



STATE ELECTION COMMISSION, HARYANA

NIRVACHAN SADAN, PLOT NO. 2, SECTOR- 17
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MUNICIPAL ELECTIONS

No. SEC/1ME/202/1997-2018

Dated: 25.10.2023

To

All the Deputy Commissioners
in the State of Haryana

Subject: Can a person belonging to Scheduled Caste from another State claim benefit of reservation in Urban Local Bodies elections in the State of Haryana or not? –Clarification regarding.

Sir/Madam,

I have been directed to refer to the above subject and to inform you that on a query from the State Election Commission, Haryana, the Urban Local Bodies Department, Haryana had sought clarification on the following points from the Law and Legislative Department, Haryana:

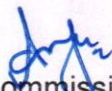
- i.) Whether a person belonging to Scheduled Castes having certificate of Scheduled Castes issued by another State and having migrated to Haryana State can claim benefit of Scheduled Caste and reservation in Urban Local Bodies election in the State of Haryana or not?
- ii) Further, if a man from unreserved category or any other category except Scheduled Castes marries a women from another State belonging to Scheduled Castes and which caste has also been included in the list of Scheduled Castes in Haryana, then can that women claim benefit of reservation meant for Scheduled Castes for contesting elections in Urban Local Bodies in the State of Haryana?

2. The Law and Legislative Department, Haryana in this respect has answered in "Negative" vide its opinion/advice dated 21.07.2023.


3. A copy of letter dated 06.10.2023 of Urban Local Bodies Department, Haryana alongwith the advice dated 21.07.2023 of Law and Legislative Department, Haryana is enclosed herewith. You are advised to familiarize yourself with the abovesaid opinion/advice of Law and Legislative Department and also bring these into the notice of all Returning/Assistant Returning Officers at the time of Municipal elections to be held in future.

Encl: As above

Yours faithfully,


Asstt. State Election Commissioner,
for State Election Commissioner, Haryana

Endst. No. SEC/1ME/2023/2019-2139

Dated: 25.10.2023 

A copy of above alongwith enclosure is forwarded to the following for information and necessary action:-

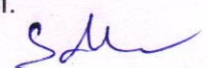
1. Commissioners of all the Municipal Corporations in the State.
2. District Municipal Commissioners of all the Municipal Councils and Committees in the State.
3. Executive Officers (E.Os) and Secretary's of all the Municipal Corporations, Municipal Councils and Municipal Committees in the State for information and compliance.


Asstt. State Election Commissioner,
for State Election Commissioner, Haryana

Endst. No. SEC/1ME/2023/2140

Dated: 25.10.2023

A copy of above is also forwarded to I.T.Cell of this Commission with the directions to host the notification in the official website of this Commission.


Asstt. State Election Commissioner,
for State Election Commissioner, Haryana



Please To examine and put up aspects
provisions contained in the relevant Ad/Rules.
The Secretary,
State Election Commission, Haryana,
Sector - 17, Panchkula.

S.E.C
10.10.2023

Memo No. 2AE/2023/ 30718
Dated: 06/10/23

Subject:- Can a person belonging to Scheduled Castes from another State claim benefit of reservation in Urban Local Bodies elections in the State of Haryana or not? - Clarification regarding.

Secretary
12.10.2023

In reference to your letter No. SEC/1ME/2023/961 dated 25th May, 2023 and letter No. SEC/1ME/2023/1562 dated 04th September, 2023 on the above noted subject.

2. It is intimated that the Law and Legislative Department was requested to provide the legal opinion/advice on the following issues: -

- i) Whether a person belonging to Scheduled Castes having certificate of Scheduled Castes issued by another State and having migrated to Haryana State can claim benefit of Scheduled Castes reservation in Urban Local Bodies elections in the State of Haryana or not?"
- ii) Further, if a man from unreserved category or any other category except Schedule Castes marries a women from another State belonging to Scheduled Castes and which caste has also been included in the list of Scheduled Castes in Haryana, then can that women claim benefit of reservation meant for Scheduled Castes for contesting elections in Urban Local Bodies in the State of Haryana.

3. In this regard, the Law and Legislative Department has tendered its Legal opinion/advice on dated 21.07.2023 and in view of the statutory provisions as well as settled law, the query raised by the Department has been answered in 'Negative'.

4. Therefore the copy of Legal advice/opinion tendered by the Law and Legislative Department vide their U.O. No. 5975-G(18)ULB/Op.Br.23/215 dated 21.07.2023 as well as instructions of Haryana Government, General Administration Department (General Services-III Branch) issued vide letter No. 22/132/2023-1GS-III dated 22nd March, 2022 are sent herewith for taking further necessary action accordingly.

Additional Director (HQ),
for Director, Urban Local Bodies,
Haryana, Panchkula. 9

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LAW AND LEGISLATIVE DEPARTMENT NOTE

Before replying to the queries raised by A.D. in portion side lined 'A' at noting page 4 of the A.D.'s file, the relevant statutory provisions are required to be gone through. Relevant rule 21 of the Haryana Municipal Election Rules, 1978 which prescribes the disqualifications for being elected as president and member of the Municipality reads as under: -

"21. Disqualifications for President and members. - (1) No person shall be eligible for election as president or a member of a committee, who,-

(a) is not an elector, that is, a qualified voter for any constituency of that committee under these rules, and has not attained the age of twenty-one years; or

(b) in the case of a seat reserved for the Scheduled Castes and Backward Classes, is not a member of Scheduled Castes and Backward Classes in relation to the State of Haryana; or"

Further, relevant rule 23 of the Haryana Municipal Corporation Election Rules, 1994 which prescribes the disqualifications for being elected as president and member of the Municipal Corporation reads as under: -

"23. Disqualifications for Mayor and members. - (1) A person shall be disqualified for being chosen as, and for being a Mayor and member of the Corporation, if he incurs any of the disqualification as mentioned in section 8.

(2) No person shall be eligible for election as a Mayor and member of the Corporation who, in the case of a seat reserved for Scheduled Castes, Backward Classes or woman, is not a member of any of these categories."

Further, according to rule 2(l) of the Haryana Municipal Election Rules, 1978 and rule 2 (m) of the Haryana Municipal Corporation Election Rules, 1994, "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as have been specified under article 341 of the Constitution of India to be Scheduled Castes.

Article 341(1) of the Constitution of India provides that the President may with respect to any State or Union Territory and where it is a State after consultation with a Governor thereof, by public notification specify the caste, races or tribes or parts of or groups within castes, races or tribes, which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory as the case may be.

While interpreting the aforesaid article 341 of Constitution of India especially the words 'in relation to that State', Hon'ble Supreme Court in

"Marri Chandra Shekhar Rao versus Dean, Seth G.S. Medical College and Others" reported as (1990) 3 SCC 130, in para 13, 14 and 22 of its judgement, has observed as under:-

"13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled. See the observations of this Court in Venkatarama Devaru v. State of Mysore, where Venkatarama Aiyer, J. reiterated that the rule of construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression 'for the purposes of this Constitution' in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all — to Scheduled Castes or Tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) in as much as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that

tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution.

14. Our attention was drawn to certain observations in *Elizabeth Warburton v. James Loveland*. It is true that all provisions should be read harmoniously. It is also true that no provision should be so read as to make other provisions nugatory or restricted. But having regard to the purpose, it appears to us that harmonious construction enjoins that we should give to each expression — "in relation to that State" or "for the purposes of this Constitution" — its full meaning and give their full effect. This must be so construed that one must not negate the other. The construction that reservation made in respect of the Scheduled Caste or Tribe of that State is so determined to be entitled to all the privileges and rights under the Constitution in that State would be the most correct way of reading, consistent with the language, purpose and scheme of the Constitution. Otherwise, one has to bear in mind that if reservations to those who are treated as Scheduled Caste or Tribe in Andhra Pradesh are also given to a boy or a girl who migrates and gets deducted (sic inducted) in the State of Maharashtra or other States where that caste or tribe is not treated as Scheduled Caste or Scheduled Tribe then either reservation will have the effect of depriving the percentage to the member of that caste or tribe in Maharashtra who would be entitled to protection or it would denude the other non-Scheduled Castes or non-Scheduled Tribes in Maharashtra to the proportion that they are entitled to. This cannot be logical or correct result designed by the Constitution.

22. In that view of the matter, we are of the opinion that the petitioner is not entitled to be admitted to the medical college on the basis of Scheduled Tribe certificate in Maharashtra. In the view we have taken, the question of petitioner's right to be admitted as being domicile does not fall for consideration."

Similar controversy was involved in the case titled "Ranjana Kumari versus State of Uttarakhand and others" reported as (2019) 15 SCC 664, wherein a three Judge Bench of Hon'ble Supreme Court held as under:-

"4. Two Constitution Bench judgments of this Court in *Marri Chandra Shekhar Rao v. Seth G.S. Medical College and Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India* have taken the view that merely because in the migrant State the same caste is

recognised as Scheduled Caste, the migrant cannot be recognised as Scheduled Caste of the migrant State. The issuance of a caste certificate by the State of Uttarakhand, as in the present case, cannot dilute the rigours of the Constitution Bench judgments in Marri Chandra Shekhar Rao and Action Committee."

In the case titled "Bhadar Ram versus Jassa Ram and others", reported as (2022) 4 SCC 259, controversy involved was regarding entitlement of benefit of status as SC/ST or OBC of the State in another State and it has been held that benefit of status of SC/ST or OBC in one State is not automatically or ordinarily transferable to another State upon migration.

The Division Bench of Hon'ble Punjab and Haryana High Court in case titled "Haryana Public Service Commission versus Shweta Kashyap and another" reported as 2020(1) SLR 354 has held that a SC in the State of her origin would not be entitled to benefit of reservation after shifting to State of Haryana on account of her marriage even though the particular caste to which she belongs fell in the same category in the State of Haryana where she migrated and was also issued a Domicile Certificate. Para 17 to 21 of the said judgment are relevant and same are as follows:-

"17. Reliance placed by the learned Single Judge on the aforesaid three pronouncements is totally mis-founded and the facts of the judgments upon which reliance has been placed are clearly distinguishable from the facts of the case at hand.

18. In the case of Sunita Singh's case (supra), the issue was whether the caste is determined by birth and if a person of a general category marries with a scheduled caste whether he/she would be entitled to be extended the benefit meant for the Scheduled Caste category. The facts were that the lady born in 'Agarwal' family which falls in general category married with a person of a Scheduled caste and was issued a certificate certifying her to be belonging to a Scheduled Caste. In the circumstances, Hon'ble Apex Court held as under:-

"There cannot be any dispute that the caste is determined by birth and the caste cannot be changed by marriage with a person of scheduled caste. Undoubtedly, the appellant was born in "Agarwal" family, which falls in general category and not in scheduled caste. Merely because her husband is belonging to a scheduled caste category, the appellant should not have been issued with a caste certificate showing her caste as scheduled caste."

19. The ratio of the aforesaid judgment of the Supreme Court is on the entirely different issue and cannot said to stand attracted in the facts of the present case.

20. The two judgments referred to above rendered by Rajasthan High Court in our considered opinion are directly in the teeth of the two Constitution Bench judgments of the Hon'ble Apex Court

in Marri Chandra Shekhar Rao's case (supra) and Action Committee's case (supra), as also 15 of 16 the latest three Judges judgment in the case of Rarijana Kumari v. State of Uttranchal (supra) and thus cannot be treated to be laying down a good law.

21. In the wake of the above facts and discussion as also the law settled by the pronouncements of the Hon'ble Apex, impugned judgment rendered by the learned Single Judge is not liable to be sustained and is hereby set aside. As a consequence, the appeal stands allowed."

In view of aforesaid statutory provisions as well as settled law, as discussed above, queries raised by the A.D. in portion sidelined 'A' at noting page 4 of the A.D.'s file are answered in 'Negative'.

6/3/16
8/5/21

Sanjay Singhal

D.L.R. & D.S. (Op.)

for L.R. & Admn. Secy. to Govt., Haryana,
Law and Legislative Department.

Commissioner & Secretary, Urban Local Bodies
U.O. No. 5975-G(18)ULB/Op.Br.23/215

Dated:- 21/07/2023

20/07/2023