* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16.02.2012
Date of Decision: 29.02. 2012

+ W.P.(C) 771/2012

VIKAS ..... Petitioner

versus

STATE ELECTION COMMISSION ..... Respondent

+ W.P.(C) 782/2012

VIJENDER KUMAR ..... Petitioner

versus

STATE ELECTION COMMISSION ..... Respondent

+ W.P.(C) 698/2012

KULDIP SINGH & ANR. ..... Petitioners

versus

STATE ELECTION COMMISSION ..... Respondent

+ W.P.(C) 724/2012

RAMVIR SINGH ..... Petitioner

versus

STATE ELECTION COMMISSION ..... Respondent

+ W.P.(C) 745/2012

DINESH KUMAR ..... Petitioner

versus

STATE ELECTION COMMISSION& ORS. ..... Respondents

+ W.P.(C) 746/2012

VIVEK KUMAR SURI ..... Petitioner

versus

LT. GOVERNOR OF DELHI & ORS. ..... Respondents

+ W.P.(C) 750/2012

SUDHIR KUMAR JAIN ..... Petitioner

versus

STATE ELECTION COMMISSION & ANR. ..... Respondents

+ W.P.(C) 807/2012

MANJINDER SINGH SIRSA ..... Petitioner

versus

MCD & ORS. ..... Respondents

+ W.P.(C) 814/2012

MADAN LAL BALMIKI ..... Petitioner

versus

STATE ELECTION COMMISSION ..... Respondent

+ W.P.(C) 841/2012

SURAJ PAL SINGH ..... Petitioner

versus

STATE ELECTION COMMISSION ..... Respondent

+ W.P.(C) 924/2012

LALITA BERWA ..... Petitioner

versus

STATE ELECTION COMMISSION & ANR. ..... Respondents

+ W.P.(C) 927/2012

SHRI PARVEEN ..... Petitioner

versus

STATE ELECTION COMMISSION ..... Respondent

Through:

For the Petitioners: Mr. M.N. Krishnamani, Sr. Adv. with Mr. M. Tarique Siddiqui, Mr.Usman Siddiqui& Mr. Amit Kumar, Advs. in WP (C) No.771/2012.
Mr. P.D. Gupta, Mr. Kamal Gupta, Tripti Gupta & Mr. Abhishek Gupta, Advs. in WP (C)

No.782/2012.
Mr. O.P. Saxena, Mr. Shyam S. Sharma, Mr. Rajesh Kaushik, Mr. Sanjeev K. Baliyan& Mr. Nirbhay Sharma, Advs. in WP (C) No.698/2012.
Mr. Dushyant Chaudhary, Adv. in WP (C) No.724/2012.
Mr. J.P. Sengh, Sr. Adv. with Mr. Rajive R. Raj & Mr. Nikhilesh Ramchandran, Ms.Ankita Gupta, Mr.Sumeet Batra and Ms.Poonam Kalia, Advs. in WP (C) No.745/2012.
Mr. Arvind Nigam and Mr. Rakesh Tiku, Sr. Advs. with Mr. Sunil Mittal and Ms. Purnima Sethi, Advs. in WP (C) No.746/2012.
Mr. N.N. Aggarwal & Mr. Rohit Gandhi, Advs. in WP (C) No.750/2012.
Mr. Maninder Singh, Sr. Adv. with Mr. P.S. Bindra, Adv. in WP (C) No.807/2012.
Mr. Suman Kapur and Mr. Naveen Kumar, Advs. in WP (C) No.814/2012.
Mr. Darpan Wadhwa, Mr. Sagar Pathak& Mr. Saurabh Seth, Advs. in WP (C) No.841/2012.
Mr. Manu Sisodia, Adv. in WP (C) No.924/2012.
Mr. Dalip Kumar Santoshi, Adv. in WP (C) No.927/2012.

For the Respondents: Mr. Najmi Waziri, Standing Counsel for the Govt. of NCT of Delhi with Mr. Sanjeev Dubey, Ms. Neha Kapoor& Mr. Shoaib Haider, Advs. for Govt. of NCT of Delhi in WP (C) Nos.745/2012; 698/2012; 724/2012; 746/2012; 750/2012; 771/2012; 782/2012; 807/2012; 814/2012; 841/2012; 924/2012; 927/2012.
Ms. Maninder Acharya, Adv. for the MCD in WP (C) Nos.745/2012; 746/2012 ; 807/2012.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE RAJIV SHAKDHER

SANJAY KISHAN KAUL, J.

1. The notifications issued reserving seats for Scheduled Castes (for short 'SC') candidates in the impending elections to the Municipal Corporation of Delhi (for short 'MCD') has given rise to the present batch of writ petitions by prospective candidates. The changes effected in pursuance of the notification in the wards of the Corporations of which elections are to be held has resulted in the grievance. One set of petitions only seek to impugn the notification dated 27.1.2012 reserving the wards for the SC and for women (both SC and General category) while the other set of petitions also seek to lay a further challenge to the delegation of powers by the Department of Urban Development, Government of NCT of Delhi (for short 'GNCTD') to the State Election Commission (for short 'SEC') vide notification dated 24.1.2012 to carry out the exercise of identifying the reserved wards. We may notice that though earlier there was one Delhi Municipal Corporation, now there will be three Municipal Corporations in the NCT of Delhi in pursuance of a notification dated 27.1.2012 – North Delhi, South Delhi and East Delhi.

2. The Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the 'said Act') was enacted by the Parliament for constituting the MCD. The Councilors of the Corporation are chosen by direct election on the basis of adult suffrage from various wards into which Delhi is divided. The MCD was established under Section 3 of the said Act and consisted of 80 Councilors initially out of which 12 seats were reserved for members of SC. The Constitution (74th Amendment) Act, 1992 inserted Chapter IX-A in the Constitution of India pertaining to Municipalities. This was followed by the amendment to the said Act by virtue of Act No.67

of 1993 assigning 134 wards to the MCD out of which 25 per cent seats were reserved for the members of the SC on the basis of the population census of 1991.

3. The SEC issued a notification on 30.12.1993 in exercise of powers under proviso 4 to sub-sections (6), (7) & (8) of Section 3 of the said Act determining the total number of seats for women and also for women belonging to the SC from amongst the seats reserved for SCs and also determined the manner of rotation of the total reserved seats in the Corporation. However, this notification is stated to have been withdrawn and another notification dated 18.3.1994 was issued by the SEC determining that out of 25 seats reserved for SC, 9 seats would be reserved for women belonging to SCs. The total number of seats reserved for women other than SCs was fixed at 37 by a subsequent notification dated 21.3.1994. The last of these set of notifications were issued on 23.3.1994 notifying the reservation by allotment of seats for women members of SC and women belong to SC and the manner of reservation and rotation of reserved seats in different wards for six terms. The 134 wards were sought to be divided into five groups, four groups comprising 32 wards each and a fifth group of 6 wards. The reservation and rotation formulae were set out in the notification on the basis of these groups.

4. The aforesaid notification dated 23.3.1994 became subject matter of challenge in WP (C) No.1571/1994 titled Hem Raj Arya & Ors. Vs. The Election Commission of the NCT of Delhi & Ors. The said writ petition *inter alia* raised the issue of the manner of reservation of wards. The writ petition was dismissed on 1.1.1995. The general elections to the Councilors of the MCD in

1997 are stated to have been held on the basis of notifications of 23.3.1994.

5. Prior to the next elections to the wards of MCD being held, a notification dated 27.11.2001 was issued by the Central Government in supersession of the earlier notification dated 23.3.1994 directing and notifying that the reservation by allotment of seats for women, members of the SC and women belonging to the SC and the manner of reservation and rotation of reserved seats in different wards for the next elections to the MCD shall remain the same as it was for the earlier Corporation and would continue to apply till fresh delimitation of wards takes place.

6. The elections thereafter were held in 2007 to the MCD and vide notification dated 17.2.2007 the number of seats to be reserved for women belonging to the SC from amongst the seats reserved for SC was determined to be 16 and from the unreserved category 76. This notification was issued on the basis of the population of Delhi based on 2001 Census increasing the total number of wards to 272 seats reserving 46 wards for members of the SC. Once again, this notification came under challenge in WP (C) No.1331/2007 titled Ramesh Dutta Vs. The State Election Commission decided on 6.3.2007. With regard to the reservation of the seats of Councilors in the MCD for SC and women qua the forthcoming elections of the MCD, the learned single Judge of this Court, concluded that the manner of allotment of seats for SC and women must be discernable from the records and must be reasonable and not arbitrary or discriminatory or *malafide*. The mode of identifying seats reserved for SC based on the twin criteria of ranking seats in decreasing proportion of population and limiting them to not more

than two per assembly segment received the imprimatur of this Court. Similarly, the criterion of allotting every third seat from the list of wards arranged as per the serial numbers of the wards for women was held unquestionable. The notification dated 17.2.2007 was, however, set aside as it was found that the formula was not uniformly applied.

7. Now coming to the notification in question in the present cases. On 29.12.2011, the GNCTD issued a notification amending the said Act. The major change which occurred in the said Act was that instead of 1, 3 Municipal Corporations were created. Another significant change is that Section 3 (8) of the said Act has been amended to incorporate that the number of seats reserved for women shall not be less than half of the total number of seats other than those reserved for SCs. A similar amendment has been made to sub-section (7) of section 3 dealing with reservation for SC women. A third proviso has been added to sub-section (6) of Section 3 of the said Act which states that for the first election to the Corporation to be held immediately after the commencement of the Amendment Act of 2011, the population figures as published in 2001 Census shall be deemed to be the population ascertained in that Census.

8. The aforesaid notification has been followed up by another notification dated 27.1.2012 in terms whereof the SEC has prepared a list for implementation of the prescribed manner for reservation of seats in all the three Corporations of Delhi on the basis of 2001 Census. The plea of the petitioners is that this list of seats reserved in the categories has been made arbitrarily resulting in wrong and incorrect reservation of seats. The methodology

adopted is different from the one for reservation of seats in the 2007 elections. The population of SC voters in each ward is taken into account while arranging them in descending order as before but while determining which wards are to be reserved, the total number of SC population in the Assembly Constituency has played a vital role. It is not as if the principle of descending order on the basis of the population has been given a go by or that having not more than two wards reserved in the Assembly Constituency segment has not been followed but the total percentage of population in Assembly segment has been the criteria adopted to decide as to in which Assembly segments, the wards have been reserved. It is this manner of reservation of seats which has resulted in a grievance for the petitioners. As per the petitioners the result is that certain wards having higher percentage of SC population have been declared under the General category while other wards having lesser SC population have been reserved, of course, still following the principle of not more than two wards being reserved in an Assembly Constituency. We may note at this stage that there are 68 Assembly Constituencies and each Assembly Constituency has four wards and that is how there are 272 wards in total of the three Corporations. We may add that the allegation made by the petitioners is also that this impugned notification is a result of the pick and choose policy for conferring undue benefits to certain candidates though no further particulars of the same have been set out.

9. A grievance is also sought to be raised that since 2011 Census had been carried out the elections should have been held on the basis of that Census rather than the 2001 Census.

10. This exercise undertaken by the SEC is also sought to be impugned on the ground that power vests with the Central/State Government and such power could not have been delegated. Section 490A of the said Act refers to the Delegation of power by the Central Government while Section 490B deals with the Delegation of power by the Government (the GNCTD). It is the plea of the petitioners that the legislative mandate contained in the various provisions of the said Act read with the Constitution of India obligates the Central/State Government(s) to exercise such power which ought not to have been delegated to the SEC as the SEC would not fall in the nomenclature of 'any other authority' in these Sections. It is their plea that the exercise of such delegated powers actually impinges on the independence of the Election Commission.

11. A common counter affidavit has been filed in all the matters. It was agreed upon by the petitioners that such an exercise would be necessary as the first set of petitions had come up before this Court only on 3.2.2012 and the parties were desirous of an early adjudication in view of the impending elections. The exercise carried out by the SEC has been defended in view of the mandate contained in Article 243T of the Constitution of India. In so far as the notification dated 27.1.2012 providing for elections to be held as per 2001 Census is concerned, it was submitted that the same was necessitated on account of absence of such ward-wise SC population figures for the Census of 2011. An exercise is stated to have been carried out in consultation with the National Recognized Political Parties (for short 'NRPP') on the reservation formula for SC women and women wards prior to the issuance of

the notifications and it has been specifically stated that there is no violation of the principles laid down in Ramesh Dutta's case (supra). The seats which were reserved for SC ought not to be concentrated and should be equally spread out, is a principle recognized in the judgment and the exercise carried out is stated to be towards this avowed object. The amendment to the fourth proviso to sub-section 6 of Section 3 of the said Act provides for such an exercise now to be carried out by the GNCTD instead of the Central Government as earlier envisaged and the GNCTD having the power to delegate, conferred the power on the SEC.

12. The contours of the controversy having been set out by us, we consider it appropriate to deal with each of the aspects in more detail now on which the notifications are sought to be impugned by the petitioners.

Election should be held on the basis of 2011 Census and not 2001 Census:

13. It is the say of the petitioners that the data of 2011 Census is available which would impact the number of SC population in different Assembly Constituencies and wards. It has, thus, been pleaded that since the objective is that wards where there is a greater prominence of SC population should be reserved for the SC candidates, the re-distribution of SC population as per 2011 Census would have a direct impact on which seats ought to be reserved for the SC candidates.

14. In this behalf we may notice that the notification dated 27.1.2012 itself provides for reservation of seats as per Census of 2001. The relevant part of the notification reads as under:

> "AND WHEREAS as per provisions of sub-section (6) of section 3 of the Act, the number of seats to be reserved for the members of the Scheduled Castes shall, as nearly as may

be, bear the same ratio to the total number of seats as the population of Scheduled Castes bears to the population of the respective Corporation as per census 2001;"

This is in conformity with the notification dated 29.12.2011 amending the Delhi Municipal Corporation Act and stipulating in the third proviso to sub-section (6) of Section 3 of the said Act as under:

"Provided also that for the first election to the Corporations to be held immediately after the commencement of the Delhi Municipal Corporation (Amendment) Act, 2011, the population figures of every such Corporation as published in relation to 2001 census shall be deemed to be the population thereof as ascertained in that census.";

There is no challenge laid to the aforesaid incorporation of the third proviso in terms of Delhi Municipal Corporation (Amendment) Act, 2011.

15. The rationale for the aforesaid despite the 2011 Census is stated to be the communication dated 12.7.2011, by the Office of the Registrar General of India to the Director, Directorate of Census Operations, Delhi, which reads as under:'

"To
The Director
Directorate of Census Operations,
Delhi.

Subject: Requisition for Ward wise SC population of Census 2011 – regarding

Sir,

Please refer to your letter No.1/89/2011-DCO/1235 dated July 4, 2011 on the subject cited above. In the above context it is informed that the Ward wise SC population of Census 2011 can be provided only after the completion of the entire scanning and data procession of the Household Schedules of 2011 Census. The processing and release of ward wise figures would take

minimum of two years. It would then be possible to provide the desired information.

Yours faithfully,
Sd/-
(A.K. Singh)
Joint Director"

(emphasis supplied)

16. The Director, Census Operations, Delhi in turn informed the SEC vide letter dated 19.7.2011 as under:

"Respected Sir,

Kindly refer to your D.O. No.SEC (Admn.)/2011/479 dated 20.6.2011 regarding supply of ward wise SC population, Census 2011. In this regard, I am to inform you that the processing and release of ward wise figures of Scheduled Caste Population will take a minimum of 2 years as per information received from O/o Registrar General, India vide letter No.9/12/2010-CD(CEN) dated 12.07.2011 (copy enclosed).

With deep regards,

Yours sincerely,
Sd/-
Varsha Joshi, I.A.S."

(emphasis supplied)

17. The aforesaid, thus, makes it abundantly clear that there is absence of relevant data apropos the SC population in Delhi in respect of the three new Municipal Corporations, which would have enabled the SEC to carry out exercise on the basis of 2011 Census.

18. This leaves us with no manner of doubt that the exercise on the basis of 2011 Census was not possible in view of absence of data and that also appears to be the reason that this plea was not really pressed to a large extent once the counter affidavit had been brought on record.

Reservation of SC wards on the basis of percentage of SC population in each ward by arranging the wards in descending order as in the past should have been the only mode of reservation and the percentage of SC population in the Assembly segment should play no role:

19. We have already noted the exercise carried out for the elections held in 2007, which came into challenge in Ramesh Dutta's case (supra). The mode and manner of the exercise carried out received the imprimatur of the High Court though the implementation of the same was found to be faulty which was corrected as per the directions contained in the judgment. It would be useful to reproduce the conclusion of that judgment contained in paras 38 to 40, which read as under:

> "*Conclusion*
>
> 38. Accordingly, I hold that these writ petitions are maintainable. I also hold that there is no statutory requirement for disclosing the manner of allotment of seats reserved for the Scheduled Castes or women in the notifications issued under Section 5(2) of The DMC Act. However, such a manner must be discernible from the records of the Central Government (including its delegates). The manner must be reasonable and not arbitrary or discriminatory or mala fide. The manner indicated in the present case of identifying seats reserved for scheduled castes based on the twin criteria of ranking seats in decreasing proportion of population and limiting them to not more than two per assembly segment cannot be interfered with as it is neither arbitrary nor discriminatory nor *malafide*. Even the criterion of allotting every third seat from the list of wards arranged as per the Serial numbers of the wards for women cannot be questioned. However, as indicated above, the impugned notification of 17.02.2007 has gone wrong in not uniformly applying these criteria. The same is, Therefore, set aside.
>
> 39. During the course of hearing, yesterday (i.e., 05.03.2007), the learned Counsel for the Election Commission of NCT of

Delhi had indicated that a fresh notification would be issued under Section 3(6), (7) and (8) and 5(2)(c) and (d) of the DMC Act and the manner of allotment of seats for Scheduled Castes, women belonging to Scheduled Castes and women (general) would also be specified. A draft of the proposed notification was presented before the court. The manner of allotment of seats has been indicated as under:

a) Seats for the Scheduled Castes shall be arranged in the descending order of the percentage of Scheduled Castes population in each ward and shall be reserved in that order. To ensure that the seats reserved for Scheduled Castes are not concentrated and are equally spread, to the extent possible, throughout the area under MCD jurisdiction, not more than 2 wards in an Assembly segment shall be reserved for the Scheduled Castes.

b) By the above arrangement, 15 Assembly Constituencies will have 2 seats reserved for Scheduled Castes. The 1st of these 2 seats in each such Assembly Constituency will be reserved for women belonging to the Scheduled Castes. The 16th seat reserved for women belonging to the Scheduled Castes will be the Scheduled Caste seat falling in the last assembly having only one Scheduled Castes. The 16th seat reserved for Scheduled Castes women will, thus, be 245 DurgaPuri.

c) Every 3rd seat from amongst the 226 unreserved seats will be reserved for women (general). That way the 75th women seat would go to ward 271 - Karawal Nagar (West). The remaining 76th seat will go to the last remaining ward No. 272-Sonia Vihar.

I see no difficulty with allotment of seats in the proposed manner. Since, the election to be held on 05.04.2007 is to be notified by 10.03.2007, it is directed that the fresh proposed notification based on the above manner of allotment of seats is issued immediately.

40. It is made clear that there is no necessity of rotating the scheduled caste seats in the future terms, though, the Central Government may do so. There is, however, a necessity that the seats reserved for women under both the scheduled caste and general categories be rotated. The manner of such rotation must be indicated the next term."

(emphasis supplied)

20. It was, thus, initially sought to be submitted by the petitioners that the manner of reservation of SC wards having been decided in the aforesaid judgment, the same should have been followed. However, it could not be disputed by learned counsels for the petitioners that the exercise was actually not undertaken by the Court but by the SEC and the mode and manner of reservation received the imprimatur of the High Court. This did not preclude the SEC from adopting any other formula so long as the test of reasonableness was satisfied. The exercise carried out by the SEC for the proposed elections has, thus, to be scrutinized as per the parameters laid down in Ramesh Dutta's case (supra).

21. The notification dated 29.12.2011 amended the said Act. The said amendment *inter alia* increased the number of seats reserved for women from not less than 1/3rd to not less than ½. It also divided the MCD into three different Corporations as per 14th Schedule to the said amendment. In order to appreciate the effect of these amendments, it is necessary to first reproduce the relevant portion of Section 3 of the said Act, which reads as under:

> "**3. Establishment of the Corporation** –
>
> (1) With effect from such as the Central Government may, by notification in the Official Gazette, appoint, there shall be a Corporation charged with the municipal Government of Delhi, to be known as the Municipal Corporation of Delhi.
>
> …. …. …. …. …. …. …. …. ….
>
> (6) Upon the Completion of each census after the establishment of the Corporation the number of seats shall be on the basis of the population of Delhi as ascertained at that census and shall be determined by the Central

Government by notification in the Official Gazette and the number of seats to be reserved for the members of the Scheduled Castes, shall, as nearly as may be, bear the same ratio to the total number of seats as the population of Scheduled Castes bears to the total population of Delhi.

Provided that the total number of seats shall in no case be more than three hundred or less than two hundred and seventy-two;

Provided further that the determination of seats as aforesaid shall not affect the then composition of the Corporation until the expiry of the duration of the Corporation:

Provided also that for the first election to the Corporation to be held immediately after the commencement of the Delhi Municipal Corporation (Amendment) Act, 1993, the provisional population figures of Delhi as published in relation to 1991 census shall be deemed to be the population of Delhi as ascertained in that census;

Provided also that seats reserved for Scheduled Castes may be allotted by rotation to different wards in such manner as the Central Government may, by order published in the Official Gazette, direct,"

7. Seats shall be reserved for women belonging to Scheduled Castes, from among the seats reserved for the Scheduled Castes, the number of such seats being determined by the Central Government by order published in the Official Gazette which shall not be less than one-third of the total number of seats reserved for the Scheduled Castes;

8. Seats shall be reserved for women, the number of such seats being determined by order published in the Official Gazette by the Central Government which shall not be less than the one-third of total number of seats other than those reserved for the Scheduled Castes;

Provided that such seats reserved for women shall be allotted by rotation to different wards in such manner as the

Central Government may by order published in the Official Gazette direct in this behalf."

22. Section 2 of the said Act is the Definition Section and the relevant Definitions are reproduced hereinunder:

"**2. Definitions**

…. …. …. …. …. …. …. …. ….

(6) "Commissioner" means the Commissioner of the Corporation;

(7) Corporation" means the Municipal Corporation of Delhi established under this Act;

…. …. …. …. …. …. …. …. ….

(10) "Delhi" means the entire area of the Union territory of Delhi except New Delhi and Delhi Cantonment;

…. …. …. …. …. …. …. …. ….

(15A) "Election Commission" means the Election Commission of the National Capital Territory of Delhi referred to in section 7;

(15B) "Election Commissioner" means the Election Commissioner of the National Capital Territory of Delhi appointed by the Administrator under section 7;

…. …. …. …. …. …. …. …. ….

(21A) "Government" means the Government of the National Capital Territory of Delhi;

23. The relevant portions of the Amendment Act of 2011 are also being reproduced hereinunder:

"**2. General.** – In the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the "principal Act"-

(b) for the words "Central Government" wherever occurring in different sections, the word "Government" shall be substituted except in sections 2 (43), 2 (51), 3 (6), 9(1)(g), 22 (8), 31, 54, 90 (8), 96(c), 106, 185, 195(1), proviso to 195(2), 485, 486, 487, 488 and 490, 490A.

…. …. …. …. …. …. …. …. ….

6. Amendment of section 3. – In the principal Act, in section 3,-

(a) for sub-section (1), the following sub-sections shall be substituted, namely:-

"(1) The Government shall, by notification in the official Gazette, establish for the purposes of this Act, three Corporations charged with the municipal government of Delhi.

(1A) The name, area and limits of the three corporations established under sub-section (1) shall be as per the fourteenth schedule;

(b) for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) Every Corporation so established shall be a body corporate with name duly notified by the Government having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued."

(c) for sub-section (5), the following sub-section shall be substituted, namely:-

"(5) The total number of seats of councilors and the number of seats reserved for the members of the Scheduled Castes in each Corporation, shall, at the time of establishment of such Corporation, be as determined by the Government by notification in the official Gazette";

(d) In sub-section (6), -

(i) for the first proviso, the following proviso shall be substituted, namely:-

"Provided that the total number of seats in all the Corporations in Delhi shall in no case be more than two

hundred and seventy two and the number of seats in each Corporation shall be determined by the Government at the time of establishment of such Corporations";

(ii) for the third proviso, the following proviso shall be substituted, namely:-

"Provided also that for the first election to the Corporations to be held immediately after the commencement of the Delhi Municipal Corporation (Amendment) Act, 2011, the population figures of every such Corporation as published in relation to 2001 census shall be deemed to be the population thereof as ascertained in that census.";

(e) In sub-section (7),-

(i) for the words "Central Government", the word "Government" shall be substituted.

(ii) for the words "one-third", the words "one half" shall be substituted.

(f) In sub-section (8),-

(i) for the words "Central Government" wherever occurring, the word "Government" shall be substituted;

(ii) for the words "one-third", the words "one-half" shall be substituted."

…. …. …. …. …. …. …. …. ….

20. **Insertion of new section 490B.** – In the principal Act, after section 490A, the following section shall be inserted, namely:-

"**490B. – Delegation of power by the Government.** – The Government may, by notification in the official Gazette, direct that any power exercisable by it under this Act shall, subject to such conditions, if any, as may be specified in the notification, be exercisable by any of its officers or by Commissioner or by any other authority."

24. The effect of the aforesaid is that in so far as Section 3 of the said Act is concerned qua sub-section (7) & (8) the powers which were earlier exercisable by the Central Government would now be exercised by the GNCTD while the Central Government would continue to exercise powers under sub-section (6) of Section 3 of the said Act. The specific incorporation of Section 490B permits the GNCTD to delegate any of its powers as was the position with the Central Government under Section 490A of the said Act.

25. The reservations to be made as a result of all the aforesaid would be of three types:

a. Seats to be reserved for SC in proportion to their population in that Municipality;

b. One half of the SC seats would be reserved for SC women;

c. One half of the total number of seats after deduction of SC reserved seats would have to be reserved for women.

26. A notification dated 24.1.2012 was issued in exercise of powers of Section 490B of the said Act in terms whereof the GNCTD directed the relevant powers to be exercised by the SEC. The notification reads as under:

> "**(TO BE PUBLISHED IN PART-IV OF THE DELHI GAZETTE-EXTRAORDINARY)**
> **GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI**
> **DEPARTMENT OF URBAN DEVELOPMENT**
> **9TH LEVEL, C-WING, DELHI SECRETARIAT, NEW DELHI**
> F.No.13(20)/UD/MB/2012/1103 dated 24th January, 2012
> **NOTIFICATION**
> No.F.13(20)/UD/MB/2012/1103 In exercise of the powers conferred by section 490B of the Delhi Municipal Corporation Act, 1957 as amended by Delhi Municipal Corporation (Amendment) Act, 2011 (Delhi Act 12 of 2011), the GNCT of Delhi hereby directs that the powers exercisable by it under section 3 (5), 3 (7), 3 (8), section 5(2) (c) (d) (e), regarding North Delhi Municipal Corporation, South Delhi Municipal

Corporation and East Delhi Municipal Corporation, shall be exercisable by the Election Commission of the National Capital Territory of Delhi referred to in section 7 of the Delhi Municipal Corporation Act, 1957 (66 of 1957).

By order and in the name of the Lieutenant Governor of the National capital Territory of Delhi
Sd/-
(R.K. SRIVASTAVA)
Secretary (Urban Development)"

27. Thus, the SEC was empowered to carry out the exercise. This is, of course, subject to the challenge laid by one set of petitioners which we will discuss later on. The three kinds of reservations are stated to have been implemented vide notification dated 27.1.2012, which is stated to be in consonance with the directions of this Court in Ramesh Dutta's case (supra).

28. It is the say of the SEC that there was a preliminary exercise carried out before issuance of the notification and consultations with NRPP's on the reservation formula for SC women and women wards for election to the three new Municipal Corporation of Delhi were also held. A presentation was also made of the proposed reservation discussing three possible methods of reservations of SC seats and the respective effect of each options. No objection is stated to have been raised by any of the political parties to the proposed formula which has been adopted.

29. An endeavour has been made to gain the maximum spread in respect of SC population from all over Delhi and Assembly Constituencies having the higher population of SC population were chosen in descending order and seats were reserved in wards having the highest percentage in that Assembly Constituency. It is the say of the respondents that this eliminates any possible and/or hidden distortions in reservation of SC seats since the reservation

of seats is in the ratio of general population in the municipality vis-à-vis the SC population in the municipality and not the voter population of the said two categories. It has been emphasized that while Section 38 of the National Capital Territory Act, 1991 provides that constituencies in which seats are reserved for SCs shall as far as is practicable, be located in areas where the percentage of their population is comparatively large; it, however, does not specify that the constituencies having maximum or highest population only have to be reserved. It has been emphasized that the fourth proviso to Section 3 (6) of the said Act permits the reservation of SC seats by rotation to different wards which power is now to be exercised by the SEC as delegated vide notification dated 14.12.1993 of the Central Government.

30. The respondents have sought to emphasize that even if the present allocation of seats for SC, SC women and women may have upset the calculation of many a prospective candidates, the same is a logical fate which would have to be pursuant to adoption of a transparent and methodical criteria for reservation of seats.

31. We had posed a specific query to learned counsel for the SEC as to whether in future apart from rotation of seats for women, it was envisaged that there would also be rotation of seats reserved for SC category. Learned Standing Counsel for the GNCTD, Mr. Najmi Waziri, appearing on behalf of the SEC categorically stated in the affirmative. We may note at this stage that the plea of the petitioners that if data of 2011 is available, the next election would be held on the basis of Census of 2011 and, thus, different population ratios in different Assembly Constituencies/wards may come into play but that, in our considered view, is a different

matter. The respondents have annexed to their counter affidavit print outs of different slides which have been shown to the representatives of NRPP before finalization of notification and we consider it appropriate to reproduce some of them which portray the picture as it would emerge:

New reservations for 3 MCs

MC	population	SC	%age	seats
North	5272978	1024016	19.42	20.20 or 20
South	4916588	705504	14.92	14.92 or 15
East	3229373	533869	16.53	10.58 or 11

Women reservation of SCs

MC	number	women	men
NORTH	20	10	10
SOUTH	15	8	7
EAST	11	6	5

Possible Methods of reservation of SC

- In order to spread out the reservations across the AC and specific Municipal Corporation the following methods could be followed:-
- **First:** The SC population and %age in entire ACs be arranged in descending order
- One ward in one AC to be reserved
- The highest population of SC in the ward falling AC be reserved for SC
- Among them, first seat would be reserved for woman and remaining alternated accordingly between woman and SC (male)

Methods of reservation of SCs

- **Second:** SC population of all wards in MC is taken and arranged in descending order.

- On the principle of one AC having one SC seat the highest % of SC population in the ward, in the AC
- In this way 20 seats in North, 15 seats in South and 11 seats in East are reserved.
- The inter-se reservation starts with first being reserved for woman and next for male in serial order

Methods of reservation of seats

- **Third:** The reservation is done based on the principle of two seats in one AC ward being reserved for SC with the maximum % of population arranged in descending order.
- In this way only 10AC in North, 8 in South and 6 in East will get reservation
- This will however lead to concentration of SC seats in a few ACs

Reservation of Women seats

- After taking out the reserved SC seats the following seats are left:-
- North MC 104-20 = 84
- South MC 104-15 = 89
- East MC 64-11 = 53
- As 50% of seats are reserved for women the seats reserved for women are:-
- North: 42; South: 45; East: 27

Reservation for women (general)

- The seats for women would be first allotted to woman from among the remaining seats
- The alternate seat would be kept as general
- The seats would be arranged in serial order of 1st, 3rd, 5th, etc going for women (in the remaining wards) and
- 2nd, 4th, 6th etc going for general as per serial order of the numbering as per the remaining wards.

Conclusion

- The first system achieves the twin objectives of spreading the

reserved seats throughout the corporation's jurisdiction for scheduled caste and women reservations.

- The second system ensures that only those wards having highest SC population get reserved in the AC and specific corporation.
- Third system leads to bunching of SC seats.
- The reservation order would be issued as soon as the government delegates the powers.

32. The purpose of reproducing the aforesaid slides is that it is apparent that a considered exercise has been undertaken to arrive at an appropriate reservation formula which has resulted in the following picture qua reservation of seats:

	THREE WOMEN	**THREE MEN**	**EQUAL**	**TOTAL**
NORTH	10	10	6	26
SOUTH	8	7	11	26
EAST	6	5	5	16

33. The petitioners, however, sought to dispute the aforesaid position and in that behalf referred to Articles 243R to 243T of the Constitution of India, which read as under:

> "**243R. Composition of Municipalities.**—(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.
>
> (2) The Legislature of a State may, by law, provide—
>
> (a) for the representation in a Municipality of—

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.

…. …. …. …. …. …. …. …. ….

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."

34. It was emphasized that Part IXA has a heading "Municipalities" and was introduced w.e.f. 1.6.1993. The composition and reservation of seats in the "Municipalities", which was pleaded, provided for elections to wards based on the ratio of population. It was, thus, submitted that the methodology adopted for the elections of 2007 whereby all the wards were arranged in a descending order on the basis of the percentage of population of SC in each ward and thereafter reservation made subject to the condition that not more than two seats are reserved for SC in any one Assembly segment was the rational method. The utilization of the unit of the Assembly is stated to be alien to Chapter IXA and the anomaly which has been created has been illustrated by referring to the reservation of wards in South Delhi Municipal Corporation where ward Nos.140 and 194 having a SC population of 17.34 per cent and 16.26 per cent respectively are reserved for SCs while ward Nos.106 and 158 having population of 19.36 per

cent and 20.25 per cent respectively are in General category. It is not necessary to give further examples but suffice to say that there are number of cases of such kind. A further grievance is also made about reservation of three seats in some Assembly segments for women while reservation is only one for women in another Assembly segment.

35. A further plea advanced is on the basis of Article 243D of the Constitution of India, which reads as under:

> "**243D. Reservation of seats**
>
> (1) Seats shall be reserved for
>
> (a) the Scheduled Castes; and
>
> (b) the Scheduled Tribes, in every Panchayat 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 Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.
>
> (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 Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.
>
> (4) The offices of the Chairpersons in the Panchayats at the village or any other level 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: Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: Provided further that not less than one third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(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 Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens."

36. It was emphasized that the aforesaid definitions show that it is the municipal area which is relevant and if this provision read with Article 243 are dealing with composition of municipalities whereby the territorial constituencies are to be known as wards and Article 243D dealing with the reservation of seats again ward-wise, the unit of the Assembly segment has no relevance. The respondents have rebutted this plea on the ground that the Assembly unit has been taken into account only for the purposes of non-clustering, plea which we have appreciated.

37. It is our view that the SEC has carried out a considered exercise which by no stretch of imagination can be said to be irrational or arbitrary so that it would fall foul of Ramesh Dutta's case (supra).

It has already been explained that the methodology adopted in Ramesh Dutta's case (supra) for the elections in the year 2007 alone was not to be implemented for all future elections and that the exercise then carried out was rational and reasonable though there may have been flaws in the implementation aspect. The SEC was, thus, within its rights to adopt a modified formula.

38. In the present election we face a prospect of three separate Municipal Corporations. The wards have been divided between the three Corporations. Different possibilities were examined as to how best the reservations policy could be implemented keeping in mind the twin principle, i.e., areas where there is a greater population of SC should be reserved seats/wards and each Assembly should not have more than two reserved wards. It is nobody's case that the second objective has not been achieved. In so far as the first objective is concerned, there are cases where a particular ward having a greater percentage of SC population would have been reserved while another ward having more SC population has not been reserved but that is on account of a changed formula where a larger spread of population has been taken into account, i.e., the population of SC in an Assembly segment to arrange the constituency in a descending order on the basis of the SC population. Such SC population for an Assembly segment is in turn based on the totaling of the SC and the total population for each ward. Thus, the ward remains the unit and it is not as if the Assembly segment has become a unit. However, in order to achieve a greater spread, the methodology under challenge has been adopted. We may also note another aspect arising from the rotation of seats which will take place not only of

the women candidates but also of the SC candidates as has been assured by the counsel for the SEC before us qua the future elections. These would be in consonance with the 4th proviso to sub-section (6) to Section 3 of the said Act. Print outs of the slides annexed to the counter affidavit giving different options for reservation seek to conclude that the first system achieved the twin objective of spreading the reserved seats throughout the Corporation jurisdiction for SC and women while on the other hand the second system ensures that only those wards having highest SC population can be reserved in AC and specific Corporation while the third system leads to bunching of SC seats.

39. The number of seats to be reserved for women among the seats to be reserved for SC has also to be, at least, half. Thus, a twin criterion has to be followed in view of sub-section (7) & (8) of Section 3 of the said Act, i.e., not less than half seats out of the total seats for women and not less than half of the seats out of the SC seats to be for SC women.

40. Another issue raised by the Petitioners is that while implementing their own scheme of reservation, the Respondents have not adhered to reserving the 1st, 3rd, 5thetc serial no seats for women and the 2nd, 4th, 6th, etc serial no seats for general with the same situation prevailing with respect to SC women and SC. This was illustrated vide the impugned notification where this order seems to not have been followed. Mr. Waziri, standing counsel for the SEC, has explained this by reading Annexure I of the notification along with Annexure III which shows that this order of reservation has actually been followed. According to Annexure I, the SC seats have first been separated from the General seats and then the

1st seat given to SC women 2nd to SC and so on. After deducting the SC wards, the remaining wards have been arranged and the same exercise has been carried out. We accept this submission of the Learned Counsel for the Respondent.

41. The methodology adopted by the SEC can, thus, hardly be faulted and we find no merit in the challenge.

Reservation for women exceeds 50 per cent:

42. One of the specific pleas raised in WP (C) No.746/2012 is that the total reservation of women exceeds 50 per cent. This is based on the total number of seats and the seats reserved for women. The position which emerges from the Annexure to the notification dated 27.1.2012 qua the three Municipal Corporations is as under:

Constituency	**SC Women**	**SC**	**Women**	**General**	**Total**
North Delhi	10	10	42	42	104
South Delhi	8	7	45	44	104
East Delhi	6	5	27	26	64
Total	24	22	114	112	272

43. There are 272 wards and thus 50 per cent of the wards would amount to 136 wards. The wards reserved for women, both for general and SC categories is [24 (SC) + 114 (General)] 138 seats. It was, thus, pleaded that there were two extra seats reserved for women.

44. Learned counsel for the SEC emphasized that the requirement as per notification dated 29.12.2011 amending sub-sections (7) & (8) of Section 3 of the said Act is "not less than one half of the total number of seats". Thus, reservation of more than 50 per cent is permissible. It was submitted that even if the general principle of not more than 50 per cent reservation is applied, in the present case the figures as aforesaid are occurring on account of there

being fraction in two cases which have been rounded off. In South Delhi Municipal Corporation, there are 15 wards reserved for SC and, thus, the requirement would have been to have 7.5 wards for SC women. Since the reservation cannot be less than half this has been rounded off to eight. Similarly in East Delhi there are 11 wards reserved for SC and, thus, the requirement would have been to have 5.5 wards for SC women. Since the reservation cannot be less than half this has been rounded off to six. This is the reason why there are two more seats reserved for women.

45. We find the explanation given by the respondents reasonable specifically in view of provisions of Section 3 (7) & (8) of the said Act in order to ensure that the reservation for SCs is as per the ratio of population and not less than 50 per cent seats are reserved for women.

46. We also find nothing wrong in the manner in which reservation for women has been carried out which we find is in accordance with the scheme under the notification.

47. We, thus, find no merit in this challenge.

Reservation of ward 194 (East of Kailash) and Kalkaji Assembly Constituency irrational:

48. The plea of the petitioners in WP (C) No.746/2012 is based on the premise that if the percentage of SC population in an Assembly is taken as a benchmark, then SangamVihar Assembly Constituency having SC population of 13.63 per cent would actually come after Matiala Constituency with the result that the Kalkaji Constituency (the last one in which there is a reservation for SC) would go out of the ambit of the Assembly Constituency where SC seat are to be reserved. The mistake is stated to have occurred as the

population of SCs in SangamVihar is taken as 10.98 per cent instead of 13.63 per cent. Thus, the plea is based on an incorrect percentage of SC population taken for SangamVihar at 10.98 per cent instead of 13.63 per cent.

49. We had called upon the SEC to file an affidavit in this behalf which was affirmed on 17.2.2012 and though we had reserved orders on 16.2.2012, we had asked learned counsels for the parties to be present at 10:30 a.m. on 17.2.2012 qua the said issue. The said affidavit was filed in Court and both the parties were heard on this aspect.

50. It emerges from the affidavit that as per the Census of 2001 for SangamVihar, the population is 13.63 per cent as against the figures circulated by the SEC vide its order dated 27.1.2012 of 10.98 per cent. The affidavit states that this latter percentage is based on ward-wise population figures given in the notification dated 7.2.2007 of the Delimitation Commission with the approval of the Administrator of NCT of Delhi and the 2007 MCD elections were held on the basis of these figures. The same figures have been taken into consideration and repeated for ensuing elections for the three Municipal Corporations carved out of the municipal areas. The Delimitation Commission of India in 2008 for the purpose of delimitation of the area had carried out the exercise of percentage of the population but the same does not carry with it a breakup of a ward in an Assembly Constituency. However, the same Delimitation Commission in 2007, a year prior, had conducted an exercise ward-wise. Thus, after hearing public objections and suggestions the SEC had notified the ward-wise population of delimitation municipal wards within Assembly

Constituency and only ward-wise figures were available with the SEC as notified by the Gazette of India, any other figure could not be taken into account for purposes of reservation of order of 27.1.2012. The affidavit admits that there is some variation in population as mentioned in the Delimitation Commission of India 2008 and delimitation order was passed by the Administrator on 7.2.2007. The purpose of both the exercises being different, it has been affirmed, that the SEC is bound to go by the published figures for the ward level Constituencies.

51. The affidavit also emphasized that this position is prevalent even earlier for the elections of 2007 and have been raked up after four (4) years now.

52. We find merit in the plea of the SEC in view of the peculiar facts set out in the affidavit. It is, thus, not a mistake qua the percentage of population but in view of two figures available, the one based on a ward-wise survey of SC population have been taken into account which was also the basis of the elections for the year 2007.

53. We, once again, find no merit in the challenge.

The delegation of power vide notification dated 24.1.2012 by the GNCTD to SEC is bad in law:

54. We have reproduced the notification dated 24.1.2012 aforesaid in terms whereof the powers exercisable under Sections 3(5), (7), (8); 5(2) (d) & (e) of the said Act regarding the three Municipal Corporations has been delegated to be exercised by the SEC. This delegation has been specifically impugned in WP (C) Nos.827/2012 and 841/2012.

55. Mr. Maninder Singh, learned Senior Advocate and Mr. Darpan Wadhwa, Advocate emphasized that the source of power of the SEC qua the municipal elections is contained in Section 7 read with Section 2 (15A & 15B) of the said Act, which reads as under:

> "**7. Elections to the Corporation**
>
> (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Corporation shall be vested in the Election Commission of the National Capital Territory of Delhi consisting of an Election Commissioner to be appointed by the Administrator.
>
> (2) Subject to the provisions of any law made by the Legislative Assembly of the National Capital Territory of Delhi, the conditions of service and tenure of office of the Election Commissioner shall be such as the Administrator may by rules determine:
>
> Provided that the Election Commissioner shall not be removed from office except in a like manner and on the like grounds as a Judge of a High Court and the conditions of service of the Election Commissioner shall not be varied to his disadvantage after his appointment.
>
> (3) The Administrator shall, when so requested by the Election Commission make available to that Commission such staff which the Administrator considers necessary for discharge of the functions conferred on the Election Commission by sub-section (1)."

56. It was emphasized that the role of the Election Commission starts from "superintendence, directions and control of the preparation of the electoral rolls" and thereafter the conduct of election but in so far as the reservation of seats is concerned, that is a role assigned earlier to the Central Government and now the GNCTD. It was submitted that the position is similar qua the elections to the

Parliament and the State Assemblies and never has such a power been delegated to the Central Election Commission. Learned counsel referred in this behalf to Article 324 of the Constitution of India, which forms a part of XV dealing with elections. The relevant provisions read as under:

> "**324. Superintendence, direction and control of elections to be vested in an Election Commission.**— (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission)."

57. It was, thus, emphasized that the phraseology is the same, i.e., "Superintendence, direction and control of the preparation of the electoral rolls".

58. Learned counsels emphasized that the introduction of Chapter 9A dealing with the Municipalities was keeping in mind these salutary principles and, thus, the words used are same. To emphasize this learned counsels referred to the provisions of Article 243T vis-à-vis Article 330 and Article 243ZA vis-à-vis 224. For convenience, we have reproduced the same 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	**330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.**—(1) Seats shall be reserved in the House of the People for — (a) the Scheduled Castes; (b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and

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.	(c) the Scheduled Tribes in the autonomous districts of Assam. (2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

…. …. …. …. …. …. …. …. ….

243ZA. Elections to the Municipalities.—(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K. (2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make	**324.** (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution 1*** shall be vested in a Commission (referred to in this Constitution as the Election Commission).”

provision with respect to all matters relating to, or in connection with, elections to the Municipalities.	

59. It was the submission of learned counsels that an Election Commission should not exercise delegated powers when its original exercise of powers starts only from preparation of electoral rolls. The essential function of the GNCTD to carry out reservation, it was pleaded could, thus, not be delegated and that the expression "any other authority", in Section 490B of the said Act would not include either the Election Commission or the Election Commissioner of NCT of Delhi as defined in Section 2 (15A) & (15B) of the Act. The Office of the Election Commission and the Election Commissioner existed when these provisions were introduced and, thus, it could never have intended to include the Election Commissioner under the nomenclature of "any other authority".

60. Mr. Waziri, learned Standing Counsel for the GNCTD, on the other hand, contended that such delegation of power by the Central Government had occurred on various occasions in the past even for earlier elections to the Corporations starting from 1966. He emphasized that a plea cannot be based merely on a public perception when there is a specific provision to delegate the function. The expression "any other authority" used in Sections 490A and 490B of the said Act does not specifically excludes the SEC and there cannot be any such exclusion by implication. The notification dated 27.1.2012 spells out the formula for reservation of SC seats in pursuance of the mandate under Article 243 of the Constitution of India. The working out of the same has been

delegated to the SEC as per notification dated 24.1.2012 keeping in mind the guiding principles of Article 243T of the Constitution of India. The only thing done different from the past is an altered formula whereby the SC population has been identified Assembly-wise and ward-wise but instead of allocating SC seats per Assembly Constituency on the basis of the population of the ward alone, to achieve greater spread the percentage of SC population in the Assembly has been taken into account. This is pleaded to be in consonance with what is observed in Ramesh Dutta's case (supra) that the "SC ought not to be concentrated and should be equally spread out to the extent possible". Learned counsel placed reliance on the observations made in The Registrar of Co-operative Societies, Trivandrum & Anr. Vs. K. Kunjabmu& Ors. (1980) 1 SCC 340, more specifically para 3 of the said judgement, which reads as under:

> "3. It is trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It is now the function of the State to secure to its citizens 'Social, economic and political justice', to preserve 'liberty of thought, expression, belief, faith and worship,' acid to ensure 'equity of status and of opportunity' and 'the dignity of the individual' and the 'unity of the nation'. That is what the Preamble to our Constitution says and that is what is elaborated in the two vital chapters of the Constitution on Fundamental Rights and Directive Principles of State Policy. The desire to attain these objectives has necessarily resulted in intense legislative activity touching every aspect of the life of the citizen and the nation. Executive activity in the field of delegated or subordinate legislation has increased in direct, geometric progression. It has to be and it is as it should be. The Parliament and the State Legislatures are not bodies of experts or specialists. They are skilled in the art of discovering the aspirations, the expectations and the needs, the limits to the patience and the acquiescence and the

articulation of the views of the people whom they represent. They function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and situational intricacies which are better left to better equipped full time expert executive bodies and specialist public servants. Parliament and the State Legislatures have neither the time nor the expertise to be involved in detail and circumstance. Nor can Parliament and the State Legislatures visualise and provide for new, strange, unforeseen and unpredictable situations arising from the complexity of modern life and the ingenuity of modern man. That is the raison d'etre for delegated legislation. That is what makes delegated legislation inevitable and indispensable. The Indian Parliament arid the State Legislatures are endowed with plenary power to legislate upon any of the subjects entrusted to them by the Constitution, subject to the limitations imposed by the Constitution itself. The power to legislate carries with it the power to delegate. But excessive delegation may amount to abdication. Delegation unlimited may invite despotism uninhibited. So the theory has been evolved that the legislature cannot delegate its essential legislative function. Legislate it must by laying down policy and principle and delegate it may to fill in detail and carry out policy. The legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute, the preamble, the scheme or even the very subject matter of the statute. If guidance there is, wherever it may be found, the delegation is valid. A good deal of latitude has been held to be permissible in the case of taxing statutes and on the same principle a generous degree of latitude must be permissible in the case of welfare legislation, particularly those statutes which are designed to further the Directive Principles of State Policy."

(emphasis supplied)

61. In para 9 the observations made in Jyoti Pershad Vs. Administrator for the Union Territory of Delhi AIR 1961 SC 1602 have been relied upon, which read as under:

> 9. In Jyoti Pershad v. The Administrator for the Union Territories of Delhi [1962] 2 SCR 125, Rajagopala Ayyangar, J. made some useful observations which may be extracted here:
>
> *In regard to this matter we desire to make two observations. In the context of modern conditions and the variety and complexity of the situations which present themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provisions for them. The Legislature therefore is forced to leave the authorities created by it an ample discretion limited, however, by the guidance afforded by the Act. This is the ratio of delegated legislation, and is a process which has come to stay, and which one may be permitted to observe is not without its advantages. So long therefore as the Legislature indicates, in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminate. The second is that if the power or discretion has been conferred in a manner which is legal and constitutional, the fact that Parliament could possibly have made more detailed provisions, could obviously not be a ground for invalidating the law*."

62. Learned counsel also seeks assistance from two judgements of the Bombay High Court in WP No.4860/2008 titled Vikramsing Vs. The State of Maharashtra decided on 31.10.2008 and Prashant Bansilal Bamb & Ors. Vs. The State of Maharashtra AIR 2008 Bom 53 where such delegation to the SEC has been held to be valid.

63. Learned counsel submitted that in exercise of such power the SEC has just adopted a new formula to prevent the anomaly of

bunching up and new and just methods can always be adopted. He refers to the words of poet Alfred Lord Tennyson in his epic elegy on the Passing of King Arthur:

> "The old order changeth
> Yielding place to new,
> And the Lord Fulfils Himself in many ways
> Lest one old custom should corrupt the world'

64. It is specifically denied that delegation of power would dilute the independence or autonomy of the SEC in its functioning or would vitiate of any constitutional scheme regarding independency of the election process.

65. On examination of the aforesaid issue we find nothing wrong, improper or in breach of the constitutional scheme in view of the power being delegated by the GNCTD to the SEC. It is no doubt true that the essential functions of the Election Commission starts from the preparation of electoral rolls. It is in view thereof that the expression used qua elections to Municipalities or to the Assemblies and the Parliament was "superintendence, directions and control" followed by "preparation of electoral rolls". Would this imply that the Election Commission is denied of powers in aspects of pre-preparation of electoral rolls, if such power is validly conferred on it or delegated to it? The answer to this question should be in the negative. If at all a wider area of power which otherwise would vest with the Parliament or with the Central Government or the State Government has been delegated in pursuance of a statutory provision, in the present case being Section 490B of the said Act. If at all the SEC which carries out the election process is a more independent and well equipped body to carry out such an exercise. This, of course, does not imply that

the Central Government or the State Government is denuded of the power but that there is no impropriety in delegation of power to the SEC. In fact, in Kanhiya Lal Omar Vs. R.K. Trivedi& Ors. AIR 1986 SC 111, it has been observed in para 9 that superintendence, direction and control of the conduct of elections referred to in Article 324(1) of the Constitution are entrusted to the Commission and, thus, these three phases are wide enough to include all powers necessary for the smooth conduct of elections. This power is, however, subject to the power vested in the Parliament under Article 327 or 328 of the Constitution of India. The Supreme Court in para 12 of the said judgement relies upon the observations made in Sadiq Ali & Anr. Vs. Election Commision of India & Ors. (1972) 2 SCR 318 as under:

> "12…..There is also no substance in the contention that as power to make provisions in respect to elections has been given to the Parliament by Article 327 of the Constitution, the power cannot be further delegated to the Commission. The opening words of Article 327 are 'subject to the provisions of this Constitution'. The above words indicate that any law made by the Parliament in exercise of powers conferred by Article 327 would be subject to the other provisions of the Constitution including Article 324. Article 324 as mentioned above provides that superintendence, direction and control of elections shall be vested in Election Commission. It, therefore, cannot be said when the Commission issued direction, it does so not on its own behalf but as the delegate of some other authority."
>
> *(emphasis supplied)*

66. A Division Bench of the Madras High Court in WP (C) No.3346/2001 titled All India Anna DravidaMunnetraKazhagam Vs. The Chief Election Commissioner, Election Commission of India & Ors.and connected matters decided on 10.4.2001 discussed the issue arising from the use of Electronic Voting

Machines (for short 'EVMs') and came to the conclusion that though the policy decision to use EVMs is taken by Parliament, the details of how to work it out has been delegated to the Election Commission. The relevant paragraphs read as under:

> 42. So far as the argument regarding delegation of powers is concerned the Learned Senior Counsel relied on the decision Tata Iron and Steel Ltd. v. Workmen AIR 1972 SC 1917, wherein stressing the need for flexibility of procedure to meet the changing circumstances and that the Parliamentary procedure and discussion in getting through a legislative measure is time consuming, the Supreme Court explained the necessity for delegated legislation and observed as follows:
>
> The legislature, it must be borne in mind, cannot abdicate its authority and cannot pass on to some other body the obligation and the responsibility imposed on it by the Constitution. It can only utilise other bodies or authorities for the purpose of working out details within the essential principles laid down by it. In such cases, therefore, it has to be seen if there is delegation of essential legislative function or if it is merely a case in which some authority or body other than the legislature is empowered to work out the subsidiary and ancillary details within the essential guidelines, policy and principles, laid down by the legislative wing of the Government.
>
> 43. If we examine the present situation in the light of note of caution found in the above judgment of the Supreme Court, as discussed above, the conclusion is inescapable that there has been no abdication. <u>The policy decision to use EVMs is taken by Parliament and the details are to be worked out only by the EC in the fact situation</u>.
>
> 45. <u>The power of superintendence, direction and control of the preparation of the electoral rolls and the conduct of all elections have been vested with the EC under Article 324 of the Constitution. This position is strengthened in view of the decision in Mohinder Singh v. Chief Election Commissioner AIR 1978 SC 851 wherein it was held that every</u>

contingency could not be foreseen or anticipated with precision. That is why there is no hedging in Article324. The commissioner may be required to cope with some situation, which may not be provided for in the enacted laws and the rules. The Supreme Court also extracted from Sutherland Statutory Construction, 3rd Edition, page 20 the following:

An express statutory grant of power or the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually employed and that are necessary to exercise of the power or the performance of the duty.... That which is clearly implied is as much a part of a law as that which is expressed.
The Supreme Court ultimately found that the Election Commission is competent to order repoll in an appropriate case.

46. It is also noticed that the Rules framed under Section 169 of the 1951 Act have not been challenged. Merely saying that there has been excessive legislation is not enough. As already stated, the Parliament is not expected to say every minute detail in the act itself and the desires and wishes of the Parliament are to be carried out and for that Rules have been made wherein elaborate procedure has been prescribed. That apart, the counsel has not been able to point out, which Rule is ultra vires the Act or the Constitution, in the instant case. We find substance in the argument of Mr. V.T. Gopalan, additional Solicitor General to the effect that the Rules framed and laid down before the House of Parliament will answer many of the queries raised by the Petitioners. The provisions of the 1951 Act and the Rules make a complete code by themselves. In view of the above discussion, we are of the view that the EC is not invested with arbitrary exercise of power in the matter of choice of constituency or constituencies.

48. As already stated, the principles set out in the various decisions relied on by the Learned Senior Counsel for the Petitioners are not at all helpful to decide the controversy in hand. However, the point to be considered is whether, as contended by the Learned Senior Counsel, in the present

case, there has been total abdication of legislative power by the Parliament to the EC. The position can be aptly summarised by borrowing liberally from the judgment of Mukherjea, J. (as the learned Judge then was) In Re: Article 143, Constitution of India etc. AIR 1951 SC 332 particularly paragraphs 246 and 262. After referring to the American and the English cases, the learned Judge has succinctly put the matter and the relevant portions as follows:

The limits of the powers of delegation in India would therefore have to be ascertained as a matter of construction from the provisions of the Constitution itself and as I have said the right of delegation may be implied in the exercise of legislative power only to the extent that it is necessary to make the exercise of the power effective and complete. The legislature must retain in its own hands the essential legislative functions, which consist in declaring the legislative policy and laying down the standard, which is to be enacted into a rule of law, and what can be delegated is the task of subordinate legislation, which by its very nature is ancillary to the statute which delegates the power to make it.

In Rajnarain Singh v. Chairman, Patna Administration Committee (supra), the Supreme Court dealt with under Section 3 of the Bihar and Orissa Act I of 1915, as amended in 1928, by which the Central Government was given power to frame rules in future* which may have the effect of adding, altering, varying or amending the rules accepted under Section 4 as binding. The rules were laid on the table of Parliament for 14 days before they were to come into force. The Supreme Court held that Parliament had in no way abdicated its authority but was keeping strict vigilance and control over its delegate. The relevant portion runs as follows:

delegation is given to the Court to the extent of authorising an executive authority to modify the law, but not in any essential feature. As to what constitutes an essential feature cannot be enunciated in general terms. Thus, there can be delegation of legislative functions to executive authorities within certain limits.

> 49. In view of what we have stated above, we have no hesitation to hold that there is no abdication of powers. No excessive delegation also can be traced out. Parliament has given sufficient powers to the Election Commission and it has been used in just, fair and proper manner. We are also of the view that no arbitrariness is shown and there is no absence of guidelines in the introduction of Section 61-A, as stated above. So, we find no good reason to declare that Section 61-A is ultra vires. We answer the question raised at the beginning in the negative. The writ petitions W.P. Nos. 3346 and 3633 of 2001 challenging the vires of the Section are therefore dismissed."
>
> *(emphasis supplied)*

67. The matter can be looked at from another perspective. The argument that the delegation of power to reserve seats by the Central/State Government in favour of SEC erodes the independence of the SEC is flawed also for the following reasons. The notification dated 24.01.2012, whereby such power has been delegated in favour of the SEC, requires examination from two angles. The first being the provision of Article 243K of the Constitution, which being pari-materia with the provisions of Article 324 of the constitution confers in the widest terms, the power on the SEC to superintend, direct and control the preparation of electoral rolls for, and conduct of elections to the *Panchayats*. This power has undoubtedly been extended in favour of SEC, with regard to the elections to the municipalities, under Article 243ZA of the Constitution. This being the source of power, the exercise of reservation of seats could have ordinarily been undertaken by the SEC even otherwise. The rationale being that the ostensible delegate, that is, SEC is itself a donee of plenary power available under Article 243ZA of the Constitution.

68. In the case of ***Kanhaiya Lal Omar,*** somewhat similar contention was raised. Briefly, the challenge in the said case was made qua the power of the Election Commission of India (in short Election Commission) to allot symbols to individuals and parties under the Symbols Order of 1968. The argument was that the Parliament could not have delegated this power to the Election Commission. In this context the Supreme Court noted that the source of power available with the Election Commission was Article 324 of the Constitution and this power could not be circumscribed merely because the Parliament had enacted the Representation of Peoples' Act 1951 (hereinafter referred to as the 'R.P. Act'), under which Rules concerning, allotment of symbols and disputes arising therefrom, had been framed by the Central Government in consultation with the Election Commission. The enactment of the Rules did not, in the opinion of the Supreme Court, take away the power of the Election Commission, to issue directions necessary for the purpose of conducting; smooth, free and fair elections. The fact that rules had been framed under the provisions of Section 169 of the R.P. Act did not denude the plenary power of the Election Commission under Article 324 of the Constitution. As a matter of fact the Supreme Court quite clearly expressed its view that, in issuing the Symbols Order, the Election Commission, was doing so on its own behalf and not as a delegate of another authority. The Supreme Court also rejected the contention that merely because the Central Government had been delegated the power to make rules under Section 169 of the R.P. Act pertaining to symbols, it could not, further delegate, that power to evolve a subordinate legislation, in the form of the Symbols Order, on the

Election Commission. In regard to the aforesaid principles the observations of the Supreme Court in paragraph 13, 16 and 17 are relevant, and thus, for the sake of convenience are extracted hereinafter:

> "13. The above decision upholds the power of the commission to recognise political parties and to decide disputes arising amongst them or between splinter groups within a political party. It also upholds the power of the Commission to issue the Symbols Order. The Court has further observed that it could not be said that when the Commission issued the Symbols Order it was not doing so on its own behalf but as the delegate of some other authority. The power to issue the Symbols Order was held to be comprehended in the power of superintendence, direction and control of elections vested in the commission.
>
> …….
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> …….
>
> 16. Even if for any reason, it is held that any of the provisions contained in the Symbols Order are not traceable to the Act or the Rules, the power of the Commission under Article 324(1)of the Constitution which is plenary in character can encompass all such provisions. Article 324of the Constitution operates in areas left unoccupied by legislation and the words 'superintendence', 'direction' and 'control' as well as 'conduct of all elections' are the broadest terms which would include the power to make all such provisions. (See Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors.: (1978)1SCC405 and A.C. Jose v. Sivan Pillai (1984)2SCC656.
>
> 17. We do not also find any substance in the contention that the Central Government which had been delegated the power to make rules under Section 169 of the Act could not further delegate the power to make any subordinate legislation in the form of the Symbols Order to the Commission, without itself being empowered by the Act to

such further delegation. Any part of the Symbols Order which cannot be traced to Rules 5 and 10 of the Rules can easily be traced in this case to the reservoir of power under Article 324(1) which empowers the Commission to issue all directions necessary for the purpose of conducting smooth, free and fair elections. Our attention is not drawn by the learned Counsel for the petitioner to any specific provision in the Symbols Order which cannot be brought within the scope of either Rule 5 or Rule 10 of the Rules or Article 324(1) of the Constitution and which is hit by the principle delegatus non pottesdelegare, i.e. a delegate cannot delegate, the Commission itself in this case being a donee of plenary powers under Article 324(1) of the Constitution in connection with the conduct of elections referred to therein subject of course to any legislation made under Article 327 and Article 328 of the Constitution read with Entry 72 in List I or Entry 37 in List II of the Seventh Schedule to the Constitution and the rules made thereunder. While construing the expression 'superintendence', 'direction and control' in Article 324(1), one has to remember that every norm which lays down a rule of conduct cannot possibly be elevated to the position of legislation or delegated legislation. There are some authorities or persons in certain grey areas who may be sources of rules of conduct and who at the same time cannot be equated to authorities or persons who can make law, in the strict sense in which it is understood in jurisprudence. A direction may mean an order issued to a particular individual or a precept which many may have to follow. It may be a specific or a general order. One has also to remember that the source of power in this case is the Constitution, the highest law of the land, which is the repository and source of all legal powers and any power granted by the Constitution for a specific purpose should be construed liberally so that the object for which the power is granted is effectively achieved. Viewed from this angle it cannot be said that any of the provisions of the Symbols Order suffers from want of authority on the part of the Commission, which has issued it.

(emphasis supplied)

69. In the present case, the Central Government/ the State Government under the provisions of Section 490A and 490B of the DMC Act has issued a notification delegating their power of reservation of SC seats in favour of SEC. On the principle enunciated in Kanhaiya Lal Omar it could be very vigorously argued, and in our opinion quite correctly, that this is a power which is even otherwise available to the SEC under Article 243ZA de hors the delegation of this function by the Central and the State Government in favour of SEC.

70. Since, there is a notification delegating the said function in favour of the SEC, let us examine the argument as to whether that by itself would erode the independent status of the SEC.

71. In our opinion, the fact that the Central and the State Government in exercise of the powers conferred under the DMC Act have chosen to delegate this function, by issuance of notification under Section 490A and 490B of the DMC Act respectively, does not in any manner, in our opinion, erode the independent constitutional status enjoyed by the SEC under the provisions of Article 243K or Article 243ZA of the Constitution. One cannot quibble with the general principle that a delegate cannot further sub-delegate its power unless the statute provides for such an eventuality. In the instant case sections 490A and 490B undoubtedly provide that, such a power, can be sub-delegated by the Central or State Government to its "officers", "commissioners" or "any other authority".

72. The term "authority" is of wide amplitude and there is nothing in the DMC Act which would have us accept that the term

"authority" would not include the SEC. There can also be no quibble with the proposition that the delegating authority, as a general principle does not get denuded of its power, once it delegates its power. However, this general principle has it exceptions. At times, in certain circumstances, once the delegate exercises the power conferred upon it by the delegating authority, it cannot be resumed. The issue of independence of the SEC in our opinion would have to be examined, therefore, in the context of the notifications dated 14.12.1993 and 24.01.2012. A bare perusal of the notifications suggests that the Central/State Governments have delegated their powers under Section 3(5), fourth proviso to 3(6), 3(7), 3(8), 5(2)(c), (d) and (e) to the SEC.

73. The second aspect is that there is nothing in the notifications which circumscribes the manner or the mode in which the power conferred is to be exercised. Therefore, the argument of the petitioners that it dilutes the independence of the SEC has to be necessarily examined in the context of the notifications issued in that regard and not otherwise.

74. The argument of Mr Singh is that: since Section 490A and 490B use the expression "subject to such conditions" there is therefore by necessary implication an erosion of independence in the functioning of the SEC. The submission is misconceived as the conditions, if any, have to be examined as they stand at present. The notifications do not, ring fence, the exercise of power by the SEC. The SEC, in the present context, having exercised the power conferred under the aforementioned notifications; it cannot be resumed by the Central or the State Government, on a general

principle that the delegating authority is not denuded of its power of resumption. This particular instance, in our view, would fall in the exception to the general principle, which is that, powers once exercised by the delegatee cannot be resumed by the delegating authority. [See ***Battelley v. Finsbury Borough Council 56 L.G.R. 165*** and ***Blackpool Corp v Locker (1948) 1 K.B. 349***].

75. We are, thus, of the unequivocal view that no fault can be found with the delegation of power under Section 490B of the said Act by the notification dated 24.1.2012 and the challenge to the same is misplaced.

<u>*Conclusion*</u>:

76. In view of rejection of all the pleas of the petitioners, we find nothing wrong with the action of the SEC qua the mode and manner of reservation of seats for the SC and the women and, thus, dismiss the writ petitions leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

FEBRUARY 29, 2012 RAJIV SHAKDHER, J.
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