipal Corporation.

8. Presently, the incumbent in the office of Mayor has been elected from the general category. By the impugned notification dated 27.11.2019, the

office of Mayor of Dhule Municipal Corporation for the next term of 2.5 years has been earmarked for backward class of citizens. According to the

petitioner, the office of Mayor in the Dhule Municipal Corporation for the next term commencing from about June, 2021 should have been earmarked

for the scheduled caste category. It is stated that in the year 2003, the office of Mayor in Dhule Municipal Corporation was kept as an open category.

By the government notification dated 23.06.2006 for the next term the office of Mayor of the said Corporation was earmarked for the backward class

category. By the next government notification dated 07.05.2008, the said office was again kept as an open category. Thereafter, by the notification

dated 24.11.2009 the office of Mayor was earmarked for the scheduled tribe category. For the next term, State Government issued notification dated 26.4.2012 keeping the office of Mayor in the said Corporation for the open category. In the notification published on 26.08.2014, the office of Mayor for Dhule Municipal Corporation for the next term was earmarked for backward class (women) category. Finally, by the notification dated 27.03.2017, the office of Mayor in Dhule Municipal Corporation was earmarked for open category. It is in that background a contention has been raised that the office of Mayor in the Dhule Municipal Corporation for the term commencing from about June, 2021 as per impugned notification dated 27.11.2019, should have been earmarked for the scheduled caste category and could not have been earmarked for backward class category because already the office of Mayor in the Dhule Municipal Corporation was earmarked for the backward class category in 2006 and in 2014. Till date, there has been no reservation for the scheduled caste category.

9. Hence, the present challenge.

10. Respondent no.1 has filed an affidavit-in-reply justifying earmarking of the office of Mayor in Dhule Municipal Corporation for the backward class category as per notification dated 27.11.2019.

11. While learned counsel for the petitioner has elaborately referred to the provisions of article 243-T of the Constitution of India, section 19(1A) of

the Bombay Provincial Municipal Corporation Act, 1949 (since renamed as Maharashtra Municipal Corporations Act), Rule 3 of the Maharashtra

Municipal Corporations (Reservation of Offices of Mayor) Rules, 1994 as well as Rule 3 of the Maharashtra Municipal Corporations (Reservation of

Offices of Mayors) Rules, 2006 and contends therefrom that as per rotation, this time the office of Mayor in the Dhule Municipal Corporation should

have been earmarked for the scheduled caste category. In the course of his arguments, he also submitted that the office of Mayor should have been

earmarked either for the scheduled caste category or should have been kept in the open category.

12. Insofar as earmarking of the office for open category is concerned, we do not find any such prayer in the writ petition.

13. Learned counsel for the petitioner has placed reliance on the following decisions in support of his contention:-

(1) Division Bench judgment of the Bombay High Court in Writ Petition No.5386 of 2006, Uday Khanderao Pawar Vs. State Election Commission, decided on 03.10.2006;

(2) Division Bench judgment of the Bombay High Court in Writ Petition No.6389 of 2006, Prashant Bansilal Bamb Vs. State of Maharashtra, decided on 09.02.2007; and

(3) Single Bench judgement of the Karnataka High Court in Writ Petition No.38256 of 2013, M Abdul Azeez Vs. State of Karnataka, decided on 06.01.2014.

14. Mrs. Deshpande, learned Additional Government Pleader appearing for respondent nos.1 to 4 has supported the impugned notification. She

submits that present reservation in respect of office of Mayor in Dhule Municipal Corporation has been carried out in terms of the Maharashtra

Municipal Corporations (Reservation of Offices of Mayors) Rules, 2006, which has since replaced the Maharashtra Municipal Corporations

(Reservation of Offices of Mayor) Rules, 1994. In support of her submissions she has referred to the averments made in the reply affidavit of

respondent no.1 which we shall advert to in the course of the judgment.

15. Learned counsel for respondent nos. 5 and 6 submit that though the said respondents have no role to play in so far reservation in the office of

Mayor in the Dhule Municipal Corporation is concerned, they would like to support the stand taken by respondent nos. 1 to 4. More particularly they

would contend that while giving effect to the provisions of Maharashtra Municipal Corporations (Reservation of Offices of Mayor) Rules, 2006, it is

inevitable that there may be a case of repetition of reservation in one or two corporations.

15.1 Submissions of learned counsel for all the respondents is that while carrying out the reservation in the office of Mayor, all the corporations i.e. 27

corporations in the State of Maharashtra are required to be treated as one unit and the percentage of reservation is required to be calculated on the

basis of percentage of the particular reserve category in the State of Maharashtra. From that perspective, out of 27 corporations in the State of

Maharashtra, there can be reservation for scheduled caste in the office of Mayor in three corporations. After drawing of lots, the three corporations

have been shortlisted. In the process Dhule Municipal Corporation got left out.

This they would like to contend is inevitable considering the very nature of reservation vis a vis the rotation policy.

16. Submissions made by learned counsel for the parties have received the due consideration of the Court.

17. As is evident, the issue raised in the writ petition relates to reservation of the office of Mayor in Dhule Municipal Corporation. Contention of the

petitioner is that as per the rotation policy, for the present term, the office of Mayor should have been earmarked either for the scheduled caste to

which the petitioner belongs or to the open category. Instead of that, the office of Mayor has been earmarked for the other backward classes for

which category there was already reservation on earlier occasions. To appreciate the controversy at hand, let us refer to the relevant legal provisions.

18. Part IXA was inserted in the Constitution of India by the Constitution (74th amendment) Act, 1992 with effect from 01.06.1993. It deals with the

municipalities. As per Article 243Q, there shall be constituted municipalities in every State in accordance with the provisions of Part IXA. In terms of

Article 243Q (1)(c), there shall be constituted in every State a Municipal Corporation for a larger urban area in accordance with Part IXA. Article

243T deals with reservation of seats. This article being relevant, the same is extracted hereunder:

â??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 Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that

area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) 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

diferent 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.â??

19. From the above, it is evident that while clause-1 says that seats shall be reserved for the scheduled castes and the scheduled tribes in every

municipality as per their proportion to the total population which seats may be allotted by rotation to diferent constituencies in a municipality, on the

other hand, clause-4 states that offices of Chairpersons in the municipalities shall be reserved for scheduled castes, the scheduled tribes and women in

such manner as the Legislature of a State may by law provide. As per clause-6, nothing in Part IXA shall prevent the Legislature of a State from

making any provision for reservation of seats in any municipality or office of Chairpersons in the municipalities in favour of backward class of citizens.

20. The erstwhile Bombay Provincial Municipal Corporations Act, 1949 has since been renamed as the Maharashtra Municipal Corporations Act. As

per the preamble, it is an act to provide for establishment of municipal corporations for all larger urban areas eicept that of greater Mumbai in the

State of Maharshttra with aview to ensure better municipal governance. Section 19 of the Maharashtra Municipal Corporations Act provides for

election of Mayors and Deputy Mayors from amongst the Councillors in the corporation. As per sub-section (1A), there shall be reservation for the

office of Mayor in the corporation by rotation for scheduled caste, scheduled tribes, women and backward class of citizens in the prescribed manner.

This subsection was inserted in the parent Act with effect from 31.05.1994. Sub-section (1A) of section 19 reads as under:

â??(1A) There shall be reservation for the office of the Mayor in the Corporation, by rotation, for the Scheduled Castes, the Scheduled Tribes,

Women and the Backward class of citizens, in the prescribed manner.â??

21. In the exercise of the powers conferred by sub-section (1A) of section 19 of the Maharashtra Municipal Corporations Act and other related

provisions, State of Maharashtra had framed the Maharashtra Municipal Corporations (Reservation of Offices of Mayor) Rules, 1994. Rule-3 dealt

with reservation of offices for the election of Mayor. While sub-rule 1 laid down the principles whereby the office of Mayors in the municipal

corporations in the State of Maharashtra to be reserved for scheduled castes, scheduled tribes, backward class and women were to be carried out.

Sub-rule 2 provided that the State Government by notification in the official gazette should allot by draw of lots the offices of Mayors to be reserved for

scheduled castes, scheduled tribes, backward class and women on the principles specified in sub-rule 1. As per the third proviso clause-c, the offices

of Mayor to be so reserved should be rotated in such a manner that no reservation made in previous terms is repeated.

22. It may be mentioned that by notification dated 14.11.2006 issued by the Government of Maharashtra in the Urban Development Department, in

exercise of the powers conferred by sub-section (1A) of section 19 of the Maharashtra Municipal Corporations Act and such other powers and in

supersession of the existing rules, Government of Maharashtra has made the Maharashtra Municipal Corporations (Reservation of Offices of Mayors)

Rules, 2006 (briefly the 2006 Rules hereinafter). Rule 3 of the 2006 Rules is relevant and the same is extracted hereunder:

â??3. Reservation of offices for the election of Mayor-(1) The State Government shall, by notification in the Official Gazette, specify the number of

offices of Mayors in the Municipal Corporations in the State to be reserved for the Scheduled Castes, Scheduled Tribes, the category of Backward

Class of Citizens and Women (including the women belonging to the category of Backward Class of Citizens) on the following principles:-

(a) The number of offices of Mayors to be so reserved for the Scheduled Castes and Scheduled Tribes shall bear, as nearly as may be, the same

proportion to the number of such offices in the Corporations in the State as the population of the Scheduled Castes and the Scheduled Tribes in the

Municipal Corporation areas bears to the total population of all Municipal Corporation areas:

Provided that, such office of Mayor may not be so reserved, if the number of Councillors to be elected at ward elections from the category of the

Scheduled Castes or Scheduled Tribes is less than three:

Provided further that, while specifying such reservation onethird of the total number of seats so reserved shall be reserved for the women belonging to

the Scheduled Castes or, as the case may be, the Scheduled Tribes:

Provided also that, in a Municipal Corporation, where only one office of the Councillor is reserved for the Scheduled Caste or, as the case may be, the

Scheduled Tribes, then it shall not be necessary to reserve the office for women belonging to the Scheduled Castes or, as the case may be, the

Scheduled Tribes;

(b) As nearly as may be, twenty-seven per cent of the total number of offices of Mayors in the State shall be reserved for the category of Backward

Class of Citizens:

Provided that, one-third of the offices so reserved shall be reserved for Women belonging to the category of Backward Class of Citizens;

(c) One-third of the total number of offices of Mayors in the State (including the number of offices reserved for the Scheduled Castes, the Scheduled

Tribes and the category of Backward Class of Citizens) shall be reserved for women.

(2) The State Government shall,-

(a) By notification in the Oficial Gazette, allot by draw of lots, the offices of the Mayors to be reserved for the Scheduled Castes, the Scheduled

Tribes, the category of Backward Class of Citizens and Women, on the principles specifed in sub-rule (1).

(b) Ensure that, at any given point of time, the number of offices of Mayors, reserved for the Scheduled Castes, the Scheduled Tribes, the category of

Backward Class of Citizens and Women shall not be less than the number determined in accordance with the provisions of sub-rule (1).

(c) The lots in respect of women belonging to a particular category shall be drawn only among the offices of Mayors reserved for such category.

(d) While drawing lots, the office of Mayors reserved for such category in the earlier years shall be epluded from the draw of lots for those

categories;

(e) The offices of Mayors to be reserved shall be rotated in the subsequent terms of office of Mayor to such Corporation, in which no reservation has

been made in the previous terms until such reservations are given by rotation to each category.â??

22.1. From a perusal of the above, we find that as per sub-rule 1, the State Government is required to specify the number of offices of Mayors in the

municipal corporations in the State to be reserved for scheduled castes, scheduled tribes, backward class and women by following the principles

mentioned therein. As per clause-a, the number of offices of mayor to be so reserved for scheduled castes and scheduled tribes shall bear as nearly

as may be the same proportion to the number of such offices in the corporations in the State as the population of scheduled castes and the scheduled

tribes in the municipal corporation areas bears to the total population of all municipal corporation areas. As per the first proviso, such office of Mayor

may not be so reserved if the number of Councillors to be elected from the category of scheduled castes or scheduled tribe is less than three. As per

sub-rule 2, the State Government shall by notification in the official gazette allot by draw of lots offices of Mayors to be reserved for the scheduled

castes, scheduled tribes, backward class and women following the principles specified in sub-rule 1. Clause-d of sub-rule 2 clarifies that, while drawing

of lots, the office of Mayor reserved for such category in the earlier years shall be excluded from the draw of lots for those categories. Clause-e says

that the office of Mayor to be reserved shall be rotated in the subsequent terms of office of Mayor in which no reservation has been made in the

previous term until such reservations are given by rotation to each category.

23. Having noticed the above and the relevant legal provisions, we may revert back to the reservations effected in the office of Mayor in Dhule

Municipal Corporation till date. Petitioner has mentioned the same by way of a statement in paragraph 19 which has not been controverted or disputed

by the respondents. The statement reads as under:

TABLE

24. By way of the impugned notification dated 27.11.2019, the State Government has earmarked the office of Mayor in Dhule Municipal Corporation

at serial no.22 for backward class of citizens. From the statement extracted above, we find that for backward class, already the office of Mayor in

Dhule Municipal Corporation was reserved in 2006 and again in 2014. If that be so, then reservation for backward class category should have been

excluded while considering reservation in the office of Mayor of Dhule Municipal Corporation by way of the impugned notification dated 27.11.2019.

25. Respondent no.1 in her affidavit has stated that draw of lots for reservation in the office of Mayor for municipal corporations in the State of

Maharashtra was held on 13.11.2019. While carrying out reservations in the office of Mayors by way of rotation, principles laid down in Rule 3(1) in

the 2006 Rules were followed. In so far reservation for scheduled castes is concerned, three offices of Mayor were required to be so reserved out of

which two are for women. It is stated that for scheduled castes, three offices of Mayor are required to be mandatorily reserved. Out of 27

corporations, offices of Mayor in 12 corporations were reserved for scheduled castes in previous years. These 12 corporations along with Vasi-Virar

Corporation were excluded from the consideration of scheduled caste reservation. The remaining 14 corporations were considered which included the

Dhule Municipal Corporation. Through draw of lots, three corporations out of 14 i.e. MiraBhayender, Ahmednagar and Parbhani have got reservation

for scheduled castes. In so far reservation for backward class in Dhule Municipal Corporation is concerned, respondent no.1 has explained the

situation in the following manner:

“(c) For Backward Class of Citizens 7 posts of Mayor needs to be mandatorily reserved and it is clearly mentioned that out of 27 Corporations 26

Corporations, excluding newly created Panvel Corporation were reserved for Backward Class of Citizens in earlier years. As 26 Corporations were

reserved for Backward Class of Citizens in earlier years, for the draw of lots dated 13.11.2019 even the minimum required 7 Corporations were not

available, which were not previously reserved for Backward Class of Citizens. And considering this fact and the provisions in the Act and Rules the 7

Corporations which were reserved for Backward Class of Citizens in the earlier years, i.e. immediately preceding term, were excluded in the draw of

lots dated 13.11.2019.

By following the laid procedure the 4 Corporations which are reserved in the 1st and 2nd draws for Scheduled Tribes (1 Corporation) and Scheduled

Castes (3 Corporations) in the current draw of lots and 7 Corporations which

were reserved for Backward Class of Citizens in the immediately preceding term, are excluded and the remaining Corporations including Dhule Corporation are considered for this draw and in the draw the 7

Corporations are reserved for Backward Class of Citizens.â??

25.1. After the draw was carried out on 13.11.2019, respondent no.1 issued letter dated 14.11.2019 to the State Election Commission and thereafter issued the notification dated 27.11.2019.

26. We are not convinced as to how Dhule Municipal Corporation got reservation for backward class though there was reservation for such category

in 2006 as well as in 2014. Till date, there has been no reservation for scheduled castes but this is not reflected in the impugned notification dated

27.11.2019.

27. The concept of reservation by rotation has been explained by a learned Single Judge of the Karnataka High Court in the case of M. Abdul Azeez

(Supra). There also the challenge was to reservations in the office of Chairpersons and Vice Chairpersons in various municipal corporations and

councils. Learned Single Judge of the Karnataka High Court explained the principle of reservation by rotation in the following manner:

â??Rotation means something which moves in a circular order. â??Rotateâ?? means to cause to turn in a circle. The principle of rotation, in the

concept of the above two provisos, means that the offices reserved for each of the reserved categories required 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 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 a fresh cycle of rotation. Any 'repetition' would be contrary to the principle of rotation.

27.1. After holding so, Karnataka High Court went ahead and declared that if there is any allotment to any reserved category for the second time in a municipality before completion of a cycle of rotation, it would be a clear violation of the principle of rotation. It was held as follows:

12. 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.

28. We are in respectful agreement that the views expressed by the learned Single Judge of the Karnataka High Court. Obviously in so far reservation

in the office of Mayor in Dhule Municipal Corporation is concerned, already on two earlier occasions there were reservation for backward class.

Repeating such reservation again for the current time would certainly be a violation of the rotation principle. This coupled with the fact that there has

been no reservation till date for the scheduled caste category. This aspect needs to be seriously looked into by respondent no.1. Therefore, we are

inclined to remand the matter back to respondent no.1 for a fresh consideration.

29. Consequently and in the light of the above, we set aside the impugned notification dated 27.11.2019 in respect of Dhule Municipal Corporation at

serial no.22. The matter is remanded back to respondent no.1 to consider afresh the issue relating to reservation in the office of Mayor in the Dhule

Municipal Corporation having regard to the discussions made above. Reconsideration so directed shall be carried out by respondent no.1 within a

period of four weeks from the date of receipt of a copy of this judgment and order. Till the said exercise is carried out and notified, status-quo as on

today as regards office of Mayor in Dhule Municipal Corporation shall be maintained.

30. Writ petition is accordingly disposed of in the above terms, however, there shall be no order as to costs.