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ORISSA HIGH COURT
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DEPUTY REGISTRAR(JUDL.)

449

(Consolidated Cause Title)

IN THE HIGH COURT OF ORISSA: CUTTACK

(ORIGINAL JURISDICTION CASE)

W.P. (C) No. 17362 OF 2016

CODE NO.289900

In the matter of:

An application under Articles 226 and 227 of the Constitution of India, 1950 read with the provisions of the Orissa Panchayat Samiti Act, 1959.

AND

In the matter of:

Subash Chandra Biswal,
Aged about 51 years,
S/o. Gourishankar Biswal,
Resident of Village-Kurla,
P.O.: Salad, P.S. : Rengali,
District: Sambalpur

... **Petitioner**

Versus

1. State of Odisha, represented through its Secretary, Panchayati Raj Department, Secretariat Building, Bhubaneswar, District-Khurda

2. The Chief Secretary, State of Odisha, Secretariat Building, Bhubaneswar, District-Khurda

3. Collector & District Magistrate, Sambalpur, At/P.O./Dist. : Sambalpur

4. State Election Commission, Odisha, Represented through its Commissioner, At-Toshali Bhawan, B-2, First Floor, Satya Nagar, Bhubaneswar, Dist-Khurda

... **Opposite Parties**

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HIGH COURT OF ORISSA : CUTTACK

W.P.(C) No. 17362 of 2016

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Subash Chandra Biswal ..... Petitioner

Versus

State of Odisha and others ..... Opp. Parties

For petitioner : M/s. Gautam Mishra, D.K. Patra, A.S. Behera, A. Dash, J. Biswal, Advocates

For opp. parties : Mr. S.P. Mishra, Advocate General, [O.P. Nos. 1 to 3]

M/s. B.K. Dash, Raja Bhusan Dash, Smruti Ranjan Dash, & Saswat Jena, Advocates, [O.P. No. 4]

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR. VINEET SARAN
AND
THE HONOURABLE DR. JUSTICE B.R. SARANGI

Date of hearing: 09.04.2018 :: Date of judgment: 18.04.2018

DR. B.R. SARANGI, J, By means of this writ petition, which has been followed by a series of writ petitions, indulgence of this Court has been sought for in the matter of ratio of reservation adopted by the State Government for conducting election to the local self-Government under the various provisions, namely, Section 10 of the Orissa Grama Panchayats Act, 1964, Section 16 of the Orissa Panchayat Samiti Act, 1959, Section 6 of the Orissa Zilla Parishad Act, 1991 and Section 11 of the Orissa Municipal Act, 1950, wherein the thumb rule laid down by the apex Court in ***K. Krishna Murthy v. Union of India***, (2010) 7 SCC 202, so far as reservation of seats is concerned, has exceeded 50%, thereby violating Articles 14 and 21 of the Constitution of India. The instant writ petition, along the connected matters, had been filed at a point of time when election was imminent. Even though this Court initially passed an interim order, the same was subsequently vacated allowing the election to proceed, subject to the condition that applicability of the judgment in ***K. Krishna Murthy*** (supra) would be considered

at the time of final adjudication of the matter. Hence, this writ application was heard together with the connected matters and is being disposed of, with the consent of the parties, by this judgment which will govern in connected matters also.

2. For just and proper adjudication, the facts of the instant case, in which pleadings have been completed, have been referred to.

The petitioner, in the instant writ petition, who claims to be a permanent resident of district Sambalpur, has challenged the ratio of reservation in the matter of election to the post of Panchayat Samiti Members under Rengali Panchayat Samiti in the district of Sambalpur fixed by the Collector, Sambalpur, vide notification dated 08.09.2016 in Annexure-1, on the ground that the same is violative of Articles 14 and 21 of the Constitution of India and in contravention of the judgment dated 11.05.2010 in ***K. Krishna Murthy*** (supra). He further seeks to declare Section 16 of the Odisha Panchayat Samiti Act, 1959, more

particularly Sub-sections (2)(a), (2)(b-1), (3-a)(i) and (3-a)(ii-a) thereof, as ultra vires to the Constitution, as well as contrary to the law laid down by the apex Court in ***K. Krishna Murthy*** (supra), as the same provides for reservation for SC, ST and OBC in excess of the upper ceiling limit of 50%. In some of the local bodies reservation for SC, ST and OBC candidates exceeds 50% and the same is in violation of the dictum of the apex Court laid down in the case of ***K.Krishna Murthy*** (supra). The exercise to determine the extent of proportionate reservation in consonance with the aforesaid judgment having not been undertaken, it is asserted that the recommendation of the Collector notified on 08.09.2016 in Annnexure-1 is liable to be set aside and the entire exercise be done afresh keeping in view the ratio laid down by the apex Court in ***K.Krishna Murthy*** (supra), so far as reservation is concerned. It is further averred that Sub-Sections (2)(a), (2)(b-1), (3-a)(i) and (3-a)(ii-a) of Section 16 of the Odisha Panchayat Samiti Act, 1959, being violative of Articles 14 and 21 of the Constitution and contrary to the judgment of the apex Court in the case of ***K.Krishna Murthy***

(supra), the reservation held in respect of SC, ST and OBC in excess of upper ceiling limit of 50% is bad in law, hence this application.

3. Mr. G. Mishra, learned counsel for the petitioner strenuously urged before this Court that as the law laid down by the Constitution Bench of the Supreme Court in ***K. Krishna Murthy*** (supra), so far as upper ceiling limit of 50% for reservation of SC, ST and OBC is concerned, has not been followed, the notification dated 08:09.2016 issued in Annexure-1 de horse the said judgment should be quashed and accordingly the provisions of Section 16 of the Odisha Panchayat Samiti Act, 1959 are required to be amended making room for all categories of people keeping the reservation up to the upper ceiling limit of 50%. It is further contended that a perusal of the reservation list dated 08.09.2016 in Annexure-1 would indicate that out of 16, reservation for SC, ST and OBC has been made in respect of 15 Gram Panchayats, and thereby the percentage of reservation would be to the extent of 93.75%, which is much more beyond the ceiling limit of 50%, as fixed by the

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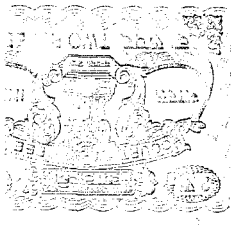
Constitution Bench of the apex Court in the case of ***K. Krishna Murthy*** (supra).

It is further contended that the provisions of Section 16 of the Orissa Panchayat Samiti Act, 1959 have to be read down to the extent that the upper ceiling limit of 50% vertical reservations in favour of SC, ST and OBC should not be breached in the context of local self-Government and, as such, the said provisions should co-exist with the judgment of ***K. Krishna Murthy*** (supra) which is binding by virtue of Article 142 of the Constitution of India so as to make Section 16 constitutionally valid. Therefore, it is contended that the judgment of the apex Court in ***K. Krishna Murthy*** (supra) has to be implemented in its letter and spirit keeping the upper ceiling limit of reservation up to 50% so far as it relates to SC, ST and OBC in local self-Government, and that even though the judgment in ***K. Krishna Murthy*** (supra) came into force in 2010, because of the cause of action arose in the year 2017, no delay can be attributable in challenging the vires of the provisions.

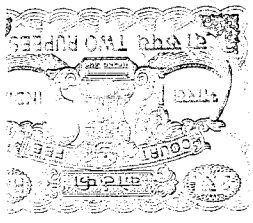
It is further contended that the law laid down by the apex Court in ***K. Krishna Murthy*** (supra) has already been implemented so far as the States of Karnataka and West Bengal are concerned. Therefore, he seeks for implementation of the said judgment in relation to local self-Government by the State authorities under the various provisions confining the upper ceiling limit of reservation up to 50% of seats so far as SC, ST and OBC are concerned. To substantiate his contentions, reliance has been placed on ***K. Krishna Murthy v. Union of India***, (2010) 7 SCC 202; ***Nimmaka Jaya Raj v. Govt. of A.P.,*** 2012 (6) ALD 329; ***Independent Thought v. Union of India,*** (2017) 10 SCC 800; ***Delhi Transport Corporation v. D.T.C. Mazdoor Congress,*** AIR 1991 SC 101; ***Shreya Singhal v. Union of India,*** (2015) 5 SCC 1; ***Motor General Traders v. State of Andhra Pradesh***, AIR 1984 SC 121; ***Oriental Insurance Co. Ltd v. Meena Variyal***, (2007) 5 SCC 428; and ***Municipal Committee, Amritsar v. Hazara Singh***, AIR 1975 SC 1087.

4. Mr. S.P. Mishra, learned Advocate General of the State appearing for opposite parties no.1 to 3 sought to justify the reservation by stating that if statute prescribes a specific ratio of reservation, and adhering to the same if any action has been taken by the competent authority, no illegality or irregularity can be said to have been committed. In the instant case, in order to comply with the statutory formality in time to conduct the election, steps have been taken on the basis of the provisions contained in the statute. He, however, emphatically contended that the State never intends to violate the ratio laid down in ***K.Krishna Murthy*** (supra), but when the statute prescribes a particular mode to have the reservation, the action has been taken in consonance with the same.



It is further contended that reservation of seats for the purpose of Panchayat Samiti Members under Rengali Panchayat Samiti for the general election to Panchayati Raj Institutions, 2017 has been made in strict adherence of the Government of Odisha in Panchayat Raj Department

Guidelines issued vide letter no.14319 dated 12.08.2016. The said guidelines were issued on the basis of Section 10 of Odisha Grama Panchayat Act, 1964. As such, the said guidelines are based upon the 2011 census for the purpose of computation of number of seats/offices to be reserved for SC or ST category. Similarly, for the purpose of reservation in respect of backward class citizens, not less than 27 per centum of total seats were reserved. As the State of Odisha comprises of both schedule and normal areas, such guidelines have played a pivotal role for determination of reservation. If any action has been taken in consonance with the statute, it cannot be said that the State Government has committed any illegality or irregularity so as to call for interference with the same.



It is further contended that the provisions of Sub-sections (2)(a), (2)(b-1), (3-a)(i) and (3-a)(ii-a) of Section-16 the Orissa Panchayat Samiti Act, 1959 are existing and operating since long, whereas the judgment of the apex Court in ***K. Krishna Murthy*** (supra) was rendered on

11.05.2010, in which the apex Court held that each and every State Legislature which breaches the upper ceiling of 50% vertical reservations in favour of SC, ST and OBC should be treated as invalid and unconstitutional. But, however, liberty has been granted to the aggrieved parties to challenge the State Legislations by adducing necessary contemporaneous empirical data. As the provisions of Orissa Panchayat Samiti Act, 1959 are in consonance with the mandate of Articles 243-D and 243-T of the Constitution, the same cannot be quashed. As the petitioner has not proved his case by providing contemporaneous empirical data justifying the reservation as bad in law, the same cannot be interfered with.

It is further contended that no direction can be issued to the Legislature for amending the Act or Rules. Article 243-D and 243-T form a distinct and independent constitutional basis for reservation in local self-Government institutions, as has been held by the apex Court that the barriers to political participation are not of the same

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character as barriers that limit access to education and employment. Reservation in local self-Government is a measure of protective discrimination to afford them adequate representation in local self-Government and to get a chance to play leadership roles. Therefore, various provisions mentioned in Section 16 of the Orissa Panchayat Samiti Act, 1959 is well within its limit and the same cannot be interfered with and more particularly Article 15(3) of the Constitution of India provides that nothing in this Article shall prevent the State from making any special provision for women and children. Therefore, when the State has enacted any law keeping in view various provisions of the Constitution, the same cannot be interfered with, but the normal rule of 50% reservation for all categories is subject to exceptions. It is further contended that the reservation, as prescribed in various provisions of Section 16 of the Orissa Panchayat Samiti Act, 1959, cannot be treated as violative of Articles 14 and 21 of the Constitution of India and as such the figure arrived at by the petitioner to indicate excessive reservation for the seats of Panchayat Samiti members is

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erroneous. More particularly, the reservation of seats in Panchayat Samiti has to be considered taking the entire State into account and also the fact that the Panchayat Extension to Scheduled Areas (PESA) Act, which provides for cent percent reservation for Scheduled Tribes in scheduled areas.

It is further contended that the reservation in political representation is well identified as a mode of affirmative action and is in consonance with and in furtherance of constitutional mandate, i.e., Article 243-D of the Constitution of India. To substantiate his contentions, he has relied upon the judgments in ***Union of India v. Association for Democratic Reforms,*** AIR 2002 SC 2112; ***Suresh Seth v. Commissioner, Indore Municipal Corporation,*** AIR 2006 SC 767; ***Indra Sawhney v. Union of India***, AIR 1993 SC 477; ***State of Kerala v. NM Thomas***, (1976) 2 SCC 310; ***Union of India v. Rakesh Kumar***, (2010) 4 SCC 50; ***Ram Kishore Sen v. Union of India***, AIR 1966 SC 644; ***Ashutosh Gupta v. State of Rajasthan***

(2002) 4 SCC 34; ***Sanjeev Coke Mgd. Co. v. Bharat Coking Coal Ltd***, (1983) 1 SCC 147; ***Secy., Ministry of Chemicals and Fertilizers, Govt. of India v. Cipla Ltd.***, (2003) 7 SCC 1; ***Ashok Kumar Thakur v. Union of India***, (2008) 6 SCC 1; and ***Jyoti Basu v. Debi Ghosal***, (1982) 1 SCC 691.

5. Mr. B.K. Dash, learned counsel appearing for the State Election Commission, Odisha contended that since it is the matter between the petitioner and the opposite party-State, State Election Commission has no role to play at this point of time. But initially, when the writ petition was filed on the teeth of election, the State Election Commission had a role to play in order to bring to the notice of this Court that when the election is 'imminent' the Court should refrain from passing any interim order stalling the election process. As the election has already been over and the petitioner has now confined his relief with regard to applicability of the judgment in ***K. Krishna Murthy*** (supra), which mandates that upper ceiling limit for reservation seats in case of SC, ST and OBC should not exceed 50%, is a matter between the

petitioner and the State, in which the State Election Commission has no role to play.

6. We have heard Mr. G. Mishra, learned counsel for the petitioner; Mr. S.P. Mishra, learned Advocate General of the State-opposite parties no.1 to 3; and Mr. B.K. Dash, learned counsel appearing for the State Election Commission-opposite party no.4. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, the matter is being disposed finally at the stage of admission.

7. For just and proper adjudication of the case, the relevant provisions of the Constitution of India are quoted below:-

xx xx xx

"14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. ***Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.***

xx xx xx

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

xx xx xx

21. No person shall be deprived of his life or personal liberty except according to procedure established by law."

8. Part-IX containing Articles 243 and 243A to 243-O has been inserted by the Constitution (Seventy-third Amendment) Act, 1992 with effect from 24.04.1993. Article 243(d) defines "Panchayat" to mean an institution (by whatever name called) of self-government constituted under Article 243B, for the rural areas. Article 243B deals with constitution of Panchayats. Under Article 243B(1) it is provided that there shall be constituted in every State, Panchayats at the village, intermediate at district levels in accordance with the provisions of this Part. By virtue of this provision, there is 3-tier Panchayat Bodies in the State, namely, Grama Panchayat, Panchayat Samiti and Zilla Parishad. Article 243C deals with composition of Panchayats. It provides that subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats. Provided that the

ratio between the population of the territorial area of Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as is practicable, be the same throughout the State. In view of such power, Odisha Gram Panchayat Act, 1964, Odisha Panchayat Samiti Act, 1959 and Odisha Zilla Parishad Act, 1991 have come into force for composition of respective bodies.

9. Article 243D deals with reservation of seats where mandate has been put that reservation has to be followed on the basis of ratio of population. Under Article 243D(6) it is provided that 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. Article 243E states about duration of Panchayats, etc. Article 243E(1) states:

> *"Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer."*

The pari materia provisions with regard to duration of State Legislature have been prescribed in Article 172 of the Constitution with the same language and with same terms. Similarly, so far as Municipal Bodies are concerned, same language has been employed in Article 243U. Article 243O puts a bar on interference by Courts in electoral matters. Similar provisions, so far as Municipality is concerned, have been specified in Article 243ZG.

Article 329 of the Constitution provides for General Elections. Article 243K deals with elections to the Panchayats, where power has been vested in the State Election Commission for superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats. Pari materia provisions, so far as Municipalities are concerned, have been prescribed in Article 243ZA and for General Elections under Article 324.

10. Since the instant writ application is dealing with election to Panchayat Samitis, as per the Odisha Panchayat

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Samiti Act, 1959 under Section 16B power has been vested with the State Election Commission for superintendence, direction and control of the preparation of electoral roll and the conduct of all elections to the Samitis and under Section 16B(iv) the general power of conducting free and fair election is vested with the Commission. Section 16 deals with constitution of Panchayat Samiti. For better appreciation, Sub-sections (2)(a), (2)(b-1), (2-A), (3)(a-1) and (a-ii) of Section-16 are quoted below:

> ***" 16. Constitution of the Panchayat Samiti –***
>
> *xx* *xx* *xx*
>
> ***(2) (a)*** *Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Samiti 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 under Clause(b) of Sub-section (1) in that Samiti as the population of the Scheduled Castes and the Scheduled Tribes in that Samiti area bears to the total population of that area and such seats shall be allotted by the rotation to different constituencies in the Samiti area:*
>
> *Provided that where the population of the Scheduled Caste or, as the case may be the Scheduled Tribes in a Samiti area is not sufficient for reservation of any seat, and seat for the Scheduled Caste, or as the case may be, one seat for the Scheduled Tribes shall be reserved in that Samiti area.*

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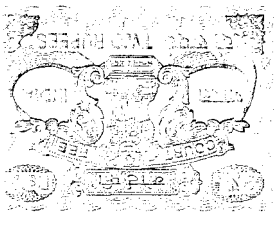
Provided further that in the Scheduled Areas, not less than one-half of the total number of seats to be filled up by direct election shall be reserved for the Scheduled Tribes.

(b-1) *As nearly as may be, but not less than, twenty seven per centum of the total number of seats to be filled up by direct election in every Samiti shall be reserved in favour of backward class of citizens as referred to in Clause (6) of Article 243-D of the Constitution in the prescribed manner [and shall be allotted by rotation to different constituencies thereof]:*

Provided that where, after reservation of the required number of seats for the Scheduled Castes and the Scheduled Tribes in a Samiti. the remaining seats are found to be insufficient for the purpose of reservation in favour of backward class of citizens, as nearly as may be, but not less than, twenty seven per centum of the remaining seats shall be reserved in favour of such citizens in that Samiti.

xx *xx* *xx*

(2-A) *The manner in which the Samiti area shall be divided into constituencies for the purpose of Clause (b) of Sub-section (1) and the seats therein shall be reserved for the purposes of Clauses (a), (b) [(b-1), (b-2)] and (c) of Sub-section (2), shall be as follows :*



(a) *The Collector shall divide the Samiti area into constituencies in such a manner that-*

(i) every constituency shall, as far as practicable, have a population of not less than two thousand and more than ten thousand; and

(ii) the territorial area of a Grama is not bifurcated.

(b) *The constituencies in which the density of population of the Scheduled Castes and the Scheduled Tribes is higher shall be reserved for the Scheduled Castes and the Scheduled*

Tribes respectively and shall rotate in descending order at every general election [and in case of backward class of citizens such reservation and rotation shall be in the prescribed manner.]

(c) Every constituency shall bear the same name as of the Grama and the names of the constituencies shall be arranged serially in Oriya alphabetical order :

Provided that where a constituency comprises more than one Grama, the constituency shall bear the name of the Grama of which the population is higher or, as the case may be, the highest.

(d) After the names of the constituencies are so arranged, the Collector shall reserve the required number of constituencies for women in the following manner :

(i) reservation of constituencies for women shall be made for the Scheduled Castes at the first instance. [then for the Scheduled Tribes and thereafter for the backward class of citizens] and, in computing one-third of the total number of constituencies, the constituencies, reserved for women belonging to the Scheduled Castes [the Scheduled Tribes and backward class of citizens] shall be taken into account;

(ii) out of the constituencies left in the list of the Oriya alphabetical order for candidates other than the Scheduled Castes, the Schedule id Tribes and the backward class of citizens the constituency which appears second and, thereafter, every third constituency shall be reserved for women, until the required quota is completed; and

(iii) as nearly as may be, but not less than, one-third of the constituencies reserved for the members of the Scheduled Castes, the Scheduled Tribes and the backward class of citizens shall be reserved for women belonging to the Scheduled Castes, the Scheduled Tribes

and backward class of citizens in the manner hereinbefore provided.

(e) The Collector shall, after previous publication in the prescribed manner inviting, objections and suggestions from all persons interested within the prescribed period, and after considering all such objections and suggestions, publish a statement showing, the division of the Samiti area into constituencies and the seats to be reserved therein, in his notice board, which shall be final;]

***(3-a)** Notwithstanding anything to the contrary in Sub-section (1)-*

(i) officers of Chairman in Samitis shall be reserved for the Scheduled Castes and the Scheduled Tribes and the number of the offices so reserved for the Scheduled Castes and the Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of such officers as the population of the Scheduled Castes and the Scheduled Tribes respectively in the State bears to the total population of the State:

(ii-a) as nearly as may be, twenty-seven percentum of the offices of Chairman in Samitis shall also be reserved in favour of backward class of citizens as referred to in Clause (6) of Article 243-D of the Constitution;

11. On perusal of the above mentioned provisions, it is made crystal clear that Sub-section (2)(a) of Section 16 deals with reservation of SC and ST, whereas Sub-section (2)(b-1) states that as nearly as may be, but not less than 27 per

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centum of the total number of seats to be filled up by direct election in every Samiti, shall be reserved in favour of backward class of citizens. Sub-section (2-A) thereof deals with the manner in which the Samiti area shall be divided into constituencies for the purpose of clause (b) of sub-section (1) and the seats therein shall be reserved for the purpose of clauses (a), (b) and (c) of sub-section (2). As per the provisions contained in clause (a) of Section 16(2-A), the Collector shall divide the Samiti area into constituencies in such manner that every constituency shall, as far as practicable, have a population of not less than two thousand and more than ten thousand and territorial area of a Grama is not bifurcated. Clause (b) of Section 16(2-A) states the constituencies in which the density of population of the SC and ST is higher shall be reserved for the SC and ST respectively and shall rotate in descending order at every general election.

12. In consonance with the provisions contained in the Constitution as well as Odisha Panchayat Samiti Act, 1959, as discussed above, the Collector considering the population

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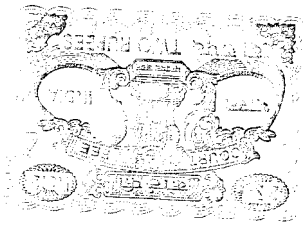
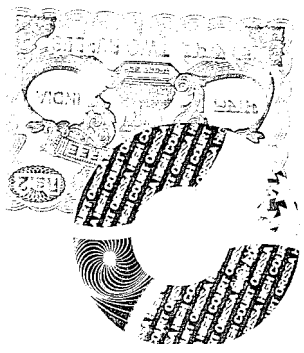
in the local area has issued the notification on 08.09.2016, and in prescribed Form-19 under Rules 7-B, 7-D and 8-F published the Final Statement of Constituencies in respect of the Panchayat Samitis under Rengali Block in the district of Sambalpur, wherein total number of constituencies has been carved out as 16 and of the same reservation has been made for SC-3, ST-7, BC-6, UR-1. As the reservation exceeds upper limit of 50% of the total seats, the petitioner has filed this application on the ground that it is contrary to law laid down by the apex Court in **K.Krishna Murthy** (supra). In this backdrop of the case, this Court on 06.10.2016 granted time to learned Addl. Govt. Advocate to obtain instruction or to file counter affidavit and further directed to list the matter on 31.10.2016 considering the eminence of the election, but passed an interim order to the following effect:





".....Considering the facts of the case and in view of the submission made by learned counsel for the petitioner recorded in the order dated 12.9.2016 passed in W.P.(C) No. 15614 of 2016, it is provided that till the next date of listing, no order shall be passed in pursuance of the recommendation made by the Collector, Sambalpur dated 8.9.2016 (Annexure-1)."

13. The aforesaid interim order was extended from time to time, but finally this Court, taking into consideration the Constitution Bench judgments of the apex Court in ***Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad***, (2006) 8 SCC 352, ***Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman***, AIR 1985 SC 1233 and ***Anugrah Narain Singh v. State of U.P.,*** (1996) 6 SCC 303, vide order dated 25.01.2017, vacated the interim order 21.12.2016 and passed an order granting liberty to the State authorities, as well as the State Election Commission, Odisha to proceed further with the election process in respect of the areas in question so as to complete the same as per the mandate fixed in the Constitution, as well as Orissa Panchayat Samiti Act, 1959. However, this Court has clarified that Section 16 of the Panchayat Samiti Act provides comprehensive procedure as to how the seats shall be reserved for Scheduled Castes and Scheduled Tribes, as well as for backward class of citizens. Sub-Section 2-A of Section 16 is a self contained code, which lays down various stages for delimitation of constituencies and reservation of

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seats in respect of various categories of reserved candidates. Even though the Collector-opposite party no.3 has recommended, by notification dated 19.08.2016, with regard to reservation of seats exceeding 50% of the upper ceiling limit, but the stage at which the petitioner has assailed the same, being "imminent" to the election process, the same can be considered after the election process is over. Therefore, after the interim order was vacated on 25.01.2017, the election process has been over and thereafter this matter has been taken up for consideration.

14. On perusal of the instant writ petition, it appears that the petitioner has filed this application with the following prayers:-

> *"(a) Quash the notification issued by the Collector, Sambalpur under Annexure-1 as the same is far in excess of the upper ceiling limit of 50%;*
>
> *(b) Direct the opposite parties to conduct elections after preparing fresh reservation lists keeping in mind the judgment of the Hon'ble Supreme Court dated 11.05.2010 in the case of K. Krishna Murthy v. Union of India (2010) 7 SCC 202;*
>
> *(c) Declare Section 16 [more particularly Section 16(2)(a), Section 16(2)(b-1), Section 16(3-a)(i) and Section 16 (3-a) (ii-a)] of the Orissa Panchayat*

Samit Act, 1959 as violative of Articles 14 and 21 of the Constitution and contrary to the Constitution Bench judgment in the case of K. Krishnamurthy v. Union of India, (2010) 7 SCC 202 as the same provies for reservations for SCs, STs and OBCs in excess of the upper ceiling limit of 50%."

Mr. G. Mishra, learned counsel for the petitioner when confronted with the prayers, very fairly stated that so far as prayer no.(a) is concerned, it has become infructuous, as the election has already been taken place. But he confined the writ petition to prayers no.(b) and (c), as mentioned above, and gave emphasis with regard to implementation of the Constitution Bench judgment of the apex Court rendered in the case of ***K. Krishna Murthy*** (supra), which provides that reservation for SC, ST and OBC should not exceed the upper ceiling limit of 50%. The relevant paragraphs of the judgment of the apex Court in ***K. Krishna Murthy*** (supra) are quoted below:-

*"**9.** In light of the submissions that have been paraphrased in the subsequent paragraphs, the contentious issues in this case can be framed in the following manner:*

(i) Whether Article 243-D(6) and Article 243-T(6) are constitutionally valid since they enable reservations in favour of backward classes for the purpose of occupying seats and chairperson

positions in panchayats and municipalities respectively?

(ii) Whether Article 243-D(4) and Article 243-T(4) are constitutionally valid since they enable the reservation of chairperson positions in panchayats and municipalities respectively?

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14. It was urged that the reservation policy contained in the Karnataka Panchayat Raj Act, 1993 provides for the aggregate reservation of nearly 84% of the seats in panchayats, which is excessive and violative of the equality clause. Especially with regard to reservations in favour of backward classes, it was argued that the same does not meet the test of "reasonable classification", thereby falling foul of Article 14.

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22. We were also alerted to the possibility that the State Governments could confer reservation benefits in favour of particular OBC groups as a means of garnering political support from these groups, instead of ameliorating backwardness in the social and economic sense. In support of this contention, it was pointed out that the Karnataka Panchayat Raj Act had provided for reservations that were in excess of the 50% upper ceiling prescribed for communal reservations in past judicial decisions. (See M.R. Balaji v. State of Mysore and Indra Sawhney v. Union of India.)

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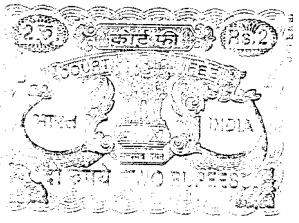
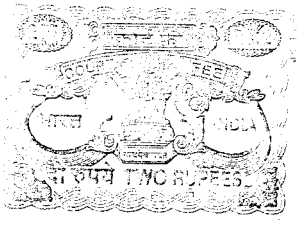
61. It is also incumbent upon the executive to ensure that reservation policies are reviewed from time to time so as to guard against overbreadth. In respect of the objections against the Karnataka Panchayat Raj Act, 1993, all that we can refer to is the Chinnappa Reddy Commission Report (1990) which reflects the position as it existed twenty years ago. In the absence of updated empirical

data, it is well-nigh impossible for the courts to decide whether the reservations in favour of OBC groups are proportionate or not.

62. *Similarly, in the case of the State of Uttar Pradesh, the claims about the extent of the OBC population are based on the 1991 census. Reluctant as we are to leave these questions open, it goes without saying that the petitioners are at liberty to raise specific challenges against the State legislations if they can point out flaws in the identification of backward classes with the help of updated empirical data.*

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 underrepresented 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.

65. *Shri Rajeev Dhavan has contended that since the context of local self-government is different from education and employment, the 50% ceiling for vertical reservations which was prescribed in Indra Sawhney cannot be blindly imported since that case dealt with reservations in government jobs. It was further contended that the same decision had recognised the need for exceptional treatment in some circumstances, which is evident from the following words: (SCC p. 735, paras 809-10)*

> *"809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%.*
>
> *810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."*

66. *Admittedly, reservations in excess of 50% do exist in some exceptional cases, when it comes to the domain of political representation. For instance,*

the Legislative Assemblies of the States of Arunachal Pradesh, Nagaland, Meghalaya, Mizoram and Sikkim have reservations that are far in excess of the 50% limit. However, such a position is the outcome of exceptional considerations in relation to these areas. Similarly, vertical reservations in excess of 50% are permissible in the composition of local self-government institutions located in the Fifth Schedule Areas.

67. *In the recent decision reported as Union of India v. Rakesh Kumar this Court has explained why it may be necessary to provide reservations in favour of the Scheduled Tribes that exceed 50% of the seats in panchayats located in the Scheduled Areas. However, such exceptional considerations cannot be invoked when we are examining the quantum of reservations in favour of backward classes for the purpose of local bodies located in general areas. In such circumstances, the vertical reservations in favour of SCs/STs/OBCs cannot exceed the upper limit of 50% when taken together. It is obvious that in order to adhere to this upper ceiling, some of the States may have to modify their legislations so as to reduce the quantum of the existing quotas in favour of OBCs.*

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82. *In view of the above, our conclusions are:*

(i) The nature and purpose of reservations in the context of local self-government is considerably different from that of higher education and public employment. In this sense, Article 243-D and Article 243-T form a distinct and independent constitutional basis for affirmative action and the principles that have been evolved in relation to the reservation policies enabled by Articles 15(4) and 16(4) cannot be readily applied in the context of local self-government. Even when made, they need not be for a period corresponding to the period of reservation for the purposes of Articles 15(4) and 16(4), but can be much shorter.

(ii) Article 243-D(6) and Article 243-T(6) are constitutionally valid since they are in the nature of provisions which merely enable the State Legislatures to reserve seats and chairperson posts in favour of backward classes. Concerns about disproportionate reservations should be raised by way of specific challenges against the State legislations.

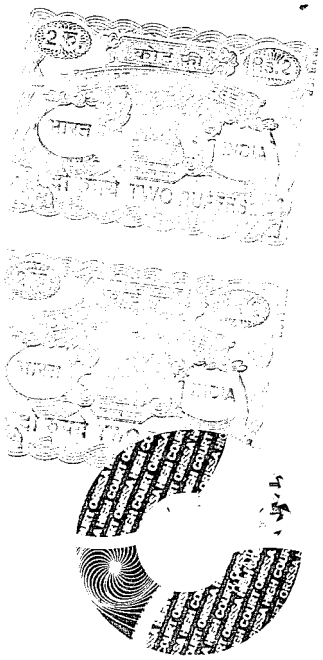
(iii) We are not in a position to examine the claims about overbreadth in the quantum of reservations provided for OBCs under the impugned State legislations since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which are indeed quite different from the patterns of disadvantages in the matter of access to education and employment. As we have considered and decided only the constitutional validity of Articles 243-D(6) and 243-T(6), it will be open to the petitioners or any aggrieved party to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court. We are of the view that the identification of "backward classes" under Article 243-D(6) and Article 243-T(6) should be distinct from the identification of SEBCs for the purpose of Article 15(4) and that of backward classes for the purpose of Article 16(4).

(iv) The upper ceiling of 50% vertical reservations in favour of SCs/STs/OBCs should not be breached in the context of local self-government. Exceptions can only be made in order to safeguard the interests of the Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas.

(v) The reservation of chairperson posts in the manner contemplated by Articles 243-D(4) and 243-T(4) is constitutionally valid. These chairperson posts cannot be equated with solitary posts in the context of public employment."

15. In ***Nimmaka Jaya Raja*** (supra), the Andhra Pradesh High Court, on consideration of the similar question, held as follows:-

> *"12. This writ petition has been filed seeking a writ of mandamus declaring Sections 9, 15, 152(1A), 153(2A), 180(1A) and 181(2)(b) of the Act and the Reservation Rules issued vide G.O. Ms. No.220, Panchayat Raj and Rural Development (Elec. & Rules) Department, dated 25.5.2006 and G.O.Ms.No.128, Panchayat Raj and Rural Development (Elec. & Rules) Department, dated 8.6.2011 as ultra vires and violative of Article 14 of the Constitution of India and contrary to the judgment of the Supreme Court in K. Krishna Murthy v. Union of India (2010) 7 SCC 202 and to direct the first respondent to fix reservations by fixing upper ceiling limit of 50% for the elections to the local bodies.*
>
> *xx xx xx*
>
> *44. On behalf of the State, the learned Advocate General submitted that the percentage of backward classes in the State is 39.39% according to the data collected in the socio-economic survey conducted by the Andhra Pradesh Backward Classes Finance Corporation Ltd. The Government decided to adopt the vertical reservation policy for the elections to be conducted to the Panchayat Raj bodies at 60.55% which had been done during the third ordinary elections held in the year 2006. Accordingly, orders have been issued in G.O. Ms.No128, dated 8.6.2001 in exercise of the power conferred under Section 268(1) read with Sections 9, 15, 152, 153, 180 and 181 of the Act and Article 243D(6) of the Constitution. He submitted that that the reservation of 34% in favour of backward classes is impugned with the provisions of Article 243D(6) of the Constitution. As the 2011 Census has not been published and as the Act limits the reservation for backward classes at 34%, the impugned G.O. has*



been issued. He submitted that since the operation of the impugned G.O. has been stayed by this Court, it would not be possible to conduct elections before the expiry of the term of the elected members, therefore, the Government promulgated Ordinance No.5 of 2011 enabling appointment of Special Officers to run the administration of the local bodies.

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56. It is argued on behalf of the State that the reservation of 34% is being followed since 1994 and even during the Elections held in the year 2006, the same percentage of reservation was adopted, therefore, it is acceptable. But, we are not inclined to accept the submission on behalf of the State for the reasons that in the State there is no empirical data and the reservation is based on unpublished data. The State Government is required to conduct a detailed investigation with regard to backwardness of the population, collect data, invite objections from the general public, analyse the same and fix the reservation in accordance with the constitutional scheme. Further, limit of reservation, as ruled by the Supreme Court in Krishna Murthy, was not available in 2006.

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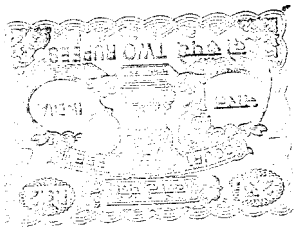
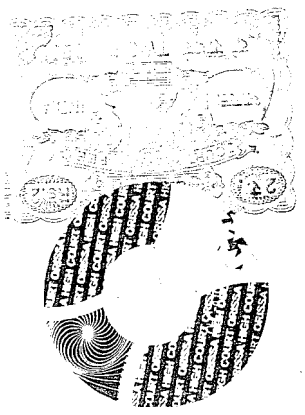
58. As noticed above, this Court, while admitting Writ Petition Nos.16560 and 16473 of 2011, granted interim stay of G.O.Ms.No.128, dated 8.6.2011 including elections. Thereafter, the government promulgated Ordinance No.5 of 2011 on 21.7.2011 making transitional arrangements for administration of local bodies till the ordinary elections are held. Consequent to the promulgation of the Ordinance, the government issued orders appointing Special Officers to the local bodies. It is the case of the State that the said Ordinance was promulgated only to fill the vacuum in extraneous circumstances as the Act did not provide for the said contingency and all necessary steps had been taken for conducting elections to the Panchayat Raj





institutions within time, but in view of the interim stay granted by this Court, further steps could not be taken for holding elections. In view of this, it cannot be said that the appointment of Special Officers is illegal. In view of the above discussion, the Writ Petitions and the public interest litigation petitions are disposed of with the following directions:

(i) For the purpose present elections, the State shall fix the reservation in favour of Backward Classes at such percentage so that it comes within 50% when the aggregate reservation in favour of Scheduled Castes, Scheduled Tribes and Backward Classes put together;

(ii) The State shall conduct a detailed investigation with regard to backwardness of the population, collect data, invite objections from the general public, analyse the same and then fix the reservation in favour of Backward Classes in accordance with the constitutional scheme. It shall also review the reservation from time to time;

(iii) The State Election Commission shall commence the process of elections to the local bodies in the State of Andhra Pradesh immediately and shall complete the elections within a period of three months from the date of finalization of the reservation percentage by the State.

(iv) All the writ petitions challenging the validity of amending Acts, providing for appointment of Special Officers for local bodies shall stand dismissed.

(v) No costs."

16. In view of the law laid down by the apex Court in ***K. Krishna Murty*** (supra) which has also been followed by the Andhra Pradesh High Court in ***Nimmaka Jaya Raja***

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(supra), the same should be applicable so far it relates to the State of Orissa in respect of reservation of seats which should not exceed 50%. But at the same time, it cannot be lost sight of that it has got its own exception considering the interest of scheduled tribe in the matter of panchayats located in the schedule area. As such, we are not examining which of the areas requires a special treatment as exception carved out by the judgment of the apex Court, and it is within the complete domain of the State authority to decide the same in accordance with law.

17. No doubt, the Constitution Bench judgment rendered by the apex Court in **K.Krishna Murthy** (supra) is binding by virtue of the Article 142 of the Constitution of India. Therefore, Section 16 of the Orissa Panchayat Samiti Act, 1959 should be read down so as to give effect to the judgment in **K.Krishna Murthy** (supra), meaning thereby Section 16 of the Panchayat Samiti Act, 1959 should co-exits with the judgment of **K.Krishna Murthy** (supra) and as such

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the provisions contained in Section 16 has to be read down to make it constitutionally valid.

18. In ***Independent Thought*** (supra), the apex Court held as follows:-

> *"**166.** I am conscious of the self-imposed limitations laid down by this Court while deciding the issue whether a law is constitutional or not. However, if the law is discriminatory, arbitrary or violative of the fundamental rights or is beyond the legislative competence of the legislature then the court is duty-bound to invalidate such a law.*
>
> ***167.** H.R. Khanna, J. in State of Punjab v. Khan Chand held that when courts strike down laws they are only doing their duty and no element of judicial arrogance should be attributed to the courts when they do their duty under the Constitution and determine whether the law made by the legislature is in conformity with the provisions of the Constitution or not. The relevant observations are as follows: (SCC p. 558, para 12)*
>
> > *"12. It would be wrong to assume that there is an element of judicial arrogance in the act of the courts in striking down an enactment. The Constitution has assigned to the courts the function of determining as to whether the laws made by the legislature are in conformity with the provisions of the Constitution. In adjudicating the constitutional validity of statutes, the courts discharge an obligation which has been imposed upon them by the Constitution. The courts would be shirking their responsibility if they hesitate to declare the provisions of a statute to be unconstitutional, even though those provisions are found to be violative of the Articles of the Constitution. Articles 32 and 226 are an integral part of the Constitution and provide remedies for*

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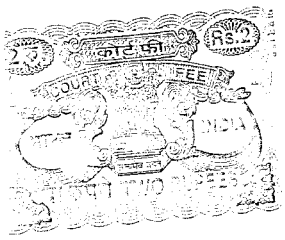
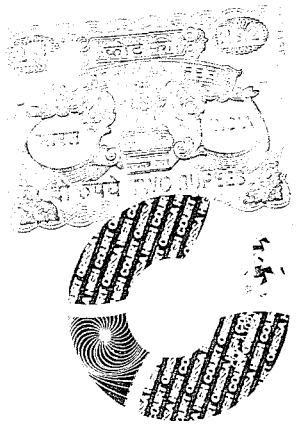
enforcement of fundamental rights and other rights conferred by the Constitution. Hesitation or refusal on the part of the courts to declare the provisions of an enactment to be unconstitutional, even though they are found to infringe the Constitution because of any notion of judicial humility would in a large number of cases have the effect of taking away or in any case eroding the remedy provided to the aggrieved parties by the Constitution. Abnegation in matters affecting one's own interest may sometimes be commendable but abnegation in a matter where power is conferred to protect the interest of others against measures which are violative of the Constitution is fraught with serious consequences. It is as much the duty of the courts to declare a provision of an enactment to be unconstitutional if it contravenes any Article of the Constitution as it is theirs to uphold its validity in case it is found to suffer from no such infirmity."

168. ***Therefore, the principle is that normally the courts should raise a presumption in favour of the impugned law; however, if the law under challenge violates the fundamental rights of the citizens, the law is arbitrary, or is discriminatory, the courts can either hold the law to be totally unconstitutional and strike down the law or the court may read down the law in such a manner that the law when read down does not violate the Constitution.*** *While the courts must show restraint while dealing with such issues, the court cannot shut its eyes to the violations of the fundamental rights of the citizens. Therefore, if the legislature enacts a law which is violative of the fundamental rights of the citizens, is arbitrary and discriminatory, then the court would be failing in its duty if it does not either strike down the law or read down the law in such a manner that it falls within the four corners of the Constitution."*

[Emphasis Supplied]





Similar view has also been taken in ***Delhi Transport Corporation*** and ***Shreya Singhal*** mentioned supra.

19. Mr. S.P. Mishra, learned Advocate General appearing for the State contended that Orissa Panchayat Samiti Act, 1959 under Section 16 envisages with regard to mode of reservation much prior to the judgment in ***K. Krishna Murthy*** (supra). Therefore, the validity of such provision cannot be negatived by implementation of the judgment of apex Court in ***K. Krishna Murthy*** (supra). It is well settled principle of law laid down by the apex Court in ***Motor General Traders*** (supra) that there is no limitation challenging the vires of the provisions of the Act. The relevant paragraph-24 is quoted below:

> *"**24**. It is argued that since the impugned provision has been in existence for over twenty three years and its validity has once been upheld by the High Court, this Court should not pronounce upon its validity at this late stage. There are two answers to this proposition. First, the very fact that nearly twenty three years are over from the date of the enactment of the impugned provision and the discrimination is allowed to be continued unjustifiably for such a long time is a ground of attack in these cases. As already observed, the landlords of the buildings constructed subsequent to Aug. 26, 1957 are given undue preference over the landlords of buildings constructed prior to that*

date in that the former are free from the shackles of the Act while the later are subjected to the restrictions imposed by it. What should have been just an incentive has become a permanent bonanza in favour of those who constructed buildings subsequent to Aug. 26, 1957. There being no justification for the continuance of the benefit to a class of persons without any rational basis whatsoever, the evil effects flowing from the impugned exemption have caused more harm to the society than one could anticipate. What was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century. The second answer to the above contention is that mere lapse of time does not lend constitutionality to a provision which is otherwise bad. "Time does not run in favour of legislation. If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity. Albeit, lateness in an attack upon the constitutionality of a stature is but a reason for exercising special caution in examining the arguments by which the attack is supported". (See W. A. Wynes : 'Legislative, Executive and Judicial Powers in Australia', Fifth Edition p. 33). We are constrained to pronounce upon the validity of the impugned provision at this late stage because the garb of constitutionality which it may have possessed earlier has become worn out and its unconstitutionality is now brought to a successful challenge."

In view of the law above settled position of law, this Court is of the considered view that merely because a particular provisions contained in an Act is in existence since several years, it cannot be said that the vires of the said provision cannot be raised subsequently when occasion

would arise. Applying the said analogy, even though Section 16 of the Orissa Panchayat Samiti Act, 1959 is in existence prior to the judgment in ***K. Krishna Murthy*** (supra), in view of the law laid down by the apex Court in ***Motor General Traders*** (supra), this Court is of the considered view that vires of the provisions contained under Section 16 can also be challenged when necessity arises and as such, limitation is not a bar to challenge the same.

20. As to the contention raised on behalf of the petitioner that judgment of ***K. Krishna Murthy*** (supra), having already been given effect to by the State of Karnataka as well as State of West Bengal, there would be no bar to give effect to the said judgment, Mr. S.P. Mishra, learned Advocate General has contended that paragraphs 64, 67 and 82(iv) of the case of ***K. Krishna Murthy*** (supra) are obiter because the same were passed in consideration of the issues that were raised in the judgment more particularly in paragraphs 1, 3, 6, 8, 9, 10, 12, 14, 22, 23, 27, 28, 43, 44, 59, 60.

It is well settled principle of law laid down by the Constitution Bench of the apex Court in ***State of Orissa v. Sudhansu Sekhar Misra,*** AIR 1968 647 that:-

> *"... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it."*

Applying the said principle to the present context, since the decision which has been rendered by the Constitution Bench in ***K. Krishna Murthy*** (supra) has been enumerated in paragraph 82 of the judgment itself, it cannot be construed at any stretch of imagination that the finding arrived at by the Constitution Bench of the apex Court in paragraphs 64, 67 and 82(iv) is obiter in any manner.

21. In ***Oriental Insurance Co. Ltd.*** (supra) and ***Municipal Committee, Amritsar*** (supra), the apex Court has also gone a step further stating that even if some findings are considered to be obiter, they may be also binding on the courts bellow.

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22. Mr. S.P. Mishra, learned Advocate General emphatically argued that percentage of reservation should be considered taking the entire State into account and also the fact that the PESA Act, provides for cent percent reservation for Scheduled Tribes in scheduled areas and, therefore, the normal rule of 50% reservation of all categories is subject to exceptions. In view of the law laid down by the apex Court in ***Indra Sawhney*** (supra) it is further contended that the exception is that reservation can be made proportionately having regard to the large population of SEBC in a State in order to secure adequate representation for them in excess of the 50% norm. Therefore, in absence of any empirical data, the contention which has been raised in the writ application to give effect to the judgment of the apex Court in ***K. Krishna Murthy*** (supra) has no basis at all.

In the above context, reliance has been placed on ***Ram Kishore Sen***, ***Ashutosh Gupra***, ***Sanjeev Coke Mgd. Co.*** and ***Secy. Ministry of Chemicals and Fertilizers GoI*** (supra) to assert that the reservation in political

representation is well identified as a mode of affirmative action and is in consonance with and in furtherance of constitutional mandate i.e. Article 243D of the Constitution of India. Reservation which has been done in accordance with the statute, cannot be construed to be arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution of India so as to warrant interference of this Court.

Relying upon the cases of ***Jyoti Basu*** and ***Rakesh Kumar*** (supra), it is further contended by learned Advocate General that political participation by a citizen is neither constitutional nor a fundamental right, but at best, can be statutory right which will be subject to the reservation policy of the Government.

23. There is no dispute with regard to the provisions and the law laid down by the apex Court in the aforementioned judgments. But then, when this Court reiterated the question with regard to the relief sought by the petitioner, Mr. G. Mishra, learned counsel for the petitioner

asserted in affirmative that the judgment rendered by the apex Court in ***K. Krishna Murthy*** (supra) is to be implemented in letter and spirit by the State Government so far as fixing the upper ceiling limit of 50% for reservation in respect of SC, ST and OBC in the State for election to the various local bodies.

24. Mr. S.P. Mishra, learned Advocate General contended that the judgment of the apex Court in ***K. Krishna Murthy*** (supra), being binding on the State, there is no difficulty to implement the same, but the State Government has to workout the methodology to give full effect to the judgment of the apex Court and taking into consideration the exception to the PESA Act and other similar provisions applicable to the case.

25. In view of the foregoing discussions, this Court is of the considered opinion that as per the provisions of Article 141 and 143 of the Constitution of India, the Constitution Bench judgment of the apex Court rendered in ***K. Krishna Murthy*** (supra) is binding on all concerned and the same,

having been considered to be the law of the land, should be implemented in letter and spirit. In case the State Government is allowed to breach the upper limit of 50% in the vertical reservations, so far as SC, ST and OBC are concerned, the said action would be unconstitutional.

26. In the above view of the matter, the State Government is directed to act upon in compliance of the judgment of the Constitution Bench of the Supreme Court in ***K. Krishna Murthy*** (supra) in letter and spirit and see that the upper limit of reservation of seats in respect of SC, ST and OBC should not exceed 50%, of course subject to the exception provided in PESA Act and other similar provisions applicable to the case.

27. The writ petition is thus allowed. No order to costs.

S/d- V. Sarcar, C-J.

S/d- Dr. B. R. Sarangi, J.

Orissa High Court, Cuttack
The 18th April, 2018, Alok/Ashok/Ajaya/GDS

26-4-18

Date of Application: 28-4
Date of Notification:- 27-4 / 2018
Date of Supply:- 27-4
Date of Ready:-
Date of Delivery:- 30-4-18

C.A No. 28031/18

MEMO OF COSTS

		Rs.	P.
Application Fee		5	00
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Extra Page [illegible]		44	00
Folio [illegible]	46	115	00
Model	46	46	00
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		240	40

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