

**GOVERNMENT OF HARYANA  
URBAN LOCAL BODIES DEPARTMENT**

**ORDER**

Whereas the Government of Haryana vide notification No. 9/22/2023-4CII dated 26<sup>th</sup> May, 2023 has published the draft of Haryana Municipal Delimitation of Ward (Amendment) Rules, 2023 wherein the provision of rule 3 alongwith other provisions of the Haryana Municipal Delimitation of Ward Rules, 1977 were proposed to be substituted. The proposed provision is made to the effect that the total number of seats for each Committee shall be fixed by the Government on the basis of the population drawn from the Family Information Data Repository established under the provisions of Haryana Parivar Pehchan Act, 2021 (20 of 2021) on such date as may be notified by the Government. Further, proviso is added with sub-rule (1) of rule 3 to the effect 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, then the population equal to 140 per centum of the number of voters in the electoral roll of the area shall be considered.

2. Whereas objections/suggestions were invited vide the said notification from the general public within a period of 10 days from the date of its publication. In this connection, Shri Hemant Kumar, Advocate has sent his objection against the said proposed amendment. In his objection he has stated that the term ‘population’, as defined not only in clause (g) of Article 243P of the Constitution of India, in the part/chapter relating to the municipalities but at the same time the term ‘population’ as defined in Haryana Municipal Act, 1973 is at conflict/in variance with ‘population’ as mentioned in the recently published draft Haryana Municipal Delimitation of Ward Rules, 1977, hence the said proposed draft rule is not only unconstitutional but also ultra vires the Haryana Municipal Act, 1973.

3. Whereas after examination of the matter, it comes out that the definition of ‘population’ under clause (g) of Article 243P of the Constitution of India means the population as ascertained at the last preceding census of which relevant figures have been published. The said definition of population is provided only for the purposes referred under the said chapter and the same would not be applicable to the matter, if otherwise provided in the subject or context used therein. Further, the term ‘population’ is also defined under section 2 of the Haryana Municipal Act, 1973, which is reproduced as under :-

*“2. Definition.- In this Act, unless there is anything repugnant in the subject or context,-*

*1 to 19. XXX*

*XXX*

*XXX*

*19A “Population” means the population as ascertained at the last preceding census of which the relevant figures have been published.*

*XXX*

*XXX*

*XXX”*

After perusal of the said provisions, it comes out that definition of ‘population’ as mentioned above would not be applicable, if there is anything repugnant in the subject or context under which the word ‘population’ is used.

4. Whereas Article 243Q of the Constitution of India relates to constitution of municipality for a transitional area, small urban area and larger urban area. The said area is to be declared after taking into consideration the various factors including the population of that area. The word 'population' used therein is only qua the constitution of municipality and the same is not for the purposes of fixation of seats or delimitation of wards.

5. Whereas Article 243R of the Constitution of India relates to the establishment of wards for the purposes of election of municipalities in which the word 'population' has not been used. The Constitution has allowed the State to determine the territorial constituencies i.e., wards for electing. Accordingly, State has laid down the objective principles in the proposed Rules, 1977.

6. Whereas the provisions of Article 243T of the Constitution of India provide for reservation of seats for Scheduled Castes and Scheduled Tribes in the municipalities, the said provision is reproduced as under :-

*“243T. Reservation of seats.- (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes 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 to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.”*

7. Whereas in consonance with the aforesaid provisions of Article 243T of the Constitution of India, similar type of provision has been provided under section 10 of the Haryana Municipal Act, 1973. Accordingly, reservation of seats for Scheduled Castes in the municipality is determined on the basis of population as ascertained at the last preceding census of which relevant figures have been published.

8. Whereas Article 243T (6) of the Constitution of India empowers the State Legislature to make any provision for reservation to the Backward Classes in the seats of any municipality or offices of Chairperson. The State Legislature may make any provision for providing such reservation and no restriction is provided under the Constitution of India. The said provision of Article 243T (6) is reproduced as under :-

*“Nothing in this Part shall prevent the Legislature of State from making any provision for reservation of seats in any Municipality or offices of Chairperson in the Municipalities in favour of Backward Class of citizens.”*

9. Whereas it transpires that the definition of 'population' under the Constitution of India is for reservation of seats for Scheduled Castes in the municipalities and not for reservation of Backward Classes. Moreover, the census does not have population of Backward Classes which is unique for each State. Therefore, Constitution has not made the binding provisions on the States to provide reservation of seats for Backward Classes based on census population. The State Government has made objective principles for reservation of seats for Backward Classes on the recommendation of the Haryana Backward Classes Commission which was constituted in compliance of the directions of Hon'ble Supreme Court of India in Writ Petition (Civil) No. 980 of 2019 titled as Vikas

KishanRao Gawali V/s State of Maharashtra & others. Accordingly, State Government has made the necessary provisions under sub-section (4) of section 10 of the Haryana Municipal Act, 1973 for providing one half of the proportionate population of Backward Classes-A to the total population in the concerned municipality. The population for this purpose is to be taken into consideration on the basis of population drawn from Family Information Data Repository or 140 per centum of the registered voters in such municipality.

10. Whereas the Article 243R (2)(b) of the Constitution of India provides that the Legislature of the State may, by Law, provide the manner of election of Chairperson of a municipality. In view of the said Constitutional provisions, the State Government has also made the provision of eight percent reservation for the offices of Chairperson of municipalities to the Backward Classes-A by making amendment in the relevant Rules.

11. Whereas earlier provision of rule 3 of the Haryana Municipal Delimitation of Ward Rules, 1977 provides that in case certain area is included within or excluded from the limits of the municipality, the population shall be ascertained on the spot in respect of such area and shall be added to or excluded from the latest census figure of that Committee for the purpose of re-fixation of the seats of its Committee. It appears that even in the un-amended provision also, consideration of the population on the basis of last census figure is not the only sole parameter applicable in all situations for re-fixation of the seats of the municipality.

12. Whereas it transpires that the term 'population' is considered differently under the different provisions of the Act and Rules made therein as per the requirement of the context under which the same is being used. The provision of considering the population as drawn from Family Information Data Repository established under Haryana Parivar Pehchan Act, 2021 has already been made under rule 3 of Rules, 1977 vide amendment made through notification No. 9/51/2022-4CII dated 16<sup>th</sup> December, 2022 issued by Haryana Government, Urban Local Bodies Department. The Haryana Government had established the Family Information Data Repository under the provision of Haryana Parivar Pehchan Act, 2021 (20 of 2021) which is an authentic, self declared, verified source and updated on real time basis. The due process has also been followed at the time of notifying the said amendment dated 16<sup>th</sup> December, 2022 which was made after seeking the objection/suggestion from the general public also. The purpose of the present proposed amendment is just to add if the population of Family Information Data Repository is less than 140 per centum of the number of electors registered in such area as per the last published Electoral Roll, then the population equal to 140 per centum of the number of voters in the Electoral Roll of the area shall be considered.

13. Whereas the State Election Commission, Haryana vide its letter dated 02<sup>nd</sup> August, 2022 has recommended to complete the work of delimitation of Wards afresh in case of Municipal Corporation, Faridabad where delimitation of Wards was finalized vide Government notification dated 07/15<sup>th</sup> April, 2022. It was observed by the State Election Commission at the time of preparing the ward-wise Electoral Rolls of Municipal Corporation, Faridabad that there is huge variation in the population and voters in wards which is not justified. It was also intimated by the State Election Commission that normally the ratio of population and voters in the State is about 70 per centum,



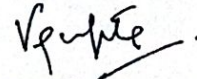
whereas the ratio of population and voters in some wards of Municipal Corporation, Faridabad is less than 30 per centum and in Ward No. 41 this is higher than 90 per centum.

14. Hence, the preliminary notification dated 26<sup>th</sup> May, 2023 has been issued by the Government for ascertaining the population as drawn from the Family Information Data Repository or the population equal to 140 per centum of the number of voters in the Electoral Roll, whichever is higher, for fixation of seats as well as delimitation of wards of municipalities. The said proposed amendment has been necessitated for maintaining the spirit of democracy to ensure that all the people who are residing in municipal areas are correctly enumerated to have proper representation.

Moreover, for the elections of Panchayati Raj Institutions, the latest population data has also been drawn from Family Information Data Repository where elections have been completed successfully in the year 2022, whereas the definition of population under clause (f) of Article 243P relates to the Chapter 'The Panchayat', is on similar lines with the definition provided under clause (g) of Article 243P of the Constitution of India.

15. Keeping in view the above, it is crystal clear that the draft amendment in rule 3 of the Haryana Municipal Delimitation of Ward Rules, 1977 has been made in accordance with the provisions of the Constitution of India as well as Haryana Municipal Act, 1973. The said proposed amendment will not defy or contravene any constitutional as well as statutory provisions. As such, no merit is found in the objection of Shri Hemant Kumar, Advocate (Ambala City) and the same deserves to be filed.

Decided accordingly.



( Vikas Gupta, IAS )

Commissioner & Secretary to Government, Haryana,  
Urban Local Bodies Department.

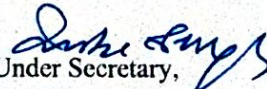
Chandigarh, Dated  
the 13<sup>th</sup> June, 2023

Endst. No. 9/22/2023-4CII

Dated : 13<sup>th</sup> June, 2023

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

1. Director, Urban Local Bodies, Haryana, Panchkula.
2. Shri Hemant Kumar, Advocate, Punjab & Haryana High Court, Chandigarh, #414, Sector-7, Urban Estate, Ambala City, Haryana (Mobile No. 9416887788 and email id : [hemantkumar.mallb@gmail.com](mailto:hemantkumar.mallb@gmail.com)).
3. General Manager (I.T.), H.Q. with the direction to upload the same on the Department's Web Portal.



Under Secretary,  
for Commissioner & Secretary to Government, Haryana,  
Urban Local Bodies Department.