

# The Peculiar Case of the Uttar Pradesh Local Body Elections- 2022

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The Urban Local Bodies elections in the State of Uttar Pradesh that were due to be held in the year 2022, were recently in news when a division bench of the Allahabad High Court, sitting at Lucknow, quashed the draft notifications issued by the Uttar Pradesh government on December 5, 2022, vide which the State government had issued a provisional list of reserved seats for mayors of 17 municipal corporations, chairpersons of 200 municipal councils and 545 Nagar Panchayats for the urban local body elections and sought suggestions/objections.

The verdict comes on the back of Petitions challenging the preparation of the OBC reservation draft without following the triple test formula prescribed by the Hon'ble Supreme Court. The petitioners had pleaded that the Supreme Court in *K. Krishna Murthy (Dr.) & Ors. Vs. Union of India*, reported in (2010) 7 SCC 202 had held that the backwardness with relation to local bodies has to be "political" – i.e. underrepresentation in politics. It differs from "social and educational backwardness", which is used to grant reservations in seats in educational institutions or government jobs and it is in the aforesaid light that the reservation policies for reservation in local bodies should be reconfigured.

Further, the Supreme Court in *Vikas Kishanrao Gawali Vs. State of Maharashtra & Ors.* reported in (2021) 6 SCC 73 has laid down that a state must:

- i. set up a dedicated, independent commission to examine backwardness in local bodies within the aforesaid state;
- ii. the aforesaid state must determine the size of the quota based on the commission's data; and
- iii. these reservations, combined with Scheduled Castes and Scheduled Tribes quotas, should not be more than 50% of the total seats in the local body.

Thus, it is amply clear, that the triple test formula has to be followed in entirety for the purpose of reservation of Other Backward Classes category in the local bodies election.

It is for the aforesaid reason that the Supreme Court, in *Suresh Mahajan Vs State of M.P.* reported in 2022 SCC OnLine SC 589, while dealing with the provisions of the Madhya Pradesh Municipal Act, 1956, directed the seats reserved for the OBC to be notified as General Category as the mandate of the triple test formula could not be completed in time by the state government.

Identical issue arose in the State of Jharkhand, whereby the exercise as laid down in the aforesaid triple test formula as mentioned in re: *Vikas Kishanrao Gawali Vs. State of Maharashtra & Ors (Supra)* could not be undertaken in time, for allocation of reservation of seats for the Other Backward Class category citizens in the local bodies election, hence, conscious decision has been taken by the State Government of Jharkhand to not provide for any reservation for Other Backward Class Category in the recent local body elections in the State of Jharkhand.

Also very recently the Hon'ble High Court of Karnataka vide Judgement and Order dated 30.09.2022 in *Writ Petition No. 17191/2022 (LB-BMP) (Sri. Vasanth. B.H. Vs State of Karnatka and Others)* and the Hon'ble Patna High Court vide Judgement and order dated 29.09.2022 in *Civil Writ Jurisdiction Case no. 12514 of 2022 (Sunil Kumar and Others Vs State of Bihar and Others)* have also set aside notifications reserving seats for Other Backward Classes, or OBCs, in municipal elections in Bengaluru and Bihar. Both the Hon'ble High Courts ruled that the state governments had not undertaken a proper data collection exercise before reserving seats for OBCs, as mandated by the Hon'ble Supreme Court.

However, the Supreme Court, very recently, on 04.01.2023 stayed the Judgment and Order dated 27.12.2022 of the Allahabad High Court, sitting at Lucknow, only to the extent whereby a direction was given by a division bench of the Hon'ble Allahabad High Court, to the Uttar Pradesh State Election Commission to notify the Urban local body elections without the Other Backward Classes category reservation. The rest of the Judgment of the Allahabad High Court, sitting at

Lucknow, quashing the draft notification dated 05.12.2022 and mandating that triple test formula is essential as also the direction for constituting a dedicated commission is intact and the same has not been interfered with. Further, the State Government of Uttar Pradesh has complied the Judgment insofar as constitution of commission is concerned. Thus the Allahabad High Court, sitting at Lucknow, had followed the dictum of law as enunciated, in *Suresh Mahajan Vs State of M.P. (Supra)* and *Vikas Kishanrao Gawali Vs. State of Maharashtra & Ors (Supra)*

Further, the Supreme Court had issued directions that the newly appointed commission, constituted for undertaking the exercise of conducting empirical study on Backwardness for the purposes of providing reservation to Backward Class of citizens in the context of elections to the urban local bodies, shall be complete the aforesaid exercise as expeditiously as possible, latest by 31.03.2023.

In the meanwhile, for the local bodies whose term would expire, the Hon'ble Supreme Court allowed the delegation of powers to a 3-member committee headed by the District Magistrate, with a condition that no major policy decision should be taken.

However, in all these hustle bustle and turn of events, one cannot lose sight of the fact that the purpose for establishing urban local government, including the municipalities, vide the 74<sup>th</sup> Constitutional Amendment was not only to ensure fair representation of social diversity in the composition of elected local bodies to contribute to the empowerment of the traditionally weaker sections in society local bodies, but also to ensure that the actual power is conferred on elected representatives at the local level. The apparent reasoning is that the elected representatives are more answerable to the public at large as they have to face the public every five years. Moreover, being residents of the same area, they are also alive to the problems of public being faced at local level, which vary from areas to areas.

In the present circumstances, when the elections are already due in the State of Uttar Pradesh it cannot be delayed much further as also in view of the constitutional mandate provided in Article 243 U of the Constitution of India which mandates that a State is obliged to ensure that the presence of newly elected body in every local body before the expiry of 5 (five) years term of the outgoing elected body.

In the present circumstances this kind of anomaly has arisen only because the state officials did not carry out the exercise/procedure laid down in the triple test formula for the purpose of reservation of other backward classes in the local bodies election. Hence, the 3-member committee headed by the District Magistrate, would be governing the citizens the time being who were ought to be governed by the elected representatives as per the constitutional mandate and the object of the 74<sup>th</sup> Amendment Act.

Thus, the constitutional scheme mandates the local self-government must be governed by the duly elected representatives uninterrupted what can now only be positively expected is that the present case would only be treated as an exceptional anomaly, which would not set any precedent for delaying the local bodies elections and the concerned officials shall undertake the triple test formula exercise as expeditiously as possible in light of the judgment of the Supreme Court as well as the Allahabad High Court, sitting at Lucknow, and the elections will notified immediately thereafter, so that the constitutional scheme as also the purport and intent of 74<sup>th</sup> Amendment is followed in its letter and spirit.

Further it is expected that taking cue from the present situation, and learning a lesson for all times to come the concerned state officials shall from next time onwards undertake delimitation or constitute an independent dedicated commission for the purpose of reservation of OBC seats, which indeed is a continuous exercise to be undertaken by the concerned authority, well-in-advance to ensure that the elections of the concerned local body are notified in time so that the elected body would be able to take over the reigns of its administration without any disruption and continuity of governance, thereby upholding the tenet of Government of the people, by the people and for the people.