

ORDER

The notification dated 16.8.2022 issued by the Department of Urban Development whereby the State Government has finalized the reservation of wards to Bruhat Bengaluru Mahanagara Palike (for short `BBMP') in exercise of the power conferred under Section 7 of the Bruhat Bengaluru Mahanagara Palike, 2020 (for short `BBMP Act, 2020) is impugned in all these writ petitions and in WP Nos.17191, 16924, 16980, 17061, 17401, 18325, 18592, 18609, 18631, 18632, 18964, 18971 and 18980 of 2022, the petitioners have also challenged the report dated 21.7.2022 formulated by Dr.Justice K Bhaktavatsala Commission of Enquiry for OBC Reservation in Local Body Elections in the State of Karnataka.

2. The BBMP is the body constituted and was established under the provisions of Karnataka Municipal Corporations Act, 1976. The Bengaluru City originally comprised 198 wards, which was determined under the KMC Act, 1976. The election to the councilors of the BBMP was held in September, 2020 and term of the councilors was for a period of five years

which expired on 10.9.2020. Since the Government did not conduct elections after expiry of terms of the councilors, the

3. For effective administration of the BBMP, the state government enacted the Bruhat Bengaluru Mahanagara Palike Act, 2020, which came into effect from 11.1.2021. Section 7(3)(a) of the Act, 2020 specifies that the Government shall by order determine the wards into which the Corporation shall for the purpose of its election, be divided into not less than 225 but more than 250 wards. Section 8(2) to 8(4) of the Act, 2020 provide for reservation of seats for SC/ST, backward classes and women.

4. Since election was not conducted after expiry of the term of the councilors, the Division Bench of this Court in WP No.10216/2020 directed the State Government to publish the final notification of reservation within two weeks from 22.9.2020 and the State Election Commission was directed to hold election for councilors of BBMP within the maximum period of six weeks from the date on which final notification is published.

5. The order passed by the Division Bench is challenged by the State Government in SLP (Civil) No.1518/2020. Meanwhile, for effective administration of the BBMP, the State Government enacted the BBMP Act, 2020 which came into effect from 11.1.2021. Section 7 of the BBMP Act, 2020 specifies that the Government shall be ordered to determine the wards into which the Corporation shall for the purpose of its election, be divided into not less than 225, but not more than 250 wards. Section 8(2) to 8(4) of the BBMP Act, 2020 provides for reservation to SC/ST, backward classes and women.

6. The Hon'ble Supreme Court has issued certain directions to complete the election process under the BBMP Act, 2020 and the election process is monitored by the Hon'ble Supreme Court. Thereafter, the notification was published for delimitation of wards in exercise of power under Section 7 of the BBMP Act, 2020, which was the subject of challenge in WP No.17438/2022 and connected matters and in the light of the order dated 17.8.2022 passed by this Court, the petitioners sought clarification from the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 26.8.2022 directed this Court to

decide the writ petitions No.17438/22 and connected matters on merits and pass interim or final orders in accordance with law.

7. The State Government constituted Dr. Justice K Bhaktavatsala Commission of Enquiry for Reservation to Other Backward Classes in Local Bodies across the State of Karnataka. The Commission after conducted an enquiry submitted a report dated 21.7.2022 that the reservation of 1/3rd of total seat in favour of OBCs in local body elections in the State of Karnataka is justifiable and the persons belonging to the minority community other than the Muslim community are not able to avail the benefit of political reservation in the local body elections. Thereafter, the State Government carried out the exercise of ward reservation on the basis of the report submitted by the Commission of Enquiry and issued the impugned notification notifying the ward wise reservation for 243 wards of BBMP out of which, 81 wards are reserved for backward classes and 120 wards are reserved for women randomly. Taking exception to the same, these writ petitions have been filed.

8. Sri Jayakumar S Patil, learned Senior Counsel,, learned Senior Counsel, Sri A S Ponnanna, learned Senior

Counsel, Sri Sandeep S Patil, Sri K S Ponnappa and Sri Jaya Movil, learned counsel appearing for the petitioners would make the following submissions.

9. The reservations of 81 wards to the backward classes is contrary to the judgment of Hon'ble Supreme Court in the case of K Krishnamurthy -vs- Union of India reported in (2010) 7 SCC 202 since the triple test set down in the aforesaid decision was not followed. The impugned notification is smacked with legal and political malafides.

10. In several assembly constituencies held by the opposition parties, more or less all the wards are reserved for women and likewise in several assembly constituencies held by the ruling party, more or less there is no reservation provided for the women. Hence, the majority reservation of wards in constituencies held by the opposition parties is smacked with arbitrariness and discrimination and the women in constituencies held by the ruling party are deprived of representing the people of the said constituencies. The reservation of wards for women is confined to certain constituencies and there is no proportionate reservation of wards

in the constituencies which establishes the intention of the ruling party is to gain unfair advantage.

11. If this Court forms an opinion that the report submitted by the Commission of Enquiry does not satisfy the triple test enumerated in the case K Krishnamurthy, the State Government be directed to provide empirical data to the Commission and after the report is formulated, the State Government may be directed to issue a notification afresh providing reservation to the Backward Classes. The direction issued by the Hon'ble Supreme Court in the case of Sunil Mahajan on 10.5.2022 was in the context that the term of the elected body had expired, and the Hon'ble Supreme Court which is monitoring the holding of election to councilors to BBMP in SLP No.15181/2020 by orders dated 20.5.2022 & 28.7.2022 on the assurance given has directed the Government to carry out the exercise of delimitation of wards and reservation of wards within a time frame. Hence, the election to the councilors of BBMP cannot be conducted without providing reservation to the Backward Classes since providing reservation to Backward Classes is a statutory requirement as specified under Section

8(3) of the BBMP Act, 2020, though it is not a constitutional mandate.

12. In WP No.18592/2022, the petitioner is the resident of Horamavu ward and belongs to scheduled caste community and he is an aspirant to contest the election of the councilor of BBMP. The ward had a total population of 95368 and the scheduled caste population was notified to be 12171 as per 2011 census. There is no exercise undertaken after delimitation of wards to verify which among the two full and two portions the scheduled caste population had been scattered to. The reservation of seats has been done without taking into account the strength of the population in various wards and without taking into consideration the higher population of scheduled caste and scheduled tribe.

13. Sri Dhyan Chinnappa, the learned Additional Advocate General appearing for the State would make the following submissions:

a) The Commission of enquiry has formulated the report by analyzing the empirical data relating to political backwardness in the State of Karnataka. The report satisfies the triple test set down by the Hon'ble

Supreme Court in the case of K Krishnamurthy (supra) and reiterated by the Hon'ble Supreme Court in the case of Vikas Kishanrao Gawali -vs- State of Maharashtra (2021) 6 SCC 73. The State Government after accepting the report has issued the impugned notification and the same is in conformity with Article 243T of the Constitution of India and Section 8(3) of the BBMP Act, 2020.

b) The reservation of wards for women is done randomly and in the absence of any material that the majority of wards is deliberately reserved for women in the constituencies held by the opposition parties so as to give an unfair advantage to the ruling party, the submission of the learned counsel appearing for the petitioners that the reservation of wards for women is smacked with malafides cannot be countenanced.

c) The election to the BBMP is to be held for the first time after commencement of the BBMP Act, 2020. Hence, the reservation of seats by following the rotation as specified under Article 243T of the Constitution of India and Section 8(3) & (4) of the BBMP Act, 2020 is not applicable.

d) In order to determine which of the wards out of 243 is required to be reserved in favour of the scheduled caste and scheduled tribe, the ward wise population as per 2011 census was taken into consideration as per the



census report. The enumeration block in each of the wards which contain the population of scheduled caste and scheduled tribe has been taken into account for providing reservation to scheduled caste and schedule tribe community.

14. Section 8(3) of the BBMP Act, 2020 specifies that 1/3rd of the wards should be reserved for Backward Classes by direct election. Since providing reservation to Backward Classes is a statutory requirement, the election cannot be conducted by dispensing with reservation to Backward Classes since the object of providing reservation for upliftment of politically backward classes will be defeated. The Hon'ble Supreme Court in its order dated 28.7.2022 passed in SLP No.15181/2020 has permitted the State Government to conduct election to the councilors of BBMP by providing reservation to politically Backward Classes and this order was passed subsequent to the direction issued by the Hon'ble Supreme Court on 10.5.2022 in the case of Sunil Mahajan. The BBMP is a newly constituted body under the BBMP Act, 2020 and Article 243U of the Constitution of India is not applicable to the newly constituted Corporation.

15. On the other hand, Sri Phanindra, learned Senior Counsel appearing for the Election Commission submits that in

the event if this Court comes to a conclusion that the report submitted by the Commission of Enquiry does not satisfy the triple test enumerated in the case of K Krishnamurthy (supra) and reiterated in the case of Vikas Kishanrao Gawli (supra), the State Election Commission may be reserved with liberty to proceed with the election without waiting for the compliance of triple test by the State Government for providing reservation to other backward classes as mandated by the Hon'ble Supreme Court in the case of Suresh Mahajan -vs- State of Madhya Pradesh (2022) SCC Online SC 589.

16. I have examined the submissions made by the learned counsel appearing for the parties.

17. The points that arise for consideration are follows:

- i) Whether the impugned notification issued by the State Government on the basis of the report submitted by the Commission of Enquiry reserving 81 wards for other backward classes satisfies the triple test enumerated in the case of K Krishnamurthy (supra)?
- ii) Whether the reservation of majority of the wards for women in the assembly constituencies held by the opposition parties is smacked with malafides?

Reg. point No.(i):

18. The Hon'ble Supreme Court in the case of K Krishnamurthy (supra) at paras-55, 56 and para-82(iii) has held as follows:

"55. It must be kept in mind that there is also an inherent difference between the nature of benefits that accrue from access to education and employment on one hand and political representation at the grassroots level on the other hand. While access to higher education and public employment increases the likelihood of the socio-economic upliftment of the individual beneficiaries, participation in local self-government is intended as a more immediate measure of empowerment for the community that the elected representative belongs to.

56. The objectives of democratic decentralization are not only to bring governance closer to the people, but also to make it more participatory, inclusive and accountable to the weaker sections of society. In this sense, reservations in local self-government are intended to directly benefit the community as a whole, rather than just the elected representatives. It is for this very reason that there cannot be an exclusion of the "creamy layer" in the context of political representation. There are bound to be disparities in the socio-economic status of persons within the groups that are the intended beneficiaries of reservation policies. While the exclusion of the "creamy layer" may be feasible as well as desirable in the context of reservations for education and employment, the same principle cannot be extended to the context of local self-government.

82(iii). We are not in a position to examine the claims about over breadth in the

quantum of reservations provided for OBCs under the impugned State legislations since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which are indeed quite different from the patterns of disadvantages in the matter of access to education and employment. As we have considered and decided only the constitutional validity of Articles 243-D(6) and 243-T(6), it will be open to the petitioners or any aggrieved party to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court. WE are of the view that the identification of "backward classes" under Article 243-D(6) and Article 243-T(6) should be distinct from the identification of SEBCs for the purpose of Article 15(4) and that of backward classes for the purpose of Article 16(4)."

19. The Hon'ble Supreme Court in the case of Vikas

Kishanrao Gawali (supra) in paras-8 to 10 has held as follows:

8. On a fair reading of the exposition in the reported decision in *K. Krishna Murthy case* [*K. Krishna Murthy v. Union of India*, (2010) 7 SCC 202 : (2010) 2 SCC (L&S) 385], what follows is that the reservation for OBCs is only a "statutory" dispensation to be provided by the State legislations unlike the "constitutional" reservation regarding SCs/STs which is linked to the proportion of population. As regards the State legislations providing for reservation of seats in respect of OBCs, it must ensure that in no case the aggregate vertical reservation in respect of SCs/STs/OBCs taken together should exceed 50 per cent of the seats in the local bodies concerned. In case the constitutional reservation provided for SCs and STs were to consume the entire 50 per cent of seats in the local bodies concerned and in some cases in Scheduled

Area even beyond 50 per cent, in respect of such local bodies, the question of providing further reservation to OBCs would not arise at all. To put it differently, the quantum of reservation for OBCs ought to be local body specific and be so provisioned to ensure that it does not exceed the quantitative limitation of 50 per cent (aggregate) of vertical reservation of seats for SCs/STs/OBCs taken together.

9. Besides this inviolable quantitative limitation, the State Authorities are obliged to fulfil other preconditions before reserving seats for OBCs in the local bodies. The foremost requirement is to collate adequate materials or documents that could help in identification of Backward Classes for the purpose of reservation by conducting a contemporaneous rigorous empirical inquiry into the nature and implications of backwardness in the local bodies concerned through an independent dedicated Commission established for that purpose. Thus, the State legislations cannot simply provide uniform and rigid quantum of reservation of seats for OBCs in the local bodies across the State that too without a proper enquiry into the nature and implications of backwardness by an independent Commission about the imperativeness of such reservation. Further, it cannot be a static arrangement. It must be reviewed from time to time so as not to violate the principle of over breadth of such reservation (which in itself is a relative concept and is dynamic). Besides, it must be confined only to the extent it is proportionate and within the quantitative limitation as is predicated by the Constitution Bench of this Court.

10. Notably, the Constitution Bench adverted to the fact that provisions of most of the State legislations may require a relook, but left the question regarding validity thereof open with liberty to raise specific challenges thereto by pointing out flaws in the identification of the Backward Classes in reference to the empirical data. Further, the

Constitution Bench expressed a sanguine hope that the States concerned ought to take a fresh look at policy making with regard to reservations in local self-government in light of the said decision, whilst ensuring that such a policy adheres to the upper ceiling including by modifying their legislations--so as to reduce the quantum of the existing quotas in favour of OBCs and make it realistic and measurable on objective parameters.

20. One of the triple tests enumerated in the decision of the Hon'ble Supreme Court is that, it is the foremost requirement to collect empirical data for identification of backward classes for the purpose of reservation and implication of backwardness in the local body concerned through an independent dedicated commission.

21. In the instant case, the Commission of Enquiry for providing reservation to other backward classes in local body has formulated the report wherein the total population in the State of Karnataka is taken as 61095257 and the total population of minorities is taken as 9611738 (15.73%) and the population of other backward classes is taken as 17516022 (31.49%) and conclusion and suggestions of the Commission of Enquiry is as follows;

"20. CONCLUSION:

On the basis of the above empirical data pertaining to urban and local body elections, held in the State of Karnataka, in the year 1996, 2001, 2010 and 2015, one can safely reach the conclusion that large number of castes and communities who come under the Category-A and B of other Backward Classes are still socially and politically backward. Therefore, providing reservation of 1/3rd (33%) of total seats, in favour of OBCs, (including minorities) in the urban and local body elections is justifiable.

As per Section 57 of the BBMP Act, 2020, the term of office of the Mayor and Deputy Mayor is 30 months, from the date of election. But, according to Section 10 of the Karnataka Municipal Corporations Act, 1976, the term of the Mayor and Deputy Mayor is 12 months. Therefore, Section 10 of the KMC Act require to be amended.

Further, Section 10 of the Karnataka Municipal Corporations Act, 1976, provides reservation for the persons belonging to the Backward Classes, falling under the Category-A and B, to the extent of 1/3rd of the total number of offices of the Mayor and Deputy Mayor, in the State of Karnataka. But, Section 58 of the BBMP Act, relating to reservation of seats, in favour of OBCs, to the office of the Mayor and the Deputy Mayor is silent.

Another interesting fact to be noted is that the definition of the Backward Classes of BBMP Act, does not refer about Category-A and B of OBCs, as notified by the Urban Development Department. But, in the proviso 1, 2 and 3 of sub-section 3 of Section 8 of BBMP Act, makes a reference about Backward Classes Category-A and B.

We have noticed that the list of SC/ST notified for the purpose of Article 15(4) and 16(4) of the Constitution of India is being adopted even for political reservation of seats in favour of SCs and STs

and there is no separate list of SCs/STs for the purpose of political reservation.

Taking into consideration that 44.40% of total population, in the State of Karnataka, belong to OBCs (including minorities), the State of Karnataka, in its Wisdom and Authority, have adopted the castes listed as Backward Classes, for the purpose of education and employment, for purpose of political reservation also, on the ground that they are socially and politically backward in the State of Karnataka. Therefore, reservation of 1/3rd (33%) of total seats, in favour of OBCs for Local Body elections, in the State of Karnataka, is based on OBCs population and empirical data. Hence, we hold that the reservation of 1/3rd (33%) of total seats in the local body elections in the State of Karnataka in favour of OBCs is justifiable.

Persons belonging to the minority community other than Muslim community are not able to avail the benefit of political reservation in local body elections. For the purpose of reservation of seats in education and employment, there is only one community under the Category-II(B) namely Muslim community which has been listed in "Backward Classes" Category-A (vide serial No.749) of the list of Backward Classes Category-A). the empirical data reveals that the Muslim Community has been given representation in the local body elections held in the year 1996, 2001, 2010 and 2015.

We are of the opinion that before the next local body elections in the State of Karnataka, in the year 2027 or 2028, the State Government may review about the re-classification of "Backward Classes" Category-A and B, into two more Categories of "Backward Classes" for the purpose of effective reservation in favour of OBCs including minorities.

## 21. SUGGESTIONS:



In view of the total population belonging to OBCs, the empirical data and foregoing discussion, we propose to make the following suggestions:

i) To continue to provide the policy of Political Reservation of 1/3rd (33%) of total seats, in the ensuing Urban and Local Bodies Elections, in favour of OBCs, as per the present classification of OBCs as "Backward Classes" Category-A and B and the aggregate of reservation of seats in favour of scheduled castes, scheduled tribes and Backward Classes shall not exceed 50% of total seats;

ii) To consider providing reservation of office of the Mayor and the Deputy Mayor in BBMP in favour of persons belonging to Other Backward Classes;

iii) To bring all Urban and Local Bodies Election wing under the control of DPAR;

iv) To consider amendment to Section 10 of the KMC Act, 1976 regarding the term of office of the Mayor and Deputy Mayor for 30 months as provided in the case of Mayor and Deputy Mayor of BBMP under the BBMP Act, 2020.

v) The State Government may review about the re-classification of "Backward Classes" Category-A and B, into two more Categories of "Backward Classes", for the purpose of effective reservation in favour of OBCs including minorities, before the next local body elections that will be held in the year 2027 or 2028."

22. The conclusion arrived by the Commission of Enquiry that 44.40% of the total population of the State of Karnataka including minorities belong to other backward classes is not based on any empirical data. The Commission was required to conduct a rigorous investigation into the pattern of the backwardness that acts as a barrier to political participation which are indeed quite different from patterns of disadvantages in the matter of access to education or employment. Such an exercise is not forthcoming from the report submitted by the Commission of Enquiry nor any material is placed by the State Government that the Commission of Enquiry had conducted such an enquiry or the report was based on the empirical data furnished by the State Government . The Commission was required to find out which of the communities are backward in the local bodies across State of Karnataka on the basis of empirical data and thereafter opine that providing reservation of 33% of total seats in favour of OBCs including the minorities in the local bodies is justifiable.

23. The conclusion that large numbers of castes and communities come under the category of A and B of other backward classes and that they are still socially and politically

backward is alleged to be based on the data pertaining to urban and local body elections held in the State of Karnataka in the year 1996, 2001, 2010 and 2015. The conclusion that 44% of the state population consists of backward class including minorities is imaginary and the same is contrary to the triple test enumerated in the case of K Krishnamurthy (supra). Hence, I am of the view that the notification issued by the State Government providing reservation for backward classes on the basis of the report submitted by the Commission of Enquiry is contrary to the triple test set down by the Hon'ble Supreme Court

Reg. point No.(ii):

24. There are 28 constituencies in BBMP limit out of which 15 are held by the ruling party and 13 by the opposition party. There are 145 wards in the constituencies held by the ruling party and 98 wards in the constituencies held by the opposition parties, out of which, 50 wards in the constituencies held by the ruling party are reserved for women and 70 wards in the constituencies held by the opposition parties are reserved for women. The number of wards reserved for categories other than women is 95 in constituencies held by the ruling party and 27

wards are reserved for categories other than women in the constituencies held by the opposition parties.

25. The ratio of wards reserved for general and women in constituencies held by the ruling party is 1:1.9 and in constituencies held by the opposition parties the ratio is 1:2.6.

26. The notification provides for reservation of majority of the wards to women in the constituencies held by the opposition parties and the majority of the wards in the constituencies held by the ruling party are reserved for categories other than women. The comparison of reservation of wards for women and categories other than women in the some of constituencies is detailed below:

| Chickpet V/S Gandhi Nagar               |          |                                  |                  |            |              |                  |                  |
|---|----------|----------------------------------|------------------|------------|--------------|------------------|------------------|
| Constituency Name                       | Ward No. | Delimited Ward Name              | Total Population |            |              | M & F Difference | Ward Reservation |
|   |          |                                  | Total Population | Total Male | Total Female |                  |                  |
|   | 1        | 2                                | 3                | 4          | 5            | 6                | 7                |
| 169-Chickpet<br>General:- 7<br>Women: 0 | 171      | 171-Sudham Nagara                | 33376            | 17036      | 16340        | 696              | SC               |
|   | 172      | 172-Dharmaraya Swamy Temple Ward | 30140            | 15647      | 14493        | 1154             | General          |
|   | 173      | 173-Sunkenahalli                 | 33429            | 17046      | 16383        | 663              | Backward Class A |
|   | 174      | 174-Vishveshwara Puram           | 33699            | 16957      | 16742        | 215              | General          |

|  |                  |                       |          |          |          |        |                 |
|--|------------------|-----------------------|----------|----------|----------|--------|-----------------|
|  | 175              | 175-Ashoka Pillar     | 36399    | 18136    | 18263    | -127   | General         |
|  | 176              | 176-Someshwaranagar   | 36631    | 18762    | 17869    | 893    | Backward        |
|  | 177              | 177-Hombegowdanagara  | 30653    | 15733    | 14920    | 813    | Class-A         |
|  | Total population |                       | 2,34,327 | 1,19,317 | 1,15,010 | 4,307  | General         |
|  |                  |                       |          |          |          |        |                 |
| 164-Gandhi Nagar<br>General:-0<br>Women: 7 | 132              | 132-Dattatreya Temple | 33445    | 17130    | 16315    | 815    | General (Women) |
|  | 133              | 133-Gandhinagar       | 31208    | 17306    | 13902    | 3404   | Class A (Women) |
|  | 134              | 134-Subhasn Nagar     | 37693    | 19313    | 18380    | 933    | SC (Women)      |
|  | 135              | 135-Okalipuram        | 38110    | 19481    | 18629    | 852    | SC (Women)      |
|  | 136              | 136-Binnipete         | 37354    | 19156    | 18198    | 958    | General (Women) |
|  | 137              | 137-Ccttonpete        | 37344    | 19213    | 18131    | 1082   | General (Women) |
|  | 138              | 138-Chickpete         | 33292    | 17629    | 15663    | 1966   | General (Women) |
|  | Total population |                       | 2,48,446 | 1,29,228 | 1,19,218 | 10,010 |                 |

| Malleswaram V/S Jayanagar & Shivajinagar  |          |                      |                  |            |              |                  |                  |
|---|----------|----------------------|------------------|------------|--------------|------------------|------------------|
| constituency Name                         | Ward No. | Delimited Ward Name  | Total            |            |              | M & F Difference | Ward Reservation |
|   |          |                      | Total Population | Total Male | Total Female |                  |                  |
|   | 1        | 2                    | 3                | 4          | 5            | 6                | 7                |
| 157-Malleswaram<br>General:-6<br>Women:-1 | 59       | 59-Mattikere         | 37036            | 19134      | 17902        | 1232             |                  |
|   | 60       | 60-Aramane Nagara    | 36738            | 19369      | 17369        | 2000             |                  |
|   | 61       | 61-Malleswaram,      | 34196            | 17527      | 16669        | 858              |                  |
|   | 62       | 62-Subramapya Nagar, | 35709            | 17893      | 17816        | 77               |                  |



| Other References    |            |                      |                        |            |              |                  |                  |                 |
|---------------------|------------|----------------------|------------------------|------------|--------------|------------------|------------------|-----------------|
| constituency Name   | Ward No.   | Delimited Ward Name  | Total                  |            |              |                  |                  |                 |
|                     |            |                      | Total Population       | Total Male | Total Female | M & F Difference | Ward Reservation |                 |
| 172-B T M Layout    | 185        | 185-Ejipura          | 38623                  | 20475      | 18148        | 2327             | General (Women)  |                 |
|                     | General:-1 | 186                  | 186-Koramangala        | 31739      | 16047        | 15692            | 355              | General (Women) |
|                     | Women:-8   | 187                  | 187-Adugodi            | 31204      | 16023        | 15181            | 842              | General (Women) |
|                     |            | 188                  | 188-Lakkasandra        | 39819      | 20515        | 19304            | 1211             | SC (Women)      |
|                     |            | 189                  | 189-Suddagunte Palya   | 38354      | 20515        | 17839            | 2676             | General         |
|                     |            | 190                  | 190-Madivala           | 33857      | 18894        | 14963            | 3931             | General (Women) |
|                     |            | 191                  | 191-Jakkasandra        | 33521      | 18009        | 15512            | 2497             | General (Women) |
|                     |            | 192                  | 192-BTM Layout         | 34851      | 18409        | 16442            | 1967             | Class A (Women) |
|                     |            | 193                  | 193-N S Palya          | 36710      | 19746        | 16964            | 2782             | Class A (Women) |
|                     |            | Total population     |                        | 3,18,678   | 1,68,633     | 1,50,045         | 18,588           |                 |
| 159-Pulakeshi Nagar | 74         | 74-Kaval Bairasandra | 34183                  | 17773      | 16410        | 1363             | General (Women)  |                 |
|                     | General:-1 | 75                   | 75-Kushal Nagar        | 39709      | 20129        | 19580            | 549              | Class A (Women) |
|                     | Women: 6   | 76                   | 76-Muneshwara Nagar    | 36543      | 18663        | 17880            | 783              | Class A (Women) |
|                     |            | 77                   | 77-Devara Jeevanahalli | 36372      | 18493        | 17879            | 614              | Class A (Women) |
|                     |            | 78                   | 78-SK Garden           | 38327      | 19680        | 18647            | 1033             | SC (Women)      |
|                     |            | 79                   | 79-Sagayarapuram       | 36876      | 18342        | 18534            | -192             | SC              |
|                     |            | 80                   | 80-Pulikeshinagar      | 39428      | 19665        | 19763            | -98              | Class B (Women) |
|                     |            | Total population     |                        | 2,61,438   | 1,32,745     | 1,28,693         | 4,052            |                 |

|                   |                  |                       |          |          |          |       |                 |
|-------------------|------------------|-----------------------|----------|----------|----------|-------|-----------------|
| 173-Jayanagar     | 194              | 194-Gurappanapalya    | 39576    | 20620    | 18956    | 1664  | General (Women) |
| General:-1        | 195              | 195-Tilak Nagar       | 39839    | 20342    | 19497    | 845   | Class B (Women) |
| Women: 5          | 196              | 196-Byrasandra        | 37834    | 18903    | 18931    | 28    | General (Women) |
|                   | 197              | 197-Shakambari Nagar  | 38321    | 19509    | 18812    | 697   | General (Women) |
|                   | 198              | 198-J P Nagar         | 38054    | 19369    | 18685    | 684   | General         |
|                   | 199              | 199-Sarakki           | 36204    | 18424    | 17780    | 644   | General (Women) |
|                   | Total population |                       | 2,29,828 | 1,17,167 | 1,12,661 | 4,506 |                 |
| 162-Shivaji Nagar | 126              | 126-Ramaswamy Palya   | 30352    | 15090    | 15262    | -172  | SC (Women)      |
| General:-1        | 127              | 127-Jayamahar         | 35795    | 18312    | 17483    | 829   | General (Women) |
| Women:- 5         | 128              | 128-Vasanth Nagar     | 34947    | 17121    | 17826    | -705  | Class A (Women) |
|                   | 129              | 129-Sampangiram Nagar | 35764    | 18127    | 17637    | 490   | Class A( Women) |
|                   | 130              | 130-Bharathi Nagar    | 38343    | 19540    | 18803    | 737   | Class B (Women) |
|                   | 131              | 131-Ulsoor            | 36525    | 20317    | 16208    | 4109  | SC              |
| Total population  |                  | 2,11,726              | 1,08,507 | 1,03,219 | 5,288    |       |                 |

27. The aforesaid details clearly indicates that the reservation of wards for women is arbitrary, and the majority of reservation of wards for women in constituencies held by the opposition parties is deliberate though the population of the women in wards in the constituencies is on the higher side.



28. The Government has not framed any guidelines or Rules fixing the criteria for providing reservation to women. The Government by notification 10.3.2021 has framed Rules for reservation of seats in Taluk and Zilla Panchayaths by rotation. Rule 3(k) of the Rules specifies that for reserving the seats to women from unreserved seats, the Commission shall allot or reserve the same to the constituency having the higher population of women in the total population of the constituency.

29. The Government by order dated 30.07.2022 has framed Rules with respect to the allotment of reservation to Scheduled castes and Scheduled Tribes by allocating the seats in the descending order with respect to wards having greater percentage of population of Scheduled castes and Scheduled Tribes. However, there is no criteria fixed for providing horizontal reservation to women and the Government has stated that it has adopted randomization for allotment of seats to women and backward class since the elections to BBMP after it was constituted under the BBMP Act, 2020 is to be held for the first time.

30. The word "random" as defined in the Oxford English Dictionary means, done or happened without any plan, purpose or regular patterns which denotes arbitrariness.

31. The object of providing reservation to women is to encourage women to participate in political issues and have equal rights to contest the election to Councilors of BBMP and a sense of equality is maintained by creating such reservations for women. The reservation of majority of the wards for women in particular constituencies will deprive the women of other constituencies having larger population of women from participating in political issues and the same is arbitrary and discriminatory. To give representation proportionally to the women in all the constituencies, it would be appropriate that the reservation of wards for women is spread out proportionally.

32. The notification providing reservation to backward classes having been held to be contrary to the law laid down by the Hon'ble Supreme Court, the next question that arises for consideration is whether the Karnataka State Election Commission can be permitted to conduct election to the councilors of BBMP without reservation to backward classes. The

Hon'ble Supreme Court in the case of Suresh Mahajan (supra) in its order dated 10.5.2022 at paras-12, 18 and 24 has held as follows:

"12. Therefore, we direct the State Election Commission by way of interim order, to issue election programme without any further delay on the basis of the wards as per the delimitation done in the concerned local bodies when the elections had become due consequent to expiry of 5 (five) years term of the outgoing elected body or before coming into force of the impugned Amendment Act(s) whichever is later. On that notional basis, the State Election Commission ought to proceed without any exception in respect of concerned local bodies where elections are due or likely to be due in the near future without waiting even for the compliance of triple test by the State Government for providing reservation to Other Backward Classes. We have no manner of doubt that only such direction would meet the ends of justice and larger public interests consistent with the constitutional mandate that the local self-government must be governed by the duly elected representatives uninterrupted except in case of its dissolution before expiry of the term on permissible grounds.

18. To put it differently, completion of delimitation exercise or be it triple test formality, as the case may be, can wait if not completed well before the expiry of five years term of the outgoing elected body, including giving enough time to the Election Commission to complete the election process within such time. Thus, the declaration of election programme cannot be delayed by the Election Commission on that account. For, it would inevitably result in creating a hiatus situation upon expiry of 5 (five) years term of the outgoing elected body. Such an eventuality needs to be eschewed by all the duty holders. *A priori*, it is not only a

constitutional obligation of the State Election Commission but also of the State Government including of the constitutional Courts.

24. In other words, the exercise of collation of empirical data and after analysis thereof, the Commission is expected to make recommendations regarding the number of seats to be reserved for Other Backward Classes "local body wise". Apparently, that exercise has not been undertaken by the Commission. The State Government can act upon only thereafter and as per the recommendations of the Commission - which is an independent body created to ensure that there is no over-breadth of such reservation in the "concerned local body".

33. The Hon'ble Supreme Court in the case of Suresh Mahajan (supra) in its order dated 18.5.2022 has held as follows:

"Further, the report of the dedicated Commission had been revised in light of the observations made by this Court. The Second (Revised) Report came to be submitted by the Commission incorporating all the requisite issues, also giving break-up of reservation for Other Backward Classes category to be provided local body wise. This report has been submitted to the State Government on 12.05.2022.

To reassure ourselves, we have gone through the reports submitted by the dedicated Commission concerned the determination of proportion of reservation to be provided for Other Backward Classes local body wise across the State of Madhya Pradesh.

For the time being, we permit the Madhya Pradesh State Election Commission to notify the

election programme for the respective local bodies keeping in mind the delimitation notifications already issued by the State Government as on this date, i.e., till today; and also the Reports submitted by the dedicated Commission, referred to above."

34. The Hon'ble Supreme Court in its order dated 10.5.2022 issued a categorical direction to the State Election Commission across India to proceed with the elections in the local bodies where the elections are due or likely to be due in the near future without waiting even for the compliance of triple test by the State Government for providing reservation to other backward classes. The aforesaid direction was issued since there was no report formulated by the Commission of Enquiry for providing reservation to backward classes in the elections to the local bodies in the State of Madhya Pradesh. Thereafter, the State of Madhya Pradesh filed an application for modification of the interim order dated 10.5.2022 stating that the report of the dedicated Commission has been revised in the light of the observations made by the Hon'ble Supreme Court by incorporating all the requisite issues. The Hon'ble Supreme Court after perusing the revised report permitted the Madhya Pradesh State Election Commission to notify the election programme of the respective local bodies keeping in mind the

delimitation notification already issued and also the report submitted by the dedicated Commission.

35. The direction issued by the Hon'ble Supreme Court in its order dated 10.5.2022 was in the context that the election was due after expiry of the Body. In the present case, the BBMP was constituted under the Act, 2020 and there is no election held after commencement of the Act, 2020. The election is to be held for the first time under the Act, 2020 and in that context the Hon'ble Supreme Court in SLP No.15181/2020 in the case of State of Karnataka by order dated 20.5.2022 on the assurance given, permitted for delimitation of wards and for determining reservation percentage for the newly constituted Corporation within a time frame. The Hon'ble Supreme Court in its order dated 28.7.2022 taking into account that the dedicated commission has submitted a report on 21.07.2022 directed the State Government to notify ward-wise reservation chart, local body wise within one week from today to facilitate the State Election Commission to initiate appropriate steps for ensuring constitution of concerned bodies.

36. Section 8(3) of the Act specifies that as nearly as may be 1/3rd of the total seats to be filled by a direct election to the corporation shall be reserved for persons belonging to backward classes. Though it is not a constitutional mandate, allocating of seats to backward classes is a statutory requirement and the same cannot be dispensed on the grounds of imminence of elections which would otherwise deprive them of participating in the decision making process of the BBMP. It is a settled law, that if a statute requires a thing to be done in a particular manner, the same shall be done in that particular manner and not otherwise.

37. The Hon'ble Supreme Court in SLP No.15181/2020 (State of Karnataka -vs- M Shivaraju and others) is monitoring the election process to councilors of BBMP and has not issued any direction to the state government to dispense with allocation of seats to backward classes on the ground of imminence of elections.

38. The learned Additional Advocate General has placed a copy of the order dated 23.09.2022 passed by the Division Bench of this Court in W.P.No.20426/2021, whereby, the time

granted for delimitation of constituencies and also reservation of posts to the election of Taluk and Zilla Panchayats is extended by a period of 12 weeks.

39. The learned Additional Advocate General has also placed on record the affidavit filed by the Officer concerned and in the said affidavit at paragraph no.6, the State Government has sought for 16 weeks time to publish the final notification for reservation. The Bruhat Bengaluru Mahanagara Palike (BBMP) was constituted under the BBMP Act, 2020 with effect from 11.01.2021 and though more than one and half years has lapsed from the date of constitution of BBMP, the council has not been constituted.

40. The elections are the essence of democracy and the elections which are long over due has deprived the voters of Bengaluru City in electing their representatives, thus causing inconvenience and hardship.

For the foregoing discussion, the impugned notification issued is in contravention of the triple test enumerated by the Hon'ble Supreme Court in the case of K.Krishnamurthy and reiterated in the case of Kishan Gawali (supra), and imminence



of elections cannot be a ground to dispense with allocating seats to backward classes which is a statutory requirement.

Accordingly, I pass the following:

ORDER

- i) Writ petitions are allowed;
- ii) The impugned final notification dated 16.8.2022 bearing No.UDD 102 BBS 2022, Bengaluru, issued by the Under Secretary, Urban Development Department (BBMP-2) is hereby quashed;
- iii) The State Government is directed to redo the exercise of providing reservation (posts) to the women for elections to the councilors of BBMP by allocating seats in the descending order with respect to wards having greater percentage of population of women.
- iv) The State Government to cooperate with the dedicated commission in furnishing the empirical data so as to formulate a report and submit the same to State Government for publication of final notification. The final notification providing reservation to SC/ST, Backward Classes and Women shall be

published on or before 30.11.2022. The Karnataka State Election Commission to complete the election process within 30 days from the date of publication of final notification.

I hope and trust that the State Government shall make all endeavours to complete the election process on or before 31.12.2022.

For reporting compliance, list these matters on 30.11.2022.

Sd/-  
JUDGE