

(2008) 02 JH CK 0023

Jharkhand High Court

Case No: None

Uday Shankar Ojha
and Others

APPELLANT

Vs

Jharkhand State
Election Commission
and Another

RESPONDENT

Date of Decision: Feb. 29, 2008

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 226, 243, 243Q

Citation: (2008) 2 JCR 249

Hon'ble Judges: M.Y. Eqbal, J; D.K. Sinha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.Y. Eqbal, J.

No election of municipal corporations, municipalities, Nagar Panchayats and other bodies had taken place in the State of Jharkhand for the last 22 years and it was only after the directions of Courts and demand of public when election programmes of the municipal corporations, municipalities, Nagar Panchayats and other bodies have been announced and published in the Gazette, these writ petitions have been filed challenging the vires of various provisions of Jharkhand Municipal Corporation Act, specially the decision of the State Government and the State Election Commission reserving some of the posts of Mayor, Chairman and Vice-Chair-man of the Municipal Corporation and Municipalities for the scheduled castes, scheduled tribes, backward classes and women.

2. In W.P. (C) No. 917 of 2008, the petitioner has challenged the notification of the State Election Commission dated 28.1.2008 whereby the post of Mayor in Ranchi Municipal Corporation for a woman candidate belonging to scheduled tribes category has been reserved and also the resolution issued by the State Election

Commission dated 21.1.2008 by which 50% posts of Chairman of Municipalities have been reserved. By filing an amendment petition, the petitioner has also challenged the vires of Sections 19(ka) and 8(2)(ka) and Section 13(l)(d) of Jharkhand Municipal Corporation Act.

3. In W.P. (PIL) No. 1052 of 2008, the petitioner has challenged the same notification dated 28.1.2008 by which the posts of Chairperson of Seraikela Nagar Panchayat has been reserved for women category. Further prayer has been made for quashing the notification whereby 50% seats have been reserved for scheduled castes, scheduled tribes and other backward classes for women.

4. In W.P. (C) No. 1054 of 2008, the petitioner has challenged the same notification dated 21.1.2008 whereby the posts of Chairman of Bundu Nagar Panchayat has been reserved for a woman belonging to scheduled tribes category. The petitioner has further challenged the decision by which out of 12 wards in the Panchayat, 6 wards have been reserved for scheduled tribes, scheduled castes and backward class candidates as against the distribution of population belonging to general and reserved categories.

5. In W.P. (PIL) No. 1062 of 2008, the petitioner has challenged the same notification dated 28.1.2008 whereby the election process has been notified and also the notification dated 28.1.2008 whereby the post of Chairman of Hazaribagh Municipality has been reserved for women candidates belonging to reserved category. A further direction has also been sought to the election commission not to proceed with the election process.

6. In W.P. (PIL) No. 996 of 2008, the petitioner has challenged the same notification by which the post of Chairman of Lohardaga Municipality has been reserved for scheduled tribe category. The petitioner has further sought a direction to the respondents to reconstitute the wards of Lohardaga Municipality.

7. In W.P. (PIL) No. 1000 of 2008, the petitioner has challenged the same notification by which the post of Chairperson of Giridih Municipality has been reserved for a woman of backward category. The petitioner has further sought for issuance of mandamus directing the respondents to reconstitute the wards in Giridih Municipality as per the provisions of Jharkhand Municipal Act.

8. In W.P. (C) No. 1060 of 2008, the petitioner has challenged the same notification by the State Election Commission whereby the post of Chairman in eight Nagar Panchayats out of sixteen Nagar Panchayats has been reserved for the candidates belonging to scheduled castes, scheduled tribes, backward classes and women candidates. The petitioner has further sought for a declaration that 50% reservation of the post of Chairman is unconstitutional.

9. In W.P. (PIL) No. 1033 of 2008, the petitioner has challenged the notification issued under the signature of Chief Election Commissioner, Jharkhand, Ranchi by

which the post of Chairperson of Gumla Nagar Panchayat has been reserved for persons of scheduled tribes category ignoring the fact that the post of Chairperson is a solitary post and reserving the said post would amount to 100% reservation which is not permissible in law.

10. Mr. Binod Singh, learned Counsel appearing for the petitioner in W.P.(C) No. 917 of 2008 assailed the vires of the provisions of the Municipal Corporation Act and the Notification as being wholly illegal, arbitrary, unconstitutional and without jurisdiction. According to the petitioner the post of Mayor is an office and if the Municipal Corporation is a Unit by itself, the same is the solitary post of its executive head. Once the said post in the specified Municipal Corporation is reserved for a particular category, then this would amount to 100% reservation in the eye of law which is hit by Article 14 of the Constitution of India as also violative of rule of equality. It is contended that Municipal Corporation is wholly independent autonomous and self contained unit by itself. It is further contended that in Ranch! Municipal Corporation 80% population are non-tribal and less than 20% population are tribal. Hence, reservation of seat of Mayor of Ranch! Municipal Corporation is unreasonable, arbitrary and unconstitutional. It is lastly submitted that in other Municipal Corporation, the Mayor is elected by indirect election through Ward Counselors but by the impugned resolution provisions have been made for direct election for the post of Mayor. In that view of the matter also, for the post of Mayor which is elective post, there cannot be 100% reservation.

11. Mr. V. Shivnath, learned senior, counsel made his submissions on behalf of the petitioners in W.P. (PIL) Nos. 1054, 1052 and 1062 of 2008. The main thrust of argument of Mr. V. Shivnath is that each municipality is a separate entity by itself and as such, the post of Chairperson of a particular municipality is a single post which cannot be reserved. Learned Counsel submitted that the State Election Commission has no jurisdiction to reserve a particular post which can be done only by the State Legislature. According to the learned Counsel, therefore, the said notification is liable to be struck down. Learned Counsel further submitted that Bundu Nagar Panchayat is such an area which consists of 12 wards. The percentage of representation of members of scheduled tribes is 13.8%, scheduled castes 14.8% and backward class 18.2%. Out of 12 wards, 2 wards have been reserved for scheduled tribes, 2 are reserved for scheduled castes and 2 are reserved for backward class. Learned Counsel submitted that the reservation of the post of Chairperson of 4 Nagar Panchayats Le. Bundu, Khunti, Gumla and Simdega for members of scheduled tribes, scheduled castes and backward classes is also unconstitutional.

12. Mr. Anil Kr. Sinha, learned senior counsel appearing in W.P. (PIL) Nos. 996 and 1000 of 2008, submitted that each municipality is a local self Government and in no case, they can be termed as one unit. Each municipality has independent entity and, therefore, reservation of a solitary post of Chairperson is not at all permissible in

law. Learned Counsel further submitted that in absence of any legislation like P.E.S.A., Chapter IX-A will not apply in such area. Learned Counsel further adopted the agreement advanced by Mr. V. Shivnath.

13. Mr. Rajiv Ranjan, learned Counsel appearing in W.P. (PIL) No. 1033 of 2008, submitted that the criteria for reservation of seats in the municipalities has been provided under Article 243T of the Constitution of India and the respondents-authorities cannot act beyond the provision and scope of the said Article of the Constitution. Learned Counsel further submitted that certain area of Gumla town has been declared as Nagar Panchayat and has been divided into 20 municipal wards. According to learned Counsel, each Nagar Panchayat is separate unit and there is single post of Chairman which cannot be reserved for a person of scheduled tribes. Learned Counsel further submitted that Section 20 of the Municipal Act is ultra vires to Article 243 of the Constitution of India.

14. Same argument has been advanced by Mr. Atanu Banerjee, learned Counsel appearing for the petitioner in W.P. (C) No. 1060 of 2008.

15. Mr. S.B. Gadodia, learned Advocate General, in reply to the arguments advanced by Mr. V. Shivnath, learned Senior Advocate, firstly submitted that the seats have been reserved in the municipalities in accordance with the provisions of Section 13(3) of the Jharkhand Municipal Act, 2000. Reservation of the post of Ward Commissioners have been made on the basis of the population of scheduled tribe, scheduled castes and backward class of the particular municipality. Learned Counsel further submitted that in all, reservation has been made to the extent of 50% which is in accordance with the mandate of Constitution of India. learned Counsel submitted that the post of Chairperson and Mayor of the municipalities and corporations are not solitary posts and the same are clubbed together for the purpose of reservation.

16. In reply to the submission made by Mr. Anil Kumar Sinha, learned senior counsel, learned Advocate General submitted that power to constitute municipality is vested in the State. The State Government is also empowered to dissolve any municipality. Learned Counsel referred various provisions of the Municipal Act and submitted that it is the constitutional and legislative mandate of the State Government and the Election Commission to constitute municipalities and corporations and to hold elections. Learned Counsel then submitted that if the contentions of the petitioners are accepted, there would be no municipalities at least in 12 districts of State of Jharkhand, namely, Ranchi, Lohardaga, Gumla, Simdega, Latehar, East Singh bhum, West Singhbhum, Seraikela-Khar-sawan, Sahibganj, Durnka, Pakur and Jamtara. In absence of the municipalities and Municipal Corporations in the aforesaid districts, there would be complete failure of health and sanitation facilities leading to complete deterrence to the people at large of the said Districts.

17. At the very outset, I must mention here that petitioner has not challenged the vires of the Constitutional provisions of Article 243T(4), Part IX-A of the Constitution of India nor have they challenged any of the Constitutional provisions contained in the Constitution of India with regard to the Constitution of Municipal Corporation and various other provisions. The petitioner has only challenged the provisions of Section 8(1)(ka), Section 13(d)(1) of the Jharkhand Municipal Corporation Act and also the Notification dated 15.2.2007 whereby Section 19(ka) has been inserted reserving the post of Mayor for the members of Scheduled Caste and Scheduled Tribe in the ratio of total population of the reserved category.

18. In the aforesaid circumstance, the only question that falls for consideration is with regard to constitutional validity of the provision inserted in the Municipal Corporation Act and Municipal Act reserving the seat of Mayor and Chairman of Corporation and Municipality for a person belonging to Scheduled Caste/Scheduled Tribe.

19. Before I discuss the Constitutional validity of the aforesaid provisions, I would first like to discuss the reasons, background and the object of reserving the seats for the persons belonging to member of Scheduled Caste and Scheduled Tribe.

20. Firstly it is worth to be noticed here that the Government of India in exercise of powers conferred by sub-paragraph (1) of paragraph 6 of the Fifth Schedule to the Constitution of India issued an Order known as "Scheduled Area (Part A States) Order, 1950". Under that order, Ranchi district, Singhbhum district excluding Dalbhum sub-division, Santhal Pargana Division excluding Gumla, Daltonganj and Latehar sub-division of Palamau district were declared to be Scheduled Area by notification dated 26.1.1950. All the said districts and sub-divisions now fall within the territory of Jharkhand. However, the aforesaid Order of 1950 was rescinded and another Order was promulgated known as Scheduled Area (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977. By the said Order, Ranchi district, Lohardaga district, Gumla district, Singhbhum district, Latehar, Simdega, Palamau, Garhwa, West Singhbhum, Dumka, Jamtara subdivision, Sundar Pahari, Borio Block of Godda sub-division in Santhal Pargana were shown as Scheduled Area which was within the combined State of Bihar, but now all those districts fall within the territory of Jharkhand. The said Order of 1977 was again rescinded so far it related to the area falling in the States of Chhatisgarh, Jharkhand and Madhya Pradesh and a new Order, namely, Scheduled Area (States of Chhatisgarh, Jharkhand and Madhya Pradesh) Order, 2003 was promulgated. Under the Scheduled Area (States of Chhatisgarh, Jharkhand and Madhya Pradesh) Order, 2003, the following areas of the State of Jharkhand have been declared Scheduled Areas:

1. Burhmu, Mandar, Chanho, Bero, Lapung, Namkom, Kanke, Or-manjhi, Angara, Sili, Sonahatu, Tamar, Bundu, Arki, Khunti, Murhu, Karra, Torpa and Raniya blocks within the district of Ranchi.

2. Kisko, Kuru, Lohardaga, Bhadra and Senha blocks within the district of Lohardaga.
3. Bishanpur, Ghaghra, Chainpur, Dumri, Raidih, Gumla, Sisai, Kag-dara, Basiya and Palkot blocks within the district of Gumla.
4. Simdega, Kalebira, Bano, Jaldega, Thethetangar, Kurdeng and Bolba blocks within the district of Simdega.
5. Barwadih, Manika, Balunath, Chandwa, Latehar, Garu and Mahuadaran blocks within the district of Latehar.
6. Bhandariya Block within the district of Garhwa.
7. Bandgaon, Chakradharpur, Sonuwa, Goyalkera, Mahoharpur, Noamundi, Jagannathpur, Manghgaon, Kumardungi, Manjhari, Tatnagar, Jhinkpani, Tonto, Khut-pani and Chaibasa Blocks within the district of West Singhbhum.
8. Govindpur (Rajnagar, Adityapur (Ghamariya), Seraikela, Khar-sawan, Kuchai, Chandil, Ichagarh and Nimdih blocks within the district of Seraikela Kharsawan.
9. Golmuri-Jugsalia, Patmada, Potka, Dumariya, Musabani, Ghatsila, Dhalbhumgarh, Chakuliya and Bahragora blocks within the district of East Singhbhum.
10. Sariyhat, Jarmundi, Jama, Ram-garh, Gopikandar, Kathikund, Dumka, Sikripara, Raneshwar and Masaliya blocks within the district of Dumka.
11. Kundhit, Nala, Jamtara and Narayanpur blocks within the district of Jamtara.
12. Sahebganj, Boriya, Daljhari, Raj-mahal, Barharwa, Pathna and Barhet blocks within the district of Sahebganj.
13. Littipara, Amrapara, Hiranpur, Pakur, Maheshpur and Pakuriya blocks within the district of Pakur.
14. Borijore and Sundarpahari blocks within the district of Godda.
21. Undisputedly, despite existence of municipalities and other such institutions, there was no sufficient representation of the weaker sections of the people belonging to Scheduled Castes, Scheduled Tribes and Women and they were always found to be suppressed community. In many states, local bodies became weak and ineffective for since long due to super session and inadequate devolution of powers and functions upon the weaker sections of the society. In order to provide adequate representation for the weaker sections of the society like Scheduled Castes, Scheduled Tribes, women, it was felt necessary for bringing 73rd amendment of the Constitution.
22. When the Bill of 73rd Amendment of Constitution was placed before the Parliament, it was exhaustively debated. I would like to quote herein below the extract of the Parliamentary debate on 73rd Amendment of the Constitution:

I welcome the provision for making one-third of the total seats reserved for women, Scheduled Castes and Scheduled Tribes at the Panchayat level and at the Municipal level. Without these reservations women have always been suffering. Although we have equality before law, before the Constitution, we have been treated as second class citizens in this country. Both the Constitution (Amendment) Bills will ameliorate, in a small way, the injustice done to women for quite a few centuries in this country. Fifty per cent of Indian population belongs to the weaker sections. I don't know why women should be called a "weaker section". I don't feel women are weak. But they are called "weaker section". So it is good that at least one third of them have been given.

The Vice-Chairman Shri V. Narayanahamy in the Chair

Reservation through these two amendments. I wish the same thing would be done even for the Assemblies and also for the Parliament and maybe, the Government will bring a Constitutional amendment Bill in the next Session of Parliament for this. Sir, I assure you that the women of the whole country will support you, if you do so,...(Interruptions).... If you do so, they will support you.

These reservations will give an opportunity to women to function as elected representatives. They will know how to function in public life, how to solve the problems and how to face difficult situations. This will be a good ground for them to be prepared for a greater political role which ultimately they will play.

The Scheduled Castes and Scheduled Tribes have always been the shame of our society. Bapu used to call them "Harijans", the persons whom God loves. The Scheduled Castes and Scheduled Tribes, with the reservation, will definitely be able to play their due role in the social system. Of course, there is a long way to go. Now they are awakening. They now know what their rights are and what their duties are and they are playing their role. I hope with this reservation they will have a greater chance to play their role. As my sister, Shrimati Sushma Swaraj, has mentioned about the finance of the Panchayats. I also share her feelings unless and until the Panchayats and the municipalities are properly fortified with means of proper income, they will not be able to fulfill the aspirations of the local people. There is another snag-may be, I am thinking aloud that is, the social system that we have in our country. It is the monied class who really wield power at the village level. Unless and until the panchayats and municipalities are properly empowered, the elected representatives will not be able to perform their duties the way they are expected to do because the monied class, the so-called vested interest class, will see to it that the panchayat and the municipalities play to their tune. They will indirectly wield power even at the grass-root levels through these bodies. Some safety valves should be there so that there would be no indirect interference by them. Now the LSG Ministry, both at the State level and at the Central level, and the bureaucrats in the Ministry wield much more power than the actual elected representatives. The poor Mukhyas have to run from pillar to post for getting the sanctioned money for

implementing schemes like, IRDP, NREP, RLEGP; Jawahar Rojgar Yojana, etc., which are supposed to be implemented at the village level and at the panchayat level. The purse-string is controlled by these officers, these bureaucrats. You don't have any measures in this Bill on how to loosen the purse-string which is being controlled by the bureaucratic system. There should have been some provision for that also. I hope when you make rules, you will take adequate measures to see that it is taken care of.

23. The background of the aforesaid objective, by Constitutional 73rd and 74th amendment, certain provisions have been inserted in the Constitution of India. By 74th Constitutional Amendment Act, 1992 Part IX-A was inserted. Section 243 is a definition Clauses. Article 243Q and Article 243R are the relevant provisions which deals with Constitution of Municipality and composition of Municipality. Article 243S lays down the provision with regard to Constitution and composition of Ward Committees. Article 243T provides for reservation of seats for the members of Scheduled Caste and Scheduled Tribe. For better appreciation Articles 243Q 243S and 243T are reproduced herein below:

243Q. Constitution of Municipalities.--(1) There shall be constituted in State,

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted. In SL urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

243S. Constitution and composition of Wards Committees, etc.--(1) There shall be constituted Wards Committees, consisting of one or more Wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2) The Legislature of a State may, by law, make provision with respect to--

(a) the composition and the territorial area of a Wards Committee;

(b) the manner in which the seats in a Wards Committee shall be filled.

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

(4) Where a Wards Committee consists of

(a) one ward, the member representing that ward in the Municipality; or

(b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.

(5) Nothing in this article shall be deemed to prevent the Legislature of a State from making provision for the Constitution of Committees in addition to the Wards Committees.

243-T. Reservation of seats.--(1) Seats shall be reserved for the Scheduled Castes and 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.

24. From reading of the aforesaid Constitutional provisions, it is manifestly clear that Article 243T provides reservation of seats for the Scheduled Castes and Scheduled

Tribes in every municipality as nearly as the same proportion to the total number of seats to be filled up by direct election. It also casts a mandate that not less than 1/3rd of the total number of seats shall be reserved for women belonging to Scheduled Castes and Scheduled Tribes. The provision categorically provides that such reservation of seats for women belonging to Scheduled Castes and Scheduled Tribes to be filled up by direct election and such seats may be allotted by rotation in different constituencies in a municipality. Clause (4) of Article 243T confers powers upon the legislature of the State to reserve post of Chairperson for the Scheduled Castes, Scheduled Tribes and women by making law. However, such reservation of the office of Chairman shall cease to have effect on the expiry of period specified in Article 334 of the Constitution of India.

25. After bifurcation of the State under Bihar State Re-organization Act, 2000, Patna Municipal Corporation Act, 1951 was adopted with certain amendments vide notification published in extra-ordinary Gazette of Government of Jharkhand on 14.1.2002 and called as "Ranchi Municipal Corporation (Adoption & Amendment) Act, 2001. Again, provision of Ranchi Municipal Corporation (Adoption & Amendment) Act, 2001 (amended vide Municipal Corporation Amendment Act, 2006) (Act 4 of 2007), was published in Gazette notification on 15.2.2007. By virtue of the said provision, Section 19(a) was introduced which, for the first time, provided reservation for the post of Mayor in Municipal Corporation across the State of Jharkhand. For better appreciation, Section 19(a) reads as under:

19(a) The posts of Mayor in the Municipal Corporation shall be reserved as provided hereunder:

(i) The ratio of reserved seats of Mayors for the persons from the category of Scheduled Caste and Scheduled Tribes in the Municipal Corporation of the State shall be, as far as nearly the same as the ratio of the number of Scheduled Castes and Scheduled Tribes in the State Population.

(ii) At least one third of the total seats of Mayors in the State Municipal Corporations shall be reserved from women.

(iii) At least one third of the posts as reserved under Clauses (i) shall be, as the case may be filled up from among the Scheduled Castes and Scheduled Tribes.

Provided, the seats reserved under this clause shall be rotated among the different Municipal Corporation by the State Election Commissioner as provided.

Clarification.--For the removal of any doubt, it is hereby clarified that the provision of rotation for the purpose of reservation of posts under this new clause shall come into force with the first election after coming into force to this Act.

Provided further that the provision of reservation in the posts of Mayor under Clause (i), (ii) & (iii). (Excluding the reservation for the women) shall be ineffective after the completion of the period as provided in Article 334 of the Constitution of

India.

26. Section 19(A) of the Municipal Corporation (Amendment) Act, 2006 was introduced to fulfill the constitutional mandate contained in Article 243T of the Constitution. This section also provides reservation of at least 1/3rd of the total seats of Mayor in the State Municipal Corporation for women. Proviso to Section 19-A categorically provides that such reservation shall be rotated among the different municipal corporations by the State Election Commission.

27. By notification dated 1.2.2006, Dhanbad Municipal Corporation was notified. Thereafter vide notification dated 24.6.2006, provisions of Ranchi Municipal Corporation (Adoption & Amendment) Act, 2001 was extended to the Dhanbad Municipal Corporation in exercise of power conferred u/s 4 of Bihar Municipal Corporation Act. The notification dated 24.6.2006 reads as under:

URBAN DEVELOPMENT DEPARTMENT

NOTIFICATION

The 24th June, 2006

No. 2/hindi 101/06-1934.--In exercise of the powers conferred by Section 4 of the Bihar Municipal Corporation Act, 1977 (Bihar Act 12 of 1978) (Adopted in Jharkhand), the Governor of Jharkhand is pleased to apply Ranchi Municipal Corporation (Amendment and Adoption) Act, 2001 notified vide Government Notification No. 14, dated the 14th January, 2002 with modification as specified in schedule appended below to Dhanbad Municipal Corporation with effect from the date of constitution of the Dhanbad Municipal Corporation.

Schedule

For the word "Ranchi", "Ranchi Municipal Corporation", "Ranchi Municipality" wherever occurring in the Ranchi Municipal Corporation (Amendment and Adoption) Act, 2001 "Dhanbad", "Dhanbad Municipal Corporation", "Dhanbad Municipality" shall be read respectively.

By order of Governor of Jharkhand

Sd/- Illegible.

Secretary.

Urban Development Department,
Government of Jharkhand

28. It is further worth to mention here that provisions of Bihar Municipal Corporation Act (Bihar Act 12 of 1978) which provides extension of Patna Municipal Corporation Act, 1951 to other Municipal Corporations was also adopted with effect from 15.11.2000 by notification dated 24.9.2001. Further, by Jharkhand Municipal (Amendment) Act, 2005 (Act 4 of 2006) certain amendments have been made in Jharkhand Municipal Corporation Act, 2000. Similarly, Ranchi Municipal Corporation

(Preparation of Electoral Rolls and Conduct of Elections) Rules, 2001 was published in extra-ordinary Gazette notification dated 2.3.2001 in exercise of power conferred u/s 540 of the Ranchi Municipal Corporation (Amendment) Act, 2001. Further, Jharkhand State Municipalities Nominations and Elections Rules, 2006 was published in extraordinary Gazette vide notification dated 24.1.2007.

29. Section 8 of Ranchi Municipal Corporation (Amendment and Adoption) Act, 2001 was substituted vide Amendment Act of 1995 which reads as under:

8. Constitution of Corporation.--Save as provided in Sub-section (3) all the seats of municipal councillors in the Corporation shall be filled by persons chosen by direct election from the territorial constituencies in the Corporation area and for this purpose, the Corporation area shall be divided into not less than thirty seven territorial constituencies to be known as wards.

(2) (a) Seats of Municipal councillors shall be reserved for the Scheduled Castes, Scheduled Tribes and Backward classes in the Corporation 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 in by direct election in the Corporation as the population of the Scheduled Castes, Scheduled Tribes or of Backward Classes in the Corporation area bears to the total population of that area, and such seats shall be allotted by rotation to different constituencies on the Corporation in such manner as may be prescribed by the State Election Commission.

(b) Not less than one-third of the total number of seats reserved under Clause (a) shall be reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes, as the case may be

(c) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes) of total number of seats to be filled in by direct election in the Corporation shall be reserved for women and such seats may be allotted by rotation to different constituencies in the Corporation in such manner, as may be prescribed.

Explanation.--For the removal of doubts it is hereby declared that the principle of rotation for the purposes of reservation under this sub-sections shall commence from the first election to be held after the commencement of this ordinance.

(d) The reservation of seats under Clauses (a) and (b) shall cease to have, effect on the expiration of the period specified in Article 344 of the Constitution of India.

(3) Notwithstanding the provisions as contained in Sub-sections (1) and (2) the following shall also be the members of the Corporations:

(i) the members of the House of People and the members of the State Legislative Assembly representing constituencies which comprise wholly or partly the Corporation area.

(ii) the members of the Council of States and the members of the State Legislative Council registered as electors within the Corporation area.

(4) Every member of the Corporation shall have the right to vote in the meeting but in case of election and removal of the Mayor, Deputy Mayor and members of Standing Committee only the members elected under Sub-section (i) shall have the right to vote.

30. It is also worth to quote Section 13 of the Jharkhand Municipal Act, 2000 which reads as under:

13. Number of Municipal Commissioners elected 2 x x x x x

(1) The State Government shall, by notification in the official Gazette, fix the number of Commissioners who shall be elected in the prescribed manner which shall not be less than ten or more than thirty seven.

(2) Save as provided in Sub-section (4), all the seats in Municipality shall be filled in 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, known as wards.

(3) (a) Seats shall be reserved for the Scheduled Castes, Scheduled Tribes and Backward Classes 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 in by direct election in that Municipality as the population of the Scheduled Castes, the Scheduled Tribes or Backward Classes in the Municipal area bears to the population of that area, and such seats may be allotted by rotation to different constituencies in a Municipality by the District Magistrate under the direction, control and supervision of the State Election Commission.

(b) Not less than one-third of the total number of seats reserved under Clause (a) of this sub-section, shall be reserved for women belonging to the Scheduled Castes or Scheduled Tribes or Backward Classes as the case may be.

(c) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes) of the total number of seats to be filled in 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 in such manner as may be prescribed.

(d) The office of the Chairman in Municipalities shall be reserved in the following manner:

(i) Such number of offices of Chairman of the Municipality in the State shall be reserved for persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes bearing, as nearly as may be the same proportion to the total number of offices in the State as the population of the Scheduled Castes, the

Scheduled Tribes and the Backward Classes in the State bears to the total population of the State, and

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Provided that the offices reserved under this clause shall be allotted by rotation to different Municipalities by the State Election Commission.

Explanation.--For the removal of doubts it is hereby declared that the principle of rotation for the purposes of reservation of offices under this subsection shall commence from the first election to be held after the commencement of this Ordinance.

31. From perusal of the aforesaid provision, it is clear the amendments have been made for fulfilling the constitutional mandate as contained in Article 243T of the Constitution. Sub-section (3) of Section 13 provides the procedure for filling up seats reserved for Scheduled Castes, Scheduled Tribes and Backward Classes. Firstly, such reserved seats shall be allotted by rotation to different constituencies in the municipality and that while reserving the seats, the population of the concerned area shall be taken into consideration. The aforesaid provision also provides reservation of at least 1/3rd seats for the women. Explanation to the said amended provision further clarifies that the principle of rotation for the purpose of reservation of office of Chairman shall be by rotation to different municipalities by the State Election Commission.

32. Correspondingly, Section 28-A of the Ranchi Municipal Corporation (Preparation of Electoral Rolls and Conduct of Elections) Rules, 2001 has been incorporated. Section 28-A reads as under:

28-A. Assignment of ward by rotation.-- (1) Reservation of seats to Scheduled Castes, Scheduled Tribes, Backward Class of citizens and Women shall be made in accordance with the provisions of Section 8 of the Act, in descending order of numerical strength of their respective population, for the purpose of the election of the Municipal Corporation to be held for the first time subsequent to the coming into force of the Patna Municipal Corporation (Amendment) Act, 1995 (Bihar Act I of 1995) (Adopted).

(2) In subsequent elections, reservation of wards for the Scheduled Castes, Scheduled Tribes, Backward Class of citizen and Women shall be made on the principle laid down under Sub-rule (1) by rotation:

Provided that the same ward shall not be reserved for the Scheduled Castes/Scheduled Tribes, Backward Class of citizen/Women in the subsequent election if the ward was reserved for the Scheduled Castes/Scheduled Tribes,

Backward Class of citizens/Women, as the case may be, during the immediate preceding election.

Explanation.-- For the purpose of this rule, the numerical strength of population in relation to the Scheduled Castes/Scheduled Tribes, Backward Class of citizens and Women shall mean the strength from the last preceding census of which the relevant figures have been published and in respect of citizen of the Backward Class of which such figures have not been published in the last census, the number of such inhabitants and citizens of the towns as ascertained and published under the authority of the State Government.

33. In exercise of power conferred "by Section 19(ka), the Election Commission of Jharkhand, Ranchi issued notification whereby the post of Mayor of Ranchi Municipal Corporation was reserved for women and the post of Chairman of the Dhanbad Municipal Corporation remained unreserved. The notification dated 28.1.2008 is quoted herein below:

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34. Similarly, by another notification dated 28.1.2008 issued by Election Commission Jharkhand Ranchi, the reserved post of Chairman in the municipality has been declared reserved for Scheduled Tribes, Scheduled Castes, Backward Classes and women and also shown unreserved for the general category candidates. The said notifications are reproduced herein below:

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1	gqISukckn	vuqlwfpr tkfr	efgyk
2	x<+ok	fiNM+k oxZ	efgyk
3	Rkysgj	vukjf{kr	vU;
4	XkskM~Mk	vukjf{kr	vU;
5	jktegy	vukjf{kr	vU;
6	ikdqM+	vukjf{kr	efgyk
7	CkklqdhukFk	vukjf{kr	vU;
8	tkerkM+k	vukjf{kr	vU;
9	fefgtke	vukjf{kr	vU;
10	fpjdq.Mk	vuqlwfpr tkfr	vU;
11	cq.Mq	vuqlwfpr tkfr	efgyk
12	[kwaVh	vuqlwfpr tkfr	vU;
13	xqeyk	vuqlwfpr tkfr	vU;
14	fljMsxk	vuqlwfpr tkfr	efgyk
15	lj;dsyk	vukjf{kr	efgyk
16	pdqfy;k	vukjf{kr	efgyk

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2	prjk	vukjf{kr	vU;
3	gtkjhckt	vuqlwfpr tkfr	efgyk
4	fxfjMhg	finM+k oxZ	efgyk
5	eFkqiqj	vukjf{kr	vU;
6	lkgscxat	vuqlwfpr tu tkfr	vU;
7	nqedk	vukjf{kr	efgyk
8	Qqljks	vukjf{kr	vU;
9	Yksgjnxk	vuqlwfpr tu tkfr	vU;
10	PkbZcklk	vuqlwfpr tu tkfr	efgyk
11	vkfnR;iqj	vukjf{kr	efgyk

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35. From perusal of the notifications it is evidently clear that out of total seats of Chairman of different municipalities and Nagar Panchayats, only 50% reservation has been given to the members of Scheduled Tribes, Scheduled Castes, Backward Classes and women.

36. Mr. V. Shivrath, learned Counsel appearing for the petitioners, mainly contended that reservation of seats have not been made in accordance with the provisions contained in Section 13(3) of the Jhar-khand Municipal Act. We are unable to accept the contention of the learned Counsel. From perusal of various notifications, it is evident that reservation of post of Ward Commissioners has been made on the basis of population of Scheduled Castes and Scheduled Tribes in that particular municipality. We have examined all the papers filed by the parties and annexed with their affidavits. We find that while reserving seats for the Scheduled Castes, Scheduled Tribes, Backward Classes and women, the population of respective constituencies have been taken into consideration.

37. The next common contention made by the learned Counsels appearing for the parties, is that each municipality is a body corporate having separate entity. Each municipality being a local self Government within the meaning of Article 12 of the Constitution of India and, therefore, all municipalities in the State of Jharkhand shall not be treated one unit. There is no dispute with regard to legal position that the terms "local authorities" as contained in Article 12 of the Constitution of India plainly refer to the corporation which is an institution of local self Government as contemplated in the directive principles. When an organization or corporation acts as an agency of the Government, it can be included within the definition of State. But the fact remains that it is the State Government which may constitute a municipality or a corporation if it is satisfied with the condition specified in Section 4 of the Municipal Act. The State Government is empowered to declare its intention to constitute municipality or Nagar Panchayat in any town or other populated area. In our view, therefore, each municipality may have separate entity, they can be clubbed together by making legislation for the purpose of giving reservation to the members of Scheduled Castes, Scheduled Tribes, Backward Classes and women. Consequently, it cannot be held that post of Mayor or the post of Chairman in each municipality is a solitary post.

38. It is well settled that reservation is stipulated in different constitutional provisions has been held to be special provision. Certain benefits like reservation

can be granted in favour of weaker sections, detriment to the rest of the citizens, is equally well settled principles. Justice, political and social are enshrined in the preamble of the Constitution of India. It is, therefore, open to the legislature to treat all the municipalities as one unit for the purpose of giving reservation to the Scheduled Castes, Scheduled Tribes, Backward Classes and women. While dealing with social justice, the Supreme Court in [Sadhuram Bansal Vs. Pulin Behari Sarkar and Others](#), held as follows : "There is no ritualistic formula or any magical charm in the concept of social justice. All that it means is that as between two parties if a deal is made with one party without serious detriment to the other, then the Court would lean in favour of the weaker section of the society. Social justice is the recognition of greater good to larger number without deprivation of accrued legal rights of anybody. If such a thing can be done then indeed social justice must prevail over any technical rule. It is in response to the felt necessities of time and situation in order to do greater good to a larger number even though it might detract from some technical rule in favour of a party."

39. In the case of [Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another](#), the Supreme Court while considering the case in the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, discussed the concept of distributive justice and observed:

16. The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudence know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed "distributive justice". The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle : "From each according to his capacity, to each according to his needs". Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargains should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements.

40. The next point raised by the learned Counsel appearing for the petitioners referring Article 243ZC is that provision of Part IX-A of the Constitution of India has not been extended to the Scheduled Area and, therefore, there cannot be any

municipality in Scheduled Area and no election can be held for the municipality of Scheduled Area. We are not able to accept the contention made by the learned Counsels.

41. Article 243ZC although provides that Chapter IX-A shall not apply to the Scheduled Areas, but if we read Article 243ZC along with Article 243ZF, it would be clear that it will not affect the existing law relating to State Municipalities, which were in existence prior to the commencement of 74th amendment of the Constitution. In other words, the aforesaid Article does not affect existing law of the State relating to Scheduled Area with respect to municipalities existing prior to commencement of 74th amendment of the Constitution. Hence, it cannot be said to be inconsistent with the provisions of Part IX of the Constitution. The Bihar Municipal Act, 1922 and the Municipal Corporation Act, 1951 was applicable to the entire United State of Bihar and after bifurcation of the State, said laws have been adopted and continued to remain in force in the entire State of Jharkhand. The provision of Articles 243ZC and 243ZF have recently been considered by a Division Bench of this Court in the case of [Debashish Soren Vs. The State of Jharkhand](#). In that case, the writ petitioner challenged the provision of Jharkhand Municipal (Amendment) Act, 2006, and Ranchi Municipal Corporation (Amendment) Act, 2006 and Jharkhand Municipal Act, 2000 on the ground that the same cannot be extended by the State to the Ranchi District including Scheduled Area as the Parliament alone can extend the provisions of Part IX-A of the Constitution of India to the Scheduled Areas through legislation as contemplated under Article 243ZC of the Constitution of India. The Court rejecting the submissions made by the learned Counsel for the parties, held that Municipal Act shall continue to operate in the Scheduled Areas though Part IX-A is not applicable to Scheduled Areas since the said Act was introduced even before commencement of Part IX-A which is consistent with that Part. The Court further held that amendment brought in the Act is only for increasing penalty and prescribing limit of reservation.

42. Besides the law discussed herein before, I would also like to mention here some more reasonings and objects of constitutional amendment and the legislation made thereafter giving reservation to women also along with other weaker sections of the society namely Scheduled Castes, Scheduled Tribes and Backward Classes.

43. The Indian Society has accorded differential status of women throughout the history. But there has been a significant change in the status of women in modern India. Educating and empowering women is critical to socio-economic development of Nation. In the words of Ex-President A.P.J. Abdul Kalam "empowering women is a prerequisite for creating a good nation, when women are empowered, society with stability is assured. Empowerment in women is essential as their thoughts and their value system lead the development of good society and ultimately a good nation."

44. Constitution of India guarantees equal rights for men and women. Women are striving to achieve equality socially, economically, educationally, politically and

legally. The principal of gender equality is enshrined in the Indian Constitution in the Preamble. The Constitution not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women. India has also ratified various International conventions and human right instruments committing to secure equal rights of women. One of them is the convention on Elimination of All Forms of Discrimination against women (CEDAW) in 1993.

45. The National Commission for women was set up by an Act of Parliament in 1990 to safeguard the rights and legal entitlement of women. The 73rd and 74th amendment of the Constitution in 1992 have provided for reservation of seats in the local bodies of Panchayat and Municipalities for women laying a strong foundation for their participation in decision making at the local levels. Women's equality in power sharing and active participation in decision making will be ensured for the achievement of goals of empowerment. All measures will be taken to guarantee women equal access to and full participation in decision making bodies at every level including legislative, executive, judicial, corporate and statutory bodies. Affirmative action such as reservation/quotas will consider whenever necessary. This is the national policy for the empowerment of women. The policy will aim at implementation of International obligation/commitment in all sectors on empowerment of women.

46. In the case of [Anugrah Narain Singh and Another Vs. State of U.P. and Others](#), the fact was that no municipal election had taken place in the State of Uttar Pradesh for the last 10 years. However, pursuant to the direction issued by Allahabad High Court in the writ petition upon the State Government to hold election of Municipal Corporation within a certain time. Pursuant to that notice was issued for holding election for all town area and Municipal Corporation in the State of Uttar Pradesh and ratios were fixed for filing nomination. In the meantime, writ petitions were filed in the Allahabad High Court challenging the notification for holding Municipal elections in the State. Fifteen similar petitions were also filed before the Lucknow Bench of the Allahabad High Court. The prayers in all the writ applications mainly were that in view of the defects in the electoral rolls and delimitation of constituencies and also on the ground of arbitrary reservation of constituencies for women, Scheduled Castes, Scheduled Tribes and Backward Classes, the process of election should be postponed. The Lucknow Bench of the Allahabad High Court dismissed the petitions. However, a Division Bench of the Allahabad High Court passed order in similar writ petitions stopping the election process regardless of the judgment and order passed by the Lucknow Bench of the High Court. The matter ultimately came to the Supreme Court. Discussing various provisions of Part IX-A of the Constitution, their Lordships finally observed:

13. The case of the writ petitioners was that, they were residents of different Nagar Nigams. Their names had been duly entered as voters in the electoral rolls of their wards. They were very keen to contest the elections for various posts including the

post of Chairperson of the Nagar Nigam. However, they became ineligible on account of allocation and reservation of wards and the municipal areas from which they wanted to contest. The case of the writ petitioners was that the erstwhile Nagar Mahapalikas were established under the Uttar Pradesh Municipal Corporations Adhiniyam, 1959. The Constitution (74th Amendment) Act, 1992 came into force on 1.6.1993. By this Amendment Act and Part IX-A, Articles 243-P to 243-ZG were inserted in the Constitution. Consequent upon the 74th amendment of the Constitution, various amendments were made in the Uttar Pradesh Municipal Corporations Adhiniyam to bring the Act in line with the constitutional amendments. Article 243Q envisaged the constitution of Nagar Panchayats, Municipal Councils and Municipal Corporations, etc. depending upon the density of the population, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as may be deemed fit. The validity of the process of the delimitation of the constituencies that took place after the amendment of the U.P. Act and also the reservations made in furtherance thereof and allocation of reserved seats in the 11 municipal areas in the State of U.P., namely, Allahabad, Agra, Aligarh, Bareilly, Gorakhpur, Ghaziabad, Kanpur, Lucknow, Moradabad, Meerut and Varanasi, was challenged by the writ petitioners. Basically, the challenge appears to be about reservation of seats in favour of Scheduled Castes and Scheduled Tribes and Backward Classes in the municipal areas. It was argued before the High Court and also before this Court that important safeguards of the Constitution were overlooked when the dates of holding of the elections were announced.

14. There are several reasons why these arguments of the writ petitioners should not have been upheld. The High Court overlooked the fact that no municipal election had been held in the State for nearly ten years and the dates of the elections were fixed under the direction given by the High Court in another case. Importance of holding elections at regular intervals for panchayats, municipal bodies or legislatures cannot be overemphasised. If holding of elections is allowed to be stalled on the complaint of a few individuals, then grave injustice will be done to crores of other voters who have a right to elect their representatives to the local bodies. As a result of the order of the High Court, elections that were going to be held to the local bodies after a long lapse of nearly ten years were postponed indefinitely. It was pointed out by this Court in the case of Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman that : (SCC p. 703, para 21)

...the fact that certain claims and objections are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations.

15. The Court also quoted from an order dated 30.3.1982 that: (SCC pp. 219-20, para 1)

...no High Court in the exercise of its powers under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution.... The High Courts must observe a self-imposed limitation on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution.

47. As noticed above, no election of municipal corporations, municipalities, Nagar Panchayat had taken place in the State of Jharkhand for the last 22 years. It was only after much persuasion, the election of municipalities, corporations and Nagar Panchayat have been announced. After the announcement of election of the institutions, these writ petitions and several other writ petitions have been filed challenging the amended provisions of the Municipal Act and the Corporation Act on the issue of reservation and also fixation of seats reserved for the post of Chairman, Commissioner/Councilors on various grounds and in all these writ petitions, prayer has been made for postponement of the elections.

48. Following the decision of the Supreme Court, in our view such question in any event cannot be gone into under Article 226 of the Constitution of India and postpone the election.

49. After giving our anxious consideration on the facts and circumstances of the case and having regard to the discussions made herein above, we do not find any merit in all these writ petitions which are, accordingly, dismissed.

D.K. Sinha, J.

50. I agree.