BIHARI LAL RADA

v.

ANIL JAIN (TINU) & ORS.

(Civil Appeal No. 976 of 2009)

FEBRUARY 13, 2009

[LOKESHWAR SINGH PANTA AND B. SUDERSHAN REDDY, JJ.]

ELECTION LAWS:

HARYANA MUNICIPAL ACT, 1973/HARYANA MUNICIPAL ELECTION RULES, 1978:

S.18/r.70 – Election to office of President of Municipality – Held: Even if the post is reserved for SC, ST, BC, Councilor belonging to SC, ST or BC can be elected even if such person is not elected as Councilor from a reserved ward – Likewise when the post is not reserved, all candidates irrespective of the fact whether they have been elected from a reserved ward or general ward entitled to seek election as president – Constitution of India, Article 243T.

In this appeal, the election of the appellant as President of Municipal Council, Hisar which has been quashed by the High Court is in issue. The question before the Court was whether the provisions of the Haryana Municipal Act, 1973 and the Rules framed thereunder curtail and put any embargo on the right of the Municipal Councilors elected from the reserved wards to contest election for the Office of President of the Municipality if by virtue of roaster such office is notified to be filled in by the members belonging to the general category.

On behalf of the appellant it was contended that all

A members of the Municipality, irrespective of the fact that they have been elected from reserved wards, are eligible to contest to the office of the President/Chairperson when it falls in the general category; that the office of the President/Chairperson once notified falling in the general
B category simply means that the same is not reserved for any particular class of persons or community; and that the contest is open to all classes who have been elected as members of the ward irrespective of the fact whether they have been elected from the wards that were
C reserved for the Scheduled Castes and the Backward Classes or from the wards which remained unreserved.

On behalf of the respondents, it was contended that the appellant being an elected member from a ward reserved for backward classes cannot contest the
D election to the office of the President as the same could only be filled in from the candidates belonging to the general category.

Allowing the appeal, the Court

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HELD: 1. Neither Article 243T of the Constitution nor Section 10 (5) of the Haryana Municipal Act provide for any reservation to the office of the President in favour of any candidate who does not belong to Scheduled Caste or Backward Class. Obviously there cannot be any such
F reservation of seats in Municipalities nor to the office of Chairperson in favour of candidates belonging to general category. There is no separate category like general category. The expression belonging to the general category wherever employed means the seats or offices
G earmarked for persons belonging to all categories irrespective of their caste, class or community or tribe. The unreserved seats euphemistically described as general category seats are open seats available for all candidates who are otherwise qualified to contest to that
H office. [Para 32] [271-D]

2. There is nothing in the provisions of the Haryana Municipal Act, 1973 suggesting that in case the office of the President of a Municipality is required to be filled in from the members belonging to the general category then only a member who has been elected as such from an unreserved ward alone can stand for election. There is nothing in law that a person belonging to Backward Class and got himself elected from a ward reserved for that class is debarred from contesting the election to the office of President/Chairperson when that office is not reserved and meant to be filled in from the members belonging to the general category. [Para 32] [272-B]

Black's Law Dictionary, **Sixth Edition, referred to.**

3.Wherever the office of the President of a Municipality is required to be filled in by a member belonging to Scheduled Caste, Scheduled Tribe or Backward Class as the case may be it would be enough if one belongs to one of those categories irrespective of the fact whether they have been elected from a general ward or a reserved ward. Likewise, the office of the President of a Municipality if not reserved or meant for general category, all the candidates irrespective of their caste, class or community and irrespective of the fact whether they have been elected from a reserved ward or a general ward are entitled to seek election and contest to the office of the President of the Municipality. [Para 33] [272-D]

Shri V.V. Giri Vs. Dippala Suri Dora & Ors. **1960 (1) SCR 426;** *R.K. Sabharwal Vs. State of Punjab* **(1995) 2 SCC 745;** *Union of India & Ors. Vs. Virpal Singh Chauhan* **(1995) 6 SCC 684;** *Indra Sawhney Vs. Union of India* **1992 Supp (3) SCC 217 and** *Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput & Anr.* **1998 (1) SCC 285, referred to.**

A **Case Law Reference:**

1960 (1) SCR 426	**referred to**	**Para 23**
(1995) 2 SCC 745	**referred to**	**Para 24**
B **(1995) 6 SCC 684**	**referred to**	**Para 25**
1992 Supp (3) SCC 217	**referred to**	**Para 26**
1998 (1) SCC 285	**referred to**	**Para 30**

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 976 of 2009.

From the final Judgment and Order dated 31.7.2008 of the High Court of Punjab and Haryana at Chandigarh in LPA No. 66 of 2007.

D Dr. A.M. Singhvi and Jayant Bhushan, Sanjeev Kumar, Vishal Gupta, Vikram Bajaj and Kumar Mihir (for Khaitan and Co.) for the Appellant.

Manjit Singh, AAG., P.S. Patwalia, Arun Sukheeja B.K. E Sharma, Aman Preet Rahi, Tushar Bakshi, D.K. Tripathi, Prem Malhotra and Kamal Mohal Gupta for the Respondents.

The Judgment of the Court was delivered by

F **B.SUDERSHAN REDDY, J.**1. Leave granted.

2. This appeal is preferred against the Judgment and Order dated 31.07.2008 made in LPA No. 66 of 2007 of the High Court of Punjab and Haryana at Chandigarh whereby the Division Bench vide the impugned judgment set aside the G election of the appellant as the President of the Municipal Council, Hisar.

3. The facts, in brief, to be noticed for the purpose of disposal of this appeal, are that election to the Municipal H Council, Hisar was held on 16.4.2005. In all there were 31 wards

out of which 15 wards were reserved for the members belonging to Scheduled Castes and 2 wards were reserved for Backward Class category. The respondent/writ petitioner was elected from ward no. 2 which was general category and not reserved in favour of any one of those categories mentioned herein above. The appellant herein was elected from ward no. 18 which was reserved for Backward Class category. Thereafter election was held to the office of the President, Municipal Council, Hisar on 29.8.2006. In the election held on 29.8.2006, in all 32 Municipal Councilors participated. The appellant secured 19 votes whereas the respondent got 13 votes and accordingly the appellant was declared to have been duly elected as the President of the Municipal Council, Hisar.

4. The respondent herein challenged the said election of the appellant mainly on the ground that as per the Notification issued by the Competent Authority the office of the President of Municipal Council, Hisar *"has been reserved for general category candidate and the same shall be filled in from amongst the members belonging to general category.* Meaning thereby, for the office of the President of Municipal Council, Hisar only the members elected from the general category had a right and not the member elected from Backward Class category." The contention was, once the office of the President of a Municipality is reserved to be filled in by persons belonging to Scheduled Castes and Backward Class category, the candidate elected from general category has no right to be elected as the President. Similarly, general category is also a separate category, therefore, only members among the general category have a right to hold the post of President "which is reserved categorically for general category", therefore, the member coming from Backward Class category cannot become the President of the Municipality which is earmarked for general category. It was on that ground the respondent herein filed the writ petition seeking a writ of certiorari to quash the proceedings whereunder the appellant was declared to have been duly elected as the President of Hisar Municipality.

A 5. The learned Single Judge after an elaborate consideration of the matter dismissed the writ petition and upheld the election of the appellant as the President of the Municipal Council, Hisar. On appeal preferred by the respondent herein, the Division Bench vide the impugned B judgment set aside the judgment of the learned Single Judge and quashed the election of the appellant herein as the President of Municipal Council, Hisar. Hence this appeal.

PART-I

C 6. Reference to Constitutional provisions is necessary to appreciate and resolve the controversy involved in the present case. The reservations in favour of the Scheduled Castes, Scheduled Tribes and other Backward Classes are authorized by Constitutional provisions that permit departure from formal D equality for the purposes of favouring specified weaker sections of the Society.

7. Ever since the adoption of the Constitution, there have been efforts at democratic decentralization of power. A E reference may be made to Article 40 of the Constitution which obligates the State to take steps to re-organise village Panchayats and endow them with such powers and functions as may be necessary to enable them to function as units of self-government. How far the local self-government institutions at the gross roots have attained the objectives of democratic F decentralization always remained a matter of serious and sustained debate. It was felt that the monopoly of leadership by certain groups was deeply disturbing. The poorer and weaker sections of the Society were prevented from providing effective leadership. Roles in implementing the community G development plans, electoral politics at the gross root level led to patronage. It was perceived that dominant sections in both Panchayati Raj Institutions and as well as Nagarpalikas/ Municipalities etc. captured power and used the same for their own ends. All this has contributed to a loss of faith in the gross

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root democratic institutions. A

8. The Constitution of India specifically provides for reservation of seats in elective legislative bodies to the Scheduled Castes and the Scheduled Tribes in proportion to their numbers. Be it noted that these reservations do not involve B 'separate electorates' – i.e. the representation of a particular group by legislators chosen by an electorate composed solely of members of that group. The seats are reserved in the sense that candidates who stand for them must belong to the specified groups, in which the entire electorate of the Constituency C participates in choosing among the reserved candidates. Such provisions were obviously made to enhance political participation by the Scheduled Castes and Scheduled Tribes. No such provision was made providing for any reservation of seats in elective bodies at the gross root level either in D Panchayats or in Municipalities.

9. It was realized that Local Bodies have become weak and ineffective on account of variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. It was felt that E the Urban Local Bodies and as well as Panchayati Raj Institutions have not been able to acquire status and dignity of viable and responsive bodies. One of the reasons noticed as to why these gross root institutions were unable to perform effectively as vibrant democratic units of self-government was F on account of inadequate representation of weaker sections such as Scheduled Castes, Scheduled tribes and Women etc.

10. That so far as the Municipalities are concerned it was proposed to add a new part in the Constitution relating to Urban Local Bodies to *inter alia* provide for reservation of seats in G every Municipality in favour of weaker sections of the Society such as Scheduled Castes, Scheduled Tribes in proportion to their population and in favour of Backward Class of citizens if so provided for by the legislature of the State. Accordingly, Part IXA; came to be inserted by the Constitution (Seventy-Fourth H

A Amendment) Act, 1992 w.e.f. 01.06.1993. It specifically provides for devolution by the State Legislature of powers and responsibilities upon Municipalities with respect to preparation of plans for economic development and social justice, and for the implementation of development schemes as may be B required to enable them to function as institutions of self-government. It was felt that economic development and implementation of schemes securing social justice may not be possible without providing for adequate representation to the weaker sections of the Society. Its paramount objective was to C empower the vulnerable sections of the Society who were hitherto precluded from participating in the local self-government institutions for various historical reasons due to which the Constitutional objective of securing social justice remained unfulfilled.

D 11. Having regard to the nature of the controversy involved herein, it would be appropriate to set out Article 243T of the Constitution of India in its entirety:

"*243T. Reservation of seats.*-(1) Seats shall be reserved E 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 F 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 G 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 H 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. A

(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. B

(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. C

(6) Nothing in this Part shall prevent the legislature of 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." D

12. A plain reading of Article 243T of the Constitution makes it clear that it provides for reservation of seats for the Scheduled Castes, Scheduled Tribes and Women in every Municipality and further enables the Legislature of a State to make provision for reservation of seats in any Municipality or offices of the Chairpersons in the Municipalities in favour of Backward Class of citizens. It also mandates that the offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, Scheduled Tribes and Women as the Legislature of a State may, by law, provide. Be it noted that no seats in the Municipalities or to the offices of the Chairpersons are reserved in favour of persons belonging to general category. E F G

PART-II

13. The Haryana Legislative Assembly made several amendments to the Haryana Municipal Act, 1973 (for short "the Act, 1973") in the light of and to bring the law relating to H

A Municipalities in conformity with the purpose, substance and direction of the Constitution (Seventy-Fourth Amendment) Act, 1992.

14. Section 10 of the Act, 1973 provides for reservation of seats which reads as under:

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"10. Reservation of seats: (1) Seats shall be reserved for the Scheduled Castes 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 a Municipality as the population of the Scheduled Castes in the municipal area bears to the total population of that area and such seats may be allotted to such ward's having maximum population of persons belonging to Scheduled Castes.

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(2) Not less than 1/3rd of total number of seats reserved under sub-section (1) shall be reserved for women belonging to the Scheduled Castes and such seats may be allotted by rotation and by lots amongst the wards reserved under sub-section (1).

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(3) Not less than 1/3rd (including the number of seats reserved for women belonging to the Scheduled Castes) 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 and by lots to different constituencies in the Municipality except those falling under sub-sections (1), (2) and (4).

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(4) [Two seats in every Committee] shall be reserved for the persons belonging to Backward Classes which shall be allotted in such territorial constituencies as having maximum population of persons belong to Backward Classes.

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(5) The offices of Presidents in the Municipalities shall be filled up from amongst the members belonging to the

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general category, Scheduled Castes, Backward Classes and women by rotation and by lots in the manner prescribed: A

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(6) The reservation of seats under sub-sections (1) and (2) and the reservation of office of the President other than the reservation for women under sub-section (4) shall cease to have effect on the expiration of the period specified under Article 334 of the Constitution of India. B

(7) The reservation of seats under sub-Sections (1), (2), (4) and (5) shall be reviewed after every decennial census. C

(8) The reservation as enumerated in this section shall be given effect to through notification issued at the time of each election. " D

15. Section 18 deals with election of the President and the Vice-president which reads as under:

"18. Election of President and Vice-President:(1) Every Municipal Committee or Municipal Council shall, from time to time, elect one of its members to be President for such period as may be prescribed, and the member so elected shall become President of Municipal Committee or Municipal Council: E F

Provided that the office of the President in Municipal Committee and Municipal Council shall be reserved for Scheduled Castes and women in accordance with the provisions made in Section 10: G

Provided further that if the office of President is vacated during his tenure on account of death, resignation or no confidence motion, a fresh election for the remainder of the period shall be held from the same category. H

A (2) Every Municipal Committee or Municipal Council shall also, from

time to time, elect one of its elected members to be Vice-President:

B Provided that if the office of the Vice-President is vacated during his tenure on account of death, resignation or no confidence motion, a fresh election for the remainder of the period shall be held.

C [(3) The term of the office of the President shall be for a period of five years or for the residue period of his office as a member, which ever is less.]"

16. Sub-rule (4) of Rule 70 of the Haryana Municipal Elections Rules, 1978 made under the Act, which is relevant D reads as under:

"Rule 70 (4): – The offices of the Presidents in the municipalities shall be filled up from amongst the members belonging to the general category, Scheduled Castes, E Backward Classes and Women by rotation which will be determined in the manner as detailed below:

Provided that the number of offices of the President reserved for the Scheduled Castes and Backward Classes in the State shall bear as may be the same F proportion to the total number of such offices of the municipalities as the population of the Scheduled Castes and Backward Classes in the State bears to the total population of the State:

G Provided further that not less than one third of the total number of offices of the President in the Municipalities shall be reserved for women including the offices reserved for Scheduled Castes and Backward Classes women. The reservation of offices for women shall rotate to different H municipalities which will be determined by draw of lots by

a committee consisting of the Director, local Bodies and Deputy Commissioners of the districts concerned or their nominee. If women of the reserved category are not available, then the office of the President shall be filled up from the male member of the said reserved category:

Provided further that the number of offices of the President for Scheduled Castes and Backward Classes shall be determined on the basis of their population and shall rotate to different municipalities firstly, having largest population of Scheduled Castes, secondly, from the remaining municipalities having largest population of Backward Classes and they rotate in the subsequent terms of offices of the municipalities having their next largest population and so on. In case percentage of population of two Municipal Committees or Municipal Councils as regards Backward Classes and Scheduled Castes is the same the reservation will be determined by draw of lots to be conducted by a committee consisting of Director, Local Bodies and Deputy Commissioner of district concerned or his nominee.

Provided further that in case of office of the Municipal Council reserved for the Backward Classes, the President shall be elected from amongst the members belonging to the Backward Classes and in case of Municipal Committees, the member of Backward Class shall be deemed to be elected as President of the municipality reserved for the Backward Classes."

17. The relevant provisions of the Act, 1973 and Election Rules made thereunder referred to herein above are to be read and understood in the light of and in conformity with Article 243T of the Constitution.

18. In the present case, the Governor of Haryana, in exercise of the powers conferred by sub-Section (8) of Section 10 of Act, 1973 and all other powers enabling him in this behalf

A issued the Notification dated 8.4.2005 specifying that the office of the President, Hisar shall be filled up from the members belonging to the general category.

QUESTION

B 19. The question which arises for our consideration in this appeal is: Whether the provisions of the Act, 1973 and the Rules framed thereunder curtail and put any embargo on the right of the Municipal Councilors elected from the reserved wards to contest election for the office of President Municipality if by C virtue of roaster such office is notified to be filled in by the members belonging to the general category?

SUBMISSIONS

20. Dr. A.M. Singhvi, learned senior counsel appearing on D behalf of the appellant submitted that all members of the Municipality, irrespective of the fact that they have been elected from reserved wards, are eligible to contest to the office of the President/Chairperson when it falls in the general category. It was submitted that the office of the President/Chairperson once E notified falling in the general category simply means that the same is not reserved for any particular class of persons or community. The contest is open to all classes who have been elected as members of the ward irrespective of the fact whether they have been elected from the wards that were reserved for F the Scheduled Castes and the Backward Classes or from the wards which remained unreserved.

21. Shri P.S. Patwalia, learned senior counsel appearing on behalf of the respondent submitted that the appellant being G an elected member from a ward reserved for backward classes cannot contest the election to the office of the President as the same could only be filled in from the candidates belonging to the general category. The precise submission was that the post of the President is meant for general category and only a candidate elected from a general H

ward is entitled to contest the election for the office of President/ Chairperson. A

22. We have carefully considered the submissions.

PART-III B

23. Dr. Singhvi in support of his submissions placed reliance on the decision of this court reported in *Shri V.V. Giri Vs. Dippala Suri Dora and Ors.* [1960 (1) SCR 426]. The facts in that case were: In a double member Parliamentary Constituency one seat was reserved for the Scheduled Tribes C and the other was general. Four persons filed their nominations for the election, G1 and G2 for the general seat and S1 and S2 for the reserved seat. In the light of the number of votes received by the candidates at the polls and in accordance with provisions of Section 54 (4) of the Representation of the People D Act, 1951, S1 was declared elected to the reserved seat and S2, who had received the largest number of votes out of the remaining candidates, was elected to the general seat. G1 filed an election petition for a declaration that the election of S2 was void. One of the contentions was that upon a proper E interpretation of Section 54 (4) a candidate who had filed his nomination for the reserved seat could not be declared elected to the general seat. The matter was heard by a Constitution Bench of this Court which after an elaborate consideration of the matter speaking through Gajendragadkar J. held: F

> "In our opinion, the true position is that a member of a scheduled caste or tribe does not forego his right to seek election to the general seat merely because he avails himself of the additional concession of the reserved seat by making the prescribed declaration for that purpose. The G claim of eligibility for the reserved seat does not exclude the claim for the general seat; it is an additional claim; and both the claims have to be decided on the basis that there is one election from the double-member constituency.

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A In this connection we may refer by way of analogy to the provisions made in some educational institutions and universities whereby in addition to the prizes and scholarships awarded on general competition amongst all the candidates, some prizes and scholarships are B reserved for candidates belonging to backward communities. In such cases, though the backward candidates may try for the reserved prizes and scholarships, they are not precluded from claiming the general prizes and scholarships by competition with the C rest of the candidates."

24. We may further refer by way of analogy to the settled legal position interpreting the provisions made for reservation of appointments or posts in favour of any backward class of citizens under Article16 (4) of the Constitution of India. In *R.K.* D *Sabharwal Vs. State of Punjab* [(1995) 2 SCC 745], a Constitution Bench of this Court held:

"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve E points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. *On the other hand the reserve category* F *candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation."* (Emphasis supplied)

G 25. The similar view is taken in *Union of India and Ors. Vs. Virpal Singh Chauhan* [(1995) 6 SCC 684]

26. In *Indra Sawhney Vs. Union of India* [1992 Supp (3) SCC 217], this Court held:

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"In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merits; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates." A B

27. The Act, 1973 makes available the minimum number of seats to the Scheduled Castes and Backward Classes by way of reservation in proportion to their population. This does not prevent the Scheduled Castes and Backward Classes in getting themselves elected from the unreserved seats on their own merit. The obvious purpose of providing such reservation to the Scheduled Castes, Backward Class and Women who were unable to get adequate representation in the Local Bodies in the absence of reservation. Reservation ensures that at least minimum number of persons belonging to such classes would get elected. Reservation so made in their favour does not mean that they are not entitled to contest election from unreserved seats and to the offices of Chairperson as the case may be. The reservation does not limit number of candidates from reserved category to be elected. They are eligible to contest from the unreserved seats and get elected resulting in increase of their representation in the Local Bodies. C D E

28. The Haryana Municipal Act, 1973 faithfully adopted the Constitutional mandate enshrined in Part IXA; for carrying out the purposes of the Constitution (Seventy-Fourth Amendment) Act, 1992. The Rules thereunder are made for carrying out the purposes of the enactment and the purposes of the Act is to ensure that at least minimum number of persons belonging to the specified categories get elected. F G

29. The construction suggested by Shri Patwalia, that the word `belonging to' governs `general category' is grammatically attractive but suggested construction not only would defeat the H

A main purposes of the provisions and the scheme of the Act, which is to make special provisions for those with special needs, and to the understanding of the Legislature when it enacted Section 10 and 18 of the Act, 1973. The apprehension that persons belonging to general category may loose their B chance forever or for a long time to get themselves elected is totally untenable and unsustainable. The whole idea is to see that minimum number of seats as provided for is filled in by vulnerable sections of the Society. There can never be any constitutional or legal objection if more members from those weaker sections get elected to the Municipalities on their own C merit from the seats meant for the unreserved category.

30. In our view, the question is no more in *res integra* but squarely covered by the decision of this Court reported in *Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput and Anr.* [D 1998 (1) SCC 285]. In that case the appellant therein who belonged to Backward Class but had been elected to the Jambusar Municipality from an unreserved seat stood for election for the post of President of the Municipality which was reserved for a Backward Class candidate. The only question E that had fallen for consideration in the said case was: Whether the appellant, who belongs to a Backward Class but had been elected to the Jambusar Municipality from an unreserved seat, could stand for election for the post of President of the Municipality which was reserved for a Backward Class F candidate or whether the candidate for that post could only be a person who was elected to the Municipality from a seat which was reserved for the Backward Class? This court held:

> "The idea of providing reservation for the benefit of the weaker sections of the society is not only to ensure their G participation in the conduct of the affairs of the municipality but it is also an effort to improve their lot. The reservation ensures that the specified minimum number of persons belonging to that category become members of the municipality. If because of their popularity a larger number

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of Scheduled Castes, Scheduled Tribes, Backward Classes or women get elected to the municipality than the number of reserved seats that would be welcome. When the idea is to promote the weaker sections of the society, and to improve their lot, it would be a contradiction in terms if members belonging to that section are debarred from standing to the office of the President because such a candidate is popular enough to get elected from a general constituency. It is a fundamental principle of democratic election that a person who is more popular is elected, popularity being measured by the number of votes which the person gets. The language of various legal provisions do not in any way suggest, expressly or by necessary implication, that even though a person who belongs to a reserved category and is popular enough to get elected from a general constituency should be barred from contesting the election of the President when that office is to be filled only by a reserved category person."

It was further observed:

"The Act and the Rules provide for reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and women. No reservation or classification is made ward-wise. To put it differently all members of the Scheduled Castes, for example, will be regarded as belonging to one class irrespective of the fact whether they had been elected to a reserved seat or to a general seat. Similar is the position with regard to the Backward Classes, Scheduled Tribes and women. The law does not contemplate or provide for any further sub-classification of the type which has been suggested by the respondents. *Just as all members of the municipality, irrespective of the fact whether they had been elected to a reserved seat or not, are eligible for election to the post of the President when it falls in the general category,* similarly when as per the roster the President is to be one who, say, belongs to the

A category of Scheduled Caste then all members of the municipality who are Scheduled Caste, irrespective of the seat to which they had been elected, would be eligible to stand for election. Neither the Act nor the Rules stipulate that it is only such a member who has been elected to the B reserved seat who would be eligible to stand for election to the post of President when it is the turn of that category of candidate to become the President of the municipality." *(Emphasis supplied)*

C 31. Shri Patwalia, however, made an attempt to distinguish the said judgment by submitting that the Gujarat Municipal Act did not provide for any post of the President to be elected from the candidates belonging to general category, therefore, a Backward Class candidate although elected from a general category seat was held to be entitled to contest for the office D of the President since the said office was reserved only for Backward Class. It was submitted that the requirement in that case was that the candidate must be a backward class candidate and it did not matter from which category of seat he was elected. According to him in the present case the office E of the President is meant for general category and only a candidate who had contested and won from a general seat alone was entitled to contest for the office of the President. We find it very difficult to rationalize much less endorse the argument advanced by the learned senior counsel. In F *Kasambhai F. Ghanchi* (supra) this Court while examining the true import and effect of the provisions of Article 243T of the Constitution of India observed:

"There is no indication or suggestion in Article 243-T or G in the Act that in case the office of the President is required to be filled by a member who is a Scheduled Caste, Scheduled Tribe, Backward Class or a woman, then only a member who has been elected from a reserved seat can stand for election. In other words, for the purpose of election to the post of President the reservation which is H

contemplated by the Act is only to the effect that the person elected should belong to the category of Scheduled Caste, Scheduled Tribe, Backward Class or woman, as per the roster. Conceivably, as in the present case, an elected member may fall within two or more categories and, in this way, may be in a position to seek re-election as envisaged by Section 33 of the Gujarat Municipal Act. If this is not so, and with the category changing every year, as per the roster, Section 33 will become redundant. The legislative intent, therefore, clearly is that one person, whether elected from reserved or general seat, but who belongs to the category out of which the President is to be elected, can seek re-election as envisaged by Section 33 of the Act."

CONCLUSION

32. Be that as it may, neither Article 243T of the Constitution nor Section 10 (5) of the Haryana Municipal Act provide for any reservation to the office of the President in favour of any candidate who does not belong to Scheduled Caste or Backward Class. Obviously there cannot be any such reservation of seats in Municipalities nor to the office of Chairperson in favour of candidates belonging to general category. There is no separate category like general category. The expression belonging to the general category wherever employed means the seats or offices earmarked for persons belonging to all categories irrespective of their caste, class or community or tribe. The unreserved seats euphemistically described as general category seats are open seats available for all candidates who are otherwise qualified to contest to that office. The word `General' derived from Latin word genus. It relates to the whole kind, class, or order. Pertaining to or designating the genus or class, as distinguished from that which characterizes the species or individual; universal, not particularized, as opposed to special; principal or central, as opposed to local; open or available to all, as opposed to select; obtaining commonly, or recognized universally, as opposed to

A particular; universal or unbounded, as opposed to limited; comprehending the whole or directed to the whole, as distinguished from anything applying to or designed for a portion only. Extensive or common to many. (See *Black's Law Dictionary,* Sixth Edition). There is nothing in the provisions of
B the Act, 1973 suggesting that in case the office of the President of a Municipality is required to be filled in from the members belonging to the general category then only a member who has been elected as such from an unreserved ward alone can stand for election. There is nothing in law that a person belonging to
C Backward Class and got himself elected from a ward reserved for that class is debarred from contesting the election to the office of President/Chairperson when that office is not reserved and meant to be filled in from the members belonging to the general category.

D 33. In our view, wherever the office of the President of a Municipality is required to be filled in by a member belonging to Scheduled Caste, Scheduled Tribe or Backward Class as the case may be it would be enough if one belongs to one of those categories irrespective of the fact whether they have been
E elected from a general ward or a reserved ward. Likewise, the office of the President of a Municipality if not reserved or meant for general category, all the candidates irrespective of their caste, class or community and irrespective of the fact whether they have been elected from a reserved ward or a general ward
F are entitled to seek election and contest to the office of the President of the Municipality.

34. For the aforesaid reasons we hold that the High Court ought not to have interfered with the proceedings whereunder the appellant was declared to have been duly elected as the
G President of Municipal Council, Hisar. The impugned judgment is, accordingly, set aside.

35. The appeal is, accordingly, allowed with no order as to costs.

H G.N. Appeal allowed.