

(1967) 06 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 907 of 1967

Dagdu Vithoba Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-06-1967

Acts Referred:

Constitution of India, 1950 — Article 170, 226, 81

Citation : (1967) 69 BOMLR 767 : (1968) MhLj 129

Hon'ble Judges : Mody, J;Chandrachud, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Chandbachud, J.—This is a petition by two voters challenging¹ under Articles 226 and 227 of the Constitution certain important stages of an election to the Jalgaon Municipal Council due to be held on July 1, 1967. The petitioners claim to be interested in contesting the forthcoming elections, and stated broadly, their grievance is that the delimitation of constituencies is arbitrary, that the list of voters was not kept for public inspection for the requisite period and that three seats reserved for women were allotted to some three wards indiscriminately.

2. Prior to June 15, 1966, Municipal Administration in the State of Maharashtra was governed by four different enactments which were applicable in the different areas comprised in the State. Those enactments were: (1) the Bombay District Municipal Act, 1901; (2) the Bombay Municipal Boroughs Act, 1925; (3) the Central Provinces and Berar Municipalities Act, 1922; and (4) the Hyderabad District Municipalities Act, 1956. With a view to providing a uniform pattern for the administration of municipal affairs in the State, the State Legislature enacted the Maharashtra Municipalities Act, 1965 (Maharashtra Act XL of 1965), hereinafter called "the Act". It was passed on September. 10, 1965, but the various provisions thereof came into force in three stages by notifications issued by the Government from time to time in exercise of the powers conferred on it by Section 1(3) of the Act.

3. After the Act came into force, the Government of Maharashtra which is respondent No. 1 to this petition appointed respondent No. 2 as the Director of the Municipal Administration u/s 74 of the Act. u/s 3 of the Act the term of the sitting Municipal councillors of the several Municipalities was extended upto December 31, 1965 only, and therefore, action had to be taken u/s 10 of the Act to fix in each Municipal area of the State the number and the extent of the wards and to reserve seats for women and for Scheduled Castes and Scheduled Tribes in such areas. Towards this object, respondent No. 2 invited proposals from the Municipalities through the Commissioners of the various Divisions and the Collectors of the respective Districts. The Municipalities were asked to submit proposals for fixation of wards mainly on the basis of the population figures disclosed by the census held in 1961. Most of the Municipalities made the necessary suggestions and on considering them, separate orders were made by respondent No. 2 in respect of each municipal area for the constitution of wards therein. The notification delimiting the constituencies within the municipal area of the Jalgaon Municipal Council was issued by respondent No. 2 on October 7, 1965, and is published in the Gazette of the Government of Maharashtra dated October 8, 1965. This notification provides by Schedule I that 36 councillors would be elected to the Jalgaon Municipal Council, that three seats would be reserved for women and that one seat would be reserved for the Scheduled Castes. Schedule II to this notification contains a description of the thirty-six wards, each ward having been referred to in the schedule by reference to its boundaries. The notification is challenged by the petitioners on the ground that the wards have been fixed arbitrarily, their division being based on no rational principle.

4. On March 11, 1967, the Government of Maharashtra issued a notification in exercise of the powers conferred on it by Section 345A(5) of the Act specifying July 1, 1967, as the date for the purposes of that sub-section. As a result of this notification, the term of the office of the councillors who are deemed to be elected to the Jalgaon Municipal Council would expire on July 1, 1967, and therefore, the new elections to the Municipal Council have to be held on or before that date. This notification is also challenged by the petitioners though it is not clear how this particular notification affects any of the rights vested in the petitioners under the Act.

5. Turning now to the more important provisions of the Act, Section 3 of the Act empowers the Government to declare any local area having a population of not less than 10,000 to be a municipal area. Section 4 classifies the municipal areas into three categories, namely, "A", "B" and "C. Municipal areas having a population of more than 50,000 fall under class "A", municipal areas having a population of more than 20,000 but not more than 50,000 fall under class "B" and municipal areas having a population of 20,000 or less fall under class "C. Section 9 of the Act provides, inter alia, that save as otherwise provided by the Act, every Council shall consist of councillors elected at ward elections and it shall also include councillors co-opted by the elected councillors in the prescribed

manner. The proviso to Sub-section (1) of Section 9 provides for reservation of certain seats for women, Scheduled Castes and Scheduled Tribes. It lays down that in every Council for a "C" class Municipal area, two seats shall be reserved for women and in every other Council such number of seats shall be reserved for women as may be fixed under Sub-section (2) of the said section. Sub-section (2) of Section 9 provides by Clause (a) that the Director of the Municipal Administration shall from time to time by an order published in the official Gazette fix for each municipal area the number of elected councillors in accordance with the table given therein: An "A" class municipal area is entitled to have a minimum of 30 elected Municipal councillors and one additional elected Councilor for every 5,000 of the population, subject to the maximum of 50 elected Councilors; a "B" class municipal area is entitled to have a minimum of 20 elected councillors and one additional elected Councilor for every 3,000 of the population; and a "C" class municipal area is entitled to have a minimum of 15 elected councillors and one additional elected Councilor for every 2,000 of the population.

6. Section 10-of the Act provides that the Director of the Municipal Administration shall from time to time by an order published in the official Gazette fix for each municipal area the number and the extent of the wards into which such area shall be divided. It also requires the Director to specify in his order the wards in which seats are reserved for women and to ensure while doing so that such seats are reserved from time to time by rotation in different wards of the municipal area. It further requires the Director to specify in his order the wards in which seats are reserved for Scheduled Castes and Scheduled Tribes. Sub-section (2) of Section 10 provides that each of the wards shall elect only one Councilor. Thus the number of councillors automatically determines the number of wards into which the municipal area can be divided.

7. Section 12 of the Act confers the right of franchise on every person whose name is in the list of voters maintained u/s 11 of the Act and it specifically lays down that every person whose name is not in such a list shall not be qualified to vote at the election of a Councilor for the ward to which such list pertains. Under Sub-section (2) of Section 12 the list of voters maintained u/s 11 shall be conclusive evidence for the purpose of determining u/s 12 whether a person is qualified or not to vote at a particular election. The Act does not prescribe any special procedure for preparing an electoral roll for the purposes of the municipal elections. Section 11, however, provides that the electoral roll of the Maharashtra Legislative Assembly prepared under the provisions of the Representation of the People Act, 1950, and for the time being in force on such date as the Director may by general or special order notify (being a date not earlier than one month from such notification), for such constituency of the Assembly or any part thereof as is included in the municipal area, shall be divided by the Chief Officer of the Municipal Council into different sections corresponding to the different wards in the municipal area. A printed copy of roll so divided constitutes the list of voters for each ward. Sub-section (5) of Section 11 provided initially that at least "one

month" before the date fixed for nomination of candidates for every general election the Chief Officer shall keep open for public inspection at the Municipal Office and at such other places in the municipal area as the Council may fix, copies of the lists of voters of each ward maintained under Sub-section (2). Sub-section (5) Was amended by Maharashtra Act No. VIII of 1967 and the amendment substitutes*the words "fifteen days" for the words "one month" which originally appeared in Sub-section (3). As a result of the amendment, the voters list is required to be kept for public inspection for fifteen days only and not for one month before the date fixed for nomination of candidates for the general election.

8. The only other provisions of the Act to which reference may be made are ,s 17 and 321. Section 17 empowers the Government of Maharashtra to make rules to provide for or to regulate matters in respect of elections to be held under the Act, with special reference, amongst other matters, to the maintenance of the list of voters and the fixation of the dates, time and places for various stages of elections. Section 321 of the Act lays down the procedure for making rules under the Act. It is in pursuance of these provisions that the Government of Maharashtra framed rules called "the- Maharashtra Municipalities Election Rules, 1966."

9. The term of office of councillors in almost all Municipalities in the State was due to expire by about the end of October 1965 and fresh elections were then due to be held. The term was, however, extended under Maharashtra Act No. LII of 1964 for reasons mentioned in the preamble of that Act. Section 345A of the main Act which was introduced by yet another Act (Maharashtra Act XIV of 1966), provides by Sub-section (5) that the term of the office of the existing councillors shall expire at 12 midnight on such date as the State Government may by notification in the official Gazette specify in this behalf and further that such date shall in no case be beyond December 31, 1967. In pursuance of this power, the Government of Maharashtra issued a notification dated March 11, 1967, specifying July 1, 1967, as the date for the purposes of that sub-section. It is consequent upon this notification that respondent No. 3, the Collector of Jalgaon, fixed the election programme to the Jalgaon Municipal Council, in pursuance of powers conferred on him by Rule 4.

10. As stated earlier, Section 10(7) of the Act requires that the Director must fix for each municipal area the number and the extent of the wards into which such area shall be divided. The notification issued by respondent No. 2 in this behalf is dated October 7, 1965 and is published in Part I "A", Supplement of the Maharashtra Government Gazette, dated October 8, 1965. The Jalgaon municipal area has been divided by the Director into 36 different wards and this division has been effected principally on the basis of the population of the different wards. The first contention raised by Mr. Adik, who appears on behalf of the petitioners, is that while delimiting constituencies in the municipal area, the Director has effected an unequal division of the wards and that he was in error in

fixing wards on the basis of population only. It is urged that considerations far more important than the population of the different wards have been wholly ignored by the Director and therefore, the discretion conferred on him by Sub-section (1) of Section 10 must be held to have been exercised improperly. A notification, says counsel, which is a result of an improper exercise of discretion must be struck down.

11. Now Section 10(1) undoubtedly imposes a duty upon the Director of Municipal Administration to fix for each municipal area the number and the extent of wards into which such area should be divided. "We are, however, unable to accept the argument that in carving out wards in the municipal area on the basis of population the Director has acted arbitrarily or unreasonably. Whether a local area can have a Municipality is itself dependent, u/s 3(1) of the Act, on whether the population of the area is not less than 10,000. Under Sub-section (1) of Section 4 of the Act every municipal area is required to be classified by the State Government as "A" Class, "B" Class or "C Class on the basis of population alone. If a municipal area has a population of more than 50,000 it is required to be classified as "A" Class municipal area; if it has a population of more than 20,000 but not more than 50,000, it has to be classified as "B" Class municipal area, and if it has a population of 20,000 or less, it is required to be classified as a "C Class municipal area. Sub-section (2) of Section 9 of the Act provides that the Director shall from time to time by an order published in the official Gazette fix for each municipal area the number of elected councillors in accordance with the table mentioned in Clause (a) of the sub-section. According to that table, in a municipal area falling within class "A" the minimum number of elected councillors shall be 30 and for every 5,000 of the population above 50,000 there shall be one additional elected Councilor, so, however, that the total number of elected councillors shall not exceed 50. If the municipal area is of "B" class, the minimum number of elected councillors shall be 20 and for every 3,000 of the population above 20,000 there has to be one additional elected Councilor. If the municipal area is of "C class, the minimum number of elected councillors has to be 15 and for every 2,000 of the population above 10,000 there has to be one additional elected Councilor. Under Sub-section (2) of Section 10 of the Act each of the wards can elect but one Councilor. In other words, the position envisaged by Section 3(1), Section 4(1), Section 9(2) and Section 10(2) of the Act is that the population of the local area determines whether the area can be notified as a municipal area; the extent of population of the municipal area determines the class of the Municipality which that area can have; the class of the Municipality determines the number of elected councillors in the Municipal Council, and the number of such councillors in the Municipal Council determines the number of wards into which the municipal area can be divided. It is thus clear that, by and large, the population of the municipal area forms an integral part of the entire scheme which culminates in the fixation of wards and therefore, if the Director has divided the municipal area into wards on the basis of population, it cannot be said that he has exercised his discretion

arbitrarily or unreasonably.

12. It is urged by Mr. Adik, and that argument was adopted by counsel appearing for the various petitioners in the companion matters, that several other factors could have been properly taken into account by the Director in dividing the municipal area into wards and since those factors have been ignored, we should quash the notification issued by the Director. Now Section 10(7) confers on the Director the discretion to delimit wards in the municipal area. This discretion must undoubtedly be exercised reasonably and the Director cannot, merely for the reason that he possesses discretion, issue a notification fixing wards arbitrarily or unreasonably. If, however, it is possible to effect a division of the municipal area into wards by applying more than one test, the discretion cannot be said to be exercised unreasonably because this test but not another has been applied by the Director. Whichever test the Director adopts in dividing a municipal area into wards, the actual delimitation of the constituencies would always be open to some exception and no division can possibly answer every criticism that can be made against the fixation of wards. If the Act itself gives preponderating importance to the extent of population of the municipal area in the entire scheme of things, the Director was in our opinion entitled to fix the extent or limits of the wards on the basis of population alone. The primary purpose of a civic election is to ensure civic welfare and in achieving that object, the- population of the different parts of the municipal area can be legitimately taken into account while delimiting the constituencies.

13. On the broad question whether a division of an area into wards on the basis of population can be said to be arbitrary, we would like to refer to Articles 81 and 170 of the Constitution of India, to which the learned Advocate General has drawn our attention. Article 81(1) provides by Clauses (a) and (b) that the House of the People shall consist of not more than five hundred members chosen by direct election from territorial constituencies in the States and not more than twenty-five members to represent the Union territories, chosen- in such manner as Parliament may by law provide. Clause (2) of Article 81 provides that for the purposes of Sub-clause (a) of Clause (1), there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all the States and that each State shall be divided into territorial constituencies in such manner that the ratio between the population of such constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State. Article 170 which prescribes the composition of Legislative Assemblies contains similar provisions, in so far as material. If the Constitution itself envisages that States shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State, the delimitation of wards in a particular municipal area on the basis of population cannot be characterized as arbitrary or unreasonable. The relevant provisions of the Constitution would show that in

similar matters, population can serve as a safe guide. In our opinion, therefore, the discretion conferred on the Director by Section 10(1) of the Act in the matter of delimitation of wards is not shown to have been exercised unreasonably or arbitrarily.

14. Annexed to the petition is a table marked exh. B and an attempt was made by Mr. Adik to demonstrate by reference to it, how the division of the municipal area on the basis of population has resulted in an absurd consequence. The table shows that there is a fairly large variation in the number of voters entitled to vote in the different wards. For example, there are 1741 voters in Ward No. 29, 1132 voters in Ward No. 1 and 722 voters only in Ward No, 23, It is urged that the Director ought to have taken into account the number of persons entitled to vote in the particular areas and assuming that the test of population could have been reasonably adopted, that test should have been tempered by an attempt to equalise the number of voters in each ward. According to Mr. Adik, if both of these aspects were taken into account by the Director, the voters would have been spared an obvious absurdity* This argument does not impress us, because the disparity in the number of voters in the different wards does not justify the conclusion that the division of the municipal area into wards is founded on an unreasonable principle. As stated earlier, the Director was not in error in fixing the boundaries of the wards on the basis of population and in adopting that basis he cannot be said to have used his discretion unreasonably. Having adopted a reasonable and recognised basis for carving out wards in the municipal area, a certain amount of variation in the number of voters in the different wards was inevitable.

15. We must also say that the disparity in the number of voters in the different wards does not impair the right of franchise. That right postulates the freedom to vote and that right is not in any manner affected on account of the fact that the number of voters is larger in one ward than in another. But then it is urged that the freedom to vote is not the only important aspect of a free, and fair election, for according to the learned Counsel, the rights of candidates contesting elections are as sacrosanct as the corresponding rights of voters. The argument is that in delimiting wards on the basis of population alone and in disregarding the disparity in the number of voters in the different wards the Director has shut his eyes to the onerous burden which was being placed on some candidates as compared with others. We see no substance whatsoever in this grievance. The argument is founded on an untenable basis that if a candidate is required to make an appeal to a larger number of voters than a candidate in a neighbouring ward is required to make, a burden not envisaged by the ethics of elections is cast on the former. To approach the electorate or to make an appeal to it is a normal incident of an election contest and no candidate can justifiably make a grievance that the task of approaching the electorate is rendered onerous. Besides, disparity in the number of voters in the different wards does not bring about any disparity in the burden placed on the candidates in the same ward, burden if it be.

16. It is then urged that assuming that the Director was justified in adopting the test of population in fixing the wards, he was in error in taking the figures disclosed by the 1961 Census as the basis. It is said that several important changes have taken place since 1961 and in ignoring those changes the Director has taken a wholly unrealistic view of the matter. One such change, according to Mr. Adik, is the steep rise in population between the last Census and now. This argument, in our opinion, overlooks that in the first place Rule 2(33) of the Act defines "population" to mean the population as ascertained at the last preceding census of which the relevant figures have been published. In view of this definition, the test of population prescribed in Sections 3(1), 4(1) and "9(2)(a) of the Act has to be answered by reference to the population figures disclosed by the Census of 1961. The Director was, therefore, justified in working out the delimitation of wards on the basis of the same figures. Those figures, at any rate, constitute the latest official estimate of the population and therefore, that estimate can serve as a useful guide. One cannot expect the Director to embark upon an expensive and elaborate inquiry for estimating the population on the eve of every municipal election. The infirmity in Mr. Adik's argument is that if the population has increased and is increasing there is no reason to suppose that it has increased to a greater extent in one ward than in another. Therefore, the official figures disclosed by the 1961 Census must afford a safe guide for fixing wards in the municipal area.

17. The petitioners are voters in two of the wards which have been formed by the Director and it is important to bear in mind that the right to vote is not a common law right but is a statutory right. As observed by the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, :

The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

The same view was taken by their Lordships in a subsequent decision reported in *Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others*, Bose J., who delivered the judgment of the Court, observes that (p. 610) :

...The right to stand as a candidate and. contest an election is not a common law right. It is a special right created by statute and can only be exercised on the conditions laid down by the statute.

In this case, the right of franchise is conferred by Section 11 of the Act and that right can be exercised only in consonance with the other provisions of the Act. The right to vote in a municipal election held under the Act depends on a variety of factors closely connected with the population of the local area and the population has to be ascertained by reference to the Census of 1961. Whether a particular local area can be declared as a municipal area, the classification of the municipal area, the number of elected councillors in the Municipal Council-these are questions which have to be decided by reference to the figures disclosed by

the last preceding census. In our opinion, therefore, it is not open to the petitioners, while seeking to exercise a right conferred by the Act, to complain that the Director has taken into account the figures of population disclosed by the 1961 Census in fixing the wards in the municipal area.

18. The learned Advocate General has urged two more objections to the arguments advanced by Mr. Adik on behalf of the petitioners. It is urged that the challenge made by the petitioners to the notification published in the Government Gazette dated October 8, 1965, is belated and that an alternative remedy which was available to the petitioners was not adopted by them. The grievance of the petitioners is that the test of population ought not to have been adopted by the Director in fixing the wards and that the official figures disclosed by the 1961 Census should not have been, in any event, taken into account. Now the notification issued by the Director was published as long back as in October 1965 and the learned Advocate General is justified in his contention that though it was open to the petitioners to complain of the notification soon after it was published, they did not choose to do so until May 9, 1967, when this petition was filed. Section 818 of the Act provides, in so far as is material, that the State Government may for the purpose of satisfying itself as to the legality or propriety of any order passed by, or as to the regularity of the proceeding of, an officer subordinate to the State Government, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit. Section 320 of the Act provides, in so far as is material, that the State Government may, either on its own motion or on the application of any party interested, review any order passed by itself and the Director may similarly review an order passed by himself under the Act and pass such order in reference thereto as it or he thinks fit. Counsel for the petitioners point out that Section 318 came into force on November 27, 1965, whereas Section 320 came into force on June 15, 1966 and therefore, those remedies were certainly not available to the petitioners until November 1965 and June 1966 respectively. Counsel is undoubtedly right but the fact that no attempt was made to draw the attention of the Director to the existence of what are now conceived as preponderating factors shows, in our opinion, that it was not until a very late stage that the petitioners themselves thought that any valid challenge could be made to the scheme proposed by the Director in the circular issued by him to the various Municipalities. However, we do not propose to dismiss this petition on the ground of delay or on the ground that the remedy provided by Sections 318 and 320 of the Act was not availed of by the petitioners and therefore, it is unnecessary to say anything more on the subject.

19. That disposes of the first contention that the municipal area has not been properly divided into wards by the Director. The second contention raised on behalf of the petitioners is that the lists of voters were not kept open for public inspection for a period of one month before the date fixed for nomination of candidates. This argument arises out of the provisions contained in Section 11(5) of the Act which originally read to say that at least one month before the date

fixed for nomination of candidates for every general election, the Chief Officer shall keep open for public inspection at the Municipal Office and at such other places in the municipal areas as the Council may fix, copies of the lists of voters of each ward maintained under Sub-section (2). This sub-section was amended by Maharashtra Act No. VIII of 1967 which came into force on April 17, 1967. Under the amendment the period of one month was reduced to fifteen days and therefore, after the amendment, the lists of voters are required to be kept open for public inspection for a period of fifteen days only before the date fixed for nomination of candidates. In the present case the Director notified April 11, 1967, as the date in reference to which the electoral roll of the Legislative Assembly was to be adopted for the purposes of the municipal elections. The last date for nominations was fixed as May 10, 1967, and the argument is that on April 11, 1967, a right was vested in the voters and the candidates u/s 11(5), as it stood then, that the lists of voters shall be kept open for public inspection for a period of one month. In the very nature of things, it is urged, the lists could not be kept open for the requisite period as the last date of nominations was fixed as May 10, 1967, which, counted from April 11, 1967, was a day less than one month. We see no substance in this argument. Apart from whether the provisions of sub's. (5) are mandatory, we are unable to accept the submission that the fixation of the election programme creates by itself any substantive rights in the voters or the candidates. Besides, the requirement that the lists of voters shall be kept open for public inspection for a certain period is a matter of procedure and such a provision cannot create substantive rights in any person. After the Director notified April 11, 1967, as the date for adopting the electoral roll of the Legislative Assembly for the purposes of the municipal elections, Sub-section (5) of Section 11 was amended by the Legislature and the requirement that the list of voters should be kept open for public inspection for one month was modified by providing that the list may be kept open for public inspection for a period of fifteen days only. The amendment: came into force on April 17, 1967 and it is not disputed that the list of voters was in fact kept open for public inspection from April 26, till May 10.

20. But then it is urged by Mr. Watwe, who in other respects supported the argument of Mr. Adik, that what is meant by "the date fixed for nomination of candidates" is not the last date on which nominations had to be filed but the first date on which nominations could be filed. The argument is that even assuming that the voters' lists ought to have been kept open for inspection for a period of fifteen days only, that period must be counted back from April 11, 1967. That was the date by reference to which the electoral roll of the Legislative Assembly was to be adopted for the purposes of the Municipal elections, and that according to Mr. Watwe was the first date on which nominations could be filed. It is not possible to accept this argument, because the date which is fixed for the nomination of candidates is never the first date but the last date. Some date may undoubtedly happen to be the first date on which nominations could be filed but neither under the Act nor under the Rules is the first date on which nomination

can be fixed. In the Maharashtra Municipalities Rules, 1966, which have been framed by the Government of Maharashtra in exercise of the statutory powers conferred upon it by Section 17(2) read with Section 321(2) of the Act, it is provided that for the purpose of holding a general election the Collector shall by order in Form I appoint the last date, time and place for making nominations. In our opinion, therefore, the words "the date fixed for nomination of candidates" must mean the last date for nomination of candidates and not the first date. As the list of voters was kept open for public inspection for a period of fifteen days before May 10, 1967, which was fixed as the last date for filing nominations, the provisions of Sub-section (3) of Section 11 must be held to have been duly complied with.

21. The last challenge to the election programme is that the three seats which are reserved for women under Clause (i) of the proviso to Sub-section (1) of Section 9 of the Act, have been indiscriminately allotted by the Director to Wards Nos. 1, 13 and 25. It is urged that the seats reserved for women should have been allotted to wards where women required a special representation as, for example, where a ward was predominantly populated by women belonging to a backward class. This argument has a short answer, under Sub-section (1) of Section 10 the Director has to issue an order fixing for each municipal area the number and the extent of the wards into which that area is to be divided. He has to specify in the order the wards in which seats are reserved for women and a duty is enjoined upon him that "in so doing he shall ensure that such seats are reserved from time to time by rotation in different wards of the municipal area." Sub-section (1) does not cast any obligation on the Director to allot the reserved seats to wards in which there is a preponderating population of women belonging to this or that particular class. Indeed, Sub-section (1) requires the Director to allot the seats reserved for women to different wards by rotation. The municipal area has been divided by the Director into 36 wards and rather than seem to act without rhyme or reason, he has allotted the three reserved seats mathematically to wards Nos. 1, 13 and 25. If counsel were correct that the seats reserved for women ought to have been allotted to the Wards in which a representation was especially required by a particular class of women, one would have found different language in the sub-section. For example, it could have been provided that the Director shall specify in the order the wards in which seats are reserved "" for women of a backward class." It is clear that the object of Sub-section (1) of Section 10 is only that a certain number of women shall be returned as councillors and not that women of backward class shall have- a certain weight age.

22. We have dealt with the various points urged before us on merits, though it was possible to reject some of the contentions either on the ground that the particular challenge was belated or on the ground that the petitioners ought to have resorted to the normal remedy provided by Section 21 of the Act under which an election, co-option or nomination of a Councilor may be called in question by an election petition only. The Act is newly put on the Statute Book

and we thought that rather than leave the important questions raised before us to be decided at a future stage we should deal with them in this petition. Sooner or later these questions were bound to be raised before this Court and sooner we attempted to settle the law, the better it is for all concerned. We must, however, say that except in unusual circumstances, as for example, when there is a flagrant violation of law, or a gross abuse of the discretion conferred on the Government or its Executive Officers, or when the provisions of the Act are utilised for a purpose not duly appointed under the Act, the machinery prescribed by the Act must be adopted for the redress of grievances arising out of an alleged violation of rights conferred by the Act. As observed by the Supreme Court, the right of franchise is a statutory right and not a common law right. Therefore, it is necessary that, normally, statutory remedies must be adopted. It is in the interests of the voters as well as the candidates that the published programme of elections is strictly adhered to and the process of elections is not arrested.

23. In the result, we reject the petition and discharge the rule. The petitioners will pay the costs of this petition to respondents Nos. 1 to 3 which we quantify at Rs. 200.