

**THE HIGH COURT OF JUDICATURE FOR MADHYA  
PRADESH AT JABALPUR**

(Division Bench)

**WRIT PETITION NO. 1302/2021**

Mohammad Azad

-Versus-

State of Madhya Pradesh & Others

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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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**Appearance:**

Shri Prabhakar Galaw, Advocate for the petitioner.

Shri Pushendra Yadav, Additional Advocate General for the respondents No.1 & 3/State.

Shri Siddharth Seth, Advocate for respondent No.2.

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Whether approved for reporting ? **Yes**

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**Law Laid Down:**

- (1) **Madhya Pradesh Municipalities Act, 1961 - Section 29** (*Determination of number and extent of wards and conduct of elections*) – **Section 29-A** (*Reservation of Seats*) & **Madhya Pradesh Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, 1994 - Rule 3** (*First time reservation of wards*) – Election for the post of Councillor in Municipal Council - **WHETHER** – *Ratio of reservation of seats for Scheduled Castes, Scheduled Tribes and Other Backward Classes in Municipal Council, can exceed 50% of the total number of wards* – **HELD** - Reservation of seats for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women in local self-government institutions is a measure of protective discrimination to weaker sections of society at the local level, intended to afford them adequate representation in local self-government, and to give them a chance to play leadership role. Vertical reservation provided in favour of SCs, STs & OBCs however, when taken together, in any case, cannot exceed upper limit of 50%. However, the upper ceiling limit of 50% can, in exceptional circumstances, be breached to provide reservation to Scheduled Tribes in Schedule-V areas but this cannot be invoked for

reservation in favour of backward classes for the purpose of local bodies located in general areas. Thus, Municipal Council Dhanpuri does not fall within the Schedule-V areas and therefore, the upper limit of 50% for providing reservation in favour of Scheduled Tribes cannot be breached in this case.

- (2) Limit of 50% reservation can be breached only if it is to be given to Schedule Tribes of the Panchayats in Scheduled Areas covered by Schedule-V of the Constitution, for there is compelling need in scheduled areas to safeguard interest of tribal communities by giving them effective voice in local self-government.

*Chronological List of Cases Cited:*

1. (2010) 7 SCC 202; *K. Krishna Murthy (Dr.) Vs. Union of India*;
2. (2010) 4 SCC 50; *Union of India Vs. Rakesh Kumar*
3. 1992 Supp (3) SCC 217; *Indra Sawhney vs. Union of India*.

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**Significant Paragraphs: 7 to 12 & 14**

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**O R D E R (Oral)**  
**(24.02.2021)**

**Per: Mohammad Rafiq, Chief Justice**

This writ petition has been filed by the petitioner praying for grant of following reliefs:

- “1) Summon the entire relevant record from the possession of the respondents for kind perusal of this Hon’ble Court.
- 2) This Hon’ble Court be pleased to set-aside the impugned order dated 28.11.2020 (Annexure P-1) passed by the respondent No.1.
- 3) This Hon’ble Court be pleased to set-aside the impugned Gazette Notification dated 10.12.2020 (Annexure P-2) passed by the respondent No.1.
- 4) This Hon’ble court be pleased to set-aside the impugned Gazette Notification dated 10.12.2020 (Annexure P-10) passed by the respondent No.1.
- 5) Further, this Hon’ble Court be pleased to direct the respondents to recategorize/undertake the process to declare the reservation seats.
- 6) Any other relief which this Hon’ble court deems fit and proper may kindly be granted.”

2. Shri Prabhakar Galaw, learned counsel for the petitioner argued that the petitioner belongs to Other Backward Classes (OBC) and is a resident of Ram Manohar Lohiya Ward. He is desirous of contesting election for the post of Councillor, Municipal Council, Dhanpuri, District Shahdol from that Ward, which is mentioned at Sl. No. 17 in the New Ward List. Learned counsel for the petitioner has placed reliance on Rule 3 of the Madhya Pradesh Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, 1994 (hereinafter referred to as the “Rules of 1994”) and contended that Section 29 of the Madhya Pradesh Municipalities Act, 1961 (for short “the Act of 1961”) talks about determination of number and extent of Wards and conduct of election. Section 29-A of the Act of 1961 provides for reservation of seats and clearly states that the seat in the Municipal Council shall be reserved for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women but ratio of such reservation in no event can exceed 50% of the total number of Wards. The learned counsel for the petitioner in support of his arguments, has relied on the judgments of the Supreme Court passed in the cases of *K. Krishna Murthy (Dr.) and Others Vs. Union of India and another; (2010) 7 SCC 202* and *Union of India and Others Vs. Rakesh Kumar and others; (2010) 4 SCC 50* and argued that as per the law laid down by the Apex Court in these cases the reservation of Scheduled Castes, Scheduled Tribes and Other Backward Classes can, in no case, exceed more than 50% of the total seats available. Referring to the Notification dated 10.12.2020

(Annexure P-2), the learned counsel for the petitioner submitted that out of total 28 Wards in the Municipal Council Dhanpuri, 3 have been reserved for Scheduled Castes, 5 for Scheduled Tribes and 7 for Other Backward Classes. Thus total 15 Wards have been reserved, which is exceeding 50% i.e. 14 number of Wards.

3. Learned counsel for the petitioner vehemently argued that issuance of the impugned notification dated 10.12.2020 (Annexure P-2) is contrary to law, because as per Section 29-A of the Act of 1961 the reserved seats cannot exceed more than 50%. He also invited attention of this Court towards the proceedings of the process of reservation carried out by the Collector and the minutes of meeting dated 26.11.2020 (Annexure P-7).

4. Shri Pushendra Yadav, learned Additional Advocate General for the respondents/State contested the aforesaid contentions and submitted that the instant writ petition is liable to be dismissed, because though the petitioner has assailed the validity of notification dated 10.12.2020, but he has not challenged the vires of either Section 29-A of the Act of 1961 or Rule 3 of the Rules of 1994. He submitted that the respondents have carried out the mandate of Section 29-A of the Act of 1961 and Rule 3 of the Rules of 1994 and have acted strictly in conformity therewith. It is contended that the communication dated 29.08.2019 (Annexure P-6) was issued earlier than issuance of the Notification under Rule 7 of the Rules of 1994 and, therefore, cannot now be of any help to the petitioner.

5. Sections 29 and 29-A of the Act of 1961 and Rule 3 of the Rules 1994, which are relevant for the purpose of deciding the present matter, read as under:

**Madhya Pradesh Municipalities Act, 1961**

**“29. Determination of number and extent of wards and conduct of elections. - (1)** The State Government shall from time to time, by notification in the official gazette, determine the number and extent of wards to be constituted for each Municipality:

Provided that the total number of wards shall not be more than forty and not less than fifteen.

**(2)** Only one Councillor shall be elected from each ward.

**(3)** The formation of the wards shall be made in such a way that the population of each of the wards shall, so far as practicable be the same throughout the Municipal area and the area included in the ward is compact.

**(4)** As soon as the formation of wards of a Municipality is completed, the same shall be reported by the State Government to the State Election Commission:

Provided that the process of inclusion or exclusion of area or reformation of wards inevitably be completed before six months of completion of tenure of any Municipal Council otherwise the State Election Commission shall start electoral process on the basis of preset and prevailing delimitation:

Provided further that inclusion or exclusion of such area or reformation of wards shall apply for upcoming election process.

**29-A. Reservation of seats. -**

**(1)** Out of the total number of wards determined under sub-section (1) of Section 29, such number of seats shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipality as bears as may be, the same proportion to the total number of seats to be filled by direct election in the Municipality as the population of the Scheduled Castes or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such wards shall be those in which the population of the Scheduled

Castes or the Scheduled Tribes, as the case may be, is most concentrated.

(2) As nearly as possible twenty-five percent of the total number of wards shall be reserved for Other Backward Classes in such Municipalities where fifty per cent or less seats are reserved for Scheduled Castes and Scheduled Tribes, and such seats shall be allotted by rotation to different wards in such manner as may be prescribed:

Provided that if from any ward so reserved, no nomination paper is filed for election, as a Councillor by any member of the Other Backward Classes then the Collector shall be competent to declare it as unreserved.

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

(4) As nearly as possible fifty percent (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes), of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats shall be allotted by rotation to different wards in a Municipality in such manner as may be prescribed.

(5) The reservation of seats under sub-sections (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 'Other Backward Classes' means category of persons belonging to Backward Classes as notified by the State Government.”

**M.P. Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, 1994**

**“3. First time reservation of wards.** - (1) Out of the total number of wards determined under sub-section (1) of Section 10 of the Madhya Pradesh Municipal Corporation Act, 1956 and sub-section (1) of Section 29 of the Madhya Pradesh Municipalities Act, 1961 such number of wards shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipality the proportion

of which in the total number of wards determined for that municipality may be, as nearly as may be, the same which is to the Population of the Scheduled Castes or of the Scheduled Tribes in that municipality bears to the total population of that municipality and such wards shall be those in a descending order in which the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, is most concentrated.

(2) As nearly as possible, twenty-five per cent of the total number of wards shall be reserved for other backward classes in such Municipalities, where out of the total number of wards fifty percent or less in number wards are reserved for Scheduled Castes and Scheduled Tribes, and such wards shall be reserved by lot from the remaining wards excluding the ward's, reserved for Scheduled Castes and Scheduled Tribes.

(3) Out of the wards reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes, as above, as nearly as possible fifty percent wards for the women of the aforesaid castes, as the case may be, shall be reserved, by lot:

Provided that where only one ward is reserved for the Scheduled Castes or Scheduled Tribes as the case may be, then in that case, such ward shall not be reserved for woman of Scheduled Castes or Scheduled Tribes, as the case may be.

**Explanation.** - When the Collector declares any ward as unreserved under sub-section (2) of Section 11 of the Madhya Pradesh Municipal Corporation Act, 1956 or sub-section (2) of Section 29-A of the Madhya Pradesh Municipalities Act, 1961, then such unreservation shall be limited to that election only.

(4) At the time of calculation under sub-rules (1), (2) and (3) fraction less than half shall be ignored and fraction equal to half or more shall be counted as one.

(5) Reservation of wards for ladies shall be made by deriving lot of unreserved wards, in such number that comes after subtracting the number of wards reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes under sub-rule (3) from as nearly as possible fifty percent in number of the total number of wards:

Provided that the number of wards reserved for women, including the wards reserved for the women of Scheduled Castes,

Scheduled Tribes and Other Backward Classes shall be as nearly as possible fifty percent of the total number of wards.

(6) The reservation made as aforesaid shall remain in force for the whole period of five years of Municipality including casual vacancies.

(7) In the context of Section 11 of the Madhya Pradesh Municipal Corporation Act, 1956 (No.25 of 1956) and Section 29-A of the Madhya Pradesh Municipalities Act, 1961 (No.37 of 1961), it is further clarified that the provision of fifty percent reservation for women shall be done horizontally in all categories, so that the overall reservation shall not exceed fifty percent.”

6. As would be seen from aforequoted provisions, process of inclusion and exclusion of the area of Wards shall be completed prior to six months of the date of completion of tenure of a Municipal Council. Otherwise, the Election Commission can start on the electoral process on the basis of number of seats prevailing within the municipal limit. Section 29-A of the Act of 1961, which is relevant for the purpose of deciding the present petition *inter alia* provides in Sub-section (1) that out of the total number of wards determined under sub-section (1) of Section 29, such number of seats shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipality as bears as may be, the same proportion to the total number of seats to be filled by direct election in the Municipality as the population of the Scheduled Castes or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such wards shall be those in which the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, is most concentrated. It is noticed from the minutes of the proceedings of the Collector, Shahdol (Annexure P-7) that total population of Dhanpuri Town as per the Census of 2011 is



45156, out of which 4261 are the members of Scheduled castes, percentage of which comes to 9.44% of the total population. When computed against all 28 wards, ratio of population of the Scheduled Castes comes to 2.64%. According to sub-rule (4) of Rule 3 of the Rules of 1994, at the time of calculation under sub-rules (1), (2) and (3) of Rule 3 thereof, fraction less than half shall be ignored but fraction equal to half or more shall be computed as one. Therefore, 03 seats have been reserved for Scheduled castes. Similarly, population of Scheduled Tribes as per the census figure of 2011 is 8390, which comes to 18.58% of the total population of 45156 and when computed against total number of 28 wards, their ratio comes to 5.20%. Since fraction of 0.20 is less than half, 5 Wards have been reserved for Scheduled Tribes.

7. There is no problem so far as the action of the respondents to the extent of providing reservation to Scheduled Castes and Scheduled Tribes is concerned. However, the difficulty arises at the stage of applying sub-section (2) of Section 29-A of the Act of 1961, which *inter alia* provides that as nearly as possible twenty-five percent of the total number of Wards shall be reserved for Other Backward Classes in such Municipalities where fifty percent or less seats are reserved for Scheduled Castes and Schedules Tribes, and such seats shall be allotted by rotation to different Wards in such manner as may be prescribed, provided that if from any ward so reserved, no nomination paper is filed for election, as a Councillor by any member of the Other Backward Classes, then the Collector shall be competent to declare it

as unreserved. Sub-Rule (2) of Rule 3 of the Rules of 1994 is also identically worded, which provides that as nearly as possible, 25% of the total number of wards shall be reserved for Other Backward Classes in such Municipalities, where out of the total number of wards, 50% or less in number wards are reserved for Scheduled Castes and Scheduled Tribes, and such wards shall be reserved by lot from the remaining wards excluding the wards, reserved for Scheduled Castes and Scheduled Tribes (underlining ours).

8. At this stage, it is also to be noted that Sub-section (3) of Section 29-A of the Act, 1961 provides that as nearly as possible 50% of the total number of seats reserved under sub-sections (1) and (2), shall be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes or Other Backward Classes, as the case may be. Sub-section (4) provides that as nearly as possible 50% (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes), of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats shall be allotted by rotation to different wards in a Municipality in such manner as may be prescribed. Sub-section (5) of Section 29-A of the Act of 1961 stipulates that the reservation of seats under sub-sections (1), (2) and (3) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India.

9. The Constitution Bench of the Supreme Court in ***K. Krishna Murthy (supra)*** had the occasion to examine this question in the

context of reservation provided in local self-government institutions. Their Lordships held that the nature and purpose of such reservation provided under Articles 243-D and 243-T of the Constitution of India, are a measure different from reservation provided under Articles 15(4) and 16(4) of the Constitution of India. Reservation in local self-government institutions is a measure of protective discrimination to weaker sections of society at the local level, intended to afford them adequate representation in local self-government, and to give them a chance to play leadership role. Vertical reservation provided in favour of SCs, STs and OBCs however, when taken together, in any case, cannot exceed upper limit of 50%. However, the upper ceiling limit of 50% can, in exceptional circumstances, be breached to provide reservation to Scheduled Tribes in Schedule-V areas but this cannot be invoked for reservation in favour of backward classes for the purpose of local bodies located in general areas. The relevant paras 64 to 67 and 82 of the judgment are reproduced hereunder:

“64. In the absence of explicit constitutional guidance as to the quantum of reservation in favour of backward classes in local self-government, the rule of thumb is that of proportionate reservation. However, we must lay stress on the fact that the upper ceiling of 50% (quantitative limitation) with respect to vertical reservations in favour of SCs/STs/OBCs should not be breached. On the question of breaching this upper ceiling, the arguments made by the petitioners were a little misconceived since they had accounted for vertical reservations in favour of SCs/STs/OBCs as well as horizontal reservations in favour of women to assert that the 50% ceiling had been breached in some of the States. This was clearly a misunderstanding of the position since the horizontal reservations in favour of women are meant to intersect with the vertical

reservations in favour of SCs/STs/OBCs, since one-third of the seats reserved for the latter categories are to be reserved for women belonging to the same. This means that seats earmarked for women belonging to the general category are not accounted for if one has to gauge whether the upper ceiling of 50% has been breached.

65. Shri Rajeev Dhavan had contended that since the context of local self-government is different from education and employment, the 50% ceiling for vertical reservations which was prescribed in *Indra Sawhney vs. Union of India, 1992 Supp (3) SCC 217*, cannot be blindly imported since that case dealt with reservations in government jobs. It was further contended that the same decision had recognised the need for exceptional treatment in some circumstances, which is evident from the following words (SCC, p. 735, paras 809-10):

"809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in Clause (4) of Article 16 should not exceed 50%.

810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being put of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

66. Admittedly, reservations in excess of 50% do exist in some exceptional cases, when it comes to the domain of political representation. For instance, the Legislative Assemblies of the States of Arunachal Pradesh, Nagaland, Meghalaya, Mizoram and Sikkim have reservations that are far in excess of the 50% limit. However, such a position is the outcome of exceptional considerations in relation to these areas. Similarly, vertical reservations in excess of 50% are permissible in the composition of local self-government institutions located in the Fifth Schedule Areas.

67. In the recent decision reported as *Union of India Vs. Rakesh Kumar, (2010) 1 SCALE 281*, this Court has explained why it may be necessary to provide reservations in favour of

Scheduled Tribes that exceed 50% of the seats in panchayats located in Scheduled Areas. However, such exceptional considerations cannot be invoked when we are examining the quantum of reservations in favour of backward classes for the purpose of local bodies located in general areas. In such circumstances, the vertical reservations in favour of SC/ST/OBCs cannot exceed the upper limit of 50% when taken together. It is obvious that in order to adhere to this upper ceiling, some of the States may have to modify their legislation so as to reduce the quantum of the existing quotas in favour of OBCs.

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82. In view of the above, our conclusions are:-

- (i) The nature and purpose of reservations in the context of local self-government is considerably different from that of higher education and public employment. In this sense, Articles 243-D and Article 243-T form a distinct and independent constitutional basis for affirmative action and the principles that have been evolved in relation to the reservation policies enabled by Articles 15(4) and 16(4) cannot be readily applied in the context of local self-government. Even when made, they need not be for a period corresponding to the period of reservation for purposes of Articles 15(4) and 16(4), but can be much shorter.
- (ii) Article 243-D(6) and Article 243-T(6) are constitutionally valid since they are in the nature of provisions which merely enable the State Legislatures to reserve seats and chairperson posts in favour of backward classes. Concerns about disproportionate reservations should be raised by way of specific challenges against the State Legislations.
- (iii) We are not in a position to examine the claims about over breadth in the quantum of reservations provided for OBCs under the impugned State Legislations since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which are indeed quite different from the patterns of disadvantages in the matter of access to education and employment. As we have considered and decided only the constitutional validity of Articles 243-D(6) and 243-T(6), it will be

open to the petitioners or any aggrieved party to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court. We are of the view that the identification of 'backward classes' under Article 243- D(6) and Article 243-T(6) should be distinct from the identification of SEBCs for the purpose of Article 15(4) and that of backward classes for the purpose of Article 16(4).

(iv) The upper ceiling of 50% vertical reservations in favour of SC/ST/OBCs should not be breached in the context of local self-government. Exceptions can only be made in order to safeguard the interests of Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas.

(v) The reservation of chairperson posts in the manner contemplated by Article 243-D(4) and 243-T(4) is constitutionally valid. These chairperson posts cannot be equated with solitary posts in the context of public employment.

10. In ***Rakesh Kumar (supra)***, the Supreme Court while examining the provisions of Article 243-M and 243-D and Schedule-V of the Constitution of India, in the context of extension of provisions of its Part-IX (Panchayati Raj System) to Scheduled Areas, held that the object and policy is to preserve protection already granted to Scheduled Areas under Schedule-V and simultaneously to extend Panchayati Raj System to those areas. But, while extending Panchayati Raj System, Scheduled Tribes cannot be put to a disadvantageous position, compared to protection already afforded to them under Schedule-V. Exceptional treatment has been given to Scheduled Tribes in Scheduled Areas in view of peculiar conditions of those areas. The Supreme Court in that case held that limit of 50% maximum reservation as prescribed in ***Indra Sawhney and others vs. Union of India and others, 1992 Supp (3) SCC 217***, applies to reservation of seats for Scheduled Castes and Scheduled Tribes in

Panchayats under Article 243-D of the Constitution of India. Article 243-D envisages proportionate representation and is distinct and an independent constitutional basis of reservation in Panchayati Raj institutions. Reservation under Article 243-D cannot be compared with affirmative action measures and merit. However, even if the law laid down in *Indra Sawhney (supra)* were to be applied, it does not recognize exceptions where reservation can exceed 50% in certain circumstances. It was however, held that reservation in Panchayats in Scheduled Areas is a fit case where exception can be applied, for the reason that there is compelling need in scheduled areas to safeguard interest of tribal communities by giving them effective voice in local self-government.

11. Applying the ratio of the aforesaid judgments however, it cannot be held that present case would fall in an exceptional category. Limit of 50% can be breached only if it is to be given to Schedule Tribes of the Panchayats in Scheduled Areas covered by Schedule-V of the Constitution. There is no such case here.

12. In the present case, in para 5.9 of the writ petition the petitioner has categorically pleaded as under:

“5.9 That after the resolution of the meeting was prepared the same was sent to the office of the respondent No.1. On receipt of resolution dated 30.05.2018, the respondent No.1 vide letter dated 29.08.2019 which was issued to the Collector very categorically stated that since the seat have been reserved as per the provisions of Rule 7 of Rules 1994, However, as there are 28 seats, 15 seats have been reserved and the same is a clear violation of Section 29 A of the Act of 1961 as the same reserved seats exceed 50% of the

total seats available. It is hereby clarified that Municipal Council Dhanpuri has 28 wards and each ward has 1 seat therefore, total number of wards comes to 28 and as per the provision of Section 29A, the maximum number of reservation viz 50% should be only 14 seats and not 15 seats. Therefore, as stated supra vide letter dated 29.08.2019 the respondent No.1 directed the Collector to re-initiate the process of reservation”.

13. It is evident from the letter dated 29.08.2019 (Annexure P-6) that the Government taking note of the fact that out of 28 Wards in the Municipal Council Dhanpuri, 15 Wards have been reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes which is in excess of 50%, directed the Collector, Shahdol that as per Section 29-A of the Act of 1961, reservation cannot exceed the limit of 50%. The Collector was required to re-submit the proposal for reservation in the Municipal Council, Dhanpuri in conformity with the Rules. The respondents in their counter affidavit have not denied the factum of the said direction of the Government to the Collector. However, the learned counsel for the respondents orally argued that the aforesaid communication was issued much prior to issuance of notice under Rule 7 of the Rules of 1994 and no interference can be made therewith now at this stage. It is thus evident that the State Government had already directed the Collector for making fresh proposal of reservation in the Municipality, intending to adhere to the upper limit of 50% in terms of Section 29-A of the Act, which was in conformity with ratio of the judgment rendered by the Constitution Bench of the Supreme Court in the case of *K. Krishna Murthy (supra)*.



14. Indubitably, the Municipal Council Dhanpuri does not fall within the Schedule-V areas and therefore, the upper limit of 50% for providing reservation in favour of Scheduled Tribes cannot be breached in this case. The Supreme Court clarified this aspect in *Rakesh Kumar (supra)* as to why it may be necessary to provide reservation in favour of the Scheduled Tribes that exceeds 50% of the seats in Panchayats located in Scheduled Areas. The Constitution Bench of Supreme Court therefore, in the case of *K. Krishna Murthy (supra)* categorically held that such exceptional considerations cannot be invoked while examining the quantum of reservation in favour of the Backward Classes for the purpose of local bodies located in general areas. It was held that in such circumstances, the vertical reservation in favour of SCs/STs/OBCs, when taken together, cannot exceed the upper limit of 50%. Their Lordships held that it is obvious that in order to adhere to this upper ceiling, some of the States may have to modify their legislation so as to reduce the quantum of existing quotas in favour of OBCs. No doubt, sub-section (2) of Section 29-A of the Act of 1961 provides that twenty-five percent of the total number of Wards shall be reserved for Other Backward Classes in Municipality but this provision is subject to two riders, firstly, that twenty-five percent need not be rigidly applied as it is preceded by the expression “as nearly as possible”; and secondly, it prescribes that such 25% of total number of Wards shall be reserved for OBC where 50% or less seats are reserved for Scheduled Castes and Scheduled Tribes. In other words, the rider of upper ceiling of

50% is implicit even in sub-section (2) of Section 29-A of the Act of 1961.

15. In view of our preceding analysis of law, the writ petition deserves to succeed. The notification dated 28.11.2020 (Annexure P-1) to the extent of providing reservation of 07 seats to Other Backward Classes (OBC) is set-aside with a direction to the respondents to provide reservation only for 06 (six) seats to the OBC so as to implement the direction of the Government dated 29.08.2019 and undertake a fresh exercise to provide such reservation by rotation in terms of Rule 3(3) of the Rules of 1994. Entire exercise shall be undertaken and completed at the earliest but not later than 15 days.

16. Accordingly, the writ petition is **allowed**. There shall no order as to costs.

**(MOHAMMAD RAFIQ)**  
**CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**

Amitabh