



Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**WRIT PETITION NOS. 2920 AND 2924 OF 2025 (F)**

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**WRIT PETITION NO. 2920 OF 2025 (F)**

1. Mr. Manuel Borges, Son of Simplicio Borges,  
Aged 56 years, Indian National, Resident of H.  
No. 85, Cupem, Nuvem, South Goa, Goa. ... Petitioner

*V e r s u s*

1. Goa State Election Commission, Thr. The  
Commissioner, Having office at Next to  
Joggers Park, Near BSNL Tower, Altinho,  
Panaji, Goa.
2. State of Goa, Thr. Its Chief Secretary,  
Having office at Secretariate, Porvorim, Goa.
3. Goa State Commission for Backward  
Classes, Thr. Its Chairman, Old IPHB  
Complex, Altinho, Panaji, Goa.
4. North Goa Zilla Panchayat, Thr its CEO, ... Respondents  
Panaji, Goa.

**A N D**

**WRIT PETITION NO. 2924 OF 2025 (F)**

1. Mr. Moreno Carlos Rebelo, Son of Inacio  
Caetano Rebelo, Aged 58 years, Indian  
National, Resident of H. No. 152, Curtorim, ... Petitioner  
Curtorim, Salcete, South Goa, Goa.

*V e r s u s*

1. Goa State Election Commission, Thr. The  
Commissioner, Having office at Next to  
Joggers Park, Near BSNL Tower, Altinho,  
Panaji, Goa.

2. State of Goa, Thr. Its Chief Secretary,  
Having office at Secretariate, Porvorim, Goa.

3. Goa State Commission for Backward  
Classes, Thr. Its Chairman, Old IPHB  
Complex, Altinho, Panaji, Goa.

4. North Goa Zilla Panchayat, Thr its CEO, ... Respondents  
Panaji, Goa.

**Mr. S. S. Kantak, Senior Advocate** with *Mr. Abhijit Gosavi, Ms. Neha Kholkar, Mr. Gaurang Kerkar, Ms. Krupa Naik, Ms. Shweta Shetgaonkar and Ms. Saicha Desai, Advocates for the Petitioners.*

**Mr. Somnath Karpe, Advocate** with *Mr. Anand Shirodkar, Ms. Siddhi Parodkar, Ms. Riddhi Shirodkar, Ms. Samiksha Vaigankar and Ms. Sonali Gaonkar, Advocates for Respondent no. 1 in both the Petitions.*

**Mr. Devidas J. Pangam, Advocate General** with *Mr. Prashil Arolkar, Additional Government Advocate for Respondent nos. 2 and 3 in WP No. 2920 of 2025(F) and with Ms. Maria Simone Correia, Additional Government Advocate for Respondent nos. 2 and 3 in WP No. 2924 of 2025(F).*

**Mr. H. D. Naik, Advocate** (through V.C. with *Ms. Preeta Gaykar, Advocate for Respondent no. 4 in both the Petitions.*

**CORAM:** **SARANG V. KOTWAL &  
ASHISH SAHADEV CHAVAN, JJ.**

**RESERVED ON:** **25<sup>th</sup> NOVEMBER, 2025**  
**PRONOUNCED ON:** **27<sup>th</sup> NOVEMBER, 2025**

**JUDGMENT** (Per Sarang V. Kotwal, J.)

1. Both these Petitions are decided by this common judgment as they challenge the same notification bearing no. 4/64/Reservation-Z.P./-2025-26/SEC/197 dated 06.11.2025 issued by the Goa State

Election Commission providing reservation of seats for General Elections to the South Goa, Zilla Panchayat.

2. Heard Mr. Kantak, learned Senior Advocate appearing for both the Petitioners, Mr. Somnath Karpe, learned Advocate appearing for the Respondent no. 1, Mr. Devidas Pangam, learned Advocate General appearing for Respondent nos. 2 and 3 and Mr. Naik, learned Counsel appearing for Respondent no. 4.

3. With consent of the parties, the Petitions are decided finally, hence 'Rule'. Rule is made returnable forthwith.

4. In both these Petitions, the Respondent no. 1 is the Goa State Election Commission, Respondent no.2 is the State of Goa and Respondent no. 3 is the Goa State Commission for Backward Classes. They are the contesting Respondents.

The Petitioner's case in Writ Petition No. 2920 of 2025(F), is that he is a voter from Scheduled Tribe Category (ST) of Constituency No. 09-Nuvem, South Goa and is aspiring to contest the General Elections to the South Goa Zilla Panchayat to be held in December, 2025 from Constituency No. 09-Nuvem, South Goa. The State Government issued a Notification bearing No.19/DP/ZP/ELN/2025/7840 dated 14.10.2025 under Rule 10 of the Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996, published in the Official Gazette dated 16.10.2025 appointing the date to elect the members of the South Goa and the North Goa Zilla Panchayats, as 13.12.2025. The impugned

Notification dated 06.11.2025 issued by the Goa State Election Commission, published in the Official Gazette mentions the reservation of seats for General Elections to the South Goa Zilla Panchayat. The Constituency of 09-Nuvem is reserved for an OBC candidate. It is the case of the Petitioner that the said Notification was in violation of the required conditions known as the 'triple test' laid down by the Hon'ble Supreme Court in various judgments. The Petitioner wrote a letter dated 10.11.2025 to the Respondent no. 1-Goa State Election Commission requesting the details whether the triple test was complied with but till the filing of the Petition, he had not received any response to that letter. Therefore, he approached this Court challenging the said Notification.

5. The case of the Petitioner in Writ Petition no. 2924 of 2025 (F) is that he was a voter from the General Category of Constituency No. 15 – Curtorim, South Goa, and was aspiring to contest the same General Elections from Constituency No. 15-Curtorim. By the impugned Notification, the said seat was reserved for OBC candidate.

6. The challenge to the said Notification is made by both the Petitioners on similar grounds.

### **Submissions of Shri Kantak on behalf of the Petitioners-**

7. Learned Senior Advocate Shri Kantak submitted that the two leading judgments of the Hon'ble Supreme Court on the issue of the requirement which were to be complied with while issuing the Notification reserving the seats for OBC candidates, are as follows :

(i) **K. Krishna Murthy & Ors. vs. Union of India & anr.**<sup>1</sup>

(ii) **Vikas Gawali vs. State of Maharashtra & Ors.**<sup>2</sup>

He submitted that the Hon'ble Supreme Court has laid down the triple test for reservation in Panchayat Election. The first test is to set up a dedicated commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness qua local bodies within the State.

The second test is to specify the proportion of reservation required to be provisioned local body-wise in light of the recommendations of the Commission so as not to fall foul of over breadth, and the third test or the condition is that in any case such reservation shall not exceed the aggregate of 50% of the total seats reserved in favour of SCs/STs/OBCs taken together. Shri Kantak submitted that the first condition of setting up a dedicated commission itself is not fulfilled therefore there was no question of specifying the proportion as was required under the second test. As far as the third test is concerned, Shri Kantak did not challenge the fact that the total

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1 (2010) 7 SCC 202

2 (2021) 6 SCC 73

reserved seats for SCs/STs/OBCs if taken together, did not cross an aggregate of 50% of the total seats.

8. Shri Kantak relied on the observations made by a Division Bench of this Court in the case of **Alex Domnic D'Souza vs. Goa State Election Commission & anr.**<sup>3</sup> In that case the Division Bench considered the submissions that the State Election Commission, the State Government and the OBC Commission had failed to comply with the triple test condition before reserving seats in the local bodies for the OBCs. In that judgment, the Division Bench recorded that the Court was satisfied that there was compliance of the condition nos. 2 and 3 in the triple test but the Division Bench was critical about the non-compliance of the first condition. The Division Bench referred to **K. Krishna Murthy's** case decided on 11.05.2010 and observed that for 12 long years, till the order was passed in **Alex Domnic D'Souza's** case, the material on record sufficiently established that the State Government and the OBC Commission did practically nothing towards compliance of the triple test requirements. No practical steps were taken by any of the authorities to comply with the constitutional requirements referred in the triple test formulated by the Hon'ble Supreme Court in **K. Krishna Murthy's** case. The Judgment further records that the Commission had received a letter dated 30.06.2022 from the State Government seeking data on OBCs and within three days of receiving such letter, almost 80% of the data was collected by

<sup>3</sup> 2022 SCC OnLine Bom 1550

the OBC Commission, and the balance 20% data was to be made available within the next 7-8 days. After going through the record, the Division Bench further observed that the OBC Commission can be said to have commenced the contemporaneous rigorous empirical inquiry after receipt of the data/information from the State Government vide Communication dated 29.06.2022. The work of commission had begun after the receipt of communication on 30.06.2022 and 80% of such work was complete as on 05.07.2022. Thus, the inquiry was completed within four to five days by the OBC Commission. The Division Bench further observed that the perusal of OBC Commission report did not make clear the nature of inquiry conducted by the Commission. The annexures to the report contained the recommendations qua each of the Panchayats where reservations were recommended. One column referred to the total population in the Panchayat areas as per the census of 2011. Another column referred to the OBC population as per the empirical data collected by the OBC Commission. In addition, there were columns relating to the percentage of OBCs, percentage of backwardness among OBCs, percentage of backward OBCs to the total population, and finally, the seats to be allotted to OBCs as per backwardness. The Court further held that, *prima facie* that exercise was more mathematical than making the contemporaneous rigorous empirical inquiry into the nature and implications of backwardness of OBC communities. Having

observed thus, the Division Bench recorded that they were not *prima facie* satisfied with the compliance with the first test/condition about the dedicated independent Commission conducting the contemporaneous rigorous empirical inquiry into the nature and implications of backwardness qua local bodies in the State of Goa. However, having observed thus, the Division Bench declined to grant any interlim relief in favour of the Petitioners therein by making reference to Article 243-O of the Constitution of India. It was observed that any interim relief, at this stage, could disrupt the election schedule giving rise to a host of complications regarding compliance with the mandatory timelines provided under the Rules.

Though the Petition was kept pending, interim relief was not granted. It was made clear that the elections to those Panchayats were to be subject to the outcome of those Petitions.

Shri Kantak heavily relied on the observations of the Division Bench in that case.

9. The next challenge raised by the Petitioners was that the Notification does not show any seat having been reserved for a Scheduled Caste candidate. According to Shri Kantak, this was in violation of the mandate of Article 243-D of the Constitution of India. The said mandate requires that irrespective of the population of people belonging to Scheduled Caste in a constituency, there has to be a minimum number of candidates reserved for Scheduled Castes. One of



the amended grounds mentions that as per 2011 census, population of Scheduled Caste in South Goa was 1.2% of the population. Therefore, it was required that atleast some seats were reserved for Scheduled Caste candidate in South Goa. Shri Kantak invited our attention to Article 243-D of the Constitution and submitted that the provision mandates reservation of atleast some seats for Scheduled Caste candidate. The State Election Commission cannot submit that since the population was very less, not a single seat could be reserved for Scheduled Caste candidate. The provision was mandatory and there is violation of that mandatory provision necessitating setting aside of the impugned Notification.

**10.** There was one more challenge taken by the Petitioner that as per the mandate, atleast one-third seats ought to have been reserved for women candidates in the Scheduled Tribes category. The reservation in South Goa Constituency in a particular category shows that there were five seats reserved for Scheduled Tribe candidates and only one amongst them was reserved for a women candidate. It fell short of the requirement. However, this challenge does not survive any more because the State Election Commission of Goa had issued a corrigendum dated 22.11.2025 and one more Constituency i.e. the Constituency no. 08 – Raia, is now reserved for women (Scheduled Tribe) Candidate. Thus, that particular requirement is now met with and the said challenge does not survive any more.

11. Shri Kantak further fairly submitted that the total reservation does not exceed 50%, therefore the third test was complied with by the Goa State Election Commission.

In short, the main contentious issue is about whether there was sufficient empirical data for making provision of reservation for OBC candidates and whether it was necessary that atleast one seat ought to have been reserved for a Scheduled Caste Candidate.

**Submissions of Shri Karpe, Advocate for Goa State Election Commission -Respondent no. 1.**

12. In both these Petitions, the Respondent no. 1, the Goa State Election Commission has filed their affidavits in reply. Shri Karpe relied on those affidavits. He submitted that the triple test laid down by the Hon'ble Supreme Court is fully complied with by the Respondent no. 1. His first argument was that the Petitioner had no locus to file the Petition. There was no law conferring the vested right to contest from a particular ward or from particular category. The Petitioners had no enforceable legal right. The Petitioners' grievance was purely personal without there being any violation of a legal right. They cannot be said to be aggrieved persons, unless it was established that their legal rights were affected. These Petitions are nothing but an attempt to stall the election process. A mere desire to contest from a particular Constituency could not confer any locus on the Petitioners.

13. The State Election Commission is constituted in terms of Article 243-K of the Constitution. Article 243-E(3) read with Section 237 of the Goa Panchayat Raj Act, 1994, stipulates that the Superintendence, control, directions for the preparation of the electoral rolls for the conduct of all elections to the Panchayat or the Zilla Panchayat, shall be vested in the State Election Commission. The ongoing tenure of Zilla Panchayat would come to an end on 07.01.2026 and in terms of the constitutional mandate, the State Election Commission was obliged to conduct elections to Zilla Panchayat before that date. As required in terms of the provisions of Section 118 read with Section 7 of the Goa Panchayat Raj Act, the State Election Commission undertook the process of reservation of seats in North Goa Zilla Panchayat and South Goa Zilla Panchayat and in that regard, called upon the Director of Panchayat vide the letter dated 27.10.2025 to furnish the data pertaining to the backwardness of Other Backward Classes in North Goa Zilla Panchayat and South Goa Zilla Panchayat. According to the affidavit and submissions of Shri Karpe, the said report was prepared by Goa State Election Commission for Backward Classes by undertaking rigorous and contemporaneous analysis ensuring strict adherence to the triple test mandated by the Hon'ble Supreme Court in the case of **Vikas Gawali**. The OBC Commission was appointed as dedicated commission to undertake the task of giving recommendations. It was appointed as a dedicated Commission on

30.10.2025. As per the report, there was about 33.99% of OBC population in North Goa Zilla Panchayat and 23.93% OBC population in South Goa Zilla Panchayat. As per the report, 81% of the OBC population is backward in North Goa Zilla Panchayat and 93% of OBC population is backward in South Goa Zilla Panchayat. Thus, the percentage of backward OBC population is 27.53% in North Goa and 20.2% in South Goa. There are 25 Zilla Panchayat Seats in North Goa and 25 Zilla Panchayat Seats in South Goa. Consequently, as per the report, the seats to be allotted to the OBC were 6.88% in North Goa that being 27.53% seats in North Goa and 5.56% seats in South Goa, being 20.2% seats in South Goa. Thus, according to these figures, the Goa State Election Commission identified 7 seats for OBC in North Goa Zilla Panchayat and 6 seats in South Goa Zilla Panchayat. This according to Shri Karpe and the averments in the affidavits was strictly in compliance of the first test of the triple test.

14. As far as the observations that there was no reservations made for Scheduled Caste in South Goa is concerned, it is the case of the Respondent no. 1 that the Petitioners had no locus to raise such a plea as he did not belong to Scheduled Caste category and, therefore, he was not aggrieved. It was further mentioned in the affidavit that the Petitioners' contention in the Petition that the Scheduled Caste population in South Goa was 1.2%, is factually incorrect. According to Respondent no. 1, the Scheduled Caste population within South Goa

Zilla Panchayat, was 0.9% of the total population of South Goa Zilla Panchayat. Article 243-D lays down that the seat reservation had to be in proportion to the total number of population of the Constituency. According to 2011 census, which was the last available data that out of the population of 5,44,426, Scheduled Caste population was 4903, which amounted to 0.9% of the total. Using that figure of 0.9%, it was considered as to how many seats could be available and by that calculation, it was found that only 0.23% seats being 0.9% of 25 seats, could be reserved out of 25 South Goa Zilla Panchayat seats for Scheduled Caste. Since the figure of 0.23% was less than 0.5%, it was rounded off to zero. Therefore, no seat was reserved for South Goa candidate. This calculation is based on the proportion of the population and the seats for South Goa Zilla Panchayat.

15. Shri Karpe relied on Article 243-O to contend that there was constitutional bar for Courts to interfere in the election process and therefore no interim relief could be granted to the Petitioner and the Petitioners cannot seek quashing and setting aside of the Notification.

He submitted that in the case of **Alex Domnic D'Souza** there was no dedicated commission but in the present case, a dedicated commission was appointed. The observations in **Alex Domnic D'Souza**, are *prima facie* in nature.

16. Shri Karpe relied on proviso to Section 7 of sub-section (4) of the Goa Panchayat Raj Act to contend that the legislature has taken into account a possibility that there could not be any reservation for a Scheduled Caste candidate at all. The said proviso mentions how members can be co-opted. The said proviso is a sufficient indication that the legislature was aware of the possibility that there could be cases when there may not be reservation for a Scheduled Caste candidate at all. Shri Karpe further submitted that in **Alex Domnic D'Souza's** case, inspite of the infirmities noticed by the Division Bench, interim relief was not granted to the Petitioners therein and the election process was not interfered with.

**Submission of Shri Pangam, learned Advocate General**

17. The learned Advocate General submitted that the Goa State Commission for Backward Classes was justified in relying on the data that was available in the year 2022 because between 2022 till today in 2025, no fresh census was conducted. Therefore, the said Commission had to rely on the data available from the year 2022. In any case, there was no challenge to the correctness of the report. The figures relied on by the said Commission cannot be verified by this Court in writ jurisdiction. The only recourse which was available to anyone challenging that report was in the form of Election Petition.

18. Learned Advocate General relied on a Division Bench judgment of the Principal Bench of High Court of Bombay in the case of **Shailaja Sunil Kolpe Pushpa vs. State of Maharashtra**<sup>4</sup> In that case, the explanation to Rule 3 of the Maharashtra Zilla Parishads and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules 1996, vis-a-vis Section 12 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, was considered. The argument that at least one seat had to be reserved for the Scheduled Caste category irrespective of the population figures, was rejected. There was a reference to Article 243-D and after considering various provisions, the Division Bench negated the contention that at least one seat had to be reserved for those categories irrespective of the population figures.

19. The learned Advocate General also relied on the case of **State of U.P. & anr. vs. Pawan Kumar Tiwari & Ors.**<sup>5</sup> which accepted the logic behind rounding off the figures for reservation of the seats. He submitted that based on both these judgments, it is quite clear that if the percentage of seats fell below 0.5%, then it has to be rounded off to the figure of zero and hence no reservation could be made for a Scheduled Caste candidate. Shri Pangam further submitted that the empirical data is always available as the Commission is in continuous process of collecting the data. It is just a matter of analyzing the available data.

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<sup>4</sup> 2014 SCC OnLine Bom 29

<sup>5</sup> (2005) 2 SCC 10

**20.** Learned Advocate General then reiterated the submission of Shri Karpe that the Goa Commission for Backward Classes has considered the further data and the report could not be challenged before this Court.

Since the submission of the rival parties referred to the report of the Goa State Commission of Backward Classes, we asked Shri Karpe to produce that report. He accordingly produced the report for our perusal. A copy of the same was also given to Shri Kantak, who in his response to the submissions of the Respondents, made the following submissions :

**Response of Shri Kantak to the submission of the Respondents:**

(i) He submitted that the Respondents cannot take recourse to Article 243-O to prevent the Petitioner from approaching this Court for challenging the Notification. The Petitioners had only a small window to challenge the Notification. On his part, the Petitioner Borges had sent a letter dated 10.11.2025 to the State Election Commission asking whether OBC reservations in the Zilla Panchayat Elections was done in compliance with the triple test as laid down in **Vikas Kishanrao Gawali's** case. Whether the State Election Commission had appointed a Commission for collecting empirical data on backwardness as mandated by the aforesaid judgment of the Hon'ble Supreme Court and whether the proportion of reservation is premised on the finding of the



commission appointed for such purpose. The Petitioner Borges did not get any response to this letter, therefore, he immediately approached this Court by way of this Writ Petition. In this situation, the Respondent cannot take recourse to Article 243-O to contend that there was no remedy of filing Writ Petition available to the Petitioners and the only remedy available to the Petitioners was by way of Election Petition after the elections were over. Shri Kantak submitted that the report referred to by the Respondents is the same as the report prepared in the year 2022, which invited strong criticism in the case of **Alex Domnic D'Souza**. He submitted that similar approach can be adopted by this Court while entertaining this Petition.

(ii) Shri Kantak submitted that the correspondence between the authorities show that the recommendations were sought from the Goa State Commission for Backward Classes vide letter dated 31.10.2025 and the recommendations through the report were submitted immediately within a couple of days i.e. on 03.11.2025. 31.10.2025 was a Friday and 03.11.2025 was a Monday. Within this short period, this report was prepared. This itself shows that either sufficient care and efforts were not taken in preparing the report or it was a pre-determined report and is not a genuine report based on which the reservation could be made.

### **Reasons and Conclusion :**

21. We have considered these submissions. Before referring to the question of reservation of OBC candidates, we will discuss the absence of reservation for any SC candidate. Article 243-D reads thus :

**“243-D. Reservation of Seats. -**

(1) Seats shall be reserved for—

(a) The Scheduled Castes; and

(b) The Scheduled Tribes;

In every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

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

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

Thus, Article 243-D mandates that 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. The argument of Shri Kantak is that the mandate of this Article is that there cannot be a situation where there is no seat reserved for a Scheduled Caste candidate. It is only the number of seats that can vary depending on the proportion of the seats with respect to the population of Scheduled Caste in that Panchayat area. However, we are unable to accept this submission because the mandate laid down in Article 243-D is a composite mandate which provides for reservations of Scheduled Castes, and, those number of seats mandatorily had to bear as nearly as may be, the same proportion to the total number of seats depending on the population of Scheduled Caste. Therefore, the mandate includes

consideration of the population of Scheduled Caste in proportion to the total number of seats. It cannot be held that irrespective of the population, the seats will have to be reserved for the Scheduled Caste, even if the population of Scheduled Caste is miniscule or negligible.

**22.** This very issue was considered by a Division Bench in the case of **Shailaja Sunil Kolpe Pushpa**, which we have referred to herein above. While considering the challenge to the explanation of Rule 3 of the Maharashtra Zilla Parishads and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules 1996, the Division Bench specifically considered the submission that atleast one seat has to be reserved for that category irrespective of the population figures as may be mentioned in the census. The Division Bench categorically rejected that submission. Section 12 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, was specifically considered. The said Section reads thus :

**“S.12. Division of District into electoral division. -**

(1) ...

[(2)(a) In the seats to be filled in by election in a Zilla Parishad there shall be seats reserved for persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Class of citizens and women, as may be determined by the State Election Commission in the prescribed manner;

(b) the seats to be reserved for the persons belonging to the Scheduled Castes and the Scheduled Tribes in a Zilla Parishad shall bear, as nearly as may be, the same proportion to the total number of seats to be filled in by direct election in that Zilla Parishad as the

population of the Scheduled Castes or, as the case may be, the Scheduled Tribes, in that Zilla Parishad area bears to the total population of that area and such seats shall be allotted by rotation to different electoral divisions in a Zilla Parishad:

[Provided that, in a Zilla Parishad comprising entirely the Scheduled areas, the seats to be reserved for the Scheduled Tribes shall not be less than one half of the total number of seats in the Zilla Parishad:

Provided further that, the reservation for the Scheduled Tribes in a Zilla Parishad falling only partially in the Scheduled areas shall be in accordance with the provisions of clause (b).”

This particular provision is similar to Article 243-D. In the facts of that particular case, it was observed that the proportionate seats available for Scheduled Caste candidates was 0.20% and therefore the fraction less than 0.5% was ignored. The Division Bench therefore did not find the Rules and the Sections as arbitrary even if the interpretation meant that in a given case, there could not be a single Scheduled Caste seat, though the Rules provided for such reservation.

In the case of **State of U.P. & anr. vs. Pawan Kumar Tiwari & Ors.**, referred by the learned Advocate General, the Hon’ble Supreme Court had accepted the logic that in case of fractions, the figure could be rounded off. In the present case, the percentage was 0.23% which could not be rounded off to mean 1%. Therefore, no seat could be reserved for Scheduled Caste candidate.

**23.** In the same context as per the submissions of Shri Karpe in respect to the proviso to Section 7(4) of the Goa Panchayat Raj Act, 1994, is another strong indication to resolve this issue. Section 7(4) with its two provisos, reads thus :

“Section 7(4) - Constitutions of Panchayats – (1) ...

(2) ...

(3) ...

(4) In every Panchayat, seats shall be reserved for the Scheduled Castes and the Scheduled Tribes and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats in the Panchayat as the population of the Scheduled Castes and the Scheduled Tribes in the Panchayat area bears to the total population of the Panchayat area:

Provided that State Election Commission in consultation with the Government, may by notification reserve any seat reserved for Scheduled Castes and Scheduled Tribes for women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes:

Provided further that the State Election Commission in consultation with the Government, may, by order published in the Official Gazette, direct any Panchayat to co-opt in such manner as may be prescribed, a person belonging to the Scheduled Caste, where there is a reasonable population of the Scheduled Caste but the reservation may not be made.”

Section 7(4) refers to reservation for the Scheduled Caste. It is very similar to the language of Article 243-D. At the same time, the second proviso provides for the manner in which the Panchayat can co-opt a member belonging to a Scheduled Caste where there is reasonable population of Scheduled Caste but the reservations may not be made.

This proviso takes into account a situation where though there was requirement for making reservation of Scheduled Caste candidates but the reservation was not made. This situation was envisaged for the procedure to co-opt a member belonging to a Scheduled Caste. This proviso gives sufficient clarity that there could be situations where the reservation for a Scheduled Caste is mandated but such reservation cannot be made. The present case is one such instance where due to less population, the reservation for a Scheduled Caste candidate is not made.

**24.** The other main objection of the Petitioners is about the report of the Commission. In that context, it is necessary to refer to the two cases i.e. **K. Krishna Murthy & Ors. vs. Union of India & anr** and **Vikas Gawali vs. State of Maharashtra & Ors.**

**25.** In **K. Krishna Murthy's** case, the Hon'ble Supreme Court was examining the constitutional validity of Article 243-D (6) and Article 243-T(6). In conclusion, the Hon'ble Supreme Court observed that the onus was on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which were quite different from the patterns of disadvantages in the matter of access to education and employment.

The identification of backward classes in Article 243-D(5) and Article 243-D(6) was distinct from identification of socially and

educationally backward classes. It was further observed that the upper ceiling of 50% in reservation of SC/ST/OBC shall not be breached in the context of local Government.

**26.** In the case of **K. Krishna Murthy's**, the Hon'ble Supreme Court at paragraphs 51 to 57 has observed thus :

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

52. Specifically with regard to the unviability of the analogy between Article 16(4) and Article 243-D, we are in agreement with a decision of the Bombay High Court, reported as *Vinayakrao Gangaramji Deshmukh v. P.C. Agrawal* [AIR 1999 Bom 142] . That case involved a fact situation where the chairperson position in a panchayat was reserved in favour of a Scheduled Caste woman. In the course of upholding this reservation, it was held as follows: (AIR p. 143, para 4)

“4. ... Now, after the seventy-third and seventy-fourth constitutional amendments, the constitution of local bodies



has been granted a constitutional protection and Article 243-D mandates that a seat be reserved for the Scheduled Caste and Scheduled Tribe in every panchayat and clause (4) of the said Article 243-D also directs that the offices of the chairpersons in the panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may, by law, provide. Therefore, the reservation in the local bodies like the village panchayat is not governed by Article 16(4), which speaks about the reservation in the public employment, but a separate constitutional power which directs the reservation in such local bodies.”

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

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

playing field is sought to be created by way of conferring reservation benefits.

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

55. It must be kept in mind that there is also an inherent difference between the nature of benefits that accrue from access to education and employment on one hand and political representation at the grassroots level on the other hand. While access to higher education and public employment increases the likelihood of the socio-economic upliftment of the individual beneficiaries, participation in local self-government is intended as a more immediate measure of empowerment for the community that the elected representative belongs to.

56. The objectives of democratic decentralisation are not only to bring governance closer to the people, but also to make it more participatory, inclusive and accountable to the weaker sections of

society. In this sense, reservations in local self-government are intended to directly benefit the community as a whole, rather than just the elected representatives. It is for this very reason that there cannot be an exclusion of the “creamy layer” in the context of political representation. There are bound to be disparities in the socio-economic status of persons within the groups that are the intended beneficiaries of reservation policies. While the exclusion of the “creamy layer” may be feasible as well as desirable in the context of reservations for education and employment, the same principle cannot be extended to the context of local self-government.

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

In this context, paragraphs 63 and 64 are also important which are as follows :

“63. As noted earlier, social and economic backwardness does not necessarily coincide with political backwardness. In this respect, the State Governments are well advised to reconfigure their reservation policies, wherein the beneficiaries under Articles 243-D(6) and 243-T(6) need not necessarily be coterminous with the Socially and Educationally Backward Classes (SEBCs) [for the purpose of Article 15(4)] or even the backward classes that are

under-represented in government jobs [for the purpose of Article 16(4)]. It would be safe to say that not all of the groups which have been given reservation benefits in the domain of education and employment need reservations in the sphere of local self-government. This is because the barriers to political participation are not of the same character as barriers that limit access to education and employment. This calls for some fresh thinking and policy-making with regard to reservations in local self-government.

64. In the absence of explicit constitutional guidance as to the quantum of reservation in favour of backward classes in local self-government, the rule of thumb is that of proportionate reservation. However, we must lay stress on the fact that the upper ceiling of 50% (quantitative limitation) with respect to vertical reservations in favour of SCs/STs/OBCs should not be breached. On the question of breaching this upper ceiling, the arguments made by the petitioners were a little misconceived since they had accounted for vertical reservations in favour of SCs/STs/OBCs as well as horizontal reservations in favour of women to assert that the 50% ceiling had been breached in some of the States. This was clearly a misunderstanding of the position since the horizontal reservations in favour of women are meant to intersect with the vertical reservations in favour of SCs/STs/OBCs, since one-third of the seats reserved for the latter categories are to be reserved for women belonging to the same. This means that seats earmarked for women belonging to the general category are not accounted for if one has to gauge whether the upper ceiling of 50% has been breached.”

**27.** The question of triple test was further elaborated by another Bench of the Hon’ble Supreme Court in the case of **Vikas Gawali vs.**

**State of Maharashtra & Ors.** and the relevant portions are in paragraph 13 and 16 :

“13. Be that as it may, it is indisputable that the triple test/conditions required to be complied with by the State before reserving seats in the local bodies for OBCs has not been done so far. To wit, (1) to set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness qua local bodies, within the State; (2) to specify the proportion of reservation required to be provisioned local body-wise in light of recommendations of the Commission, so as not to fall foul of overbreadth; and (3) in any case such reservation shall not exceed aggregate of 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together. In a given local body, the space for providing such reservation in favour of OBCs may be available at the time of issuing election programme (notifications). However, that could be notified only upon fulfilling the aforementioned preconditions. Admittedly, the first step of establishing dedicated Commission to undertake rigorous empirical inquiry itself remains a mirage. To put it differently, it will not be open to the respondents to justify the reservation for OBCs without fulfilling the triple test, referred to above.

...

16. The argument of the respondent State that the reservations in favour of OBCs must be linked to population, is very wide and tenuous. That plea if countenanced, will be in the teeth of the dictum of the Constitution Bench of this Court wherein it has been noted and rejected. The Court has expounded about the distinction in the matter of reservation in favour of SCs and STs on the one hand, which is a “constitutional” reservation linked to population unlike in the case of OBCs which is a “statutory” dispensation. Therefore, the latter reservation for OBCs must be proportionate

in the context of nature and implications of backwardness and in any case, is permissible only to the extent it does not exceed the aggregate of 50 per cent of the total seats in the local bodies reserved for SCs/STs/OBCs taken together.”

**28.** Based on these two Judgments, the report of the Commission will have to be seen. Before referring to the contents of the report, a reference can be made to the constitution of Goa State Commission for Backward Classes. It is constituted under Section 3 of the Goa State Commission for Backward Commission Act, 1993, which reads thus :

**“Section 3 - Constitution of the State Commission for Backward Classes.—** (1) The State Government shall constitute a body to be known as the State Commission for Backward Classes to exercise the powers conferred on, and to perform the functions assigned to it under this act.

(2) The Commission shall consist of the following Members nominated by the State Government:—

(a) a Chairperson, who is or has been a Judge of a High Court or District Judge or [a person who is qualified to be appointed as a Judge of a High Court or as a District Judge];

(b) a social scientist;

(c) two persons, who have special knowledge in matters relating to backward classes; and

(d) a Member- Secretary, who is or has been an Officer of the State Government in the rank of a [Joint Secretary] or above, to the Government.

Section 9 of the said Act provides for functions of the Commission. Section 9 reads thus :

**“Section 9 - Functions of the Commission.—** (1) The Commission shall examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such

lists and tender such advice to the State Government as it deems appropriate.

(2) The advice of the Commission shall ordinarily be binding upon the State Government.

Thus, the main function of this State Commission is to examine all these aspects. As rightly submitted by the learned Advocate General that it is an ongoing process. The said Commission was appointed by the Government as the dedicated OBC Commission for the purpose of rigorous empirical study vide Order no. 311-DSW-BC-2025-26/Constitution Committee/GSCBC/6098 dated 30.10.2025. Therefore, to satisfy the first two tests of the triple test, a dedicated commission was formed, which had given its report based on contemporaneous rigorous empirical inquiry.

**29.** The report itself is important for the purpose of these Petitions. The report mentions that the contemporaneous data/inquiry of 2022 comprised of ward-wise OBC population, data indicated based on all respective OBC communities which contested against reserved ward in 2012 and 2017 General Panchayat Elections, analysis of 2022 General Panchayat Elections. Analysis of OBC population data obtained through Village Panchayat Secretaries/BDOs compared to the 2011 census to determine if substantial change requires a proportionate change in reservation, assessment of political backwardness on parameters like past representations, dominance, empowerment,

literacy status, financial barriers, etc., consideration of discussions with stakeholders/representatives and office bearers of OBC community organizations, regarding political barriers and lack of opportunities.

**30.** The report further mentions that the Commission had considered political backwardness data, which was based on the past representation of the OBC Communities in the year 2007, 2012, 2017, 2022 of the Village Panchayat General Elections and as well as Zilla Panchayat General Elections 2010, 2015 and 2020. The inquiry focused on political backwardness distinct from mere social or economic backwardness. The data was rigorously examined by assessing the backwardness of the OBC community qua every individual Village Panchayat on the parametres of past representations, dominance and empowerment, literacy status and financial barriers. The Commission considered the discussions held with stakeholders/Office bearers of respective OBC organizations regarding political barriers, lack of opportunities and difficulties faced in contesting elections. Based on this study, the recommendations were made for proportionate reservations. It was specifically mentioned that the information and finding pertaining to the OBC communities and the backwardness of OBCs was derived from 2022 data for the constituent Village Panchayats.



**31.** Accordingly, as far as South Goa Zilla Panchayat was considered, the total percentage of OBC was 23.93%. 93% among OBC population was backward for this context. Hence, 22.25% was the figure for backward population amongst this population. Accordingly, the recommendation was for allotment of 5.23% seats. This was calculated with reference to total 25 seats. This recommendation was accepted and the reservations were made for South Goa Constituency reserving 6 seats for OBC candidates including two women of OBC Community.

**32.** Considering this report, in our opinion, the triple test is fully satisfied. A dedicated State Commission for Backward Classes was appointed. They relied on their data collected through the ongoing process. It was analyzed. Meetings were held. Though this exercise was done within a short period, but as rightly submitted by the learned Advocate General, the data was readily available with the Commission. It was analyzed and recommendations were made. There cannot be a specific challenge to the figures mentioned in the report and in any case, it would be beyond the scope of the writ jurisdiction of this Court. The Respondents have complied with the triple test laid down by the Hon'ble Supreme Court in the judgments referred to herein above.

**33.** The learned Advocate General and Shri Karpe rightly relied on Article 243-O, which reads thus :

**“Article 243-O - Bar to interference by courts in electoral matters.**

Notwithstanding anything in this Constitution,-

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;
- (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

**34.** In the present case, we do not find any extraordinary reason to go against the mandate of Article 243-O of the Constitution of India. We are not inclined to interfere by setting aside the impugned Notification.

**35.** With the result, we do not find any reason to set aside the impugned Notification. Accordingly, the Petitions are dismissed and the Rule is discharged.

**ASHISH S. CHAVAN, J.**

**SARANG V. KOTWAL, J.**