

THE HIGH COURT OF MADHYA PRADESH

WP-6074-2021

(Manvardhan Singh Tomar Vs. State of M.P.)

Gwalior, dated:12/03/2021

Shri Abhishek Singh Bhadoriya, learned counsel for the petitioner.

Shri Ankur Modi, learned Additional Advocate General for the respondent/State.

Learned counsel for rival parties are heard on the question of admission.

State is represented by Shri Modi who was granted time on 10.03.2021 to seek instructions in the matter *inter-alia* on the question of applicability of interim order dated 04.03.2021 passed in W.P. No.2044/2021 to this case, since both involve same issue.

Pertinently, this Bench had stayed the Notification/Order dated 10.12.2020 to the extent the same reserved the office of the Chairperson of Municipal Council Indargarh, District Datia (M.P.) for SC. The said stay order granted in W.P. No.2044/2021 (qua Indargarh Municipal Council) was followed in W.P. No.19984/2020 (Dabra Municipal Council, District Gwalior) and W.P. No.361/2021 (Municipality Indargarh, District Datia).

Shri Modi on seeking instructions submits that aforesaid interim order in respect of office of Chairperson of Municipal Council Indargarh, District Datia (M.P.) for the time being is complied with by the State in as much as not proceeding ahead with the elections to the office of the Chairperson of Municipal Council Indargarh and Chairperson Dabra.

However, Shri Modi submits that as regards the office of Chairperson of other Municipal Council and Municipal Corporations the State is proceeding with the process of election to these offices, since, there is no judicial restraint. Shri Modi do not deny that the election programme to any of the Municipalities has not yet been announced.

The instant petition has been filed as Public Interest Litigation seeking quashment of notification (Annexure P/1) dated 10.12.2020 issued by the State reserving the offices of President of various Municipal Council and Mayor of Municipal Corporations situated within the State of Madhya Pradesh. Challenge is based on the ground that all these offices are reserved for the same category (SC or ST) for which it was reserved in the last election *i.e.* 2014. The public cause raised is that the scheme for reservation in Municipalities as constitutionally provided u/A.243-T though recognizes the concept of rotation but has been given a go bye by allowing these offices of President and Mayor of all the Municipalities (including Municipal Corporations) to be again reserved for the same category (SC or ST) for which they were reserved in the last election in 2014.

That a tabular illustration is given in para 5.4 of the petition as regards two Municipal Corporations of Morena and Ujjain and 79 Municipal Councils where the offices of Chairperson (Mayor/President) having reserved for the same category (SC/ST) for which the offices were reserved in the last election.

The aforesaid factual averment in the petition has not yet been

disputed by counsel for State, though the State seeks and is granted time to file reply.

This Court while dealing with similar issue in W.P.2044/2021 where the constitutional validity for the relevant provisions in M.P. Municipalities (Reservation of Office of Mayor and President) Rules, 1999 was challenged, passed interim order dated 04.03.2021 and while doing so dealt with in considerable detail the adverse fall-out of the State's failure to adopt the policy of rotation while reserving the offices of President of Municipalities for SC or ST. This Court had *prima facie* found that policy of rotation not only applies at the stage of reservation of Constituencies (Wards) in a particular Municipality but equally applies while reserving the offices of President of a Municipality. In the said impugned order dated 04.03.2021, this Court also *prima facie* found that non-adoption of policy of rotation while reserving the offices of Chairperson (Mayor/President) of Municipalities leads to incongruous situation which is neither in consonance with Article 243-T nor is in line with the very object of reservation manifested in Article 243-T read with 334 of the Constitution.

Learned counsel for petitioner contends that by merely staying the reservation notification qua the office of Chairperson of only two Municipalities *i.e.* Municipal Council Indargarh, District Datia (M.P.) and Municipal Council Dabra, District Gwalior in W.P. No.2044/2021, W.P.361/2021 & W.P.19984/2020, without undertaking the exercise of reservation to the said offices afresh by adopting the policy of rotation,

incongruous results would arise.

It is further submitted by learned counsel for petitioner that policy of rotation in all subsequent elections are required to be followed for bringing the reservation to the said offices in line with the mandate of Article 243-T of the Constitution.

It is further submitted that whenever subsequent elections are held after the initial election at the time of the constitution of the Municipality/Municipal Corporation, the adherence to policy of rotation is mandatory.

It is further submitted that if the State is permitted to go ahead with the process of election in those Municipalities/Municipal Corporations in regard to which there is no order of judicial restraint and the offices are permitted to be reserved for the same category repeatedly then it would lead to repeatedly blocking the offices of Chairperson for the same category.

This Court has already taken a tentative view by passing interim order in W.P. No.2044/2021, W.P. No.361/2021 and W.P. No.19984/2020.

If the State is allowed to proceed on the basis of notification P/1 issued without adopting policy of rotation in terms of Article 243-T then the entire process of election which is yet to commence would render vitiated in law. Unless the policy of rotation is followed in respect of all the offices of the President of Municipalities situated in the entire State of Madhya Pradesh before commencement of any subsequent election then,

each of the office of Chairperson situated anywhere in the State of M.P. would be adversely affected. Reason being that if repeat reservation without following mode of rotation is permitted then such offices would be deprived of being represented by non-SC/ST candidate. Correspondingly, the offices which are unreserved shall be deprived of being represented by SC/ST candidate. Thus, the exercise of reservation by adopting the mode of rotation which ought to be carried out before the declaration of the election programme (which has not happened yet) is vital to bring the reservation in line with the object behind Article 243-T or else the entire subsequent election to all the offices of Chairpersons to different Municipalities situated in The State of Madhya Pradesh shall stand vitiated.

Accordingly, this Court to further the cause of elections to the offices of President/Mayor of different Municipalities where rotation has not been adopted for reservation deems it appropriate to pass the following interim order:

The impugned notification dated 10.12.2020 अधि. क. 470-एफ-01-88-2019-अठारह-3-मध्य प्रदेश नगरपालिका (महापौर तथा अध्यक्ष के पद का आरक्षण) नियम 1999 published in M.P. Gazette (Part-II), dated 11.12.2020 in effect and operation is stayed to the extent it reserves those offices of Chairperson (Mayor/President) of Municipality (Municipal Council/Municipal Corporation) for SC or ST which were reserved for the same category in the last municipal election of 2014 till next date of hearing.

State is directed to file a para wise reply to the petition before

next date of hearing.

The pendency of this petition will not come in way of the State of M.P. to work out the reservation afresh of all the offices of Chairperson (President/Mayor) of Municipalities (Municipal Council/Municipal Corporation) by adopting the process of rotation to bring it in line with the mandate of Art.243-T and proceed to announce the election programme to conduct and conclude the elections.

List the case alongwith W.P. No.2044/2021, W.P. No.361/2021 & W.P. No.19984/2020 in the **month of April, 2021** for further orders.

(Sheel Nagu)
Judge

(Anand Pathak)
Judge

Vpn

