

**(1995) 11 BOM CK 0015**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 5536 of 1995**

Suresh Deshmukh

APPELLANT

Vs

Parbhani Municipal Council and Others

RESPONDENT

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**Date of Decision :** 29-11-1995

**Acts Referred:**

Constitution of India, 1950 — Article 14, 243T  
Maharashtra Municipalities (President Election) Rules, 1981 — Rule 2A  
Maharashtra Municipalities Act, 1965 — Section 55, 55A

**Citation :** (1996) 3 BomCR 150 : (1996) 98 BOMLR 422 : (1996) 2 MhLj 1049

**Hon'ble Judges :** S.S. Dani, J;N.P. Chapalgaonker, J

**Bench :** Division Bench

**Advocate :** V.J. Dixit, for the Appellant; Kishore Patil, A.G.P., for the respondents 2 and 4, for the Respondent

**Final Decision :** Dismissed

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## Judgement

N.P. Chapalgaonker, J.—Heard Shri Dixit, Counsel for the petitioner and Shri Kishor Patil, A.G.P. for respondents 2 and 4.

2. The petitioner is a member of Municipal Council, Parbhani. One Mr. Baburao Vishwanathrao Mathpati was elected as President of the Municipal Council, Parbhani on 17th December, 1991. u/s 55-A of the Maharashtra Municipalities Act, 1965 he was removed from the President's post on 27th July, 1993. It appears that in the vacancy caused by this removal, petitioner was elected as President of the Municipal Council, Parbhani, but when Mr. Mathpati's removal u/s 55-A was set aside by this Court, this Court restored Mr. Mathpati in office and directed that he be again reinstated in the office of the President. The office which was occupied by the petitioner was to be vacated. The subsequent development is that "No confidence motion" is passed against Shri Mathpati on 6th November, 1995 and the Council is to elect the new President.

3. By Article 243-T, the Constitution provides reservation in favour of the Scheduled Caste, Scheduled Tribes and Women and enables the State Legislature

to make reservation in favour of the backward class of citizens. In exercise of these powers, the State Legislature has added section 51-1A to the Statute Book by the Maharashtra Act No. 41 of 1994 and provided that the offices of the Presidents shall be reserved for the Scheduled Caste, Scheduled Tribes, Women and Backward class of citizens in the prescribed manner. The State Government has, by Maharashtra Municipalities (President Election) (Amendment) Rules, 1995, amended the Maharashtra Municipalities (President Election) Rules, 1981 and Rule 2-A was inserted by which the Collector of each district was directed, by order published in the Official Gazette, to 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 the Municipal Council, 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). The Collector, Parbhani by his order dated 18th May, 1995 constituted a committee in whose presence the lots were to be drawn for reserving the posts of the Presidents in various Municipal Councils in Parbhani district. The lots were drawn and the post of the President of Parbhani Municipal Council has gone to Other Backward Communities as per roster. Since new election of the President of the Municipal Council will take place as per the roster, only the members belonging to Other Backward Communities will be entitled for contesting the election. In this writ petition the petitioner, who belongs to open category, has challenged the amended Rules of 1995 and the roster prepared by the Collector, Parbhani.

4. Shri Dixit, learned Counsel for the petitioner firstly submitted that the reservation as was contemplated by Article 243T of the Constitution of India is two fold. Firstly, it is in the Councillors and secondly in the Chairpersons. According to Shri Dixit, unless there is reservation in posts of the Councillors, there cannot be a reservation for the post of Chairperson. Shri Dixit, contends that admittedly in the last election of the Municipal Council, there was no post reserved for Other Backward Communities and since there is no Councillor who is elected in a Constituency reserved for Other Backward Communities, the post of the Chairperson cannot be reserved for that category. According to Shri Dixit, the primary reservation is for the Councillors and if, there are councillors elected from that reserved constituency then only there can be reservation for Chairperson from that category. The second point contended by Shri Dixit is that vacancy arising out of the petitioner's vacating the post of President of Parbhani Municipal Council, is not a vacancy which is contemplated by the Rules of 1995. The argument is unfounded for the reason that the facts show that the petitioner vacated the office and thereafter Mr. Mathpati assumed the office of the President of Municipal Council. Since a vote of "No confidence" has been passed against him, the office of the President of Municipal Council has fallen vacant. Therefore, the vacancy to be filled in is not caused by petitioner's vacating the office of President, but by the vote of "No confidence" which was passed against Mr. Mathpati. Secondly, the submission of Shri Dixit, will have to be negated on the

ground that Rule 2-A of the amended Rules does not really refer as to how the vacancy has arisen. It merely refers to the election which has to take place. Therefore, from the first election of the President after the date of commencement of the amended rules, the roster will come into operation. If the President is removed by resolution of the Council as provided by section 55 of the Maharashtra Municipalities Act, 1965 then there is vacancy and it will have to be filled in as per the Rules.

5. Shri Dixit, further contends that there are various anomalies in the rules framed while reserving the posts for the Councillors and Chairpersons. According to Shri Dixit, if there is no reservation for Other Backward Communities in the Councillors and Chairperson's post is reserved for that category, a situation may arise that there may not be a Single Councillor belonging to that category. This questions we need not go into since it is not the case of the petitioner that there is no Councillor in the Parbhani Municipal Council who belongs to Other Backward Community. Shri Dixit, in his further submission contended that the post of the President of the Municipal Council is a public office and not an employment under the State and also contended that to reserve a post of Chairperson in a Municipal Council would be 100% reservation of a public office thus, depriving the members not belonging to that reserved category from enjoying that office. We fail to appreciate the submissions that there cannot be reservation in respect of a public office. It is not correct to say that the reservation should be confined only to the employment under the State and there should be no reservation to a public office. Legislative bodies and the local authorities should have a fair representation for the weaker sections of the society who are not likely to get proper representation if the reservation is not made. Though, the situation is unfortunate, it will have to continue till the legislatures feel that now they have come at par with the rest of the society. Secondly, as we see the roster and the rules, we find that it is not that the post in the Municipal Council is totally reserved and the persons belonging to unreserved category do not have any opportunity to contest it. The only thing is that they will have to wait till their turn under the roster comes. The other submissions in respect of the alleged anomalies in the rules need not be considered in this writ petition since they will be purely academic and hypothetical. Shri Dixit also pointed out that the term "ten years" in Rule 2-A will signify that the reservation for a category will be in operation for one year only. Shri Dixit also pointed out that there may be cases in which there may be vacancies more than one in a single year and then it is not clear as to how the roster will be operated. All these questions do not arise for our consideration in this petition and should be left for occasion when they are required to be dealt with. Since this is first vacancy after the Rules became operative, the roster will have to be followed and the challenge to the roster to this extent is unfounded. We, therefore, reject this writ petition summarily.