



HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 5987 of 2020 alongwith CWP
Nos. 6012, 6013 and 6046 of 2020

Judgment reserved on : 29.12.2020

Date of decision: 6th January, 2021

1. CWP No. 5987 of 2020

Manish Dharmaik

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

2. CWP No. 6012 of 2020

Bhupender Kumar

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

3. CWP No. 6013 of 2020

Chaman Prakash Sharma

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

4. CWP No. 6046 of 2020

Satish Kumar Thakur

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge

The Hon'ble Ms. Jyotsna Rewal Dua, Judge

Whether approved for reporting¹ : YES

For the Petitioner: Mr. T.S. Chauhan, Advocate, for the petitioner in CWP Nos. 5987 & 6046 of 2020

Mr. Hamender Kumar Chandel, Advocate, for the petitioner in CWP Nos. 6012 & 6013 of 2020

Mr. Abhimanyu Rathore, Advocate, for the petitioner in CWP No. 6177 of 2020

For the Respondents: Mr. Ashok Sharma, Advocate General, with Mr. Vinod Thakur, Mr. Vikas Rathore, Mr. Shiv Pal Manhans, Additional Advocate Generals, with Mr. Bhupinder Thakur, Ms. Seema Sharma and Mr. Yudhbir Singh Thakur, Deputy Advocate Generals for the State in all the cases.

Mr. Ajit Saklani, Advocate, for State Election Commission, in all the cases.

Jyotsna Rewal Dua, J.

This bunch of writ petitions questions the preparation, implementation and rotation of election reservation roster in Gram Panchayats for purposes of ensuing 2020-21 elections to the Panchayati Raj Institutions in the State. Common contention of the petitioners is that election reservation roster prepared by the State for 2020-2021 elections is inherently faulty, as a result, reservation of previous election years has been repeated for offices in the Gram Panchayats/areas involved in the writ petitions in the now

¹ Whether Reporters of local newspaper are permitted to see the judgment ?

scheduled elections thereby denying equal opportunity of representation to members of other categories. Involving common questions of law, these writ petitions, therefore, are taken up together for disposal.

Facts from lead case CWP No. 5987 of 2020, Manish Dharmaik Vs. State of H.P. are being considered hereinafter for comprehending the issue raised in this bunch of writ petitions.

Grievance

2. Petitioner's grouse is that in ensuing 2020-2021 elections to be conducted for Panchayati Raj Institutions (for short PRI) in the respondent-State under The Himachal Pradesh Panchayati Raj Act, 1994 (in short the Act) and H.P. Panchayati Raj (Election) Rules, 1994 (in short the Rules), the seat of Pradhan in Gram Panchayat Khagna, Development Block Chopal, District Shimla, H.P. has been reserved for women (General). The office/area in question was reserved for women (General) in 2010 elections, for scheduled castes (open) in 2015 and, therefore, could not be kept for women (General) in 2020 elections. This amounts to repeating the reservation in the area for women (General) thereby denying the opportunity of representation to various other categories. Repeating the reservation in the area for women

(General) is contrary to the principle of rotation envisaged in the Constitution of India, the 'Act' and the 'Rules'.

Since the legal question raised is with respect to the alleged illegal repetition of reservation of an area for a particular category in forthcoming elections to PRI, therefore, following needs to be comprehended before proceeding further :-

- (i) Related Legal Provisions.
- (ii) Methodology adopted by the respondent State in preparing, applying and rotating reservation roster for election to PRI.

3. Related Legal Provisions

3(i)(a) Article 243 under Part IX of the Constitution of India pertains to Panchayats. Article 243D provides for reservation of seats in Panchayat elections as under :-

"243D. Reservation of seats

(1) Seats shall be reserved for :-

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat 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 Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat

(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 Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Caste,s the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(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 Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.”

3(i)(b) Section 8 of H.P. Panchayati Raj Act provides for Constitution of Gram Panchayats. Reservation of seats of Pradhans in Gram Panchayats under the Act is governed by following Section 125 of the Act :-

125. Reservation for Chairpersons.-

(1) There shall be reserved by the Government, in the prescribed manner such number of offices of Chairpersons in Panchayats at every level in the State for the persons belonging to the Scheduled Castes and Scheduled Tribes and the number of such offices, bearing as may be the same proportion to the total number of offices in the State as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the population of the State.

(2) *One-half of offices of Chairpersons reserved in each category, for persons belonging to the Scheduled Castes and Scheduled Tribes and of the non-reserved offices in the Panchayats at every level shall be reserved for women.*

(3) *The State Government may, by general or special order, reserve such number of offices of chairpersons for persons belonging to Backward Classes in Panchayats at every level, not exceeding the proportion to the total number of offices to be filled by direct election in the Panchayat as the population of the persons belonging to Backward Classes in the State bears to the total population of the State and may further reserve one-half of the total seats reserved under this sub-section for women belonging to Backward Classes.*

(4) *The offices of Chairpersons reserved under sub-sections (1), (2) and (3) shall be allotted by rotation to different constituencies in the district in such manner as may be prescribed.*

Explanation.- For the removal of doubt it is hereby declared that the principle of rotation for the purposes of reservation of office under this section shall commence from the first election to be held after the commencement of this Act.

**Rule 28 under Chapter IV of H.P. Panchayati Raj
(Election) Rules provides for reservation of seats in Panchayats in
following manner :-**

“28. Reservation of seats in Panchayats.-

(1) Before every election to a Panchayat the Deputy Commissioner or any other officer authorised by him in this behalf shall, in accordance with the provisions of sections 8, 78, and 89 of the Act reserve the constituencies for Scheduled Castes, Scheduled Tribes and Women in a Panchayat area and determine their rotation.

(2) In every Panchayat the population of general category, Scheduled Castes, Scheduled Tribes and Women shall be worked out constituency-wise and the percentage of Scheduled Caste and Scheduled Tribes and Women, in relation to the total population of the Constituency shall be determined for the purposes of making reservation.

(3) In every Panchayat, constituency/constituencies shall be reserved for the Scheduled Castes and Scheduled Tribes in proportion to their population in that Panchayat area. The constituency having highest percentage of population of Scheduled Castes shall be reserved for the members of the Scheduled Castes and the constituency having the highest percentage of population of Scheduled Tribes shall be reserved for the Scheduled Tribes.

(4) If the number of constituencies to be reserved for the members of Scheduled Castes or Tribes is more than one, then the constituency having the next highest percentage of Scheduled Castes and Scheduled Tribes shall be reserved for the members of the Scheduled Castes and Scheduled Tribes, as the case may be and so on:

Provided that if the total population of Scheduled Castes or Scheduled Tribes in a Panchayat area is less than five percent of the total population of the panchayat area, then no constituency shall be reserved.

(5) Out of the constituencies reserved for members of Scheduled Castes and Scheduled Tribes, one-half of the constituencies shall be reserved for women members belonging to Scheduled Castes and Scheduled Tribes, as the case may be, and the Constituency having highest percentage of population of women belonging to Scheduled Castes or Scheduled Tribes in relation to total population of the Constituency, as the case may be, in a Panchayat area shall be reserved for such women.

(6) If the number of constituencies to be reserved for women belonging to Scheduled Castes, or Scheduled Tribes, as the case may be, is more than one then the constituency having the next highest percentage of women belonging to Scheduled Castes or Scheduled Tribes, as the case may be, shall be reserved for such women, and so on.

(7) Out of the total constituencies excluding the constituencies reserved for Scheduled Castes and Scheduled Tribes (including women belonging to Scheduled Castes and Scheduled Tribes), one-half of the constituencies shall be reserved for women and the constituency having highest percentage of population of women shall be reserved for such women and if the number of constituencies to be reserved for women is more than one, then the constituency having the next highest percentage of women population shall be reserved for general women and so on.

(8) The Constituencies reserved for Scheduled Castes and Scheduled Tribes and women belonging to Scheduled Castes and Scheduled Tribes and women belonging to general category on the basis of percentage of population shall be rotated after every five years from the date of first election. At the time of next election, the constituency/constituencies having the next highest percentage of population shall be reserved for members of Scheduled Castes and Scheduled Tribes including women belonging to Scheduled Castes and Scheduled Tribes and women belonging to general category and so on for subsequent elections:

Provided that the reservation for a particular category shall not be repeated unless all other constituencies are covered by rotation:

Provided further that the reservation for a particular category shall not be rotated in such a constituency where the population of that category is less than 5% of the total population of that constituency.

(8-A) Notwithstanding anything contained in these rules, the roster of reservation of seats shall operate from the initial stage for the elections to be held after the commencement of the Himachal Pradesh Panchayati Raj (Election) Amendment Rules, 2010 as if the said elections are being conducted for the first time under sub-rule (8)

and thereafter, the reservation of seats shall be rotated to different constituencies under this rule.

(9) The reservations made under this rule shall be finalised by the Deputy Commissioner or any other officer authorised by him in this behalf and shall be given wide publicity by him by affixing a copy of order of such reservation on the notice board of his office and that of the offices of Zila Parishad, Panchayat Samitis and Gram Panchayats and he shall also send a copy of the same to the Government and this notification shall be the conclusive proof of reservations of constituencies."

Rule 87 of the Himachal Pradesh Panchayati Raj (Election) Rules, 1994 prescribes the procedure to be followed for reservation of office of Pradhans in Gram Panchayats. The Rule runs as under :-

"87. Reservation of office of Pradhans, Gram Panchayats.-

(1) Before every election to a Gram Panchayat the State Government or any other officer authorised by it in this behalf shall in accordance with the provisions of section 125 of the Act, determine the number of the offices of Pradhans of Gram Panchayats to be reserved for Scheduled Castes, Scheduled Tribes and Women in a block.

(2) For the purpose of reservation of the offices of the Pradhans the population of general category, Scheduled Castes, Scheduled Tribes and women shall be worked out Gram Sabha-wise and the percentage of Scheduled Castes, Scheduled Tribes and women in relation to the total population of Gram Sabha, shall be determined.

(3) In every block the offices of the Pradhans of the Gram Panchayats shall be reserved for the Scheduled Castes and Scheduled Tribes in proportion to their population in the Block. The Gram Sabha having highest percentage of population of Scheduled Castes shall be reserved for the members of the Scheduled Castes and the Gram Sabha having the highest percentage of population of Scheduled Tribes shall be reserved for the Scheduled Tribes.

(4) If the number of offices to be reserved for the members of Scheduled Castes or Scheduled Tribes is more than one, then the Gram Sabha having the next highest percentage of population of Scheduled Castes and Scheduled Tribes, shall be reserved for the members of the Scheduled Castes and Scheduled Tribes, as the case may be, and so on:

Provided that if the total population of Scheduled Castes or Scheduled Tribes in a Block is less than 5 % of the total population, then no office shall be reserved.

(5) Out of the offices reserved for members of Scheduled Castes and Scheduled Tribes, one-half of the offices shall be reserved for women members belonging to Scheduled Castes and Scheduled Tribes as the case may be, and the Gram Sabha having highest percentage of population of women belonging to Scheduled Castes or Scheduled Tribes, in relation to the total population of Gram Sabha, as the case may be, in a block shall be reserved for such women.

(6) If the number of offices to be reserved for women belonging to Scheduled Castes or Scheduled Tribes, as the case may be, is more than one than the Gram Sabha having the next highest percentage of population of women belonging to Scheduled Castes or Scheduled Tribes, as the case may be, shall be reserved for such women, and so on.

(7) Out of the total offices, excluding the offices reserved for Scheduled Castes and Scheduled Tribes (including women belonging to Scheduled Castes and Scheduled Tribes), one-half of the offices shall be reserved for women, and the Gram Sabha having the highest percentage of women population shall be reserved for general women, and so on.

(8) The offices reserved for Scheduled Castes and Scheduled Tribes and women belonging to Scheduled Castes and Scheduled Tribes and women belonging to general category on the basis of percentage of population shall be rotated after every five years from the date of first election. At the time of next election, the Gram Sabha having the next highest percentage of population shall be reserved for members of Scheduled Castes and Scheduled Tribes including women belonging to Scheduled Castes and Scheduled Tribes and women belonging to general category and so on for subsequent election:

Provided that the reservation of any office for a particular category shall not be repeated unless all other offices in the block are covered by rotation:

Provided further that the reservation for a particular category shall not be rotated in such a Gram Sabha where the population of that category is less than 5% of the total population of that Gram Sabha.

(8-A). Notwithstanding anything contained in these rules, the roster of reservation of offices shall operate from the initial stage for the elections to be held after the commencement of the Himachal Pradesh Panchayati Raj (Election) Amendment Rules, 2010 as if the said elections are being conducted for the first time under sub-rule (8) and thereafter, the reservation of offices shall be rotated to different Gram Sabhas under this rule.

(9) The reservations made under this rule shall be finalised by the State Government or by any officer authorised by it, in this behalf, and shall be given wide publicity by affixing a copy of order of such reservation on the notice board of his office and that of the Gram Panchayat and Panchayat Samiti and shall also send a copy of the same to the Government for publication of the order in the Official Gazette

and this notification shall be the conclusive proof of reservations of offices as of Pradhan in the block.”

3(ii) Provisions of the Act and the Rules are not under challenge. These provisions govern the reservation of offices in Gram Panchayats for different categories. Under sub Rule 8-A of Rules 28 and 87, year 2010 has been treated as the base election year for the purpose of applying election reservation roster, disregarding reservation of Gram Panchayats in previous elections.

3(ii)(a) First exercise is determination of number of offices of Pradhan of Gram Panchayats to be reserved for Scheduled Castes, Scheduled Tribes and Women in a Block. The number is determined in accordance with the provisions of the Act and the Rules. The number is dependent upon various factors, including the population. Population census 2011 is the foundation for carrying out the exercise for 2020-2021 elections. Population of different categories is worked out Gram Sabha-wise and this percentage is determined in relation to total population of Gram Sabha.

3(ii) (b) In every Block, offices of Pradhans of Gram Panchayats, shall be reserved for Scheduled Castes and Scheduled Tribes in proportion to their population in the Block. Gram Sabha

having the highest percentage of population of Scheduled Castes shall be reserved for Scheduled Castes and Gram Sabha having highest percentage of Scheduled Tribe population shall be reserved for Scheduled Tribes. If number of offices required to be reserved for Scheduled Castes or Scheduled Tribes is more, then Gram Sabha having the next highest percentage of population of these categories in the descending order shall be reserved for members of Scheduled Castes and Scheduled Tribes.

3(ii)(c) However, no office shall be reserved for Scheduled Castes and Scheduled Tribes in case their population in a Block is less than 5% of the total population.

3(ii)(d) Half of the offices reserved for Scheduled Castes and Scheduled Tribes shall be reserved for women belonging to these categories in the Gram Sabha with the highest percentage of population of women in relation to total population of Gram Sabha in the descending order.

3(ii)(e) Out of total offices, excluding the offices reserved for Scheduled Castes and Scheduled Tribes (including women belonging to Scheduled Castes and Scheduled Tribes), one half of offices, shall be reserved for women in the Gram Sabha with the highest percentage of women population belonging to general category in the descending order.

3(ii)(f) Offices reserved for Scheduled Castes, Scheduled Tribes, women belonging to Scheduled Castes, Scheduled Tribes and General category, on the basis of percentage of population will be rotated after every five years from the date of first election. Year 2010, under the Rule 87(8-A) has been taken as the base election year for the purpose of applying and rotating election reservation roster. Therefore, treating 2010 as the base year, at the time of conduct of next elections in 2015 and all subsequent elections, Gram Sabhas having the next highest percentage of population shall be reserved for members of Scheduled Castes and Scheduled Tribes, including women belonging to these categories and belonging to general category.

3(ii)(g) First Proviso attached to Rule 87(8) says that reservation of any office for a particular category shall not be repeated unless all other offices in the Block are covered by rotation. The second proviso says that reservation for a particular category shall not be rotated in a Gram Sabha where population of that category is less than 5% of total population of Gram Sabha.

4. Methodology adopted by State for applying reservation roster in elections to PRI:

4(i). How the above provisions relating to reservation of offices of Pradhans in Gram Panchayats for Scheduled Castes,

Scheduled Tribes and women belonging to Scheduled Castes, Scheduled Tribes & general category vis-à-vis rotating these offices amongst different reserve categories as understood by the respondent-State, has been explained by it in a following hypothetical example of a Block containing seven Gram Panchayats i.e. A, B, C, D, E, F and G. Assuming the number of offices to be reserved for Scheduled Castes in this Block is determined as 2, and no other category viz. Scheduled Tribes/OBC is present in the Block, then first of all, a chart of all seven Gram Panchayats with percentage of Scheduled Castes population in the Block in descending order is prepared. Hypothetical chart ‘A’ is as under :-

“ **“Chart-A”**

Descending order of SC Population Percentage Panchayats in Block		
Sr. No.	Name of Panchayat	SC Population % in Panchayat
1.	A	50
2.	B	49
3.	C	48
4.	D	46
5.	E	42
6.	F	40
7.	G	38

”

Next stage is preparation of chart of seven Gram Panchayats showing percentage of SC (Women) population in the Block in descending order. Hypothetical chart ‘B’ is as under :-

‘Chart-B’ “

Descending order of SC Women Percentage Panchayats in Block		
Sr. No.	Name of Panchayat	SC Population % in Panchayat
1.	D	30
2.	G	25
3.	A	23
4.	C	21
5.	B	20
6.	E	17
7.	F	15

”

Lastly, a third chart reflecting percentage of population of women belonging to general category is prepared.

The hypothetical chart ‘C’ is as under :-

“Chart-C”

Descending order of Women Percentage Panchayats in Block		
Sr. No.	Name of Panchayat	Female Population % in Panchayat
1.	B	50
2.	C	49.5
3.	A	49
4.	D	48.5
5.	F	48
6.	E	47.5
7.	G	43

”

4(ii). Assuming that based on proportion of their percentage of population, the number of seats of Scheduled Castes to be filled in the above Block of seven (7) constituent Gram Panchayats is two (2) and also assuming that reservation for no other category, for example Scheduled Tribes etc. is required to be provided in this Block, then $7-2 = (5)$ five Gram Panchayats are left for general category. 50% of these five seats = 2.5, rounded to three(3) will have to be reserved for women belonging to general category. Reservation of offices for different categories in 2010 elections will be, thus, as under :-

2010 Elections

Two Gram Panchayats with maximum percentage of Scheduled Castes population in descending order i.e. A and B (Chart A) will be reserved for Scheduled Castes. Out of these two, A with maximum percentage of women (Chart B) will be reserved for SC (W). Thus, three, out of remaining five Gram Panchayats i.e. C, D, E, F and G, have to go to W(G). Three, out of these five Gram Panchayats in descending order of maximum percentage of women i.e. C, D and F (Chart C) will be reserved for by W(G). Remaining two Gram Panchayats i.e. E and G shall be unreserved. Therefore, in 2010 elections reservation of Gram Panchayats will be as under:-

“

Sr. No.	Name of Panchayat	Reservation in 2010.
1.	A	SC Female
2.	B	SC
3.	C	Female
4.	D	Female
5.	E	UR
6.	F	Female
7.	G	UR

2015 Elections

In the next elections to be held in the year 2015, assuming percentage of population and all other relevant factors in the three charts remain as they were in 2010, then leaving Gram Panchayats A and B, which were already reserved for SC category in 2010, next two Gram Panchayats in descending order of population of SC category will be C and D. So, these two Panchayats will be reserved for SC category out of which, D having more percentage of SC women (Chart B) shall be reserved for women (SC). Three, out of remaining five Gram Panchayats A, B, E, F and G, have to be reserved for women belonging to general category. B, A and E in descending order of percentage of women (Chart B) will, therefore, be reserved for women (General). Final position of roster/reservation in 2015 will be as under :-

	Name of Panchayat	Reservation in 2015.
1.	A	Female
2.	B	Female
3.	C	SC
4.	D	SC Female
5.	E	Female
6.	F	UR
7.	G	UR

2020 Elections

E and F Gram Panchayats next in line for SC category in descending order of percentage of population (Chart A) will be reserved for SC category, out of these, Gram Panchayat E with higher percentage of women shall be reserved for Women (SC). Remaining five Gram Panchayats to be kept for general category shall be A, B, C, D and G. Three out of these remaining five Gram Panchayats have to be reserved for Women (General).

Applying Rule 87(8) and the proviso attached to it, out of these five Gram Panchayats A, B, C, D and G, since G has never been reserved for W (G), therefore, it shall now have to be reserved for W(G). Remaining four Gram Panchayats A, B, C and D have remained reserved for W(G) either in 2010 or in 2015 elections, therefore, to avoid immediate repetition and in accordance with the instructions issued by the respondent-State, C and D which were reserved for W(G) in 2010 shall be repeated by

way of rotation for 2020 elections for W(G). As a fallout, remaining Gram Panchayats A and B will go to UR. The ultimate position will be as under :-

“

Sr. No.	Name of Panchayat	Reservation in 2020
1.	A	UR
2.	B	UR
3.	C	Female
4.	D	Female
5.	E	SC Female
6.	F	SC
7.	G	Female

”

4(iii) The Final reservation roster of above Block of 7 Gram Panchayats in 2010, 2015 and 2020 elections comes out as under :-

“

Sr. No.	Name of Panchayat	Reservation in 2010	Reservation in 2015	Reservation in 2020
1.	A	SC Female	Female	UR
2.	B	SC	Female	UR
3.	C	Female	SC	Female
4.	D	Female	SC Female	Female
5.	E	UR	Female	SC Female
6.	F	Female	UR	SC
7.	G	UR	UR	Female

”

The above consolidated chart makes it crystal clear that in the third elections (2020-2021), while rotating the election reservation roster for the second time, there could be repetition of reservation of categories in certain Gram Panchayats.

4(iv) The contention of learned counsel for the petitioner is that Gram Panchayat Khagna in Development Block Chopal, District Shimla, H.P. was reserved for W(G) in 2010 elections and for Scheduled Castes (Open) category in 2015 elections. Keeping this Gram Panchayat reserved once again for W(G) in now scheduled 2020-21 elections, is a clear indicator that respondents are only repeating the election reservation roster and not rotating it in accordance with law. The argument advanced on behalf of the petitioners is that when a Gram Panchayat was reserved for A category in 2010 elections, for B category in 2015 elections, then that Gram Panchayat cannot once again be reserved for A or B category in the third election to be held in 2020-2021. This virtually means repeating the election reservation roster contrary to the principle of rotation of roster envisaged under the Act and Rules. By repetition of election reservation roster for some categories in certain Gram Panchayats, the other categories are denied equal opportunity of representation, which should have been made available to them for the seats in the Gram Panchayats.

The argument, crisp and simple looks attractive at first blush, but the fact is that in any eventuality, 50% of the offices in a Block (Gram Panchayats) are reserved for women. Reservation is provided to members of Scheduled Castes, Scheduled Tribes, women belonging to these categories and women belonging to general category. In the first election, not less than half of the Gram Panchayats constituting a Block may have to be reserved for persons belonging to these categories. In the next election, the areas left out from previous application of election reservation roster, in descending order of percentage of population will have to be reserved. In the third election, there could be repetition of reservation of seats in Gram Panchayats while applying reservation roster by way of rotation. This has been explained by the State, in the above Charts. We are in agreement with the methodology adopted by the State, in preparing the reservation roster, in applying it and in rotating it over different Gram Panchayats. Learned counsel for the petitioners though vehemently argued that election reservation roster prepared by the State is faulty, as it results into repetition of reservation of certain Gram Panchayats for some of reserved categories, however, no other election reservation roster muchless a workable one has been produced before us by learned counsel for the petitioners in all these writ petitions.

Merely because reservation position of previous elections has been repeated in the third election in some of the offices/Gram Panchayats, that would not ipso facto lead to the conclusion that election reservation roster is not being rotated as per law. As observed earlier, repetition of reservation by rotation is possible. Roster cannot be rotated uniformly for different categories. Applying simple mathematics, 50% reservation will be repeated in third cycle whereas 20% reservation may not be repeated upto sixth cycle.

4(v) Application of Reservation Roster in cases of separation, bifurcation, creating of Gram Panchayats and/or their merger with new Blocks.

4(v)(a) There could be a situation where before holding of an election, an old Gram Panchayat is re-organized, bifurcated, separated or a new Gram Panchayat is created in a Block. There could be situations, where after re-organization of a Gram Panchayat, certain constituent villages of old Gram Panchayat are merged with a new Gram Panchayat in a different Block or a Gram Panchayat is made part of a different Block. Applicability of election reservation roster and its rotation in these changed scenarios of old and new position of villages/Gram Panchayats/Blocks assumes significance. Sticking to the facts of lead case : after 2015 elections, a new Block Kupvi from old Block

Chopal was created and consequently, certain Gram Panchayats were transferred from Chopal to Kupvi Block. Additionally, certain new Gram Panchayats were created in Chopal Block. We heard these matters on number of days to understand the nitty-gritty of rotation of reservation roster covering such situations. Despite continued hearings of these matters for days together, no clear answer with respect to application and rotation of election reservation roster in such changed positions has been provided to us by the State. Learned Advocate General has emphatically tried to submit that even in such a situation, election reservation roster is being applied and rotated in accordance with law. Whereas learned counsel for the petitioners contended that many of the villages/constituents of old Gram Panchayats, after merging in new Gram Panchayats/new Blocks, were being considered in the merged areas with their old tags attached to them, resulting in wrong rotation of election reservation roster, thereby denying them right of representation.

Consideration of the merged areas with their old tags for purposes of applying and rotating the election reservation roster is contrary to the relevant provisions of the Statute and the Election Rules. The old tags attached with the villages in the old Panchayats/old Blocks will vanish after their merger with new

Panchayats/new Blocks. The election reservation roster in new Block/new Panchayat is required to be rotated strictly in accordance with the provisions of the Act and the Rules. In this regard, it will be apposite to refer to a judgment delivered on 09.10.2015 passed by Allahabad High Court in PIL No. 54764 of 2015, titled **Sant Ram Sharma Vs. State of U.P. and others alongwith connected matters.** Before the Allahabad High Court, inter alia, Constitutional validity of following provisos introduced by way of amendments to the U.P. Panchayati Raj (Reservation and Allotment of Seats and offices) (Tenth Amendment) Rules 2015 were in question, which provided for applicability of fresh roster after general modification in 'areas' of the 'Panchayat areas' in the State.

"A IV The amending Rules of 2015 The provisions of the Rules of 1994 were amended by the tenth amendment Rules of 2015 which were notified on 16 September 2015. As a result of the amendment, the following proviso was introduced in Rule 4(4):

"Provided further that whenever there is General delimitation of territorial constituencies of Gram Panchayats in the State on the basis of General modification in areas of 'Panchayat areas' of Gram Panchayats in the State or otherwise, before a General election of the members of Gram Panchayats, then the allotment of number of seats as provided in Rule 3 shall be made afresh to different territorial constituencies without taking into consideration their status of allotment in previous elections."

A similar proviso was introduced into Rule 4(6). Correspondingly, Rule 5(2), which provides for the allotment of offices of pradhans for the Scheduled Castes,

the Scheduled Tribes and the Other Backward Classes by rotation, was amended by the introduction of the following proviso:

"Provided further that whenever there is General modification in areas of the 'Panchayat areas' of Gram Panchayats in the State, on the basis of change in population of 'Panchayat areas' or otherwise, before a General election for the offices of Pradhans, then the allotment of number of offices of Pradhans for the Scheduled Tribes, the Scheduled Castes and the Backward Classes, as determined in sub-rule (1), shall be made afresh to different Gram Panchayats in the Khand without taking into consideration their status of allotment in previous elections."

Rule 5(4) has also been amended by the introduction of a proviso which reads as follows:

"Provided further that whenever there is General modification in areas of 'Panchayat areas' of Gram Panchayats in the State, on the basis of change in population of 'Panchayat areas' or otherwise, before a General election for the offices of Pradhans, then the allotment of number of offices of Pradhans reserved for women shall be made afresh without taking into consideration their status of allotment in previous elections."

While upholding the validity of the above amendments in the Rules, it was observed by the Court as under :-

"In the facts of the present case, we are inclined to hold that the State Government has not acted arbitrarily or in violation of the underlying principles which emerge from the provisions of [Article 243D](#) of the Constitution and the U P Panchayat Raj Act 1947 in making the amendment to the Rules of 1994. The facts which have been narrated in the counter affidavit filed by the State Government as well as in the supplementary affidavit which has been filed in these proceedings, have not been controverted in any of the writ petitions. No countervailing material or factual data to dispute the material placed on the record by the State have been produced by the petitioners. The material which has been placed before the Court in the form of facts and figures is sufficient to indicate that there was a due and proper application of mind to the circumstances which had resulted in a situation where, over the last twenty years, there had been no delimitation exercise in the State of Uttar Pradesh. Admittedly, after 1995, a delimitation was carried out for the first time in 2014-15. The exercise of delimitation and the creation of new gram panchayats was the result of a massive exercise of reorganization and delimitation. In the meantime, based on the census

figures of 2001 and 2011, there has been a major change in the demographic profile of the territorial constituencies in the rural parts of the State. These facts have not been disputed before the Court. The only submission which has been urged in response to the materials which have been placed on the record is that, as a result of the decision of the State Government based on the Rules of 2015 allowing the State to carry out a fresh exercise of rotation, those constituencies which had an expectation of a seat being rotated in accordance with the erstwhile cycle would be deprived of that opportunity now. In particular, it was sought to be emphasized that, insofar as the Scheduled Castes in the State are concerned, 21 percent of the total number of seats would have been reserved during the course of each of the four elections which took place between 1995 and 2010. On this basis, it was sought to be submitted that 84 percent of the total constituencies have been reserved in the four previous elections leaving in balance 16 percent of the remaining constituencies which may have a small or marginal representation from amongst reserved categories. This hypothesis is countered by the Chief Standing Counsel by submitting that there is no guarantee that a seat or constituency will be reserved necessarily for a particular category in an ensuing election since an arrangement has to be made on each occasion in a descending order of population based on population figures. In our view, the point to be noted is that the exercise which has been conducted by the State Government, has not either abrogated the principle of rotation or deprived any reserved category - be it the Scheduled Castes, Scheduled Tribes, Other Backward Classes or women of their entitlement. The principle on the basis of which reserved seats would be determined in the panchayats and for the offices of chairpersons, would be strictly in accordance with the norms which have been laid down in [Article 243D](#) and as specified in [Section 11-A](#) and [Section 12 \(5\)](#) of the U P Panchayat Raj Act. During the course of every election to the three-tier panchayats, the process of allocating reserved seats to territorial constituencies and of rotating constituencies has to be necessarily carried out. The Rules, in their original form, make it clear that the principle of rotation has to be applied as far as may be. The words 'as far as may be' which are used in Rule 4(4), Rule 4(6) and in Rule 5(2) are indicative of the fact that rotation itself is subject to such situational variations that may be required. When an electoral exercise on as gigantic scale as envisaged in the State of Uttar Pradesh is to be carried out, situational variations are liable to occur. The constitutional validity of legislation or a subordinate legislation can not be made to depend upon such situational variations or aberrations.

Finally, before we conclude, we may also note that on behalf of the State, reliance was placed on a judgment of a Division Bench of this Court in *Krishna Dutt Mishra Vs State of U P*. The judgment of the Division Bench was delivered on 18

July 2005 which is prior to the decision of the Supreme Court in *K Krishna Murthy (supra)*. The observations contained in the judgment of the Division Bench treat the principle of rotation purely as directory in nature. These observations of the Division Bench in *Krishna Dutt Mishra (supra)* will give way to the binding principles which have been laid down in the judgment of the Supreme Court in *K Krishna Murthy (supra)*. The object of the principle of rotation is to ensure that no community or reserved category can lay a claim to a reserved seat in perpetuity. Any observation to the contrary contained in the judgment in *Krishna Dutt Mishra (supra)* would have no binding effect in consequence. The observations in the judgment of the Division Bench on the availability of judicial review would also give way to the binding principles laid down by the Supreme Court in *K Krishna Murthy*.

The learned counsel appearing on behalf of the petitioners sought to draw sustenance from a judgment rendered by a Division Bench of the Bombay High Court in *Prashant Bansilal Bamb Vs State of Maharashtra*. The Division Bench held that in light of the previous statement made before the Bombay High Court by the State Election Commission coupled with the provisions of the State Rules of 1996 which mandated rotation of seats amongst reserved categories, the State Election Commission was bound to act in accordance with the rules. The judgment referred to, in our opinion, is clearly distinguishable inasmuch as in an earlier round of litigation before the Bombay High Court, the State Election Commission had made an affirmation on oath that it would implement the rotation policy from the next elections. While the Rules, which fell for consideration, had been promulgated in 1996, the first elections had taken place in 1997 and the elections thereafter were to be held in 2007. It was in the above factual backdrop that the above decision came to be rendered. Insofar as the State of Uttar Pradesh is concerned, we find that the rotation policy had been followed in four subsequent elections and the cycle of rotation itself had been substantially completed. More importantly, we are faced with a statutory amendment which, while not doing away with the system of rotation only bids all to treat the ensuing elections to be the first elections and consequently provide that rotation would commence afresh. In the light of the above distinguishing features, we find that the judgment of the Bombay High Court does not carry the case of the petitioners any further."

In the instant case, relevant statutory provisions and the Rules have not been amended. It is the year 2010, which for the purposes of application and rotation of election reservation roster,

has to be treated as first election year. Therefore, rotation of election reservation after even change of territorial areas of Gram Panchayats/Block, has to be strictly in consonance with the applicable legal provisions. However, we do not have the wherewithal to go into the voluminous statistics and data in this regard, at this stage, when elections to Panchayati Raj Institutions have already been announced and the election process is underway. We have already spent number of days to comprehend basic facts about application, implementation and rotation of election reservation roster. We are also conscious of the limitations set forth on such exercise of judicial review in view of bar of jurisdiction imposed by Article 243-O of the Constitution of India, which is quoted hereinbelow :-

“243-O. Bar to interference by courts in electoral matters - Notwithstanding anything in this Constitution-

(a) 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;

(b) 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 for by or under any Law made by the Legislature of a State.”

In Bal Krishan and others Vs. State of H.P. and others 2015 (6) ILR (HP) 914, this Court considered the preliminary objections relating to maintainability of the writ petitions questioning the constitution, re-constitution, delimitation, reservation of the Panchayat areas, merger of Panchayats with

Municipal areas and vice-versa, change of headquarters of Gram Panchayats, amalgamation and alteration of respective Panchayat areas on ground that such actions of respondents were in violation of H.P. Panchayati Raj Act, 1994, Himachal Pradesh Panchayati Raj (Election) Rules 1994 etc. After considering entire legal gamut, the position was summed up in following operative para 33 :-

“33. The proposition which can now be culled out from the above noted judgments of the Hon'ble Supreme Court and other High Courts including this Court is that:-

(1) The word "election" appearing in Article 243-O and the provisions contained in the 1994 Act and the rules framed thereunder bears larger connotation. It embraces and includes all steps commencing from the date of notification by the Competent Authority, whereby the electorates are called upon to elect Pradhans and Up-Pradhans and ending with declaration of result. Reservation of offices of Pradhan and Wards in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women, preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny of nomination papers and withdrawal thereof, publication of the list of eligible candidates, allotment of symbols, appointment of election agents, the conduct of poll, counting of votes, declaration of results and all other ancillary steps taken for the purpose of holding elections fall within the ambit of the term "election". {N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Mohinder Singh Gill v. Chief Election Commissioner, Election Commission of India v. Shivaji and Election Commission of India v. Ashok Kumar (supra)}.

(2) (i) The bar contained in Article 243-O, which begins with non-obstante clause, debars all Courts from entertaining any challenge to law relating to delimitation of constituencies or allotment of seat made or purporting to be made under Article 243-K or election to the Panchayats. This bar also operates against the High Court's power of judicial review under Article 226. (N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Durga Shankar Mehta v. Raghuraj Singh, Election Commission of India v. Shivaji and Election Commission of India v. Ashok Kumar (supra))

(ii) The proposition contained in Clause (i) above is subject to the condition that challenge to the delimitation may be entertained in exceptional cases where no objections were invited and no hearing was given provided that such challenge is

made before issue of notification for holding election. {State of U.P. v. Pradhan Sangh Kshetra Samiti (supra)}.

(iii) The bar contained in Article 243-O (a) would operate immediately after publication of notification of delimitation of Panchayat areas even in cases where the same is challenged prior to issuance of notification of election.

(iv) The bar contained in Article 243-O(b) operates only till the adjudication of election dispute by an adjudicatory forum created by or under any law made by the Legislature of the State. An order made by an adjudicatory forum constituted under the law made by the State Legislature can be called in question by filing a petition under Article 226 of the Constitution.

(3) The bar contained in Article 243-O operates at all stages of the election i.e. notification issued by the State Election Commission calling upon the electorate to elect Pradhans and Up-Pradhans; reservation of offices of Pradhans in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women; preparation, printing and publication of electoral rolls (provisional and final); filing of nomination papers, scrutiny and withdrawal thereof; allotment of symbols; appointment of election agents; counting of votes and declaration of result.

(4) The bar contained in Article 243-O(b) does not operate qua challenge to the constitutionality of a statutory provision relating to elections, though, even in such a case, the High Court will be extremely loath to pass an interlocutory order which has the effect of stalling or jeopardizing the process of election or which may result in the constitutional hiatus on account of indirect violation of Article 243-K(3) read with Article 243-K(1).

(5) Where the petitioner raises grounds which is not barred under the aforesaid provisions of the Constitution and is not covered in any one of the grounds as prescribed under Section 175(1) of the Himachal Pradesh Panchayati Raj Act, then the bar of alternate remedy by way of election petition under Section 162 of the Act and further bar under Article 243-O of the Constitution would not be attracted. Even in such cases, the Court will not normally pass interlocutory orders, which has effect of interrupting, obstructing or protracting the election.”

(emphasis supplied)

Before High Court of Karnataka, in **Smt. Latha Vs.**

State of Karnataka CWP Nos. 22740-762/2016, rendered on judgment rendered on 06.01.2016, allocation of category-wise reservation to Zila Panchayats for the posts of Pradhans/Up-

Pradhans was contended to be in breach of relevant Statute and the Rules providing such reservation. State took up preliminary objection regarding maintainability of the petitions in view of Article 243-O of the Constitution of India. The Court held that allotment of seats for the post of Pradhans in Zila Panchayat would fall within the ambit and scope of Clause (a) of Article 243 of Constitution of India, therefore, writ jurisdiction of High Court cannot be invoked. The only remedy provided and allowed by the Constitution was of an Election Petition before the Competent Authority.

In the lead case, final reservation roster in different Blocks of District Shimla was issued on 14.12.2020. The Election Programme for conduct of general elections to Panchayati Raj Institutions in the State has been notified on 21.12.2020. The election process is already underway. Therefore, in view of ratio of Ram Swaroop's case (supra), more particularly the conclusion drawn in para 33(3) thereof, the bar contained in Article 243-O becomes operative. The writ petitions, therefore, cannot be considered as maintainable, at this stage.

Considering the above exposition of law, these writ petitions and the grievance(s) raised by the petitioners cannot be looked into at this stage when the elections for various Panchayati

Raj Institutions in the State have already been pronounced. Accordingly, these petitions are dismissed reserving liberty to the petitioners to avail appropriate remedy in accordance with law. Pending applications, if any, also stand disposed of.

Before parting with the judgment, having taken note of methodology adopted by the State in preparing, implementing and rotating the election reservation roster for reservation of offices/Gram Panchayats in elections to the Panchayati Raj Institutions in the State and various contentions advanced by learned counsel for the parties, we hereby issue following directions to the State to be followed in future :-

- (i) In cases of re-organization/bifurcation/separation/creation of Gram Panchayats/Blocks etc., reservation of offices therein should be allocated afresh based upon the 'changed' population structure in accordance with relevant provisions of applicable Statute and the Rules. However, while applying the Election Reservation Roster, proper care should be taken so that reservation roster gets rotated to the maximum extent possible ;
- (ii) Grievances of the petitioners with respect to application and rotation of election reservation roster over changed territories of Gram Panchayats/Blocks, howsoever genuine these might be, cannot be examined at this stage when election process is already

underway, in view of bar imposed by Article 243-O of Constitution of India. In such circumstances, we direct the respondent-State to ensure that, in future, the notification reserving offices in the Gram Panchayats/Blocks in the State for various categories in elections to Panchayati Raj Institutions is published and placed in public domain on the website of State Election Commission at least three months prior to the commencement of election process to enable timely adjudication of disputes pertaining to application/rotation of election reservation roster. All consequent steps in furtherance of same be also taken accordingly.

With the above observations, all the writ petitions are disposed of in the aforesaid terms.

**Tarlok Singh Chauhan,
Judge**

6th January, 2021 (K)

**Jyotsna Rewal Dua,
Judge**