K. Krishna Murthy & Ors vs Union Of India & Anr on 11 May, 2010

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Bench: J.M. Panchal, P. Sathasivam, D.K. Jain, R.V. Raveendran, K.G. Balakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 356 OF 1994

DR. K. KRISHNA MURTHY & ORS. ... PETITIONERS

VERSUS

UNION OF INDIA & ANR. ... RESPONDENTS

WITH

W.P. (C) NOS. 245 OF 1995 AND 517 OF 2005

JUDGMENT

K.G. BALAKRISHNAN, CJI

1. In these writ petitions, we are required to examine the constitutional validity of some aspects of the reservation policy prescribed for the composition of elected local self-government institutions. In particular, the contentions have concentrated on the provisions that enable reservations in favour of backward classes and those which contemplate the reservation of chairperson positions in the elected local self-government institutions. These provisions have been challenged as being violative of principles such as equality and democracy, which are considered to be part of the `basic structure' doctrine.

2. The Constitution (Seventy-third) Amendment Act, 1992 [hereinafter `73rd Amendment'] and the Constitution (Seventy- fourth) Amendment Act, 1992 [hereinafter `74th Amendment'] had inserted Part IX and Part IX-A into the constitutional text thereby contemplating the powers, composition and functions of local self-government institutions, i.e. the Panchayats (for rural areas) and Municipalities (for urban areas). In pursuance of objectives such as democratic decentralization, greater accountability between citizens and the state apparatus as well as the empowerment of weaker sections, these constitutional amendments contemplated a hierarchical structure of elected local bodies. With respect to rural areas, Part IX contemplates three tiers of Panchayats, namely those of `Gram Panchayats' (for each village, or group of small villages), `Panchayat Samitis' (at the block level) and the `Zilla Parishads' (at the District level). For urban areas, Part IX-A prescribed the constitution of `Nagar Panchayats' (for areas in transition from a rural area to an urban area), `Municipal Councils' (for smaller urban areas) and `Municipal Corporations' (for a larger urban area).

3. To better appreciate the legislative intent, it would be instructive to refer to the following extract from the Statement of Objects and Reasons for the 73rd Amendment:

> "1. Though the Panchayati Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.
>
> 2. Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the short-comings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them.
>
> 3. Accordingly, it is proposed to add a new Part relating to Panchayats in the Constitution to provide for, among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the Offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for Panchayats and holding elections within a period of 6 months in the event of supersession of any Panchayat; ..."

In the same vein, we can refer to the following extracts from the Statement of Objects and Reasons for the 74th Amendment:

> "1. In many States, local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.
>
> 2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution, particularly for -
>
> (i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to -
>
> (a) the functions and taxation powers; and
>
> (b) arrangements for revenue sharing
>
> (ii) ensuring regular conduct of elections;
>
> (iii) ensuring timely elections in the case of supersession; and
>
> (iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

3. Accordingly, it is proposed to add a new Part relating to the Urban Local Bodies in the Constitution to provide for -

> (a) constitution of three types of Muncipalities:
>
> (i) Nagar Panchayats for areas in transition from a rural area to urban area
>
> (ii) Municipal Councils for smaller urban areas;
>
> (iii) Municipal Corporations for larger urban areas. ...
>
> (e) reservation of seats in every Municipality -
>
> (i) for Scheduled Castes and Scheduled Tribes in proportion to their population of which not less than one-third shall be for women; ..."

4. Before outlining and addressing the contentions advanced on behalf of the petitioners and the respondents, it will be useful to survey the constitutional provisions that have been called into

question. The rival contentions relate to Article 243-D(4) and 243-T(4) which contemplate the reservation of chairperson posts, as well as Article 243-D(6) and 243-T(6) which enable reservations in favour of backward classes. With respect to the reservation of seats in Panchayats, Article 243-D reads as follows: -

> 243-D. Reservation of Seats. - (1) Seats shall be reserved for-
>
> (a) The Scheduled Castes; and
>
> (b) The Scheduled Tribes, in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.
>
> (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
>
> (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.
>
> (4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:
>
> Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:
>
> Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:
>
> Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.
>
> (5) The reservation of seats under clauses (1) and (2) and the reservation of office of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

> (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

(emphasis supplied) Similarly, the composition of Municipalities is guided by the reservation policy contemplated in Article 243-T:

> 243-T. Reservation of seats. - (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.
>
> (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes.
>
> (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.
>
> (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.
>
> (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.
>
> (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

(emphasis supplied)

5. The overarching scheme of Article 243-D and 243-T is to ensure the fair representation of social diversity in the composition of elected local bodies so as to contribute to the empowerment of the traditionally weaker sections in society. The preferred means for pursuing this policy is the reservation of seats and chairperson positions in favour of Scheduled Castes (SC), Scheduled Tribes (ST), women and backward class candidates.

7Article 243-D(1) and Article 243-T(1) are analogous since they lay down that the reservation of seats in favour of SC and ST candidates should be based on the proportion between the population belonging to these categories and the total population of the area in question. Needless to say, the State Governments are empowered to determine the extent of such reservations on the basis of empirical data such as population surveys among other methods, thereby being guided by the principle of `proportionate representation'. 7Article 243-D(2) and Article 243-T(2) further provide that from among the pool of seats reserved for SC and ST candidates, at least one-third of such seats should be reserved for women belonging to those categories. Hence, there is an intersection between the reservations in favour of women on one hand and those in favour of SC/STs on the other hand. 7With respect to reservations in favour of women, Article 243- D(3) and Article 243-T(3) lay down that at least one-third of the total number of seats in the local bodies should be reserved for women. On the face of it, this is an embodiment of the principle of `adequate representation'. This idea comes into play when it is found that a particular section is inadequately represented in a certain domain and a specific threshold is provided to ensure that this section of the population comes to be adequately represented with the passage of time. 7With regard to chairperson positions, Article 243-D(4) and Article 243-T(4) enable State legislatures to reserve these offices in favour of SC, ST and women candidates. In the case of panchayats, the first proviso to Article 243-D(4) states that the aggregate number of chairperson positions reserved in favour of SC and ST candidates in an entire state should be based on the proportion between the population belonging to these categories and the total population. With all the chairperson positions at each level of the panchayats in an entire State as the frame of reference, the second proviso to Article 243-D(4) states that one-third of these offices should be reserved for women. The third proviso to Article 243-D(4) lays down that the number of chairperson positions reserved under the said clause would be allotted by rotation to different panchayats in each tier. This rotational policy is a safeguard against the possibility of a particular office being reserved in perpetuity. It is pertinent to note that unlike the reservation policy for panchayats, there are no comparable provisos to Article 243-T(4) for guiding the reservation of chairperson positions in Municipalities. This is a notable distinction between the otherwise analogous schemes prescribed in Article 243-D and Article 243-T. 7It is also pertinent to take note of Article 243-D(5) and Article 243-T(5), both of which provide that the reservation of seats and chairperson positions in favour of SC and ST categories would operate for the period contemplated under Article 334. It must be stressed here that there is no such time-limit for the reservations made in favour of women, implying that they will operate in perpetuity.

7Article 243-D(6) and Article 243-T(6) contemplate the power of State Legislatures to reserve seats as well as chairperson positions in favour of a `backward class of citizens'. Unlike the fore-mentioned provisions that deal with reservations in favour of SC, ST and women candidates, Article 243-D(6) and Article 243-T(6) do not explicitly provide guidance on the quantum of reservations. In the absence of any explicit criteria or limits, it can be assumed that reservation policies contemplated under Article 243-D(6) will ordinarily be guided by the standard of proportionate representation.

6. 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:

(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?

(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?

SUBMISSIONS MADE ON BEHALF OF THE PETITIONERS

7. In W.P. (C) No. 356/1994, Shri M. Rama Jois, learned senior counsel appearing on behalf of the petitioners had initially challenged the constitutionality of Clauses (2) to (6) of Art. 243-D as well as Clauses (2)-(6) of Art. 243-T. These were challenged in conjunction with some provisions of the Karnataka Panchayati Raj Act, 1993 which provided for the reservation of seats and chairperson posts in favour of SCs, STs, women and backward classes. The impugned sections of that statute reserved 15% of the seats in Panchayats in favour of SCs, 3% in favour of STs, 33% in favour of women and 33% in favour of other backward classes [Section 5 for Gram Panchayats, Section 123 for Taluk Panchayats and Section 162 for Zilla Panchayats]. Chairperson positions in Panchayats were reserved in a similar proportion, with the entire pool of chairperson posts in the State as the frame of reference [Section 44 for Gram Panchayats, Section 138 for Taluk Panchayats and Section 177 for Zilla Panchayats]. Subsequently, the scope of the challenge was enlarged to question the reservation of seats and chairperson posts in favour of women and backward classes under the Karnataka Municipalities Act, 1964 [Sections 11, 14(2)(A) and 352(5) of the said Act] and the Karnataka Municipal Corporations Act, 1976 [Section 7 and 10 of the said Act].

8. The petitioners did not object to the proportionate reservation of seats in favour of Scheduled Castes and Scheduled Tribes, as contemplated by Art. 243-D(1) and 243-T(1) respectively. It was stated that reservations in favour of SC/STs were consistent with the intent of the framers of the Constitution, since reservations in favour of these groups had been provided in respect of the composition of the Lok Sabha and the State Legislative Assemblies (under Art. 330 and 332). However, the petitioners raised strong objections against the other aspects of the reservation policy contemplated under Articles 243-D and 243-T. Initially, they had assailed the reservation of seats in favour of women, which has been enabled by Art. 243-D(2) and (3) with respect to rural local bodies, and by Art. 243-T(2) and (3) with respect to urban local bodies. However, this challenge was given up during the course of the arguments before this Court and the thrust of the petitioner's arguments was directed towards the following two aspects:

7Firstly, objections were raised against Art. 243-D(6) and Art. 243-T(6) since they enable reservations of seats and chairperson posts in favour of backward classes, without any guidance on how to identify these beneficiaries and the quantum of reservations.

7Secondly, it was argued that the reservation of chairperson posts in the manner contemplated under Art. 243-D(4) and 243-T(4) is unconstitutional, irrespective of

whether these reservations are implemented on a rotational basis and irrespective of whether the beneficiaries are SCs, STs and women. The objection was directed against the very principle of reserving chairperson posts in elected local bodies.

9. The common thread running across the petitioners' arguments was that these provisions which were inserted into the Constitution by way of the 73rd and 74th Amendments, are violative of principles such as equality, democracy and fraternity, which are part of the `basic structure' doctrine. The decision in I.R. Coelho v. State Tamil Nadu [(2007) 2 SCC 1] had clarified that the constitutional amendments which have been placed in the Ninth Schedule after the Keshavananda Bharati decision [(1973) 4 SCC 425] are not immune from judicial review. Even though there is some uncertainty as to whether constitutional amendments can be scrutinized with respect to the fundamental rights enumerated in Part III, there is no obstruction to their scrutiny on the basis of principles such as equality, democracy and fraternity, since all of them find a place in the Preamble to our Constitution. Since the petitioner has given up the challenge against the reservation of seats in favour of women, it will not be necessary to paraphrase the submissions related to that aspect.

10. It was urged that the reservation policy contained in the Karnataka Panchayati Raj Act, 1993 provides for the aggregate reservation of nearly 84% of the seats in Panchayats, which is excessive and violative of the equality clause. Especially with regard to reservations in favour of backward classes, it was argued that the same does not meet the test of `reasonable classification', thereby falling foul of Article 14. Pointing to the caste groups which have been listed as Other Backward Classes (OBCs) in the State of Karnataka, it was reasoned that even if they are assumed to be backward in the socio-economic sense, there was ample evidence that they were already well represented in the political space. In fact, the findings of the Chinappa Reddy Commission Report (1990) showed that a majority of the Members of Parliament (MPs) and the Members of the Legislative Assembly (MLAs) elected from Karnataka belonged to the OBC category. In such a scenario, there was no intelligible criterion to identify OBCs for preferential treatment by way of reservations. An analogy was drawn with reservations for government jobs under Article 16(4), which presupposes backwardness as well as the inadequate representation of the beneficiary group.

11. Next, it was urged that the reservations in favour of OBCs were solely on the grounds of caste, thereby violating the anti-discrimination clause found in Article 15 of the Constitution. It was further suggested that reservations in favour of the already well represented OBC groups would not serve the stated objective of empowering the weaker sections in society. Shri M. Rama Jois, learned senior counsel drew a distinction between the context of reservations in the matter of elections on one hand and in the matter of education and employment on the other hand. It was reasoned that persons belonging to Socially and Educationally Backward Communities (SEBCs) [in respect of Article 15(4) and 15(5)] and under-represented Backward Classes [in respect of Article 16(4)] are legitimately given reservations since they are in a disadvantageous position when they compete for selection to educational courses and government jobs, respectively. This disadvantage is linked to backwardness in the social and economic sense, owing to which persons belonging to these groups may not have the resources or the awareness needed to gain access to higher education or public employment. However, the fact of social and economic backwardness does not necessarily act as a barrier to political participation. Stressing on the distinction between `selection' and `election', Shri

Jois contended that the OBCs did not need reservation benefits because empirical findings suggested that there was already a high degree of political mobilization among them. Apart from the fact that OBCs appear to be well-represented in the legislature, it was argued that economic backwardness should not be conflated with political backwardness. This is so because in the electoral arena, a candidate from a poorer background is not necessarily at a disadvantage when competing with candidates from relatively richer backgrounds.

12. It was also contended that reserving seats and chairperson posts in favour of OBCs was an unjustified departure from the intent of the framers of the Constitution. As noted earlier, the framers conferred reservation benefits on SCs and STs for the purpose of elections to the Lok Sabha and the State Legislative Assemblies (under Arts. 330 and 332) which are time-bound in accordance with Article 334. Given this background, the petitioners contend that the framers had incorporated these measures in the nature of compensatory discrimination to address the historical disadvantage faced by SCs and STs. However, it could not be assumed that OBCs had suffered a comparable degree of disadvantage, especially since there were no cogent empirical findings about the prevalence of backwardness and that there were no specific recommendations for reservations in favour of backward classes, as contemplated under Article 340 of the Constitution. It was urged that since the framers had not explicitly provided for OBC reservations in 1950, it was untenable to introduce them by way of constitutional amendments in 1993.

13. Another set of concerns touched on the overbreadth in the identification of OBCs for the purpose of the reservations conferred by the impugned State legislations. It was contended that even among the listed OBC groups, one cannot assume the same degree of backwardness for the entire group. There are bound to be some sub-sections within these groups which are in a relatively better-off situation. However, the reservations enabled by Art. 243-D(6) and Art. 243-T(6) do not contemplate the exclusion of the `creamy layer' in the manner that has been prescribed for reservations in the context of higher education [under Arts. 15(4) and 15(5)] and public employment [under Art. 16(4), (4A) and (4B)] respectively. The non-exclusion of the creamy layer creates the apprehension that the benefits will be cornered by a limited section of the intended beneficiaries, thereby frustrating the objectives of the reservation policy in the first place. We were also alerted to the possibility that State Governments could confer reservation benefits in favour of particular OBC groups as a means of garnering political support from these groups, instead of ameliorating backwardness in the social and economic sense. In support of this contention, it was pointed out that the Karnataka Panchayati Raj Act had provided for reservations that were in excess of the 50% upper ceiling prescribed for communal reservations in past judicial decisions. [See: M.R. Balaji v. State of Mysore, AIR 1963 SC 649; Indra Sawhney v. Union of India, 1992 Supp 3 SCC 217]

14. With respect to Chairperson positions in the elected local bodies, it was argued that they were in the nature of single posts and reserving them amounted to cent-per-cent reservation, thereby offending the equality clause. The objection was against the very principle of reserving chairperson posts, irrespective of the identity of the beneficiaries and even when such posts are reserved by way of rotation. This argument was buttressed with references to past decisions which have struck down the reservations of single posts in the context of public employment [See: Post Graduate Institute of Medical Education and Research V. K.L. Narasimhan, (1997) 6 SCC 283]. It was further argued that

the chairperson positions in the Panchayats and Municipalities were executive offices and reserving them would set a dangerous precedent that could ultimately lead to the reservation of executive offices at higher levels of government. It was urged those who occupy the reserved chairperson posts are more likely to cater to the narrow interests of their own groups rather than working for the welfare of the entire local community.

15. After his extensive arguments which invoked the equality clause, Shri M. Rama Jois turned our attention to arguments invoking the principle of democracy. It was argued that excessive reservations placed unfair limitations on the rights of political participation of persons belonging to the unreserved categories. In particular, the reservation of seats and chairperson positions curtailed the right to vote, the right to sponsor candidates of one's choice and the right to contest elections among other aspects. It was contended that such restrictions were in conflict with the principle of `universal adult franchise' (under Art. 326) which also entails that as far as possible, there should be parity in the weightage given to the votes cast by each individual. In this sense, reservations tend to distort the electoral process by giving more weightage to the voters and candidates from the beneficiary groups as opposed to those from the general category. With regard to reservations of chairperson posts, the petitioners have described a scenario wherein there may be very few persons from the reserved category in a particular village, thereby forcing voters to re-elect candidates belonging to the reserved categories despite dissatisfaction with their performance.

16. Lastly, Shri M. Rama Jois argued that reservations in the electoral arena would only lead to more divisiveness at the level of the local community as well as at the national level. In the long run, reservations designed on caste lines are likely to become instruments of political favouritism, thereby fanning resentment among the people. This would clearly come into conflict with the preambular objective of promoting a sense of fraternity among the citizens. In the petitioner's submissions, it has been reasoned that the objective of empowering the weaker sections through political participation will be better served if a larger number of candidates belonging to these sections were nominated by political parties to stand for elections. Based on these submissions, the petitioners in W.P. (C) No. 356/1994 have prayed for the striking down of Articles 243-D(4) and 243-T(4) since they enable reservations of chairperson posts in elected local bodies, as well as Articles 243-D(6) and 243-T(6) which enable reservation of seats and chairperson posts in favour of backward classes. In relation to the same, the petitioners have also sought the invalidation of the impugned State legislations, in so far as they provide for excessive reservation in favour of backward classes and the reservation of chairperson posts.

17. In W.P. 517/2005, Shri Salman Khurshid, learned senior counsel appearing on behalf of the petitioners has confined their contentions to two aspects. With regard to reservations in favour of OBCs in the State of Uttar Pradesh, it has been contended that the aggregate reservations should not exceed the upper ceiling of 50%. There is no challenge to the constitutional validity of Article 243-D(6) and Article 243-T(6) since they are merely enabling provisions. However, there is a concurrence between the petitioners in respect of their objections against the reservation of chairperson posts in elected local bodies. Hence the petitioners in W.P. (C) No. 517/2005 have also contested the constitutional validity of Article 243-D(4) and Article 243-T(4).

18. The specific challenge is directed against Sections 11A and 12 of the Uttar Pradesh Panchayat Raj Act, 1947 read with the relevant rules as well as Sections 6A, 7A, 18A and 19A of the Uttar Pradesh Kshetra Panchayat and Zilla Panchayat Act, 1961 read with the relevant rules. The grievance is directed against the fact that under these State Legislations, 27% of the seats in panchayats have been reserved for OBCs even though empirical data indicates that nearly 59% of the entire population of the State of Uttar Pradesh belongs to the OBC category. It has been contended that this is a clear case of excessive reservations in favour of a community that is already in a majority. Akin to the arguments made in respect of the State of Karnataka, this argument can be reasonably developed to argue that there is no need for reserving seats in elected local bodies for communities that are already well represented in the political space and do not face serious hurdles in respect of political participation. Furthermore, it was contended that there was no provision for the exclusion of the `creamy layer' in respect of the reservations for OBCs in panchayats. In this respect, Shri Salman Khurshid stressed on the need for the State legislations to be modified in order to ensure that the upper ceiling of 50% reservations was not breached. It was argued that reservation policies should be either in the nature of compensatory discrimination to address historical injustices or in the nature of protective discrimination to protect weaker sections. However, they should not be allowed to become instruments of reverse discrimination which curtail the rights of persons who do not belong to the reserved categories.

19. However, the main objection was directed against the very principle of reserving chairperson posts, irrespective of whether it is in favour of SCs, STs, women or OBCs. By drawing an analogy with solitary posts in public employment, it was argued that Art. 243-D(4) and Art. 243-T(4) come into conflict with Art. 16(4) since the latter did not contemplate reservations of single posts. With regard to the aims and objectives of local self-government, it was contended that the reservation of chairperson posts placed undue restrictions on the rights of candidates belonging to the general category. It was reasoned that unlike candidates in elections to the Lok Sabha and the State Legislative Assemblies who are free to contest from different constituencies, candidates in elections for local bodies will not ordinarily contest in areas other than those where they are registered as voters. If such migration were to frequently take place, then that would defeat the objectives of local self-government since the overarching objective is to empower elected representatives who are sufficiently interested in the welfare of local communities and are accountable to them. Hence, the reservation of chairperson posts in panchayats can have the effect of unduly preventing persons belonging to the unreserved categories from contesting these elections. In support of their contentions, the petitioners have cited some High Court decisions which have struck down the reservation of chairperson posts in panchayats, namely those reported as Janardhan Paswan v. State of Bihar, AIR 1988 Pat 75 and Krishna Kumar Mishra v. State of Bihar, AIR 1996 Pat. 112.

20. It was contended that the `reverse discrimination' which takes place in the context of reservations in local self-government is of a higher degree than what transpires in case of education and employment. It was reasoned that in respect of admission to educational institutions and recruitment to government jobs, the meritorious candidates who are displaced by reservations at least have alternatives available to them. However, such alternatives are not open to those who want to contest elections to become members of Panchayats in the areas where they reside. In the petitioners' view, this is not only an unfair limitation on the rights of persons belonging to the

general category, but also a measure that frustrates the pursuit of democratic decentralization.

21. Shri Salman Khurshid, further submitted that the courts have to strive for a balance between the often competing considerations of `justice to the backwards, equity for the forwards and efficiency for the entire system' [M. Nagaraj v. Union of India, (2006) 8 SCC 212, at para. 44]. In this respect, it was argued that excessive reservations in favour of OBCs and the reservation of chairperson posts in panchayats disrupts the desired balance between these considerations. In fact the petitioners have also urged us to reconsider some earlier decisions of this Court which have dealt with the status of the rights of political participation such as the right to vote, the right to nominate candidates and the right to contest elections. It may be recalled that the right to vote has been held to be a statutory right and not a fundamental right and the same position has been consistently upheld in subsequent decisions. [See decision in N.P. Ponnuswamy v. Returning Officer, 1952 SCR 218, which has been followed in Jyoti Basu v. Debi Ghosal, (1982) 1 SCC 691, Mohan Lal Tripathi v. District Magistrate, Rai Bareilly, (1992) 4 SCC 80, Rama Kant Pandey v. Union of India, (1992) 2 SCC 438 and Kuldip Nayar v. Union of India, (2006) 7 SCC 1] This implies that the rights of political participation are not absolute in nature and are subject to statutory controls such as those provided in the Representation of People Act, 1951 among others. Undoubtedly, reservations in elected local bodies do place restrictions on the rights of political participation of persons who do not belong to the reserved categories. In this respect, the petitioners have contended that this Court should examine the reasonableness of such restrictions with regard to the objective of ensuring `free and fair elections' [as observed in Indira Gandhi vs. Raj Narain, 1975 Supp SCC 1, at Para. 213] as well as the expanded understanding of Article 21 of the Constitution.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENTS

22. Since the constitutionality of some clauses in Art. 243-D and Art. 243-T have been contested in this case, notices were issued to all the State governments which had either enacted fresh legislations or amended existing legislations in accordance with the mandate of the 73rd and 74th Amendments. While all of these State Governments were impleaded as respondents in this case, we had the benefit of listening to the oral arguments presented by Shri Rajeev Dhavan, Sr. Adv., who appeared on behalf of the State of Bihar, Shri Dinesh Dwivedi, Sr. Adv., who appeared on behalf of the State of Uttar Pradesh, Shri Uday Holla, Sr. Adv., who appeared for the State of Karnataka and Shri R. Shanmugasundaram, Sr. Adv., who represented the Union Territory of Pondicherry. Apart from the learned senior counsels who represented the various State Governments, we were also addressed by Shri Gopal Subramanium, the Additional Solicitor-General [now Solicitor-General of India] who voiced the views of the Union of India.

23. The respondents have of course defended the constitutional validity of reservations in favour of backward classes [as contemplated under Art. 243-D(6) and 243-T(6)] as well as reservations of chairperson posts [enabled by Art. 243-D(4) and 243-T(4)] in elected local bodies. For the sake of convenience, we will first refer to the submissions made by Shri Rajeev Dhavan, Sr. Adv., since the same were adopted by most of the other answering respondents. In response to the petitioner's contention that the impugned constitutional provisions violated elements of the `basic structure' doctrine, Shri Rajeev Dhavan contended that the basic structure is not co-extensive with the

fundamental rights in their entirety and hence it would be wrong to scrutinize the validity of Art. 243-D and 243-T on the basis of principles which have been evolved in relation to the reservation benefits enabled by Articles 15(4) and 16(4). A distinction was drawn between a constitutional amendment which modifies the scope of fundamental rights and an abrogation of the basic structure. Pointing out that the nature and purpose of reservations in the context of local self-government was quite different from that of education and employment, it was contended that the objectives of Art. 243-D and Art. 243-T was to pursue the idea of substantive equality rather than formal equality in the matter of political representation at the grassroots level. Beginning with the premise that Constitutional amendments represent the popular will, it was contended that classifications that are made by constitutional provisions deserve a higher standard of deference in comparison to statutory classifications. In this case, the test of `reasonable classification' cannot be applied mechanically and due regard must be shown to the underlying objectives of democratic decentralization such as the empowerment of weaker sections, a fair representation of social diversity in local bodies and more accountability between the elected representatives and the voters. The respondents' submission is that the provisions enabling reservations in panchayats and municipalities are in consonance with these objectives and that the standard of judicial review over them should be that of proportionality.

24. It was further contended that the equality clause should not be viewed in a strait-jacketed manner and that it should account for the `equality of expectations' as well as `equality of outcomes' in the context of political representation at the grassroots level. This means that while there is an expectation of equal distribution of political power in representative institutions, we also have to factor in how the distribution of power has a bearing on the substantive outcomes and results for the electorate. In this case, we are dealing with considerations of horizontal equality in a political sense. Owing to the complex patterns of inequality in our society, there may often be a need to depart from the standard of `formal equality' when it comes to expectations about distribution of political power. Affirmative action is designed to pursue the goal of substantive equality and for this purpose it is necessary to take into account the existing patterns of discrimination, disadvantage and disempowerment among the different sections of society. It was contended that while such patterns of inequality were often sought to be ascertained through empirical studies, a mere emphasis on numbers is not adequate to understand the implications of the same. Hence, reservations in local self-government have been introduced to ensure the effective sharing of State power with the previously marginalized sections and also to empower them so as to enable a confrontation with the existing patterns of social discrimination.

25. Proceeding on the basis of this theoretical formulation, Shri Rajeev Dhavan has defended the constitutional validity of reservations in favour of backward classes as well as the reservation of chairperson posts. In response to the petitioner's arguments that the reservations curtailed the rights of political participation of persons belonging to the general category, it was contended that we must take a real view of democracy which is responsive to the existing patterns of social inequality rather than the formal view taken by the petitioners. Such a real view of democracy would endorse the affirmative action taken to empower the traditionally weaker sections. Even though it was conceded that there has been a lot of uncertainty in the identification of backward classes for the purpose of reservation policies in the context of education and employment, it was contended

that Art. 243-D(6) and Art. 243-T(6) are merely enabling provisions and cannot be struck down as being in violation of the equality clause. It was reasoned that even though these provisions did not contain any guidance as to the quantum of reservations, it was eventually up to the State Governments to investigate the existence of backwardness and to confer reservation benefits accordingly. In that respect, this case presents a good opportunity to clarify whether the phrase `backward classes' which appears in Art. 243-D(6) and Art. 243-T(6) is coextensive with the `Socially and Educationally Backward Classes' (SEBCs) contemplated under Articles 15(4) and 15(5) or with the under-represented backward classes as contemplated under Art. 16(4).

26. It was further contended that the upper ceiling of 50% reservations has been contemplated in judicial decisions dealing with reservations in education and employment. While the considerations behind the same cannot be readily extended to the domain of political representation at the grassroots level, it was argued that even if they were to be applied, the decision in Indra Sawhney decision had contemplated an exception to the 50% norm in `extraordinary situations' [See 1992 Supp (3) SCC 217, at Para. 810]. To support this contention, it was pointed out that reservations in excess of 50% had been permitted in the Fifth and Sixth Scheduled Areas and more importantly the Legislative Assemblies of some States have reservations that are far in excess of 50% of the number of seats. With respect to the State legislations under challenge, it was argued that the 50% ceiling would not be crossed under most of them since it is only the vertical reservations (i.e. on communal lines in favour of SC/ST/OBCs) that are taken into consideration for this purpose. Even though there is a 33% reservation in favour of women in elected local bodies, the same is in the nature of a horizontal reservation which intersects with the vertical reservations in favour of SC/ST/OBC. In such a scenario, the seats occupied by women belonging to the general category cannot be computed for the purpose of ascertaining whether the 50% upper ceiling has been breached.

27. In response to the challenge against the very principle of reserving Chairperson posts, it has been contended that the same is in the nature of protective discrimination. The respondents have strongly refuted the petitioners' submission that the chairperson posts in local bodies are akin to solitary posts in public employment. Disputing this analogy, it was contended that as per Art. 243-D(4), the reservation of Chairperson posts is to be done on a rotational basis and the frame of reference for the same is the entire pool of chairperson posts in the local bodies of the whole State. In such a scenario, it was wrong to characterise chairperson posts as solitary posts. In response to the suggestion that the reservation of executive positions in local self-government could prove to be the precursor for reservation of executive positions in higher levels of government, it was stated that the considerations applicable in the local setting are very different from those that prevail at the State and the National level. At higher levels of government, elected representatives from the traditionally weaker sections can rely on the support of mainstream political parties if they face undue pressures and prejudices. However, at the local level, the patterns of disempowerment, discrimination and disadvantage are far more pervasive and it will be difficult for weaker sections to gain an effective say in governance, but for the reservation of chairperson positions in Panchayats and Municipalities.

28. The respondent's position was further supported by Shri Gopal Subramanium (now SG). The Learned SG responded to the petitioner's argument that the framers had deliberated upon the

question of reservations in representative institutions and that they had chosen to confine the same to SCs and STs (under Arts. 330 and 332). To counter this line of reasoning, it was submitted that the provisions incorporated by the framers did not preclude the expansion of reservation benefits in favour of backward classes by means of a subsequent constitutional amendment. It was pointed out that even though the 73rd and 74th Amendments enacted in 1993 had given constitutional recognition to the local self-government institutions, it could not be asserted that reservations in favour of weaker sections had not been contemplated before that point of time. To support this line of reasoning, the written submissions submitted on behalf of the Union of India have traced the evolution of local self-government institutions from the pre-constitutional period to the post-independence period. After referring to the main recommendations of the Balwantrai Mehta Committee Report (1957) and the Ashok Mehta Committee Report (1978) which were in favour of democratic decentralisation, it was urged that reservations in local self-government were intended to enable the adequate representation of previously excluded and marginalized groups while also giving them the opportunity to play leadership roles. The learned SG further contended that the spirit behind Arts. 243-D and 243-T was akin to Arts. 15(3), 15(4) and 16(4) which have enabled different forms of affirmative action in order to pursue the goal of substantive equality. In this sense, the learned SG has taken a definitive stand by suggesting that the phrase `backward classes' which appears in Art. 243-D(6) and 243-T(6) should be coterminus with the Socially and Educationally Backward Classes (SEBCs) identified for the purpose of reservation enabled by Art. 15(4).

29. Apart from the above, the learned SG has cited numerous decisions of this Court which have examined and evolved the idea of `substantive equality', which in turn is identified as part of the `basic structure' doctrine. In this respect, the gist of the submission is that the reservation policy enabled by Arts. 243-D and 243-T will enhance the political participation of hitherto weaker sections, thereby contributing to their welfare in the long run. In response to the arguments about limitations on the political participation of persons who do not belong to the reserved categories, it was reiterated that the right to cast votes and to contest elections are not fundamental rights and hence they can be subjected to statutory controls.

THE NATURE AND PURPOSE OF RESERVATIONS IN THE CONTEXT OF LOCAL-SELF GOVERNMENT IS DIFFERENT FROM THAT IN HIGHER EDUCATION AND PUBLIC EMPLOYMENT

30. Before addressing the contentious issues, it is necessary to examine the overarching considerations behind the provisions for reservations in elected local bodies. At the outset, we are in agreement with Shri Rajeev Dhavan's suggestion that the principles that have been evolved for conferring the reservation benefits contemplated by Articles 15(4) and 16(4) cannot be mechanically applied in the context of reservations enabled by Article 243-D and 243-T. In this respect, we endorse the proposition that Article 243-D and 243-T form a distinct and independent constitutional basis for reservations in local self-government institutions, the nature and purpose of which is different from the reservation policies designed to improve access to higher education and public employment, as contemplated under Article 15(4) and 16(4) respectively. Specifically with regard to the unviability of the analogy between Article 16(4) and Article 243-D, we are in agreement with a decision of the Bombay High Court, reported as Vinayakrao Gangaramji

Deshmukh v. P.C. Agrawal & Ors, AIR 1999 Bom 142. That case involved a fact-situation where the chairperson position in a Panchayat was reserved in favour of a Scheduled Caste Woman. In the course of upholding this reservation, it was held as follows:

> "... Now, after the seventy-third and seventy-fourth Constitutional amendments, the constitution of local bodies has been granted a constitutional protection and Article 243D mandates that a seat be reserved for the Scheduled Caste and Scheduled Tribe in every Panchayat and Sub-article (4) of the said Article 243D also directs that the offices of the Chairpersons in the panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. Therefore, the reservation in the local bodies like the Village Panchayat is not governed by Article 16(4), which speaks about the reservation in the public employment, but a separate constitutional power which directs the reservation in such local bodies. ..."

We are of course aware of the fact that some decisions in the past have examined the validity of reservations in local self-government by applying the principles evolved in relation to education and employment.

31. In this respect, we are in partial agreement with one of the submissions made by Shri M. Rama Jois that the nature of disadvantages which restrict access to education and employment cannot be readily equated with disadvantages in the realm of political representation. To be sure, backwardness in the social and economic sense does not necessarily imply political backwardness. However, the petitioner's emphasis on the distinction between `selection' (in case of education and employment) and `election' (in case of political representation) does not adequately reflect the complexities involved. It is of course undeniable that in determining who can get access to education and employment, due regard must be given to considerations of merit and efficiency which can be measured in an objective manner. Hence, admissions to educational institutions and the recruitment to government jobs is ordinarily done through methods such as examinations, interviews or assessment of past performance. Since it is felt that applicants belonging to the SC/ST/OBC categories among others are at a disadvantage when they compete through these methods, a level-playing field is sought to be created by way of conferring reservation benefits.

32. In the domain of political participation, there can be no objective parameters to determine who is more likely to get elected to representative institutions at any level. The choices of voters are not guided by an objective assessment of a candidate's merit and efficiency. Instead, they are shaped by subjective factors such as the candidate's ability to canvass support, past service record, professed ideology and affiliations to organised groups among others. In this context, it is quite possible that candidates belonging to the SC/ST/OBC categories could demonstrate these subjective qualities and win elections against candidates from the relatively better-off groups. However, such a scenario cannot be presumed in all circumstances. It is quite conceivable that in some localized settings, backwardness in the social and economic sense can also act as a barrier to effective political participation and representation. When it comes to creating a level-playing field for the purpose of elections to local bodies, backwardness in the social and economic sense can indeed be one of the

criteria for conferring reservation benefits.

33. 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. The objectives of democratic decentralisation 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. At the level of panchayats, the empowerment of the elected individual is only a means for pursuing the larger end of advancing the interests of weaker sections. Hence, it would be counter-intuitive to exclude the relatively better-off persons among the intended beneficiaries from the reservation benefits that are designed to ensure diversity in the composition of local bodies. It is quite likely that such persons may be better equipped to represent and protect the interests of their respective communities. We can now attempt to provide answers to the contentious issues.

(i). VALIDITY OF RESERVATIONS IN FAVOUR OF BACKWARD CLASSES

34. With respect to the challenge against the constitutional validity of Art. 243-D(6) and 243-T(6) which enable the reservation of seats and chairperson posts in favour of backward classes, we are in agreement with the respondents that these are merely enabling provisions and it would be quite improper to strike them down as violative of the equality clause. Admittedly, Art. 243-D(6) and 243-T(6) do 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 State Legislatures to design and confer reservation benefits in favour of backward classes. It is but natural that questions will arise in respect of the exercise of a discretionary power. The petitioners in this case have objected to reservations in favour of OBCs to the tune of 33% in the State of Karnataka and 27% in the State of Uttar Pradesh. Similar objections can be raised with regard to some of the other State legislations as well. The gist of the objection is that since most of the OBC groups are already well represented in the political space, there is no principled basis for conferring reservation benefits on them. Based on this premise, it was contended that the

reservations in favour of OBCs do not meet the tests of `reasonable classification' and proportionality. Furthermore, apprehensions were voiced that the reservations in favour of OBCs have emerged as an instrument by which incumbent State governments can engage in `vote-bank' politics by preferring one group over another. In light of these contentions, it is obvious that the petitioner's real concern is with overbreadth in the State legislations.

35. There is no doubt in our minds that excessive and disproportionate reservations provided by State legislations can indeed be the subject-matter of specific challenges before the Courts. However, the same does not justify the striking down of Art. 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 Art. 340, dedicated commissions need to be appointed to conduct a rigorous empirical inquiry into the nature and implications of backwardness. 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 Panchayati 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 are not. 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.

36. 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 Art. 243-D(6) and 243-T(6) need not necessarily be coterminus with the Socially and Educationally Backward Classes (SEBCs) [for the purpose of Art. 15(4)] or even the Backward classes that are under-represented in government jobs [for the purpose of Art. 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.

37. 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. However, we must lay stress on the fact that the upper ceiling of 50% (quantitative limitation) with respect to vertical reservations in favour of SC/ST/OBCs should not be breached. On the question of breaching this upper ceiling, the arguments made by the petitioners were a little misconceived since they had accounted for vertical reservations in favour of SC/ST/OBCs as well as horizontal reservations in favour of women to assert that the 50% ceiling had been breached in some of the

States. This was clearly a misunderstanding of the position since the horizontal reservations in favour of women are meant to intersect with the vertical reservations in favour of SC/ST/OBC, since one-third of the seats reserved for the latter categories are to be reserved for women belonging to the same. This means that seats earmarked for women belonging to the general category are not accounted for if one has to gauge whether the upper ceiling of 50% has been breached.

38. Shri Rajeev Dhavan had contended that since the context of local self-government is different from education and employment, the 50% ceiling for vertical reservations which was prescribed in Indra Sawhney (supra.), cannot be blindly imported since that case dealt with reservations in government jobs. It was further contended that the same decision had recognised the need for exceptional treatment in some circumstances, which is evident from the following words (at Paras. 809, 810):

> "809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in Clause (4) of Article 16 should not exceed 50%.
>
> 810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being put of the mainstream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

39. Admittedly, reservations in excess of 50% do exist in some exceptional cases, when it comes to the domain of political representation. For instance, the Legislative Assemblies of the States of Arunachal Pradesh, Nagaland, Meghalaya, Mizoram and Sikkim have reservations that are far in excess of the 50% limit. However, such a position 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. In the recent decision reported as Union of India v. Rakesh Kumar, (2010) 1 SCALE 281, this Court has explained why it may be necessary to provide reservations in favour of Scheduled Tribes that exceed 50% of the seats in panchayats located in 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 SC/ST/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.

(iii). VALIDITY OF RESERVING CHAIRPERSON POSITIONS

40. The main criticism against the reservation of chairperson positions in local self-government is that the same amounts to cent-per-cent reservation since they are akin to solitary posts. As mentioned earlier, the petitioners have relied upon some High Court decisions [See: Janardhan

Paswan v. State of Bihar, AIR 1988 Pat 75; Krishna Kumar Mishra v. State of Bihar, AIR 1996 Pat 112], wherein it had been held that reservations of Chairperson posts in Panchayats would not be permissible since the same was tantamount to the reservation of solitary seats. However, Article 243-D(4) provides a clear Constitutional basis for reserving the Chairperson positions in favour of SC and STs (in a proportionate manner) while also providing that one-third of all chairperson positions in each tier of the Panchayati Raj Institutions would be reserved in favour of women. As described earlier, the considerations behind the provisions of Article 243-D cannot be readily compared with those of Article 16(4) which is the basis for reservations in public employment. It is a settled principle in the domain of service law that single posts cannot be reserved under the scheme of Article 16(4) and the petitioners have rightly pointed out to some precedents in support of their contention. However, the same proposition cannot be readily extended to strike down reservations for chairperson positions in Panchayats. This is because Chairperson positions should not be viewed as solitary seats by themselves for the purpose of reservation. Instead, the frame of reference is the entire pool of Chairperson positions in each tier of the three levels of Panchayati Raj Institutions in the entire State. Out of this pool of seats which is computed across panchayats in the whole state, the number of offices that are to be reserved in favour of Scheduled Castes and Scheduled Tribes is to be determined on the basis of the proportion between the population belonging to these categories and the total population of the State. This interpretation is clearly supported by a bare reading of the first proviso to Art. 243-D(4). It would be worthwhile to re-examine the language of the said provision:

> 243-D(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:
>
> Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:
>
> Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:
>
> Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

41. As may be evident from the above-mentioned provision, when the frame of reference is the entire pool of chairperson positions computed across each tier of Panchayati Raj institutions in the entire state, the possibility of cent-per-cent reservation does not arise. For this purpose, a loose analogy can be drawn with reservations in favour of Scheduled Castes and Scheduled Tribes for the purpose of elections to the Lok Sabha and the respective Vidhan Sabhas. Before elections to these bodies, the Election Commission earmarks some electoral constituencies as those which are reserved for candidates belonging to the SC/ST categories. For the purpose of these reservations, the

frame of reference is the total number of Lok Sabha or Vidhan Sabha seats in a State and not the single position of an MP or MLA respectively. Coming back to the context of Chairperson positions in Panchayats, it is therefore permissible to reserve a certain number of these offices in favour of Scheduled Castes, Scheduled Tribes and women, provided that the same is done in accordance with the provisos to Article 243-D(4).

42. In the case of urban local bodies, Art. 243-T(4) also enables reservation of chairperson posts in favour of Scheduled Castes, Scheduled Tribes and women. However, there are no further specifications to guide the reservation of chairperson positions in urban areas. While it is not possible for us to ascertain the legislative intent behind the same, one can perhaps theorise that there was an assumption that the intended beneficiaries are in a relatively better-off position to overcome barriers to political participation in urban local bodies, when compared with rural local bodies.

43. It was also contended that since chairpersons of Panchayats and Municipalities are entrusted with executive powers, reserving these posts could prove to be the precursor for reservations of executive offices at higher levels of government. It was even suggested that the reservation of chairperson posts was akin to reserving the posts of Chief Minister and Prime Minister at the State and National level, respectively. In our opinion, this analogy with the higher levels of government is misplaced. The offices of chairpersons in Panchayats and Municipalities are reserved as a measure of protective discrimination, so as to enable the weaker sections to assert their voice against entrenched interests at the local level. The patterns of disadvantage and discrimination faced by persons belonging to the weaker sections are more pervasive at the local level. Unlike elected representatives in the Lok Sabha and the Vidhan Sabha who can fall back on the support of mainstream political parties as well as media scrutiny as a safeguard against marginalization and unjust discrimination, elected representatives from the disadvantaged sections may have no such support-structures at the local level. In this respect, the Union Parliament thought it fit to enable reservations of Chairperson positions in order to ensure that not only are the weaker sections adequately represented in the domain of local self-government, but that they also get a chance to play leadership roles.

44. The other significant criticism of the reservation of chairperson posts in local bodies is that it amounts to an unreasonable limitation on the rights of political participation of persons who do not belong to the reserved categories. As enumerated in the petitioner's submissions, the rights of political participation broadly include the right of a citizen to vote for a candidate of his/her choice and right of citizens to contest elections for a public office. In the context of the present case, these would include the rights of elected members to choose the chairpersons of Panchayats and Municipalities. As outlined earlier, it was contended that reserving these posts has the effect of limiting the choices available to voters and effectively discourages persons belonging to the general category from contesting these elections. Shri Salman Khurshid had made the point that unlike those who contest elections for the Lok Sabha and the Vidhan Sabha, it is not viable for those who seek membership in the local bodies to contest elections in territorial constituencies other than those in which they reside. This line of argumentation was adopted in support of the contention that the reservation of chairperson posts is violative of the principles of democracy.

45. While the exercise of electoral franchise is an essential component of a liberal democracy, it is a well-settled principle in Indian law, that the right to vote and contest elections does not have the status of fundamental rights. Instead, they are in the nature of legal rights which can be controlled through legislative means. On this point, we can refer to the following observations made by R.M. Sahai, J. in Mohan Lal Tripathi v. District Magistrate, Rai Bareilly, (1992) 4 SCC 80, Para. 2:

> "Democracy is a concept, a political philosophy, an ideal practised by many nations culturally advanced and politically mature by resorting to governance by representatives of the people elected directly or indirectly. But electing representatives to govern is neither a `fundamental right' nor a `common law right' but a special right created by the statutes, or a `political right' or `privilege' and not a `natural', `absolute' or `vested right'. Concepts familiar to common law and equity must remain strangers to Election Law unless statutorily embodied. Right to remove an elected representative, too, must stem out of the statute as `in the absence of a constitutional restriction it is within the power of a legislature to enact a law for the recall of officers'. Its existence or validity can be decided on the provision of the Act and not, as a matter of policy.' In this respect, it may be noticed that the Constitution empowers the Election Commission of India to prepare electoral rolls for the purpose of identifying the eligible voters in elections for the Lok Sabha and the Vidhan Sabhas. This suggests that the right to vote is not an inherent right and it cannot be claimed in an abstract sense. Furthermore, the Representation of People Act, 1951 gives effect to the Constitutional guidance on the eligibility of persons to contest elections. This includes grounds that render persons ineligible from contesting elections such as that of a person not being a citizen of India, a person being of unsound mind, insolvency and the holding of an `office of profit' under the executive among others. It will suffice to say that there is no inherent right to contest elections since there are explicit legislative controls over the same.

46. The petitioners have asked us to reconsider the precedents wherein the rights of political participation have been characterised as statutory rights. It has been argued that in view of the standard of reasonableness, fairness and non-discrimination required of governmental action under Article 21 of the Constitution, there is a case for invalidating the restrictions that have been placed on these rights as a consequence of reservations in local self-government. We do not agree with this contention. In this case, we are dealing with an affirmative action measure and hence the test of proportionality is a far more appropriate standard for exercising judicial review. It cannot be denied that the reservation of chairperson posts in favour of candidates belonging to the Scheduled Castes, Scheduled Tribes and women does restrict the rights of political participation of persons from the unreserved categories to a certain extent. However, we feel that the test of reasonable classification is met in view of the legitimate governmental objective of safeguarding the interests of weaker sections by ensuring their adequate representation as well as empowerment in local self-government institutions. The position has been eloquently explained in the respondents' submissions, wherein it has been stated that `the asymmetries of power require that the Chairperson should belong to the disadvantaged community so that the agenda of such Panchayats is not hijacked for majoritarian reasons.' [Cited from Submissions on behalf of the State of Bihar, p. 49]

47. There have of course been some arguments doubting the efficacy of reserving chairperson posts, mostly on the premise that this does not lead to the actual empowerment of the intended beneficiaries, since they are still dominated by the traditionally powerful sections. Especially in the case of elected women representatives at the local level, it is often argued that the real power is exercised by the male members of their families. We are also alert to the frequent reports of instances where women representatives have asserted themselves, thereby inviting the wrath of the retrograde patriarchial society. However, there are also increasing reports about success stories which show that enhancing women's participation in local self-government has expanded social welfare. Irrespective of such concerns about the efficacy of reservations in local self-government, it is not proper for the judiciary to second-guess a social welfare measure that has been incorporated by way of a constitutional amendment. In light of these considerations, we reject the challenge in respect of the constitutional validity of Art. 243-D(4) and 243-T(4). CONCLUSION

48. In view of the above, our conclusions are:-

(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, Articles 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 purposes of Articles 15(4) and 16(4), but can be much shorter.

(ii) Article 243-D(6) and Article 243-T(6) are constitutionally valid since they are in the nature of provisions which merely enable 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 Art. 243-

D(6) and Art. 243-T(6) should be distinct from the identification of SEBCs for the purpose of Art. 15(4) and that of backward classes for the purpose of Art. 16(4).

(iv) The upper ceiling of 50% vertical reservations in favour of SC/ST/OBCs should not be breached in the context of local self-government. Exceptions can only be made in order to safeguard the interests of 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 Article 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.

49. With these observations, the present set of writ petitions stands disposed of.

..... CJI [K.G. BALAKRISHNAN] .....J. [R.V. RAVEENDRAN] .....J. [D.K. JAIN] .....J. [P. SATHASIVAM] .....J. [J.M. PANCHAL] NEW DELHI MAY 11, 2010