

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**(Division Bench)**

**W.P. No.20761/2020**

*Balram Malviya*  
**-Versus-**  
*The State of M.P. and others*

Shri Shreyas Dharmadhikari, Advocate for the petitioner.

Shri Pushendra Yadav, Additional Advocate General for the respondents/State.

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**CORAM :**

**Hon'ble Shri Justice Mohammad Rafiq, Chief Justice.**  
**Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

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**ORDER**  
**(Jabalpur, dtd.26.02.2021)**

**Per : Vijay Kumar Shukla, J.-**

The instant petition has been preferred under Article 226 of the Constitution of India, seeking a direction to the respondents No.1 and 2, to conduct election of the Municipal Council, Sanchi District Raisen, as per notification published in the M.P. Gazette on 21-10-2014. The petitioner is also seeking a direction that the notification dated 11-12-2020 be made effective from the election to be held in year 2026.

2. The petitioner is an Ex-President of the Municipal Council, Sanchi and he served as President of the Municipal Council from the year 2008 to 2013 for a period of five years. Municipal

Council, Sanchi was established in the year 1998 and ever since the same has been reserved for the Scheduled Caste (SC), quoted as per the Rules called *Madhya Pradesh Municipalities (Reservation of the Office of Mayor & President) Rules, 1999* [hereafter referred to as “the Rules 1999”].

3. The contention of the petitioner is that the last election of the Municipal Council was held in the year 2013 on the basis of notification issued under Rules 1999. In the said election the post of the President of Municipal Council, Sanchi was reserved for SC (female). The terms of the said Municipal Council was up to the year 2018. In the meantime, a notification under the Rules 1999 was issued on 21-10-2014, in which the seat of the President of the Municipal Council, Sanchi was reserved for SC (female). After completion of the term of the Municipal Council, the election was not held, due to administrative reasons, and now the impugned notification has been issued under Rules 1999, and again by the Notification dated 11-12-2020, the seat of the President of the Municipal Council, Sanchi has been reserved for SC (female).

4. It is contended that as per Rule 7 of the Rules 1999, if reservation is made in a Municipality under Rules 5 and 6, whereas an elected Corporation or Council exists, then such Corporation or

Council shall be affected by such reservation and such reservation shall be deemed to be effective for the purpose of next general election of such Municipality. It is further contended that in the election held in the year 2013, the seat was reserved for SC (female). Thereafter, during existence of the Municipal Council a notification was issued on 21-10-2014, wherein the seat was reserved for SC (male). Therefore, as per Rule 7 of the Rules 1999, the said notification should be made effective in the upcoming election of the Municipal Council, Sanchi and the reservation which was notified on 11-12-2020, should be made effective in the next general election of the year 2026.

**5.** The respondents have filed reply and submitted that the reservation was carried out in the year 1999 in which the seat of the President of the Municipal Council, Sanchi was reserved for SC (female), and at a particular time there was existing Council, therefore, the said notification was applicable in the election held in the year 2013.

**6.** It is stated that the election conducted in the year 2013 was within a period of five years from the date of notification issued under the Rules 1999. Subsequently, a fresh notification was issued on 21-10-2014 and following the rotation system the seat of the

President of Municipal Council, Sanchi was reserved for SC (male). At that time, there was existing Council, therefore, the said reservation was not made applicable in the said Council and the same was required to be implemented in the next election which ought to have been held in the year 2018. It is further canvassed that due to some administrative reasons, the election could not be held from the year 2018 till date. In the meantime, the term of the reservation which was held in the year 2014, came to an end in the year 2019, in view of the Rules 1999 read with Section 36 of the M.P. Municipalities Act, 1961 [for short, “the Act of 1961”] and, therefore, there is no illegality in the notification, dated 11-12-2020, whereby the seat of the President of Municipal Council, Sanchi has again been reserved for SC (female).

7. Having regard to the arguments advanced on behalf of the parties, it is apposite to refer Rules 4 to 7 of the Rules 1999, which are extracted hereunder :

*“4. Term of reservation. - (1) The term of reservation shall be co-terminus with the term of the Corporation and the Council as specified in Section 20 of the Madhya Pradesh Municipal Corporation Act, 1956 and Section 36 of the Madhya Pradesh Municipalities Act, 1961 respectively.*

*(2) If the office of the Mayor or President, as the case may be, falls vacant for any reason before the expiry of the term as specified in sub-rule (1), the*

*reservation shall be deemed to be applicable at the time of filling up the vacancy for the remaining period.*

**5. Procedure of reservation.** - (1) *Such number of offices shall be reserved for Scheduled Castes and Scheduled Tribes as shall bear the same proportion, as nearly as may be, as the population of each of these categories, within the limits of all the Municipal Corporations, all Municipal Councils and all Nagar Panchayats, as the case may be, in the State bears to the total population within such limits. Such offices shall be reserved in descending order in those Municipalities in which the percentage of population of Scheduled Castes or Scheduled Tribes, as the case may be, is highest in their total population.*

*Explanation.* - *If there is any Municipality where the percentage of population of both the Scheduled Castes and Scheduled Tribes is highest in their category, then reservation shall be made for such category whose percentage is higher in that Municipality.*

(2) *Leaving the Municipality where reservation has been made for Scheduled Castes, Scheduled Tribes, as the case may be, under sub-rule (1), lot of the names of the remaining Municipalities shall be drawn and as nearly as possible, one-fourth of the total offices shall be reserved for Other Backward Classes.*

(3) *Out of the offices reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes under sub-rules (1) and (2), as the case may be, as nearly as may be one-third offices shall be reserved for women of the aforesaid categories by drawing of lots.*

(4) *As nearly as may be one-third [including the number of offices reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes under sub-rule (3)] of the total number of seats, shall be reserved for women by*

*drawing of lot of the names of unreserved Municipalities.*

*(5) While calculating under sub-rules (1), (2), (3) and (4) the fraction less than half shall be ignored and fraction of half and more than half shall be counted as one.*

**6. Procedure of subsequent reservation.** - *For every subsequent reservation purpose, same procedure of reservation shall be adopted as laid down in Rule 5, but the reservation to be made by lot shall be by rotation system and for this purpose the names of Municipalities, offices of which have been reserved for a category shall not be included in the lot for the reservation of that category until such Municipality does not come again in the order of reservation.*

*Explanation.* - *The names of such Municipalities in which reservation for other women (including reservation for women belonging to the categories of Scheduled Castes, Scheduled Tribes and Other Backward Classes) has been made previously shall not be included in the lot for reservation of women belonging to any of such categories until the name of such Municipality does not come again for reservation of any women belonging to the aforesaid category in the rotation system.*

**7. Existing Council not to be affected by reservation.** - *If reservation is made in a Municipality under Rule 5 or 6 where as elected Corporation or Council, as the case may be, exists then such Corporation or Council shall not be affected by such reservation and such reservation shall be deemed to be effective for the purpose of next general election of such Municipality.*”

*(Emphasis supplied)*

8. From a perusal of the aforesaid Rules, it is graphically

clear that Rule 4 stipulates that the term of reservation shall be co-terminus with the term of the Corporation and the Council as specified in Section 20 of the M.P. Municipal Corporation Act, 1956 [for brevity, “the Act of 1956”] and Section 36 of the Act of 1961 respectively. It further provides that if the office of the Mayor or President, as the case may be, falls vacant for any reason before the expiry of the term as specified in sub-rule (1), the reservation shall be deemed to be applicable at the time of filling up the vacancy for the remaining period.

9. Rule 5 of the Rules 1999 postulates procedure of reservation, which is not in dispute in the present case. Rule 6 prescribes procedure of subsequent reservation. It stipulates that for every subsequent reservation purpose, same procedure of reservation shall be adopted as laid down in Rule 5, but the reservation to be made by lot shall be by rotation system and for this purpose the names of Municipalities, offices of which have been reserved for a category, shall not be included in the lot for the reservation of that category, until such Municipality does not come again in the order of reservation. The explanation appended thereto, also provides that the names of such Municipalities in which reservation for other women (including reservation for women belonging to the categories of Scheduled Castes, Scheduled Tribes

and Other Backward Classes) has been made previously, shall not be included in the lot for reservation of women belonging to any of such categories until the name of such Municipality does not come again for reservation of any women belonging to the aforesaid category in the rotation system.

**10.** Rule 7 of the Rules 1999 deals with existing Council not to be affected by reservation. It stipulates that if reservation is made in a Municipality under Rule 5 or 6 whereas elected Corporation or Council, as the case may be, exists then such Corporation or Council shall not be affected by such reservation and ***“such reservation shall be deemed to be effective for the purpose of next general election of such Municipality”***. (Emphasis supplied)

**11.** In the obtaining factual matrix, election of the Municipal Council, Sanchi was conducted in the year 2013. A notification under the Rules 1999 was issued on 9-11-2009 and the seat of President of the Municipal Council, Sanchi was reserved for female category. The election on the basis of the aforesaid reservation took place in the year 2013 and one Smt. Sushila Ahirwar is said to be the President of the Council for the period 2013 to 2018. The next election was to be conducted in the year 2018. The notification under Rules 1999 was published on 21-10-2014 and as per the Rules



mentioned above, following rotation system under Rules 5, 6 and 7 of the Rules 1999, the post of President of Municipal Council, Sanchi, was rightly notified for the male category. Since the election which was supposed to take place in the year 2018 could not be conducted due to administrative reasons and as such, after the term of Smt. Sushila Ahirwar expired in the the year 2018, thereafter the Municipal Council, Sanchi was headed by the Government Administrator. The respondents No.1 and 2 have issued the impugned notification, dated 11-12-2020 whereby again, the seat of the President of Municipal Council, Sanchi has been reserved for the female category, which is against the mandate of the Rules 1999, as the election was supposed to take place in the year 2018, which was not held.

**12.** According to the petitioner, he has raised objection before the respondents No.1 and 2 on 9-12-2020 the very date on which the rotation reservation lots were being announced at Bhopal, but the same has been left unanswered and hence, the petitioner being aggrieved by the aforesaid action has approached this Court, as there is no other alternative efficacious remedy available to the petitioner for redressal of his grievance.

**13.** The stand of the respondents is that the reservation was carried out in the year 1999, in which the seat of the President of the Municipal Council, Sanchi was reserved for SC (female). At that particular time, there was existing Council, therefore, the said notification was applicable in the election held in the year 2013, which was conducted for a period of five years. A fresh notification was issued on 21-10-2014 and following the rotation system the seat of the President of the Municipal Council, Sanchi was reserved for SC (male). According to the respondents since the existing Council was there and for certain administrative reason, the election could not be held in the year 2018 till date. In the meantime, the term of reservation which was held in the year 2014, came to an end in the year 2019 by virtue of Rule 4 of the Rules 1999 and, therefore, a fresh notification dated 11-12-2020 has been issued reserving the seat of the President of the Municipal Council, Sanchi again for SC (female) and there is no illegality in the same.

**14.** We have heard the learned counsel for the parties and bestowed our anxious consideration on the arguments advanced *qua* the relevant Rules of the Rules 1999. Rule 4 specifically provides that the term of reservation shall be co-terminus with the term of the Corporation and the Council, as specified in Section 20 of the Act of 1956 and Section 36 of the Act of 1961. Rule 6 clearly

provides that for every subsequent reservation purpose, some procedure of reservation shall be adopted as laid down in Rule 5, but the reservation to be made by lot, shall be by rotation system and for this purpose the names of category shall not be included in the lot for the reservation of that category until such Municipality does not come again in the order of reservation. The explanation clause further stipulates that the names of such Municipalities in which reservation for other women (including reservation for women belonging to the categories of Scheduled Castes, Scheduled Tribes and Other Backward Classes) has been made previously, shall not be included in the lot for reservation of women belonging to the aforesaid category in the rotation system. Thus, rotation system has to be followed in the subsequent reservation.

**15.** On scanning of the Rule 7 of the Rules 1999, it is luminescent that if reservation is made in a Municipality under Rules 5 and 6, whereas elected Corporation or Council, as the case may be, exists then such Corporation or Council shall not be affected by such reservation and such reservation shall be deemed to be effective for the purpose of next general election of such Municipality. In the present case, admittedly, the respondents have issued the notification dated 21-10-2014, whereby the seat of the President of Municipal Council, Sanchi was reserved for SC (male),

but due to administrative reasons, the election which was due in the year 2018 could not be held and in the meantime, the notification dated 11-12-2020 has been issued, whereby seat of the President of the Municipal Council, Sanchi has been reserved for SC (female) again.

**16.** If we accept the contention of the learned counsel for the respondents/State, the same would be contrary to the provisions of Rules 4 and 7 of Rules 1999, as the seat of the President of the Municipal Council, Sanchi was reserved for SC (female) for the period 2013 to 2018. In the year 2018 as following the rotation system, the same was reserved for SC (male). However, because the election could not be held, now by notification dated 11-12-2020 the seat has been again reserved for SC (female).

**17.** In view of the provisions of Rules 4 and 7 of the Rules 1999, it is graphically clear that the term of reservation shall be co-terminus with the term of the Corporation and the Council. Rule 7 clearly provides that the reservation made under Rules 5 and 6, shall not affect the existing Corporation or Council and **such reservation shall be deemed to be effective for the purpose of next general election of such Municipality.**

**18.** In the present case, we find that the impugned notification, dated 11-12-2020, whereby again the seat of President of the Municipal Council, Sanchi has been reserved for the female category, runs counter to the provision of Rule 7 of the Rules 1999, as the elections which were supposed to take place in the year 2018, could not be held and as such current election which has to be held, shall be in accordance with the notification published on 21-11-2014 and not as per the impugned notification dated 11-12-2020.

**19.** In view of the aforesaid, the writ petition succeeds. We are of the considered view, that the election of the President of the Municipal Council, Sanchi, District Raisen, shall be held in accordance with the notification published on 21-10-2014 and not as per the notification dated 11-12-2020, and the seat of the President of the Municipal Council, Sanchi shall be treated to be reserved for SC (male) as per notification dated 21-10-2014.

**20.** *Ex-consequenti*, the **writ petition is allowed** in the above term. There shall be no order as to costs.

**(Mohammad Rafiq)**  
**Chief Justice**

**(Vijay Kumar Shukla)**  
**Judge**

*ac.*

