



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Writ Petition No.1041 of 2021

Decided on : March 6, 2023

Sunita Sharma

.....Petitioner

Versus

State of Himachal Pradesh & others

....Respondent

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting? Yes.

For the Petitioner : Mr. Ajay Sharma, Senior Advocate,
with Mr. Ajay Thakur, Advocate.

For the respondent : Mr. Hemant Vaid, Additional Advocate
General, for respondents No.1 to 3.

Mr. Nimish Gupta, Advocate, for
respondent No.4.

Mr. Kapil Dev Sood, Senior Advocate,
with Mr. Het Ram Thakur, Advocate,
for respondent No.5.

Vivek Singh Thakur, Judge

In instant petition, petitioner has assailed action of respondents-State, allowing respondent No.5 to contest and thereafter elect her as President of Municipal Council Dehra, District Kangra against the seat reserved for Women (General), on the ground that respondent No.5 Sunita Kumari, for belonging to a Scheduled Caste category, was not eligible to contest and seek election as President/Chairperson, which was reserved for Women belonging to General Category.

...2...

2. I have heard Mr. Ajay Sharma, learned Senior Advocate, on behalf of petitioner; Mr. Kapil Dev Sood, Senior Advocate, appearing for respondent No.5 and Mr. Hemant Vaid, learned Additional Advocate General, for respondent-State, and have also gone through the material placed before me.

3. Undisputed facts, in present case, are that for conducting elections for Members/Office-bearers of Municipal Councils and Nagar Panchayats in District Kangra, Deputy Commissioner Kangra issued Order dated 4.9.2020, announcing category-wise reservation of the Wards, whereby Ward No.3 Hanuman Mandir was allocated to General Category, whereas Ward No.6 Shiv Mandir was reserved for women.

4. On 17.12.2020, Government of Himachal Pradesh issued Notification, notifying reservation to the Offices of the Chairpersons in Municipalities in District Kangra, wherein office of Chairperson of Municipal Council Dehra was reserved for Women (General) Category.

5. Petitioner and respondent No.5 are elected Members of Municipal Council Dehra. Petitioner contested election from Ward No.6 Shiv Mandir against a seat reserved for Women (General Category), whereas respondent No.5 contested election from Ward No.3 Hanuman Mandir allocated

...3...

for General Category. It is also undisputed that respondent No.5 belongs to Scheduled Caste category.

6. Elections for electing Members of Municipal Council Dehra were conducted from on 10.1.2021 onwards and petitioner and respondent No.5 were declared elected as Ward Members from their respective Wards from which they contested the election. Thereafter, election for Office of President/Chairperson of Municipal Council Dehra, which was reserved for Women belonging to General Category, was fixed on 18.1.2021.

7. Vide communication dated 15.1.2021, Returning Officer-cum-SDO(C), Dehra, sought clarification from Deputy Commissioner, Kangra, regarding reservation of post of President in Municipal Council Dehra, on the following points:

- “1. Whether a women of any category is eligible for the post of president?
2. If a women has not taken benefit of her SC category and has fought election in open ward, whether she is eligible for president post?
3. The women candidate has not attached any caste certificate with her nomination paper
4. In case the candidate of President seat under general category has no majority, what procedure we should adopt?”

8. District Election Officer-cum-Deputy Commissioner, Una, had also sought clarification with respect

...4...

to reservation of seats of Chairpersons and Members of Urban Local Bodies (ULB). In response thereto, vide communication dated 16.1.2021, Secretary (UD) to the Government of Himachal Pradesh had conveyed to the District Election Officer-cum-Deputy Commissioner, Una, as under:

"I am directed to refer to your letter No.60/ADC/LFA dated 12/01/2021 on the subject cited above and to say that similar matter was referred to Law Department by the Panchayat Raj Department and the opinion of the Law Department is as under:-

"The Hon'ble apex Court vide Judgment dated 10-02-2009 passed in Civil Appeal No.976 of 2009 titled as Bihari Lal Rada Vs Anil Jain (Tinu) and others on the basis of the Law laid down by the Hon'ble Apex Court in other cases has held that 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 in 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. From the law laid down by the Hon'ble Apex Court in the above titled case, this department is of the view that when a seat has been reserved for general category women then the women of Scheduled casts, Schedule Tribes and backward class category are also eligible for contesting election against that seat."

Similar advice was communicated to the District Election Officer-cum-Deputy Commissioner, Kangra, as well as Returning Officer-cum-SDO (Civil) Dehra.

9. Election of Chairperson/President of Municipal Council Dehra was conducted on 18.1.2021, wherein respondent No.5, Member from Ward No.3, was elected unanimously for the post of President.

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10. Grievance of the petitioner is that respondent No.5 belongs to Scheduled Caste category, whereas post of Chairperson was reserved for Women belonging to General Category and, therefore, petitioner had filed representation before Returning Officer-cum-SDO (Civil), Dehra, in furtherance where to clarification was sought by Returning Officer-cum-SDO (Civil), Dehra, which was responded by the State, in terms of communication dated 16.1.2021, informing that women belonging to any category can contest the election for office of Chairperson reserved for Women (General) Category, whereas, according to the petitioner, a woman belonging to Scheduled Caste category, despite elected as Member from a Ward reserved for women belonging to General Category, cannot be permitted to contest the election for the office of Chairperson/ President of Municipal Council reserved for Women belonging to General Category. It is claim of the petitioner that post reserved for Woman of General Category means a post reserved for all women, but excluding the women belonging to reserved category.

11. Referring pronouncement of a two-Judges Bench of Supreme Court in **Sarwati Devi v. Shanti Devi (Smt.) and others, (1997) 1 SCC 122**, it has been contended that seats meant for General Category are to be filled only by candidates

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elected on the seats reserved/meant for General Category, and reservation of seat of President/Chairperson of Municipal Council to a category is for the Member elected from the seat reserved for the said category. ◇

12. Referring pronouncement of the Supreme Court in **Kasambhai F. Ghanchi v. Chandubhai D. Rajput and others, (1998) 1 SCC 285**; and **Bihari Lal Rada v. Anil Jain (Tinu) and others, (2009) 4 SCC 1**, it has been submitted that idea of providing reservation is to give benefit to the weaker section of the society but not to the persons like respondent No.5, who, despite belonging to the Scheduled Caste category, has been elected from the seat allocated for General Category and is holding the post of President/Chairperson of the Municipal Council, repeatedly grabbing the chances of women belonging to General Category by depriving them from being elected to the post of President/ Chairperson.

13. It has been contended on behalf of petitioner that definition of word "general" referred in **Bihari Lal Rada's** case is not applicable in present case, as the provisions contained in Chapter-III of the Himachal Pradesh Municipal Election Rules, 2015 provide reservation of seats to the General Category, wherein sub-rule (7) of Rule 12 clearly prescribes that out of total offices, including the office 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 Municipality having the next highest women population percentage shall be reserved for women belonging to General Category.

14. It has been contended by the learned counsel for the petitioner that when an Office has been reserved for women belonging to General Category, it means that such reservation for General Category is in exclusion of the Scheduled Castes and Scheduled Tribes women, and, thus, respondent No.5, being a women belonging to a Schedule Caste, cannot contest for the seat or Office reserved for women belonging to the General Category.

15. It is also contended on behalf of the petitioner that Returning Officer-cum-SDO (Civil) has not applied his independent mind while dealing with the representation submitted by the petitioner but has acted upon the advice of the Deputy Commissioner, communicated to him on the basis of the advice of the Secretary of the Urban Department/Law Department, which is impermissible in law as Returning Officer has to decide the matter applying his own mind and, in present case, there is complete non-application of mind by the Returning officer as he, instead of applying his mind, has followed the instructions of the Higher Authorities.

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16. Referring **State of Punjab and others v. Mohabir Singh and others, (1996) 1 SCC 609**, it has been contended that it is duty of the authority to take a decision itself but not under the direction or as per dictates of the higher authorities and failure of the authority to do so amounts to non-application of mind and, as such, decision is not sustainable. Referring judgment of a Coordinate Bench of this Court, passed in **CWP No.7295 of 2012**, titled as **Ajay Parihar v. State of H.P.**, decided on **18.5.2016**, it has been contended that a process must be completed and an act by the authorities must be done in the manner as provided under the Act, Rules and Law and, therefore, it has been contended that Returning Officer had to take decision at his own, without referring the matter to the higher authorities with respect to eligibility of respondent No.5 to contest the election of the post/office of the President/ Chairperson of the Municipal Council and it has been contended that on this count petition deserves to be allowed.

17. With respect to maintainability of the petition, it has been canvassed on behalf of the petitioner that in present case there is issue involved regarding exercise of power by the concerned authority in illegal manner and the said issue cannot be adjudicated in Election Petition. Therefore, petitioner is entitled to invoke extraordinary jurisdiction of this

High Court as provided under Article 226 of the Constitution of India (Constitution).

18. It has been contended on behalf of respondents that in pronouncement of the Supreme Court in **Civil Appeal No.976 of 2009** (arising out of SLP (Civil) No.19237 of 2008), titled as **Bihari Lal Rada Vs Anil Jain (Tinu) and others**, decided on 10-02-2009, reported in **(2009) 4 SCC 1**, it has been held that post of President of Municipality which is required to be filled-in by a Member belonging to Scheduled Castes, Scheduled Tribes or Backward Classes, as the case may be, can be filled by any Member belonging to one of those categories, irrespective of the fact whether they have been elected from a general ward or a reserved ward and, therefore, present petition is not maintainable.

19. It has been submitted on behalf of respondents that the post, in present case, was reserved for "women" and respondent No.5, being a woman, is entitled to contest the election from any Ward open for all, reserved for women of General Category, in addition to Ward reserved for Scheduled Caste Category and the fact of her belonging to a Scheduled Caste category cannot come in her way for contesting election for the post meant for "general category" or "women belonging to general category".

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20. It has been contended on behalf of the respondents that petitioner, though participated in the election process conducted for the post/office of President/Chairperson of Municipal Council, but she was not a candidate, as no nomination by her or on her behalf was filed and none of the elected Members proposed her name to the post/office of President/Chairperson of the Municipal Council and she had not objected to the election of respondent No.5 as Chairperson/ President of Municipal Council Dehra and, therefore, she has no right and entitlement to file and maintain the present writ petition.

21. It has been further submitted on behalf of respondents that petitioner has alternate remedy of filing Election Petition to challenge the election of respondent No.5 but she has failed to avail the same and on this count also present petition is not maintainable.

22. Mr. K.D. Sood, learned Senior Advocate, referring pronouncement of this Court in **Manish Dharmaik v. State of Himachal Pradesh and others, 2021(1) Him LR (DB) 376**; and **CWP No.691 of 2021**, titled as **Kauser v. State Election Commission and others**, decided on **8.2.2021**, as well as provisions of Article 243ZG of the Constitution, has contended that present petition is not maintainable.

23. In **Sarswati's** case, the Supreme Court had held that for contesting for the seat/office of President/Chairperson of the Municipal Council reserved/meant for a particular category, contestant must be elected as Member from a seat reserved/meant for such category. In other words, the seat reserved/meant for woman belonging to General Category can only be occupied by a Member elected from the seat reserved for women belonging to General Category. Heavy reliance has been placed, by the learned counsel for the petitioner, on this pronouncement.

24. Pronouncement in **Sarswati's** case was considered by a three-Judges Bench of the Supreme Court in **Kasambhai's** case, wherein it was held that conclusion arrived at **Sarswati's** case did not flow from the language of relevant provision and it is not in consistent with the concept of reservation and, thus, it does not lay down a correct law. Therefore, reliance on behalf of the petitioner on a judgment already overruled by a Larger Bench of the Supreme Court is of no help to her.

25. In **Bihari Lal Rada's** case, similar issue had arisen for consideration before the Supreme Court, wherein it was contended that where office of President is meant for General Category, there only a candidate, who had contested and won from a general seat alone was entitled to contest for the post/office of President. Referring observations made in

Kasambhai's case, the aforesaid plea was rejected by the Supreme Court as under:

“34. The construction suggested by Shri Patwalia, that the word ‘belonging to’ governs ‘general category’ is grammatically attractive but suggested construction not only would defeat the main purposes of the provisions and the scheme of the Act, which is to make special provisions for those with special needs, and to the understanding of the Legislature when it enacted Section 10 and 18 of the Act, 1973. The apprehension that persons belonging to general category may lose their chance forever or for a long time to get themselves elected is totally untenable and unsustainable. The whole idea is to see that minimum number of seats as provided for is filled in by vulnerable sections of the Society. There can never be any constitutional or legal objection if more members from those weaker sections get elected to the Municipalities on their own merit from the seats meant for the unreserved category.

35. In our view, the question is no more in res integra but squarely covered by the decision of this Court reported in **Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput & Anr.** [1998 (1) SCC 285]. In that case the appellant therein who belonged to Backward Class but had been elected to the Jambusar Municipality from an unreserved seat stood for election for the post of President of the Municipality which was reserved for a Backward Class candidate. The only question that had fallen for consideration in the said case was: Whether the appellant, who belongs to a Backward Class but had been elected to the Jambusar Municipality from an unreserved seat, could stand for election for the post of President of the Municipality which was reserved for a Backward Class candidate or whether the candidate for that post could only be a person who was elected to the Municipality from a seat which was reserved for the Backward Class? This court held:

“13. The idea of providing reservation for the benefit of the weaker sections of the society is not only to ensure their participation in the conduct of the affairs of the municipality but it is

...13...

also an effort to improve their lot. The reservation ensures that the specified minimum number of persons belonging to that category become members of the municipality. If because of their popularity a larger number of Scheduled Castes, Scheduled Tribes, Backward Classes or women get elected to the municipality than the number of reserved seats that would be welcome. When the idea is to promote the weaker sections of the society, and to improve their lot, it would be a contradiction in terms if members belonging to that section are debarred from standing to the office of the President because such a candidate is popular enough to get elected from a general constituency. It is a fundamental principle of democratic election that a person who is more popular is elected, popularity being measured by the number of votes which the person gets. The language of various legal provisions do not in any way suggest, expressly or by necessary implication, that even though a person who belongs to a reserved category and is popular enough to get elected from a general constituency should be barred from contesting the election of the President when that office is to be filled only by a reserved category person.”

36. It was further observed: (*Kasumbhai case*)

“16. The Act and the Rules provide for reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and women. No reservation or classification is made ward-wise. To put it differently all members of the Scheduled Castes, for example, will be regarded as belonging to one class irrespective of the fact whether they had been elected to a reserved seat or to a general seat. Similar is the position with regard to the Backward Classes, Scheduled Tribes and women. The law does not contemplate or provide for any further sub-classification of the type which has been suggested by the respondents. *Just as all members of the municipality, irrespective of the fact whether they had been elected to a*

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reserved seat or not, are eligible for election to the post of the President when it falls in the general category, similarly when as per the roster the President is to be one who, say, belongs to the category of Scheduled Caste then all members of the municipality who are Scheduled Caste, irrespective of the seat to which they had been elected, would be eligible to stand for election. Neither the Act nor the Rules stipulate that it is only such a member who has been elected to the reserved seat who would be eligible to stand for election to the post of President when it is the turn of that category of candidate to become the President of the municipality.” (Emphasis supplied)

37. Shri Patwalia, however, made an attempt to distinguish the said judgment by submitting that the Gujarat Municipal Act did not provide for any post of the President to be elected from the candidates belonging to general category, therefore, a Backward Class candidate although elected from a general category seat was held to be entitled to contest for the office of the President since the said office was reserved only for Backward Class. It was submitted that the requirement in that case was that the candidate must be a backward class candidate and it did not matter from which category of seat he was elected.

38. According to him in the present case the office of the President is meant for general category and only a candidate who had contested and won from a general seat alone was entitled to contest for the office of the President. We find it very difficult to rationalize much less endorse the argument advanced by the learned senior counsel.

39. In *Kasambhai F. Ghanchi* this Court while examining the true import and effect of the provisions of Article 243T of the Constitution of India observed:

“There is no indication or suggestion in Article 243-T or in the Act that in case the office of the President is required to be filled by a member who is a Scheduled Caste, Scheduled

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Tribe, Backward Class or a woman, then only a member who has been elected from a reserved seat can stand for election. In other words, for the purpose of election to the post of President the reservation which is contemplated by the Act is only to the effect that the person elected should belong to the category of Scheduled Caste, Scheduled Tribe, Backward Class or woman, as per the roster. Conceivably, as in the present case, an elected member may fall within two or more categories and, in this way, may be in a position to seek re-election as envisaged by Section 33 of the Gujarat Municipal Act. If this is not so, and with the category changing every year, as per the roster, Section 33 will become redundant. The legislative intent, therefore, clearly is that one person, whether elected from reserved or general seat, but who belongs to the category out of which the President is to be elected, can seek re-election as envisaged by Section 33 of the Act.”

CONCLUSION

40. Be that as it may, neither Article 243T 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. The word ‘General’ derived from Latin word genus.

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“...It relates to the whole kind, class, or order. Pertaining to or designating the genus or class, as distinguished from that which characterizes the species or individual; universal, not particularized, as opposed to special; principal or central, as opposed to local; open or available to all, as opposed to select; obtaining commonly, or recognized universally, as opposed to particular; universal or unbounded, as opposed to limited; comprehending the whole or directed to the whole, as distinguished from anything applying to or designed for a portion only. Extensive or common to many.” (See Black’s Law Dictionary, 6th Edition).

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.”

26. No doubt, Rule 12(7) speaks about reservation of one half of the offices, out of total offices, for women

belonging to General Category, excluding the offices reserved for Scheduled Castes and Scheduled Tribes, including women belonging to Scheduled Castes and Scheduled Tribes. There is exclusion of offices/seats reserved for Scheduled Castes/Scheduled Tribes, including seats/offices reserved for women belonging to Scheduled Castes/Scheduled Tribes, because 50% of seats of total seats/offices reserved for Scheduled Castes/Scheduled Tribes has already been reserved for women belonging to Scheduled Castes/Scheduled Tribes in Rule 12(5). But, it, i.e. Rule 12(7) does not say that a woman belonging to Scheduled Caste or Scheduled Tribe category cannot contest to the post/office reserved for women belonging to General Category. As a matter of fact, this subsection provides reservation for 'women' but not reservation for General Category. As observed by the Supreme Court in **Bihari Lal Rada's** case, 'General Category' means open to all. It is inclusive of entire unreserved category as well as reserve categories such as Scheduled Castes, Scheduled Tribes, Other Backward Classes, etc.

27. Reservation is for women but not for General Category. 'General Category' means 'all' and 'reservation for all' makes no sense. Thus appropriate meaning of 'General Category' is open for all.

28. Reservation has been provided exercising power under Articles 15 and 16 of the Constitution. Clauses (3) and (4) of Article 15 of Constitution empower the State to provide reservation for socially and educationally backward classes of citizens, for Scheduled Castes and Scheduled Tribes and women. There is no provision in the Constitution to provide reservation to General Category. As a matter of fact, "General Category" means all classes, including the categories for whom reservation has been provided. Seats meant for General Category cannot be filled by excluding any person of any category who is otherwise eligible and entitled for that on his own merit.

29. Reservation to the Members of Municipal Council as well as Chairpersons of Municipalities has been provided in the Constitution under Article 243T of PART IX-A, dealing with the Municipalities. Power to provide such reservation flow from Article 15 of the Constitution and, therefore, provisions of such reservation are to be interpreted in consonance with the provisions of Article 15(1) of Constitution, which provides that the State shall not discriminate against any citizen on the ground only of religion, race, caste, sex, place of birth or any of them. Clauses (3), (4), (5) & (6) of Article 15 are exceptions carved out therein providing reservation for certain classes which nowhere provides that there shall be reservation in

favour of 'General Category' in exclusion of Scheduled Castes and Scheduled Tribes or Other Backward Classes.

30. Provisions of Article 15 or 243T of the Constitution nowhere provide that seat of Member in Municipalities or office of President/Chairperson can be reserved in favour of persons belonging to General Category. "General Category" is, in fact, an Open Category, which is not a quota for a separate class but a category available to all men and women. Provision of reservation is not aimed for dividing the society in separate segments by providing reservation to each class by creating a class as 'General Category' in exclusion of other reserved categories.

31. Vertical Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes and horizontal reservation for women is based upon historical and social reasons, as these classes of the society were and are living in adverse social environment, difficult geographical terrains, living conditions, hostile atmosphere and large segment of these classes is being discriminated and deprived of equal social status in the society, so as to give them an environment of equal opportunity with dignity to grow and bloom together with other privileged classes of the society. Reservation has been provided to socially and educationally backward classes, which include Scheduled Castes, Scheduled Tribes, Other

Backward Classes and Women, for providing them an opportunity to gain equal status and dignity in the society. Even as on date, persons belonging to a section of society not permitted to enter in the house and temple; to fetch water from common source; to have community feast together with all classes, particularly so-called "General Category" people. There are instances where even luggage of teachers is thrown from accommodation rented to them on disclosure of their caste; groom is not allowed to ride horse in his marriage procession and in some places marriage procession is not permitted to cross the village with band party. A larger section of the society considers women as second grade citizens not entitled to take decision on their own and there are instances where instead of elected women candidates as a Member/Office bearer of the Local Self Body, oath is sworn by the husband by not permitting the wife to do so. The women are not allowed to choose life partners of their choice and the inter-caste marriage results into honour-killing, even burning the couple alive, etc. These are few examples of so many unending historical and social reasons, which are still continuing, for which reservation has been provided for Scheduled Castes, Scheduled Tribes, Other Backward Classes as well as Women, but not for others. The reservation has been provided to bring all at par.

32. Thought behind providing reservation is that weaker section of society, nourished with medicine of reservation, shall, one day, become equal in status with equal opportunity of growing and living in the society to live a dignified life among all. Reservation may be equated with crutches which are not necessitated to be provided to healthy person but definitely to those who are not able or permitted to stand on their legs or whose legs are weak for deprivation of healthy atmosphere and equal status in the society. Therefore, there is no provision for providing separate reservation to all sections of society.

33. Bharat has a heritage of an incomparable rich culture and well developed society, based on Dharma, i.e. Rule of Law, wishing marching of all together towards prosperity. Oldest text Vedas pronounce that all be live together, grow together, progress together, eat together and march together towards the ultimate goal of life. But for taboos and evils ingrained in the society during medieval era we are behaving contrary to that spirit of Vedas, our ancient rich values, culture and real Dharma and despite framing the Constitution to achieve the goal for providing justice, liberty and equality to all with fraternity, as envisaged in the Preamble of the Constitution, our society is following practices which are blur on the Indian Society and that is the reason for

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providing and continuation of reservation for deprived, downtrodden and suppressed classes.

34. Reservation is not a quota provided to the sections of the society by dividing the society in Scheduled Castes/Scheduled Tribes/Other Backward Classes and General Categories, in exclusion of rest from every category, but a special provision or measure to ensure achievement of Constitutional Goal of equality of status with dignity to all sections of the society by providing a crutch to those whose legs are broken or not permitted to be developed or suffering from disease because of ill, undemocratic and irreligious behaviour of the society. Therefore, cases related to reservation are to be adjudicated in aforesaid historical and social background and the conditions prevailing as on date in the society but not on the basis of pseudo-equality, as 'unequals cannot be treated as equals'.

35. From the above discussion, it has emerged that Vertical Reservation has been provided to achieve the goal of the Constitution for providing social, economic, and political justice with liberty of thought, expression, belief, faith and worship and with equality of status and of opportunity, by inculcating fraternity amongst all citizens with aim to protect unity and integrity of the nation. Classes to whom Vertical Reservation has been provided have not been excluded from

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the mainstream or the entire society. Therefore, seats 'open to all' or meant for "General Category" are available to all sections of the society, including the section to whom Vertical Reservation has been provided. "Open Category" or "General Category" is not a category remained after subtracting the categories to whom Vertical Reservation has been provided but Open or General Category includes all, irrespective of religion, race, caste, sex or place of birth. Everybody is free to compete and contest, on his/her own merit, including categories provided benefit of Vertical Reservation.

36. Reservation for women has also been provided to ensure their equal participation in every field of life, including social and administrative matters. Article 243T of the Constitution mandates that seats not less than one-third of total seats, including seats for reserved category, shall be reserved for women candidates in their respective category. Therefore, one-third or more seats can be reserved for women in Municipalities and that seat of Member or office of President/Chairperson of the Municipality can also be reserved for women.

37. In Himachal Pradesh, Rule 12, contained in Chapter-III of the Himachal Pradesh Municipal Election Rules, 2015, provides reservation of 50% seats for women in the Municipalities. It provides that 50% of seats available in each

category, i.e. General Category, Scheduled Castes Category, Scheduled Tribes Category, shall be reserved for women in each category separately. There are two sets of seats available in Vertical Reservation. For one set, in the General Category, all men and women belonging to all categories, irrespective of religion, race, caste, sex or place of birth, subject to eligibility, are competent and entitled to contest. For seats reserved for Scheduled Castes and Scheduled Tribes, sometimes denoted as 'SC (General) and ST (General)', all men and women of respective category, subject to eligibility, are competent and entitled to contest for the seats in their respective category. All men and women, entitled to compete and contest the seat reserved for Scheduled Castes/Scheduled Tribes/Other Backward Classes, are also entitled to contest the seat meant for Open or General Category.

38. Reservation of seats for women is also in aforesaid terms, but excluding men. Therefore, all women belonging to all categories, irrespective of their religion, race, caste, sex or place of birth, subject to eligibility, are entitled to contest election for the seats meant for all as well as women belonging to Open or General Category. All women entitled to compete and contest the seat reserved for Scheduled Castes

and Scheduled Tribes are also eligible for seat meant for all as well as women belong to Open or General Category.

39. It is evident from the aforesaid discussion that a man or a woman may be eligible to contest election from more than one seat, in different capacity, as a candidate belonging to reserved category can contest election for a seat meant for General Category as well as reserved category, and such person shall also be entitled to contest the election of Member or office of President/Chairperson of the Municipality in either capacity. There is no legal impediment or bar to a person, including a man and a woman, to exercise his/her right to contest in either category. Therefore, a woman belonging to reserved category can contest election for the seat of Member available for General Category, which is open for all, including men and women, and she can also contest for seat reserved for women belonging to General Category. Similarly, a Member belonging to Scheduled Caste Category is not disentitled for contesting and competing for the office of President or Chairperson available for General Category or meant for Open Category, which is available to all, irrespective of their religion, race, caste, sex or place of birth. Therefore, respondent No.5 was eligible to contest and hold the post of President/Chairperson of the Municipality reserved for 'women' belonging to General Category.

40. Contention of the petitioner that by seeking clarification and explanation from the higher authorities, concerned authority has not applied its own mind to decide the issue raised before it, is also misconceived. Definitely, decision should be taken by the concerned authority at its own which is conferred power for that purpose and every act of the authority must be done in the manner as provided under the Act, Rules or Law, but, at the same time, any authority/officer is not prohibited seeking aid and advice from the superiors or from the experts or Law Department of the State or otherwise, so as to arrive at a right conclusion before arriving at a conclusion to take decision. It is not a case where the competent authority had submitted the case before the higher authority for dictating him the decision thereon but it is a case where on receiving representation of the petitioner, the competent authority sought clarification in the matter and after receiving the clarification, that too based upon the pronouncement of the Supreme Court, has decided the issue raised by the petitioner and permitted respondent No.5 to contest election for and hold the post of President/ Chairperson of the Municipality reserved for 'women' belonging to General Category. Therefore, I am of the opinion that the issue raised by the petitioner is misconceived and is not sustainable.

41. Sections 283 and 296 of the Himachal Pradesh Municipal Act, 1994, contained in Chapter XVII – Disputes relating to Election, read as under:

“283. Election Petitions.-No election under this Act shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.

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296. Grounds for setting aside election.-

(1) If the authorised officer is of the opinion –

(a) that on the date of his election the elected person was not qualified, or was disqualified to be elected under this Act; or

(b) that any corrupt practice has been committed by the elected person or his agent or by any other person with the consent of the elected person or his agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns the elected person, has been materially affected –

(i) by the improper acceptance of any nomination; or

(ii) by improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iii) by any non-compliance with the provisions of this Act or of any rule made under this Act; the authorised officer shall set aside the election of the elected person.

...28...

(2) When an election has been set aside under sub-section (1), a fresh election shall be held.”

42. Contention of the petitioner that unlawful exercise of power by the authority cannot be adjudicated in an Election Petition is also misconceived, as any action of the concerned authority, contrary to provisions of law, including allowing ineligible person to contest and compete and to be elected can be adjudicated in the Election Petition as the same very action shall be in question to lay challenge to the election of unqualified or disqualified or ineligible person to the post/ office. Therefore, plea raised in present petition was available to the petitioner for filing Election Petition to assail the election of respondent No.5.

43. Article 243 ZG creates bar to interference by Courts in electoral matters, which reads as under:

“243ZG. 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 243ZA shall not be called in question in any court;
- (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as it provided for by or under any law made by the Legislature of a State.”

44. The aforesaid provisions are pari materia to the provisions related to Gram Panchayats, contained in Article 243-O of the Constitution.

45. A Division Bench as well as a Coordinate Bench of this High Court in **Manish Dharmaik v. State of Himachal Pradesh and others, 2021(1) Him LR (DB) 376**; and **CWP No.691 of 2021**, titled as **Kauser v. State Election Commission and others**, decided on **8.2.2021**, have already discussed the law in this regard in the matter related to Panchayat and has arrived at conclusion that a petition, like present one, is not maintainable at all and, thus, on this sole point present petition is liable to be dismissed.

46. I find force in the contention of the respondents that at the time of election of President/Chairperson of the Municipality, name of petitioner was not proposed by any of the elected Member of the Municipality and she was not a contesting candidate in the election and, therefore, she has no right to file the present petition. It is not a case that in case of ineligibility of respondent No.5, petitioner was the only available candidate, as a women Member belonging to General Category. Therefore, also petitioner is not entitled to maintain the present petition.

47. It is also settled that availability of alternative remedy is not an absolute bar to entertain a petition under

Article 226 of the Constitution. In an appropriate case, for valid reasons and grounds, writ petition may be entertained under Article 226 of the Constitution, as power of Judicial Review provided to the High Courts, under the Constitution, is not inhibited by any provision of alternate remedy. But, in present case, no such extraordinary exceptional case is made out, entitling the petitioner to maintain the present writ petition.

48. In election matters, person can be unseated by way of not only Election Petition but also by filing an appropriate Writ Petition of Quo Warranto, by a person, where there is no alternate remedy is available, and the elected person, being ineligible to hold the said office, has usurped the post and power, but for petitioner, in present case, in the facts and circumstances narrated hereinabove, such recourse is also not available, as even otherwise, as discussed supra, respondent No.5 is not ineligible person to hold the office of Chairperson/President of Municipal Council so as to enable the petitioner to maintain a writ petition of Quo Warranto against her for holding the said office because respondent No.5 is eligible and entitled to hold the said office.

49. In view of above discussion and in the light of the earlier pronouncements of the Courts, I find no merit in the

...31...

present Writ Petition. Accordingly, the Writ Petition is dismissed.

Writ Petition stands disposed of, so also pending application, if any. ◇

(Vivek Singh Thakur)
Judge.

March 6, 2023^(sd)

High Court of H.P.