
(1998) 04 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No's. 16132 and 16133/95 and 13676 and 13677/96

T. Vinayagam and 3 others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-04-1998

Acts Referred:

Constitution of India, 1950 — Article 127, 14, 15, 226, 226A

Citation : (1998) 04 MAD CK 0017

Hon'ble Judges : Manmohan Singh Liberhan, C.J.;Raju, J

Bench : Division Bench

Advocate : K.P. Krishna Shetty and Mr. Mohan Parasaran, for the Appellant; N.R. Chandran, for Mr. T. Murugesan, Addl. Govt. Pleader (Pondicherry) on behalf of the Respondent and Mr. Perumbulavil Radhakrishnan, Advocate for the 2nd Respondent, for the Respondent

Judgement

Raju, J.—The above four Writ Petitions may be dealt with together, since they relate to a challenge made to the elections to be held for the

various Local Bodies in the Union Territory of Pondicherry and submissions made by learned counsel on either side are common. Writ Petition

No. 16132 of 1995 has been filed by a Voter in Ward No. 16 of Oulgaret Municipality, seeking for issue of a writ of certiorari to call for and

quash the proceedings pertaining to the Notification issued by the Secretary to Government, Development Department (L.A.). Government of

Pondicherry, in G.O.Ms. No. 127/95/LAS dated 29.10.1995 and the Tables II and III of the said Notification. Writ Petition No. 16133 of 1995

has been filed by yet another Voter in Ward No. 6, Vadhanur Paranasinga Palayam, Mannadipet Commune seeking for the issue of a Writ of

Certiorarified Mandamus to call for and quash the proceedings of the Secretary, Development Department (L.A.) Government of Pondicherry in

Notification in G.O. Ms. No. 128/95/LAS, dated 29.9.1995 and the Tables II, III and IV in the said Notification relating to the reservation of

seats for the Schedule Caste men, Scheduled Caste Women and Other Backward Classes in Commune Panchayats, Village Panchayats and the

reservation of offices of Chairperson, of Commune Panchayats and Village Panchayat Councils and consequently to direct the respondents to

frame the schemes of reservation in such a way as to conform to the constitutional provisions.

2. Writ Petition No. 13676 of 1996 has been filed by a citizen-and voter of Murunigapakkam, Mudaliarpet, Pondicherry, seeking for the issue of a

Writ of Declaration, declaring that Section 9 of the Pondicherry Municipalities Act and the Pondicherry Municipalities (Amendment) Act 1996

(Pondicherry Act 3 of 199(5) and the consequential Notifications reserving; seats for scheduled Castes, Scheduled Tribes. Scheduled Caste

Women, Women and other Backward Classes including the publications relating to holding of elections for Municipalities and wards fixed for

12.10.1996 or on future dates as unconstitutional and void. Writ Petition No. 13677 of 1996 has been filed by a citizen and voter of

Abishekapakkam, Ariyankuppam Commune, Pondicherry, seeking for issue of a Writ of Declaration declaring that Section 11 of the Pondicherry

Village and Commune Panchayat Act and the Pondicherry Village and Commune Panchayat (Amendment) Act, 1996 (Pondicherry Act 4 of

1996) and the consequential Notifications reserving seats for Scheduled Castes, Scheduled Tribes. Schedule Caste women, women and other

backward classes, including the Publications relating to holding of elections for Panchayats fixed for 12.10.1996 or as unconstitutional and void.

3. In W.P.Nos.16132 and 16133 of 1995, the challenge is made on the ground that such a reservation effected for the various categories is far in

excess of the total population of the respective class of population and is in violation of Article 243-1(1) of the Constitution of India and Section

9(2) of the Pondicherry Municipality Act, 1973 in so far as it related to election to Municipality or Panchayat and in gross violation of Article 243T

(1), (2) and (4) of the Constitution of India. It is also contended for the petitioners in those Writ Petitions that no law has been enacted by the State

Legislature for the purposes of reservation of offices of Chair-persons of Municipalities. It was also contended that not only the percentage of

reservation for the various categories as disclosed in the Tables annexed to the Notification are arbitrary and unreasonable and exceeds the

percentage of the population belonging to the respective category but, in the absence of details relating to such population in the respective areas of

the limits of the local bodies, the reservations could not be said to be in accordance with law. A grievance has also been projected that

reservations for scheduled caste women has been made in addition to the reservation meant for the Scheduled Castes and the Scheduled Tribes

and this also vitiates the impugned Notification and the Tables annexed thereto.

4. So far as the Writ Petitions in W.P.Nos.13676 and 13677 of 1996 are concerned, the challenge is made with reference to the excessive extent

of reservations contrary to the directions of the President of India and that such reservations made in the case on hand under the various

Notifications and Tables annexed thereto are opposed to the law declared by this Court in the decision reported in ILR 1996-11 Madras-1 (G.

Karunakaran v. The State of Tamil Nadu). It is also contended that the very Tables annexed to the Notification would go to show that the details

relating to the Backward Class Population is not mentioned and that in the absence of the required materials and details in this regard, the

reservations made in favour of Backward Classes has to go, as they have been made in a manner opposed to the constitution and the law

governing the elections relating to the Local Bodies in question.

5. The respondents have filed counter affidavits opposing the claim in all the above Writ Petitions. So far as Writ Petitions 13676 and 13677 of

1996 are concerned, the second respondent-Election Commissioner, Pondicherry, has filed a separate counter affidavit. Since the entire challenge

was on certain constitutional and other legal infirmities, except with reference to the attempt made by the learned counsel to demonstrate certain

factual infirmities in the impugned Notification and the Tables annexed thereto, which will be referred to later and we will consider those aspects

separately, no further details of facts are considered necessary to deal with this, challenge and the defence made to the impugned Notification and,

therefore, we refrain from making any reference to the same.

6. When the Writ Petitions were taken up for hearing, Mr. N.R. Chandran, learned Senior Counsel appearing for the Union Territory of

Pondicherry contended that these Writ petitions are not maintainable. According to the learned Senior Counsel, in as much as the validity of any

law relating to delimitation of Constituency or allotment of seats cannot be called in question in any Court of law, in view of Articles 243-0 and 243

ZG of the Constitution of India and as per law declared by the Apex Court in State of U.P. v. Pradhan Sangh Kshettra Samiti (AIR 1995 SC

1512), Anugrah Narain Singh v. State of U.P. (1996) 6 S.C.C. 303) and by a Division Bench in Vaikundaraj. M. v. State of Tamil Nadu

(1997(1) CTC296). The learned senior counsel also, while traversing the stand taken by Mr. Mohan Parasaran, learned counsel appearing for the

Writ Petitioners in W.P. Nos. 13676 and 13677 of 1996 and by Dr. Krishna Shetty, learned counsel appearing for the Writ Petitioners in

W.P.16132 and 16133 of 1995, contended that the decision of the Apex Court in L. Chandra Kumar v. Union of India (AIR 1997 SC 1125)

would have no application to the case on hand and that it is not given to this Court to decide as to the legality and propriety or the correctness of

the decisions of the Apex Court in State of U.P. v. Pradhan Sangh Kshettra Samiti (AIR 1995 SC 1512) and Anugrah Narain Singh v. State of

U.P. ((1996) 6 SCC 303), despite the later decision in L. Chandra Kumar v. Union of India (AIR 1997 SC 1125). Strong reliance has been

placed in this regard by the learned senior counsel for the State on the decisions reported in Anil Kumar Neotia v. Union of India (AIR 198 S.C.

1353) and Indian Oil Corporation Ltd. v. Municipal Corporation (AIR 1995 SC 1480). The learned Senior Counsel for the State also urged that

the law declared in L. Chandra Kumar v. Union of India (AIR 1997 SC 1125) having been declared to be with prospective effect only, it will have

no relevance or application to the case on hand. The learned Senior Counsel for the State also contended that the earlier decision of a Division

Bench of this Court in G. Karunakaran v. The State of Tamil Nadu (I.L.R. 1996 Madras 1) will have no application to the case, since according to

the learned counsel it turned on entirely different consideration. Apart from above contentions urged on behalf of the State in defence of the

Notification under challenge, he urged that the reservations have been made only in respect of the seats and not in respect of the Offices and the

actual reservations made as notified in the relevant Tables are in accordance with the Pondicherry Municipal Councils (Reservations of Seats for

Other Backward Classes) Rules, 1995 and Pondicherry Village and Commune Panchayat Councils (Reservation of Seats for the Backward

Classes) Rules, 1995. As for the grievance, and by the learned counsel for the petitioners that there had been no enumeration of Backward Class

population and in the absence of the details relating to the same, the reservation made in respect of other Backward Classes have to be set aside,

in the light of the earlier Division Bench judgment of this Court reported in G. Karunakaran v. State of Tamil Nadu (I.L.R. (1996) II Madras 1),

the learned Senior Counsel appearing for the State contended that a Committee has been appointed for updating the Backward Classes and in the

context of an-interim report submitted, the Government of Pondicherry has notified by a Government Order dated 6.7.1994, 260 Castes

Communities as other Backward Classes and, therefore, those notified Other Backward Classes would be eligible to claim the status of Backward

Classes for the purpose of both the Panchayat and Municipal elections as against the seats reserved (or such classes and, therefore, it is not

necessary for the Government to wait till the final report of the Commission is made. That apart, the learned Senior Counsel for the State also

contended that having regard to the principles laid down by the Apex Court in the decision reported in India Sawhney and others v. Union of India

((1992) 3 S.C.C. 217) ""Mandal Commission Case"" that the reservation of 27% cannot be considered to be on the higher side and, therefore, it is

contended that there is no need for any fresh enumeration of any Backward Classes as contended by the petitioners and consequently, the decision

rendered by this Court in respect of the elections in the State of Tamil Nadu, will have no application to the case on hand. On behalf of the State, a

further plea has been raised that W.P.13676 and 13677 of 1996 are liable to be dismissed on the ground of laches, since the Writ Petitions were

said to have been filed when the election process had already commenced and the reservation of seats for the various categories was notified by

the Government on 29.9.1995 itself. As for the objections taken for the petitioners in W.P. Nos. 13676 and 13677 that the Amendment Act

having not been reserved for the consideration of the President as per Business Rule and having not obtained the Assent of the President, the law

cannot be considered to have been validly enacted, it is contended for the State that it is always open to the Union of Pondicherry to enact law

which falls within Entry, 5, List II of Seventh Schedule and the Business Rules are merely directory in nature and even any alleged violation thereof,

would not affect the validity of the Act as such. Relying upon Act 20 of 1963, it is contended that the Amendment Acts need not be reserved for

the consideration of the President and in respect of the Union Territory, they have not received the assent of the Lieutenant Governor and,

therefore, the contention that the Amendment Acts should have been reserved for the consideration of the President is not tenable.

7. We consider it appropriate to first deal with the preliminary objection raised to the maintainability of the Writ Petitions, projected vis-a-vis

Article 243-0 and Article 243-ZG of the Constitution of India. Article 243-0 of the Constitution provides that notwithstanding anything in the

Constitution, the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting

to be made under Article 243K, shall not be called in question in any Court and no election to any Panchayat shall be called in question except by

an Election Petition presented to such authority and in such manner as is provided by or under any law made by the Legislature of a State. The said

provision is in Part IX of the Constitution of India and governs the matter relating to The Panchayats". Article 243ZG is almost in identical terms

and it forms Part of pan IX-A of the Constitution and relates to the Municipalities".

8. In State of U.P. v. Pradhan Sangh Kshettra Samiti (ATR 1995 SC 1512), while adverting to Article 243-0 of the Constitution of India, the

Apex Court observed that neither the delimitation of Panchayat area, nor of the constituencies in the said area, and the allotment of seats to the

constituencies could have been allowed to be challenged, nor the Court could have entertained such challenge except on the ground that before the

delimitation, no objections were invited and no hearing was given. The Apex Court came to hold such a view, particularly in the context of the

peculiar fact of the case, that the challenge so made was after the notification for the election was issued. In coming to such conclusion the earlier

decision in Meiraj Kothari v. Delimitation Commission (AIR 1967 SC 669) has been adverted to and relied upon, wherein the Apex Court,

dealing with a case arising under Delimitation Commission Act and Article 327 of the Constitution of India, observed that an order under Sections

8 and 9 of the Delimitation Commission Act and published u/s 10(4) of that Act puts such an order in the same position as a law made by

Parliament itself, which could be made by it under Article 327 of the Constitution of India.

9. In *Boddula Krishnaiah v. State Election Commissioner, A.P.* (AIR 1996 SC 1.S95), while dealing with the scope of Articles 243-0 and 226 of

the Constitution of India, the Supreme Court did not approve of the action of the High Court in entertaining a Writ Petition after the election

process was commenced, on the plea that voters were allegedly prevented from exercising their franchise and when the Court directed the election

officer to stall the proceedings and to conduct the election process afresh. Reliance has also been placed on the earlier decision in *Lakshmi Charan*

Sen v. A.K.M. Hassan Uzzaman, (AIR 1985 SC 1233), wherein it was held that though the High Court did not lack the jurisdiction to entertain

the Writ petition and to issue appropriate directions, no High Court in the exercise of its power under Article 226 of the Constitution should pass

any orders, interim or otherwise, which should have the effect of postponing the election, which is reasonably imminent and in relation to which its

Writ Jurisdiction is invoked. High Courts were cautioned to observe a self-imposed limitation on their power to act under Article 226, in a manner

which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation

and functioning of our Constitution. Such limitation was expected to be observed irrespective of the fact whether the preparation and publication of

electoral rolls are a part of the process of "election" within the meaning of Article 329(b) of the Constitution of India.

10. In *Anugrah Narain Singh v. State of UP.* ((1996) 6 S.C.C303), while dealing with the bar under Article 243Z(i of the Constitution, the Apex

Court held that in terms of Article 243ZG of the Constitution, there is complete and absolute bar in considering any matter relating to municipal

election on any ground whatsoever after the publication of the notification for holding municipal election, the bar being two-fold, viz., the validity of

laws relating to delimitation and allotment of seats made under Article 243 ZA cannot be questioned in any Court and that no election to a

"Municipality can be questioned except by an election petition. That also seems to be a case where, as noticed by their Lordships, election was

well under way. Proceeding further in this context, the Annex Court held as follows:-

24. The validity of Sections 6-A, 31, 32 and 33 of the U.P. Act dealing with delimitation of wards cannot be questioned in a Court of law because of the express bar imposed by Article 243-ZG of the Constitution. Section 7 contains Rules for allotment of seats to the Scheduled Castes, the Scheduled Tribes and the Backward Class people. The validity of that Section cannot also be challenged. That apart, in the instant case, when the delimitation of the wards was made, such delimitation was not challenged on the ground of colourable exercise of power or on any other ground of arbitrariness. Any such challenge should have been made as soon as the final order was published in the Gazette after objections to the draft order were considered and not after the notification for holding of the election was issued. As was pointed out in *Lakshmi Charan Sen Case* (AIR 1967 SC 669), that the fact that certain claims and objections had not been disposed of before the final order was passed, cannot arrest the process of election.

25. In this connection, it may be necessary to mention that there is one feature to be found in the Delimitation Commission Act, 1962 which is absent in the U.P. Act. Section 10 of the Act of 1962 provided that the Commission shall cause each of its order made under Sections 8 and 9 to be published in the gazette of India and in the Official Gazettes of the States concerned. Upon publication in the Gazette of India every such order shall have the force of law and shall not be called in question in any Court. Because of these specific provisions of the Delimitation Commission Act, 1962, in the case of *Meghraj Kothari v. Delimitation Commission* (AIR 1967 SC 669), this Court held that notification of orders passed under Sections 8 and 9 of that Act had the force of law and therefore, could not be assailed in any Court of law because of the bar imposed by Article 329. The U.P. Act of 1959, however, merely provides that the draft order of delimitation of municipal areas shall be published in the Official Gazette for objections for a period of not less than seven days. The draft order may be altered or modified after hearing the objections filed, if any. Thereupon it shall become final. It does not lay down that such an order upon reaching finality will have the force of law and shall not

be questioned in any Court of law. For this reason, it may not be possible to say that such an order made u/s 32 of the U.P. Act has the force of

law and is beyond challenge by virtue of Article 243ZG. But any such challenge should be made soon after the final order is published. The

election Court constituted u/s 61 of the U.P. Act will not be competent to entertain such an objection. In other words, this ground cannot be said

to be comprised in sub-clause (iv) of clause (d) of Section 71 of the I.P. Act. In the very nature of things, the election Court cannot entertain or

give any relief on this score. The validity of a final order published u/s 33 of the U.P. Act is beyond the ken of Election Court Constituted u/s 61 of

the said Act.

11. In *Vaikundaraj, M. v. State of Tamil Nadu* (1997(1)CTC 296), a Division Bench of this Court, while dealing with a challenge made to the

allotment of seats for women in Municipality, held that a writ is not maintainable in view of Article 243 ZG of the Constitution of India and the

proper remedy is to file an election petition as mentioned in Article 243 ZG (b) of the Constitution of India,

12. In *Jayaraj v. The State Election Commissioner* (1996 Writ L.R. 805), it was held that a challenge to the validity of acceptance or rejection of

nomination, on the ground that the candidate does not belong to the Scheduled Caste Community, cannot be made by means of a Writ Petition, in

view of the be enacted in Article 243A of the Constitution of India.

13. *R.C. Pudyal v. Union of India* (1994 Supp. (1) S.C.C. 324) a Constitution Bench of the Apex Court had dealt with the immunity to certain

laws accorded in Articles 329 and 329 (a) of the Constitution of India." It was observed as follows:-

119. It is true that the right to vote is central to the right of participation in the democratic process. However, there is less consensus amongst

theorists on the propriety of Judicial activism in the voting area. In India, the Delimitation Laws made under Article 327 of the Constitution of India,

are immune from the Judicial test of their validity and the process of allotment of seats and constituencies is not liable to be called in question in any

Court by virtue of Article 329 (a) of the Constitution. But the laws providing reservations are made under authority of other provisions of the

Constitution such as those in Article 332 or clause (f) of Article 371F which latter

is a special provision for Sikkim.

14. From the above, it could be seen that the emerging essential principle is not to interfere with the process of election so as to either postpone the

same or conduct the elections afresh by imposing the views (sic) once the process of election has commenced. At the same time, it cannot be

legitimately contended that absolute immunity is granted to any and every action taken or the violations committed, even before the process of

election commenced. Mr. Mohan Parasaran, learned counsel, relying upon the decision of the Apex Court of a larger Bench of seven learned

Judges in *L. Chandra Kumar v. Union of India* (AIR 1997 SC 1125), wherein it has been held, while dealing with the Constitutional validity of

Article 223A and 323B of the Constitution, which, while constituting certain Tribunals, excluded the jurisdiction of the High Courts and the

Supreme Court under Articles 226/227 and 32 are unconstitutional, contended that the power of judicial review conferred under Article 32 of the

Constitution as well as Articles 226/227 of the Constitution constitutes the basic structure of the Constitution being an integral and essential feature

of the Constitution and the power of the Supreme Court or the High Courts to test the constitutional validity of such legislations of proceedings can

never be ousted or excluded and, therefore, the provisions engrafted in Articles 243-0 and 243 ZG of the Constitution of India have to be so read

down and construed as to make it constitutional and not by construing those-provisions as drawing a complete leave or cover over the powers of

Judicial Review under Article 226A/127 of the Constitution of India.

15. On a careful analysis and consideration of the above referred to judicial pronouncements, we are of the view that the plea of absolute and total

bar projected for the respondent-State cannot be countenanced for the reason that even the decisions relied upon by the learned senior counsel for

the respondents do not (sic) support to such a claim of absolute and total bar and also for the further reason that in those decisions, only the scope

of the provisions as it existed were considered and the question of such construction offending the basic structure and rendering the very provision

imposing such an absolute bar being rendered unconstitutional as offending the basic structure of the Constitution, was not dealt with until the

decision of the Apex Court in *L. Chandra Kumar v. Union of India* (AIR 1997 SC

1125) (supra). The question that if so construed in absolute terms, it would offend the basic structure of the Constitution, having been raised before us, we are obliged to also construe those provisions in a restricted manner by virtue of the compelling force of the authority of the Apex Court in the declaration of law made in AIR 1997 S.C. 1125 (supra). By doing so, we cannot be considered to be undertaking any exercise as to the correctness of the law declared by the Apex Court in the earlier decisions or that those decisions do not have binding force. Therefore, the reliance placed on the decision reported in Indian Oil Corporation Ltd. v. Municipal Corporation (AIR 1995 SC 1480) cannot be of any avail to the learned counsel for the respondents in this case. Consequently, in view of the latest decision of the Apex Court reported in AIR 1997 SC 1125 (supra), we are obliged to construe Article 243-0 and 243 ZG of the Constitution as not imposing any bar in absolute terms and that on the other hand Courts exercising jurisdiction under Article 226/227 must act with great circumspection and 82 should not interfere in a routine manner and as a matter of course, in all cases and for any or every irregularity pointed out or urged so as to bring about a stalemate in the timely conduct of Elections to the various local bodies. The embargo envisaged under the above stated Articles of the Constitution are two-fold viz., in challenging the validity of law relating to delimitation of constituencies or the allotment of seats to such constituencies on the one side and challenging the election as such except by an election petition, on the other. The election could be filed in respect of an election completed and results declared and constitutional issues could not be raised or adjudicated in such proceedings. If at all such issues could be got adjudicated only on a reference to the High Court and that too when it is found permissible. So far as the law relating to determination of constituencies or allotment of seats are concerned, they pertain in substance to matters of policy and large latitude is given to the statute to implement such policy decisions, which to some extent also partake political colour, and that is how such questions are "sought to be kept out of a routine review or challenge, But, where the monstrosity of a situation created is such as to make the whole elections a mockery in terms and purport and the very negation of democracy and the action taken virtually amounts to a

colourable exercise of power and even would seem to be a fraud on the Constitution itself, it would be nothing but an abdication of powers as well

as responsibilities of Courts exercising powers of Judicial review to turn their Nelson eye to such situations, even when brought before Court and

proved to be so on the face of it, Consequently, the objections raised on behalf of the respondent-State Government to the maintainability of the

Writ Petitions cannot be sustained and they shall stand rejected.

16. Articles 243 D(6) of the Constitution in so far as it relates to Panchayats and Article 143T in relation to Municipalities deal with reservation of

seats in favour of Backward Classes of citizens in the respective areas and for respective bodies. In substance, the Constitution, while enacting the

policy, principles and guidelines for reservation of Seats of Offices for members of the" Scheduled Castes and Scheduled Tribes as also women,

made an enabling provision empowering the legislatures of States to make provision for reservation likewise in favour of Backward Classes of

citizens. By availing of such powers, statutory provisions and statutory Rules have been made by the Union Territory of Pondicherry providing for

27 percentage of reservation in favour of Backward Classes and has chosen to implement the same by drawing lots. In our view, when the

Constitution itself has provided the norms and yardstick for reservations in favour of Scheduled" Caste and Scheduled Tribe as also women with

reference and the same proportion to the total number of seats to be filled as to population of the particular class or category for which"

reservation is made in the area and the total population of that area in proportion to the total number of seats-it is but necessary and essential that

for other Backward Classes also the same principles have to be adopted and there cannot be any other general formula and any flat rate

reservation, of drawal of lots for such fixation. Normally, the question of deciding anything by drawal of lots would arise only when more than one

satisfied the requirements and that there is no other rational means or way of deciding the issue. Drawal of lot cannot be the normal Rule for

application as a matter of course, invariably. It is in this context that the decision rendered by this Court in relation to similar elections in the State of

Tamil Nadu becomes relevant and Significant. The attempt of the respondent-state; to justify the ratio of 27% reservation for Backward Classes as

being within the proportion accepted by the Apex Court in Mandal's case for reservation in Services cannot be justified. Reservations for

Admissions into Educational Institution and for posts in State services and Reservations for elective office in the Local Bodies which are

considered to be instruments of local self Government cannot be on the same ratio or formula and principle and there can be no comparison

whatsoever in respect of such varying fields or area for reservation. These aspects have been considered by the earlier Division Bench in the

decision reported in ILR 1996 (2) Madras-1 (supra). Apart from the above, it has also been held in the above decision that blanket reservations at

a flat rate of percentage on large scale made at all levels would- be unconstitutional, arbitrary and unreasonable as well as irrational and

consequently violative of Articles 14 and 15 of the Constitution of India. The relevant provisions in the Act and the Rules which provides for such

reservations in favour of Backward Classes particularly in the teeth of the admitted fact situation that there are no statistics for details available of

such Backward Class people in the areas in question - are unconstitutional and unenforceable in law. Except that, in the present case the Union

territory of Pondicherry has fixed a flat rate of 27% unlike the procedure adopted in the State of Tamil Nadu by making it a variable one, there

seem to be no differences whatsoever between these two cases and the constitutional infirmities pointed out; in the decision reported in ILR 1996

(2) Madras-1 (supra) pervades into the present system under challenge also and the same cannot be distinguished for being saved. The mere

identification of the categories of Backward Classes alone or the list of such classes without the details relating to the numerical strength of such

persons in the various areas or localities will-be of no avail to proceed with the implementation of the policy of reservation for Backward Classes,

in the elections for Local Bodies in question. Consequently, Section 9(8) of the Pondicherry Municipalities Act, 1973 as amended by Act 3 of

1996, and Section 11(8) of the Pondicherry Village and Commune Panchayats Act, 1973, as amended by Act 4 of 1996, and the Rules framed

thereunder as well as the impugned notifications are unconstitutional and unenforceable. We may also state that we are not convinced with any of

the other infirmities attempted to be pointed out with reference to the number of seats allotted to the "women vis-à-vis 1/2-vis total number of reserved

stats or the percentage of population of Scheduled Caste, etc., Unless and until a proper census enumeration and publication with particulars

regarding their particular class and community which constitutes the Backward Classes are made and rendered available to public by due

publication, there can be no reservations of any seats or constituencies at any level for holding or conducting elections to the various local bodies

with the number of reservations notified already for Backward Classes. The Writ Petitions are allowed on the above limited terms and grounds. It

is always open to the respondent to proceed in the matter afresh, after rectification of the offending part of the action taken for holding elections, as

indicated supra. No. costs.