

HARYANA VIDHAN SABHA

Bill No. 9— HLA OF 2023

THE HARYANA MUNICIPAL (AMENDMENT) BILL, 2023

A

BILL

further to amend the Haryana Municipal Act, 1973.

Be it enacted by the Legislature of the State of Haryana in the Seventy-fourth Year of the Republic of India as follows:-

1. This Act may be called the Haryana Municipal (Amendment) Act, 2023.
2. In section 10 of the Haryana Municipal Act, 1973 (hereinafter called the principal Act,-

- (i) in sub-section (3), for the figures, brackets, sign and word “(1), (2) and (4)”, the figures, brackets and word “(1) and (2)” shall be substituted and shall be deemed to have been substituted with effect from the 16th May, 2023;
- (ii) for sub-section (4), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 16th May, 2023, namely:-

“(4) (a) The seats shall be reserved for the Backward Classes ‘A’ in every municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats in that municipality as one-half of the proportion of Backward Classes ‘A’ population to the total population in that municipality and rounded off to the next higher integer in case the decimal value is 0.5 or more; and such seats shall be allotted by draw of lots among three times of the number of seats, proposed for reservation of Backward Classes ‘A’, after excluding those seats already reserved for Scheduled Castes, drawn from those seats which are having the largest percentage population of Backward Classes ‘A’ and also by rotation in the subsequent elections:

Provided that the municipality shall have at least one member belonging to the Backward Classes ‘A’ if their population is two per centum or more of the total population of the municipality:

Short title.

Amendment of section 10 of Haryana Act 24 of 1973.

Provided further that where the number of seats so reserved for Backward Classes 'A' under this sub-section added to the number of seats reserved for the Scheduled Castes exceeds fifty per centum of the total number of seats in that municipality, then the number of seats reserved for the Backward Classes 'A' shall be restricted to such largest number that shall lead to the total of the seats reserved for the Backward Classes 'A' and Scheduled Castes not exceeding fifty per centum of the total seats in that municipality.

Explanation.- (1) For the purposes of reservation of Backward Classes 'A' under this sub-section, the population of the municipal area and the population of Backward Classes 'A' in that municipality shall be such as drawn from the Family Information Data Repository established under the provisions of the Haryana Parivar Pehchan Act, 2021 (20 of 2021) on such date, as may be notified by the State Government.

Explanation.- (2) For the purposes of the second proviso, fifty per centum of the total seats in the municipality shall be taken as one-half of the total seats of the municipality rounded up to the next higher integer where the decimal value is 0.5 or more or rounded down to the next lower integer where the decimal value is less than 0.5.

- (b) Not less than one-third of the total number of seats reserved under this sub-section shall be reserved for women belonging to the Backward Classes 'A' and such seats may be allotted by rotation and by lots amongst the wards reserved under this sub-section.”;
- (iii) in sub-section (5), for the words “Backward Classes”, the words, sign and alphabet “Backward Classes 'A' ” shall be substituted and shall be deemed to have been substituted with effect from the 16th May, 2023;
- (iv) in sub-section (7), the sign, brackets and figure “, (4)” shall be omitted and shall be deemed to have been omitted with effect from the 16th May, 2023.

3. In section 203 of the principal Act,-

- (i) for the proviso to sub-section (1), the following proviso shall be substituted, namely:-

“Provided that where an individual or a company applies for preparation or approval of town planning scheme over its land,

then the un-built area shall not be declared and no resolution from the committee shall be required. In case an application is received from an individual or a company for the town planning scheme, the Deputy Commissioner shall forward the same alongwith all relevant documents to the State Government within a period of thirty days from the date of the receipt of the application. However, a resolution from the committee shall be required if the committee draws a town planning scheme for un-built area and building scheme for built area on its land or jointly with an individual or a company.”;

(ii) in sub-section 2,-

- (a) for the sign “.” existing at the end, the sign “:” shall be substituted;
- (b) the following proviso shall be added, namely:-

“Provided that public notice shall not be required in case town planning scheme is applied by an individual or a company on its land.”.

4. (1) The Haryana Municipal (Amendment) Ordinance, 2023 (Haryana Ordinance No. 1 of 2023) is hereby repealed. Repeal and savings.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

1. The composition of Municipalities is guided by the reservation policy contemplated in Article 243-T of the Constitution of India, wherein clause (6) provides that 'Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.' Hon'ble Supreme Court of India vide its judgment dated 11.05.2010 in *Dr. K. Krishna Murthy & Ors. Versus Union of India & Anr. (2010) 7 SCC 202* while upholding the constitutional validity of the Article 243-T(6) observed that this provision enables State Legislatures to reserve seats and chairperson posts in favour of backward classes.

2. Hon'ble Supreme Court of India vide its judgment dated 04.03.2021 passed in writ petition (Civil) No. 980 of 2019 titled as *Vikas Kishanrao Gawali Versus State of Maharashtra and others* further observed that the State Legislation cannot simply provide uniform and rigid quantum of reservation of seats for Backward Classes in the Local Bodies across the State, that too without a proper inquiry into the nature and implications of backwardness by an independent Commission. The triple test conditions required to be complied with by the State before reserving seats in the Local Bodies for Backward Classes are as under:-

- (1) To set up a dedicated Commission to conduct contemporaneous rigorous empirical inquiry into the nature and implications of the backwardness qua Local Bodies, within the State;
- (2) To specify the proportion of reservation required to be provisioned, Local Body-wise, in the light of recommendations of the Commission, so as not to fall foul of over breadth; and
- (3) In any case such reservation shall not breach the upper ceiling of 50% vertical reservation in favour of SCs/STs/OBCs taken together.

In another Writ Petition (Civil) No. 278 of 2022 titled '*Suresh Mahajan Versus State of Madhya Pradesh and Another*', the Hon'ble Supreme Court, vide its order dated 10.05.2022, has observed that until the triple test formality is completed 'in all respects' by the State Governments, no reservation for OBCs can be provisioned and directed all the State Governments and the respective State Election Commissions to abide by the same without fail to uphold the constitutional mandate.

Further, Hon'ble Punjab and Haryana High Court passed interim order dated 17.05.2022 in CM-3239-CWP-2022-IN CWP-18977-2021 with CM-3200-CWP-2022-IN CWP-21883-2021 to comply with the orders dated 10.05.2022 passed by the Hon'ble Supreme Court of India.

3. Haryana Backward Classes Commission was constituted vide Government notification dated 12.07.2022 of Welfare of Scheduled Castes and Backward Classes Department, among other functions, to study and recommend the proportion

of reservation for backward classes required to be provisioned in Panchayati Raj Institutions and Municipalities in the State. The Commission has made recommendation to provide reservation for Backward Classes 'A' in the elections of municipalities for which amendment of Section 10 of the Haryana Municipal Act, 1973 is required. The seats shall be reserved for the Backward Classes 'A' in every municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats in that municipality as one-half of the proportion of Backward Classes 'A' population to the total population in that municipality.

4. The last census in India in which the data on caste was included was conducted in 1931. Since 1951 every census has published the population of Scheduled Castes and Scheduled Tribes only. Thus figures of population of Backward Classes 'A' are not available in the Census. Government has established Family Information Data Repository (FIDR) under the Haryana Parivar Pehchan Act, 2021 (20 of 2021) wherein the information about residents of Haryana constituted in families is available which is dynamically updated and periodically verified. As on 18th August, 2023 a total of 69,00,836 families with 2,76,72,355 number of persons have been registered in FIDR.

5. Hence, data available in FIDR has been considered for purpose of reservation for Backward Classes 'A' in the elections of municipalities. Reservation of seats for Backward Classes 'A' and fixation of total number of seats for each municipality shall be done on the basis of population figures including that of Backward Classes 'A' drawn from Family Information Data Repository established under the Haryana Parivar Pehchan Act, 2021 (20 of 2021) on such date as may be notified by the Government.

6. According to elector-population (EP) ratio, for every 1000 persons, the number of eligible electors is nearly 700 in State. As enrolling for Family Id is a voluntary process and there is a likelihood that in certain pockets a majority of residents may not have registered in FIDR, thus it has also been considered that where the population as drawn from Family Information Data Repository is less than 140 per centum of the number of electors registered in such areas as per the last published Electoral Roll, the population shall be considered equal to 140 per centum of the number of voters in the last published Electoral Roll of the area. Further, the limit for variation of population in wards of a municipality has been increased from 10 per centum to 20 per centum above or below the average population per ward by amending the Rule 7 of the Haryana Municipal Delimitation of Ward Rules, 1977 in consultation with State Election Commission, Haryana.

7. For incorporating the recommendation of Haryana Backward Classes Commission to provide eight per centum reservation for Backward Classes 'A' in the Offices of Presidents in the State of Haryana, a provision has been made under Rule 70A of the Haryana Municipal Election Rules, 1978 in consultation with the State Election Commission, Haryana.

8. To comply with the third condition of the triple test laid down by the Hon'ble Supreme Court of India, the total reservation in seats for Scheduled Castes and Backward Classes 'A' shall not exceed 50 per centum of the total number of seats in a municipality. If so happens then the number of seats reserved for Backward Classes 'A' shall be restricted to such largest number that shall lead to total seats reserved for Scheduled Castes and Backward Classes 'A' not exceed 50 per centum of the total number of seats in that municipality.

9. Hence, for provisioning the reservation to the Backward Classes 'A' in the seats of each municipality, an amendment is required to be carried out in Section 10 of the Haryana Municipal Act, 1973.

10. Further Urban Local Bodies Department grant approval of Town Planning Scheme within the area of municipal corporations in the State under the provision of Section 203 of the Haryana Municipal Act, 1973.

11. The proviso under the sub section (1) of Section 203 of the Haryana Municipal Act, 1973 provided that where an individual or a company applies for preparation/approval of town planning scheme over its own land, then the un-built area shall not be declared. The committee shall pass a resolution for approval of town planning scheme within sixty days from the date such proposal is put up for its consideration for the first time, otherwise the Deputy Commissioner shall forward the proposal of the town planning scheme directly to the State Government.

12. Further sub section (2) of Section 203 of the Haryana Municipal Act, 1973 provided that when a scheme has been drawn up under the said provision the committee shall give public notice of such scheme and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such scheme which he may wish to make.

13. The above mentioned provision related to 'resolution from the committee' and 'requirement of public notice' discourages and delay the process of the grant of Town Planning Scheme. Further the T&CP Department grant license within municipal area and outside the municipal area under the provision of The Haryana Development and Regulation of Urban Areas Act, 1975 (Haryana Act No. 8 of 1975) but there is no such condition in the said Act or policies to pass the resolution from the house and requirement of public notice.

14. Therefore with an objective of increasing the availability of quality of affordable housing, hence there is requirement to amend the provision related to requirement of 'resolution from the house' and 'requirement of public notice' in the Haryana Municipal Act, 1973. This will also help in getting the regulatory approvals in hassle free manner.

15. Therefore, it has been proposed that the existing proviso in sub section (1) of section 203 of the Haryana Municipal Act, 1973 may be substituted from the proposed provision that if town planning scheme is applied from an individual or

a company then the resolution from the committee is not required and resolution is only required if the committee draws a town planning scheme for the unbuilt area and built up scheme for the built area on the committee land or jointly with an individual or a company. Accordingly, after the sub section (2) of Section 203 of the Haryana Municipal Act, 1973 proviso may be inserted that in case Town Planning Scheme is applied by an individual or a company on its own land then public notice is not required to be issued.

DR. KAMAL GUPTA,
Urban Local Bodies Minister, Haryana.

CHANDIGARH:
The 23rd August, 2023

R. K. NANDAL,
Secretary.

N. B.— The above Bill was published in the Haryana Government Gazette (Extraordinary), dated the 23rd August, 2023, under proviso to rule 128 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly.

ANNEXURE

EXTRACT FROM THE HARYANA MUNICIPAL ACT, 1973.

10. Reservation of seats.-

(1) XXX XXX XXX XXX XXX

(2) XXX XXX XXX XXX XXX

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes) of the total number of seats to be filled by direct election in every municipality, shall be reserved for women and such seats may be allotted by rotation and by lots to different constituencies in the municipality except those falling under sub-sections (1), (2) and (4).

(4) Two seats in every committee shall be reserved for the persons belonging to Backward Classes which shall be allotted in such territorial constituencies as having maximum population of persons belonging to Backward Classes.

(5) The offices of presidents in the municipalities shall be filled up from amongst the members belonging to the general category, Scheduled Castes, backward classes and women by rotation and by lots in the manner prescribed.

(6) XXX XXX XXX XXX XXX

(7) The reservation of seats under sub-sections (1), (2), (4) and (5) shall be reviewed after every decennial census.

(8) XXX XXX XXX XXX XXX

203. Building Scheme.-

(1) XXX XXX XXX XXX XXX

Provided that where an individual or a company applies for preparation/ approval of town planning scheme over its own land, then the un-built area shall not be declared. The committee shall pass a resolution for approval of town planning scheme within sixty days from the date such proposal is put up for its consideration for the first time, otherwise the Deputy Commissioner shall forward the proposal of the town planning scheme directly to the State Government.

(2) When a scheme has been drawn up under the provision of sub-section (1), the committee shall give public notice of such schemes and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such scheme which he may wish to make.

Modification in the Bill other than the Haryana Municipal (Amendment) Ordinance, 2023 (Haryana Ordinance No. 1 of 2023) promulgate by the Governer.

In section 203 of the principal Act,-

- (i) for the proviso to sub-section (1), the following proviso shall be substituted, namely:-

“Provided that where an individual or a company applies for preparation or approval of town planning scheme over its land, then the un-built area shall not be declared and no resolution from the committee shall be required. In case an application is received from an individual or a company for the town planning scheme, the Deputy Commissioner shall forward the same alongwith all relevant documents to the State Government within a period of thirty days from the date of the receipt of the application. However, a resolution from the committee shall be required if the committee draws a town planning scheme for un-built area and building scheme for built area on its land or jointly with an individual or a company.”;

- (ii) in sub-section 2,-

(a) for the sign “.” existing at the end, the sign “:” shall be substituted ;

(b) the following proviso shall be added, namely :-

“Provided that public notice shall not be required in case town planning scheme is applied by an individual or a company on its land.”.

