

WP Nos. 22288, 22289 and 22301 of 2021  
and  
WMP Nos. 23514, 23515 and 23529 of 2021

---

**R. MAHADEVAN, J**

and

**ABDUL QUDDHOSE, J**

(Order of the Court was made by **R. Mahadevan, J**)

---

All these three writ petitions are filed as Public Interest Litigations seeking to quash G.O. Ms. No.51 and 52/LAS, Local Administration Secretariat, Puducherry dated 06th October 2021 issued by the Secretary to Government, Government of Puducherry, Local Administration Department and the consequential notifications dated 07.10.2021 issued by the State Election Commission, Puducherry.

2. WP No. 22288 of 2021 is filed by the Leader of the Opposition in Puducherry Legislative Assembly.

3. WP No. 22289 of 2021 is filed by a resident of Puducherry assailing the validity of the aforesaid orders and/or notification issued by the respective respondent.

WEB COPY

4. WP No. 22301 of 2021 is filed by the Independent Member of Legislative Assembly (MLA) who was elected from Muthialpet Constituency in the Assembly Election held on 07.03.2021.

5. The grievance of the petitioners in these writ petitions are common. It is stated by the petitioners in unison that by virtue of the impugned notifications passed by the respondents, the reservation meant for Backward Classes and Scheduled Tribes to contest to the five Municipalities and ten Commune Panchayats in the Union Territory of Puducherry, has been taken away. It is also the common contention urged on behalf of the petitioners that in the guise of implementing the order dated 05.10.2021 passed by the first Division Bench of this Court in WP Nos. 21067, 21117 and 21708 of 2021, the State Election Commission had withdrawn and/or repealed the notification issued in G.O. Ms. NO.48/LAS/2019 dated 07.03.2019 and published in the Extraordinary Gazette of Puducherry, providing for reservation, thereby depriving the reservation conferred to the Backward Classes and Scheduled Tribes to contest the election. According to the petitioners, such orders have been passed without any basis and hence they are legally untenable.

6.(i) Mr. Wilson, learned Senior counsel appearing for the petitioners in WP Nos. 22288 and 22289 of 2021 would vehemently contend that the Government of Puducherry, by notifications published in G.O. Ms. No.47 and G.O. Ms. No.48 allotted 33.5% reservation for Backward Classes and 0.5% to Scheduled Tribes in local body elections in conformity with Articles 243 D (1) and (6) and 243 T (1) and (6) of The Constitution of India as well as Section 9 (8) and 11 (8) of The Puducherry Municipalities Act, 1973 and The Puducherry Village and Commune Panchayats Act, 1973. According to the learned Senior counsel, the local body elections in the Union Territory of Puducherry was held in 2006 and the term of office of the elected representatives ended in 2011. Thereafter, the local body election was not conducted and it was kept under suspension due to pendency of litigation concerning the delimitation exercise based on 2011 census. In this context, the learned Senior counsel invited the attention of this Court to the order dated 08.06.2018 passed in Special Leave to Appeal (C) No.(s) 24321 and 24322 of 2015 wherein the Honourable Supreme Court has given an ultimatum to the Election Commission of Puducherry to complete the de-limitation exercise in so far as Panchayat and Municipal Elections are concerned within a period of four weeks. However, the order of the Honourable Supreme Court has not been complied with by the respondents within the time fixed. After a lapse of

over two years, the delimitation exercise was completed only during June 2021. Thereafter, a notification dated 23.08.2021 notifying the allotted reserved seats and the offices of Chairperson of Municipalities and Councillors for the five municipalities namely Puducherry, Oulgaret, Karaikal, Mahe and Yanam and a consequential notification/press release dated 22.09.2021 were issued indicating the schedule of election. Challenging the same, WP Nos. 21067, 21117 and 21708 of 2021 were filed before the first Bench of this Court mainly pointing out certain anomalies. One such anomaly pointed out is that the wards with the higher percentages of Scheduled Caste population have not been reserved but the wards with lesser percentage of scheduled caste population have been declared as reserved Constituencies. The first Bench of this Court, by order dated 05.10.2021, recording the undertaking of the Additional Solicitor General permitted the State Election Commission to withdraw the municipal election notification dated 22.09.2021 and granted liberty to issue a fresh notification. Pursuant to the said order, the orders, which are impugned in the present writ petitions were passed withdrawing the order providing for reservation to Backward Classes and Scheduled Tribes to contest to the five Municipalities and ten Commune Panchayats in the Union Territory of Puducherry.

(ii) The learned Senior counsel for the petitioners also invited the attention of this Court to Article 243D and E of the Constitution of India, which provides for reservation to the Scheduled Castes and Scheduled Tribes in every panchayat, to contend that the impugned orders are contrary to the constitutional mandate provided under the said provisions of the Constitution of India and therefore, the same are legally not sustainable.

(iii) The learned Senior counsel for the petitioners further placed reliance on the decision of the Full Bench of this Court in the case of *All India Anna Dravida Munnetra Kazhagam vs. The State Election Commissioner, rep. by D. Chandrasekaran, State Election Commissioner and others* reported in 2007 2 Law Weekly 1 and contended that when the mandatory provisions laid down under the Statute are flouted, which the State Election Commission is bound to follow, the petitioners need not be directed to avail the alternative remedy available before the appropriate Court and the writ petition itself is maintainable. It was also held by the Full Bench of this Court that in a public interest litigation, if it is shown that injustice is meted out to a large number of people, the Constitutional Courts should not hesitate to step in. The learned Senior counsel therefore prayed this Court to grant an interim stay of all further proceedings pending disposal of these writ petitions.

7.(i) Mr. AR.L. Sundaresan, learned Senior counsel appearing for the petitioner in WP No. 22301 of 2021 referred to Section 9 (8) of The Pondicherry Municipalities Act, 1973, which provides for reservation of seats. Sub-clause (8) of Section 9 provides that the Government may prescribe for reservation of seats in any municipality in the municipal councils in favour of backward class of citizens. It is his contention that the elected representatives of the Union Territory of Puducherry reflected the mind and will of the people, however, before issuing the impugned election notification, they were not consulted and the consultative process have been given a go-by. In fact, all the Members of the Legislative Assembly have signed and submitted a representation for giving effect to the order dated 05.10.2021 passed by the Division Bench of this Court and to rectify the anomaly. Instead of resorting to such an action, the State Election Commission has passed the impugned order withdrawing the reservation provided to the backward classes and Scheduled Tribes to contest the local body election. It is his further contention that the impugned order is in violation of statutory provisions contained under The Puducherry Municipalities Act, Article 243-O of the Constitution of India and the reservation policies hitherto followed in the Union Territory of Puducherry.

(ii). The learned Senior counsel for the petitioner referred to Article 243-O of The Constitution of India, which specifically provides that if the validity of any law relating to the delimitation of constituencies or allotment of seats to such constitutions is asserted, then it shall be called in question by the Constitutional Court. In the present case, the delimitation exercise has been prolonged and it was completed only during June 2021. While so, in the guise of giving effect to the order passed by the first Division Bench of this Court and on a fallacious claim, the election commission has issued the impugned notifications, withdrawing the reservation provided to backward classes and Scheduled Tribe. Pointing out that the first Bench of this Court has directed the State Election Commission only to rectify the anomalies with reference to earmarking of percentage of reservation proportionate to their population, the learned Senior counsel for the petitioner prayed for granting an order of interim stay restraining the Election Commission from proceeding with the local body election pending disposal of the present writ petition.

WEB COPY

8. Mr. Chandrasekaran, learned counsel appearing for the State Election Commission justified the orders, which are impugned in these writ petitions, by contending that the same were passed pursuant to the order dated 05.10.2021 passed by the first Bench of this Court in WP Nos. 21067, 21117

and 21078 of 2021 permitting withdrawal of the earlier notification by the State Election Commission in entirety. He further submitted that the tenor of the orders, which are impugned in these writ petitions, would make it clear that they are intended to fulfil the constitutional obligation of Clause 6 of Article 243-T and sub-section (8) of Section 9 of the Puducherry Municipalities Act, 1973 on sound reasons in compliance with the order dated 08.05.2018 passed in Civil Appeal No. 4994 to 4995 of 2018 and the order passed by this Court in WP No. 30477 of 2012. It is also stated that the reservation for backward classes is given for the first time in the history of Puducherry Local Body elections. The orders, which are impugned in these writ petitions, are in the form of executive instructions and it has come into operation. While so, it is not fair and open to the petitioners to assail the same at this juncture when the election is notified. Above all, he would submit that the State Election Commission has reserved the seats for backward classes according to the notification dated 07.03.2019 issued by the Government of Puducherry and there is no specific data population for backward classes by the Government made during the last census. Notwithstanding the above submissions, the learned counsel prayed this Court to grant time to file a counter affidavit in these writ petitions.

9. On the above contentions, we have heard Ms. Mala, learned Government Pleader appearing for the Government of Puducherry, who submitted that the withdrawal of the subsequent notification in G.O. Ms. No.51 and 52 dated 06.10.2021 is an executive action for which a consultative process is not required.

10. We have heard the respective counsel for the parties and perused the materials placed on record.

11. We have noticed that the issue as regards the delimitation of the constituencies in Union of Territory of Puducherry dates back to 1999, which could be evident from the order dated 07.02.2002 passed in WMP Nos. 7079 to 7082 of 1999 in WP Nos. 16132, 16133 of 1995 and 13676 and 13677 of 1996. The order dated 07.02.2002 can be profitably quoted hereunder:-

"2. The writ petitions came to be filed complaining of the non-enumeration of the backward classes but yet proceeding with the elections by making reservation for backward classes. Section 9 (8) of The Pondicherry Municipalities Act, 1973, as amended by Act 3 of 1996 and Section 11 (8) of The Pondicherry Village and Commune Panchayats Act, 1973, as amended by Act 4 of 1996 and consequent Rules framed thereunder, enable the Union Territory of Pondicherry to provide reservation for backward classes in the local body elections - be it municipalities or the other local bodies like panchayats etc., It is in tune with Clause (6) of Article 243D, which was inserted by constitution (seventh-third amendment) Act of 1992. But there is a difference

in the phraseology used, as in so far as the Scheduled Castes and Scheduled Tribes are concerned, there is absolute imposition but coming to backward classes, it reads as an enabling power.....

3. Analogous is the provision in Clause (6) of Article 243T of Indian Constitution. As held by the Constitutional Bench of the Supreme Court in *Ajit Singh vs. State of Punjab* (AIR 1999 SC 3471), it is not imperative for the State to provide reservation in favour of backward classes and that it is only an enabling provision and the State, in its discretion, may provide for the reservation for backward classes if it deems fit. But, as rightly pointed out by the Division Bench in the instant case, reservation for backward classes, even if the State wants to provide, cannot be extended until the enumeration of backward classes is made. But for that reason it cannot be said that the provisions contained in Section 9 (8) of the Pondicherry Municipalities Act, 1973, as amended by Act 3 of 1996 and Section 11 (8) of The Pondicherry Village and Commune Panchayats Act, 1973, as amended by Act 4 of 1996, inserting the provisions enabling the State to provide reservation for election - be it a municipality or panchayat, are unconstitutional. As such, we clarify that the above provisions are constitutional and valid

4. Now, a letter is filed by the Government of Pondicherry, issued by the Secretary to Government, Local Administration, on 31.01.2002 to the learned Advocate General, who is appearing for the Union Territory of Pondicherry, to the effect that the Union Territory of Pondicherry is inclined to go ahead with the elections to local bodies, both for municipalities and panchayats, without providing for reservation for backward classes, reserving their right to do so for future elections. In the circumstances, we clarify the order, which has been passed earlier by this Court, on 30.04.1998 to the effect that Section 9 (8) of the Pondicherry Municipalities Act, 1973, as amended by Act 3 of 1996 and Section 11 (8) of the Pondicherry Village and Commune Panchayats Act, 1973, as amended by Act 4 of 1996 are constitutional and valid but the Union Territory of Pondicherry is not precluded from conducting elections to the local bodies, both for municipalities and panchayats without providing for reservation for backward classes. It is also made clear that in future elections, it shall be open to the Union Territory of Pondicherry to provide reservation for backward

classes in the election for local bodies - be it Municipalities or panchayats, subject to condition of completion of enumeration of the backward classes. We clarify accordingly."

12. Thus, as per the order passed by the Division Bench of this Court, on 07.02.2002, the Union Territory of Puducherry has conducted successive elections without providing reservation to backward classes. In the year 2012, since the delimitation exercise has not been completed, a writ petition in WP No. 30477 of 2012 was filed before this Court and a direction was issued to complete the delimitation and hold elections immediately thereafter. Assailing the order passed by this Court, Civil Appeal Nos. 4994 to 4995 of 2018 were filed before the Honourable Supreme Court. The Honourable Supreme Court, in its order dated 08.05.2018, has given an ultimatum to the Election Commission to complete the delimitation exercise within four weeks. The order dated 08.05.2018 reads thus:-

"The present case discloses a sorry state of affairs. Despite the fact that the electoral body had to demit office in the year 2011, no election has yet been held. We may only state that the Puducherry Village and Commune Panchayat Act, 1973 has provisions contained in Sections 11 (1) to (8) thereof which are reflective of the constitutional provisions qua reservation in Article 243D (1) and (6). Unfortunately, despite this being the constitutional provision, by virtue of interim and other orders passed by the High Court, the process of de-limitation has dragged on and has not culminated in any fruitful result. Ultimately, the appellant, by a letter dated 06.07.2015 written to the Ministry of Social Justice and Empowerment, has stated that the process remains stalled

because no backward class information has yet been received, despite the fact that all other data including census information had been received and delimitation could have been carried out. Both the constitutional position as well as the State Act make it clear that reservation for Scheduled Castes and Scheduled Tribes is based on population, whereas if provision has to be made for backward classes, it is left to the States to do so, if they so desire.

This being so, we see no further impediment in the State Election Commission completing delimitation as soon as possible.

We, therefore, direct respondent No.4 before us to complete the delimitation exercise insofar as Panchayat and Municipal Elections are concerned within a period of four weeks from today. The moment this is complete, the elections to the municipalities and panchayats will be notified immediately and held in accordance with the constitutional and statutory provisions concerned. Needless to add, no further delay can be brooked, and it will be open to any party to come back to this Court in case the needful is not done within the strict time limit fixed by us. We make it clear that on no account will the election process be stalled after delimitation is complete.

13. It is evident from the order dated 08.05.2018 passed by the Honourable Supreme Court that an observation was made to the effect that *"...Ultimately, the appellant, by a letter dated 06.07.2015 written to the Ministry of Social Justice and Empowerment, has stated that the process remains stalled because no backward class information has yet been received, despite the fact that all other data including census information had been received and delimitation could have been carried out"*. In the light of the

above observation of the Honourable Supreme Court, the contentions of the learned counsel for the State Election Commission that there is no specific population data for backward classes made available by the Government cannot be accepted.

14. It is stated that during June 2021, the delimitation exercise has been completed and reservation for backward class and Schedule Tribes have been provided. The notification issued by the Election Commission after delimitation dated 23.08.2021 and the press release dated 22.09.2021 to hold election was once again subjected to challenge before the First Bench of this Court in WP Nos. 21067, 21117 and 21708 of 2021 on the ground that there are several anomalies in the earmarking of seat for Scheduled Caste communities based on the population in a particular ward. The first Division Bench passed an order dated 05.10.2021 directing the Election Commission only to rectify those anomalies and to proceed with the election. The order dated 05.10.2021 is extracted hereunder:-

"2. WP No.21067 of 2021 has been taken up on several occasions. When the petition was received on September 29, 2021, it was admitted by the Union Territory that this was the first municipal elections being conducted on the basis of the 2011 census and after the recent delimitation exercise was completed in June of 2021. Upon the discovery of several anomalies, the petition was adjourned and heard again along with WP No.21117 of 2021 on September 30, 2021, October

1, 2021 and October 4, 2021.

3. Learned Additional Solicitor-General submits that a notification rescinding the earlier notifications pertaining to reservation being G.O.Ms.No.47/LAS/2019 dated March 07, 2019 and G.O.Ms.No.48/LAS/2019 dated March 07, 2019 will be issued by October 07, 2021. As a consequence, the State Election Commission seeks leave to withdraw the municipal elections notification dated September 22, 2021. Since the State Election Commission seeks permission to issue a fresh election notification in the above circumstances, such permission is granted so that the fresh notification is published within five days of the formal rescinding of the previous notification of September 22, 2021.

4. A fresh notification be issued calling for the election of Municipalities, Commune Panchayats and Village Panchayats by providing for reservation and by treating the present election as the first for the purpose of the rotation principles as recognised in Section 9(5) of the Puducherry Municipalities Act, 1973 and Rule 9 of the Puducherry Municipalities (Allotment and Rotation of Reserved Seats and Office) Rules, 1996.

5. The Union Territory of Puducherry has reminded this court that in terms of an order of the Supreme Court the municipal elections need to be conducted expeditiously.

6. It is hoped that the anomalies are now removed and the proposed notification carries no mistake so that the elections can be held as expeditiously as possible, subject to the minimum time being maintained between the issuance of the notification, the last date for filing nominations and the conduct of the elections.

W.P.Nos.21067, 21117 and 21708 of 2021 are disposed of. There will be no order as to costs. Consequently, WMP Nos. 22326, 22327, 22383, 22382, 22890 and 22891 of 2021 are closed."

15. It is pursuant to the above direction issued by the first Bench of this Court, to rectify the anomaly, the Election Commission has issued the impugned notifications/press release to hold election *interalia* issuing the

revised schedule for conduct of the elections to the five Municipalities and ten Commune Panchayats in the Union Territory of Puducherry. While issuing the impugned notifications, the Government of Puducherry, without any basis, had withdrawn and/or repeal the notifications issued in G.O. Ms. No.47 and 48, both dated 07.03.2019 and thereby disentitling the backward classes and scheduled Tribes from contesting the local body elections in the reserved ward. It is not clear as to what prompted the Government to withdraw reservations provided in the notifications issued in GO Ms. Nos. 47 and 48 dated 07.03.2019. In the impugned notifications dated 06.10.2021, reference has been made to the order dated 05.10.2021 passed by the first Division Bench of this Court. Curiously, in the order dated 05.10.2021, the Election Commission was directed to rectify the anomalies exist in the notifications providing for reservation to backward classes and scheduled Tribe communities. There is nothing in the impugned order to indicate that it was issued after a consultative process with the elected representatives. In fact, after the impugned orders have been passed, all the elected representatives of the Puducherry Union Territory have given a joint representation dated 09.10.2021 to conduct the election to the local body only after rectifying the anomalies existing in the earlier notifications with reference to the reservation of the local body or municipal wards for Scheduled Tribes and backward class

based on the existing population, which indicates that there is no consultative process made with the elected representatives before passing the impugned order. Furthermore, the impugned orders are not in consonance with Section 9 (8) and 11 (8) of The Puducherry Municipalities Act, 1973 and The Puducherry Village and Commune Panchayats Act, 1973 as well as the constitutional mandate contained under Article 243-O of The Constitution of India.

16. In such circumstances, we direct the respondents herein to keep in abeyance all further proceedings pursuant to the orders, which are impugned in these writ petitions, in the matter of conduct of election to the Municipalities and Commune Panchayats in Union Territory of Puducherry till 21.10.2021 enabling the respondents to file their counter.

17. Post these writ petitions on 21.10.2021 before the first Bench of this Court. The respondents shall file their counter affidavit by then.

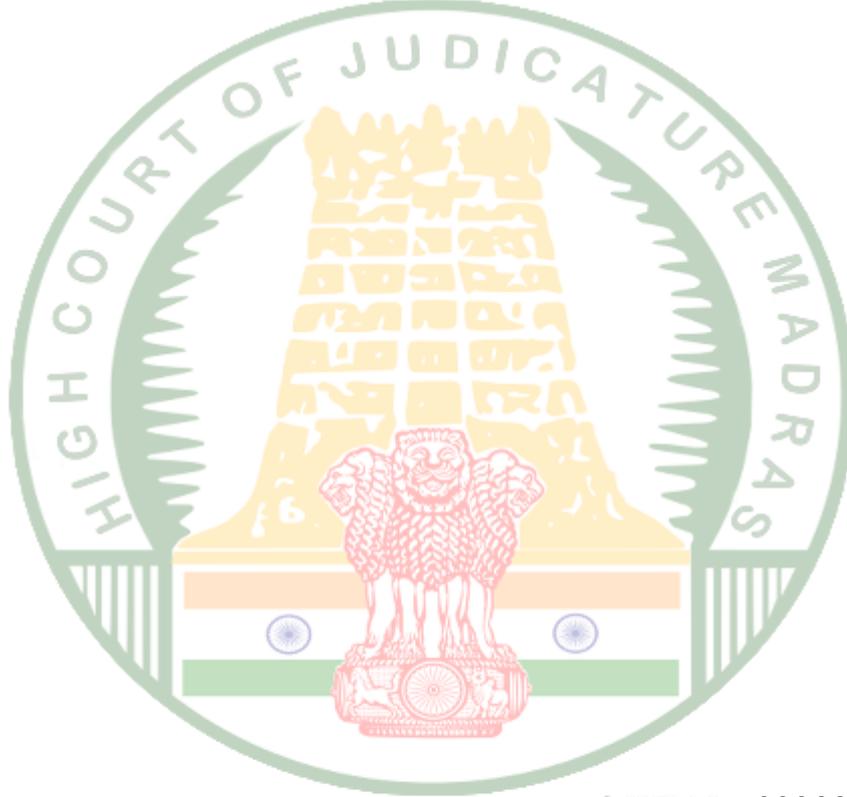
**(R.M.D.J.) (A.Q.J.)**  
11.10.2021

rsh

WP Nos. 22288, 22289 and 22301 of 2021

**R. MAHADEVAN, J**  
and  
**ABDUL QUDDHOSE, J**

rsh



सत्यमेव जयते

WP No. 22288, 22289 and  
22301 of 2021

and

WMP Nos. 23514, 23515 and  
23529 of 2021

WEB COPY

11-10-2021