

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW.**

REVIEW PETITION NO. OF 2021

Dilip Kumar

..... REVIEW APPLICANT

IN RE :

WRIT PETITION NO.6929 (PIL) CIVIL OF 2021

Ajay Kumar

.....PETITIONER

Versus

State of U.P. and others

.....RESPONDENTS

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Lucknow
Dated: .2021

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LIST OF DATE AND EVENTS

DATE	EVENTS
7.12.1947	The Uttar Pradesh Panchayati Raj Act 1947 received assent of Governor-General of the Dominion of India on 7.12.1947 under Section 76 of the Government of India Act, 1935 and published in the U.P. Government Gazette, dated 27.12.1947 to establish and develop Local Self-Government in the rural areas of the Uttar Pradesh.
28.04.1994	On 28.04.1994 in order to provide for scheme of rotation the Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994 were notified.
2011	In 2011, the 15 th National Census was conducted which noted changes in the demography of certain villages and panchayats in Uttar Pradesh.
16.09.2015	On 16.09.2015, the Government of Uttar Pradesh, brought an amendment (10 th Amendment) to the Uttar Pradesh

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	<p>Panchayati Raj (Reservation and Allotment of Seats and Offices Rules, 1994, whereby <i>inter alia</i> a proviso was appended to Rule 4 of the 1994 Rules, enabling the Government to not follow rotation system followed in the past on account of de-limitation.</p>
09.02.2021	<p>On 09.02.2021, the Respondent No. 1 amended the 1994 Rules, vide Xith Amendment and deleted the provision as inserted by the Xth Amendment that enabled re-setting the system of rotation followed in the last elections. Thus, the foundation for Government Order dated 16.09.2015 was abrogated, as it did not allow ignoring reserved roster for villages in past elections.</p>
11.02.2021	<p>In pursuance of the aforementioned Xith Amendment to the 1994 Rules, a Government order was issued on 11.02.2021 by the Government of Uttar Pradesh by the means of which procedure for reservation of seats in the upcoming Panchayat Elections of 2021 were prescribed wherein the past reservations made in the years 1995, 2000, 2005 and 2010 were taken into account to ensure that adequate representation is given in accordance with the spirit of Article 243D of the Constitution of India.</p>
11.02.2021	<p>The instant Government Order dated 11.02.2021 sought to restore the anomaly introduced by</p>

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	Government Order dated 16.09.2015 and sought to give priority to those who have not had benefit of the past reservations.
12.03.2021	On 12.03.2021, the instant PIL Civil No. 6929 of 2021 was filed by one Sh. Ajay Kumar claiming to be running NGO in rural area before this Hon'ble Court challenging the Government Order dated 11.02.2021.
12.03.2021	Vide and order dated 12.03.2021 this Hon'ble Court sought instructions from the Respondent State of U.P.
14.03.2021	In compliance of the aforementioned order dated 12.03.2021 instructions were made available to the Chief Standing Counsel before the Hon'ble Allahabad High Court at Lucknow which were produced for perusal of this Hon'ble Court.
15.03.2021	Vide Judgment and Order dated 15.03.2021 passed in Writ Petition No.6929 (PIL) Civil of 2021 (<i>Ajay Kumar v. State of U.P. and ors.</i>), this Hon'ble Court allowed the Writ Petition and had set-aside the Government Order dated 11.02.2021.
26.03.2021	The Review Applicant being aggrieved by the Judgment and Order dated 15.03.2021 applied for permission to file Special Leave Petition No. 43707/2021 and filed Special Leave Petition Diary No. 7989 of 2021. However, as the Review Applicant was not a party before this Hon'ble

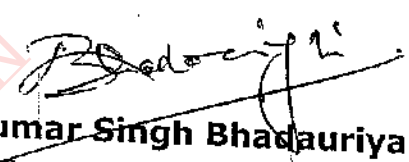
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	Court in PIL (Civil) No. 6929 of 2021, the Hon'ble Supreme Court was inclined to rather permit the Review Applicant to approach this Hon'ble Court and permitted as such by an order dated 26.03.2021.
--	Since there are errors apparent which have crept in the Judgment and Order dated 15.03.2021 due to non-production of relevant facts.
	Hence, this Review Application.

Lucknow

Dated:

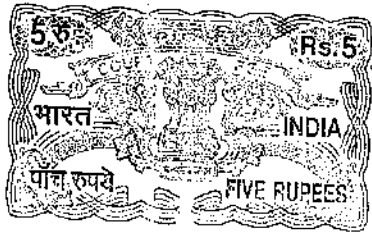
.2021


(Amit Kumar Singh Bhadauriya)
Advocate
Counsel for Review Applicant



**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD,LUCKNOW BENCH, LUCKNOW**

REVIEW PETITION NO. OF 2021



Dilip Kumar, Aged about 43 years, S/o Rajendra Singh , Village -
Barosa, Block Hargaon (HS Mills, Biswan), District Sitapur, Uttar
Pradesh-261121

.....REVIEW APPLICANT

VERSUS

1. State of U.P, Through Additional Chief Secretary/Principal Secretary, Panchayat Raj Department, Civil Secretariat, Lucknow 226001
2. Director, Panchayati Raj, Uttar Pradesh, Plot-6, Lohiya Bhawan, Sector-E, Aliganj, Lucknow-226024
3. State Election Commission, Uttar Pradesh, Through its Secretary 226001
4. Ajay Kumar aged about 47 years Son of Sri Raj Narain Bajpai Resident of - Village Shekhapur, Post- Beni Rajapur, District- Lakhimpur Khiri

.....RESPONDENTS

IN RE :

WRIT PETITION NO.6929 (PIL) CIVIL OF 2021



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Ajay Kumar aged about 47 years Son of Sri Raj Narain Bajpai
Resident of - Village Shekhapur, Post- Beni Rajapur, District-
Lakhimpur Khiri.

.....PETITIONER

VERSUS

1. State of U.P, Through Additional Chief Secretary/Principal Secretary, Panchayat Raj Department, Civil Secretariat, Lucknow 226001
2. Director, Panchayati Raj, Uttar Pradesh, Plot-6, Lohiya Bhawan, Sector-E, Aliganj, Lucknow-226024
3. State Election Commission, Uttar Pradesh, Through its Secretary 226001

.....RESPONDENTS

Review Application under Chapter V Rule 12 of the Allahabad High Court Rules, 1952 seeking review of Judgment and Order dated 15.03.2021 passed by Hon'ble Mr Justice Ritu Raj Awasthi and Hon'ble Mr. Justice Manish Mathur in Writ Petition No.6929 (PIL) Civil of 2021 (Ajay Kumar v. State of U.P. and others).

The above-named Review Applicant humbly submits as under:

1. That by means of the instant Review Application, the Review Applicant is seeking review of the Judgment and Order dated 15.03.2021 passed by Hon'ble Mr. Justice Ritu Raj Awasthi and Hon'ble Mr. Justice Manish Mathur in Writ Petition No.6929 (PIL) Civil of 2021 (*Ajay Kumar v. State of U.P. and ors.*), whereby the writ petition preferred by one Shri Ajay Kumar i.e. the Petitioner therein was allowed with certain directions. Certified copy of the Judgment and Order



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12/05/2021

dated 15.03.2021 in Writ Petition No.6929 (PIL) CIVIL of 2021 (*Ajay Kumar vs. State of U.P. and ors.*) is enclosed along with the present application.

2. That necessary provisions of the Constitution, statute and the rules with amendments from time to time are annexed herewith in the affidavit for ease of perusal.

Facts leading to changes till 2015 Election

3. That the Uttar Pradesh Panchayati Raj Act 1947 received assent of Governor-General of the Dominion of India on 7.12.1947 under Section 76 of the Government of India Act, 1935 and published in the U.P. Government Gazette, dated 27.12.1947 to establish and develop Local Self-Government in the rural areas of the Uttar Pradesh and to make better provision for village administration and development. It was amended from time to time reflect the Constitutional values and contemporary requirement.
4. That Article 243D was inserted vide 73rd Constitutional Amendment Act 1992 dealing with the 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.
5. That the statement of objects and reasons of the 73rd Constitutional Amendment is as under:



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- "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 shortcomings 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;"
6. That the Article 243D of the Constitution of India is extracted below:

"243D. 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:



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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.

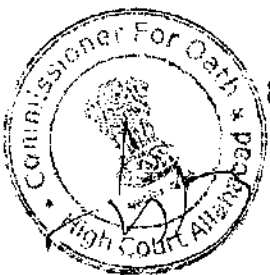
(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

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

(emphasis supplied)

7. That in furtherance of the aforesaid provisions, the State legislature made necessary amendments both under the Uttar Pradesh Panchayat Raj Act, 1947 as well as the Uttar Pradesh (Kshetra Panchayats and Zila Panchayats) Act 1961 which under similar terms provide for reservation in the respective level of local bodies. Section 12 of the UP Panchayat Raj Act, 1947 deals with election in Gram Panchayat and Section 12(5) deals with reservation which aims to mirror Article 243-D(4) of the Constitution and provides for rotation. The instant petition pertains to panchayat elections alone.

8. That the *Second proviso* to Section 12 (5) of 1947 Act provides reservation. Similar provision has been provided for election of Village Pradhan in Section 11-A of the 1947 Act.



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9. That on 28.04.1994 in order to provide for scheme of rotation the Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994 (hereinafter referred to as the "1994 Rules" for the sake of brevity) were notified. The provision contained in Rule 4 of the aforesaid 1994 Rules sets out seven categories for which reservation by rotation has to take place. For ease of perusal and kind consideration of this Hon'ble Court, the seven categories of candidates for which reservation by rotation has been laid down under Rule 4 of the 1994 Rules are reproduced hereunder:

- A. Women belonging to schedule tribe
- B. the scheduled tribes
- C. women belonging to scheduled castes
- D. the schedule castes
- E. women belonging to the backward classes
- F. backward classes
- G. women;

10. That Rule 5 of the 1994 Rules provides for rotation system.

11. That thus, it is relevant to state that in the light of the Rule 4 of the 1994 Rules, the number of seats shall be allotted to different territorial constituencies on the basis of population in the descending order, the territorial constituency having the largest population of the Scheduled Tribes shall be earmarked for the candidate belonging to the Schedule Tribe, the territorial constituency having the largest population of the Scheduled Castes shall be earmarked for the candidate belonging to the Schedule Tribe and the territorial constituency having the largest population of the backward classes shall be earmarked for the candidate



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belonging to such Backward Classes, and in the subsequent election the allotment shall be made in the aforesaid manner. However, as far as may be, the territorial constituency allotted in the previous election to the Scheduled Tribes shall not be allotted to the Scheduled Tribes and the territorial constituency allotted to the Scheduled Castes shall not be allotted to the Scheduled Castes and the territorial constituency allotted to the backward classes shall not be allotted to the backward classes.

12. That it is submitted that rotation has to be ensured in light of the aforementioned provision so that an equal opportunity is given to all the reserved categories in descending order of their respective population, until candidate belonging to each of the reserved and unreserved categories gets an equal opportunity of representation.
13. That during the U.P. Panchayat Elections of 1995 (first election) under the new provision, the reservation of the seat was done keeping into consideration the population in the year 1995 in accordance with law. For the aforesaid purpose, a formula had been arrived to calculate the number of seats to be reserved and taking into account the population. Broadly, similar formula using population has been followed from time to time.
14. That similarly, during the subsequent elections of the U.P. Panchayat in the year 2000, 2005 and 2010 similar exercise was carried out whereby the seats in the Panchayat

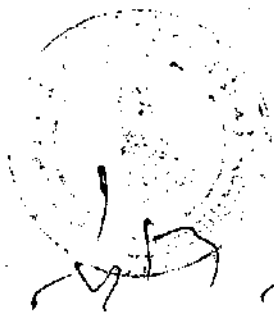


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Elections were reserved for respective categories by applying the methodology worked out on the basis of 1994 Rules, treating 1995 to be the base year. It is relevant that "base year" would mean the population data available, which gets built in the calculation every time. Due to change in population data the reservation roster is not meant to be reset, but only to be accounted for.

15. That thus, if the methodology then adopted were to be applied i.e. roster starting from 1995 elections, the Review Applicant herein who belongs to the S.C. Category had legitimate expectation that in the year 2015, the Review Applicant Gram Panchayat of Village Barosa, District Sitapur would be declared reserved for S.C. category and the Review Applicant would get his under the Constitutional mandate promised under Article 243D of the Constitution. This is because the Review Applicant's village has relatively low population of members of Schedule Caste Category in his village and in the descending order the chance of his village to have seat reserved for Schedule Caste Category Pradhan would come low in the list and at a later point in time. Those villages with maximum Scheduled Caste population will get benefit of reservation first and those with lower Scheduled Caste population will get last. However, for the village last in the list to get the benefit, the roster must continue and any attempt to abandon the same midway would defeat Article 243D (4) proviso guaranteeing reservation.



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16. That the scheme of rotation starting from Panchayat General Election of 1995 continued till Panchayat General Election of 2010.
17. That in 2011, the 15th National Census was conducted which noted changes in the demography of certain villages and panchayats in Uttar Pradesh. There is no significant change in the demography of the Village Panchayat of Review Applicant. There is no delimitation of Review Applicant's village panchayat.
18. That on 16.09.2015, the Government of Uttar Pradesh, brought an amendment (**10th Amendment**) to the **Uttar Pradesh Panchayati Raj (Reservation and Allotment of Seats and Offices Rules, 1994**, whereby *inter alia* a proviso was appended to Rule 4 of the 1994 Rules, enabling the Government to not follow rotation system followed in the past on account of de-limitation. It further provided that whenever there are demographic or other changes with relations to the ratio of population of the territorial area of the Gram Panchayat, the system of rotation would necessarily be started from the beginning without taking into account the reservation of seats in previous elections. For ease of perusal and kind consideration of this Hon'ble Court, the provision contained in proviso to Rule 4 of 1994 Rules (as amended) is reproduced hereunder:



Provided further that whenever there is General delimitation of the territorial constituencies of Gram Panchayats in the State on the basis of general modification in area of 'Panchayat Area' of Gram Panchayats in the State or otherwise, before a general election of the members Gram Panchayat, then the allotment of the number of the seats as provided in rule 3 shall be made **afresh** to different territorial

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constituencies without taking into consideration their status of allotment in previous election

Similar *proviso* was inserted for women etc. which is not being set out herein for brevity.

19. That, the 10th Amendment to the 1994 Rules dated 16.09.2015 inserted proviso in Rule 4 that enabled a "fresh start" to the reservation cycle (set out in Rule 4) in case there was a general delimitation. In other words, this fresh start enabled by the Rules, permitted ignoring the roster that had been followed since 1995. To implement this 10th Amendment, a Government Order dated 16.09.2015 was issued that laid down detailed procedure to be followed in UP Panchayat General Election 2015. The aforementioned Government order dated 16.09.2015 mentions the fact that 7,315 new gram panchayats have been created apart and there have been territorial changes in the existing gram panchayats. Strangely, despite there being only 7315 new panchayats, the system was disrupted in the whole State. However, rather than limiting the *denovo* commencement of rotation to only those areas where there had been delimitation exercise, fresh exercise of rotation had been done on the basis of Census Data of 2011. Thus, merely on account of establishment of certain new gram panchayats, the rotation roster was disturbed in the whole State, for which 1994 Rules were amended by the aforementioned Xth Amendment.



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Facts leading to the instant Review Petition

20. That in February, 2021, **Writ-C No. 23377 of 2020 (Vinod Upadhyay v. State of UP & Anr)** was filed before this Hon'ble Court at Allahabad seeking direction to hold Panchayat Election within five years from 16.01.2016 as per the mandate of Article 243E of the Constitution of India. This Hon'ble Court passed Judgment and Order dated 04.02.2021 directing that reservation of the constituencies be finalized by 17.03.2021. It is notable that SLP against the Judgment and Order dated 04.02.2021 has been dismissed as well.
21. That it may kindly be noted that in the aforesaid Judgment and Order dated 04.02.2021 the contention of the counsel for State has been recorded that:

"Learned Advocate General appearing with the learned Additional Advocate Generals submits that the process for reservation of the constituencies has to be undertaken in reference to Section 11 (A) of U.P. Panchayat Raj Act, 1947 read with Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and Offices) Rules, 1994. The exercise for reservation also requires compliance of U.P. Panchayat (Determination and Publication of Number of Persons Belonging to Backward Classes) Rules, 1994, as amended in the year 2015. The exercise under the Rules of 1994 (as amended) is required due to reduction of number of Panchayats. In the election of 2016, 59074 Gram Pradhans were elected whereas now the number has been reduced to 58194. The number of Gram Pradhans has come down by 880 on account of delimitation and thereby the exercise of reservation of constituencies is going to take time. Door to door survey of backward class has to be made..."



22. That on 09.02.2021, the Respondent No. 1 amended the 1994 Rules, vide XIth Amendment and deleted the said

Pradip Singh

provision as inserted by the Xth Amendment that enabled re-setting the system of rotation followed in the last elections. The *proviso* inserted by Xth Amendment that enabled starting reservation roster afresh in case of general delimitation, was deleted/omitted by XIth Amendment. Thus, the foundation for Government Order dated 16.09.2015 was abrogated, as it did not allow ignoring reserved roster for villages in past elections.

23. That in pursuance of the aforementioned XIth Amendment to the 1994 Rules, a Government order was issued on 11.02.2021 by the State of Uttar Pradesh by means of which the procedure for reservation of seats in the upcoming Panchayat Elections of 2021 were prescribed wherein the past reservations made in the years 1995, 2000, 2005 and 2010 were taken into account to ensure that adequate representation is given in accordance with the spirit of Article 243D of the Constitution of India. Further, the said Government Order specifically provided that priority in reservation would be given to those panchayats that have not had the benefit of reservation. For ease of perusal and kind consideration of this Hon'ble Court, the manner of reservation as laid down in the Government Order dated 11.02.2021, is reproduced hereunder:



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क्र. सं०	आरक्षण वर्ग	आरक्षित वर्ग की जनसंख्या का प्रदेश की जनसंख्या में अनुपात (%)	पदों की कुल संख्या का आरक्षित वर्ग की जनसंख्या के प्रतिशत का गुणांक	कुल आरक्षित पदों की संख्या
1.	अनुसूचित जन जाति	0.5677	330.36	330
2.	अनुसूचित जाति	20.6982	12045.11	12045
3.	पिछड़ी जाति	27	15712.38	15712

From the aforementioned tabular representation, it is evident that the quantum of reservation does not exceed the quantitative limit of 50% (aggregate) of vertical reservation of seats for SCs/STs/OBCs taken together in the entire State of U.P. as has been laid down by the Constitution Bench of the Hon'ble Supreme Court of India in a case reported in (2010) 7 SCC 2020 in re: *K. Krishnamurthy v. Union of India*.

24. That thus, the instant Government Order dated 11.02.2021 sought to restore the anomaly introduced by Government Order dated 16.09.2015 in order to give priority to those who have not had the benefit of past reservations. The aforesaid intent behind issuance of Government Order dated 16.09.2015, is manifest from the following two clauses:

7. खण्ड के अन्तर्गत प्रधान के पदों का आवंटन :

7.1 अनुसूचित जनजातियों, अनुसूचित जातियों और पिछड़े वर्गों के लिये प्रधानों के आरक्षित पदों की संख्या उस खण्ड (ब्लॉक) में भिन्न-भिन्न ग्राम पंचायतों को उनके प्रादेशिक क्षेत्र की कुल जनसंख्या में क्रमशः अनुसूचित जनजातियों, अनुसूचित जातियों और पिछड़े वर्गों की जनसंख्या के अनुपात के अवरोही क्रम में आवंटित की जायेगी अर्थात् उस खण्ड (ब्लॉक) की ग्राम पंचायतों में से वह ग्राम पंचायत जिसके प्रादेशिक क्षेत्र में अनुसूचित जनजातियों की जनसंख्या का अनुपात सबसे अधिक हो, उनको आवंटित की जायेगी और वह ग्राम पंचायत जिसके प्रादेशिक क्षेत्र में अनुसूचित जातियों की जनसंख्या का अनुपात सबसे अधिक हो, उनको आवंटित की जायेगी और वह ग्राम पंचायत जिसके प्रादेशिक क्षेत्र में पिछड़े वर्गों की जनसंख्या का अनुपात सबसे अधिक हो, उनको आवंटित की जायेगी, किन्तु इस प्रकार कि, जहाँ तक हो सके, पंचायतों के सामान्य निर्वाचनों वर्ष 1995, 2000, 2005, 2010 एवं 2015 में अनुसूचित जनजातियों को आवंटित ग्राम पंचायत अनुसूचित जनजातियों को आवंटित नहीं की जायेगी, अनुसूचित जातियों को आवंटित ग्राम पंचायत अनुसूचित जातियों को आवंटित नहीं की जायेगी और पिछड़े वर्गों को आवंटित ग्राम पंचायत पिछड़े वर्गों को आवंटित नहीं की जायेगी।



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7.4 उपर्युक्तानुसार क्षेत्रों के लिये आवंटित प्रधानों के पदों को सम्मिलित करते हुए खण्ड (स्नाक) में प्रधानों के पदों की कुल संख्या के एक तिहाई से अन्यूल प्रधानों के पदों को क्षेत्रों को आवंटित किया जायेगा किन्तु इस प्रकार कि जिन ग्राम पंचायतों के प्रादेशिक क्षेत्रों में सामान्य वर्ग की अधिक जनसंख्या, (जिसमें अनुसूचित जनजातियों, अनुसूचित जातियों और पिछड़े वर्गों की जनसंख्या सम्मिलित नहीं है), वे उनको आवंटित की जायेगी, किन्तु इस प्रकार कि, जहाँ तक हो सके, पूर्ववर्ती पंचायतों के सामान्य निर्वाचनों वर्ष 1995, 2000, 2005, 2010 एवं 2015 में क्षेत्रों को आवंटित ग्राम पंचायतों क्षेत्रों को आवंटित नहीं की जायेगी। सामान्य जनसंख्या का अवरोही क्रम बनाने में यदि एक से अधिक ग्राम पंचायतों की सामान्य जनसंख्या समान अथवा शून्य हो तो उस दशा में ऐसी ग्राम पंचायतों को उनकी कुल जनसंख्या के आधार पर उन्हें अवरोही क्रम में व्यवस्थित कर पदों का आवंटन किया जायेगा।

25. That the State Government had made all preparations for following reservation system as per Government Order dated 11.02.2021 and final list was to be published on 17.03.2021.
26. That on 12.03.2021, the instant PIL Civil No. 6929 of 2021 was filed by one Sh. Ajay Kumar claiming to be running NGO in rural area who sought the relief of:
- Quashing the G.O. dated 11.02.2021
 - Issuance of fresh guidelines for conduct of election as per 1994 Rules

The PIL Petitioner does not appear to be a beneficiary of reservation under 73rd Amendment to the Constitution of India.

27. That in the instant PIL, filed by the PIL Petitioner allegedly claiming himself to be a public spirited person filed the instant PIL without any research in respect of operation of reservations in the State of UP and the extant issues faced by those in whose favour the reservation has to apply. There are only bald averments and no data or substantiation in the PIL as to how the operation of reservation under Government Order dated 11.02.2021



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would exceed 50% cap even though this argument was taken note of in the Judgment and Order dated 15.03.2021. As a matter of fact the limit of 50% reservation was not being exceeded by operation of Government Order dated 11.02.2021. The State of UP had also not given any statement in this regard. The said PIL clearly conceals the XI Amendment by which the foundation for Government Order dated 16.09.2015 was abrogated and it paved way for Government Order dated 11.02.2021.

28. That thus, while challenging the Government Order dated 11.02.2021, the PIL Petitioner had not challenged the XIth Amendment to the 1994 Rules, and it was only the consequential Government Order dated 11.02.2021 and not the statutory provisions in form of the XIth Amendment to the 1994 Rules, on the basis whereof the aforementioned Government Order dated 11.02.2021 was issued, was under challenge in the PIL.
29. That by an order dated 12.03.2021 in Writ Petition No.6929 (PIL) Civil of 2021 (Supra) this Hon'ble Court had sought instructions from the Respondent State of U.P. in compliance whereof the Additional Chief Secretary, Department of Panchayati Raj, Government of U.P. vide letter dated 14.03.2021 addressed to the Chief Standing Counsel, High Court of Allahabad sitting at Lucknow made available the instruction which were produced for perusal of this Hon'ble Court.



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30. That the Review Applicant or any person like him was not a party to the writ proceedings and it appears that the Review Applicant's village has not had Pradhan from Scheduled Caste category in collective memory of the village community and certainly not since 73rd Amendment was inserted in 1992. The Review Applicant or any person similar to him had no opportunity to appear and assists this Hon'ble Court to prevent any error from creeping into the record.
31. That it is pertinent to mention at this juncture that the Review Applicant who belongs to the Schedule Caste Category and hails from Village Barosa, District Sitapur was benefited by the Government Order dated 11.02.2021 as the system of reservation of seat of Gram Pradhan contemplated under the Government Order dated 11.02.2021 would have resulted in reserving the Gram Pradhan post in Village Barosa for a member of a Scheduled Caste, thus leaning in favour of the Review Applicant. However, no such person aggrieved was made party in the PIL even in representative capacity and the PIL was just filed by the PIL Petitioner allegedly claiming himself as a public spirited person.
32. That in the aforesaid regard, it is pertinent to place reliance on a judgment rendered by the Hon'ble Supreme Court of India reported in **AIR 1963 SC 1909** in re: **Shivdev Singh and others v. State of Punjab and others**, wherein the Hon'ble Supreme Court of India has observed that there is nothing in Article 226 of the Constitution of India to



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preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice and such power can also be exercised at the behest of persons who even though are not made parties in the previous proceedings though their interests were sought to be affected by the decision of the High Court.

33. That furthermore, none of the aggrieved persons challenged the Government Order dated 11.02.2021 and it was only the PIL Petitioner without impleading any of the persons whose rights would have been effected due to the outcome of the PIL went ahead and filed the Public Interest Litigation before this Hon'ble Court challenging the Government Order dated 11.02.2021 belatedly only on 12.03.2021.
34. That as a matter of fact the limit of 50% reservation was not being exceeded by operation of Government Order dated 11.02.2021 and there was only bald assertion by the Writ/PIL Petitioner, without substantiating the same by any document or data and the aforesaid assertion is wrong. Even the State of UP had also not given any statement in this regard, and no data/exercise had been placed on record. Eroneous reliance has been placed on **Vikas Kishanrao Gawali v. State of Maharashtra, (2021) SCC Online SC 170** for the reasons that in the said case the excess reservation was pleaded and established, and in the present case there is only a bald averment and no further pleadings or data in that regard. In the aforementioned case **Vikas Kishanrao (Supra)**, under challenge was Section

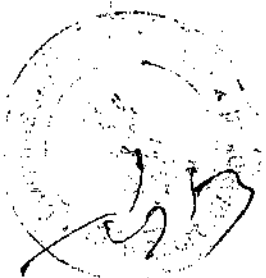


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State Government but surprisingly none of them apprised this Hon'ble Court of the aforementioned fact.

38. That it is on the aforesaid ground that an error has crept in the Judgment and Order dated 15.03.2021 passed by this Hon'ble Court PIL (Civil) No. 6929 of 2021 (Supra) in as much as there is no consideration on the aspect as to whether a Writ Petition/PIL solely challenging the Government Order dated 11.02.2021 and not challenging the statutory provision on the basis whereof the aforementioned Government Order was passed is maintainable.
39. That there is a manifest error which has crept in the Judgment and Order dated 15.03.2021 whereby this Hon'ble Court has set-aside the Government Order dated 11.02.2021 in as much as the statutory provision i.e. the 1994 Rules, as amended by the XIth Amendment, on the basis whereof the Government Order dated 11.02.2021 had been issued, has not even been read down by the Hon'ble Court and thus, the foundation of the Government Order dated 11.02.2021 stands till date.
40. That resultantly, an error apparent on face of record has crept in the aforesaid Judgment and Order dated 15.03.2021 in as much as this Hon'ble Court could not consider that the rotation system of reservation which had been initiated in the year 1995 has not been brought to its logical end and the same has been disrupted by giving



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12(2)(c) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 which concerns with reservation of OBCs, which was not the issue in the present PIL (Civil) No. 6929 of 2021 (Supra) before this Hon'ble Court.

35. That the aforesaid legal position was not brought to the notice of this Hon'ble Court, and the order dated 15.03.2021 was passed by this Hon'ble Court.
36. That moreover, it is well settled position of law that when the original order has not been challenged and it is only the consequential order which has been challenged in a Writ Petition such writ petitions are not maintainable. The aforesaid contention of the Review Applicant has been fortified by catena of pronouncements of Hon'ble Supreme Court of India as also this Hon'ble Court. Few of such pronouncements by the Hon'ble Supreme Court of India are reported in **(2010) SCC Online All 2366** in re: **Paritosh Singh and others v. State of U.P. and others** and reported in **(2010) 1 SCC 756** in re: **Edukanti Kistamma v. Venkantareddy**.
37. That in PIL (Civil) No. 6929 of 2021 (Supra) under challenge was only the Government Order dated 11.02.2021 which was an outcome of the XIth Amendment in the 1994 Rules, and not the statutory rules/provisions on the basis whereof the aforesaid Government Order dated 11.02.2021 came into being, which fact ought to have been brought to the notice of this Hon'ble Court by the PIL Petitioner as also the



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effect to the Government Order dated 16.09.2015 merely on the basis of concession by the State Government.

41. That as the Review Applicant was not heard, the Review Applicant applied for permission to file Special Leave Petition No. 43707/2021 and filed Special Leave Petition Diary No. 7989 of 2021. However, as the Review Applicant was not a party before this Hon'ble Court in PIL (Civil) No. 6929 of 2021 (Supra), the Hon'ble Supreme Court of India was inclined to rather permit the Petitioner to approach this Hon'ble Court and permitted as such by an order dated 26.03.2021.

42. That the term error apparent on face of record has been explained by the Hon'ble Supreme Court of India in a catena of pronouncements, few of such case law is reported in **(2009) 14 SCC 663** in re: ***Inderchand Jain (D) through L.Rs v. Motilal (D) through L.Rs*** and reported in **AIR 1954 SC 526** in re: ***Moran Mar Basselios Catholicos and another v. Most Rev. Mar Poulouse Athanasius & others***, wherein, it has been held that the power of review can be exercised for correction of a mistake or error apparent on the face of the record. It is stated that the instructions dated 14.03.2021 which were taken on record by this Hon'ble Court while passing the judgment and order dated 15.03.2021 itself states that on account of Xith Amendment the Government Order dated 16.09.2015 has lost its legal basis.



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43. That in the present matter, the aforementioned facts and point of law were not brought to the notice of this Hon'ble Court either by the PIL Petitioner or by the State Government. It is submitted that it was not brought to the notice of this Hon'ble Court that change in population gets accounted for in the formula and the delimitation exercise, being a usual and an administrative affair cannot form the basis of changing the entire roster of reservation being followed since 1995. While seeking direction of this Hon'ble Court to conduct elections as per Government Order dated 16.09.2015, the State did not inform this Hon'ble Court that the Government Order dated 16.09.2015 cannot be acted upon as the rules have since been amended and thus the very foundation of the Government Order dated 16.09.2015 is no longer in existence. The Review Applicant verily believes that had this Hon'ble Court been informed that the necessary enabling proviso in Rule 4 of 1994 Rules had been omitted by XIth Amendment, this Hon'ble Court may have reached a different outcome as this Hon'ble Court would not have passed any order contrary to the rules.
44. That it has already been held by the Hon'ble Supreme Court of India in a catena of pronouncements that in case, where the contentions of a party were not properly raised or argued before the Court, then the proper remedy in the aforesaid respect would be to file a Review Application before the same Court. In the present case, the Review Applicant or any person who were to benefit from reservation were not made a party to the Writ Petition/PIL



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and the Writ Petition/PIL (Civil) No. 6929 of 2021 (Supra) was virtually decided without hearing the affected individuals such as the Review Applicant. The aforesaid contention of the Review Applicant has been fortified in catena of pronouncements of the Hon'ble Supreme Court of India. One of such pronouncement of Hon'ble Supreme Court of India is reported in **(2003) 2 SCC 111** in re: **Bhavnagar University vs. Palitana Sugar Mills (Pvt.) Ltd. & Another.**

45. That it has been held by Hon'ble Supreme Court of India in the Judgment reported in **AIR 1964 SC 1372** in re: **Thungabhadra Industries Ltd Vs. The Government of Andhra Pradesh** and various other pronouncements that the Review Application is proper remedy where there is an error apparent on the face of the record. Further, the observation by this Hon'ble Court on the issue of 50% reservation being exceeded was not supported by any data and no factual information appears to have been made available by the State Government. The Hon'ble Supreme Court of India in **K Krishnamurthy (Supra)** has held that the unit for considering reservation is State, and this aspect has not been placed before this Hon'ble Court for consideration. The nexus of reservation with backwardness is a factual issue to be determined on the basis of pleading, which is not set out in the Writ Petition/PIL or has been placed by the State Government.



46. That the Hon'ble Supreme Court in the matter of **BCCI v. Netaji Cricket Club** reported in **(2005) 4 SCC 741** has

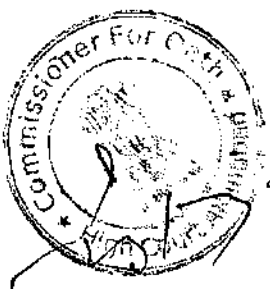
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held that Order 47 Rule 1 CPC provided for filing an application for review. Such an application for review could be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the records but also if the same is necessitated on account of some mistake or for any other sufficient reasons. What would constitute sufficient reason would depend on the facts and circumstances of the case. The word "sufficient reason" in Order 47 Rule 1 CPC are wide enough to include a misconception of fact or law by a court or even an advocate. In the instant case, there has been both a misconception/mistake of fact as well as law and hence the appropriate remedy lies in filing a review application only. The same principle has been followed and reiterated by this Hon'ble Court in catena of pronouncements including the one rendered in **Cantonment Board Meerut v. State of U.P. &Ors.** reported in **2014 (32) LCD 1343.**

47. That there is no delay in filing the instant Review Application. Since, the Review Applicant had filed SLP Diary No. 7989 of 2021 along with permission to file Special Leave Petition, and the Hon'ble Supreme Court of India by an order dated 26.03.2021 had permitted the Review Applicant herein to approach this Hon'ble Court. Hence, the instant Review Applicant is within the prescribed limitation.

48. That even otherwise, this Hon'ble Court in a matter reported in **2016(11) ADJ 110** in re: **Mohd. Jahan Begum and Ors. vs. Board of Revenue, Allahabad and Ors.** has been

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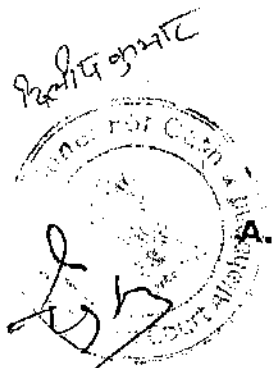
pleased to hold that the power to review its judgment inheres in this Hon'ble Court to do complete justice and prevent its miscarriage and that there is no limitation prescribed for exercise of such inherent power.

49. That thus, it is evident from the averments made herein above that there are errors apparent on the face of record, which have crept in the Judgment and Order dated 15.03.2021 passed by in Writ Petition No.6929 (PIL) Civil of 2021 (*Ajai Kumar vs. State of U.P. and ors.*) (*Supra*). Hence, it is in the interest of justice, that the Judgment and Order dated 15.03.2021 be reviewed.

GROUNDS

A. BECAUSE, it has been held that the power of review can be exercised for correction of a mistake or error apparent on the face of the record. It is stated that the instructions dated 14.03.2021 which were taken on record by this Hon'ble Court while passing the judgment and order dated 15.03.2021 itself states that on account of XIth Amendment the G.O. dated 16.09.2015 has lost its legal basis.

- B. BECAUSE,** it is stated that it was not brought to the notice of this Hon'ble Court that change in population gets accounted for in the formulae and the delimitation exercise, being a usual, administrative affair cannot form the basis of changing the entire roster of reservation being followed sine 1995.

- C. **BECAUSE**, while seeking direction of this Hon'ble Court to conduct elections as per G.O. dated 16.09.2015, the State did not inform this Hon'ble Court that the G.O. dated 16.09.2015 cannot be acted upon as the rules have since changed and foundation for the G.O. dated 16.09.2015.
- D. **BECAUSE**, he Petitioner verily believes that had this Hon'ble Court been informed that the necessary enabling proviso in Rule 4 of 1994 Rules had been omitted by XIth Amendment, this Hon'ble Court may reached a different outcome as this Hon'ble Court would not have passed any order contrary to the rules.
- E. **BECAUSE**, the Petitioner or any person who were to benefit from reservation was not made a party to the Writ Petition and the Writ Petition was virtually decided without hearing the affected groups and without hearing their arguments;
- F. **BECAUSE**, the Petitioner had filed SLP Diary No. 7989 of 2021 along with permission to file Special Leave Petition, and the Hon'ble Supreme Court by an order dated 26.03.2021 had permitted the Petitioner herein to approach this Hon'ble Court;
- G. **BECAUSE**, the order dated 15.03.2021 is *per incuriam* as it does not consider XI Amendment to the 1994 Rules which was stated in the letter dated 14.03.2021;
- H. **BECAUSE**, a concession of law, contrary to the law itself cannot be granted even by the Advocate General;



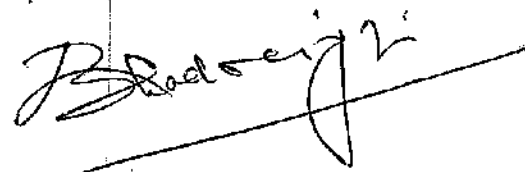
- I. **BECAUSE**, concession on a point of law contrary to the statutory rules cannot be granted and accepted, especially when there is no challenge to the rules.
- J. **BECAUSE**, the non consideration of XI Amendment which is still not abrogated, goes to the root of the matter;

P R A Y E R

WHEREFORE, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to review and recall the Judgment and Order dated 15.03.2021 passed by Hon'ble Mr. Justice Ritu Raj Awasthi and Hon'ble Mr. Justice Manish Mathur in Writ Petition No.6929 (PIL) Civil of 2021 (*Ajai Kumar vs. State of U.P. and ors.*), in the interest of justice.

Further, such other order as may be deemed, just and proper may also be passed by this Hon'ble Court to safeguard the interest and rights of the Review Applicants during the pendency of this Review Petition.

Lucknow
Dated: 2/3/2021



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