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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9th DAY OF AUGUST, 2018

BEFORE

THE HON' BLE MR. JUSTICE B. VEERAPPA

WRIT PETITION No.31722/2018(LB-ELE)

C/W

W.P.Nos. 32294/2018(LB-ELE), 32779-32780/2018(LB-RES),

32890/2018 (LB-RES) AND 33436/2018(LB-ELE)

IN WP NO.31722/2018

BETWEEN:

P. UMESH,
S/O K.PUTTAPPA,
AGED ABOUT 48 YEARS,
RESIDING AT 1ST CROSS,
GANDHI BAZAAR EAST,
SHIMOGA DISTRICT-577201.

... PETITIONER

(BY SRI RAVI H. K., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
DEPARTMENT OF URBAN DEVELOPMENT,
BY ITS SECRETARY,
VIDHANA SOUDHA,
BENGALURU-560001.
2. STATE ELECTION COMMISSION,
KARNATAKA STATE COOPERATIVE MARKETING
FEDERATION BUILDING,
CUNNINGHAM ROAD,
BENGALURU-560001.
REPRESENTED BY ITS COMMISSIONER.

3. THE DEPUTY COMMISSIONER,
MAHAVEER CIRCLE,
SHIMOGA DISTRICT-577201.
4. THE CITY CORPORATION
SHIMOGA,
SHIMOGA DISTRICT-577201,
REPRESENTED BY ITS COMMISSIONER.

... RESPONDENTS

(BY SRI UDAY HOLLA, ADVOCATE GENERAL ALONG WITH
SMT. PRATHIMA HONNAPURA AGA FOR R1 AND R3;
SRI K.N. PHANEENDRA, ADVOCATE FOR R2;
SRI H.R. SHOWRI, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 &
227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
NOTIFICATION DATED 19.07.2018 ISSUED BY RESPONDENT
NO.1 VIDE ANNEXURE-D IN SC FAR AS FIXING THE
RESERVATION TO THE POST OF CORPORATOR OF GANDHI
BAZAAR EAST, BEARING WARD NO.23 TO GENERAL WOMEN
CATEGORY;

IN WP NO.32294/2018

BETWEEN:

SRI M. ANWARJI,
AGED 74 YEARS,
S/O LATE MOHIDEEN SHARIEF,
EX-COUNCILOR, MYSORE CITY CORPORATION
R/O NO.6, THRIVENI CIRCLE,
KYATHAMARANAHALLI LAYOUT,
MYSORE-570011.

... PETITIONER

(BY SRI M. KRISHNAPPA, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REP. BY ITS PRINCIPAL SECRETARY
TO GOVERNMENT,
URBAN DEVELOPMENT DEPARTMENT,
VIKASA SOUDHA, DR. AMBEDKAR ROAD,
BANGALORE-560001.

2. MYSORE CITY CORPORATION
NEW SAYYAJIRAO ROAD,
MYSORE-570004.
REP. BY COMMISSIONER,

... RESPONDENTS

(BY SRI UDAY HOLLA, ADVOCATE GENERAL ALONG WITH
SMT. PRATHIMA HONNAPURA AGA FOR R1;
VIDE ORDER DATED 30.07.2018 R2 IS DELETED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTIFICATION DATED 19.7.2018 ISSUED BY RESPONDENT NO.1 AS PER ANNEXURE-B, IN SO FAR IT RELATES TO SEAT RESERVED FOR WARD NO.32 "GHOUSIA NAGAR "A" BLOCK USMANIA WARD NO.32" OF THE MYSORE CITY CORPORATION RESPONDENT-2.

IN WP Nos.32779-32780/2018

BETWEEN:

1. SRI.H.JAYARAM,
S/O HONNAIAH
AGED ABOUT 40 YEARS
R/AT E-30 2ND CROSS, E & F BLOCK,
SBM COLONY, NEAR CHURCH,
RAMAKRISHNA NAGAR,
MYSORE - 570022.
2. SRI H. S. JAISHANKAR
S/O LATE SHAMBU LINGAPPA,
AGED ABOUT 34 YEARS
R/AT D. NO.198,
SEWAGE FORUM ROAD,
HUDCO HOUSE,
V
IDYARANYAPURAM
MYSORE - 570008.

... PETITIONERS

(BY SRI MANMOHAN P. N., ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF URBAN DEVELOPMENT
M. S. BUILDING
BANGALORE - 560001
REPRESENTED BY ITS
PRINCIPAL SECRETARY,
2. THE STATE ELECTION COMMISSION,
PARK HOUSE,
CUBBON PARK,
BANGALORE - 560001,
REPRESENTED BY ITS COMMISSIONER
3. MYSORE CITY CORPORATION
MYSORE - 570001
REPRESENTED BY ITS COMMISSIONER,
4. THE DEPUTY COMMISSIONER
MYSORE - 570001.

... RESPONDENTS

(BY SRI UDAY HOLLA, ADVOCATE GENERAL ALONG WITH
SMT. PRATHIMA HONNAPURA AGA FOR R1 AND R4;
SRI K. N. PHANEENDRA, ADVOCATE FOR R2;
SMT. M.P. GEETHA DEVI, ADVOCATE FOR R3)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES
226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE NOTIFICATION DATED 19.07.2018 ISSUED BY
RESPONDENT NO.1 (PRODUCED AT ANNEXURE-E).

IN WP NO.32890/2018BETWEEN:

SRI. LOKESHA @ LOKESHA M. K.
AGED 42 YEARS,
S/O LATE M.K.KALEGOWDA,
R/O NO.530, 2ND STAGE,
WARD NO.14, SATHYANAGAR,
UDAYAGIRI, MYSORE-570019.
MYSORE DISTRICT.

... PETITIONER

(BY SRI M. KRISHNAPPA, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REP. BY ITS PRINCIPAL SECRETARY
TO GOVERNMENT,
URBAN DEVELOPMENT DEPARTMENT,
VIKASA SOUDHA, DR. AMBEDKAR ROAD,
BANGALORE-560 001.
2. THE DEPUTY COMMISSIONER,
MYSORE DISTRICT,
MYSORE-570 005.

... RESPONDENTS

(BY SRI UDAY HOLLA, ADVOCATE GENERAL ALONG WITH
SMT. PRATHIMA HONNAPURA AGA FOR R1 AND R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 &
227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
IMPUGNED NOTIFICATION DATED 19.7.2018 ISSUED BY
RESPONDENT NO.1 AS PER ANNEXURE-C, IN SO FAR AS IT
RELATES THE SEAT RESERVED FOR WARD NO.14-SATHYA
NAGAR OF THE MYSORE CITY CORPORATION, MYSORE;

IN WP NO.33436/2018BETWEEN:

SMT. LEELAVATHI,
AGED ABOUT 49 YEARS,
D/O SRINIVAS NAIDU
R/AT NO.222, 12TH CROSS,
1ST MAIN, ARAVIND NAGARA,
MYSORE - 570 023.

... PETITIONER

(BY SRI V. R. SARATHY, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY THE SECRETARY
DEPARTMENT OF URBAN DEVELOPMENT
VIKAS SOUDHA
BANGALORE - 560 001.

2. THE KARNATAKA STATE ELECTION COMMISSION
REP BY ITS ELECTION COMMISSIONER
OPPOSITE OF K.S.M.F.BUILDING
NO.8, 1ST FLOOR, CUNNINGHAM ROAD
BANGALORE - 560 052.
3. THE DEPUTY COMMISSIONER
MYSORE DISTRICT
MYSORE - 570 001.
4. THE MYSORE CITY CORPORATION
REP BY ITS COMMISSIONER
MYSORE - 570 001. ... RESPONDENTS

(BY SRI UDAY HOLLA, ADVOCATE GENERAL ALONG WITH
SMT. PRATHIMA HONNAPURA AGA FOR R1 AND R3;
SRI K. N. PHANEENDRA, ADVOCATE FOR R2;
SMT. M.P. GEETHA DEVI, ADVOCATE FOR R4)

...

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 &
227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
IMPUGNED NOTIFIATION ANNEXURE-A DATED 19.7.2018
ISSUED BY THE RESPONDENT NO.1 AS ILLEGAL.

THESE WRIT PETITIONS HAVING BEEN HEARD AND
RESERVED FOR ORDERS IS COMING ON FOR
PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE
THE FOLLOWING:

ORDER

All these writ petitions are filed by the petitioners
challenging the notification dated 19.7.2018 issued by
the 1st respondent/State Government insofar it relates
to reservation of seats in respect of Mysuru and
Shivamogga Municipal Corporation Wards.

I-FACTS OF THE CASES

2. The petitioners are claiming that they are eligible to contest to the elections for general, BCA, BCB and SC have filed the present writ petitions contending that the State Government issued draft notification on 19.06.2018 in respect of reservations under the provisions of Section 7 (2), (3), and (4) of the Karnataka Municipal Corporations Act, 1976 (for short, hereinafter referred to as 'Act'), reserving seats wardwise for 65 different wards for Mysuru City Corporation on the basis of population as per 2011 census calling for objections, if any, from the general public which shall be filed within seven days from the date of publication. Ghousianagar A Block Usmania Ward No.32 (Old Ward No.59) has been reserved for General category. Therefore, the petitioner - M Anwarji in W.P.No.32294/2018 did not file any objections since it was in accordance with law. But when the final notification was issued on 19.07.2018 reserving the said ward for General Woman category, it was contrary to

draft notification. It is further contended that Ward No.32 was continuously and repeatedly reserved for General Woman for last three elections i.e., 2007, 2013 and 2018 and the same is contrary to the roster policy. It is further contended that unless cycle of 10 categories is exhausted, there was no justification for repetition of any category permanently and granting of seven days time to file objections is also contrary to the dictum of this Court and the Hon'ble Supreme Court time and again.

3. The learned Counsel for the petitioner in Writ Petition No.31722/2018 contended that, petitioner belongs to BCA category and he is concerned with Gandhi Bazar East, Ward No.23 of 4th respondent-Corporation. The City Municipal Council, Shivamogga was upgraded/converted to City Corporation, Shivamogga by the Government Order dated 20.12.2013 as per Annexure-B and it is further contended that for the year 2001, Ward No.23 was reserved for General Woman for the year 2007, BCA for the year 2013 and

General Women for the year 2018. It was further contended that the respondent No.1 had earlier reserved said post for General Category. However, after thought, for extraneous consideration, respondent No.1 re-fixed reservation to General Women category depriving the opportunity to the petitioner and similarly situated persons from contesting the reservation made and the same is contrary to the Government Notification issued from time to time.

4. The petitioners in Writ Petition Nos. 32779-80/2018 are from BCB and SC in respect of Ward Nos.55 and 65 of the 3rd respondent-Corporation have contended that in respect of Ward No.55 for year 2008, General Category was reserved and again for the year 2013 it was repeated for General and so also for the year 2018 as General. In respect of Ward No.65, it was reserved for General for the years 2008 and 2013 and BCA for the year 2018. Therefore, the learned Counsel for the petitioners contended that inspite of objections filed pointing out that the notification issued

is in violation of the provisions of Section 7 of the Act and that the ward reservation policy has not been implemented, the 1st respondent without considering the objection filed by the petitioners has issued final notification on 19.7.2018 reserving seats in respect of 65 Wards of the Corporation. Therefore, they are before this Court.

5. The petitioner in Writ Petition No.33436/2018 belongs to BCB category, Mysuru. It is stated that Ward No.64 was earlier reserved for BCA Women for the year 2001, General for the years 2008, 2013, and 2018. Though in the draft notification, it was notified as general, but in the Final Notification, it was reserved for BCA Women. Therefore, he contended that the Ward Reservation Policy is without any basis and without following the provisions of Article 243T of Constitution of India r/w Section 7 of the Act.

6. The learned Counsel for the petitioner in Writ Petition No. 32980/2018 contended that Ward No.14,

Sathyanagara, Mysuru, for the year 2001, was reserved for BCA category, Scheduled Caste for the years 2007 and 2013 and BCA Women for the year 2018.

7. Therefore, all the writ petitions are filed to quash the impugned final notification dated 19.07.2018 mainly on the ground that the respondents have not followed the rotation policy.

8. I have heard the learned counsel for the parties to the lis.

**II-ARGUMENTS ADVANCED BY THE LEARNED COUNSEL
FOR THE PARTIES**

9. Sri M. Krishnappa, learned counsel for petitioners in Writ Petition Nos. 32294/2018 and 32890/2018 contended that the continuous reservation for the category General Women for the years 2007, 2013 and 2018 in respect of Ward No. 59, Ghousianagar, Mysuru City Corporation; Ward No.14, Sathyanagar, Mysuru City Corporation for the BCA Woman in year 2001, SC in the years 2007 and 2013

and BCA Woman for the year 2018 is contrary to the roster policy. He would further contend that as per Government Order dated 07.05.2007 guideline Nos.12 and 13 are applicable to petitioners i.e., the principles of rotation in respect of other categories shall ensure that there is no repetition of reservation of seats with reference to reservation in the previous terms. The seat allotted to Schedule Caste, Scheduled Tribe, Backward Classes A or B or Women in the previous term shall not be allotted to the same category in the succeeding term. A seat reserved for Women in previous term shall not be reserved for Women in any category in the succeeding term. In spite of the said guidelines issued by the State Government in pursuance of the order passed by this Court in Writ Petition No. 5886/2007 and connected matters, still the respondents have reserved the seats for General Women continuously for three terms which is against the roster policy. He would further contend that in view of Article 243T of the Constitution of India, reservation of seats shall be made strictly in accordance

with law and provisions of Section 7(4) of the Act, but the same has not been done. Therefore, he would contend that repetition of the reservation for General Women continuously for three terms is contrary to the very roster policy. Therefore, he sought to quash the impugned notification issued by the State Government.

10. In support of his contentions, the learned counsel relied upon unreported judgment of this Court in the case of:

- i) Sri G. Sangappa vs. State of Karnataka D.D. 25.11.2010 especially para 20, 25, 26 and 27; and
- ii) also the Division Bench of this Hon'ble Court in the case of A Ramdas and Others -vs- State of Karnataka reported in ILR 2001 KAR 5354 para 6, 7, 10, 12, 14, 16, 20, 21. Therefore he sought to allow writ petitions for the relief sought for.

11. Sri H.K. Ravi, learned Counsel appearing for one of the petitioners in respect of Shivamogga

contended that objections filed in respect of Ward No.23 was not at all considered. He further contended that fixation of roster is against the roster policy. In support of his contentions he relied upon judgment of the Hon'ble Supreme Court in the case of *Baldev Singh and Others vs. State of Himachal Pradesh and Others reported in 1987 SC 1239* with regard to notified area, prior opportunity of hearing of residents of the locality must be afforded.

12. Sri P.N.Manmohan, learned counsel appearing for some of the petitioners in respect of Ward No.55 and 65 of Mysuru City Corporation contended that the very reservation made is in utter violation of Article 243T of the Constitution of India and proviso to Sub-Section 4 of Section 7 of the Act. He would further contend that the State Government has not followed the procedure as contemplated under the Government Order dated 02.02.2015 with regard to reservation and hence, the same is contrary to the dictum of this Court and the

Hon'ble Supreme Court. In support of his contentions, he relied upon the following judgments:

- i) *Prashant Bansilal Bamb -vs- State of Maharashtra reported in (2007) 4 Maharashtra Law Journal 341 para 19;*
- ii) *State of Orissa and Others -vs- Md. Illiyas reported in (2006) 1 SCC 275 ;*
- iii) *M. Abdul Azeez -vs- The State of Karnataka, by its Secretary, Urban Development Department and Others reported in ILR 2014 KAR 1839 para 11 with regard to rotation;*

13. Sri V.R. Sarathy, learned Counsel for the petitioner in respect of Ward No.64, Mysuru while adopting the arguments of the learned Counsel for the petitioners sought to allow the writ petitions for the relief sought for.

14. Per contra, Sri Udaya Holla, learned Advocate General for the State Government contended that earlier the Shivamogga City Municipal Council was upgraded

to the Municipal Corporation, Shivamogga in the year 2013 and in view of the census of the year 2011, fresh reservation had to be applied. Therefore, the contentions of the learned counsel for petitioners with regard to Shivamogga Ward that it is in violation of roster policy cannot be accepted. He would further contend that Sub-section (26-A) of Section 2 of the Karnataka Municipal Corporations Act, 1976, which refers to 'Population' which means the population as ascertained at the last preceding census of which relevant figures have been published. The impugned notification for reservation is issued on the basis of 2011 census and admittedly in the absence of any Rules under the Act for reservation, the respondents have invoked the provisions of Article 243T of Constitution of India and the provisions of the Sections 7(2), (3), (4) of the Act based on 2011 census. Admittedly the said notification is not at all challenged and in so far as the elections conducted for Mysuru Corporation for the years 2007 and 2013 on the basis of census for the year

2001 and reservation made under the impugned notifications to conduct elections under the 2011 census. He would further contend that the judgment relied upon by learned Counsel Sri Krishnappa in Writ Petition No.36337/2010 has been set aside by the Division Bench of this Court in the case of *Karnataka State Election Commission, Bangalore -vs- G. Sangappa and Others reported in (2011)1 AIR Kar. R 820 (DB)* and in view of the dictum of the Division Bench stated supra, the petitioners are not entitled to any relief.

15. The learned Advocate General would further contend that the Division Bench of this Court while considering the provisions of Karnataka Panchayath Raj Act has held that the starting point has to be taken when delimitation is carried out after the culmination of census operations. Therefore, he would contend that the contention of the petitioners that the reservation was made to a particular category for the years 2001, 2007 and 2013 cannot be accepted for the simple reason that the elections conducted for the

years 2007 and 2013 were on the basis of **2001** census and in so far as Shivamogga City Municipal Council that the City Municipal Council, Shivamogga was upgraded as Municipal Corporation and the notification was issued on the basis of 2011 census, the starting point for both the elections under the impugned notification is on the basis of 2011 census. Therefore, the reservation has to be made afresh and sought to dismiss the writ petitions.

16. Per contra, Sri K.N.Phaneendra, learned counsel for the State Election Commission, while supporting arguments of learned Advocate General contended that the Calendar of Events is issued on 02.08.2018 and therefore, the petitioners are not entitled to any relief before this Court in exercise of powers under Articles 226 and 227 of Constitution of India and sought for dismissal of writ petitions.

III-POINT FOR DETERMINATION

17. In view of the aforesaid contentions of the learned counsel for the parties, the only point that arises for consideration is:

Whether petitioners are entitled to the relief as sought for under Articles 226 and 227 of Constitution of India in view of the constitutional mandate as contemplated under Article 243U of the Constitution of India in the facts and circumstances of the case?

IV-CONSIDERATION

18. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record carefully.

19. It is the specific case of petitioners in all these writ petitions that the reservation in some of the wards was repeated for last three years continuously and thereby deprived the reservation to other categories

which is in violation of the provisions of Section 7 (2), (3) and (4) of Act and Article 243T of the Constitution of India. The substance of the respondent/State that the earlier City Municipal Council, Shivamogga was upgraded as Municipal Corporation in the year 2013 and the present impugned notifications for reservation are issued on 19.6.2017 and 19.7.2017 based on 2011 census and the reservation has to be applied for the first time. Therefore, the contentions of the petitioners cannot be accepted.

20. The material on record clearly depicts that some of the petitioners relying upon the Government Order with regard to guidelines for rotation of reservation of seats dated 7.5.2007 that the Government Orders were issued in pursuance of the order passed by this Court in Writ Petition No.5886/2007 on the basis of the population figures of census of the year 2001 and some of the petitioners relied upon the Government Order dated 02.02.2015 made on the basis of 2011 census. It is also not in

dispute that insofar as the Shivamogga Corporation that earlier it was Town Municipal Council and in the year 2013 it was upgraded to Municipal Corporation and therefore, fresh reservation has to be applied and earlier roster relied upon by the learned Counsel for the petitioners in respect of Shivamogga cannot be accepted.

21. In so far as the contentions raised by the petitioners in respect of Mysuru, being two writ petitions filed, one petitioner relied upon 7.5.2011 Government Order 2.2.2015 for reservation of rotation, Sub Section (26-A) of Section 2 of the Act prescribes that the definition of 'Population' means, population as ascertained at the last preceding census of which relevant figures are published.

22. Admittedly, in the present cases, the last preceding census was conducted in the year 2011. As per Article 243P Sub-clause (g) of the Constitution of

India 'Population' means population ascertained at the last preceding census of which relevant figures have been published. Therefore, the elections of Municipal Corporations and reservation made thereon have to be done as per the preceding census of which relevant figures have been published. Admittedly, the notification is issued for delimitation and reservation of seats made by the State Government on the basis of the 2011 census. Therefore, the elections for the Corporations have to be conducted on that basis alone.

23. In view of the above, it is relevant to consider the provisions of Section 7 of the Karnataka Municipal Corporations Act, 1976 which reads as under:

"7. Constitution of the Corporation.—

(1) The Corporation shall consist of,-

(a) such number of elected councillors not being less than thirty and not more than Two hundred as the Government, may by notification determine; and

(b) not exceeding ten percent of the total number of councilors in the case of Bruhat Bengaluru Mahanagara Palike and not more than five persons in the case of other city corporations nominated by the Government from amongst the residents of the city,-

(i) who are persons having special knowledge and experience in municipal administration or matters relating to health, town planning or education; or

(ii) who are social workers;

(c) the members of the Houses of People and the members of the State Legislative Assembly representing a part or whole of the city whose constituencies lie within the city.

(d) the members of the Council of State and State Legislative Council who are registered as electors within the city:

Provided that the persons referred to in clause (b) shall not have right to vote in the meetings of the Corporation.

(2) Seats shall be reserved in a corporation,-

(a) for the Scheduled Castes; and

(b) for the Scheduled Tribes:

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 the corporation as the population of the Scheduled Castes in the city or of the Scheduled Tribes in the city bears to the total population of the city.

(3) Such number of seats which shall as nearly as may be, one third of the total number of seats to be filled by direct election in a corporation shall be reserved for persons belonging to the Backward Classes;

Provided that out of the seats reserved under this sub-section, eighty percent of the total number of such seats shall be reserved for the persons falling under category "A" and the remaining twenty percent of the seats shall be reserved for the persons falling under category "B":

Provided further that if no person falling under category "A" is available, the seats reserved for that category shall also be filled by the persons falling under category "B" and vice-versa.

Provided also that the number of seats so reserved for the Backward Classes under this sub-section shall be so determined, that the total number of seats reserved for the Scheduled Castes and Schedule Tribes under sub-Section (2) and the Backward Classes under this sub-section shall not exceed fifty percent of the total number of seats in the City Corporation.

Explanation.--For the purpose of this sub-section and proviso to clause(b) of sub-section (1A) of section 10, categories "A" and "E" shall mean categories "A" and "B" referred to in clause (1) of section 2.

(4) Not more than fifty percent of the seats reserved for each category of persons belonging to Scheduled Castes, Scheduled Tribes and Backward Classes and those of the non-reserved seats to be filled by direct election in a corporation shall be reserved for women:

Provided that the seats reserved in sub-sections (2), (3) and (4) shall be allotted by rotation to different wards in a city.

(5) The Councillors referred to in clause (a) of sub-sections (1) shall be elected in the manner provided in this Act.

(6) Nothing contained in sub-sections (2), (3) and (4) shall be deemed to

prevent the members of the Scheduled Castes, Scheduled Tribes, Backward Classes or Women from standing for election to the non-reserved seats.”

24. A plain reading of the said provisions make it clear that the Corporation shall consist of (a) such number of elected councilors not being less than thirty and not more than two hundred as the Government may, by notification determine; and (b) not exceeding ten percent of the total number of Councillors in the case of Bruhat Bengaluru Mahanagara Palike and not more than five persons in case of other City Corporations nominated by the Government from amongst the residents of the city who are persons having special knowledge and experience in municipal administration or matters relating to health, town planning or education or who are social workers. (c) The members of the House of People and the members of the State Legislative Assembly representing a part or whole of the City whose constituencies lie within the

city. (d) the members of the Council of State and State Legislative Council who are registered as electors within the city ; Provided that the persons referred to in clause (b) of Section 7 shall not have right to vote in the meetings of the Corporation.

Sub-section (2) of Section 7 of the Act prescribes that the seats shall be reserved in a Corporation for the Scheduled Castes and for the Scheduled Tribes and the number of seats so reserved shall be as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the Corporation as the population of the Scheduled Castes in the city or of the Scheduled Tribes in the city bears to the total population of the city.

Sub-section (3) of Section 7 of the Act prescribes that such number of seats which shall as nearly as may be, one third of the total number of seats to be filled by direct election in a Corporation shall be reserved for persons belonging to the Backward classes; Provided

that out of the seats reserved under this sub-section, eighty percent of the total number of such seats shall be reserved for the persons falling under category 'A' and the remaining twenty percent of the seats shall be reserved for the persons falling under category B ; Provided further that if no person falling under category 'A' is available, the seats reserved for the category shall also be filled by the persons falling under Category 'B' and vice versa ; Provided also that the number of seats so reserved for the Backward classes under this sub-section shall be so determined, that the total number of seats reserved for scheduled castes and scheduled tribes under sub section (2) and the backward classes under sub section (3) shall not exceed fifty percent of total number of seats in the city corporations.

The explanation to Section 7 of the Act prescribes that for the purpose of the said section and proviso to clause (b) of sub section (1A) of section 10, categories 'A' and 'B' shall mean categories A and B referred to in clause (1) of Section 2 of the Act.

Clause (4) of section 7 of the Act prescribes that not more than fifty percent of the seats reserved for each category of persons belonging to Scheduled Castes, Scheduled Tribes and Backward classes and those of the non reserved seats to be filled by direct election in a Corporation shall be reserved for women; Provided that the seats reserved in sub section (2), (3) and (4) shall be allotted by rotation to the different wards in a city.

Sub-section (5) of Section 7 prescribes that the councilors referred to clause (a) of Sub-section (1) shall be elected in the manner provided in the Act. Sub-Section (6) of Section 7 prescribes that nothing contained in Sub-sections (2), (3) and (4) shall be deemed to prevent the members of the scheduled castes, scheduled tribes, backward classes or women from standing for election to non reserved seats.

25. Section 8 of the Act deals with term of office of the councilors which reads as under:

“8. Term of office of Councillors.- (1)

Save as otherwise provided in this Act, the term of office of councillors,-

(i) directly elected at a general election shall be five years;

(ii) nominated by the Government under clause (b) of sub-section (1) of section 7 shall, subject to the pleasure of the Government, be five years.

(2) The term of office of the councillors shall commence on the date appointed for the first meeting of the corporation.

(3) Notwithstanding anything contained in this Act, where two thirds of the total number of councillors required to be elected have been elected, the Corporation shall be deemed to have been duly constituted under this Act.

(4) If any casual vacancy occurs it shall be filled, as soon as may be, by the election of a person thereto. The person

so elected shall hold office only so long as the person in whose place he is elected would have held had the vacancy not occurred:

Provided that no election to fill a casual vacancy shall be held if the vacancy occurs within four months before the expiry by efflux of time of the term of office of the councillors.

(5) A councillor may resign his office at any time by notice in writing addressed to the Mayor and delivered to him and such resignation shall take effect from the date on which it is delivered.”

26. A plain reading of the said provision makes it clear that the term of the office of the councilors directly elected at a general election shall be five years and the term of office of the Councillors nominated by the Government under Clause (b) of Sub-section (1) of Section 7 shall, subject to the pleasure of the Government, be five years. Sub-section (2) of Section 8 prescribes that the term of office of councilors shall

commence on the date appointed for the first meeting of the Corporation. Sub-section (3) of Section 8 prescribes that notwithstanding anything contained in the Act, where two-thirds of the total number of councilors required to be elected have been elected, the Corporation shall be deemed to have been duly constituted under the Act. Sub-section (4) of Section 8 prescribes that if any casual vacancy occurs it shall be filled, as soon as may be, by the election of a person thereto. The person so elected shall hold office only so long as person in whose place he is elected would have held had the vacancy not occurred ; Provided that no election to fill casual vacancy shall be held if vacancy occurs within four months before the expiry by efflux of time of the term of office of the councilors.

Sub-section (5) of Section 8 of the Act prescribes that a councilor may resign his office at any time by notice in writing addressed to the Mayor and delivered to him and such resignation shall take effect from the date on which it is delivered.

27. With a view to provide for setting up democratic institutions at the grass-root level by virtue of Seventy-fourth Amendment to the Constitution, Part IX-A providing for establishment of the Municipalities was incorporated in the Constitution w.e.f 1.6.1993. The object of introducing Part IX-A in the Constitution of India was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Election had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. The new provisions i.e., Articles 243P to 243ZG were added in the Constitution of India with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of election.

28. If holding of election is allowed to be stalled on the complaint of few individuals/petitioners, then grave injustice will be done to lakhs of other voters, who have a right to elect a representative to the local body. The Court should not intervene when the elections are imminent. A careful reading of the notification issued by the Government on 19.06.2018 exercising powers under the provisions of Section 7(2), (3), (4) of the Act, reserving seats for different wards both at Mysuru City Corporation and Shivamogga Corporations on the basis of population as per 2011 census figures calling objections from the general public and final notification came to be issued on 19.07.2018 invoking the same provisions, but the fact remains that the present notification issued for reservation of seats in various wards is based on 2011 census. Therefore, fresh reservation of seats has to be applied. In view of the provisions of Sub-section (26A) of Section 2 of the KMC Act, which refers to 'Population' means population as ascertained at the last preceding census of which

relevant figures have been published and the same is also envisaged under Article 243P(g) of the Constitution of India, the 'Population' means the population as ascertained at the last preceding census of which relevant figures have been published.

29. Admittedly, in the present case, inspite of repeated the orders/observations made by this Court earlier, the State Governments have not raised an occasion to make the Rules for reservation of various Wards in respect of elections to be conducted for the local bodies even though the Karnataka Municipalities Act came into effect in 1964 and Karnataka Municipal Corporations Act, 1976 and we are in the year 2018, for all these years, that is more than four decades, the successive State Governments have adopted the policy of issuing notification/Government Order for reservation of guidelines continuously thereby to say goodbye to the very roster policy or reservation of seats as contemplated under Article 243T of the Constitution of India. It is high time for the State Government to

frame rules with regard to reservation of seats in respect of election of local bodies/Municipalities/Corporations elections and to curb the menace of adoption of issuing Government guidelines by passing a Government Orders under Article 162 of the Constitution of India according to their own sweet whims and fancies which is impermissible. It is also unfortunate that, whenever, elections are contemplated either for the Municipalities/Municipal Corporations/local bodies, only few individuals, who approach this Court, raise hue and cry. There is no consistent efforts to implement the reservation policy which clearly indicates that both the Election Commissioner, State Government and the general public, who approach the Court at the time of issuing notifications i.e., either delimitation or reservation, they are not approaching the Court within time and everybody approach the Court only at the fag end of the day unnecessarily pressurizing the Courts by filing petitions/litigations thereby everybody try to

abuse the process of the Court. On that ground also, the petitioners are not entitled to any relief.

30. It is not in dispute that Article 243P(g) defines 'population' to mean the population as ascertained at the last preceding census of which the relevant figures have been published. The Hon'ble Supreme Court while considering the provisions of Articles 243P(g) and 243T of the Constitution of India in the case of *ANUGRAH NARAIN SINGH* cited *supra* held at Paragraph-33 as under:

“33. *In our view, the argument advanced on behalf of the State must be upheld. It is true that Article 243-P(g) has defined 'population' to mean "population as ascertained by the last preceding census of which the relevant figures have been published". The delimitation of constituencies and also preparation of electoral rolls will have to be done on the basis of the figures available from the last census which was taken in 1991. Reservation of seats for Scheduled Castes and Scheduled*

Tribes is mandatory under Article 243-T of the Constitution. This must also be done on the basis of the available figures from the census. Clause (6) of Article 243-T of the Constitution has made it permissible for the State Government to reserve seats for other Backward Classes. The census of 1991 has not enumerated the number of persons belonging to Backward Classes. Therefore, in order to reserve seats for citizens belonging to Backward Classes, their number will have to be found out. Clause (6) of Article 243-T has impliedly empowered the State Government to ascertain the Backward Classes and the number of people belonging to such classes. Otherwise, the provisions of clause (6) of Article 243-T will become otiose and meaningless. Merely because, such an enumeration of people belonging to Backward Classes was made, does not mean that the figures enumerated by the last census were discarded. The latest available census figures had to be the basis for delimitation of the

constituencies, preparation of electoral rolls and also for reservation of seats for Scheduled Castes, Scheduled Tribes and women. But census figures are not available for persons belonging to Backward Classes. The next census will be in the year 2001. There is no way to reserve seats for Backward Classes in the meantime except by making a survey of the number of persons belonging to such classes for the purpose of giving them assured representation in the municipal bodies. To do this exercise is not to do away with the last available census figures but to find out what was not to be found by the last census. Had such counting been done in the census, then it would not have been open to the State Government to embark upon a survey of its own. The State Government here had only two choices. It could say that there will be no reservation for people belonging to Backward Classes because, the census figures of such people are not available or it could make a survey and count the number of

people belonging to the Backward Classes and reserve seats for them in the municipal bodies. The State Government has taken the latter course. This is in consonance with the provisions of clause (6) of Article 243-T. Therefore, the survey made by the State Government for finding out the number of persons belonging to Backward Classes was not in any way contrary to or in conflict with any of the provisions of the Constitution.”

31. Admittedly in the present case, learned Counsel for the petitioners relied upon two Government Orders/guidelines for rotation of reservation of seats among different categories in various Wards of Urban Local Bodies/the City Corporations/Town Municipal Council and Town Panchayath elections:

- i) The Government Order dated 07.05.2007 made in UDD 82 MLR 2007
- ii) The Government Order dated 02.02.2015 bearing No. NAE 240 MLR 2013

32. In view of the above two Government Orders relied upon by the learned Counsel for the petitioners, the latest Government Order has to be applied to follow the guidelines for reservation, since the impugned notifications issued for reservation of seats are based on 2011 census.

33. When the second Government Order is issued to follow the guidelines for reservation, second Government Order is repugnant in any way to the first Government Order. Therefore, the second Government Orders must prevail for it stands last in the notification and speaks the last intention of the makers or the Government, in view of the dictum of the Privy Council in the case of *The King vs. Dominion Engineering Co. Ltd.* reported in *AIR(93)1947 Privy Council 94* wherein para-7 reads as hereunder:

“7. Proviso 2 qualifies the main enactment in the matter of delivery no less than does proviso 1 and it also

qualifies proviso 1 itself. For it provides "further" that "in any case where there is no physical delivery of the goods," the tax is to be payable when the property in the goods passes to the purchaser. Thus where there is no physical delivery the notional delivery which proviso 1 introduces is rendered inapplicable. Anger J. found in proviso 2 an alternative ground for his decision against the Crown and it is the main ground of Hudson J.'s judgment in the Supreme Court. In their Lordships' view this proviso presents an insuperable obstacle to the Crown's claim. There has been no physical delivery of the goods by the Dominion Company to the Pulp Company, The proviso enacts that "in any case" where there has been no physical delivery the tax is to be payable when the property passes. The property in the goods in question has never passed to the Pulp Company, Consequently the tax has never become payable. If proviso 2 is repugnant in any way to proviso 1 it must prevail for it stands last in the enactment and so to

quote Lord Tenterden C. J., "speaks the last intention of the makers" ((1831), 2 B. and Ad. 8181 at p. 821). The last word is with the respondent, the Dominion Company, and must prevail".

34. The judgment relied upon by Sri. M. Krishnappa, learned Counsel appearing for some of the petitioners in the case of *A. Ramdas and Others -vs- State of Karnataka, Department of Urban Development and Others reported in ILR 2001 Kar. 5354* was a public interest challenging Rotation of categories of Reservations. Ultimately the said notifications were withdrawn by the Government in view of the concession made by the learned Advocate General. The facts of the said case are entirely different from the facts of the present case and hence has no application to the present case. In so far as the other judgments relied upon in the case of *G. Sangappa -vs- State of Karnataka* made in Writ Petition No.36337/2010 and connected matters D.D. 25th November, 2010, the order

passed by the learned Single Judge has been set aside by the Division Bench of this Court in the case of *Karnataka State Election Commission, Bangalore --vs- G. Sangappa & Others reported in 2011(1) AIR Kar 820.*

35. The other case relied upon by Sri M. Krishnappa, learned Counsel for the petitioner is *Obajji Basavarajappa and Another --vs- State of Karnataka and Others in Writ Petition No.5308/2007 and connected matters D.D.16th April, 2007* wherein it was a case where non implementation of the Municipal Election Rules was also disposed of in view of the concession made by the then learned Advocate General that the previous reservation to the Wards would be taken into consideration so as to ensure that there is no repetition in the reservation to the very same Ward which exercise by the State would take less than 9 weeks. Therefore, this case has no application to the facts and circumstances of the present case.

36. As already stated supra, admittedly, for the election of City Corporations, inspite of repeated orders passed by this Court and Constitutional Mandate of Article 243T of the Constitution of India, till today, the State Governments have not framed any Rules regarding reservation of seats even after a lapse of 40 years.

37. The judgment relied upon by Sri P.N. Manmohan, learned Counsel appearing for the petitioner in the case of *Prashant Bansilal Bamb -vs- State of Maharashtra reported in 2007(4) Mh.L.J 341* where a writ of mandamus was sought before the Maharashtra High Court to direct the respondents to follow rotation policy for the general elections to Panchayats in the State of Maharashtra in compliance with the Maharashtra Zilla Parishad and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules, 1996 wherein the Maharashtra High Court allowed the petition and directed to implement the

Rules which was framed exercising the powers conferred under Article 243-K of the Constitution of India. The said case has no application to the facts and circumstances of the present case.

38. So also the case relied upon by the learned Counsel for the petitioners in the case of *M. Abdul Azeez -vs- The State of Karnataka, by its Secretary, Urban Development Department and Others reported in ILR 2014 Kar. 1839* for allotting offices of Chairpersons and Vice Chairpersons to the various reserved categories in the Municipal Corporations, City Municipal Councils, Town Municipal Councils and Town Panchayats on the ground that the notifications issued are in violation of the principle of violation, has no application to the facts and circumstances of the present case.

39. It is an undisputed fact that every Corporation shall have a lifespan of five years and if dissolved earlier, fresh elections will have to be held

within the time specified in clause (3) of Article 243U of the Constitution of India, which reads as under:

“243U. Duration of Municipalities, etc:-

(1) Every Municipality, 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: Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause(1)

(3) An election to Constitute a Municipality shall be completed,

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under, clause(1) had it not been so dissolved.”

40. It is an undisputed fact that in view of provisions of section 21(1) and (2) and 35(1)(d)(iv) of the KMC Act and Articles 243ZA, 243ZG and 243U of the Constitution of India, the delimitation of wards and reservation of wards were made on the basis of latest

census 2011 figures. The alleged violation of population of wards stated in terms of statute would not in any way affect the petitioners and ultimately it is for the petitioners to file election petitions before the appropriate Court/Election Tribunal. On that ground also writ petitions are liable to be dismissed.

41. It is also not in dispute that the duration of Municipalities is fixed as five years and it is mandatory in nature and any violation cannot be justified in view of Article 243U of Constitution of India. The Hon'ble Supreme Court while considering the provisions of Articles 243K, 243ZA, 324, 243E, 243U, 32 and 226 of the Constitution of India in the case of *Kishansing Tomar -vs- Municipal Corporation of the City of Ahmedabad* reported in (2006)8 SCC 352 held at paragraphs 19, 20, 21 and 22 as under:

19. *From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on*

unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years' period as stipulated in clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

20. *The majority opinion in Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman [(1985) 4 SCC 689] held that the fact that certain claims and objections are not finally disposed of while preparing the electoral rolls or even assuming that they are not filed in accordance with*

law cannot arrest the process of election to the legislature. The election has to be held on the basis of the electoral rolls which are in force on the last date for making nomination. It is true that the Election Commission shall take steps to prepare the electoral rolls by following due process of law, but that too, should be done timely and in no circumstances, it shall be delayed so as to cause gross violation of the mandatory provisions contained in Article 243-U of the Constitution.

21. *It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the municipality, but they are exceptional circumstances and under no (sic other) circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. But that should be an exceptional circumstance and shall not be a regular*

feature to extend the duration of the municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects. It is only when the municipality is dissolved for any other reason and the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the municipality for such period.

22. *In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State Governments to recognise the*

significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for Parliament and the State Legislatures. In fact, in the domain of elections to the panchayats and the municipal bodies under Part IX and Part IX-A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.

42. It is also not in dispute that the State Government issued notifications on 28.12.2017 and 20.04.2018 for delimitation of wards based on 2011 census and draft notification on 19.06.2018 and final notification on 19.07.2018 for reservation of seats, exercising powers under the provisions of Section 7(2), (3) and (4) of the Act based on 2011 census and the election to the local bodies are imminent to be conducted on or before 05.09.2018 as mandated under

Article 243U of the Constitution of India. It is also not in dispute that the State Election Commission has already issued Calendar of Events on 02.08.2018. It is an admitted fact that by the impugned notifications, the State Government notified reservation of seats to 105 Wards, out of which only six Wards are under challenge by the petitioners. Admittedly, the elections are already set in motion by the State Election Commission by issuing Calendar of Events. Therefore, it is not possible for this Court to interfere with the election process already set in motion exercising powers under Articles 226 and 227 of the Constitution of India.

43. When the calendar of events has already been issued as on 2.8.2018 and the elections to the Corporations have to be conducted as per the Constitutional Mandate on or before 5.9.2018 and once the calendar of events is issued, this Court cannot interfere in the election process in view of Article 243-O of the Constitution of India, which reads as under:

“243-O. Bar to interference by courts in electoral matters- Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

44. The Hon'ble Supreme Court in the case of *N.P. Ponnuswami -vs- Returning Officer, Namakkal* reported in AIR 1952 SC 64, while considering the interference in election matters, has held as under:

“9. The question now arises whether the law of elections in this country contemplates that there should be two

attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the high Court under Article 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question Article 329(b) was apparently enacted to prescribe the manner in which and the

stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any are rectified, there will be no meaning in enacting a provision like Article 329(b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.

12. It is now well recognized that where a right or liability is created by a statute

which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willies J. in Wolver Hampton New Water Works Co. v. Hawkesford, (1859) 6 C.B. (N.S.) 336, at p.356 in the following passage:

“There are three classes of cases in which a liability may be established founded upon statute, one is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that

or the statutory remedy. The second class of case is, where the statute gives the right to sue merely, but provided no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to”.

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd*, (1919) A.C. 368 and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and*

Tabago .vs Gordon Grant & Co., 1935 A.C. 532 and Secretary of State v. Mask & Co., 44 cal. W.N. 709; and it has also been held to be equally applicable to enforcement of rights (see Hurduttrai v. Off Assignee of Calcutta, 52 cal. W.N. 343, At p.349. That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage.

13. *It was argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution. This argument however is completely shut out by reading the Act alongwith Article 329(b). It will be noticed that the language used in that article and in S.80 of the Act is almost*

identical, with this difference only that the article is preceded by the words “notwithstanding anything in this Constitution”. I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress.”

45. In the case of *Boddula Krishnaiah –vs- State Election Commissioner* reported in (1996)3 SCC 416, the Hon’ble Supreme Court while considering the interference of elections already set in motion, has held as under:

“11. Thus, it would be clear that once an election process has been set in motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh, in particular when election has

already been held in which the voters were allegedly prevented from exercising their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for redressal.

12. Under these circumstances, we hold that the order passed by the High Court is not correct in law in giving direction not to declare the result of the election or to conduct fresh poll for 20 persons, though the writ petition is maintainable. The High Court, pending writ petition, would not be justified in issuing direction to stall the election process. It is made clear that though we have held that the respondents are not entitled to the relief by interim order, this order does not preclude any candidate including defeated candidate from canvassing the correctness of the election. They are free, as held earlier, to seek remedy by way of an election petition as provided in the Act and the Rules.”

46. In the case of *Kurapati Maria Das -vs- Dr. Ambedkar Seva Samajan and Others* reported in (2009)7 SCC 387, the Hon'ble Supreme Court has held as under:

“19. In the first place, it would be better to consider as to whether the bar under Article 243-ZG(b) is in absolute bar. The article reads thus:

“243-ZG (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State.”

“At least from the language of clause (b), it is clear that the bar is absolute. Normally where such a bar is expressed in a negative language as is the case here, it has to be held that the tone of clause (b) is mandatory and the bar created therein is absolute.

20. This Court in its recent decisions has held the bar to be absolute. First such decision is *Jaspal Singh Arora v. State of M.P.* {(1998)9 SCC 594}. In this case the election of the petitioner as the President of the Municipal Council was challenged by a writ petition under Article 226, which was allowed setting aside the election of the petitioner. In para 3 of this judgment, the Court observed:

“It is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243-ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for

because of the statutory provision for election petition...”

21. *The second such decision is Gurudeep Singh Dhillon v. Satpal {(2006)10 SCC 616}. In that decision, after quoting Article 243-ZG(b) the Court observed that the shortcut of filing the writ petition and invoking constitutional jurisdiction of the High Court under Articles 226/227 was not permissible and the only remedy available to challenge the election was by raising the election dispute under the local statute.”*

V - CONCLUSION

47. For the reasons stated above, the point raised in the writ petitions has to be answered in the negative holding that the petitioners have not made out any prima facie case to interfere at this stage under Articles 226 and 227 of the Constitution of India, too when the calendar of events are issued and elections are already

set in motion. Accordingly, writ petitions are ***dismissed.***

48. However, this Court ardently hope and trust that the State Government will take necessary steps to frame appropriate rules for reservation of seats in respect of election of local bodies/Municipalities/Corporations, etc., in accordance with the provisions of Section 7(2) of the Karnataka Municipal Corporations Act, 1976 as well as the constitutional mandate under Article 243T of the Constitution of India at the earliest in the interest of general public at large.

**Sd/-
Judge**

Nsu/-