



महाराष्ट्र शासन राजपत्र

असाधारण भाग आठ

वर्ष ७, अंक १८(२)]

शुक्रवार, ऑक्टोबर १, २०२१/आश्विन ९, शके १९४३

[पृष्ठे ६, किंमत : रुपये २७.००

असाधारण क्रमांक ४०

प्राधिकृत प्रकाशन

महाराष्ट्र विधानमंडळाचे अधिनियम व राज्यपालांनी प्रख्यापित केलेले अध्यादेश व केलेले विनियम आणि विधि व न्याय विभागाकडून आलेली विधेयके (इंग्रजी अनुवाद).

In pursuance of clause (3) of article 348 of the Constitution of India, the following translation in English of the Mumbai Municipal Corporation, Maharashtra Municipal Corporations and Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships (Amendment) Ordinance, 2021 (Mah. Ord. VI of 2021), is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

SATISH WAGHOLE,

I/c. Secretary (Legislation) to Government,
Law and Judiciary Department.

(Translation in English of the Mumbai Municipal Corporation, Maharashtra Municipal Corporations and Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships (Amendment) Ordinance, 2021 (Mah. Ord. VI of 2021), published under the authority of the Governor).

URBAN DEVELOPMENT DEPARTMENT

Mantralaya, Madam Cama Marg, Hutatma Rajguru Chowk,
Mumbai-400 032, dated the 1st October 2021.

MAHARASHTRA ORDINANCE NO. VI OF 2021.

AN ORDINANCE

further to amend the Mumbai Municipal Corporation Act, the Maharashtra Municipal Corporations Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.

WHEREAS both Houses of the State Legislature are not in session;

(१)

AND WHEREAS the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Mumbai Municipal Corporation Act, the Maharashtra Municipal Corporations Act and the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships Act, 1965, for the purposes hereinafter appearing;

III of
1888.
LIX of
1949.
Mah. XL
of 1965.

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Maharashtra is hereby pleased to promulgate the following Ordinance, namely :—

CHAPTER I

PRELIMINARY.

Short title and commencement.

1. (1) This Ordinance may be called the Mumbai Municipal Corporation, Maharashtra Municipal Corporations and Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships (Amendment) Ordinance, 2021.

(2) It shall come into force at once.

CHAPTER II

AMENDMENT TO THE MUMBAI MUNICIPAL CORPORATION ACT.

Amendment of section 5A of III of 1888.

2. In section 5A of the Mumbai Municipal Corporation Act, in sub-section (4), for clause (a), the following clause shall be substituted, namely :—

“(a) The seats to be reserved for the persons belonging to the category of Backward Class of citizens shall be upto 27 per cent. of the total number of seats to be filled in by direct election in a Corporation and the total reservation shall not be more than 50 per cent. of the total seats in the Corporation;”.

CHAPTER III

AMENDMENT TO THE MAHARASHTRA MUNICIPAL CORPORATIONS ACT.

Amendment of section 5A of LIX of 1949.

3. In section 5A of the Maharashtra Municipal Corporations Act, in sub-section (1), for clause (c), the following clause shall be substituted, namely :—

“(c) the seats to be reserved for the persons belonging to the category of Backward Class of citizens shall be upto 27 per cent. of the total number of seats to be filled in by direct election in a Corporation and the total reservation shall not be more than 50 per cent of the total seats in the Corporation and such seats shall be allotted by rotation to different wards in a Corporation :

Provided that, one-half of the total number of seats so reserved shall be reserved for women belonging to the category of Backward Class of citizens;”.

CHAPTER IV

AMENDMENT TO THE MAHARASHTRA MUNICIPAL COUNCILS, NAGAR PANCHAYATS AND INDUSTRIAL TOWNSHIPS ACT, 1965.

Mah. XL of 1965. 4. In section 9 of the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships Act, 1965, in sub-section (2), for clause (d), the following clause shall be substituted, namely :—

Amendment of section 9 of Mah. XL of 1965.

“(d) the seats to be reserved for the persons belonging to the category of Backward Class of citizens shall be upto 27 per cent. of the total number of seats to be filled in by direct election in a Municipal Council and the total reservation shall not be more than 50 per cent. of the total seats in the Municipal Council :

Provided that, one-half of the total number of seats so reserved shall be reserved for women belonging to the category of Backward Class of citizens.”.

STATEMENT

Section 5A(4)(a) of the Mumbai Municipal Corporation Act (III of 1888), section 5A(1)(c) of the Maharashtra Municipal Corporations Act (LIX of 1949) and section 9(2)(d) of the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships Act, 1965 (Mah. XL of 1965), provide for reservation of seats in Corporations and Municipal Councils, respectively, for persons belonging to the category of Backward Class of citizens. The said Acts provide reservation of 27 per cent. for Backward Class of citizens of the total number of seats to be filled in by direct election in the Corporations and Municipal Councils.

2. The notifications dated the 27th July 2018 and the 14th February 2020 and other notifications were issued by the State Election Commission for providing reservation for the persons belonging to the Scheduled Castes, Scheduled Tribes and the category of Backward Class of Citizens and accordingly, the State Election Commission has conducted elections of the *Zilla Parishads* and *Panchayat Samitis*.

3. The provisions of section 12(2)(c) of the Maharashtra *Zilla Parishads* and *Panchayat Samitis* Act, 1961 (Mah. V of 1962) and the notifications dated the 27th July 2018 and the 14th February 2020 issued by the State Election Commission providing reservation exceeding 50 per cent. in respect of *Zilla Parishads* and *Panchayat Samitis* of Districts Washim, Akola, Nagpur and Bhandara were challenged before the Supreme Court in *Vikas Kishanrao Gawali V/s. State of Maharashtra and Ors.* [Writ Petition (Civil) No. 980 of 2019].

The Supreme Court, *vide* its order dated the 4th March 2021, has quashed and set aside the said notifications to the extent that they provide for reservation of seats for OBCs being void and *non est* in law and also directed that the vacancy of seats caused on account of the declaration be forthwith filled up by the State Election Commission with general/open category candidates for the remainder term of the concerned local bodies, by issuing notification in that regard. The Supreme Court has also held that, the reservation in favour of Other Backward Class in concerned local bodies can be notified to the extent that it does not exceed 50 per cent of the total seats reserved in favour of SCs/STs/OBCs taken together.

4. In Paragraph 12 of the said judgment, the Supreme Court has held that, the following triple test/conditions required to be complied by the State before reserving seats in the local bodies for OBCs:— (1) To set up dedicated Commission to conduct contemporaneous rigorous inquiry into 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 pursuant of the said judgment, the Government has assigned the said work to the Maharashtra State Commission for Backward Classes constituted under the Maharashtra State Commission for Backward Classes Act, 2005 (Mah. XXXIV of 2006). The Commission will require time to conduct the contemporaneous rigorous inquiry for the said purpose.

5. In the said judgment in Paragraph 28, the Supreme Court has held that, the challenge to the validity of section 12(2)(c) of the 1961 Act is negated. Instead, that provision is being read down to mean that reservation in favour of OBCs in the concerned local bodies can be notified to the extent that it does not exceed aggregate 50 per cent. of the total seats reserved in

favour of SCs/STs/OBCs taken together. In other words, the expression “shall be” preceding 27 per cent. occurring in section 12(2)(c), be construed as “may be” including to mean that reservation for OBCs may be upto 27 per cent. but subject to the outer limit of 50 per cent. aggregate in favour of SCs/STs/OBCs taken together, as enunciated by the Constitution Bench of this Court.

6. In view of the said judgment, the OBCs has no reservation in local bodies. To give representation to OBCs in local bodies, the Government has decided, as an intermediate measure, to make provision for reservation upto 27 per cent. of seats to the persons belonging to the category of Backward Class of Citizens in the Corporations and Municipal Councils and to provide that, the total reservation shall not be more than 50 per cent. of the total seats in the local bodies. It is, therefore, proposed to make suitable amendments in section 5A(4)(a) of the Mumbai Municipal Corporation Act, section 5A(1)(c) of the Maharashtra Municipal Corporations Act and section 9(2)(d) of the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships Act, 1965.

7. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Mumbai Municipal Corporation Act, the Maharashtra Municipal Corporations Act and the Maharashtra Municipal Councils, *Nagar Panchayats* and Industrial Townships Act, 1965, for the purposes aforesaid, this Ordinance is promulgated.

Mumbai,
Dated the 30th September 2021.

BHAGAT SINGH KOSHYARI,
Governor of Maharashtra.

By order and in the name of the Governor of Maharashtra,

MAHESH PATHAK,
Principal Secretary to Government.