

THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH

Single Bench : Hon'ble Shri Justice Subodh Abhyankar

Writ Petition No.12517/2021

(Jayesh Gurnani s/o Mr. Ravi Gurnani & another v. Madhya Pradesh State Election Commission & others)

1	Case No.	Writ Petition No.12517/2021
2	Parties Name	Jayesh Gurnani s/o Mr. Ravi Gurnani Dilip Kaushal s/o Late Gulab Kaushal Versus Madhya Pradesh State Election Commission AND TWO OTHERS
3	Date of Order	10 th of January, 2022
4	Bench constituted of Hon'ble Justice	Single Bench Hon'ble Shri Justice Subodh Abhyankar
5	Order passed by	Hon'ble Shri Justice Subodh Abhyankar
6	Whether approved for reporting	Yes
7	Name of counsel for the parties	Shri Vibhor Khandelwal, learned counsel for the petitioners. Shri Kamal Airen, learned counsel for respondent No.1 / Madhya Pradesh State Election Commission. Shri Valmik Sakargayen, learned Panel Lawyer for respondents 2 and 3 / State of Madhya Pradesh.
8	Law laid down	1. The sole issue which falls for consideration of this Court is whether the gazette publication regarding reservation of Municipal wards, issued by the State Government on 06.11.2020, meets the constitutional validity, as provided under Article 243-T of the Constitution of India. (Para 23)

Held: Considering the provisions of the Act and the Rules in the light of the constitutional provision i.e. Article 243-T, it is found that the provision of rotation of different seats is indeed provided in the Act as well as the Rules and are in line with the provisions of Article 243-T of the Constitution. **(Para 25)**

Judgment relied: -

K. Krishna Murthy (Dr.) and others v. Union of India and another reported as (2010) 7 SCC 202;
“This rotational policy is a safeguard against the possibility of a particular office being reserved in perpetuity. It is pertinent to note that unlike the reservation policy for panchayats, there are no comparable provisos to Article 243-D (4) for guiding the reservation of chairperson positions in Municipalities. This is a notable distinction between the otherwise analogous schemes prescribed in Article 243-D and Article 243-T.”
(Para 29)

Judgment relied: -

Sant Ram Sharma v. State of Uttar Pradesh and others reported as 2015 SCC OnLine All 9574 = AIR

2016 (NOC 686) 318 (Para 30)

“The object of the principle of rotation is to ensure that no community or reserved category can lay a claim to a reserved seat in perpetuity. Any observation to the contrary contained in the judgment in Krishna Dutt Mishra (supra) would have no binding effect in consequence.”

Judgment Distinguished: Tulsiram Jatav v. Union of India & others reported as 1999 SCC OnLine MP 383 = (2001) 4 MPLJ 132.

2. Any conflict between the decision rendered by a bench of this Court and the subsequent decision rendered by the Supreme Court on the same issue, it would be the Supreme Court's decision which would prevail under Article 141 of the Constitution of India. **(Para 30)**

9 Significant paragraph

23, 25, 26, 27, 28, 29, 30, 31 and 32.

ORDER

(Case was heard on 08.12.2021)

Post for

10.01.2022

**(SUBODH ABHYANKAR)
JUDGE**

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

Writ Petition No.12517/2021

(Jayesh Gurnani s/o Mr. Ravi Gurnani
Dilip Kaushal s/o Late Gulab Kaushal

Versus

Madhya Pradesh State Election Commission AND TWO OTHERS)

* * * * *

Shri Vibhor Khandelwal, learned counsel for the petitioners.
Shri Kamal Airen, learned counsel for respondent No.1 / Madhya Pradesh
State Election Commission.
Shri Valmik Sakargayen, learned Panel Lawyer for respondents 2 and 3 /
State of Madhya Pradesh.

* * * * *

ORDER

(Passed on this 10th day of January, 2022)

This petition filed under Article 226 of the Constitution of India takes exception to the entire process of reservation of Municipal Wards adopted by the respondents No.2 and 3 contrary to the procedure prescribed under the Madhya Pradesh Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, 1994 (herein after referred to as “the Reservation Rules, 1994”) and also for quashing the impugned notification dated 06.11.2020 (Annexure P/3) issued by the respondent No.2 (The State of Madhya Pradesh) in pursuance to the Rule 7 of the Rules of 1994, whereby the list of Reserved Wards has been published in the Madhya Pradesh Gazette, finalizing the reservation of Municipal Wards of Indore Municipal Area, without following the due process of “Rotation of Wards”, as required under Rule 4 of the Rules of 1994.

2. According to the petitioners, the process adopted by the respondents for reservation of the Indore Municipal Wards is illegal, unconstitutional and irrational and thus, deserves to be quashed.

3. Brief facts giving rise to the petition are that the petitioners are eligible to cast their votes in the Municipal Elections and also fulfill the eligibility criteria to contest Municipal Elections, as provided under the Madhya Pradesh Municipal Corporation Act, 1956 (herein after referred to as the Act of 1956).

4. Respondent No.1 is the authority responsible to conduct the Municipal Elections for 85 Wards of the Indore Municipal Area in the light of Article 243-K read with Article 243-ZA of the Constitution of India.

5. The following relief has been sought by the petitioners in this petition: -

“7.1 That, the instant writ petition may kindly be allowed and impugned Gazette notification dated 06.11.2020 may kindly be quashed to the extent of the reservation of wards of Indore Municipal Corporation Area;

7.2 That, the respondent no.2 and 3 may kindly be directed to conduct the process of reservation of wards of Indore Municipal Area for upcoming municipal election afresh by following the due process of 'rotation' of wards in the letter and spirit as prescribed under the Constitution of India, the Act of 1956 and the Reservation Rules of 1994;

7.3 That, the cost of petition may kindly be awarded to the petitioners and any other order which this Hon'ble Court may consider appropriate, may also be granted in favour of the petitioners.”

6. According to the petitioners, after publication of the notice, as required under Rule 5 of the Reservation Rules of 1994,

the respondent No.3 has conducted the reservation process on 31.07.2020 (Annexure P/2) and recorded in writing the entire process adopted for reservation of Indore Municipal Wards, as required under Rule 6 of the Reservation Rules of 1994, but the respondent No.3 erroneously failed in adopting the 'Rotation' system while making the reservation of Indore Municipal Wards, as required under Article 243-T of the Constitution of India read with Section 11 of the Act of 1956 and the Rules 3 and 4 of the Reservation Rules of 1994. The respondent No.2 has also published a list of reserved wards in the Official gazette on 06.11.2020 (Annexure P/3), which is under challenge in this petition.

7. Thirteen municipal wards which were earlier reserved for Scheduled Caste Category are once again reserved for the same category for the upcoming Indore Municipal Election and three municipal wards which were earlier reserved for Scheduled Tribes Category are again reserved for the said category, which according to the petitioners, is contrary to the mandate of the Article 243-T of the Constitution of India.

8. It is further the case of the petitioners that similar irregularity was also committed while conducting the process of reservation of seats for Mayor and Presidents of Municipal Corporation and Municipalities under the Madhya Pradesh Municipalities (Reservation of Office of Mayor and President) Rules,

1999, but the entire process was stayed by the Gwalior Bench of this Court in Writ Petition No.6074/2021 vide order dated 12.03.2021 (Annexure P/5).

9. A representation to this effect has also been submitted by the petitioners, but no action has been taken by the respondents.

10. The petitioners have also given the details of the seats which have been reserved for SC, ST and OBC respectively continuously for the past many years, without any rotation. The same reads, as under: -

S.NO.	CATEGORY	SEATS RESERVED	NUMBER OF WARDS
1	SC	13	24, 26, 35, 36, 47, 54, 18, 30, 45, 46, 59, 61, 76
2	ST	3	75, 77, 79
3	OBC	21	02, 09, 11, 14, 17, 32, 53, 58, 63, 78, 03, 06, 07, 08, 12, 16, 20, 34, 41, 43, 67.

11. Shri Vibhor Khandelwar, learned counsel appearing for the petitioners has vehemently argued that not only the impugned gazette notification dated 06.11.2020 is contrary to Article 243 of the Constitution of India, Section 11 of the Act of 1956 and Rule 4 of the Reservation Rules of 1994, but also runs contrary to the decision rendered by the Supreme Court of India in the case of **K. Krishna Murthy (Dr.) and others v. Union of India and another** reported as (2010) 7 SCC 202; and this view has also been adopted by a Division Bench of this Court at Gwalior in Writ Petition No.2044 of 2021 and Writ Petition No.19984 of 2020.

12. It is further submitted that the Rotation System provides

rationality in the process of free and fair election as well as in implementing the constitutional thought of reservation and the same deserves to be upheld by quashing the impugned gazette notification.

13. A reply to the said petition has also been filed by respondent No.1 MP State Election Commission, wherein it is admitted that the respondent is the Constitutional Body entrusting with conducting lawful elections in the State of Madhya Pradesh and the representation submitted by the petitioners on 26.03.2021 (Annexure P/6) has already been forwarded to respondent No.2 - The State of Madhya Pradesh vide letter dated 07.04.2021 (Annexure P/7) and thus, it is for the respondent No.2 to take further action in this regard.

14. Respondent No.2, in its reply has opposed the relief sought by the petitioners and it is submitted that there is no denying the fact that Article 243-T of the Constitution of India clearly reflects that there has to be a reservation of seats in the Municipal Election for Scheduled Castes and Scheduled Tribe Category in certain proportion for the implementation of which, the discretion is left to the State Governments, however, as a matter of suggestion, it is provided that reservation may be done by way of rotation.

15. Thus, it is submitted that it is not the constitutional mandate that the reservation of seats for SC & ST in the Municipal Election must be / shall be / always be done only by way of rotation

as the use of word 'may' preserves the discretionary domain with the State Government. Hence, it is too far-fetched a contention that reservation by way of rotation is the mandate of Article 243-T of the Constitution of India.

16. It is further stated that Section 11 (1) of the Act of 1956 and Section 29 (A) (1) of the Municipalities Act, 1961 does not contain provision for rotation of seats by lot, which were reserved in preceding election for Scheduled Castes and Scheduled Tribes. This is also clear from Rule 3 read with Rule 4 of Rules of 1994. The provision of Article 243-T of the Constitution of India no doubt enables rotation of seats reserved for Scheduled Castes and Scheduled Tribes. It is further stated that what is to be noted for the constitutional provision contained under Article 243-T is that there is a mandate for reservation of seats in wards in Municipal Areas for Scheduled Castes and Scheduled Tribes category in proportion to their population. The language used is "the seats shall be reserved", but in the same Article so far as allotment of seats by rotation is concerned, the Constitution has purposely used the expression "such seats *may* be allotted by rotation to different constituency". It thus, clear that the provisions of rotation is only an enabling one.

17. It is further stated that if rotation system is applied also to the Scheduled Castes and Scheduled Tribes seats reserved in descending order, after ascertaining their population in various

Municipal Areas, even the wards in areas where their concentration of population is very low, would get reserved for them on rotation basis. That would be, a result contrary to the intention for which the seats are reserved on the basis of population of Scheduled Castes and Scheduled Tribes.

18. The State has also relied upon a decision rendered by a Division Bench of this Court in the case of **Tulsiram Jatav v. Union of India & others** reported in **1999 SCC OnLine MP 383 = (2001) 4 MP LJ 132**, wherein the Hon'ble High Court has rejected the plea of reservation of seats by way of rotation in the Municipal Election.

19. It is further submitted that so far as the order passed by a Division Bench of this Court, Bench at Gwalior in **Writ Petition No.2044 of 2021 (Rajkumar Yadav s/o Dattu Singh Yadav & another v. The State of Madhya Pradesh & others)** dated **04.03.2021** is concerned, in the said decision, the order passed by the Division Bench in the case of **Tulsiram Jatav v. Union of India & others** (supra) has not been taken into account; and thus, it cannot be relied upon; and otherwise also, this order has already been assailed before the Supreme Court. Thus, it is submitted that no interference is called for in the election process for reservation concluded by the respondent authority, which has been carried out in accordance with the provisions of the Constitution of India and the Reservation Rules of 1994.

20. In rebuttal, Shri Vibhor Khandelwal has submitted that it may be that the order passed by the Gwalior Bench does not reflect that it has also taken into account the order passed by the earlier Division Bench of this Court in the case of **Tulsiram Jatav v. Union of India & others** (supra), but the Supreme Court's decision in the case of **K. Krishna Murthy (Dr.) and others v. Union of India and another** (supra) passed in the year 2010 would prevail over the Division Bench order passed by this Court.

21. Counsel has also drawn the attention of this Court to another decision of the Allahabad High Court in the case of **Sant Ram Sharma v. State of Uttar Pradesh and others** reported as **2015 SCC OnLine All 9574 = AIR 2016 (NOC 686) 318** wherein taking into account the decision rendered by the Supreme Court in the case of **K. Krishna Murthy (Dr.) and others v. Union of India and another** (supra), it is held that “the object of the principle of rotation is to ensure that no community or reserved category can lay a claim to a reserved seat in perpetuity. Any observation to the contrary contained in the judgment in **Krishna Dutt Mishra v. State of UP (2005 ALJ 3016)** would have no binding effect in consequence. Thus, it is submitted that the petition be allowed with costs.

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

23. The sole issue which falls for consideration of this Court is whether the gazette publication regarding reservation of Municipal wards, issued by the State Government on 06.11.2020 meets the constitutional validity, as provided under Article 243-T of the Constitution of India.

24. At this juncture, it would germane to refer to the relevant provisions which has led to the issuance of the impugned gazette notification.

Article 243-T of the Constitution of India reads, as under: -

“243T. Reservation of seats.

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats *may* be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have

effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.”

(Emphasis supplied)

Section 11 of the Act of 1956 reads, as under: -

“11. Reservation of seats.-

(1) Out of the total number of wards determined under sub-section (1) of section 10 such number of seats shall be reserved for Scheduled Tribes in every Municipal Corporation as bears, as nearly as may be the same proportion to the total number of seats to be filled by direct election in the Municipal Corporation 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 percentage of 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 Municipal Corporation, where fifty percent 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 nomination paper is filed for election, as a Councillor, by any member of the backward classes, then the Collector shall be competent to declare it as unreserved.

(3) Not less than one-third of the total number of seats reserved under sub-section (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) Not less than one-third (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 Municipal Corporation shall be reserved for women and such seats, shall be allotted by rotation to different wards in a Municipal Corporation 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.”

Rules 3 and 4 of the Rules of the Reservation Rules of 1994

read, as under: -

“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 per cent 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.

(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 un-reservation 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.

4. Reservation of wards at the time of subsequent elections. - For the purpose of every subsequent election, the same procedure of reservation shall be adopted, which is described in Rule 3 for the first time reservation. *Provided that the reservations to be made by lot for the purpose of rotation, the wards which are earlier reserved for a category, shall not be included in the lot for the reservation of that category, until such ward does not come again in the serial of reservation.*”

(emphasis supplied)

25. Considering the aforesaid provisions of the Act of 1956 and the Rules of in the light of the constitutional provision i.e. Article 243-T, it is found that contrary to the stand of the respondents in para 6 of their reply, the provision of rotation of different seats is indeed provided in the Act as well as the Rules and are in line with the provisions of Article 243-T of the Constitution.

26. It is also found that so far as the State's stand is concerned, they have referred to the use of word “*may be allotted by the rotation to different constituencies in a municipality*” in Article

243-T and according to them, the use of word 'may' gives a discretion to the State Government or the municipalities to either to adhere to the rotation, as prescribed under Article 243-T of the Constitution of India or it can also be done away with. In contrast to the aforesaid submissions, when we see Section 11 (2) of the Act of 1956, it clearly provides that "*and such seats shall be allotted by rotation to different wards in such manner, as may be prescribed*". It may be argued that it (Section 11(2)) refers to other backwards classes only, but in the considered opinion of this court there appears to be no justification in providing rotation for the seats reserved for OBC category only to the exclusion of SC/ST categories. Thus, reading the provisions of Section 11 (2) of the Act of 1956 in harmony with Art. 243-T of the Constitution, it reflects that rotation of reserved seats is for all the categories viz. SC/ST as also for OBC.

27. Similarly, Rule 3 of the Reservation Rules of 1994 also provides that "*and such wards shall be those in a descending order in which the population of the Scheduled Caste or Scheduled Tribe, as the case may be, is most concentrated*". Similarly, in Rule 4 which refers to reservation of wards at the time of subsequent elections, it is clearly provided that for the purpose of subsequent election, the same procedure of reservation shall be adopted, which is described in Rule 2 (3) of the first time reservation, "*Provided that the reservations to be made by lot for the purpose of rotation, the wards*

which are earlier reserved for a category, shall not be included in the lot for the reservation of that category, until such ward does not come again in the serial of reservation.”.

28. Suffice it to say that, even if the State interprets Article 243-T of the Constitution of India as only directory and not mandatory, but in its wisdom, in the Act of 1956, and the Rules of 1994, the State Legislature has decided to rotate the seats of reserved categories, exercising its discretion in favour of the rotation of seats only.

29. Now coming to the applicability of **Tulsiram Jatav v. Union of India & others** (supra) case. It is apparent that the Supreme Court in its subsequent decision in the case of **K. Krishna Murthy (Dr.) and others v. Union of India and another** (supra) has observed, as under: -

“8. The overarching scheme of Article 243-D and 243-T is to ensure the fair representation of social diversity in the composition of elected local bodies so as to contribute to the empowerment of the traditionally weaker sections in society. The preferred means for pursuing this policy is the reservation of seats and chairperson positions in favour of Scheduled Castes (SC), Scheduled Tribes (ST), women and backward class candidates:

With regard to chairperson positions, Article 243-D (4) and Article 243-T (4) enable State legislatures to reserve these offices in favour of SC, ST and women candidates. In the case of panchayats, the first proviso to Article 243-D (4) states that the aggregate number of chairperson positions reserved in favour of SC and ST candidates in an entire state should be based on the proportion between the population belonging to these categories and the total population. With all the chairperson positions at each level of the panchayats in an entire State as the frame of reference, the second proviso to Article 243-D (4) states that one-third of

these offices should be reserved for women. The third proviso to Article 243-D (4) lays down that the number of chairperson positions reserved under the said clause would be allotted by rotation to different panchayats in each tier. This rotational policy is a safeguard against the possibility of a particular office being reserved in perpetuity. It is pertinent to note that unlike the reservation policy for panchayats, there are no comparable provisos to Article 243-D (4) for guiding the reservation of chairperson positions in Municipalities. This is a notable distinction between the otherwise analogous schemes prescribed in Article 243-D and Article 243-T.”

(Emphasis supplied)

30. It goes without saying that in case of any conflict between the decision rendered by a bench of this Court and the subsequent decision rendered by the Supreme Court on the same issue, it would be the Supreme Court's decision which would prevail under Article 141 of the Constitution of India. It is also found that the Division Bench of the Allahabad High Court in the case of **Sant Ram Sharma v. State of Uttar Pradesh and others** reported as **2015 SCC OnLine All 9574 = AIR 2016 (NOC 686) 318** headed by Hon'ble Shri Justice Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice (as His Lordship then was) it is held, as under: -

“65. Finally, before we conclude, we may also note that on behalf of the State, reliance was placed on a judgment of a Division Bench of this Court in **Krishna Dutt Mishra v. State of UP (2005 ALJ 3016)**. The judgment of the Division Bench was delivered on 18 July 2005 which is prior to the decision of the Supreme Court in K Krishna Murthy (supra). The observations contained in the judgment of the Division Bench treat the principle of rotation purely as directory in nature. These observations of the Division Bench in Krishna Dutt Mishra (supra) will give way to the binding principles which have been laid down in the judgment of the Supreme Court in K Krishna Murthy (supra). **The object of the principle of rotation is to ensure that no community or**

reserved category can lay a claim to a reserved seat in perpetuity. Any observation to the contrary contained in the judgment in Krishna Dutt Mishra (supra) would have no binding effect in consequence. The observations in the judgment of the Division Bench on the availability of judicial review would also give way to the binding principles laid down by the Supreme Court in K Krishna Murthy.”

(Emphasis supplied)

31. Apparent from the aforesaid that the Division Bench of the Allahabad High Court has also opined that the decision rendered by the Supreme Court in K. Krishna Murthy's case (supra) would have the binding effect.

32. On the aforementioned discussion, in the light of the constitutional mandate, and the State enactments, viz. Municipal Corporation Act and the Rules of 1994, as also the decision rendered by the Supreme Court in the case of **K. Krishna Murthy (Dr.) and others v. Union of India and another** (supra), this Court is of the considered opinion that the impugned gazette notification regarding the allotment of seat cannot be sustained in the eyes of law; and accordingly, the same is hereby quashed. However, with liberty reserved to the State to formulate such policy of reservation of rotation of seats as provided under Article 243-T of the Constitution of India and issue a fresh publication for conduct of election.

Writ Petition No.12517/2021 stands **allowed**.

No costs.

(Subodh Abhyankar)
Judge