IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.2325 of 2020

Sunil Kumar Paswan, Aged about 47 years, Son of Shri Parmeshwar Paswan, Resident of Sitalpur Sirsiya, P.O.- Sirsiya, P.S. – Giridih Muffasil, District – Giridih, Jharkhand.

... ... Petitioner

Versus

1. State of Jharkhand.
2. The Secretary, Urban Development and Housing, Govt. of Jharkhand At – Project Building, Dhurwa, P.O. – and P.S. – Dhurwa, District – Ranchi (Jharkhand)

... ... Respondents

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Binod Singh, Advocate
For the Respondents : Mr. P.A.S.Pati, S.C.-IV

C.A.V. on 14.09.2020 **Pronounced on 12.02.2021**

Per Dr. Ravi Ranjan, C.J.

With consent of the parties, hearing of the matter was done through video conferencing and there was no complaint whatsoever regarding audio and visual quality.

2. Heard parties.

3. The instant writ petition is under Article 226 of the Constitution of India for declaration of Rule 3.16 of the Jharkhand Municipality Elected Representative (Discipline and Appeal) Rules, 2020 (hereinafter referred as the Rules, 2020), as *ultra vires* to Section 18(1) of the Jharkhand Municipal Act, 2011 (hereinafter referred as the Act, 2011), as amended by the Jharkhand Municipal (Amendment) Act, 2017 (hereinafter referred as the Act, 2017), which is the

Parent Act, and for a further direction for issuance of an appropriated writ/writs in the nature of certiorari for quashing the letter No.2026 dated 14.08.2020, issued by the Department of Urban Development and Housing, Government of Jharkhand, whereby and whereunder it has been decided that the petitioner is ineligible under Rule 3.16 of the Rules, 2020, for the post of Mayer, Giridih Municipal Corporation as also to stay the decision as contained in impugned letter No.2026 dated 14.08.2020, issued by the Department of Urban Development and Housing, Government of Jharkhand or no coercive action be directed to be taken against the petitioner.

4. However, Mr. Binod Singh, learned counsel appearing for the writ petitioner, has confined his prayer only with respect to the prayer No.1 pertaining to declaration of Rule 3.16 of the Rules, 2020), as *ultra vires* to Section 18(1) of the Act, 2011, as amended by the Act, 2017 being the Parent Act as because according to him since the writ petitioner has challenged the *vires* of Rule 3.16 of the Rules, 2020, therefore, an opportunity be given to the writ petitioner to assail the other prayers as contained under Prayer Nos. II and III before the appropriate forum, if the opinion so arises.

5. In view thereof, the instant writ petition is confined only to the prayer No.I pertaining to pertaining to declaration of Rule 3.16 of the Rules, 2020), as *ultra vires* to Section 18(1)

of the Act, 2011, as amended by the Act, 2017 and so far as relief Nos. II and III are concerned, the writ petitioner would be at liberty, if he so wishes, to approach the appropriate forum.

6. The factual matrix of the case, as per the pleading made in the writ petition and argued by the learned counsel for the writ petitioner, is as under :-

The writ petitioner claims himself to be a local resident of the district of Giridih within the State of Jharkhand. He claims to have contested the election for the post of Mayer in the year 2018 and to that effect a certificate was issued in favour of the writ petitioner on 20.04.2018 as would be evident from Annexure – 1 appended to the writ petition.

It is the contention of the writ petitioner that under Section 18(1) of the Act, 2011, as amended by virtue of the Amendment Act, 2017, the grounds of disqualification of a person holding the office as Councillor has been provided containing therein altogether 15 grounds for disqualification and as such, the Councillor is supposed to be disqualified only on a condition if he/she has been found to be disqualified as per the condition referred under Section 18(1) of the Act, 2011. It has further been contended that the Jharkhand Municipal (Amendment) Act, 2017 notified vide Gazette dated 23.01.2018 has further been amended as Jharkhand Municipality Elected Representative (Discipline

and Appeal) Rules, 2020, notified vide Notification No.1910 dated 28.07.2020 in exercise of power conferred under Section 590 of the Act, 2011 whereby and whereunder a provision has been inserted under Rule 3.16 laying down a condition for disqualification which is not provided under Section 18(1) of the Act, 2011, the parent Act, and therefore, the provision of Rule 3.16 of the Amended Rules, 2020 is *ultra vires* since the said condition of disqualification is absent under Section 18(1) of the Act, 2011.

According to the learned counsel appearing for the petitioner, there is no dispute in the settled position of law that any provision enacted in a rule, if found to be contrary to the parent Act, the same is to be declared *ultra vires* and therefore, the instant writ petition has been filed.

7. In support of his contention, learned counsel appearing for the petitioner has relied upon the following judgments rendered by the Hon'ble Apex Court :-

(i) ***Indian Express Newspapers (Bombay) Private Ltd. and Others v. Union of India and Others*** reported in ***(1985) 1 SCC 641;***

(ii) ***Supreme Court Employees Welfare Association v. Union of India and Another*** reported in ***(1989) 4 SCC 187;***

(iii) ***Kunj Behari Lal Butail and Others v. State of H.P. and Others*** reported in ***(2000) 3 SCC 40;***

(iv) ***Additional District Magistrate (Rev) Delhi Admn v. Siri Ram*** reported in ***(2000) 5 SCC 451;***

(v) ***State of T.N. and Another v. P. Krishnamurthy and Others*** reported in ***(2006) 4 SCC 517;***

8. *Per contra*, Mr. P.A.S. Pati, learned Standing Counsel-IV appearing for the State of Jharkhand, has contested the case on the ground that *vires* of an Act is to be tested under the power of judicial review if it is found to be not relevant for the purpose of achieving the intent and object of the Act. But, herein the situation and circumstances are quite different as because after the 74th Amendment enacted in the Constitution of India by way of 74th Amendment Act, 1992 wherein one of the purpose of Amendment Act is to reserve 50% of total seats of the elected members in every council for Scheduled Caste, Scheduled Tribe, Backward Classes and Women and therefore, as provided under Section 590 of the Act, 2011, the State Government has been conferred with the power to make rules for carrying out the purposes of the Act hence, the provision as contained under Rule 3.16 of the Amended Rules, 2020 pertaining to disqualification on the ground that a candidate who has contested and elected from an area reserved for reserved category i.e., Scheduled Caste, Scheduled Tribe, Backward Classes or Women, or elected by way of a forged certificate of reserved category, such candidate will be disqualified.

According to the learned counsel, the amendment has been brought under Rule 3.16 by inserting a provision regarding disqualification to carry out the purpose of the Act in exercise of power conferred under Section 590 of the Act, 2011.

He further submits that it is incorrect to say that the provision as contained under Rule 3.16 is foreign to the provision as contained under Section 18(1) of the Act, 2011 and, to fortify his argument, he has relied upon Section 18(1)(b) which contains a provision that if a person is so disqualified by or under any law, for the time being in force, for the purpose of election to the Legislature of the State, as such, according to learned counsel appearing for the State, that if a candidate is found to be disqualified by or under any law for the time being in force, he will be disqualified in pursuance to the provision as contained under Section 18(1)(b) of the Act, 2011 and the provision of Representation of the People Act, 1951 clearly provides under Section 5 that a candidate if not coming under the reserved quota, cannot be allowed to contest from an area earmarked for the reserved category and even if he has contested and elected, he will be disqualified in pursuance to Section 5 of the Representation of People Act, 1951. By bringing the said amendment, it has only been clarified by putting the word in specific term under Rule 3.16 of the Amended Rules, 2020 to achieve the purpose

of the Act and as such, it cannot be said that the provision as contained under Rule 3.16 is foreign to the provision of Section 18(1) of the Act, 2011.

In support of his argument, learned counsel has relied upon following judgments rendered by the Hon'ble Apex Court :-

(i) ***Kangra Valley State Co. Ltd. v. State of Punjab and OPthers*** reported in ***(1969) 1 SCC 286***

(ii) ***Govt. of India v. Citedal Fine Pharmaceuticals, Madras and Others*** reported in ***(1989) 3 SCC 483***

(iii) ***Bar Council of India and Another v. Aparna Basu Mallick and Others*** reported in ***(1994) 2 SCC 102***

(iv) ***Commissioner of Central Excise and Custom v. Venus Castings (P) Ltd.*** reported in ***(2000) 4 SCC 206***

(v) ***Power Machines India Ltd. v. State of Madhya Pradesh and Others*** reported in ***(2017) 7 SCC 323***

9. Parties have been heard and on appreciating their rival submissions and having gone through the judgment relied upon by the parties, this Court is now proceeding to examine the legal issues. However, before proceeding further, it would be relevant to refer certain legal provisions which are of paramount importance and relevant for consideration of the *lis*. The amendment has been brought in the Constitution of India by way of 74th Amendment Act, 1992, based on the principles of participation in, and decentralization, autonomy

and accountability of, urban self-government at various levels, to introduce reforms in financial management and accounting systems, internal resource generation capacity and organizational design of municipalities, to ensure professionalization of the municipal personnel and to provide for matters connected therewith or incidental thereto. The State of Jharkhand, in conformity with the provision of the Constitution of India as amended by 74th Amendment Act, 1992, has come out with and Act, namely, ***Jharkhand Municipal Act, 2011 (Jharkhand Act 07 of 2012)*** by way of a measure to consolidate and amend the laws relating to the Municipal Governments in the State of Jharkhand.

Chapter 3 of the Act, 2011 contains the provision of Constitution of Councils under ***Section 16*** which reads hereunder as :-

> "16. **Constitution of Council** -
> (1) All the seats specified in clause 2 (a) of section 15 shall be filled by direct elections, and for this purpose, each municipal area shall be divided into territorial constituencies referred as Wards.
> (2) (a)In every Council, as nearly as possible but not exceeding fifty percent of the total seats of elected members shall be reserved for
> (i) Scheduled Castes,
> (ii) Scheduled Tribes,
> (iii) Backward Classes, and
> (iv) Women
> The number of seats so reserved for Scheduled Castes and Scheduled Tribes shall as nearly as possible be the same proportion to the total number of seats to be filled up by direct election in that municipality as the population of the Scheduled Castes and Scheduled Tribes as the case may be bears to the total population of the municipality and such seats shall be allotted by rotation to different wards in the municipality under the direction, control and supervision of the State Election Commission in the manner prescribed by it.
> After reservation of seats for the Scheduled Castes and the Scheduled Tribes, the number of seats to be reserved for the Backward Classes shall be such number of seats within the

overall limit of fifty percent reservation for the Scheduled Castes, the Scheduled Tribes and the Backward Classes in the manner prescribed. Such seats shall be allotted by rotation to different wards in the municipality during subsequent elections under the direction, control and supervision of the State Election Commission in the manner prescribed by it;

(b) As nearly as possible but not exceeding fifty percent of the total number of seats reserved under clause (a) shall be reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes, as the case may be;

(c)As nearly as possible but not exceeding fifty percent of the total number of the seats not reserved for Scheduled Castes, Scheduled Tribes and Backward Classes shall be reserved for women.

(d) Such total number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes, the Backward Classes and unreserved category shall be allotted by rotation under the direction, control and supervision of the State Election Commission to different wards in a municipality in such manner as may be prescribed by it;

Explanation -For the removal of doubts it is hereby declared that the principle of rotation for the purposes of reservation of seats for the Scheduled Castes, Scheduled Tribes, Backward Classes and Women under this sub-section shall commence from the first election held after the commencement of this Act:

... ..."

10. It is evident from the provision of Section 16(2) of the Act, 2011 that 50% of the total seats of elected members shall be reserved in every council to be elected from among the members of Scheduled Caste, Scheduled Tribe, Backward Classes and Women.

Section 18 of the Act, 2011 contains the various provisions for disqualification of Councillors, which read as hereunder :-

"18. **Disqualification of Councillors:**

(1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the office as councilor, if such person:

(a) is not a citizen of India;

(b) is so disqualified by or under any law, for the time being in force, for the purpose of elections to the Legislature of the State:

Provided no person shall be disqualified on the ground that he is less than twenty five years of age when he has attained the age of twenty one years,

(c) is in the service of the Central or State Government or any local authority;

(d) is in the service of any institution receiving aid from the Central or State
Government or any local authority;
(e) has been adjudged by a competent court to be of unsound mind;
(f) applies to be adjudicated or is adjudicated as an insolvent;
(g) has been dismissed from the service of the Central or State Government or any local authority for misconduct and has been declared to be disqualified for employment in the public service;
(h) has been sentenced by a criminal court, whether within or outside India, to imprisonment for an offence, other than a political offence for a term exceeding six months or has been ordered to furnish security for keeping good behavior under section 109 or section 110 of the Code of Criminal Procedure, 1973 and such sentence or order not having subsequently been reversed, or absconding being an accused in a criminal case for more than six months;
(i) has under any law for the time being in force become ineligible to be a member of any local authority;
(j) holds any salaried office or office of profit under the Municipality:
Provided that a person shall not be deemed to hold an office of profit under the municipality by reason only that he is a mayor or chairperson or councilor of a municipality,
(k) has been found guilty of corrupt practices:
Provided that on being found guilty of corrupt practices, the disqualification shall cease after six years of general election;
(l) if he has not paid all taxes due by him to the Municipality at the end of the financial year immediately preceding that in which the election is held;
(m) has been willfully omits or refuses to perform his duties and functions or abuses the power vested in him or is found to be guilty of misconduct on the discharge of his duties or become physically or mentally incapacitated for performing his duties;
(n) if he has more than two living children:
Provided that a person having more than two children on or upto the expiry of one year of the commencement of the Act shall not be deemed to be disqualified;
(o) has been absent from three consecutive meetings or sittings of the Municipality without having previously obtained permission from the council at a meeting.
(2) … … …
(3) … … …"

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It is, thus, evident that the Act, 2011 contains provision for disqualification of Councillors consisting of 15 conditions for such declaration. It further requires to refer the provision of disqualification pertaining to Mayer because the present

case pertains to the elected Mayer of Giridih Municipal Corporation. Under Section 26 of the Act, 2011, there is provision of election of Mayer and the Chairperson, which reads as hereunder :-

> "26. **Election of Mayor and the Chairperson** -
> (1) The Mayor and the Chairperson shall be elected by all the electors in the municipality.
> (2) The provisions of this Act and the rules framed thereunder in relation to elections/disqualification/recall of a Councillor, shall apply, *mutatis mutandis*, in relation to the elections/disqualification/recall of the Mayor and Chairperson.
> (3) If in a general election, a person is elected both as a Mayor or Chairperson and a councillor, he shall cease to be a councillor from the date of his election as Mayor or Chairperson.
> (4) The Mayor or the Chairperson shall assume office forthwith after taking the oath of secrecy.
> (5) The term of office of Mayor and chairperson shall be coterminous with the term of office of councilors."

It is evident from Section 26 of the Act, 2011 that so far as the condition of disqualification for Mayer is concerned, the same has been provided to be applicable *mutatis mutandis* as the condition of disqualification provided for a Councillor contained under Section 18(1) of the Act, 2011.

Reference of Section 590 of the Act, 2011 as under Chapter 46 is also required to be made herein which confers power upon the State Government to make out a rule for carrying out the purposes of this Act, which reads as hereunder:-

> **"590. Power to make rules.-**
> (1) The State Government may, by notification, and subject to the condition of
> previous publication, make rules for carrying out the purposes of this Act.
> (2) … … …
> (3) … … …"

Jharkhand Nagarpalika Nirwachan Evam Chunav Yachika Niyamawali, 2012 (hereinafter to be referred to as the Nagarpalika Niyamawali, 2012) is also required to be referred herein as, after enactment of the Act, 2011, Nagarpalika Niyamawali, 2012 has been framed containing therein the provision of disqualification as contained under Rule 19 which provides *pari materia* provision as has been provided under Section 18(1)(b) of the Act, 2011 that a person, if disqualified by or under any law, for the time being in force, for the purpose of elections to the Legislature of the State, would stand disqualified under Rule 19 also.

The State of Jharkhand through Urban Development and Housing Department, has come out with a notification as contained in Notification No.1910 dated 28.07.2020 repealing Jharkhand Nagarpalika Nirwachit Janpratinidhi (Anushashan evam Appeal) Niyamawali, 2017 which contains a provision under Rule 3.16 that if a candidate has been found to be elected from the seat reserved for Scheduled Caste, Scheduled Tribe, Backward Classes or Women even though he/she does not belong to reserved category, by furnishing false certificate or misrepresentation of fact, he/she will be disqualified.

11. The aforesaid provision as contained under Rule 3.16 has been questioned in this writ petition for declaration of this provision as *ultra vires* on the ground that the condition

of disqualification as contained under Rule 3.16 of the Rules, 2020 is not available under Section 18(1) of the Act, 2011.

I have already referred the provision of Section 590 of the Act, 2011 which confers power upon the State Government to make out a rule to carry out the purpose of the Act.

I have also referred the various provisions of the Act, 2011 more particularly, the provision as contained under Section 16 of the Act, 2011 which provides for reserving the seats in the area earmarked for the candidates belonging to Scheduled Caste, Scheduled Tribe, Backward Classes or Women. The very purpose of the Act by way of inserting the provision under Section 16 of the Act, 2011 to reserve the seats for the reserved categories but not exceeding 50% of the total seats and that provision has been enacted in order to make out a rule in conformity with the 74th Amendment Act, 1992, meaning thereby, one of the purposes of the Act is to provide representation of the Councillor or Mayer in a council from amongst the Scheduled Caste, Scheduled Tribe, Backward Classes or Women but not exceeding 50%.

12. There is no dispute that any rule, if found to be contrary to the parent Act and further, if found to be contrary or irrelevant in achieving the intent and object of the Act, would be fit to be declared as *ultra vires* and therefore, this Court has proceeded to examine the contention of the

learned counsel appearing for the writ petitioner on the basis of the settled position of law but before that it is thought proper to refer certain judgments upon which reliance has been placed by the writ petitioner vis-à-vis the learned counsel for the respondents.

13. Learned counsel appearing for the writ petitioner has referred a decision rendered in ***Indian Express Newspapers (Bombay) Private Ltd. and Others v. Union of India and Others*** reported in ***(1985) 1 SCC 641*** wherein at paragraph 75 the grounds to question a subordinate legislation has been laid down. Paragraph 75 is quoted hereinbelow :-

> **"75.** A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."

The judgment rendered by Hon'ble Apex Court in the case of ***Supreme Court Employees Welfare Association v. Union of India and Another*** reported in ***(1989) 4 SCC 187*** lays down at paragraph 100 that, where the validity of a subordinate legislation (whether made directly under the Constitution or a statute) is in question, the court has to consider the nature, objects and scheme of the instrument as a whole, and, on the basis of that examination, it has to

consider what exactly was the area over which, and the purpose for which, power has been delegated by the governing law. Further, at paragraph 101 it has been laid down that rules are liable to be declared invalid if they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or violative of the general principles of the law of the land or so vague that it cannot be predicated with certainty as to what is prohibited by them or so unreasonable that they cannot be attributed to the power delegated or otherwise disclose bad faith.

In the judgment rendered in the case of ***Kunj Behari Lal Butail and Others v. State of H.P. and Others*** reported in ***(2000) 3 SCC 40***, principle has been laid down in paragraphs 13 and 14 which read as hereunder :-

> **"13.** It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent act. (See: *Sant Saran Lal* v. *Parsuram Sahu* [AIR 1966 SC 1852 : (1966) 1 SCR 335] , AIR para 19.)...
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> ... .
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> **14.** We are also of the opinion that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself."

In the judgment rendered in the case of ***Additional***

District Magistrate (Rev) Delhi Admn v. Siri Ram reported in ***(2000) 5 SCC 451***, at paragraph 16 the Hon'ble Apex Court has held as under :-

> "16. It is a well-recognised principle of interpretation of a statute that conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. From the above discussion, we have no hesitation to hold that by amending the Rules and Form P-5, the rule-making authority has exceeded the power conferred on it by the Land Reforms Act."

In the judgment rendered in the case of ***State of T.N. and Another v. P. Krishnamurthy and Others*** reported in ***(2006) 4 SCC 517***, the Hon'ble Apex Court has held at paragraphs 15 and 16 as hereunder :-

> **"15.** There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:
>
> (*a*) Lack of legislative competence to make the subordinate legislation.
>
> (*b*) Violation of fundamental rights guaranteed under the Constitution of India.
>
> (*c*) Violation of any provision of the Constitution of India.
>
> (*d*) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
>
> (*e*) Repugnancy to the laws of the land, that is, any enactment.
>
> (*f*) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).
>
> **16.** The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under

> the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."

This Court, after going through the judgment relied upon by the learned counsel for the writ petitioner, finds that the ratio laid down in these judgments is against the writ petitioner since it has been laid down therein that in order to achieve the intent and object of the Act, any rule can be framed by the State, therefore, as would be apparent from Section 590 of the Act, 2011, the State Government has come out with the Rules, 2020 to achieve one of the objects and intents of the Act to provide reservation to the members of the Scheduled Caste or Scheduled Tribe or Backward Classes or Women up to the extent of 50% and for that purpose, if any provision has been enacted, the same would be said to be done for the purposes of achieving the object and intent of the Act. Hence, the reliance placed by the writ petitioner on these judgments would be of no help to the writ petitioner.

14. It has also been thought proper to refer the judgment upon which reliance has been placed by the learned counsel appearing for the State as rendered in the case of ***Commissioner of Central Excise & Customs v. Venus Castings (P) Ltd.*** reported in ***(2000) 4 SCC 206*** in which the

Hon'ble Apex Court has held as under :-

> **"11.** ... ... In holding a relevant rule to be ultra vires it becomes necessary to take into consideration the purpose of the enactment as a whole, starting from the preamble to the last provision thereto. If the entire enactment read as a whole indicates the purpose and that purpose is carried out by the rules, the same cannot be stated to be ultra vires of the provisions of the enactment. ... ..."

15. It is evident from the judgment as referred hereinabove that there is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:-

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

Further, it is evident from the aforesaid judgment that the court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the

subordinate legislation conforms to the parent statute, where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.

16. Now, this Court would proceed to examine the validity of the rule as contained under Rule 3.16 of the Rules, 2020.

It has already been referred hereinabove that one of the purposes of the Act, 2011 is to provide up to 50% reservation to the members of Scheduled Caste, Scheduled Tribe, Backward Classes or Women and as provided under Section 590 of the Act, 2011 that the State Government has been conferred with the power to make out a rule for the purpose of achieving the object and intent of the Act, therefore, according to us, since one of the purposes is to provide reservation in the seats from amongst the members of Scheduled Caste, Scheduled Tribe, Backward Classes or Women and if such provision has been incorporated by way of amendment in the Rules, 2020 as contained under Rule 3.16, the same cannot be said to be contrary in achieving the intent and object of the Act, 2011.

Further, as provided under Section 18(1)(b) read with

Section 26(2) of the Act, 2011 which contains a provision that if such person is so disqualified by or under any law, for the time being in force, for the purpose of elections to the Legislature of the State, will have to be declared disqualified for the post of Councillor or Mayer, as the case may be.

At this juncture, the provision of Section 5 of the Representation of People Act, 1951 is required to be referred which reads as under :-

> **"5. Qualifications for membership of a Legislative Assembly.**—A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—
> (a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;
> (b) in the case of a seat reserved for an autonomous district of Assam, he is a member of a [Scheduled Tribe of any autonomous district] and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and
> (c) in the case of any other seat, he is an elector for any Assembly constituency in that State:
> [Provided that for the period referred to in clause (2) of article 371A, a person shall not be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland unless he is a member of the regional council referred to in that article.]"

Therefore, when Section 5 declares that a person would not be qualified to contest in the Legislative Assembly from an area where the seat has been reserved for the Scheduled Caste or Scheduled Tribe or Backward Classes or Women, such person, in view of the aforesaid provision of the Representation of people Act, 1951 would automatically be covered under the disqualification provisions contained

in Section 18(1)(b) of the Act, 2011. Thus, such person, who would be disqualified to contest the election to the Legislative Assembly of the State in view of Section 5 of the Representation of People Act, 1951, will also be disqualified to be elected as a Councillor or Mayer, as the case may be. Therefore, it cannot be said that Section 18(1) of the Act, 2011 under the caption heading "Disqualification of Councillors" read with Section 26 of the Act, 2011 is not containing a provision in conformity with the provision inserted in the Rules, 2020 under Rule 3.16 containing therein a provision of disqualification of such candidate who has been found to be elected for an area reserved for Scheduled Caste, Scheduled Tribe, Backward Classes or Women or in such a condition, if found to be elected by furnishing false certificate or misrepresentation of fact. Only difference is that by virtue of the provision of Rule 3.16 under the Rules, 2020, the legislature has inserted the specific provision to achieve the intent and object of the Act to provide benefit of reservation to the members of Scheduled Caste, Scheduled Tribe, Backward Classes or Women.

Therefore, in considered view of this Court, if such provision has been inserted under Rule 3.16 by the State in exercise of power conferred under Section 590 of the Act, 2011 to provide benefit of reservation of upto 50% in favour of the members of Scheduled Caste, Scheduled Tribe,

Backward Classes or Women, the provision inserted for the said purpose cannot be said to be inconsistent or repugnant as provided under the parent Act under Section 18(1) read with Section 26(2) of the Act, 2011.

Further, we have also gathered from the Nagarpalika Niyamawali, 2012 that Chapter 4 thereof consists a provision under Rule 19(2) *pari materia* to that of the provision contained under Section 18(1) (b) read with Section 26(2) of the Act, 2011.

17. This Court has already referred the judgment rendered by Hon'ble Apex Court in the matter of power of judicial review making interference with respect to declaration of a statute to be *ultra vires* laying down that if any provision is made by the Parliament or State Legislature, it will be presumed to be in consonance with the Constitution and for the purpose of achieving the intent and object of the Act unless found otherwise.

The Court can exercise power of review for declaring the law to be *ultra vires* only if it is found to be inconsistent with the parent Act or not for the purpose of achieving the intent and object of the Act.

18. In view of the facts, as discussed hereinabove, based upon the judgments pronounced by the Hon'ble Apex Court referred hereinabove and the provisions of law as contained under the Jharkhand Municipal Act, 2011 read with

Jharkhand Nagarpalika Nirwachan Evam Chunav Yachika Niyamawali, 2012 more particularly Jharkhand Municipality Elected Representative (Discipline and Appeal) Rules, 2020, we are of the considered view that the provision as contained under Rule 3.16 of the Jharkhand Municipality Elected Representative (Discipline and Appeal) Rules, 2020 cannot be held to be *ultra vires*. If such provision would be held to be *ultra vires* by this Court, one of the purposes in achieving the object to provide reservation to the extent of 50% in favour of the members of the Scheduled Caste, Scheduled Tribe, Backward Classes or Women will not be achieved.

19. This Court, therefore, is of the view that the provision of Rule 3.16 inserted by way of Amended Rules, 2020, is not *ultra vires* to the Parent Act.

20. Accordingly, the writ petition fails and is dismissed.

(Dr. Ravi Ranjan, C.J.)

I agree

(Sujit Narayan Prasad, J.)

(Sujit Narayan Prasad,J.)

Birendra/**A.F.R.**