VIKAS KISHANRAO GAWALI

v.

STATE OF MAHARASHTRA & ORS.

(Writ Petition (Civil) No. 980 of 2019)

MARCH 04, 2021

[A.M. KHANWILKAR, INDU MALHOTRA AND AJAY RASTOGI, JJ.]

Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 – s.12(2)(c) – Constitution of India – Arts. 14, 16, 243-D and 243-T – Reservation in local self-government – Petitioners sought a declaration that s.12(2)(c) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, is ultra vires the provisions of Arts. 243-D and 243-T including Arts. 14 and 16 of the Constitution – In addition, the validity of notifications dated 27.07.2018 and 14.02.2020 issued by the State Election Commission providing for reservation exceeding 50 per cent in respect of Zilla Parishads and Panchayat Samitis have been questioned – The provision in the form of s.12 of the 1961 Act enables the respondents to reserve 27 per cent of seats for persons belonging to the Backward class citizens in the concerned Zilla Parishads and Panchayat Samitis – The respondent-State urged that the that it is permissible to reserve seats for OBCs to the extent permissible in the 1961 Act – Held: The decision of the Constitution Bench in K. Krishna Murthy required the triple test/conditions required to be complied by the State before reserving seats in local bodies for OBCs i.e. (1) to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness qua local bodies, within the State; (2) to specify the proportion of reservation required to be provisioned local body wise in light of recommendations of the Commission, so as not to fall foul of overbreadth; and (3) in any case such reservation shall not exceed aggregate of 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together – The said triple test conditions were not complied by the State – As regards s.12(2)(c) of the 1961 Act inserted in 1994, the plain language does give an impression that

A *uniform and rigid quantum of 27 per cent of the total seats across the State need to be set apart by way of reservation in favour of OBCs – In light of the dictum of the Constitution Bench, such a rigid provision cannot be sustained much less having uniform application to all the local bodies within the State – The provision*
B *in the form of s.12(2)(c) can be saved by reading it down – The expression "shall be" preceding 27 per cent occurring in s.12(2)(c), be construed as "may be" including to mean that reservation for OBCs may be up to 27 per cent but subject to the outer limit of 50 per cent aggregate in favour of SCs/STs/OBCs taken together, as enunciated by the Constitution Bench of this Court – In the instant*
C *case, no inquiry much less contemporaneous rigorous empirical inquiry into the nature and implications of backwardness by a dedicate Commission established by the State for the purpose was undertaken, it is not open to the State to fall back on s.12(2)(c) as enacted in 1994 – That provision is an enabling provision and*
D *would become functional and operational only upon fulfilling triple test as specified by the Constitution Bench – Thus, the impugned notifications issued by the State Election Commission reserving seats for OBCs in the concerned local bodies, suffer from the vice of foundational jurisdictional error – The impugned notifications to the extent it provides for reservation for OBCs in the concerned*
E *local bodies, is, therefore, void and without authority of law.*

Disposing of the writ petitions, the Court

HELD: 1. On a fair reading of the exposition in the *K. Krishna Murthy*, what follows is that the reservation for OBCs is only a "statutory" dispensation to be provided by the State
F **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**
G **should exceed 50 per cent of the seats in the concerned local bodies. In case, constitutional reservation provided for SCs and STs were to consume the entire 50 per cent of seats in the concerned local bodies and in some cases in scheduled area even beyond 50 per cent, in respect of such local bodies, the question**

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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. [Para 7][187-A-D]

2. Besides this inviolable quantitative limitation, the State Authorities are obliged to fulfil other pre-conditions 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 concerned local bodies 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 overbreadth 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. [Para 8][187-D-G]

3. As a matter of fact, no material is forthcoming as to on what basis the quantum of reservation for OBCs was fixed at 27 per cent, when it was inserted by way of amendment in 1994. Indeed, when the amendment was effected in 1994, there was no guideline in existence regarding the modality of fixing the limits of reserved seats for OBCs as noted in the decision of the Constitution Bench in *K. Krishna Murthy*. After that decision, however, it was imperative for the State to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of backwardness and on the basis of recommendations of that Commission take follow up

steps including to amend the existing statutory dispensation, such as to amend Section 12(2)(c) of the 1961 Act. There is nothing on record that such a dedicated Commission had been set up until now. [Para 11][188-D-G]

4. Be that as it may, it is indisputable that the triple test/ conditions required to be complied by the State before reserving seats in the local bodies for OBCs has not been done so far. To wit, (1) to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness *qua* local bodies, within the State; (2) to specify the proportion of reservation required to be provisioned local body wise in light of recommendations of the Commission, so as not to fall foul of overbreadth; and (3) in any case such reservation shall not exceed aggregate of 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together. In a given local body, the space for providing such reservation in favour of OBCs may be available at the time of issuing election programme (notifications). However, that could be notified only upon fulfilling the aforementioned pre-conditions. Admittedly, the first step of establishing dedicated Commission to undertake rigorous empirical inquiry itself remains a mirage. To put it differently, it will not be open to respondents to justify the reservation for OBCs without fulfilling the triple test, referred to above. [Para 12][189-B-E]

5. As regards Section 12(2)(c) of the 1961 Act inserted in 1994, the plain language does give an impression that uniform and rigid quantum of 27 per cent of the total seats across the State need to be set apart by way of reservation in favour of OBCs. In light of the dictum of the Constitution Bench, such a rigid provision cannot be sustained much less having uniform application to all the local bodies within the State. Instead, contemporaneous empirical inquiry must be undertaken to identify the quantum *qua* local body or local body specific. [Para 13] [189-E-F]

6. In opinion of this Court, the provision in the form of Section 12(2)(c) can be saved by reading it down, to mean that reservation in favour of OBCs in the concerned local bodies may

be notified to the extent, that it does not exceed 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together. In other words, the expression "shall be" preceding 27 per cent occurring in Section 12(2)(c), be construed as "may be" including to mean that reservation for OBCs may be up to 27 per cent but subject to the outer limit of 50 per cent aggregate in favour of SCs/STs/OBCs taken together, as enunciated by the Constitution Bench of this Court. On such interpretation, Section 12(2)(c) can be saved and at the same time, the law declared by the Constitution Bench of this Court can be effectuated in its letter and spirit. [Para 14][189-G-H; 190-A-B]

7. In light of the finding recorded hitherto (that no inquiry much less contemporaneous rigorous empirical inquiry into the nature and implications of backwardness by a dedicate Commission established by the State for the purpose has been undertaken), it is not open to the State to fall back on Section 12(2)(c) as enacted in 1994. That provision, as aforementioned, is an enabling provision and would become functional and operational only upon fulfilling triple test as specified by the Constitution Bench of this Court. That is the *sine qua non* or the quintessence for exercise of power to reserve seats for OBCs in the local bodies. Indeed, the exercise of power to reserve seats for OBCs springs from Section 12(2)(c) of the 1961 Act, but that is hedged by conditions and limitations specified by the Constitution Bench of this Court and would not get ignited until such time. [Para 17][190-G-H; 191-A-B]

8. Thus understood, the impugned notifications issued by the State Election Commission reserving seats for OBCs in the concerned local bodies, suffer from the vice of foundational jurisdictional error. The impugned notification(s) to the extent it provides for reservation for OBCs in the concerned local bodies, is, therefore, void and without authority of law. [Para 18] [191-B-C]

9. A *priori*, the elections conducted by the State Election Commission on the basis of such notifications concerning reserved OBC seats alone are vitiated and must be regarded as *non est* in the eyes of law from its inception in the wake of

declaration of law in that regard by the Constitution Bench of this Court. [Para 19][191-C-D]

10. In conclusion, this Court hold that Section 12(2)(c) of the 1961 Act is an enabling provision and needs to be read down to mean that it may be invoked only upon complying with the triple conditions as specified by the Constitution Bench of this Court, before notifying the seats as reserved for OBC category in the concerned local bodies. Further, this Court quash and set aside the impugned notifications to the extent they provide for reservation of seats for OBCs being void and *non est* in law including the follow up actions taken on that basis. In other words, election results of OBC candidates which had been made subject to the outcome of these writ petitions including so notified in the concerned election programme issued by the State Election Commission, are declared as *non est* in law and the vacancy of seat(s) caused on account of this declaration be forthwith filled up by the State Election Commission with general/open candidate(s) for the remainder term of the concerned local bodies, by issuing notification in that regard. [Para 25][198-E-G; 199-A-B]

K. Krishna Murthy (Dr.) & Ors. v. Union of India & Anr. **(2010) 7 SCC 202 : [2010] 6 SCR 972 – followed.**

Case Law Reference

[2010] 6 SCR 972	**followed**	**para 2**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 980 Of 2019

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

With

Writ Petition (Civil) Nos. 981 of 2019, 1408 of 2019, 743 of 2020.

Vikas Singh, Sr. Adv., Sandeep Sudhakar Deshmukh, Amol B. Karande, Kapish Seth, Mukesh Samarth, D.N. Goburdhun, Mrs. Sujata Kumar Muni, Somanatha Padhan, Ravindra Keshavrao Adsure, Rahul Chitnis, Sachin Patil, Aaditya A. Pande, Geo Joseph, Ajit Kadathankar, Vijay Kumar, Ms. Bharti Tyagi, Ms. Qurratulain, Ms. Damini Hajela, Brij Kishor Sah, Nicholas Chaudhary, Aditya Jadhav, Himanshu Bhushan, Sudhanshu S. Choudhari, and Mahesh P. Shinde, Advs. for the appearing parties.

The Judgment of the Court was delivered by

A.M. KHANWILKAR, J.

1. These writ petitions under Article 32 of the Constitution of India seek a declaration that Section 12(2)(c) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961[1], is *ultra vires* the provisions of Articles 243-D and 243-T including Articles 14 and 16 of the Constitution of India. In addition, the validity of the notifications dated 27.7.2018 and 14.2.2020 issued by the State Election Commission, Maharashtra providing for reservation exceeding 50 per cent in respect of *Zilla Parishads* and *Panchayat Samitis* of districts Washim, Akola, Nagpur and Bhandara have been questioned and it is prayed that the same be quashed and set aside. A district wise chart has been presented to illustrate the excess reserved percentage and seats (more than aggregate 50 per cent of total seats), in some of the districts, which reads thus:

"District: Washim

Particulars	Total Seats	General	Reserved			Exceed 50 per cent	
			SC	ST	OBC	Percentage	Seats
Zilla Parishad	52	23	11	04	**14**	**5.76 %**	**3**
Gram Panchayat	490	219	100	39	**132**	**5.30 %**	**26**

District: Bhandara

Particulars	Total Seats	General	Reserved			Exceed 50 per cent	
			SC	ST	OBC	Percentage	Seats
Zilla Parishad	52	25	09	04	**14**	**1.92 %**	**1**
Gram Panchayat	541	261	91	43	**146**	**1.75 %**	**9**

District: Akola

Particulars	Total Seats	General	Reserved			Exceed 50 per cent	
			SC	ST	OBC	Percentage	Seats
Zilla Parishad	53	22	12	05	**14**	**8.49 %**	**4**
Panchayat Samiti	106	44	25	09	**28**	**8.49 %**	**9**
Gram Panchayat	539	226	125	42	**146**	**8.07 %**	**43**

District: Nagpur

Particulars	Total Seats	General	Reserved			Exceed 50 per cent	
			SC	ST	OBC	Percentage	Seats
Zilla Parishad	58	25	10	07	**16**	**6.89 %**	**4**
Panchayat Samiti	116	51	19	15	**31**	**6.03 %**	**7**
Gram Panchayat	772	330	137	97	**208**	**7.25 %**	**56**

[1] for short, "the 1961 Act"

District: Gondiya

Particulars	Total Seats	General	Reserved			Exceed 50 per cent	
			SC	ST	OBC	Percentage	Seats
Zilla Parishad	53	23	06	10	**14**	**6.60 %**	**3**
Panchayat Samiti	106	45	12	19	**30**	**7.54 %**	**8**
Gram Panchayat	544	232	66	99	**147**	**7.35 %**	**40**"

(emphasis supplied)

2. The conundrum in these matters revolves around the exposition of the Constitution Bench of this Court in ***K. Krishna Murthy (Dr.) & Ors. v. Union of India & Anr.***[2]. Relying on the dictum in the said decision, the petitioners would urge that it is no more open to the respondents to reserve more than 50 per cent (aggregate) seats in the concerned local bodies by providing reservation for Scheduled Castes[3]/Scheduled Tribes[4]/ Other Backward Classes[5]. Whereas, the respondent-State would urge that the stated decision recognises that it is permissible to reserve seats for OBCs to the extent permissible in the 1961 Act. Further, in exceptional situation, the reservation for SCs/STs/OBCs in the concerned local bodies (*Zilla Parishads* and *Panchayat Samitis*) could exceed even 50 per cent of the total seats. This is the central issue to be dealt with in the present writ petitions.

3. The provision in the form of Section 12 of the 1961 Act enables the respondents to reserve 27 per cent of seats in the concerned *Zilla Parishads* and *Panchayat Samitis*. Section 12 of the 1961 Act is reproduced hereunder:

> "12. Division of District into electoral division.—(1) The State Election Commission shall, for the purposes of election of Councillors divide every District; into electoral divisions (the territorial extent of any such division not being outside the limits of the same Block), each returning one Councillor, and there shall be a separate election for each electoral division:
>
> Provided that, such electoral division shall be divided in such a manner that the ratio between the population of each electoral division and the total number of Councillors to be elected for the *Zilla Parishad* shall, so far as practicable, be the same throughout the *Zilla Parishad* area:

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[2] (2010) 7 SCC 202
[3] for short, "the SCs"
[4] for short, "the STs"
[5] for short, "the OBCs"

Provided further that, while distributing such electoral divisions among the Panchayat Samitis, not less than two electoral divisions shall be allotted to each *Panchayat Samiti.*

(2)(a) In the seats to be filled in by election in a *Zilla Parishad* there shall be seats reserved for persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Class of citizens and women, as may be determined by the State Election Commission in the prescribed manner:

(b) the seats to be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in a *Zilla Parishad* 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 *Zilla Parishad* as the population of the Scheduled Castes or, as the case may be, the Scheduled Tribes in that *Zilla Parsishad* area bears to the total population of that area and such seats shall be allotted by rotation to different electoral divisions in a *Zilla Parishad*:

Provided that, in a *Zilla Parishad* comprising entirely the Scheduled Areas, the seats to be reserved for the Scheduled Tribes shall not be less than one-half of the total number of seats in the *Zilla Parishad*:

Provided further that, the reservation for the Scheduled Tribes in a Zilla Parishad falling only partially in the Scheduled Areas shall be in accordance with the provisions of clause (b):

Provided also that one-half of the total number of seats so reserved shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes:

(c) the seats to be reserved for persons belonging to the category of Backward Class of Citizens shall be 27 per cent. of the total number of seats to be filled in by election in a *Zilla Parishad* and such seats shall be allotted by rotation to different electoral divisions in a *Zilla Parishad* :

Provided that, in a *Zilla Parishad* comprising entirely the Scheduled Areas, the seats to be reserved for the persons belonging to the Backward Class of Citizens shall be 27 per cent. of the seats remaining (if any), after reservation

A **of the seats for the Scheduled Tribes and the Scheduled Castes :**

Provided further that, the reservation for the persons belonging to the Backward Class of Citizens in a *Zilla Parishad* falling only partially in the Scheduled Areas shall
B **be in accordance with the provisions of clause (c) :**

Provided also that one-half of the total number of seats so reserved shall be reserved for women belonging to the category of Backward Class of Citizens:

C (d) one-half (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and the category of Backward Class of Citizens) of the total number of seats to be filled in by direct election in a *Zilla Parishad* shall be reserved for women and such seats shall be allotted by rotation to different electoral divisions in a *Zilla Parishad*.

D (3) The reservation of seats (other than the reservation for women) under sub-section (2) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India."

(emphasis supplied)

E 4. We may straight away advert to the decision in ***K. Krishna Murthy*** (supra). In paragraph 9 of the decision, this Court formulated two questions for its consideration, the same read thus:

"**9.** In light of the submissions that have been paraphrased in the subsequent paragraphs, the contentious issues in this case can be framed in the following manner:
F

(*i*) Whether Article 243-D(6) and Article 243-T(6) are constitutionally valid since they enable reservations in favour of backward classes for the purpose of occupying seats and chairperson positions in panchayats and municipalities respectively?
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(*ii*) Whether Article 243-D(4) and Article 243-T(4) are constitutionally valid since they enable the reservation of chairperson positions in panchayats and municipalities respectively?"

H (emphasis supplied)

5. As regards the discussion on the question of validity of reservation in favour of backward classes, the Court proceeded to examine the same in paragraphs 58 to 67 of the reported decision. The essence of the view expressed by the Constitution Bench on the said question is that Articles 243-D(6) and 243-T(6) of the Constitution of India are merely enabling provisions and it would be improper to strike them down as violative of the equality clause. At the same time, the Court noted that these provisions did not provide guidance on how to identify the backward classes and neither do they specify any principle for the quantum of such reservations. Instead, discretion has been conferred on the State legislatures to design and confer reservation benefits in favour of backward classes. While dealing with the provisions pertaining to reservations in favour of backward classes concerning the States of Karnataka and Uttar Pradesh wherein the quantum of reservation was 33 per cent and 27 per cent respectively, the Court noted that objections can be raised even with regard to similar provisions of some other State legislations. The real concern was about overbreadth in the State legislations and while dealing with that aspect in paragraphs 60 to 63, the Court noted thus:

> "**60.** There is no doubt in our minds that excessive and disproportionate reservations provided by the State legislations can indeed be the subject-matter of specific challenges before the courts. However, the same does not justify the striking down of Articles 243-D(6) and 243-T(6) which are constitutional provisions that enable reservations in favour of backward classes in the first place. **As far as the challenge against the various State legislations is concerned, we were not provided with adequate materials or argumentation that could help us to make a decision about the same**. **The identification of backward classes for the purpose of reservations is an executive function and as per the mandate of Article 340, dedicated commissions need to be appointed to conduct a rigorous empirical inquiry into the nature and implications of backwardness**.
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> **61. It is also incumbent upon the executive to ensure that reservation policies are reviewed from time to time so as to guard against overbreadth**. In respect of the objections against the Karnataka Panchayat Raj Act, 1993, all that we can

refer to is the Chinnappa Reddy Commission Report (1990) which reflects the position as it existed twenty years ago. **In the absence of updated empirical data, it is well-nigh impossible for the courts to decide whether the reservations in favour of OBC groups are proportionate or not.**

62. Similarly, in the case of the State of Uttar Pradesh, the claims about the extent of the OBC population are based on the 1991 census. Reluctant as we are to leave these questions open, it goes without saying that the petitioners are at liberty to raise specific challenges against the State legislations if they can point out flaws in the identification of backward classes with the help of updated empirical data.

63. As noted earlier, social and economic backwardness does not necessarily coincide with political backwardness. **In this respect, the State Governments are well advised to reconfigure their reservation policies, wherein the beneficiaries under Articles 243-D(6) and 243-T(6) need not necessarily be coterminous with the Socially and Educationally Backward Classes (SEBCs) [for the purpose of Article 15(4)] or even the backward classes that are under represented in government jobs [for the purpose of Article 16(4)].** It would be safe to say that not all of the groups which have been given reservation benefits in the domain of education and employment need reservations in the sphere of local self-government. **This is because the barriers to political participation are not of the same character as barriers that limit access to education and employment. This calls for some fresh thinking and policy-making with regard to reservations in local self-government**."

(emphasis supplied)

6. Again, in paragraph 64, the Court noted about the absence of explicit constitutional guidance as to the quantum of reservation in favour of backward classes in local self-government. For that, the thumb rule is that of proportionate reservation. The Court hastened to add a word of caution, which in, essence, is the declaration of the legal position that the upper ceiling of 50 per cent (quantitative limitation) with respect to vertical reservations in favour of SCs/STs/OBCs taken together should not be

breached. This has been made amply clear and restated even in paragraph 67 of the reported decision, which reads thus:

> "**67.** In the recent decision reported as *Union of India* v. *Rakesh Kumar* [(2010) 4 SCC 50 : (2010) 1 SCC (L&S) 961 : (2010) 1 Scale 281] this Court has explained why it may be necessary to provide reservations in favour of the Scheduled Tribes that exceed 50% of the seats in panchayats located in the Scheduled Areas. **However, such exceptional considerations cannot be invoked when we are examining the quantum of reservations in favour of backward classes for the purpose of local bodies located in general areas. In such circumstances, the vertical reservations in favour of SCs/STs/OBCs cannot exceed the upper limit of 50% when taken together. It is obvious that in order to adhere to this upper ceiling, some of the States may have to modify their legislations so as to reduce the quantum of the existing quotas in favour of OBCs**."
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> (emphasis supplied)

On that analysis, the Court in conclusion noted as follows:

> *"**Conclusion***
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> **82.** In view of the above, our conclusions are:
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> (*i*) The nature and purpose of reservations in the context of local self-government is considerably different from that of higher education and public employment. In this sense, Article 243-D and Article 243-T form a distinct and independent constitutional basis for affirmative action and the principles that have been evolved in relation to the reservation policies enabled by Articles 15(4) and 16(4) cannot be readily applied in the context of local self-government. Even when made, they need not be for a period corresponding to the period of reservation for the purposes of Articles 15(4) and 16(4), but can be much shorter.
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> (*ii*) Article 243-D(6) and Article 243-T(6) are constitutionally valid since they are in the nature of provisions which merely enable the State Legislatures

to reserve seats and chairperson posts in favour of backward classes. **Concerns about disproportionate reservations should be raised by way of specific challenges against the State legislations**.

(*iii*) **We are not in a position to examine the claims about overbreadth 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).**

(*iv*) **The upper ceiling of 50% vertical reservations in favour of SCs/STs/OBCs should not be breached in the context of local self-government. Exceptions can only be made in order to safeguard the interests of the Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas.**

(*v*) The reservation of chairperson posts in the manner contemplated by Articles 243-D(4) and 243-T(4) is constitutionally valid. These chairperson posts cannot be equated with solitary posts in the context of public employment."

(emphasis supplied)

7. On a fair reading of the exposition in the reported decision, 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 concerned local bodies. In case, constitutional reservation provided for SCs and STs were to consume the entire 50 per cent of seats in the concerned local bodies 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.

8. Besides this inviolable quantitative limitation, the State Authorities are obliged to fulfil other pre-conditions 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 concerned local bodies 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 overbreadth 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.

9. 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 concerned States 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.

10. Despite this declaration of law and general observations cum directions issued to all the States on the subject matter, the legislature of the State of Maharashtra did not take a relook at the existing provisions which fell foul of the law declared by the Constitution Bench of this Court. As a matter of fact, couple of writ petitions[6] came to be filed in the Bombay High Court in which solemn assurance was given on behalf of the State of Maharashtra that necessary corrective measures in light of the decision of this Court, will be taken in right earnest. The situation, however, remained unchanged.

11. As a matter of fact, no material is forthcoming as to on what basis the quantum of reservation for OBCs was fixed at 27 per cent, when it was inserted by way of amendment in 1994. Indeed, when the amendment was effected in 1994, there was no guideline in existence regarding the modality of fixing the limits of reserved seats for OBCs as noted in the decision of the Constitution Bench in ***K. Krishna Murthy*** (supra). After that decision, however, it was imperative for the State to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of backwardness and on the basis of recommendations of that Commission take follow up steps including to amend the existing statutory dispensation, such as to amend Section 12(2)(c) of the 1961 Act. There is nothing on record that such a dedicated Commission had been set up until now. On the other hand, the stand taken by the State Government on affidavit, before this Court, would reveal that requisite information for undertaking such empirical inquiry has not been made available to it by the Union of India. In light of that stand of the State Government, it is unfathomable as to how the respondents can justify the notifications issued by the State Election Commission to reserve seats for OBCs in the concerned local

[6] W.P. (Civil) No.6676 of 2016 and W.P. (Civil) No.5333 of 2018

bodies in respect of which elections have been held in the year December 2019/January 2020, which notifications have been challenged by way of present writ petitions. This Court had allowed the elections to proceed subject to the outcome of the present writ petitions.

12. Be that as it may, it is indisputable that the triple test/conditions required to be complied by the State before reserving seats in the local bodies for OBCs has not been done so far. To wit, (1) to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness *qua* local bodies, within the State; (2) to specify the proportion of reservation required to be provisioned local body wise in light of recommendations of the Commission, so as not to fall foul of overbreadth; and (3) in any case such reservation shall not exceed aggregate of 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together. In a given local body, the space for providing such reservation in favour of OBCs may be available at the time of issuing election programme (notifications). However, that could be notified only upon fulfilling the aforementioned pre-conditions. Admittedly, the first step of establishing dedicated Commission to undertake rigorous empirical inquiry itself remains a mirage. To put it differently, it will not be open to respondents to justify the reservation for OBCs without fulfilling the triple test, referred to above.

13. As regards Section 12(2)(c) of the 1961 Act inserted in 1994, the plain language does give an impression that uniform and rigid quantum of 27 per cent of the total seats across the State need to be set apart by way of reservation in favour of OBCs. In light of the dictum of the Constitution Bench, such a rigid provision cannot be sustained much less having uniform application to all the local bodies within the State. Instead, contemporaneous empirical inquiry must be undertaken to identify the quantum *qua* local body or local body specific.

14. In our opinion, the provision in the form of Section 12(2)(c) can be saved by reading it down, to mean that reservation in favour of OBCs in the concerned local bodies may be notified to the extent, that it does not exceed 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together. In other words, the expression "shall be" preceding 27 per cent occurring in Section 12(2)(c), be construed as "may be" including to mean that reservation for OBCs may be up to 27 per cent but subject to the outer limit of 50 per cent aggregate in favour

of SCs/STs/OBCs taken together, as enunciated by the Constitution Bench of this Court. On such interpretation, Section 12(2)(c) can be saved and at the same time, the law declared by the Constitution Bench of this Court can be effectuated in its letter and spirit.

15. The argument of the respondent-State that the reservations in favour of OBCs must be linked to population, is very wide and tenuous. That plea if countenanced, will be in the teeth of the dictum of the Constitution Bench of this Court wherein it has been noted and rejected. The Court has expounded about the distinction in the matter of reservation in favour of SCs and STs on the one hand, which is a "constitutional" reservation linked to population unlike in the case of OBCs which is a "statutory" dispensation. Therefore, the latter reservation for OBCs must be proportionate in the context of nature and implications of backwardness and in any case, is permissible only to the extent it does not exceed the aggregate of 50 per cent of the total seats in the local bodies reserved for SCs/STs/OBCs taken together.

16. Indeed, this Court had allowed the State Election Commission to conduct elections on the basis of old dispensation in terms of orders dated 28.08.2019, 07.11.2019 and 13.12.2019, by recording *prima facie* view as noted in the order dated 18.12.2019. However, it was made amply clear that the elections in respect of five districts (Nagpur, Washim, Akola, Dhule and Nandurbar) were allowed to proceed subject to the outcome of present writ petition(s) questioning the validity of Section 12(2)(c) of the 1961 Act. Thus understood, the respondents cannot take benefit of the *prima facie* observations to repel the challenge to the old dispensation being continued despite the decision of the Constitution Bench of this Court and more particularly, to the notifications reserving seats for OBC candidates exceeding the quantitative limitation of aggregate 50 per cent of total seats in the local bodies concerned.

17. In light of the finding recorded hitherto (that no inquiry much less contemporaneous rigorous empirical inquiry into the nature and implications of backwardness by a dedicate Commission established by the State for the purpose has been undertaken), it is not open to the State to fall back on Section 12(2)(c) as enacted in 1994. That provision, as aforementioned, is an enabling provision and would become functional and operational only upon fulfilling triple test as specified by the Constitution Bench of this Court. That is the *sine qua non* or the quintessence for exercise of power to reserve seats for OBCs in the

local bodies. Indeed, the exercise of power to reserve seats for OBCs springs from Section 12(2)(c) of the 1961 Act, but that is hedged by conditions and limitations specified by the Constitution Bench of this Court and would not get ignited until such time.

18. Thus understood, the impugned notifications issued by the State Election Commission reserving seats for OBCs in the concerned local bodies, suffer from the vice of foundational jurisdictional error. The impugned notification(s) to the extent it provides for reservation for OBCs in the concerned local bodies, is, therefore, void and without authority of law.

19. A *priori,* the elections conducted by the State Election Commission on the basis of such notifications concerning reserved OBC seats alone are vitiated and must be regarded as *non est* in the eyes of law from its inception in the wake of declaration of law in that regard by the Constitution Bench of this Court. The fact that it will impact large number of seats throughout the five districts or elsewhere where such elections are conducted in 2019/2020, would make no difference. For, such reservation was not permissible in law unless the essential steps, as propounded by the Constitution Bench of this Court, had been taken before issuing the election notifications, that too only to the extent of quantitative limitation. This position would apply in full measure, to all elections conducted in respect of reserved OBC seats by the State Election Commission duly notifying that the same will be subject to the outcome of these writ petitions. The State Election Commission must proceed to take follow up steps and notify elections for seats vacated in terms of this decision for being filled up by open/general category candidates for the remainder tenure of the concerned *Gram Panchayats* and *Samitis*. We are inclined to take this view as it is not possible to identify which of the reserved seat for OBCs in the concerned local body would fall foul of the law declared by the Constitution Bench of this Court, amongst the total seats reserved for OBCs.

20. The respondent-State through learned counsel had urged that this Court ought not to entertain the present writ petitions as writ petitions[7] were still pending before the High Court for the same relief. We are not impressed by this hyper technical objection. It is true that petitioners in two writ petitions had first approached the High Court, but still the issue

[7] W.P. (Civil) No. 2756 of 2019; W.P. (Civil) No. 2893 of 2019 and W.P. (Civil) No. 9159 of 2020

A under consideration needs to be answered at the instance of petitioners in other two writ petitions praying for the same reliefs. Indeed, it would have been possible for us to request the High Court to decide the issue in the first instance but as the matter essentially pertains to the width of declaration and directions given by the Constitution Bench of this Court in ***K. Krishna Murthy*** (supra) and its implementation in its letter and B spirit, we deem it appropriate to answer the issue under consideration.

21. It has been faintly suggested by the respondent-State in its written submission that the writ petition may be set down for further hearing. However, we fail to fathom why such a plea has been put forth C especially when the State has already filed a consolidated affidavit in this Court, apart from the comprehensive written submissions filed after closure of oral arguments. In our opinion, no fruitful purpose will be served by showing that indulgence. For, the matter is capable of and is being disposed of on the basis of undisputed fact that before instructing the State Election Commission to reserve seats for OBC groups in the D local bodies, no attempt was made by the State Government to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of backwardness, and then to act upon the report of the Commission. That fact is reinforced from the consolidated affidavit filed by the respondent-State in SLP (Civil) No. 33904 of 2017, which was the lead matter until it was disposed of on E 17.02.2021, after analogous hearing with the present writ petitions. That consolidated affidavit was filed pursuant to the directions given by this Court vide order dated 19.01.2021, which

reads thus:

F "Heard learned counsel for the parties. We direct the Respondent-State to file a consolidated affidavit dealing with the issues raised in each of these proceedings including in the form of interlocutory application(s) to be served on learned counsel appearing for the concerned petitioners/applicants within three weeks from today.

G **We clarify that the consolidated affidavit will be a common affidavit used in the concerned petitioners and application(s) as the case may be.**

List on 11.02.2021."

(emphasis supplied)

H

Accordingly, the consolidated affidavit dated 04.02.2021 came to be filed by the State duly sworn by the Deputy Commissioner (Establishment), which reads thus:

"**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT**

I, D.D. Shinde age 55 years, Occ. Service, presently working as Deputy Commissioner (Establishment) in the office of Divisional Commissioner, Nashik, Maharashtra, do hereby submit on solemn affirmation as under that:-

1. I am the authorized officer of the respondent in the present Special Leave Petition. I am also authorized to file Counter Affidavit on behalf of Respondent as such I am well conversant with the facts and circumstances of the case and hence I am competent and authorized to swear this Counter Affidavit on behalf of the Respondent.

2. I have gone through the contents of the present Special Leave Petition in reply thereto the answering Respondent seeks to file this Counter Affidavit in order to oppose the averments and contentions of the Special Leave Petition with liberty of this Hon'ble Court to file a further Counter Affidavit as and when necessary and with the permission of this Hon'ble Court.

3. The State Government has filed affidavits dated **05.11.2019 and 13.03.2020**, and I repeat and reiterate the contents of the same as if the same have been set out herein, in extenso. I say that I am filing this Affidavit in compliance of the directions of the Hon'ble Court in its order dated 19.01.2021, passed in the above Special Leave Petition.

4. I say that the elections were held to the Zilla Parishads of five districts in Maharashtra, namely Nagpur, Washim, Akola, Dhule and Nandurbar in December 2019/January 2020, pursuant to the orders passed by this Hon'ble Court. In all the aforesaid districts, the reservation exceeded 50%. It is the contention of the Petitioners that in all the aforesaid districts the reservation could not have exceeded 50% as it was the upper limit as set out in the judgments of *Indra Sawhney vs. Union of India reported in (1992) 3 SCC 217* and the judgment of *K. Krushnamurthy vs. Union of India reported in (2010) 7 SCC 202*. The only issue that

essentially remains for consideration of this Hon'ble Court, in all these matters is whether the reservation in all the aforesaid five districts could have exceeded 50%.

5. I repeat and reiterate that the elections held in December 2019/ January 2020 have been held on the basis of the old dispensation, but for future elections, the State Government will have to provide category wise breakup of population and in particular regarding Backward Class Category (BCC), as the information can be provided only by the Central Government. It is therefore submitted that, I.A. No.188324/2019 be allowed and the Registrar General of India, Ministry of Home Affairs, Government of India and the Secretary, Ministry of Social Justice and Welfare be added as party respondents in the aforesaid Special Leave Petitions. It is further submitted that, I.A. No.188318/2019 be allowed and the Registrar General of India, Ministry of Home Affairs, Government of India and the Secretary, Ministry of Social Justice and Welfare be directed to make available the data of Socio-Economic Census 2011, to the extent only relating to the caste of the citizens of Rural Maharashtra, to enable the Government of Maharashtra to calculate population belonging to castes that make a part of Backward Classes of Citizens (BCC) in Maharashtra.

6. I repeat and reiterate with regard to the decision of the Constitution Bench of this Hon'ble Court in *K. Krishnamurthy (supra)*, and in particular paragraph no.83(iv) thereof, it is submitted with respect that, a reading of paragraphs no.59, 64, 66 and 67 thereof, create a doubt as to whether 50% vertical reservations referred to in paragraph no.82(iv) can be regarded as unalterable. A breakup of the figures in respect of the five districts (mentioned in the order dated 18.12.2019) show that if the direction given in paragraph no.82(iv) are to be strictly complied with, it may not be possible to give effect thereto, at least in respect of Dhule and Nandurbar districts which have high tribal population.

7. I submit that in the case of *K. Krushna Murthy (Supra)* the Hon'ble Constitution Bench of this Hon'ble Court lays down that the nature and purpose of reservations in the context of local self-government is considerably different from that of higher education and public employment. It further lays down that Article 243-D and Article 243-T form a distinct and independent constitutional

basis for affirmative action and the principle that have been evolved in relation to the reservation policies enabled by Articles 15(4) and 16(4) of the Constitution, cannot be readily applied in the context of local self-government.

8. I submit that in the absence of explicit constitutional guidance as to the quantum of reservation in favour of backward classes in local self-government, the rule of thumb is that of 'proportionate reservation'. Admittedly, reservations in excess of 50% do exist in some exceptional cases, when it comes to the domain of political representation, which is the outcome of exceptional considerations in relation to these areas. Similarly, vertical reservations in excess of 50% are permissible in the composition of local self-government institutions located in the Fifth Schedule Areas. I submit that in the judgment of *Union of India v. Rakesh Kumar reported in (2010) 4 SCC 50,* this Hon'ble Court has explained why it may be necessary to provide reservations in favour of the Scheduled Tribes that exceed 50% of the seats in local self-governments located in the Scheduled Area.

9. With regard to the elections held in December 2019/January 2020, in Nandurbar district, 44 out of 56 seats were reserved for Scheduled Tribes (ST) category which was in keeping with the population ratio. This itself consumed 50% upper limit provided by the Constitution Bench of this Hon'ble Court, leaving 1 reservation for Scheduled Caste (SC) Category. In respect of elections held in December 2019/January 2020, in Dhule district, 23 out of 56 seats were reserved for Scheduled Tribes (ST) category which was in keeping with the population ratio. This itself consumed 50% upper limit provided by the Constitution Bench of this Hon'ble Court, leaving 3 reservation for Scheduled Caste (SC) Category. In Dhule District the talukas of Saktri and Shirpur are partly 'Scheduled Areas'. In Nandurbar District, the talukas of Navapur, Taloda, Akkalkuwa and Akrani are fully 'Scheduled Areas' and the blocks of Nandurbar and Shahda are partly 'Scheduled Areas'. I say that both Dhule and Nandurbar Districts, being partly 'Scheduled Areas' would fall within the exceptions laid down in the case of *Indra Sawhney (Supra)*. Further, the decision of *Indra Sawhney (Supra)* was given in respect of reservation measures enabled by Article 16(4) of the Constitution.

A The principles of reservation which are applicable for public employment and for admission to educational institutions cannot be readily applied in respect of a reservation policy made to protect the interests of the Scheduled Tribes by assuring them of majority of reservation in Scheduled Areas. Further, the case of *Indra Sawhney (Supra)* reveals that though an upper limit of 50% was B prescribed for reservations in public employment, the said decision recognizes the need of exceptional treatment in some circumstances. The case of Indra Sawhney (supra) prescribes an upper limit of 50% (in paragraph 806 of the judgment) because Article 16(4) deals with 'adequate representation' and not C 'proportionate representation'. Hence, the elections held in December 2019/January 2020 ought not to set aside for the districts of Dhule and Nandurbar districts.

10. In any event, as set out in detail in the Affidavit dated 13.3.2020, I say that the State Government is unable to D **provide category wise breakup of population and in particular regarding Backward Class Category (BCC), as that information can be provided only by the Central Government and the same is not forthcoming. It is important that the data of Socio-Economic to the extent only of field** E **relating to the caste of the citizens of Rural Maharashtra, be provided to the State Government by the Central Government, so as to enable the State Government to calculate population belonging to castes that make a part of Backward Caste of Citizens (BCC) in Maharashtra**. With regard to the elections held in December 2019/January 2020, in F Nagpur, Washim, and Akola districts, the reservations exceeded 50% of the seats, only by 6% to 8% and ought not to be set aside by this Hon'ble Court.

11. I repeat and reiterate that it is important that the data of Socio-Economic to the extent only of field relating to the caste of the G citizens of Rural Maharashtra, be provided to the State Government by the Central Government, so as to enable the State Government to calculate population belonging to castes that make a part of Backward Caste of Citizens (BCC) in Maharashtra.

12. Considering the facts and circumstances of the case in hand, H the special leave petition deserves to be dismissed.

13. That no new additional facts or documents, which are not part of the record are stated or annexed in the counter affidavit.

Hence this Counter Affidavit.

(Deponent)

Drawn by: Sd/-

Rahul Chitnis, Advocate. (D.D. Shinde)"

(emphasis supplied)

22. As matter of fact, this affidavit plainly concedes that in case of some local bodies, the reservation has far exceeded 50 per cent with nominal seats for general category. At this stage, it may be relevant to mention that the consolidated affidavit refers to the previous affidavit(s) dated 5.11.2019 and 13.03.2020 which, however, do not contain any other statement, or any additional information, requiring scrutiny in the context of the issues answered in this decision. The consolidated affidavit also refers to three interlocutory applications filed in the disposed of SLP (Civil) Nos. 33904-33910 of 2017. IA No.188324 of 2019 was filed for direction to allow impleadment of Registrar General of India, Ministry of Home Affairs, Government of India and Secretary, Ministry of Social Justice and Welfare as party respondents in the SLP. That was because the State had sought directions against that party to furnish census data on the basis of which analysis could be done by the State for providing reservation to OBCs in the local bodies, in the elections due in 2019/2020. That relief was claimed by the State in IA No.188318 of 2019. Since the said elections are completed, the State is free to pursue with the Union of India for getting requisite information which can be then made available to the dedicated Commission to be established by it for conducting a contemporaneous rigorous empirical inquiry into the nature and implications of backwardness of the concerned groups. As regards IA No.108915 of 2019 referred to in the consolidated affidavit, the relief claimed was to defer the impending elections in the concerned *Zilla Parishads* and *Panchayat Samitis*. Those elections having been completed in 2019/2020, obviously the relief as claimed is worked out. We, therefore, fail to understand as to why the State Government wants further hearing of the matter on such flimsy and specious grounds. To observe sobriety, we say no more.

A 23. We, however, appreciate the stand taken by the State Election Commission which is in conformity with the exposition of the Constitution Bench of this Court; and that it had issued impugned notifications by making it amply clear to all concerned that the elections were being conducted as directed by this Court and would be subject to the outcome of the present writ petitions. The elections were held only after this B Court directed the State Election Commission to ensure that the elections in the concerned *Zilla Parishads* and *Panchayat Samitis* of as many as five districts (out of 36 districts) of the State, were not being conducted even after more than two years from the expiry of term of the outgoing councillors/members of the concerned local bodies.

C 24. The State Election Commission had invited our attention to the fact that, provision similar to Section 12(2)(c) of the 1961 Act regarding reservation for OBCs finds place in other State enactments[8] concerning the establishment of Village *Panchayat,* Municipal Council, *Nagar Panchayat*, Corporation, etc. Needless to observe that the view taken D in this judgment would apply with full force to the interpretation and application of the provisions of the stated Act(s) and the State Authorities must immediately move into action to take corrective and follow up measures in right earnest including to ensure that future elections to the concerned local bodies are conducted strictly in conformity with the E exposition of this Court in ***K. Krishna Murthy*** (supra), for providing reservation in favour of OBCs.

25. In conclusion, we hold that Section 12(2)(c) of the 1961 Act is an enabling provision and needs to be read down to mean that it may be invoked only upon complying with the triple conditions (mentioned in paragraph 12 above) as specified by the Constitution Bench of this Court, F before notifying the seats as reserved for OBC category in the concerned local bodies. Further, we quash and set aside the impugned notifications to the extent they provide for reservation of seats for OBCs being void and *non est* in law including the follow up actions taken on that basis. In other words, election results of OBC candidates which had been made G subject to the outcome of these writ petitions including so notified in the concerned election programme issued by the State Election Commission,

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[8] (1) The Maharashtra Village Panchayats Act, 1959 – Section 10(2)(c)
(2) Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 – Sections 9(2)(d) and 341(B)(4)
H (3) The Maharashtra Municipal Corporations Act, 1949 – Section 5A(1)(c)

are declared as *non est* in law and the vacancy of seat(s) caused on account of this declaration be forthwith filled up by the State Election Commission with general/open candidate(s) for the remainder term of the concerned local bodies, by issuing notification in that regard.

26. As a consequence of this declaration and direction, all acts done and decisions taken by the concerned local bodies due to participation of members (OBC candidates) who have vacated seats in terms of this decision, shall not be affected in any manner. For, they be deemed to have vacated their seat upon pronouncement of this judgment, prospectively. This direction is being issued in exercise of plenary power under Article 142 of the Constitution of India to do complete justice.

27. It was urged that this Court ought not to exercise plenary power under Article 142 and abjure from disturbing the completed elections. However, we are not impressed with this contention because participation in the elections conducted since December 2019 to the concerned local bodies across the State of Maharashtra was on clear understanding that the results of the reserved seats for OBCs would be subject to the outcome of these writ petitions. That was clearly notified by the State Election Commission in the election programme published by it at the relevant time, in consonance with the directions given by this Court vide interim orders. Therefore, the reliefs as claimed and being granted in terms of this judgment, are in consonance with liberty given by this Court.

28. Accordingly, these writ petitions must partly succeed. The challenge to the validity of Section 12(2)(c) of the 1961 Act is negatived. Instead, that provision is being read down to mean that reservation in favour of OBCs in the concerned local bodies can be notified to the extent that it does not exceed aggregate 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together. In other words, the expression "shall be" preceding 27 per cent occurring in Section 12(2)(c), be construed as "may be" including to mean that reservation for OBCs may be up to 27 per cent but subject to the outer limit of 50 per cent aggregate in favour of SCs/STs/OBCs taken together, as enunciated by the Constitution Bench of this Court. However, the impugned notifications/orders dated 27.7.2018 and 14.2.2020 and all other similar notifications issued by the State Election Commission during the pendency of these writ petitions mentioning that the elections to the concerned local bodies were being held subject to the outcome of these

A writ petitions, are quashed and set aside to the extent of providing reservation of seats in the concerned local bodies for OBCs. As a consequence, follow up steps taken on the basis of such notifications including the declaration of results of the candidates against the reserved OBC seats in the concerned local bodies, are declared *non est* in law; and the seats are deemed to have been vacated forth with prospectively
B by the concerned candidate(s) in terms of this judgment. The State Election Commission shall take immediate steps to announce elections in respect of such vacated seats, of the concerned local bodies, not later than two weeks from today, to be filled by general/open category candidates for the remainder term of the *Panchayat/Samitis.* Ordered
C accordingly.

The writ petitions are disposed of in the above terms. No order as to costs.

All pending applications also stand disposed of.

Ankit Gyan Writ petitions disposed of.