

Sanjay Ramdas Patil vs Sanjay on 1 September, 2021

Equivalent citations: AIRONLINE 2021 SC 546

Author: B.R. Gavai

Bench: L. Nageswara Rao, B.R. Gavai, B.V. Nagarathna

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5060 OF 2021
[Arising out of SLP(C) No. 7556 of 2021]

SANJAY RAMDAS PATIL . . . APPELLANT(S)
VERSUS

SANJAY AND OTHERS . . . RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5061 OF 2021
[Arising out of SLP(C) No. 7557 of 2021]

CIVIL APPEAL NO. 5062 OF 2021
[Arising out of SLP(C) No. 7558 of 2021]

CIVIL APPEAL NO. 5063 OF 2021
[Arising out of SLP(C) No. 8870 of 2021]

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. All these appeals take exception to the judgment and order passed by the Division Bench of the High Court of Judicature at Bombay, Bench at Aurangabad dated 7 th May 2021, thereby allowing the writ petition being Writ Petition No.14440 of 2019, filed by respondent No.1 Sanjay Sudhakar Jadhav and setting aside the Notification dated 27 th November 2019 in respect of Dhule Municipal Corporation, vide which the Office of Mayor in Dhule Municipal Corporation for the term commencing from June, 2021 was reserved for Backward Class category. The High Court further directed the State of Maharashtra to reconsider the reservation process for the office of Mayor in Dhule Municipal Corporation in accordance with the observations made by it in the judgment.

3. Appeals arising out of SLP(C) Nos. 7556 of 2021, 7557 of 2021 and 7558 of 2021 are filed by the Municipal Councillors who belong to the Backward Class category whereas the appeal arising out of SLP(C) No. 8870 of 2021 is filed by the State of Maharashtra.

4. Facts in brief giving rise to filing of these appeals are as under: □ We will refer to the facts in appeal arising out of SLP(C) No. 7556 of 2021. The respondent No. 1 though belongs to the Scheduled Caste category, was elected as a Councillor to the Dhule Municipal Corporation (hereinafter referred to as the “said Corporation”) from the General category. By the Notification dated 27th November 2019, the Office of Mayor in the said Corporation was earmarked for Backward Class of Citizens for the next term of two and half years commencing from June, 2021. Contending that from the year 2003 onwards, the Office of Mayor in the said Corporation was reserved for Backward Class category on various occasions, but was not reserved for Scheduled Caste category, a petition came to be filed by the respondent No. 1, challenging the said reservation with a prayer for direction to reserve the post of Mayor of the said Corporation for the next term of two and a half years for Scheduled Caste category. The said petition came to be allowed as aforesaid. Being aggrieved thereby, the present appeals.

5. The Division Bench of the High Court while construing sub-rule (2) of Rule 3 of the Maharashtra Municipal Corporations (Reservation of Offices of Mayors) Rules, 2006 (hereinafter referred to as the “said Rules”) and relying on the judgment of the Single Judge of the Karnataka High Court held that since already on two earlier occasions, the Office of Mayor of the said Corporation was reserved for Backward Class, reserving the same again for Backward Class coupled with the fact that there has been no reservation for the Scheduled Caste category, amounted to violation of rotation policy. As such, it remanded the matter to respondent No. 2 □ State for consideration afresh in accordance with these observations.

6. We have heard Ms. Meenakshi Arora, learned Senior Counsel and Mr. Braj Kishore Mishra, learned counsel appearing on behalf of the private appellants and Mr. Sachin Patil, learned counsel appearing on behalf of the State of Maharashtra. We have heard Mr. Nishant Ramakantrao Katneshwarkar, learned counsel appearing on behalf of the respondent □ original writ petitioner.

7. It is the contention of the appellants that the judgment of the High Court is rendered without considering the import of Clauses (d) and (e) of sub-rule (2) of Rule 3 of the said Rules. It is submitted that out of the 27 total seats of Mayors available in the State, 1 is reserved for Scheduled Tribes, 3 are reserved for Scheduled Castes and 7 are reserved for Backward Class of Citizens. Learned counsel for the appellant further submitted that out of 27 seats, only 9 seats are eligible for reservation of Scheduled Tribes category. It is stated that taking into consideration the fact that the seats reserved for Backward Class of Citizens are 7 as against 3 for Scheduled Castes, which is more than twice, it is quite possible that while applying the said Rules, the reservation may be provided for Backward Class category on more than one occasion and no reservation be provided for Scheduled Castes even on a single occasion.

8. It is stated on behalf of the State that while earmarking the seats of Mayor, the State of Maharashtra had followed an appropriate procedure so as to give effect to the said Rules. It is

submitted that, however, the same has not been taken into consideration by the High Court.

9. As against this, Mr. Katneshwarkar, learned counsel appearing on behalf of the original writ petitioner would submit that the High Court has correctly applied the principle of rotation and held that unless all the categories got representation in a particular Municipal Corporation, the reservation for a particular category cannot be repeated.

10. It is not in dispute that from 2003 to 2017, the Office of Mayor of the said Corporation was reserved for Backward Class category for two terms, out of the total 7 terms. It is also not in dispute that there was no reservation provided for the Scheduled Castes category even once. We will have to consider the rival submissions in the backdrop of this factual scenario.

11. It will be relevant to refer to Article 243T of the Constitution of India which reads thus: “243T. 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.”

12. Perusal of Clause (1) of Article 243T would reveal that it mandates the State to reserve seats for Scheduled Castes and Scheduled Tribes in every Municipality. It further mandates that 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 the 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. It further mandates that such seats may be allotted by rotation to different constituencies in a Municipality. Clause (2) thereof provides that not less than 1/3 rd 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. Clause (3) provides that not less than 1/3 rd (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 shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality. Clause (4) thereof provides that the offices of the 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. Clause (6) thereof enables the Legislature of the State to make provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of Backward Class of Citizens.

13. Section 19 of the Maharashtra Municipal Corporations Act, 1949 (hereinafter referred to as the “said Act”) provides for election of Mayor and Deputy Mayor from amongst the Councillors in the Corporation. It will be relevant to refer to Section 19 (1A) of the said Act: □ “19. Mayor and Deputy Mayor (1) ... (1A) There shall be reservation for the office of the Mayor in the Corporation, by rotation, for the Scheduled Castes, the Scheduled Tribes, women and the Backward Class of citizens, in the prescribed manner.”

14. It could thus be seen that sub□section (1A) of Section 19 of the said Act provides that there shall be reservation for the office of the Mayor in the Corporation, by rotation, for the Scheduled Castes, the Scheduled Tribes, Women and the Backward Class of Citizens, in the prescribed manner.

15. The manner of reservation has been provided under Rule 3 of the said Rules which reads thus: □ “3. Reservation of offices for the election of Mayor □ (1) The State Government shall, by notification in the Official Gazette, specify the number of offices of Mayors in the Municipal Corporations in the State to be reserved for the Scheduled Castes, Scheduled Tribes, the category of Backward Class of Citizens and Women (including the women belonging to the category of Backward Class of Citizens) on the following principles: □

(a) The number of offices of Mayors to be so reserved for the Scheduled Castes and Scheduled Tribes shall bear, as nearly as may be, the same proportion to the number of such offices in the Corporations in the State as the population of the Scheduled Castes and the Scheduled Tribes in the Municipal Corporation areas bears to the total population of all Municipal Corporation areas:

Provided that, such office of Mayor may not be so reserved, if the number of Councillors to be elected at ward elections from the category of the Scheduled Castes or Scheduled Tribes is less than three:

Provided further that, while specifying such reservation one □ third of the total number of seats so reserved shall be reserved for the women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes:

Provided also that, in a Municipal Corporation, where only one office of the Councillor is reserved for the Scheduled Caste or, as the case may be, the Scheduled Tribes, then it shall not be necessary to reserve the office for women belonging to the

Scheduled Castes or, as the case may be, the Scheduled Tribes;

(b) As nearly as may be, twenty-seven per cent of the total number of offices of Mayors in the State shall be reserved for the category of Backward Class of Citizens:

Provided that, one-third of the offices so reserved shall be reserved for Women belonging to the category of Backward Class of Citizens;

(c) One-third of the total number of offices of Mayors in the State (including the number of offices reserved for the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of Citizens) shall be reserved for women. (2) The State Government shall,

(a) By notification in the Official Gazette, allot by draw of lots, the offices of the Mayors to be reserved for the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of Citizens and Women, on the principles specified in sub-rule (1).

(b) Ensure that, at any given point of time, the number of offices of Mayors, reserved for the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of Citizens and Women shall not be less than the number determined in accordance with the provisions of sub-rule (1).

(c) The lots in respect of women belonging to a particular category shall be drawn only among the offices of Mayors reserved for such category.

(d) While drawing lots, the office of Mayor reserved for such category in the earlier years shall be excluded from the draw of lots for those categories;

(e) The offices of Mayors to be reserved shall be rotated in the subsequent terms of office of Mayor to such Corporation, in which no reservation has been made in the previous terms until such reservations are given by rotation to each category.”

16. It is clear that sub-rule (1) of Rule 3 of the said Rules provides that the Government shall, by notification in the Official Gazette, specify the number of offices of Mayors in the Municipal Corporations in the State to be reserved for the Scheduled Castes, Scheduled Tribes, Backward Class of Citizens and Women (including the women belonging to the category of Backward Class of Citizens). Clause (a) of sub-rule (1) of Rule 3 of the said Rules provides that the number of offices of Mayors to be so reserved for the Scheduled Castes and Scheduled Tribes shall bear, as nearly as may be, the same proportion to the number of such offices in the Corporations in the State as the population of the Scheduled Castes and the Scheduled Tribes in the Municipal Corporation areas bears to the total population of all Municipal Corporation areas.

Obviously, the said provision is in tune with Clause (1) of Article 243T of the Constitution of India. The first proviso thereof provides that such office of Mayor may not be so reserved, if the number of Councillors to be elected at ward elections from the category of the Scheduled Castes or Scheduled Tribes is less than 3. The second proviso provides that while specifying such reservation, 1/3 rd of the total number of seats so reserved shall be reserved for the women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. It further provides that in a Municipal Corporation, where only one office of the Councillor is reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes, then it shall not be necessary to reserve the office for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

17. Clause (b) of sub-rule (1) of Rule 3 of the said Rules provides that as nearly as may be, 27% of the total number of offices of Mayors in the State shall be reserved for the category of Backward Class of Citizens. The proviso thereof provides that 1/3rd of the offices so reserved shall be reserved for Women belonging to the category of Backward Class of Citizens. Clause

(c) of sub-rule (1) of Rule 3 of the said Rules provides that 1/3 rd of the total number of offices of Mayors in the State (including the number of offices reserved for the Scheduled Castes, the Scheduled Tribes and the category of Backward Class of Citizens) shall be reserved for women.

18. Sub-rule (2) of Rule 3 of the said Rules would be the most relevant one inasmuch as it is that provision which falls for consideration in the present matter. Clause (a) thereof provides that by notification in the Official Gazette, the State Government shall allot by draw of lots, the offices of the Mayors to be reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Class of Citizens and Women, on the principles specified in sub-rule(1). Clause (b) thereof provides that the State Government shall ensure that, at any given point of time, the number of offices of Mayors, reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Class of Citizens and Women shall not be less than the number determined in accordance with the provisions of sub-rule (1). Clause (c) provides that the lots in respect of women belonging to a particular category shall be drawn only among the offices of Mayors reserved for such category. Clause (d) provides that while drawing lots, the office of Mayors reserved for such category in the earlier years shall be excluded from the draw of lots for those categories. Clause (e) provides that the offices of Mayors to be reserved shall be rotated in the subsequent terms of office of Mayor to such Corporation in which no reservation has been made in the previous terms until such reservations are given by rotation to each category.

19. It is thus clear that the scheme of Rules which is in tune with Section 19(1A) of the said Act and in turn with the constitutional provision under Article 243T, is to provide reservation to the Scheduled Castes and Scheduled Tribes in proportion to the total population of the Scheduled Castes and Scheduled Tribes in the Municipal Corporation areas. Insofar as the Backward Class is concerned, the reservation provided is fixed at 27% of the total number of offices of Mayors. 1/3 rd of the total number of posts shall be reserved for women category including the one belonging to Scheduled Castes, Scheduled Tribes and Backward Class of Citizens. Clause (a) of sub-rule(2) of Rule 3 of the said Rules mandates the State Government to allot by draw of lots, the offices of Mayors for the Scheduled Castes, Scheduled Tribes, Backward Class of Citizens and Women, on the

principles specified in sub-rule (1). Clause (b) of sub-rule (2) of Rule 3 of the said Rules mandates the State Government to ensure that, at any given point of time, the number of offices of Mayors, reserved for the said categories, shall not be less than the number determined in accordance with the provisions of sub-rule (1). Clause (c) of sub-rule (2) of Rule 3 of the said Rules provides that the lots in respect of women belonging to a particular category shall be drawn only among the offices of Mayors reserved for such category. Clause (d) of sub-rule (2) of Rule 3 of the said Rules provides that while drawing lots, the offices of Mayors reserved for such category in the earlier years shall be excluded from the draw of lots for those categories. Clause (e) of sub-rule (2) of Rule 3 of the said Rules requires that the offices of Mayors to be reserved, shall be rotated in the subsequent terms of office of Mayor to such Corporation, in which no reservation has been made in the previous terms until such reservations are given by rotation to each category.

20. The High Court, while interpreting clause (e) of sub-rule (2) of Rule 3 of the said Rules, has held that until the reservations are given by rotation to each category, the reservation cannot be provided to a category for which reservation was already provided. While doing so, the High Court has relied on the judgment of the Karnataka High Court in *M. Abdul Azeez v. State of Karnataka and Others*¹. We will have to examine the correctness of the said view.

21. The procedure adopted for draw of lots followed by the State was explained by filing an affidavit before the High Court by Smt. Alice Sufi Pore, Regional Deputy Director, Municipal Administration, Aurangabad. It will be relevant to refer to paragraphs (5) to (8) of the said affidavit: “5. The principles and manner for the reservation is mentioned in the Rule 3 (1) and procedure to be followed by the State Government is mentioned in Rule 3 (2) of Maharashtra Municipal Corporations (Reservation of Offices of Mayor) Rules 2006. As per the provisions broadly the office of the Mayor of Corporations are reserved in the proportion mentioned as follows:”

(a) The number of offices of the Mayor to be so reserved for the Scheduled Castes and Scheduled Tribes shall bear, as nearly as may be the same proportion to the total number of such offices in the Corporations in the State as the population of the Scheduled Castes and Scheduled tribes in the Municipal Corporation areas bears to the total population of all the Municipal Corporation Areas.

(b) As nearly as may be, 27% of the total number of offices of the Mayors in the State shall be reserved for the Backward class of Citizen. 1 Writ Petition No. 38256 of 2013 decided on 06.01.2014

c) One third of the total number of offices of Mayors (including the number of offices reserved for women belonging to the category of backward Class of Citizen) in the Corporations in the State shall be reserved for women.

6. While drawing the lots for the reservation of the office of the Mayors of all 27 Corporations in the state on 13.11.2019 the above proportion mentioned in the concern Rules is followed in totality and the offices of Mayors reserved for different classes is as follows: Sr. Social The posts needs to allot as Remarks No. Class per rule General Women Total

1. Scheduled 101 As per the rules Tribes in proportion to the total population. As per third proviso of rule 3(1)(a).

2. Scheduled 123 As per the rules Castes in proportion to the total population.

3. Backward 347 As per the rules class of 27% of total Citizens posts.

4. General 088 One Half of the women unreserved posts as per rules.

5. Open 808 Total 131427

7. As per Rule 3 (2) (d) while allotting the offices of the Mayor for persons belonging to the Scheduled Castes, Scheduled Tribes and the Backward Class of Citizens (including women belonging to the said categories) the offices of the Mayor reserved for any of the said categories in the earlier years shall be excluded Rule 3 (2) (e) indicates the policy of rotation has to be followed while allotting the offices of Mayor.

8. It is humbly submitted that the provisions and the essence of the rules of reservation is followed totally considering the total number of Corporations and the reservations in earlier years in 27 Corporations in the State. The approved procedure to follow the above rules is adopted in the draw of lots dated 13.11.2019. The approved minutes of the draw of lots dated 13.11.2019 is annexed herewith and marked as Exhibit 'A'. A copy of the factual position of earlier Reservation in Annexed here with and marked as Exhibit 'B'. As per the factual position of earlier reservation and the number of posts mandatorily needs to be reserved for various class the following approved principle is followed:□

a) For Schedule Tribes 1 posts of Mayor needs to be mandatorily reserved and out of 27 Corporations there are 9 Corporations where the number of Concillors to be elected at ward election from the said category is not less than 3. Out of those 9 corporation 4 Corporations were reserved for schedule tribes in earlier years. And those 4 corporations are excluded as their are 5 corporations available for draw of lots, which were not previously reserved for scheduled tribes. And in the draw of lots dated 16.11.2019 by following the laid procedure out of those 5 Corporations 1 corporation is reserved for schedule Tribe [sic].

b) For Schedule Castes 3 posts of Mayor needs to be mandatorily reserved and out of 27 Corporation 12 corporations were reserved for schedule Castes in earlier years. Those 12 Corporations and 1 corporation (vasi□Virar Corporation) which was reserved for schedule tribes in the first draw of this draw of lots dated 13.11.2019 are excluded, So there are 14 Corporations available, which were not previously reserved for schedule caste. In para no.4 of this minutes the details of draw of lots for scheduled caste is mentioned. And it is clear that Dhule Corporation was also considered among those 14 corporations in the draw for schedule caste. Though it is a draw of lots out of those 14 corporations 3 corporations (Mira□Bhayender, Ahmednagar and Parbhani Corporation) got reserved for Schedule caste [sic].

c) For backward Class of Citizens 7 posts of Mayor needs to be mandatorily reserved and it is clearly mentioned that out of 27 Corporations 26 Corporations excluding newly created Panvel Corporation were reserved for Backward Class of Citizens in earlier years. As 26 Corporations were reserved for backward Class of Citizens in earlier years, for the draw of lots dated 13.11.2019 even the minimum required 7 Corporations were not available. Which were not previously reserved for backward Class of Citizens. And considering this fact and the provisions in the Act and Rules the 7 Corporations which were reserved for backward Class of Citizens in the earlier years, i.e. immediately preceding term were excluded in the draw of lots dated 13.11.2019.

By following the laid procedure the 4 Corporations which are reserved in the 1st and 2nd draws for Scheduled Tribes (1 Corporation) and scheduled castes (3 Corporations) in the current draw of lots and 7 corporations which were reserved for backward Class of Citizens in the immediately preceding term are excluded and the remaining corporations including Dhule Corporation are considered for this draw and in the draw the 7 Corporations are reserved for backward class of Citizens.”

22. It could thus be seen from paragraph (8) of the said affidavit that insofar as Scheduled Castes are concerned, 3 posts of Mayor need to be mandatorily reserved. It could further be seen that out of 27 Corporations, 12 Corporations were reserved for Scheduled Castes in earlier years. It further states that those 12 Corporations and 1 Corporation (Vasai-Virar Corporation) which was reserved for Scheduled Tribes in the first draw of lots dated 13 th November 2019 were excluded. As such, there are 14 Corporations available, which were not previously reserved for Scheduled Castes. It is further clear that when draw of lots was done for the Scheduled Castes category, amongst the other eligible Corporations, Dhule Municipal Corporation was also considered. However, in the said draw of lots, 3 Corporations i.e. Mira-Bhayandar, Ahmednagar and Parbhani Municipal Corporation got reserved for Scheduled Castes.

23. Insofar as Backward Class is concerned, it is stated that 7 posts of Mayor need to be mandatorily reserved. Out of 27 Corporations, 26 Corporations excluding the newly created Panvel Corporation were reserved for Backward Class of Citizens in the earlier years. It is stated that since 26 Corporations were reserved for Backward Class of Citizens, even the minimum required 7 Corporations were not available in the draw in question. As such, 7 Corporations which were reserved for Backward Class of Citizens in the earlier years i.e. immediately preceding term, were excluded in the draw of lots. So also, 4 Corporations which got reserved for Scheduled Castes and Scheduled Tribes in the first and second draw, were excluded. As such, the draw of lots was done from the pool of 16 Corporations after excluding the 7 Corporations which were reserved for Backward Class of Citizens in the immediately preceding term and the 4 Corporations which were reserved for Scheduled Castes and Scheduled Tribes.

24. We have no hesitation in observing that sub-rule (2) of Rule 3 of the said Rules has not been happily worded. On a plain reading, various clauses in the sub-rule are capable of being interpreted in a manner that there are inconsistencies and at times, conflict amongst them. We will have to therefore examine the legal position with the aid of principles of interpretation as laid down by this Court in such situations.

25. In *Philips India Limited v. Labour Court, Madras and Others*², this Court observed thus: “15. No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction *ex visceribus actus*. This rule of statutory construction is so firmly established that it is variously styled as “elementary rule” (see *Attorney General v. Bastow* [(1957) 1 All ER 497]) and as a “settled rule” (see *Poppatlal Shah v. State of Madras* [AIR 1953 SC 274 : 1953 SCR 667]). The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: “it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers” (Quoted with approval in *Punjab Beverages Pvt. Ltd. v. Suresh Chand* [(1978) 2 SCC 144 : 1978 SCC (L&S) 165 : (1978) 3 SCR 370]).”

26. In *Balasinor Nagrik Cooperative Bank Limited v. Babubhai Shankerlal Pandya and Others*³, this Court observed thus: “4.It is an elementary rule that construction of a section is to be made of all parts together. It is not 2 (1985) 3 SCC 103 3 (1987) 1 SCC 606 permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section.....”

27. Again in the case of *Mohan Kumar Singhania and Others v. Union of India and Others*⁴, this Court observed thus: “67. We think, it is not necessary to proliferate this judgment by citing all the judgments and extracting the textual passages from the various textbooks on the principles of Interpretation of Statutes. However, it will suffice to say that while interpreting a statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of statutes/rules/regulations relating to the subject matter, Added to this, in construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation.”

28. In *Sultana Begum v. Prem Chand Jain*⁵, this Court observed thus: “4 1992 Supp (1) SCC 594 5 (1997) 1 SCC 373 “15. On a conspectus of the case-law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of “harmonious construction”.

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a “dead letter” or “useless lumber” is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose.”

29. In Jagdish Singh v. Lt. Governor, Delhi and Others 6, this Court observed thus:□

“7.It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made thereunder should be read as a whole and one provision should

6 (1997) 4 SCC 435 be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well□known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a “dead letter” is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction.....”

30. In Commissioner of Income Tax v. Hindustan Bulk Carriers⁷, this Court observed thus:□“16. The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used.

(See Salmon v. Duncombe [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p.

634, Curtis v. Stovin [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in S. Teja Singh case [AIR 1959 SC 352 : (1959) 35 ITR 408] .)

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing 7 (2003) 3 SCC 57 about an effective result. (See Nokes v. Doncaster Amalgamated Collieries [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LjKB 865 : 163 LT 343 (HL)] referred to in Pye v. Minister for Lands for NSW [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) The principles indicated in the said cases were reiterated by this Court in Mohan Kumar Singhania v. Union of India [1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455 : (1992) 19 ATC 881 : AIR 1992 SC 1] .

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See *R.S. Raghunath v. State of Karnataka* [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See *Sultana Begum v. Prem Chand Jain* [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a “useless lumber” or “dead letter” is not a harmonised construction. To harmonise is not to destroy.”

31. It could thus be seen that it is more than well settled that it is the duty of the Court to construe the Statute as a whole and that one provision of the Act has to be construed with reference to other provisions so as to make a consistent enactment of the whole Statute. It is the duty of the Court to avoid a head-on clash between two sections and construe the provisions which appear to be in conflict with each other in such a manner so as to harmonise them. It is further equally settled that while interpreting a particular statutory provision, it should not result into making the other provision a “useless lumber” or a “dead letter”. While construing the provisions, the Court will have to ascertain the intention of the law-making authority in the backdrop of dominant purpose and the underlying intendment of the Statute.

32. In the light of these guiding principles, we will have to construe the provisions that fall for consideration. Undisputedly, the said Rules are mechanism for giving effect to the constitutional mandate under Article 243T of the Constitution of providing reservation for Scheduled Castes and Scheduled Tribes and the enabling provision for providing reservation for Backward Class of Citizens in proportion to their population. As already discussed hereinabove, the said Rules have been prescribed so as to provide a procedure for the reservation of the office of Mayor in the Corporation by rotation for the Scheduled Castes, the Scheduled Tribes, Women and the Backward Class of Citizens as mandated under Section 19 (1A) of the said Act. It could thus be seen that the intent and the dominant purpose of Rule 3 of the said Rules is to provide reservation to Scheduled Castes, Scheduled Tribes, Backward Class of Citizens and Women and further to ensure that there is no repetition of reservation of a particular category in a particular Corporation. It could thus be seen that the dominant purpose and the legislative intent of the said Rules is to provide reservation in

proportion of the population of such categories in the Municipal areas and also to ensure that while all the eligible Corporations get reservation at some point of time for the different categories, at the same time there would be no repetition of reservation until the rotation is complete. However, while doing so, the number of seats reserved for a particular category also cannot be ignored. As already pointed out hereinabove, the total number of seats reserved for Scheduled Castes are 3 whereas for Backward Class of citizens, they are 7. Sub-rule (2) of Rule 3 of the said Rules prescribes the manner in which the seats are to be allotted to be reserved for various categories including women. Clause (a) thereof provides that it shall be done by notification in the Official Gazette by allotment of draw of lots. Clause (d) thereof provides that while drawing lots, the offices of Mayors reserved for such category in the earlier years shall be excluded from the draw of lots for those categories. Clause (e) thereof provides that the offices of Mayors to be reserved shall be rotated in the subsequent terms of office of Mayor to such Corporation, in which no reservation has been made in the previous terms until such reservations are given by rotation to each category.

33. No doubt, that at the first blush, an isolated reading of clause (e) is capable of being interpreted in a manner that until reservation is provided for each category by rotation, the said office cannot be reserved for a category for which it was already reserved. However, if the Rules along with Article 243T of the Constitution and Section 19(1A) of the said Act are read as a whole, then the dominant purpose behind the said Rules appears to be that the reservation as mandated in the Constitution, should be provided for offices of Mayors in the Corporations. While doing so, the reservation has to be provided by a draw of lots. It has to be ensured that at any given point of time, the number of offices of Mayors reserved for such categories should not be less than the number determined in accordance with the provisions of sub-rule (1) of Rule 3 of the said Rules. Clause (d) of sub-rule (2) of Rule 3 of the said Rules also provides that while drawing lots, the offices of Mayors reserved for such category in the earlier years, shall be excluded from the draw of lots for those categories. The purpose appears to ensure that the reservation is not thrust upon a particular Corporation again and again and all the Corporations, at some point of time, will have the office of Mayor reserved for particular category in accordance with the said Rules. The office of Mayor can be reserved for Scheduled Tribes in only 9 Corporations whereas all the Corporations are eligible for reservation for Scheduled Castes and Backward Class of Citizens. However, taking into consideration the fact that the number of seats reserved for Scheduled Castes are 3 whereas for Backward Class of Citizens, they are 7 i.e. more than twice, it is quite probable that the post of Mayor could be reserved for two earlier terms for Backward Class of Citizens and whereas no reservation is provided for Scheduled Castes. We find that a harmonious construction of the said Rules would not lead to a conclusion that the procedure as followed by the State Government in allotting the reservation by draw of lots, would be said to be inconsistent with the scheme of the said Rules. As has been explained in the affidavit filed before the High Court by Smt. Alice Sufi Pore, after excluding 12 Corporations which are already reserved for Scheduled Castes in the earlier years and the one which was reserved for Scheduled Tribes in the first draw of lots, there were 14 Corporations available including the Dhule Municipal Corporation. The said Corporation was also included in the draw of lots for Scheduled Castes. However, in the draw of lots, it could not be reserved for Scheduled Castes. However, insofar as Backward Class is concerned, out of 27 Corporations, 26 Corporations excluding newly created Panvel Corporation were already reserved for Backward Class in the earlier years. As such, the State excluded the 7 Corporations which were immediately reserved for the Backward Class and also

excluded the 4 Corporations which were reserved for Scheduled Castes and Scheduled Tribes in the present draw of lots. Coincidentally, in the draw of lots, Dhule Municipal Corporation was one of the 7 Corporations which got to be reserved for the Backward Class.

34. We find that such a situation is bound to occur in view of the difference in number of seats, reserved for Scheduled Castes and Backward Class of Citizens. If the interpretation as placed is to be accepted then unless the post of Mayor is reserved for Scheduled Tribes in all the Corporations to complete the rotation, it will not be possible to provide reservation for the categories which were already reserved earlier. However, it could be seen that as per the Rules, only 9 Corporations could be reserved for Scheduled Tribes. We therefore find that the combined reading of the said Rules along with the constitutional mandate under Article 243T of the Constitution and Section 19(1A) of the said Act would not permit the interpretation as placed by the High Court.

35. Apart from that, we find that another rule of interpretation will also come into play. It will be relevant to refer to the observations of this Court in *State of Tamil Nadu v. M.K. Kandaswami and Others*⁸: “26.If more than one construction is possible, that which preserves its workability, and efficacy is to be preferred to the one which would render it otiose or sterile.....”

36. This Court in *Commissioner of Income Tax v. Hindustan Bulk Carriers* (supra) has observed thus: “15. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable.

(See *Whitney v. IRC* [1926 AC 37 : 10 Tax Cas 88 :

95 LJB 165 : 134 LT 98 (HL)] , AC at p. 52 referred to in *CIT v. S. Teja Singh* [AIR 1959 SC 352 : (1959) 8 (1975) 4 SCC 745 35 ITR 408] and *Gursahai Saigal v. CIT* [AIR 1963 SC 1062 : (1963) 48 ITR 1] .)”

37. In *Balram Kumawat v. Union of India and Others* 9, this Court observed thus: “25. A statute must be construed as a workable instrument. *Ut res magis valeat quam pereat* is a well known principle of law. In *Tinsukhia Electric Supply Co. Ltd. v. State of Assam* [(1989) 3 SCC 709 : AIR 1990 SC 123] this Court stated the law thus: (SCC p. 754, paras 118-120) “118. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle ‘*ut res magis valeat quam pereat*’. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In *Manchester Ship Canal Co. v. Manchester Racecourse Co.* [(1900) 2 Ch 352 : 69 LJCh 850 : 83 LT 274 (CA)] Farwell, J. said: (pp. 360-361) 9 (2003) 7 SCC 628 ‘Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty.’

119. In *Fawcett Properties Ltd. v. Buckingham County Council* [(1960) 3 All ER 503 : (1960) 3 WLR 831 (HL)] Lord Denning approving the dictum of Farwell, J. said: (All ER p. 516) 'But when a statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the courts have to say what meaning the statute is to bear, rather than reject it as a nullity.'

120. It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and that nothing short of impossibility should allow a court to declare a statute unworkable. In *Whitney v. IRC* [1926 AC 37 :

95 LJKB 165 : 134 LT 98 (HL)] Lord Dunedin said: (AC p. 52) 'A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.' "

26. The courts will therefore reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used.

[See *Salmon v. Duncombe* [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] (AC at p. 634).] Reducing the legislation futility shall be avoided and in a case where the intention of the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result....."

38. It could thus be seen that the Court will have to prefer an interpretation which makes the Statute workable. The interpretation which gives effect to the intention of the legislature, will have to be preferred. The interpretation which brings about the effect of result, will have to be preferred than the one which defeats the purpose of the enactment. As already discussed hereinabove, the dominant intent of the said Rules is to give effect to the reservation policy while ensuring that reservations are not repeated in particular Corporations and at the same time in all the Corporations, there shall be reservation, at some point of time, for all the eligible categories by rotation. The legislative intent is to exclude the Corporations which were earlier reserved for a particular category until all the categories are provided reservation. However, while doing so, the Court will have to interpret Rule 3 of the said Rules in such a manner that this scheme is made workable and not frustrated. At the cost of repetition and particularly taking into consideration the difference in number of seats for Scheduled Castes and Backward Class of Citizens, we find that the interpretation as placed by the High Court, would not make the said Rules workable and give effect to the legislative intent. It would have been a different matter that even after completion of the cycle, requisite reservation as per the Rules is not provided to the Scheduled Castes and excessive reservation is provided for Backward Class of Citizens. Such is not the case. Unfortunately, for the writ petitioner, even for the present term, Dhule Municipal Corporation was also in the pool of eligible Corporations for draw of lots for Scheduled Castes category. However, in the draw, it could not be reserved for Scheduled Castes. Only thereafter, Dhule Municipal Corporation was considered in the pool of draw of lots for Backward Class of Citizens. This was so because in the immediate preceding elections, the office of Mayor was not reserved for Backward Class of Citizens.

39. The High Court has strongly relied on the following observations of the Single Judge of the Karnataka High Court in *M. Abdul Azeez v. State of Karnataka and Others* (supra): “27.1. An elementary test to find out as to whether the principle of rotation is violated or not, is to examine as to whether any allotment to a reserved category is repeated in any Municipality before commencement of a fresh cycle of rotation for that category. If there is any allotment to any reserved category for the second time in a Municipality before completion of a cycle of rotation or before commencement of a fresh cycle of rotation for that category, it would be a clear violation of the principle of rotation.”

40. However, it is to be noted that the Rules that fell for consideration before the Karnataka High Court, provided that the offices of the President and Vice-President shall be rotated for the different categories from term to term. The Rules provided that the cycle of the reservation will begin from the Municipal Council which had the highest population of a particular category. The rotation will go to the other Municipal Councils in the descending manner on the basis of the population of a particular category in the concerned Municipal Council area. The scheme is that the Municipal Council which has the highest number of population of a particular category, will be the first to be reserved for that category and the Council with the least population of that category, would be the last one to be reserved for that category. Only after completion of the said cycle, the reservation can come back for a particular category which was reserved for it at the first instance. It could thus be seen that the Rules that fell for consideration before the Karnataka High Court, were totally different than the ones which fell for consideration before the Bombay High Court.

41. Though the Division Bench of the High Court was not bound by the judgment of the Single Judge and it had only a persuasive value, we may gainfully refer to the observations of this Court in *The Regional Manager and Another v. Pawan Kumar Dubey*¹⁰: “7.Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.....”

42. We are therefore of the considered view that the view taken by the Division Bench of the Bombay High Court needs to be interfered. The appeals are therefore allowed and the judgment and order passed by the Bombay High Court dated 7th May 2021, is quashed and set aside.

.....J. [L. NAGESWARA RAO]J. [B.R. GAVAI] NEW DELHI;

SEPTEMBER 01, 2021.