2026:AHC-LKO:41628-DB

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Reserved on : 12.03.2026
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HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 6153 of 2011

Jagdish Singh

…..Petitioner(s)

Versus

Election Commission of India Through Chief Election Commissi

…..Respondent(s)

Counsel for Petitioner(s)	:	Ajay Pratap Singh, Ajay Pratap Singh, Surya Bhan Singh
Counsel for Respondent(s)	:	C.S.C., O.p.srivastava, S B Pandey

Court No. - 5

HON'BLE ALOK MATHUR, J.
HON'BLE AMITABH KUMAR RAI, J.

(Delivered by Hon'ble Amitabh Kumar Rai, J.)

(1) Heard Shri Ajay Pratap Singh, learned counsel appearing on behalf of petitioner, Shri Raj Kumar Singh, learned counsel for the Union of India, Shri Akhilesh Srivastava, learned Standing Counsel for State-respondent No.4 and Shri O.P. Srivastava, learned Senior Advocate assisted by Ms. Anupriya Srivastava, learned counsel for the Election Commission.

(2) The instant petition has been filed for the following reliefs :-

"(a) Issue a writ order or direction in the nature of certiorari quashing the impugned notification dt.

18.12.2006 issued by the opp. no.2 notifying the Kadipur Assembly Constituency (191) for the Scheduled Cast as it relates with the Kadipur Assembly Constituency (191) District Sultanpur as contained in the Annexure No.1 to the writ petition after summoning the original from the records.

(aa) Issue a writ order or direction declaring the following part of Section 9(1)(c) of the Delimitation Act, 2002;

"and located as far as practicable in those areas, where the proportion of their population to the total is comparatively large" as ultra vires being violative of the Article 14, 15, 16, 19 and Article 330 and 332 of the Constitution of India.

(b) Issue a writ order or direction in the nature of mandamus commanding the O.P. No.2 to consider the representation of the petitioner dt. 09.09.2006 and declare the Kadipur Assembly Constituency (191) District Sultanpur as a general constituency before the fourth coming Assembly Election."

(3) The petitioner is a resident of Village Gajendrapur, Tehsil Kadipur, District Sultanpur which falls in 191 Kadipur Assembly Constituency of District Sultanpur, U.P. and is an elector of the Kadipur Assembly Constituency. The grievance raised by him is that since the creation of the Kadipur Assembly Constituency, the seat has stood reserved for the Scheduled Caste category for almost six decades. Due to such reservation, the petitioner, who claims to be a social worker and politically active is restrained from voting of a candidate of his choice in the Legislative Assembly Election of the State Legislature to a candidate of general category due to the embargo of Section 5(a) of the Representation of the People Act, 1951 as seat is reserved for the Scheduled Caste.

(4) It has been submitted by learned counsel for the petitioner that the petitioner is compelled to cast a caste-bonded vote in favour of only Scheduled Caste candidates for generations, which is discriminatory compared to fellow citizens residing in other

assembly constituencies, and also violative of the Fundamental Right to Equality as provided under Article 14 and 15 of the Constitution of India.

(5) Learned counsel for the petitioner, while arguing, referred to Article 168 of Chapter III, Part VI of the Constitution of India, which provides for constitution of legislatures in the States, and also referred to Part XVI of the Constitution of India, which provides for special provisions relating to certain classes. Specific mention is made of Article 332 of the Constitution of India, which provides for the reservation of seats for Scheduled Castes and Scheduled Tribes (hereinafter referred to as **"SC/ST"**) in the Legislative Assemblies of the State. Reference is also made to Article 170 of the Constitution of India, which lays down the maximum number of seats in Legislative Assemblies of State and certain principles to be followed in allocating seats in the State Legislative Assembly.

(6) It has further been submitted that as per provisions of Section 7 of the Representation of the People Act, 1950, the total number of seats in the Assembly Constituency in State of U.P. has been determined as 403, of which 85 seats are reserved for Scheduled Castes as per the proportionate ratio of Scheduled Castes population in accordance with the census of 2001. It has been submitted that as per the mandate of Article 332 of the Constitution of India, the number of seats has to be reserved for SC/ST, but it nowhere provides that the seats with the comparatively large SC/ST population are to be reserved always for SC/ST. The grievance raised by the petitioner is that due to an incorrect interpretation of the provisions contained in Article 332, the seats having highest number of SC/ST population are always reserved for SC/ST candidates without following the principle of rotation, which is followed in Panchayat elections and Municipal elections as per Part IX and IX-A of the Constitution of India.

(7) It has been submitted that the Delimitation Act, 2002 (hereinafter referred to as **"Act, 2002"**) was notified, which, as per Section 9 of the Act, provides manner in which the Delimitation Commission shall distribute and locate seats as far as practicable in those areas where the proportion of SC/ST population is comparatively large, resulting in stagnation in reservation of seats. As a consequence, the constituency once reserved for SC/ST has remained reserved indefinitely, which is against the very object of the concept of reservation.

(8) It has been argued that Section 9(1)(c) of the Act, 2002, for the aforesaid reasons, is unconstitutional as it is against the Preamble of the Constitution, which provides for securing social, economic and political justice to its citizens and equality of status and liberty of thought, expression, belief, faith and worship. It has been submitted that Section 9(1)(c) of the Act, 2002 is violative of Articles 14, 15 and 19 of the Constitution of India, inasmuch as it creates discrimination between one section of Scheduled Caste population residing in an area with a high population percentage of Scheduled Castes in a constituency, in comparison to other Scheduled Castes in areas having a low population percentage and deprives the residual voters of the right to a free vote, compelling them to cast a "conditional vote" for generations.

(9) It has further been submitted that such discrimination is arbitrary under Article 15 of the Constitution of India, as no such discrimination can be made solely on the basis of religion, race, caste, sex or place of birth. It has also been argued that protection of certain rights regarding freedom of speech includes the right to vote, which is derived from Article 326 of the Constitution and is an electoral expression available under Representation of People Act, 1950. This right cannot be curtailed by a conditional vote system for all time to come and such an act is violative of Article 19 of the Constitution of India.

(10) Learned counsel for the petitioner also referred to the Constitutional debates of the Constituent Assembly of India on proposed Articles 292/294 (numbered in the Constitution of India as Articles 330/332) in which a proposal was made through Amendment No.22 for adding a proviso to proposed Article 292, providing that the constituencies for the seats reserved for the Scheduled Caste or Scheduled Tribes should comprise, so far as possible, such contiguous areas where they were comparatively more numerous than in other areas. The proposed Amendment No.22 was negatived and, as such, it has been contended by learned counsel for the petitioner that it was never the intention of the framers of the Constitution to provide reservation of seats in Assembly/Parliament confined to those constituencies where the number of Scheduled Castes and Scheduled Tribes is maximum/largest. It has also been pointed out that the National Commission for Review of the Working of the Constitution, in its report dated 31.03.2002 Chaired by Hon'ble Justice M.N. Venkatachaliah recommended in para nos. 4-17 under heading "Delimitation of Constituencies" for rotation of seats reserved for Scheduled Castes and Scheduled Tribes so as to reflect the plural composition of society.

(11) It has been argued that Act, 2002 has been misinterpreted to deem it mandatory, including the provisions of Articles 14, 15, 19(1)(a), 81, 82, 170, 330, 332 and 334 of the Constitution of India by putting a moratorium on the status of existing seats in the Legislative Assemblies of all States as fixed on the basis of 1971 census to remain unaltered till the first census to be taken up after the year 2026. It has been submitted that the petitioner appeared before the Delimitation Commission on 09.09.2006 and requested/suggested the adoption of the rotational principle for allotting the constituencies for the reserved category as provided by the Panchayat elections.

(12) On the other hand, Shri O.P. Srivastava, learned Senior Advocate, for the Election Commission of India has raised objections regarding the maintainability of the writ petition on the strength of Article 329 (a) of the Constitution, which prohibits a challenge to the validity of any law relating to delimitation of the constituencies or the allotment of the seats to such constituencies from being called in question in any Court. It has been submitted that the order passed by the Delimitation Commission and published in the Gazette of India regarding delimitation and reservation of the constituencies has the force of law and is not liable to be called in question.

(13) It has been submitted that, as per the proviso under the Explanation below clause (3) of Article 330 of the Constitution, no change of the reservation of seats as determined by the Delimitation Commission based on 2001 census can be made until the census figures of the census to be held after 2026 are published.

(14) It has further been submitted that the Hon'ble Supreme Court in the case of *Meghraj Kothari vs. Delimitation Commission* reported in *AIR 1967 SC 669,* specifically held that the orders passed by the Delimitation Commission and published under the provisions of the Act, 2002 have the same effect as a law made by the Parliament under Article 327, and such orders cannot be called in question. As such, the present writ petition, for the said reason, is not maintainable and is liable to be dismissed at the threshold.

(15) It has further been submitted that, in the instant writ petition, the methodology adopted by the Delimitation Commission while determining the constituencies has been put under challenge, but no such objection was raised during the course of hearing before the Delimitation Commission and the writ petition has been filed after a long delay following the publication of the order of the

Delimitation Commission in the Gazette of India way back in the year 2008. Therefore, the present writ petition suffers from delay and laches. It has been submitted that the contention of the learned counsel for the petitioner for following the rotational principle in allotting the constituencies for the reserved category is a policy matter for which a writ of mandamus is not maintainable, particularly when the Constitution itself does not provide for rotation in the allotment of seats for the reserved category.

(16) Learned counsel for the petitioner, regarding the preliminary objections as to the maintainability of the writ petition, has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Kishorchandra Chhanganlal Rathod vs. Union of India and Ors. Civil Appeal No.7930 of 2024* decided on *23.07.2024*, wherein it was held in paragraph 5 of the judgment that the exercise of judicial review under Article 226 of the Constitution of India is permissible despite the restrictions contained in Article 329 of the Constitution.

(17) Regarding the preliminary objection, we are of the view that the instant writ petition, for the relief sought, is maintainable, as the challenge in the writ petition is to the vires of Section 9(1)(c) of the Act, 2002 relating to the mechanism to be adopted for reserving seats for SC/ST. The Hon'ble Supreme Court in the case of *Kishorchandra Chhanganlal Rathod (supra)* has specifically held that Article 329 of Constitution cannot be construed to completely debar citizens from pleading their grievance in cases where interpretation of constitutional provisions is required for facilitating the elections or when a case for malafide or arbitrary exercise of power is made out. The relevant paragraphs 5 to 9 of the judgment of the Hon'ble Supreme Court in *Kishorchandra Chhanganlal Rathod (supra)* are reproduced hereinbelow:-

> *"5. We, however, do not approve the view taken by the High Court that the order of delimitation of*

constituencies, issued in exercise of statutory powers under the Delimitation Act, is entirely insusceptible to the powers of judicial review exercisable under Article 226 of the Constitution. Although Article 329 undeniably restricts the scope of judicial scrutiny re: validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, it cannot be construed to have imposed for every action of delimitation exercise. If judicial intervention is deemed completely barred, citizens would not have any forum to plead their grievances, leaving them solely at the mercy of the Delimitation Commission. As a constitutional court and guardian of public interest, permitting such a scenario would be contrary to the Court's duties and the principle of separation of powers.

6. This understanding is supported by a three-Judge Bench decision of this Court in Dravida Munnetra Kazhagam v. State of T.N., (2020) 6 SCC 548, para 14] where the Court was called upon to interpret Articles 243-O and 243-ZG of the Constitution, which mirror the aforementioned Article 329. Rejecting the contention that these provisions place a complete bar on judicial intervention, it was noted that a constitutional court can intervene for facilitating the elections or when a case for mala fide or arbitrary exercise of power is made out. Using this, the Court directed delimitation to be conducted for nine new districts. Recently, a three-Judge Bench of this Court in State of Goa v. Fouziya Imtiaz Shaikh, (2021) 8 SCC 401, para 67, affirmed the ratio of the above-cited decision while discussing principles on Article 329(a), and rejected the contention which sought to prove it as per incuriam.

7. Therefore, while the Courts shall always be guided by the settled principles regarding scope, ambit and limitations on the exercise of judicial review in delimitation matters, there is nothing that precludes them to check the validity of orders passed by the Delimitation Commission on the touchstone of the Constitution. If the order is found to be manifestly arbitrary and irreconcilable to the constitutional values, the Court can grant the appropriate remedy to rectify the situation.

8. In order to prove that any kind of judicial intervention is fully prohibited, the respondents relied upon a Constitution Bench decision of this Court in Meghraj

Kothari v. Delimitation Commission, 1966 SCC OnLine SC 12. A closer examination of the aforementioned case, however, would show that the Court in that case restricted judicial intervention when the same would unnecessarily delay the election process. This is writ large from the following paragraph, where the Court explicated the reason behind adopting the hands-off approach: (SCC OnLine SC para 20)

> *"20. In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under Sections 8 and 9 were published in the Gazette of India and in the Official Gazettes of the States concerned, these matters could no longer be reagitated in a court of law. There seems to be very good reason behind such a provision. If the orders made under Sections 8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Section 10(2) of the Act clearly demonstrates the intention of the legislature that the orders under Sections 8 and 9 published under Section 10(1) were to be treated as law which was not to be questioned in any court."*

9. Hence, the aforementioned judgment does not support the respondents' contention regarding complete restriction on judicial review. A constitutional court can undertake the exercise of judicial review within the limited sphere at an appropriate stage."

(18) Thus, we are of the considered opinion that the preliminary objection regarding the maintainability of the writ petition is liable to be rejected, and accordingly, we hold that the present writ petition, for the relief sought, is maintainable.

(19) Having heard the learned counsel for the parties and perused the record, the question that falls for consideration in the present writ petition is whether Section 9(1)(c) of the Act, 2002 is ultra vires

on the ground that it provides for allotment of constituencies for the reserved category in those areas where the proportion of their population is comparatively large without providing for rotation, resulting in stagnation of a particular seat remaining reserved for the reserved category for all times to come, thereby being violative of Articles 14, 15, 19, 330 and 332 of the Constitution of India. The ancillary question that arises for consideration is that whether, in exercise of powers under Article 226 of the Constitution of India, this Court can issue directions for providing reservation on the basis of rotation in the constituencies for the Legislative Assembly by issuing a writ of mandamus for inserting such a provision in the Act, 2002.

(20) Article 330 of the Constitution provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People. Clause (2) of Article 330 provides for the number of seats to be reserved in a State or Union Territory for the Scheduled Castes or Scheduled Tribes shall, as nearly as may be, bear the same proportion to the total number of seats allotted to that State or Union Territory in the House of the People as the population of the Scheduled Castes or Scheduled Tribes in that State or Union Territory bears to the total population of the State or Union Territory. Clause (3) of Article 332 of the Constitution mandates reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the State and provides that the number of seats reserved for the Scheduled Castes and Scheduled Tribes shall be in proportion to the population of the Scheduled Castes and Scheduled Tribes in the State to the total population of the State. Thus, Articles 330(1) and 332(1) contain a mandate which is evident from the use of the expression *"seats shall be reserved"* for the Scheduled Castes and Scheduled Tribes in the House of the People and in the Legislative Assembly of every State and the number of seats required to be reserved is to be as stipulated in clause (2) of Article 330 and clause (3) of Article

332. The principle adopted by both these provisions requires that the number of seats so reserved shall, *"as nearly as may be",* bear the same proportion to the total number of seats allotted to the State in the House of the People and in the Legislative Assembly, as the case may be, as the proportion of the population of the Scheduled Castes and Scheduled Tribes in respect of which seats are so reserved bears to the total population of the State.

(21) The implementation of the constitutional mandate for reserving seats for the Scheduled Castes and Scheduled Tribes in the House of the People and in the State Legislative Assemblies is governed by a statutory regime and does not provide for reservation for any particular Scheduled Caste or Scheduled Tribe. Article 327 of the Constitution entrusts Parliament with the power to make provisions with respect to elections to either House of Parliament or to the Legislature of a State, whereas Article 329 provides for a bar to interference by courts in electoral matters, including the validity of any law relating to the delimitation of constituencies or the allotment of seats to constituencies made under Articles 327 and 328. Entry 72 of the Union List of the Seventh Schedule deals with elections to Parliament and to the legislatures of States, among other subjects. Thus, the legislative domain lies exclusively with Parliament in terms of Articles 245 and 246 read with Entry 72 of List I with regard to legislation in the election matters.

(22) The Representative of the People Act, 1950, vide Section 3 provides for allocation of seats to the States in the House of the People and the number of seats reserved for the Scheduled Castes and Scheduled Tribes as indicated in the First Schedule. Section 7(1) provides that the total number of seats in the Legislative Assembly of all the States specified in the Second Schedule by direct election from assembly constituencies and the number of seats reserved for the Scheduled Castes and for the Scheduled

Tribes, shall be as indicated in that Schedule. Parliament enacted the Act, 2002 providing for the constitution of the Delimitation Commission. The Delimitation Commission is required to readjust the division of States into territorial constituencies for the purpose of elections to the House of the People and to the State Legislative Assemblies. In terms of Section 8, the Delimitation Commission is empowered to determine the seats to be allocated to each State in the House of the People and in the Legislative Assemblies of the States on the basis of census figures of 1971. The Delimitation Commission is also empowered to determine the number of seats reserved for the Scheduled Castes and Scheduled Tribes on the basis of the 2001 census.

(23) Section 9 of the Act, 2002 provides for distribution of the seats allocated to each State in the House of the People. Section 10 of the Act, 2002 pertains to the publication of orders by the Delimitation Commission in accordance with the exercise of powers under Sections 8 and 9. Section 10(4) of the Act, 2002 specifically states that the orders so published under Section 10 shall apply to every election to the House of the People and to the Assemblies if such elections are held after the publication of such orders. The orders apply in supersession of all other provisions pertaining to representation and delimitation contained in any other law, order or notification.

(24) Article 330 of the Constitution provides for reservation of seats of Scheduled Castes and Scheduled Tribes in the House of the People and the number of seats reserved should be in proportion to the population of the Scheduled Castes and Scheduled Tribes to the total population in that State or Union Territory. Article 332, on the other hand, provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States or of the Scheduled Tribes in the State or part of the State, as the case may be, bears to the total population of the State. It

does not provide any methodology for identification of the seats to be reserved. Articles 330 as well as 332 of the Constitution do not provide any methodology for reservation of seats by applying reservation to constituencies on a rotational basis, as expressly provided under Article 243D for Panchayat elections and Article 243T for Municipal elections.

(25) Articles 330 and 332 of the Constitution are silent on the issue of methodology to be adopted for identifying reserved seats in favour of Scheduled Castes and Scheduled Tribes and confine themselves only to the determination of number of seats to be allotted/reserved for Scheduled Castes and Scheduled Tribes in a State or Union Territory. The Act, 2002 provides the methodology for identification of reserved seats as contained in Section 9(1)(c), providing therein for reservation of seats in favour of Scheduled Castes or Scheduled Tribes in those areas where the proportion of their population to the total population is comparatively large, meaning thereby that those areas where the population of Scheduled Castes and Scheduled Tribes is comparatively large are to be reserved for Scheduled Castes and Scheduled Tribes constituencies. The Act, 2002 thus provides the methodology for reservation of seats for Scheduled Castes and Scheduled Tribes in those areas where the proportion of population of Scheduled Castes and Scheduled Tribes are comparatively large, for which there is no bar under Article 330 and 332 of the Constitution of India so as to contend that the provisions of Section 9(1)(c), to that extent, are in conflict with the scheme provided under Articles 330 and 332 of the Constitution of India.

(26) The argument of the learned counsel for the petitioner contends that the provision for reservation of seats in those area where the population of SC/ST is comparatively large is arbitrary and hit by Article 14, as it amounts to curtailment of the right to vote and the right to contest elections in such constituencies by a general

category candidate. The argument so advanced deserves to be rejected for the reason that when seats are reserved for SC/ST candidates, it cannot be said that the rights of a general category candidate are violated, inasmuch as the constitutional scheme itself provides for reservation of seats under Articles 330 and 332 of the Constitution of India. The right of a general category candidate to contest an election cannot override the constitutional scheme envisaged under Articles 330 and 332 of the Constitution.

Further argument of the learned counsel for the petitioner that the petitioner's constituency has remained reserved for decades as a Scheduled Castes constituency, thereby depriving him of the right to vote for a general category candidate and forcing him into "conditional voting", is also devoid of any merit. The right to vote does not imply that a voter can dictate the terms of allotment of a constituency or insist that a constituency be allotted to candidates of a particular category. The right to vote of every citizen in an election, whether to the Lok Sabha or Legislative Assembly is recognized under Articles 325 and 326 of the Constitution subject to the limitations prescribed by or under the Constitution. Article 327 of the Constitution empowers the Parliament to make laws with respect to all matters relating to elections to either House of Parliament or to the House or either House of the Legislature of a State, including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses. Thus, the claim of the petitioner that his right to vote is adversely affected by continuing reservation of his constituency for a reserved category is misconceived, as the right to vote in elections to the Lok Sabha or the Legislative Assembly is a constitutional right subject to laws made by Parliament under Article 327 of the Constitution.

(27) Hon'ble Supreme Court in the case of **Rajbala and others vs. State of Haryana and Others** reported in **(2016) 2 SCC 445**,

delved into the questions of the right to vote and the right to contest elections and concluded that every citizen has a constitutional right both to elect and to be elected to either Parliament or a State Legislature, subject to restrictions prescribed by law. Relying upon the judgment in **People's Union for Civil Liberties (PUCL) and another vs. Union of India and another** reported in **(2003) 4 SCC 399**, the Hon'ble Supreme Court held that both the right to elect and the right to be elected are constitutional rights created by the Constitution. The Constitution itself provides, under Articles 330 and 332, for reservation of seats, and therefore the constitutional rights to vote and to contest elections must be considered in harmony with Articles 330 and 332 of the Constitution, which provide for reservation of seats in favour of the SC/ST candidates. Consequently, a citizen belonging to a reserved constituency cannot legitimately complain that his constitutional rights to vote and contest elections are hampered merely because the constituency stands reserved. The relevant paragraph 31 to 38 of the judgment in **Rajbala (supra)** are reproduced hereinbelow :

> *"31. The right to vote of every citizen at an election either to the Lok Sabha or to the Legislative Assembly is recognised under Articles 325 and 326 subject to limitations (qualifications and disqualifications) prescribed by or under the Constitution. On the other hand, the right to vote at an election either to the Rajya Sabha or to the Legislative Council of a State is confined only to Members of the electoral colleges specified under Articles 80(4) and (5) and Articles 171(3)(a), (b), (c) and (d) respectively. In the case of election to the Rajya Sabha, the electoral college is confined to elected members of Legislative Assemblies of various States and representatives of Union Territories. In the case of the Legislative Council, the electoral college is divided into four parts consisting of : (i) members of various local bodies specified under Article 171(3)(a); (ii) certain qualified graduates specified under Article 171(3)(b); (iii) persons engaged in the occupation of teaching in certain qualified*

institutions described under Article 171(3)(c); and (iv) Members of the Legislative Assembly of the State concerned. Interestingly, persons to be elected by the electors falling under any of the abovementioned categories need not belong to that category, in other words, need not be a voter in that category.

32. The electoral college for election to the Office of the President consists of elected members of both Houses of Parliament and elected members of the Legislative Assemblies of the State while the electoral college with respect to the Vice-President is confined to Members of both Houses of Parliament.

33. The Constitution prescribes certain basic minimum qualifications and disqualifications to contest an election to any of the abovementioned offices or bodies. Insofar as election to the Offices of the President and Vice-President is concerned, they are contained under Articles 58 and 66 respectively. Insofar as Parliament and the State Legislatures are concerned, such qualifications are stipulated under Articles 84 and 173, and disqualifications under Articles 102 and 191 respectively. The Constitution also authorises Parliament to make laws prescribing both further qualifications and disqualifications.

34. Interestingly, insofar as elections to Offices of the President and Vice-President are concerned, the Constitution does not expressly authorise either Parliament or Legislative Assemblies of the State to prescribe any further qualifications or disqualifications to contest an election to either of these Offices. It stipulates only two conditions which qualify a person to contest those Offices, they are — citizenship of the country and the minimum age of 35 years. Under Articles 58(1)(c) and 66(3)(c), it is further stipulated that a person who was otherwise eligible to contest for either of the abovementioned two Offices shall not be eligible unless he is qualified for election as a Member of the Lok Sabha or the Rajya Sabha respectively.

35. An examination of the scheme of these various Articles indicates that every person who is entitled to be a voter by virtue of the declaration contained under Article 326 is not automatically entitled to contest in

any of the elections referred to above. Certain further restrictions are imposed on a voter's right to contest elections to each of the abovementioned bodies. These various provisions, by implication create a constitutional right to contest elections to these various constitutional offices and bodies. Such a conclusion is irresistible since there would be no requirement to prescribe constitutional limitations on a non-existent constitutional right.

36. Articles 84 and 173 purport to stipulate qualifications for membership of Parliament and legislatures of the State respectively. Articles 102 and 191 purport to deal with disqualifications for membership of the abovementioned two bodies respectively. All the four articles authorise Parliament to prescribe further qualifications and disqualifications, as the case may be, with reference to the membership of Parliament and legislatures of the State, as the case may be.

37. The distinction between the expressions "qualification" and "disqualification" in the context of these four articles is little intriguing. There is no clear indication in any one of these four articles or in any other part of the Constitution as to what is the legal distinction between those two expressions. In common parlance, it is understood that a qualification or disqualification is the existence or absence of a particular state of affairs, which renders the achievement of a particular object either possible or impossible. Though there are two sets of articles purporting to stipulate qualifications and disqualifications, there is neither any logical pattern in these sets of articles nor any other indication which enables discernment of the legal difference between the two expressions. We reach such a conclusion because citizenship of India is expressly made a condition precedent under Articles 84 and 173 for membership of both Parliament and State Legislatures. Lack of citizenship is also expressly stipulated to be a disqualification for membership of either of the abovementioned bodies under Articles 102 and 191. In view of the stipulation under Articles 84 and 173 — citizenship is one of the requisite qualifications for contesting election to either Parliament or the State Legislature, we do not see any

reason nor is anything brought to our notice by the learned counsel appearing on either side to again stipulate under Articles 102 and 191 that lack of citizenship renders a person disqualified from contesting elections to those bodies. The learned counsel appearing on either side are also unanimously of the same opinion. We are, therefore, of the opinion that the distinction between qualifications and disqualifications is purely semantic.

38. We, therefore, proceed on the basis that, subject to restrictions mentioned above, every citizen has a constitutional right to elect and to be elected to either Parliament or the State Legislatures."

(28) The next question that falls for consideration is whether the reservation of seats in favour of SC/ST candidates in those areas where the SC/ST population is comparatively larger is arbitrary and, for that reason, whether the relevant provision contained in Section 9(1)(c) of the Act, 2002 is liable to be struck down, inasmuch as such a scheme of reservation has resulted in certain constituencies reserved in favour of SC/ST candidates for decades, which is alleged to be arbitrary and unreasonable. The issue as to whether a statute can be declared unconstitutional on the ground that it is arbitrary and therefore violative of Article 14 of the Constitution was specifically considered by the Hon'ble Supreme Court in the case of **Rajbala (supra)**. It was specifically held in paragraph 65 of the judgment that it is not permissible to declare a statute unconstitutional merely on the ground that it is "arbitrary". The relevant paragraphs 51 to 65 of the judgment in **Rajbala (supra)** is reproduced hereinbelow:

"51. We first deal with the submission of violation of Article 14 on the ground of arbitrariness.

52. The petitioners argued that the scheme of the Constitution is to establish a democratic, republican form of Government as proclaimed in the Preamble to the Constitution and any law which is inconsistent with such scheme is irrational and therefore "arbitrary". In support

of the proposition that the Constitution seeks to establish a democratic republic and they are the basic features of the Constitution, the petitioners placed reliance upon Kesavananda Bharati v. State of Kerala [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225] , SCC para 1159 and Indira Nehru Gandhi v. Raj Narain [Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1] , SCC paras 563 and 578. There cannot be any dispute about the proposition.

53. In support of the proposition that a statute can be declared unconstitutional on the ground that it is arbitrary and therefore violative of Article 14, the petitioners relied upon the judgments of this Court in Subramanian Swamy v. CBI [Subramanian Swamy v. CBI, (2014) 8 SCC 682, Indian Council of Legal Aid & Advice v. Bar Council of India [Indian Council of Legal Aid & Advice v. Bar Council of India, (1995) 1 SCC 732] , B. Prabhakar Rao v. State of A.P. [B. Prabhakar Rao v. State of A.P., 1985 Supp SCC 432] and D.S. Nakara v. Union of India [(1983) 1 SCC 305] and certain observations made by A.C. Gupta, J. in his dissenting judgment in R.K. Garg v. Union of India [(1981) 4 SCC 675] .

54. <u>In our opinion, none of the abovementioned cases is an authority for the proposition that an enactment could be declared unconstitutional on the ground it is "arbitrary"</u>.

55. In Subramanian Swamy case [Subramanian Swamy v. CBI, (2014) 8 SCC 682] , the dispute revolved around the constitutionality of Section 6-A of the Delhi Special Police Establishment Act, 1946, which was introduced by an amendment in the year 2003. It stipulated that the Delhi Special Police Establishment shall not conduct any "enquiry" or "investigation" into any offence falling under the Prevention of Corruption Act, 1988, alleged to have been committed by certain classes of employees of the Central Government, etc. The said provision was challenged on the ground it was arbitrary and unreasonable and therefore violative of Article 14. The submission was resisted by the respondent (Union of India) on the ground that such a challenge is impermissible in view of the decision in State of A.P. v. McDowell & Co. [(1996) 3 SCC 709, para 43] But the Constitution Bench eventually declared the impugned provision unconstitutional not on the ground of it being arbitrary but on the ground that it makes an unreasonable

classification of an otherwise homogenous group of officers accused of committing an offence under the Prevention of Corruption Act without there being reasonable nexus between the classification and the object of the Act.

56. Coming to Indian Council of Legal Aid & Advice v. Bar Council of India [Indian Council of Legal Aid & Advice v. Bar Council of India, (1995) 1 SCC 732] , it was a case where the legality of a rule made by the Bar Council of India prohibiting the enrolment of persons who completed the age of 45 years was in issue. The rule was challenged on two grounds. Firstly, that the rule was beyond the competence of the Bar Council of India as the Advocates Act, 1961 did not authorise the Bar Council of India to prescribe an upper age-limit for enrolment. Secondly, that the rule is discriminatory and thirdly, the fixation of upper age-limit of 45 years is arbitrary.

57. On an examination of the scheme of the Advocates Act, this Court came to a conclusion that the impugned rule was beyond the rule-making power of the Bar Council of India and, therefore, ultra vires the Act. This Court also held that the rule was "unreasonable and arbitrary".

58. We are of the opinion that in view of the conclusion recorded by the Court that the rule is beyond the competence of the Bar Council of India, it was not really necessary to make any further scrutiny whether the rule was unreasonable and arbitrary. Apart from that, in view of the conclusion recorded that the rule was clearly discriminatory, the inquiry whether the choice of the upper age-limit of 45 years is arbitrary or not is once again not necessary for the determination of the case. At any rate, the declaration made by this Court in the said case with regard to a piece of subordinate legislation, in our view, cannot be an authority for the proposition that a statute could be declared unconstitutional on the ground that in the opinion of the Court the Act is arbitrary.

59. Now we shall examine Prabhakar Rao case [1985 Supp SCC 432] . The facts of the case are that the age of superannuation of employees of the State of Andhra Pradesh was 55 till the year 1979. In 1979, it was enhanced to 58 years. The Government of Andhra Pradesh in February 1983 decided to roll back the age of superannuation to 55 years and took appropriate legal

steps which eventually culminated in passing of Act 23 of 1984. The said Act came to be amended by Ordinance 24 of 1984, again enhancing the age of superannuation to 58 years which was followed up by Act 3 of 1985. While enhancing the age of superannuation to 58 for the second time by the abovementioned Ordinance 24 of 1984 and Act 3 of 1985, benefit of the enhanced age of superannuation was given to certain employees who had retired in the interregnum between 20-2-1983 and 23-8-1984; while others were denied such benefit. Prabhakar Rao and others who were denied the benefit challenged the legislation.

60. *This Court placing reliance on D.S. Nakara case [(1983) 1 SCC 305] concluded that the impugned Act insofar as it denied the benefit to some of the employees who retired in the interregnum between two dates mentioned above was unsustainable and held as follows : (Prabhakar Rao case [B. Prabhakar Rao v. State of A.P., 1985 Supp SCC 432] , SCC p. 461, para 20)*

> *"20. ... The principle of Nakara clearly applies. The division of government employees into two classes, those who had already attained the age of 55 on 28-2-1983 and those who attained the age of 55 between 28-2-1983 and 23-8-1984 on the one hand, and the rest on the other and denying the benefit of the higher age of superannuation to the former class is as arbitrary as the division of government employees entitled to pension in the past and in the future into two classes, that is, those that had retired prior to a specified date and those that retired or would retire after the specified date and confining the benefits of the new pension rules to the latter class only."*
>
> *(emphasis supplied)*

The Bench also observed : (SCC p. 461, para 20)

> *"20. ... Now if all affected employees hit by the reduction of the age of superannuation formed a class and no sooner than the age of superannuation was reduced, it was realised that injustice had been done and it was decided that steps should be taken to undo what had been*

done, there was no reason to pick out a class of persons who deserved the same treatment and exclude from the benefits of the beneficent treatment by classifying them as a separate group merely because of the delay in taking the remedial action already decided upon. We do not doubt that the Judge's friend and counsellor, 'the common man', if asked, will unhesitatingly respond that it would be plainly unfair to make any such classification. The commonsense response that may be expected from the common man, untrammelled by legal lore and learning, should always help the Judge in deciding questions of fairness, arbitrariness, etc. Viewed from whatever angle, to our minds, the action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory."

The petitioners in the present case placed reliance on the last sentence which said that the "action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory" in support of their submission that an Act could be declared unconstitutional on the ground that it is arbitrary.

61. We are of the opinion that Prabhakar Rao case [1985 Supp SCC 432] is not an authority on the proposition advanced by the petitioners. The ratio of Prabhakar Rao case is that there was an unreasonable classification between the employees of the State of Andhra Pradesh on the basis of the date of their attaining the age of superannuation.

62. Observations by Gupta, J. in R.K. Garg case [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] no doubt indicate that the doctrine propounded by this Court in E.P. Royappa v. State of T.N. [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] and Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] that arbitrariness is antithetical to the "concept of equality" is also relevant while examining the constitutionality of a statute but such observations are a part of the dissenting judgment and not the ratio decidendi of the judgment.

63. *The learned Attorney General heavily relied upon para 43 of the State of A.P. v. McDowell & Co. [State of A.P. v. McDowell & Co., (1996) 3 SCC 709, para 43] which dealt with the question of declaring a statute unconstitutional on the ground it is arbitrary : (SCC pp. 737-39, paras 43-44)*

> *"43. Shri Rohinton Nariman submitted that inasmuch as a large number of persons falling within the exempted categories are allowed to consume intoxicating liquors in the State of Andhra Pradesh, the total prohibition of manufacture and production of these liquors is 'arbitrary' and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in State of T.N. v. Ananthi Ammal [State of T.N. v. Ananthi Ammal, (1995) 1 SCC 519] . Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions in this behalf. In the United Kingdom, Parliament is supreme. There are no limitations upon the power of Parliament. No court in the United Kingdom can strike down an Act made by Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways viz. the division of legislative powers between the States and the Federal Government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness — concepts inspired by the decisions of United States Supreme Court. Even*

in USA, these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary ["Per Jeevan Reddy, J. : An expression used widely and rather indiscriminately — an expression of inherently imprecise import. The extensive use of this expression in India reminds one of what Frankfurter, J. said in Tiller v. Atlantic Coast Line Railroad Co., 1943 SCC OnLine US SC 36 : 87 L Ed 610 : 318 US 54 (1943). "The phrase begins life as a literary expression; its felicity leads to its lazy repetition and repetition soon establishes it as a legal formula, undiscriminatingly used to express different and sometimes contradictory ideas", said the learned Judge."] or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review

is limited to three grounds viz. (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality, and (iii) procedural impropriety (see Council of Civil Service Unions v. Minister for the Civil Service [Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] which decision has been accepted by this Court as well). The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. (See the opinions of Lords Lowry and Ackner in R. v. Secy. of State for Home Deptt., ex p Brind [R. v. Secy. of State for Home Deptt., ex p Brind, (1991) 1 AC 696 : (1991) 2 WLR 588 : (1991) 1 All ER 720 (HL)] , AC at pp. 766-67 and 762.) It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted. Now, coming to the decision in Ananthi Ammal [State of T.N. v. Ananthi Ammal, (1995) 1 SCC 519] , we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation in instalments if it exceeded rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed : (SCC p. 526, para 7)

'7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.'

44. It is this paragraph which is strongly relied upon by Shri Nariman. We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word 'arbitrary' in para 7 was used in the sense of being discriminatory, as the reading of the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 insofar as it provided for payment of compensation in instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labelled as arbitrary. It is in this sense that the expression 'arbitrary' was used in para 7.

(emphasis supplied)

64. From the above extract from McDowell & Co. case [State of A.P. v. McDowell & Co., (1996) 3 SCC 709, para 43] it is clear that the courts in this country do not undertake the task of declaring a piece of legislation unconstitutional on the ground that the legislation is "arbitrary" since such an exercise implies a value judgment and courts do not examine the wisdom of legislative choices unless the legislation is otherwise violative of some specific provision of the Constitution. To undertake such an examination would amount to virtually importing the doctrine of "substantive due process" employed by the American Supreme Court at an earlier point of time while examining the constitutionality of Indian legislation. As pointed out in the above extract,

> *even in United States the doctrine is currently of doubtful legitimacy. This Court long back in A.S. Krishna v. State of Madras [A.S. Krishna v. State of Madras, AIR 1957 SC 297 : 1957 Cri LJ 409] declared that the doctrine of due process has no application under the Indian ConstitutionAs pointed out by Frankfurter, J., arbitrariness became a mantra.*
>
> *65. For the above reasons, we are of the opinion that it is not permissible for this Court to declare a statute unconstitutional on the ground that it is "arbitrary"."*
>
> *(emphasis supplied)*

(29) Articles 330 and 332 of the Constitution of India do not contain any prohibition against the provisions contained in Section 9 (1) (c) of the Act, 2002, which provide for reservation of seats for SC/ST candidates in those areas where the SC/ST population is comparatively large. Hence, it cannot be said that such a provision is violative of any constitutional provision. In fact, Parliament, in its wisdom, enacted such a provision in the Act, 2002 in exercise of the powers conferred under Article 327 of the Constitution, which neither forbids nor infringes any constitutional provision.

(30) The validity of Act can be challenged only on two grounds, namely, (i) lack of legislative competence, and (ii) violation of any Fundamental Rights contained in Part III of the Constitution or any other constitutional provisions, with an exception carved out by the courts where the statutory enactment is manifestly arbitrary and unreasonable. We do not find that providing reservation under Section 9(1)(c) of the Act, 2002 for Scheduled Castes and Scheduled Tribes in those areas where comparatively the population of Scheduled Castes and Scheduled Tribes is large suffers from manifest arbitrariness or can be said to be unreasonable inasmuch as the legislature in its wisdom has provided for reserving seats where population of SC/ST is comparatively larger which cannot be termed as arbitrary or unreasonable. It is not the case of the petitioner that Section 9(1)

(c) in any manner lacks legislative competence or violates any of the Fundamental Rights or any other constitutional permission.

(31) The Hon'ble Supreme Court in the case of **K.S. Puttaswamy (Retired) and another (AADHAAR) vs. Union of India and Anothe**r reported in **(2019) 1 SCC 1**, reiterated the law as laid down by the Hon'ble Supreme Court in the case of **Rajbala (supra)** and held, in paragraph 103 of the judgment, as reproduced hereinbelow:

> *"**103.** In support of the aforesaid proposition that an Act of Parliament can be invalidated only on the aforesaid two grounds, passages from various judgments were extracted [State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312 : (2012) 3 SCC (Civ) 481] , [Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1 : 3 SCEC 35] . The Court also noted the observations from State of A.P. v. McDowell and Co. [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] wherein it was held that apart from the aforesaid two grounds, no third ground is available to validate any piece of legislation. In the process, it was further noted that in Rajbala v. State of Haryana [Rajbala v. State of Haryana, (2016) 2 SCC 445] (which followed McDowell and Co. case [State of A.P. v. McDowell and Co., (1996) 3 SCC 709]), the Court held that a legislation cannot be declared unconstitutional on the ground that it is "arbitrary" inasmuch as examining as to whether a particular Act is arbitrary or not implies a value judgment and courts do not examine the wisdom of legislative choices, and, therefore, cannot undertake this exercise.*

(32) In view of the settled principle of law as indicated hereinabove, we find that the challenge in the petition to the constitutional validity of Section 9(1)(c) of the Act, 2002 does not suffer from any infirmity or illegality and the petitioner has miserably failed to point out any ground so that it can be held that Section 9(1)(c) is unconstitutional. We find that Section 9(1)(c) has been enacted by the Parliament, which is within its competence falling under Entry

72 of List I of the Seventh Schedule of the Constitution. The provisions of Section 9(1)(c) neither violate the Fundamental Rights contained in Part III of the Constitution nor violates any constitutional provisions. Further, as Article 330 and 332 of the Constitution do not provide any methodology for reservation, leaving it open to the Parliament to make appropriate measures through legislation, the same has been done by the enactment of Act, 2002, which provides for reservation of seats for Scheduled Castes and Scheduled Tribes on the basis of areas where the population of Scheduled Castes and Scheduled Tribes is comparatively large. We are of the view that a statute enacted by Parliament or a State Legislature cannot be declared unconstitutional unless it can be held that the appropriate Legislature does not have the competence to make the law or that it violates any of the Fundamental Rights enumerated in Part III of the Constitution or any other constitutional provisions.

(33) The Constitutional debate negativing the proposal for allotment of seats in favour of Scheduled Castes and Scheduled Tribes in areas where the population of Scheduled Castes and Scheduled Tribes is comparatively large does not mean that the Parliament, in its legislative wisdom, cannot provide for the same, as it in no manner violates any constitutional provisions. In fact, the petitioner, through the present writ petition, has sought to implement the population-based rosters in reservation of seats for Scheduled Castes and Scheduled Tribes in State Elections as well as Parliament Elections, which is a legislative function, and this Court, in exercise of Article 226 of the Constitution of India, cannot issue any such direction to the legislature to enact the law in a particular manner as sought by the petitioner.

(34) Hon’ble Supreme Court in the case of **Union of India vs. Deoki Nandan Aggarwal** reported in **1992 Supp (1) SCC 323** has held in Paragraph 14 that the power to legislate has not been conferred

on the courts and, therefore, the court cannot add words to a statute or read words into it which are not there. Paragraph 14 of the judgment in the case of **Deoki Nandan Aggarwal (supra)** is reproduced hereinbelow:

> *"**14.** We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. Vide P.K. Unni v. Nirmala Industries [(1990) 2 SCC 378, 383-84 : (1990) 1 SCR 482, 488] , Mangilal v. Suganchand Rathi [(1964) 5 SCR 239 : AIR 1965 SC 101] , Sri Ram Ram Narain Medhi v. State of Bombay [1959 Supp 1 SCR 489 : AIR 1959 SC 459] , Hira Devi (Smt) v. District Board, Shahjahanpur [(1952) 2 SCC 154 : 1952 SCR 1122, 1131 : AIR 1952 SC 362] , Nalinakhya Bysack v. Shyam Sunder Haldar [(1953) 1 SCC 167 : 1953 SCR 533, 545 : AIR 1953 SC 148] , Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha [(1980) 2 SCC 593 : 1980 SCC (L&S) 197 : (1980) 2 SCR 146] , G. Narayanaswami v. G. Pannerselvam [(1972) 3 SCC 717 : (1973) 1 SCR 172, 182] , N.S. Vardachari v. G. Vasantha Pai [(1972) 2 SCC 594 : (1973) 1 SCR 886] , Union of India v. Sankal Chand Himatlal Sheth [(1977) 4 SCC 193 : 1977 SCC (L&S) 435 : (1978) 1 SCR 423] and CST v. Auriaya Chamber of Commerce, Allahabad [(1986) 3 SCC 50, 55 : 1986 SCC (Tax) 449 :*

(1986) 2 SCR 430, 438] . Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme, will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power."

(35) Similarly, in the case of **Vemareddy Kumaraswamy Reddy vs. State of A.P.** reported in **(2006) 2 SCC 670,** the Hon'ble Supreme Court in Paragraph 15 observed hereinbelow :

*"**15.** Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so". (See Frankfurter "Some Reflections on the Reading of Statutes in 'Essays on Jurisprudence' ", Columbia Law Review, p. 51.)"*

(36) Hon'ble Supreme Court in the case of **Suresh Seth vs. Indore Municipal Corporation** reported in **(2005) 13 SCC 287** has held in Paragraph 5 that the Court cannot issue any direction to the legislature to make any particular kind of enactment because, under the constitutional scheme, Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation.

(37) Hon'ble Supreme Court in the case of **Supreme Court Employees' Welfare Association vs. Union of India** reported in **(1989) 2 SCC 187** has ruled in Paragraph 51 as hereinunder :

> *"**51.** There can be no doubt that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority."*

(38) Hon'ble Supreme Court in the case of **Manoj Sharma vs. State and others** reported in **(2008) 16 SCC 1** has held in Paragraph 21 as under:

> *"**21.** Ordinarily, we would have agreed with Mr B.B. Singh. The doctrine of judicial restraint which has been emphasised repeatedly by this Court e.g. in Aravali Golf Club v. Chander Hass [(2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289 : JT (2008) 3 SC 221] and Govt. of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720] restricts the power of the Court and does not permit the Court to ordinarily encroach into the legislative or executive domain. As observed by this Court in the above decisions, there is a broad separation of powers in the Constitution and it would not be proper for one organ of the State to encroach into the domain of another organ."*

(39) Hon'ble Supreme Court in **State of U.P. vs. Mahindra and Mahindra Ltd.** reported in **(2011) 13 SCC 77** has held in Paragraph 10 that the judiciary has been vested with the power to interpret legislation and to give effect to it, as the parameters of the jurisdiction of both organs are distinct and earmarked. Paragraph 10 of the judgment is reproduced hereinbelow :

> *"**10.** Within our Constitution, we have specifically demarcated the ambit of power and the boundaries of the three organs of the society by laying down the principles of separation of powers, which is being adhered to for carrying out democratic functioning of the country. So far as the legislation is concerned, the exclusive domain is with the legislature. Subordinate legislations are framed by the executive by exercising the delegated power conferred by the statute, which is the rule-making power. The judiciary has been vested with the power to interpret the aforesaid legislations and to give effect to them since the parameters*

> *of the jurisdiction of both the organs are earmarked. Therefore, it is always appropriate for each of the organs to function within its domain. It is inappropriate for the courts to issue a mandate to legislate an Act and also to make a subordinate legislation in a particular manner. In this particular case, the High Court has directed the subordinate legislation to substitute wordings in a particular manner, thereby assuming to itself the role of a supervisory authority, which according to us, is not a power vested in the High Court."*

(40) Thus, it is not within the domain of this court to issue directions for legislating the Act, 2002 in a manner so as to provide for rotation of reserved seats for Assembly/Parliamentary constituencies as provided under Article 243(D) and 243(T) for Panchayats and Municipalities etc. and it is the Parliament which has to take call on the subjects. Further, we are of the view that where the populations of SC/ST are comparatively larger, then in such constituency a SC/ST candidate by virtue of its large population can itself get elected without the aid of reservation. The goals of social justice, political justice and equality as provided in our Constitution can only be achieved by rotation of seats enabling the SC/ST candidates to get elected even from those seats where their population is comparatively much low to the overall population of the constituency. It is for the parliament to ponder on the issue and legislate as per its wisdom and this court cannot issue any direction so as to compel the State for providing roster in reservation for SC/ST in Assembly/ Parliamentary constituencies in view of the settled principles of law as discussed hereinabove.

(41) Accordingly, the writ petition is **dismissed**. No order as to costs.

(Amitabh Kumar Rai, J.) (Alok Mathur, J.)

June 22, 2026
Shubhankar