

HIGH COURT OF MADHYA PRADESH, JABALPUR
BENCH AT INDORE

S.B.: Hon'ble Shri Justice Subodh Abhyankar

Writ Petition No.10960/2021

(Ranchod Jirati s/o Shatan

AND

Pushpa w/o Sanjay Parmar

Versus

The State of Madhya Pradesh

AND

TWO OTHERS)

(Case was heard on 26th / 27th August, 2021)

Counsel for the Parties : Shri Veer Kumar Jain, learned Senior Counsel along with Shri Akshat Pahadia, learned counsel for the petitioners. Shri Pushyamitra Bhargava, learned Additional Advocate General for respondents No.1 and 3 / State of Madhya Pradesh. Shri Kamal Airen, learned counsel for respondent No.2 / State Election Commission, Bhopal. Shri Abhinav P. Dhanodkar, learned counsel for intervener (Smt. Manjulata w/o Rakesh Patidar, President, Nagar Parishad, Anjad, District Barwani, r/o Patel Nagar, Anjad, District Barwani MP).

Whether approved for reporting : Yes

Law laid down : The sole question which falls for consideration of this Court is whether the nomination of Smt. Manjulata Rakesh Patidar, as the President of Municipal Council, Anjad, District Barwani (MP) is in accordance with provisions of Section 29-B (4) read with Section 37 of the Madhya Pradesh Municipality Act, 1961; and the following question was formulated by the Court: -

When the seat of the President is reserved under Section 29-B for women only, and there are women councillors available, both, where the seats are exclusively reserved for the women and also in the unreserved category where the women have been elected from open category, whether the women councillors who have been elected from the seats reserved for women exclusively can only be nominated as the President or, the post of the President can also be filled in by any woman councillor, from the pool of the women Councillors of the said Municipal Council, irrespective of the fact that whether she is elected from reserved category or unreserved category ?;

Held:

A perusal of Sub Section (4) of Section 29-B of the Act, which provides for reservation of the Office of

President of the Council, clearly reveals that the mandate is that “as nearly as possible fifty percent of the total number of offices shall be reserved for ‘women’ including the ‘women’ belonging to the Scheduled Castes, Scheduled Tribes or Other Backward Classes; and according to the Proviso to Section (2) of Section 37 of the Act which refers to filling of casual vacancies, provides that, “if the office of President is reserved under Section 29-B, the President shall be nominated from the elected Councillors belonging to *such*“reserved category. *For the purposes of this petition, the word ‘such’ here refers only to women category which is the reserved category for the post of President of the Municipal Council and the phrase “such reserved category” does not refer to the seats reserved only for women only but includes the women elected from any other seat as well.*

The Court has no hesitation to hold that when it comes to filing of vacancy through nomination of a President of reserved category of 'women' as provided under Section 37 of the Act, the only condition is that a candidate must be a 'woman' irrespective of her caste i.e. whether she is “Scheduled Caste”, “Scheduled Tribe”, “Other Backward Class” or “Unreserved Category” as the 'woman' itself is a “reserved category”. Thus, in the considered opinion of this Court, no distinction can be made between a 'woman' councillor of from a seat reserved for women only, or a woman councillor from any other seat; and both of them would be on the same pedestal, so far as the nomination of a woman councillor for the post of President is concerned.

Case relied upon **Bihari Lal Rada v. Anil Jain (Titu) and others** reported in (2009) 4 SCC 1.

Significant paragraph : From 14 to 23 numbers

O R D E R

Post for

13.09.2021

(Subodh Abhyankar)
Judge

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

Writ Petition No.10960/2021

(Ranchod Jirati s/o Shatan
Agriculturist,
104, Sawarkar Path, Ward No.11,
Anjad, District Barwani (MP)

Pushpa w/o Sanjay Parmar
House Wife & Councillor, 36/1, Sirvi Mohalla, Ward No.3,
Anjad, District Barwani (MP)

Versus

The State of Madhya Pradesh
Ministry of Urban Development & Housing Department,
Through Principal Secretary, Vallabh Bhawan, Bhopal

The State Election Commission
Through Secretary,
Nirwahan Bhawan, Bhopal

The Collector,
Office of Collector, Barwani
District Barwani MP)

* * * * *

Shri Veer Kumar Jain, learned Senior Counsel along with Shri Akshat Pahadia, learned counsel for the petitioners.

Shri Pushyamitra Bhargava, learned Additional Advocate General for respondents No.1 and 3 / State of Madhya Pradesh.

Shri Kamal Airen, learned counsel for respondent No.2 / State Election Commission, Bhopal.

Shri Abhinav P. Dhanodkar, learned counsel for intervener (Smt. Manjulata w/o Rakesh Patidar, President, Nagar Parishad, Anjad, District Barwani, r/o Patel Nagar, Anjad, District Barwani MP).

* * * * *

ORDER

(Passed on this 13th day of September, 2021)

This petition under Article 226 of the Constitution of India has been filed by the petitioners (both of whom are the Councillors in the Municipal Council, Anjad, District Barwani, MP) against the inaction on the part of the respondents to fill in the vacancy of the President of Municipality, Anjad, District Barwani, seeking the following relief: -

“(1) That, the Hon'ble Court be pleased to issue the writ in the nature of *mandamus*, order, direction, directing the respondent no.1 to communicate forthwith to Respondent No.2 about the vacancy arose on the post of the President of the Municipality, Anjad on account of death of the President of Municipality,

pality, Anjad as per Section 37 (1) of the Municipality Act, 1961.

(2) That, the Hon'ble Court be pleased to issue the writ in the nature of *mandamus*, order, direction, directing the respondent no.2 to hold elections for the Post of President of Municipality, Anjad at the earliest in terms of section 37 of the Municipality Act, 1961.

(3) That, the Hon'ble Court be pleased to issue the writ in the nature of *mandamus*, order, direction, directing respondent to nominate the President as per reservation roaster in terms of Section 37 (2) of the Municipality Act, 1961.

(4) That, the Hon'ble Court be pleased to issue the writ in the nature of *mandamus*, order, direction, directing the respondent to nominate the Councillor of Ward No.3 i.e. petitioner No.2 to discharge power & functions of the President of the Municipality, Anjad in terms Section 37 (2) of the Municipality Act, 1961 till the vacancy fulfilled in terms of section 37 (1) of the Municipality Act, 1961.

(5) Costs of this petition be awarded to the petitioner.

(6) Any other relief, which the Hon'ble Court deems fit in the facts and circumstances of the case, be granted to the petitioner.”

2. The petition has been subsequently amended and order dated 28.06.2021 (Annexure P/10) passed by respondent / State of Madhya Pradesh, appointing Smt. Manjula Rakesh Patidar, who is nominated as the President of the Municipal Council, Anjad District Barwani (MP), has also been challenged.

3. In brief, the facts giving rise to the present petition are that in the year 2018, the elections for the post of President and Councillors for the Municipality, Anjad, District Barwani (MP) were held and on 29.01.2018, the result was declared in which Smt. Santosh Shekhar Chand Patni was declared as the President of the said Municipality. However, on account of spread of COVID-19, Smt. Santosh w/o Shekhar Chand Patni suffered from Corona and passed away on 26.04.2021 (Annexure P/4). Another Councillor, (Gyarsi Bai w/o Bab-

ulal) of Ward No.7 also passed away on 04.08.2020. On 04.05.2021, vide Annexure P/6 a communication was made by the Collector, Barwani, who has recommended the name of Councillor of Ward No.3 (petitioner No.2 herein) to be nominated for the post of President, as per provisions of Section 37 of the Madhya Pradesh Municipality Act, 1961; and thereafter, as no order was passed in respect of petitioner No.2, nominating her as the President, a representation was also submitted by eleven councillors of the said Municipality on 18.06.2021 (Annexures P/7, P/8 and P/9), however, no orders were passed.

4. The present petition was filed on 23.06.2021, however, subsequently when the President was appointed by the respondent vide order dated 28.06.2021 (Annexure P/10), the petition has also been amended, assailing the aforesaid order, whereby Smt. Manjula Rakesh Patidar, Councillor of Ward No.4 has been nominated as the President of the Municipality till the next order, or till the elections are held.

5. Shri Veer Kumar Jain, learned Senior Counsel assisted by Shri Akshat Pahadia has assailed the order dated 28.06.2021 (Annexure P/10) of appointment / nomination of the President on the ground that it has been passed in violation of Section 29-B (4) as also Section 37 (2) of the Madhya Pradesh Municipalities Act, 1961 (herein after referred to as the 'Act of 1961').

6. Learned Senior Counsel has submitted that the respondents have failed to see that it is not a case of election of the President, but a case of nomination only; and despite the fact that Smt. Manjula Rakesh

Patidar (Councillor from Ward No.4), who has been nominated as the President of the Municipality Anjad, District Barwani (MP) as also the petitioner No.2 Smt. Pushpa w/o Sanjay Parmar, Councillor, Ward No.3 both belong to the Other Backward Classes (OBC), but still, since petitioner No.2 has contested the elections from a seat reserved for women only, whereas Smt. Manjula Rakesh Patidar has contested the elections from a seat not reserved for women, preference ought to have been given to petitioner No.2 which would also be in line with the provisions of Section 29-B (4) and proviso to Section 37 of the Act of 1961.

7. Learned Counsel has also drawn the attention of this Court to a letter dated 04.05.2021 (Annexure P/6) issued by the Collector, Barwani (MP) informing the Principal Secretary of the State of Madhya Pradesh, Urban Development & Housing Department, Bhopal, saying that as a vacancy has arisen on account of death of President of the Municipal Council, Anjad, District Barwani (MP), which has to be filled in, as per Section 37 (2) of the Act of 1961; and since as per the gazette notification dated 21.10.2014 (Annexure P/1), the President's post is reserved for woman for Municipal Council, Anjad; and as per gazette notification dated 12.05.2017 (Annexure P/2), the Councillors who were elected for Municipal Council, Anjad, for the seats reserved for 'women' were at Ward No.3 and Ward No.7; and since the Councillor of Ward No.7 has already died, appropriate orders may be passed.

8. Thus, Shri Jain has submitted that petitioner No.2 (who is elected from Ward No.3) is the only remaining councilor / candidate in the reserved category of woman to be appointed on the post of President; and the appointment of Smt. Manjulata Rakesh Patidar, who is an elected Councillor from Ward No.4 which is not reserved for women cannot be sustained in the eyes of law; and thus, it is submitted that the impugned order be quashed and respondents be directed to nominate / appoint petitioner No.2 as the President of the Municipal Council, Anjad, District Barwani (MP).

9. Shri Pushyamitra Bhargava, learned Additional Advocate General appearing for respondents No.1 and 3 / State of Madhya Pradesh, on the other hand, has vehemently opposed the prayer; and it is submitted that the petition being devoid of merits is liable to be dismissed, inasmuch as the petitioners have controverted the legal aspect of the matter; as the appointment / nomination of Smt. Manjulata Rakesh Patidar, a Councillor from Ward No.4 who belongs to OBC category, is in accordance with law; and needs no interference. Shri Bhargava, has also drawn the attention of this Court to the relevant provisions of Section 29-B (4) and Section 37 of the Act of 1961 to submit that the reservation on the post of President, as provided under proviso to Sub-Section (2) of Section 37 of the Act of 1961, clearly spells out that “if the Office of President is reserved under Section 29-B, the President shall be nominated from the elected Councillors belonging to such reserved category”, which means that since in the present case the “Re-

served Category” is ‘woman’, it would suffice, if any Councillor from ‘women’ category is appointed / nominated on the said post; and no distinction can be made between a ‘woman’ councillor of from a seat reserved for women only, or a woman councillor from any other seat; and both of them would be on the same pedestal, so far as the nomination of a woman councillor for the post of President is concerned. Thus, it is submitted that the petition being devoid of merits is liable to be dismissed.

10. In supported of his contention, Shri Bhargava has also relied upon a decision rendered by the Supreme Court in the case of **Bi-hari Lal Rada v. Anil Jain (Titu) and others** reported in (2009) 4 SCC 1.

11. Shri Abhinav P. Dhanodkar, learned counsel appearing for intervener (Smt. Manjula w/o Rakesh Patidar) has also opposed the prayer of the petitioner; and has submitted that nomination / appointment of Smt. Manjula Rakesh Patidar as the President of Municipal Council, Anjad, District Barwani (MP) is in accordance with law; and even otherwise, the petitioners have not arrayed Smt. Manjula Rakesh Patidar, as party respondent; and thus, the petition is liable to be dismissed for non-joinder of the “necessary party”.

12. In rebuttal, Shri Veer Kuma Jain, learned Senior Counsel has submitted that Smt. Manjula Rakesh Patidar is not a “necessary party”, as only the question of law is involved in the matter; and it is not necessary to hear her as she is only a nominee.

13. Heard learned counsel for the parties and perused the record.

14. The sole question which falls for consideration of this Court is whether the nomination of Smt. Manjulata Rakesh Patidar, as the President of Municipal Council, Anjad, District Barwani (MP) is in accordance with provisions of Section 29-B (4) read with Section 37 of the Act of 1961 or, in other words, in a Municipal council, while filling a casual vacancy u/s 37 of the Act of 1961, when the seat of the President is reserved under Section 29-B for women only, and there are women councillors available, both, where the seats are exclusively reserved for the women and also in the unreserved category where the women have been elected from open category, whether the women councillors who have been elected from the seats reserved for women exclusively can only be nominated as the President or, the post of the President can also be filled in by any woman councillor, from the pool of the women Councillors of the said Municipal Council, irrespective of the fact that whether she is elected from reserved category or unreserved category ?

15. To appreciate the dispute between the parties, it would be apt to refer to Section 29-B (4) and Section 37 of the Act of 1961, which read as under: -

“29-B Reservation of the office of President of the Council.-

(1) Out of the total number of offices of Presidents of Municipal Councils and Nagar Panchayats, as the case may be, in the State, such number of offices of Presidents shall be reserved for Scheduled Castes and Scheduled Tribes, as shall bear the same proportion, as nearly as possible, as the population of each of these categories within the limits of all the Municipal Councils and Nagar Panchayats, as the case may be, in the State bears to the total population.

(2) As nearly as possible twenty five percent of the total number of offices of Presidents of Municipal Councils and Na-

gar Panchayats, as the case may be, shall be reserved for Other Backward Classes.

(3) As nearly as possible [fifty percent] of the total number of offices of Presidents reserved under sub-sections (1) and (2) shall be reserved for women belonging to the Scheduled Castes, Scheduled Tribes or Other Backward Classes, as the case may be.

(4) As nearly as possible [fifty percent] (including the number of offices reserved for women belonging to the Scheduled Castes, Scheduled Tribes or Other Backward Classes) of the total number of offices shall be reserved for women.

(5) The aforesaid reservation shall be made in such manner as may be prescribed.

(6) The reservation of offices of President under sub-section (1), (2) and (3) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India.

Explanation: In this section and in Section 29-A the expression “Scheduled Castes”, “Scheduled Tribes” and “Other Backward Classes” shall have the same meaning as assigned to them in the Madhya Pradesh Lok Seva (Ansuchit Jatiyon, Ansuchit Janjatiyon Aur Anya Vargon Ke Liye Arakshan) Adhiniyam, 1994 (No.21 of 1994).

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

37. Filling to Casual Vacancies .-

(1) As soon as the office of a President, or seat of Councillor elected from ward, becomes vacant, or is declared vacant, or the election of President or the Councillor, as the case may be, is declared void, the State Government shall forthwith inform the State Election Commission for filling up the vacancy and the person so elected shall hold office of President or Councillor, as the case may be, only for the remaining period of the Council:

Provided that if the remaining period of the Council is less than six months, such vacancy shall not be filled in.

(2) Until the vacancy in the Office of President is filled in under sub-section (1), all the powers and duties of the President shall not be performed by such elected Councillor as the State Government may nominate in this behalf:

Provided that if the office of President is reserved under Section 29-B the President shall be nominated from the elected Councillors belonging to such reserved category.”

(emphasis supplied)

16. A perusal of Sub Section (4) of Section 29-B of the Act of 1961, which provides for reservation of the Office of President of the

Council, clearly reveals that the mandate is that “as nearly as possible fifty percent of the total number of offices shall be reserved for ‘women’ including the ‘women’ belonging to the Scheduled Castes, Scheduled Tribes or Other Backward Classes; and according to the Proviso to Section (2) of Section 37 of the Act of 1961 which refers to filling of casual vacancies, provides that, “if the office of President is reserved under Section 29-B, the President shall be nominated from the elected Councillors belonging to *such* “reserved category”. *For the purposes of this petition, the word ‘such’ here refers only to women category which is the reserved category for the post of President of the Municipal Council and the phrase “such reserved category” does not refer to the seats reserved only for women only but includes the women elected from any other seat as well.*

17. So far as the decision rendered by the Supreme Court in the case of Biharilal Rada (supra) is concerned, it has been held, as under: -

“40. Be that as it may, neither Article 243 T of the Constitution nor Section 10 (5) of the Haryana Municipal Act provide for any reservation to the office of the President in favour of any candidate who does not belong to Scheduled Caste or Backward Class. Obviously there cannot be any such reservation of seats in Municipalities nor to the office of Chairperson in favour of candidates belonging to general category. There is no separate category like general category. The expression belonging to the general category wherever employed means the seats or offices earmarked for persons belonging to all categories irrespective of their caste, class or community or tribe. The unreserved seats euphemistically described as general category seats are open seats available for all candidates who are otherwise qualified to contest to that office.

41.

42. There is nothing in the provisions of the Act, 1973 suggesting that in case the office of the President of a Municipality is required to be filled in from the members belonging to the general category then only a member who has been elected as such from an unreserved ward alone can stand for election. There is nothing in law that a person belonging to Backward Class and got himself elected from a ward reserved for that class is debarred from contesting the election to the office of President/Chairperson when that office is not reserved and meant to be filled in from the members belonging to the general category.

43. In our view, wherever the office of the President of a Municipality is required to be filled in by a member belonging to Scheduled Caste, Scheduled Tribe or Backward Class as the case may be it would be enough if one belongs to one of those categories irrespective of the fact whether they have been elected from a general ward or a reserved ward. Likewise, the office of the President of a Municipality if not reserved or meant for general category, all the candidates irrespective of their caste, class or community and irrespective of the fact whether they have been elected from a reserved ward or a general ward are entitled to seek election and contest to the office of the President of the Municipality.

44. For the aforesaid reasons we hold that the High Court ought not to have interfered with the proceedings where-under the appellant was declared to have been duly elected as the President of Municipal Council, Hisar. The impugned judgment is, accordingly, set aside.”

(Emphasis supplied)

18. It is also found that in the notification dated 21.10.2014 (Annexure P/1) in respect of Municipal Council, Anjad, District Barwani (MP) Ward Nos.4, 5 and 6 have also been reserved for ‘women’ only, which is apparent from the Entry made in Serial No.7, which reads, as under: -

“अधि. क्र. 55 – एफ – 1-19-17 – अठारह-3.- मध्यप्रदेश नगरपालिका (अनुसूचित जाति, जनजाति, पिछड़ा वर्ग एवं महिलाओं के लिये वार्डों का आरक्षण) नियम, 1994 के नियम 7 की अपेक्षा अनुसार नगरपरिषद् अंजड़, जिला बड़वानी के लिये आरक्षित वार्डों की सूचना निम्नानुसार प्रकाशित की जाती है:-

क्र. (1)	वर्ग जिसके लिए आरक्षण किया गया (2)	आरक्षित वार्डों की संख्या (3)	आरक्षित वार्डों के क्रमांक व नाम (4)
1	अनुसूचित जाति के लिये आरक्षित कुल वार्ड	03	वार्ड क्रमांक 08 जवाहर वार्ड वार्ड क्रमांक 13 डॉ. अम्बेडकर वार्ड वार्ड क्रमांक 15 नगरी माता वार्ड
2	अनुसूचित जनजाति के लिये आरक्षित कुल वार्ड	03	वार्ड क्रमांक 01 नर्मदा सागर वार्ड वार्ड क्रमांक 05 सावरकर वार्ड वार्ड क्रमांक 06 मुखर्जी वार्ड

3	अन्य पिछडा वर्ग के लिये आरक्षित कुल वार्ड	04	वार्ड क्रमांक 04 सरदार पटेल वार्ड वार्ड क्रमांक 09 राणाप्रताप वार्ड वार्ड क्रमांक 11 गांधी वार्ड वार्ड क्रमांक 12 विवेकानंद वार्ड
4	अनुसूचित जाति की महिलाओं के लिये आरक्षित कुल वार्ड	02	वार्ड क्रमांक 08 जवाहर वार्ड वार्ड क्रमांक 13 डॉ. अम्बेडकर वार्ड
5	अनुसूचित जनजाति की महिलाओं के लिये आरक्षित कुल वार्ड	02	वार्ड क्रमांक 05 सावरकर वार्ड वार्ड क्रमांक 06 मुखर्जी वार्ड
6	अन्य पिछडा वर्ग की महिलाओं के लिये आरक्षित कुल वार्ड	02	वार्ड क्रमांक 04 सरदार पटेल वार्ड वार्ड क्रमांक 09 राणा प्रताप वार्ड
<u>7</u>	<u>महिलाओं के लिये (उक्त सरल क्रमांक 4, 5 व 6 के अलावा) आरक्षित वार्ड.</u> ”	<u>02</u>	<u>वार्ड क्रमांक 03 अम्बिका वार्ड वार्ड क्रमांक 07 सुभाष वार्ड</u>

(emphasis supplied)

19. Thus, so far as the “reserved category” for ‘women’ is concerned, according to Sub-Section (4) of Section 29-B of the Act of 1961, it includes all the categories of ‘women’ irrespective of the fact whether they are from the seats exclusively reserved for women or from unreserved seats, which is also apparent from notification dated 21.10.2014 (Annexure P/1) which amongst other Municipalities also includes Municipal Council, Anjad, District Barwani (MP) in which total reserved wards are 18 (eighteen), out of which, the wards reserved for ‘women’ are Ward No.3 and Ward No.7, in addition to Ward Nos.4, 5 and 6. So far as Ward Nos.4, 5 and 6 are concerned, they are also reserved for women category but out of which Ward no.4 is reserved for OBC women , whereas Wards nos. 5 and 6 are reserved for ST category women only which is also apparent from the result of the election declared vide Gazette Notification dated 29.01.2018 filed as Annexure-P/3.

20. In view of the aforesaid discussion, this Court has no hesitation to hold that when it comes to filing of vacancy through nomination of a President of reserved category of women as provided under Section 37 of the Act of 1961, the only condition is that a candidate must be a 'woman' irrespective of her caste i.e. whether she is "Scheduled Caste", "Scheduled Tribe", "Other Backward Class" or "Unreserved Category" as the woman itself is a reserved category. Thus, in the considered opinion of this Court testing the aforesaid facts on the anvil of the decision rendered by the Supreme Court in the case of Biharilal Rada (supra), no distinction can be made between a woman candidate of reserved category or an unreserved category.

21. Thus, the contentions of Shri Veer Kumar Jain cannot be accepted, that the seat of President is reserved for 'women' of unreserved category only as the same being fallacious, is liable to be rejected.

22. In view of the same, this Court does not find any fault in appointment of Smt. Manjulata Rakesh Patidar, a Councillor from Ward No.4, as the President of Municipal Council Anjad, District Barwani (MP) which falls within the prerogative of the State Government as provided under Section 37 of the Act of 1961, and the petition so far as it relates quashment of the order dated 28.06.2021, is hereby ***dismissed***. Thus, the impugned order dated 28.06.2021 is hereby ***upheld***.

23. This Court also finds that relief No.1 and 2 sought by the petitioners in the present petition have already been taken care of by

this Court in **Writ Petition No.5456/2019 (Rakesh Soni v. The State of MP & others)** and **Writ Petition No.5506/2019 (Smt. Premabai v. The State of MP & others)** order dated **15.05.2019**; and the respondents shall be bound by the aforesaid order and shall act accordingly.

24. Resultantly, the petition is hereby partly allowed, as aforesaid. The Interim relief granted earlier on 13.07.2021 stands vacated.

No costs.

(Subodh Abhyankar)
Judge