

(2010) 12 MAD CK 0246

In the Madras High Court

Case No : Writ Petition No's. 24612 of 2010 and Others, W.P. (MD) . No. 12917 of 2010 and M.P. No's. 1, 2 and 3 of 2010

K. Sridhar Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Constitution of India, 1950 — Article 107, 108, 109, 111, 136(2)
Delimitation Commission Act, 1962 — Section 10(1), 10(2), 8, 9
Representation of the People Act, 1950 — Section 10, 10(1), 10(2), 11, 12
Representation of the People Act, 1951 — Section 15A, 80
Tamil Nadu Legislative Council Act, 2010 — Section 2, 3, 3(1), 3(2), 3(3)
Tamil Nadu Panchayats Act, 1994 — Section 10, 12, 12(2), 17, 19

Citation : (2011) 256 MLJ 210

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : P. Madhavan, R. Muthukumarasamy for A. Jenasen, V. Raghavachari, S. Sithiraianandam, N.G.R. Prasad, for Row and Reddy, for G. Devadoss, H. Lakshmi Shankar, J. Saravana Vel, Su. Srinivasan, A. Navaneethakrishnan, P.G. Thiyagu and S. Sivakumar, for the Appellant; M. Ravindran, A.S.G. of India, a/b., J. Ravindran, A.S.G. of India, K. Ravichandra Baabu, SCGS, G. Rajagopalan for G.R. Associates, P.S. Raman, General for Government Pleader, a/b., M. Sneha, P. Mahaadevan, SCCG and K.K. Senthilvelan, Assistant Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—As common questions of law and fact arise for consideration in this batch of 13 writ petitions, they were heard together and are disposed of by this common order.

2. The matter concerns creation of a Legislative Council in the State of Tamil Nadu. The Legislative Assembly of Tamil Nadu passed a resolution for creation of a Legislative Council on 12.4.2010 and the said resolution was passed by 2/3rd majority as required under Article 169(1) of the Constitution of India. The

Council of States on 5.5.2010 passed the Tamil Nadu Legislative Bill, 2010, which was passed by the Lok-Sabha and got the Presidential Assent on 18.5.2010. Thereafter, it was published in the Gazette on the same day on 18.5.2010 and republished by the order of Governor of Tamil Nadu on 20.5.2010. Earlier, a writ petition was filed in the nature of a public interest litigation in W.P. No. 24613 of 2010 wherein the Petitioner sought for issuance of writ of declaration for declaring the provisions of the Tamil Nadu Legislative Council Act, 2010 as unconstitutional and void ab-initio. This Bench by its order dated 9.10.2010, dismissed the writ petition as devoid of merits. The operative portion of the order is as under:

13. The Constitution Bench of the Supreme Court, while deciding the question as to the validity of the 24th, 25th and 29th amendments to the Constitution in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , discussed different Articles, including Article 169 of the Constitution of India. Their Lordships observed as under:

62. In the Constitution, the word "amendment" or "amend" has been used in various places to mean different things. In some articles, the word "amendment" in the context has a wide meaning and in another context it has a narrow meaning. In Article 107, which deals with legislative procedure, Clause (2) provides that "subject to the provisions of Articles 108 and 109, a Bill shall not be deemed to have been passed by the House of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses". It is quite clear that the word "amendment" in this article has a narrow meaning. Similarly, in Article 111 of the Constitution, whereby the President is enabled to send a message requesting the Houses to consider the desirability of introducing amendments, the word "amendments" has a narrow meaning.

63. The opening of Article 4(1) reads:

4(1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law.

Here the word "amendment" has a narrower meaning. "Law" under Articles 3 and 4 must "conform to the democratic pattern envisaged by the Constitution; and the power which the Parliament may exercise "is not the power to override the constitutional scheme. No state can, therefore, be formed, admitted or set up by law under Article 4 by the Parliament which has no effective legislative, executive and judicial organs".... Per Shah, J. Mangal Singh v. Union of India.

(Emphasis supplied)

64. Article 169(2) reads:

Any law referred to in Clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the

provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

Here also the word "amendment" has a narrow meaning.

Further their Lordships observed as under: (para 64 page 317)

64. Any law referred to in Clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

14. In the instant Act, as noticed above, Sections 4 and 5 of the Act make provisions for necessary amendment/insertion of the word "Tamil Nadu" and the words "Legislative Council of the State of Tamil Nadu" in the parent statute as required under Article 169(2) of the Constitution of India. Since the word "amendment/insertion" has a narrow meaning, the Act cannot be declared ultra vires or unconstitutional in the absence of corresponding amendments to be carried out in the Parent Statutes, namely, the Representation of People Act, 1950 and the Representation of People Act, 1951. The grounds taken by the Petitioner in the writ petition are absolutely unfounded and they have no substance.

15. In the light of the facts of the case, and the law discussed herein above, and after giving our deep consideration in the matter, we do not find any merit in the writ petition, which is accordingly dismissed. No costs.

3. It appears that the aforementioned judgment has become final. In this batch of writ petitions, the challenge is to the Presidential Notification dated 30.9.2010, called the Delimitation of Council Constituencies (Tamil-Nadu) Order 2010 (hereinafter referred to as the "Delimitation Order") and varied prayers have been made in all these writ petitions. The sum and substance of the prayers is that the Delimitation Order is in contravention of the Representation of the Peoples Act 1950 (hereinafter referred to as the "RP Act 1950"); that the same is ineffective without prior approval of the Parliament and therefore, liable to be struck down as unconstitutional, null and void. In one of the writ petitions, prayer has been made to amend the Delimitation Notification to include middle schools located in the State of Tamil Nadu so as to enable the Secondary Grade Teacher working in middle school to become eligible to vote.

4. Before we venture into the grounds on which the Petitioners have challenged the Delimitation order, it would be necessary to have a brief background of the law and facts:

5. Part VI of the Constitution of India deals with The States and Chapter III of Part VI deals with The State Legislature. In terms of Article 168(1) of the Constitution, falling under Chapter III for every State there shall be a Legislature which shall consist of the Governor and Clause (a) of Article 168(1) provides for two Houses in certain States and in respect of other States, there shall be one

House in terms of Clause (b) of Article 168(1). In terms of Article 168(2) where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as Legislative Assembly. The State of Tamil Nadu, when it was the erstwhile the State of Madras had two Houses, however, the same came to be abolished w.e.f. 1.11.1986, pursuant to the Tamil Nadu Legislative Council (Abolition Act) 1986, (Central Act 4, 1986).

6. During 1996, the Tamil Nadu Legislative Assembly passed a Resolution in accordance with Article 169(1), which inter alia provides for abolition or creation of Legislative Councils in States, for creation of Legislative Council in the State of Tamil Nadu, this Bill was placed before the Lok-Sabha on 14.8.1997, but the same lapsed on the dissolution of the Eleventh Lok-Sabha and the Tamil Nadu Legislative Assembly subsequently passed another Resolution on 12.9.2001, rescinding its earlier Resolution passed during 1996.

7. Pursuant to the resolution of the Legislative Assembly of Tamil Nadu on 12.4.2010, a resolution was passed by 2/3rd majority for creation of Legislative Council in the State and received the Presidential Assent and termed as the Tamil Nadu Legislative Council Act, 2010, (hereinafter referred to as the Act 16 of 2010). At this stage, it would be necessary to look into the provisions of Act 16 of 2010 and for better appreciation, the same is reproduced herein below:

Ministry of Law and Justice

(Legislative Department)

New Delhi, the 18.5.2010/Vaisakha 28, 1932 (Saka)

The following Act of Parliament received the assent of the President on the 18.5.2010, and is hereby published for general information:

The Tamil Nadu Legislative Council Act, 2010

No. 16 of 2010.

An Act to provide for the creation of Legislative Council for the State of Tamil Nadu and for matters supplemental, incidental and consequential thereto.

Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:

1. This Act may be called the Tamil Nadu Legislative Council Act, 2010.

2. In this Act, unless the context otherwise requires, each of the words and expressions used herein and not defined but defined in the Representation of the People Act, 1950, shall have the same meaning as in that Act.

3(1) As from such date as the President may, by order appoint, there shall be a Legislative Council for the State of Tamil Nadu; and as from that date, in Sub-clause (a) of Clause (1) of Article 168, after the word "Karnataka," the words

"Tamil Nadu", shall be inserted.

(2) In the said Council, there shall be 78 seats of which (a) the numbers to be filled by persons elected by the electorates referred to in Sub-clauses (a), (b) and (c) of Clause (3) of Article 171 shall be 26, 7 and 7 respectively;

(b) the number to be filled by persons elected by the members of the Legislative Assembly of Tamil Nadu in accordance with the provisions of Sub-clause (d) of the said Clause shall be 26; and

(c) the number to be filled by persons nominated by the Governor of Tamil Nadu in accordance with the provisions of Sub-clause (e) of that Clause shall be 12.

(3) As soon as may be after the commencement of this Act, the President, after consultation with the Election Commission, shall, by order, determine,

(a) the constituencies into which the State of Tamil Nadu Shall be divided for the purpose of elections to the said Council under each of the Sub-clauses (a), (b) and (c) of Clause (3) of Article 171;

(b) the extent of each constituency; and

(c) the number of seats to be allotted to each constituency.

(4) As soon as may be after such determination, steps shall be taken to constitute the said Council in accordance with the provisions of this Act, the Representation of the People Act, 1950 and the Representation of the People Act, 1951.

4. In the Representation of People Act, 1950,

(a) in the Third Schedule, after entry No. 6 relating to Karnataka, the following entry shall be inserted, namely:

7. Tamil Nadu 78 26 7 7 26 12;

(b) in the Fourth Schedule, after the heading "Karnataka" and the entries thereunder, the following heading and entries shall be inserted, namely:

Tamil Nadu

1. Municipalities, as referred to in Article 243-Q of the Constitution.

2. Panchayat Union Councils.

3. Cantonment Boards.

4. District Panchayats referred to in the Tamil Nadu Panchayat Act, 1994.

5. In Section 15-A of the Representation of the People Act, 1951, after the words and figures "under the Andhra Pradesh Legislative Council Act, 2005", the words and figures "and constituting the Legislative Council of the State of Tamil Nadu under the Tamil Nadu Legislative Council Act, 2010" shall be inserted.

V.K. Bhasin,

Secretary to the Government of India.

(Republished by Order of the Governor)

R. Kathirvel,

Joint Secretary to Government,

Law Department.

8. The Act 16 of 2010 was enacted to provide for creation of Legislative Council for the State of Tamil Nadu and for matters supplemental, incidental and consequential thereto. In terms of 2, unless the context otherwise requires, each of the words and expression used in Act 16 of 2010 and not defined, shall have the same meaning as in the RP Act, 1950. As per Section 3(1), the creation of the Legislative Council shall be as from such date as the President may by order appoint and as from that date in Article 168(1)(a) of the Constitution, the words "Tamil Nadu" shall be inserted after the word "Karnataka". Section 3(2) deals with number of seats and the manner to be filled up. Section 3(3) states that as soon as after the commencement of Act 16 of 2010, the President after consultation with the Election Commission determine the constituencies into which the State of Tamil Nadu shall be divided for the purposes of elections to the Council under each of the Sub-clause (a) to (c) of Article 171(3) of the Constitution, the extent of each Constituency and the number of seats to be allotted to each constituency. Section 3(4) states that as soon as such determination is done in terms of Section 3(3) steps shall be taken to constitute the Council in accordance with the provisions of Act 16 of 2010, RP Act, 1950 and the RP Act, 1951. In terms of Section 4, an amendment of the Third Schedule and Fourth Schedule of RP Act, 1950 has been made by inserting the entry Tamil Nadu and inserting the four headings, namely Municipalities, Panchayat Union Councils, Cantonment Boards and District Panchayats. Similarly, in terms of Section 5, amendments have been made in Section 15(A) of RP Act, 1951 by inserting the words, and figures "and constituting the Legislative council of the State of Tamil Nadu under The Tamil Nadu Legislative Council Act, 2010."

9. Pursuant to Section 3(3) of Act 16 of 2010, the President passed the Delimitation order dated 30.9.2010, in and by which, the constituencies into which the State of Tamil Nadu was divided for the purpose of election to the Legislative Council and the number of seats so allotted.

10. The challenge to the Delimitation Notification is on the following ground:

(i) The notification cannot be acted upon without compliance of the provisions of Section 13 of the RP Act 1950.

(ii) The RP Act, 1950, is a law passed by Parliament and u/s 2(c), the "Council Constituency" means a constituency provided by law for the purpose of election for the Legislative Council and the allocation of seats in State Legislative Council

is indicated in Schedule III of RP Act, 1950 and it shall be in accordance with Article 171(3) of the Constitution. In terms of the language employed by the Parliament, while creating the Legislative Council for the State directed, steps shall be taken to constitute a Council in accordance with the provision of the RP Act 1950 and the same has not be excluded.

(iii) Reading of Section 4(4) of the Act 16 of 2010, extends the operation of Section 13 of the RP Act 1950, making it mandatory on the part of the President to place it before the Parliament and the Presidential order has no legal force or authority.

(iv) Based on the Presidential order, the Election Commission cannot act for the purpose of fixing the constituencies. The bar under Article 329 of Constitution would not apply to the instant case as it can be made applicable to Delimitation of Constituencies created in pursuance of a Parliamentary" Laws and the language of Article 327 is explicit and only Parliamentary Laws that should be governed by preparation of electoral rolls, delimitation of constituencies and not unpublished and un-gazetted Presidential order.

(v) The village panchayats which is the core of the local bodies in the State have been omitted to be the electorate. That the Panchayat Union Council in Section 4(b) of Act 16 of 2010 does not substitute or take into account the village panchayat for the reason that the Panchayat Union Council under Panchayat Act, 2 of 1994 is a different composition at the intermediary level. Therefore, Section 4 of Act 16 of 2010 is unconstitutional and violative of Article 171(3) of the Constitution.

(vi) That the Andhra Pradesh Legislative Councils Act and Act 16 of 2010 are in pari materia and the Andhra Pradesh Act was placed before the Parliament on 18.12.2006.

(vii) That the contention of the State, stating that there is no requirement for laying it before the Parliament is totally misconceived, as the RP Act, 1950, delegates the power for carrying out the Delimitation process to the President u/s 11, 12 and 13, and likewise in Act 16 of 2010, such power is delegated, but does not provide for checks and safeguards as provided under RP Act, 1950. The Law enacted by the Parliament under Article 169(1) is independent from the Law enacted by the Parliament, by virtue of the Legislative power conferred under Article 327 of the Constitution.

(viii) The non-availability of a laying Clause in Tamil Nadu Act renders the determination absolute with no supervisor check or control as to its correctness or authenticity involved in the process by the Parliament.

(ix) Section 3(3) of Act 16 of 2010, empowered the President after consultation with the Election Commission to determine the Constituency, however once such order is issued, steps have to be taken to constitute the Legislative Council in accordance with the provisions of the RP Acts 1950 and 1951. It is admitted that

the Presidential order has been placed before the Parliament on 15.11.2010 and having placed the same before the Parliament, the Respondents are estopped from taking a contrary plea. Section 3(3) and Section 3(4) of Act 16 of 2010 has to be read harmoniously and in the absence of a non-obstante Clause in Section 3(3), the Respondents are bound to follow Section 3(4).

(x) Insisting upon the graduates/teachers, who aspire to enroll the voters to appear in person on working days has a negative effect of discouraging such persons to register themselves as voters as a large Section of them are employed.

(xi) The learned Counsels appearing for the Petitioners placed reliance on the following decisions:

(a) Union of India etc. etc. Vs. National Hydroelectric Power Corpn. Ltd. and Others etc. etc., .

(b) Rashtriva Panchayati Raj Gram Pradhan Sangh and Anr. (2005) 6 SCC 66.

(c) Election Commission of India Through Secretary Vs. Ashok Kumar and Others, .

(d) Association of Resident of Mhow (ROM) and Another Vs. The Delimitation Commission of India and Others, .

(e) Meghraj Kothari v. Delimitation Commission AIR 1967 SCC 669.

(f) D.S. Garewal Vs. The State of Punjab and Another, .

(g) Hukam Chand etc. Vs. Union of India (UOI) and Others, .

(h) Atlas Cycle Industries Ltd. and Ors. v. State of Haryana AIR 1979 SC 1149 : (1979)2 SCC 196.

(i) Regional Transport Officer, Chittoor and Others Vs. Associated Transport Madras (P) Ltd. and Others, .

(j) A.C. Jose Vs. Sivan Pillai and Others, .

(k) Delhi Laws Act, 1912, In re v. Part "C" States (Laws) Act, 1950 AIR 1951 SC 332.

(l) Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others, .

(m) Ajoy Kumar Banerjee and Others Vs. Union of India (UOI) and Others, .

11. On the other hand, the common stand taken by the Respondents could be broadly summarised as hereunder:

(i) Writ petitions challenging the Delimitation Notification are not maintainable, in view of the bar created in Article 329(a) of the Constitution.

(ii) The Delimitation Notification has been made u/s 3(3) of Act 16 of 2010 and not under the provisions of the RP Act, 1950 and Act 16 of 2010 does not provide for placing the order before the Parliament.

(iii) In terms of Act 16 of 2010 constituting the Council comes only after the determination of the Constituencies and Section 13 of RP Act, 1950 would apply only if delimitation was made u/s 11 and 12 of RP Act, 1950 and as the delimitation in the present case has been made under Act 16 of 2010, Section 13 of the RP Act, 1950 has no application.

(iv) Even in cases, where Section 13 of the RP Act, 1950 applies the validity of the Delimitation order does not depend upon placing such order before the Parliament, but shall be subject to such modification as the Parliament may make on a motion made within 20 days from the date on which, the order is so laid.

(v) The Election Commission before finalising on the Delimitation order consulted various recognised political parties on 20.8.2010, asserting their views, revised its proposal, again consulted recognised National and State parties on 17.9.2010 and only thereafter, the proposal was forwarded to the Government of India for obtaining the Presidential Assent.

(vi) The third Schedule to the RP Act, 1950 was suitably amended vide Section 4 of the Tamil Nadu Legislative Council Act, 2010 and it is in accordance with the provisions of the Article 171 of the Constitution. Hence, the composition of the Council is clear from the provisions of the Act and no further action under Article 171(3) of the Constitution is called for.

(vii) The learned senior Counsel appearing for the Election Commission of India placed reliance on the following decisions:

(a) Meghraj Kothari v. Delimitation Commission (supra).

(b) Chief Electoral Officer and Secretary to Government v. Sunny Joseph and Ors. CDJ 2005 Kerala High Court 700.

(c) Order in W.P. No. 2135 of 2006 (Division Bench) High Court of Chattisgarh dated 30.8.2006.

(d) Order in Division Bench Civil Special Appeal (Writ) No. 265 of 2007 (High Court of Rajasthan) dated 28.3.2007.

12. We have heard the learned Counsels appearing for the Petitioners, the learned Advocate General for the State, learned Assistant Solicitor General of India and learned senior Counsel for the Election Commission and carefully perused the materials on record and the written submissions and the various decisions cited on either side.

13. The primary ground on which the Delimitation Order/Presidential order is questioned is by contending that the same has not been placed before the Parliament u/s 13 of the RP Act, 1950 and therefore, the Presidential Order has

no legal force or validity. It was argued by the learned Counsels for the Petitioners that after the State Legislative Assembly passed the Resolution by 2/3rd majority, the Parliament may by law provide for creation of Legislative Council and the law referred to under Article 169(1) shall contain such provisions for amendment of the Constitution so as to give effect to the provisions of the law and it may also contain such supplemental, incidental and consequential provisions. In terms of Article 171 of the Constitution, the Parliament by law provides the composition of the Legislative Council of the State which shall be in line with Article 171(3). The RP Act, 1950 is the law passed by the Parliament for the purpose of getting the constitution of the council and as per the definition of the term "Council Constituency", as defined u/s 2(c) of the RP Act, 1950, a constituency provide by law for the purpose of allocation for the Legislative Council. The allocation of seats in the State Legislative Council is as indicated in schedule III of RP Act, 1950 and the allocation of seats envisaged in Section 10 of the RP Act, 1950 shall be in accordance with Article 171(3) of the Constitution. The President after consulting the Election Commission, issues the "order" and this order issued by the President is only in pursuance of the powers conferred on him under Sections 11 and 12 of the RP Act, 1950. That the Parliament passed Act 16 of 2010 and determination shall be done in accordance with Section 3(3) of Act 16 of 2010 and RP Act 1950 and 1951 and the same is clear from Section 3(4) of Act 16 of 2010. Therefore, it is contended that steps shall be taken to constitute a council in accordance with the provisions of RP Act, 1950 and the said provisions have not been excluded. It is further contended that from a reading of Section 4(4) of Act 16 of 2010, it extends the operation of Section 13 of RP Act, 1950, making it mandatory on the part of the President to lay his order before the Parliament and it shall be subject to such modifications as it may make on a motion within twenty days from the date on which the order is so laid. Without placing the same before the Parliament, the Presidential Order has no legal force and based on such order, the Election Commission cannot act for the purpose of fixing the Constituencies or appointing Electoral Officers. The Election Commission being governed by the law of the Parliament under Article 324 of the Constitution, the action initiated by the Election Commission is without legal authority and unconstitutional.

14. In order to examine the contentions raised, it would be necessary at the first instance to examine certain provisions of the Constitution namely Articles 168, 169, 170 and 171. In the earlier part of this judgment, we have noticed the scope of Article 168. Under Article 169, notwithstanding anything contained under Article 168, the Parliament may by law provide for abolition of Legislative Council of a State having such a council or for creation of such council in a State having no such council, if the legislative assembly of the State passes a resolution to the effect by a majority of the total Membership of the assembly and by a majority of not less than 2/3rd of the members of the Assembly present and voting.

15. Article 169(2) states that any law referred to in Clause (1) of Article 169

shall contain such provisions for the amendment of the Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliamentary may deem necessary. Sub-clause (3) states that no such law as aforesaid shall be deemed to be an amendment of the Constitution for the purposes of Article 368.

16. Article 170 deals with composition of the Legislative Assemblies and Article 171 deals with composition of Legislative Councils. For the purpose of these batch of cases, Article 171(3) would be relevant and for better appreciation, the same is quoted as hereunder:

171(3) Of the total number of members of the Legislative Council of a State-

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, nor lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of Clause (5).

17. Section 10 of the RP Act, 1950 deals with allocation of seats in the Legislative Council. In terms of Sub-section (1) of Section 10, the allocation of seats in the councils of the State having such councils shall be as shown in the third schedule to the RP Act, 1950. In terms of Section 10(2) of the Legislative Council of each State specified in the first column of the third schedule, there shall be the number of seats specified in the second column and of those seats, the numbers specified in third, fourth and fifth column shall be the number of seats to be filled up by persons elected by the electorates referred to in Sub-clause (a)(b) and (c) of Clause (3) of Article 171, referred supra.

18. Section 11 deals with Delimitation of council constituencies and states that the President shall by order determine the Constituencies into which each State having a Legislative Council shall be divided for the purpose of elections to that council under each of the Clauses (a), (b) and (c) of Clause 3 of Article 171,

extent of each constituency and the number of seats allotted to each constituency.

19. In terms of Section 12 of the RP Act, 1950, the President may from time to time after consulting the Election Commission by order, alter or amend an order made by him u/s 11. Section 13(3) states that every order made u/s 11 or 12 shall be laid before the Parliament as soon as may be after it is made and shall be subject to such modifications as Parliament may make by a motion made within twenty days from the date on which the order is so laid.

20. The learned Counsels appearing for the Petitioners would strenuously contend that the Presidential order has been made only in pursuance to the power conferred under Sections 11 and 12 of the RP Act, 1950, which mandates that the same shall be placed before the Parliament. At this stage, it would be necessary to refer to certain provisions of Act 16 of 2010 which has been extracted above. Section 3 deals with creation of the Legislative Council for Tamil Nadu. In terms of Sub-section 2 of Section 3, in the State Council there shall be 78 seats, of which (a) the numbers to be filled by persons elected by the electorates referred to in Sub-clauses (a), (b) and (c) of Clause (3) of Article 171 shall be 26, 7 and 7 respectively; (b) the number to be filled by persons elected by the members of the Legislative Assembly of Tamil Nadu in accordance with the provisions of Sub-clause (d) of the said Clause shall be 26; and (c) the number to be filled by persons nominated by the Governor of Tamil Nadu in accordance with the provisions of Sub-clause (e) of that Clause shall be 12. In term of Section 3(3) the consultation of the President with the Election Commission for the purpose of determination of the constituencies, extent of each constituency shall be as soon as after the commencement of Act 16 of 2010. Similarly, in terms of Section 3(4) after such determination of the constituencies steps shall be taken to constitute the council in accordance with the provisions of Act 16 of 2010, RP Act, 1950 and RP Act 1951.

21. The aforementioned provisions states that as soon as may be after the commencement of Act 16 of 2010, the President after consultation with Election Commission may by order determine the Constituencies in which the State of Tamil Nadu shall be divided under Article 171(3)(a), (b) and (c), extent of each constituency and the number of seats to be allotted to each constituency. Further, Sub-section 4 of Section 3 mandates that as soon as after such determination under Sub-section (3), steps shall be taken to constitute the council in accordance with the provisions of Act 16 of 2010, the RPI Act, 1950 and RPI Act, 1951.

22. Thus, a careful reading of the above provisions amply illustrates that the President acts in consultation with the Election Commission as soon as after the commencement of Act 16 of 2010. In fact, the preamble of the Act itself states that it is an Act to provide for the creation of Legislative Council for the State of Tamil Nadu and for matters supplemental, incidental and consequential thereto and the same had received the assent of the President on 18.5.2010. Thus, it

appears that the Act is a self-contained code and the President acts in consultation with the Commission as soon as after the commencement of Act 16 of 2010. Therefore, there is no room to read Sections 10 and 11 of the RP Act, 1950 into Section 3(3) of Act 16 of 2010. This reasoning is further clear by a careful reading of Sub-section 4 of Section 3. Sub-section 4 mandates that after determination is done by the President in consultation with Election Commission after the commencement of Act 16 of 2010, steps shall be taken to constitute the council under Act 16 of 2010, the RP Act, 1950 and RP Act, 1951. Therefore, the Constitution of the Council shall be in accordance with the provisions of Act 16 of 2010 and it is only thereafter, the provisions of the RP Act 1950 and 1951 would come into play.

23. We have seen the provisions of RP Act and it is evidently clear that Section 13 may operate only in cases where the orders of Delimitation are u/s 11 or 12 of RP Act, 1950. However, in the instant case, in terms of Section 3(3) of Act 16 of 2010, the Delimitation of the Constituencies is after the commencement of Act 16 of 2010 and not u/s 11 or 12 of the RP Act, 1950. On a further reading of Section 13 of RP Act, 1950, it makes it clear that even in respect of Delimitation, orders made u/s 11 or 12 of RP Act, 1950, it shall be laid before the Parliament and shall be subject to such modifications as the Parliament may make by a motion made within 20 days from the date of the order is so laid. Nothing springs out of this provisions to give an interpretation that the validity of an order of Delimitation passed u/s 10 or 11, depends upon the placing of such order before the Parliament. In our understanding, the law is clear that every such order of Delimitation u/s 11 or 12 shall be subject to such modification the Parliament may undertake. This cannot be construed to mean that unless the same is placed before the Parliament, it is not valid. In any event, in the cases before us, the provisions of Section 3(3) of Act 16 of 2010, makes it evidently clear that there is no such requirement for the matter to be placed before the Parliament.

24. In view of the above reasoning, the contentions raised by the learned Counsels appearing for the Petitioners that the territorial classification cannot be delegated by the President since it has to be a law directly made by the Parliament, does not merit acceptance. In view of our above conclusion, the decisions referred to by the learned Counsels regarding the effect of a law/order not placed before the Parliament have no relevance.

25. Yet another contention was raised by the learned senior Counsel appearing for the Petitioners that the Village Panchayats have been omitted to be the electorate and the Panchayat Union Council in Section 4(b) of Act 16 of 2010 cannot substitute the Village Panchayat and therefore, Section 4 of Act 16 of 2010 is unconstitutional and violative of Article 171(3). In this regard, the argument advanced by the learned advocate General would merit consideration. Prior to 1994 under the Panchayat Act, there was a two tier system wherein the ward members and the President of the Panchayat were directly elected and

there was an indirect election to the Panchayat Union. After the amendment of the Panchayat Act in 1994, a three tier system has been introduced, namely the Village Level Panchayat, the Panchayat Union and the District Panchayat and the elections are by direct election and the indirect election is only in respect of the Vice-President of the Village Panchayat and the Chairman of the Panchayat Unions and the District Panchayat. In terms of Section 2(9) of the Panchayat Act 1994, "District Panchayat" means the District Panchayat constituted under Sub-section (1) of Section 24; Section 2(21) defines "Panchayat" to mean a Village Panchayat, a Panchayat Union Council or a District Panchayat constituted under the Act; Section 2(23) defines "Panchayat Union" to mean any local area which is declared to be a Panchayat Union under the Act; Section 2(24) defines "Panchayat Union Council" to mean the body constituted for the administration of a Panchayat Union under the Act; Section 2(37) defines "Village Panchayat" to mean a Panchayat constituted as a Village Panchayat under Sub-section (1) of Section 6. In terms of Section 6(1) a Village Panchayat shall be constituted for each Panchayat Village consisting of such number of elected members, with effect from such date as may be specified in the notification issued by the Inspector of Panchayat, who is an officer not below the rank of Collector appointed by the Government. In terms of Section 10, the members of the Village Panchayat shall be elected in the manner as may be prescribed; In terms of amended Section 12 of the Act for the purposes of election of members to a Village Panchayat, the Inspector may, after consulting the Village Panchayat, by notification, divide the Panchayat Village into wards in accordance with such scale as may be prescribed and in terms of Sub-section 2 of Section 12 only one member shall be elected from each wards. In terms of Section 17, a Panchayat Union Council constituted for any Panchayat Union, shall consist of the elected members as notified u/s 19. Section 19 states that every Panchayat Union Council shall consist of persons elected from the wards in the Panchayat Union, as notified by the Government and such a ward of the Panchayat Union area may either comprise a full ward or one or more wards of the Village Panchayats. In terms of the proviso to Section 19, one member cannot be a member of more than one Panchayat Union Council and if a member stands for election for the Panchayat Union Council is not eligible to stand for election in the Village Panchayat, President of Village Panchayat or member of a District Panchayat. Further, member of Panchayat Union Council elected is not eligible to stand for election as member of Village Panchayat or a member of District Panchayat. According to the 2nd proviso to Section 19, no person who stands for election as a member of the Panchayat Union Council is eligible to stand for election for the other office of the Village Panchayat. In terms of proviso 3, member of Panchayat Union Council is ineligible to stand for election to the other office of the Village Panchayat i.e., Member, President of the Village Panchayat and the President of the District Panchayat. The District Panchayat is formed u/s 24 of the Act and in terms of Section 25, every District Panchayat shall consist of a) all the elected members as determined u/s 27; b) the members of the House of People and the members of the State Legislative Assembly representing a part or whole of the

district whose constituencies lie within the district; c) the member of the Council of States who is registered as elector within the district and in terms of Section 25(2), members of the House of People, the State Legislative Assembly and the Council of States, referred to in Clauses (b) and (c) of Sub-section (1), shall be entitled to take part in the proceedings, [and vote at the meetings of the District Panchayat] u/s 26, the members are elected from the wards of the District Panchayat as per the notification and the person who stands for the election as member of the District Panchayat cannot stand for election as member of Village Panchayat, President of Village Panchayat or Panchayat Union Council.

26. The plea raised by the Petitioners is that in Section 4 of Act 16 of 2010, the Village Panchayat have been omitted and the Village Panchayat being the backbone of the local bodies, they ought not to have been omitted. We have seen the provisions of the Panchayat Act, and it is clear that after the 1994 amendment, there is a three tier system, which sufficiently takes care of representation at all levels and the plea raised by the Petitioners that it is discriminatory and violative of Article 14 of the Constitution is wholly misconceived. It has been brought to our notice that in the State of Tamil Nadu out of the 32 Districts, 26 members have to be elected as certain Districts have been clubbed based on relevant considerations. At this stage, it would be useful to refer to the decision of the Andhra Pradesh High Court in A.P. Sarpanches Association and Others Vs. Union of India (UOI) and Others, . Before the Division Bench of the Andhra Pradesh High Court, the question which fell for consideration is whether the Sarpanchas of Gram Panchayats are entitled to participate in the election to the Andhra Pradesh Legislative Council and a direction was sought for to include Sarpanchas and Gram Sabhas as electors for the local authority constituencies. The Division Bench after examining the provisions of Article 171(1), (2) (3) and (4), Article 243(b), (c), (d), (g), Article 243(B), Article 243P(e) and Article 243(Q) of the Constitution and the provisions of the RP Act, 1950 and Section 4 of the Andhra Pradesh Legislative Council Act considered the question as to whether the non-inclusion of the Gram Panchayats in the fourth Schedule of RP Act, 1950 is discriminatory and the violative of Article 14 of the Constitution and the Division Bench held thus:

77. Article 14 of the Constitution declares that the State shall not deny to any person equality before the laws or the equal protection of the laws within the territory of India. The doctrine of equality enshrined in Article 14 has been interpreted by the Courts to mean that "all persons similarly situated should be treated alike with reference to the purpose of legislation and there shall be no discrimination among similarly situated persons". At the same time, the Courts have also evolved a subsidiary doctrine, which is known as the doctrine of classification. In Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, , the Constitution Bench of the Supreme Court made a beautiful synthesis of the doctrine of equality and doctrine of classification.

20. The Petitioners have invoked the doctrine of equality and prayed for striking

down of Section 4 of the 2005 Act on the premise that Gram Panchayats are included in the list of "local authorities" in respect of the States of Maharashtra, Uttar Pradesh and Karnataka, but the same have not been included in the list of the State of Andhra Pradesh. This plea of the Petitioners is liable to be rejected. A perusal of the list of local authorities pertaining to Bihar shows that Gram Panchayats are not included and so is the case of Maharashtra and Madhya Pradesh. For Karnataka, Gram Panchayats are included in the list of local authorities, for Uttar Pradesh, Zilla Parishads, Nagar Panchayats and Kshettra Panchayats are included apart from other bodies. This shows that for different States, different local authorities have been included in the Fourth Schedule of the 1950 Act. This must have been done keeping in view the provisions contained in the local Acts relating to the Municipal Bodies and Panchayats. The Petitioners have not shown that the provisions of the contemporaneous enactments of the States of Bihar, Karnataka, Madhya Pradesh, Maharashtra and Uttar Pradesh are similar to those of the State of Andhra Pradesh. Therefore, we do not find any valid ground or justification to declare Section 4 of the 2005 Act as discriminatory and violative of Article 14 of the Constitution.

21. The Petitioner's plea of discrimination vis-a-vis other local authorities is based on a misconceived assumption of similarity between the municipal bodies operating in the urban areas and Zilla Parishads etc., operating in the rural areas. The Municipal Corporations owe their existence to two legislative instruments i.e., Hyderabad Municipal Corporation Act, 1955 and the Andhra Pradesh Municipal Corporations Act, 1994. The Municipalities and Nagar Panchayats owe their existence to the Andhra Pradesh Municipalities Act, 1965, the Cantonment Boards owe their existence to the Cantonments Act, 1924 (The 1924 Act has been repealed by the Cantonments Act, 2006), and Zilla Parishads and Mandal Parishads owe their existence to the Andhra Pradesh Panchayat Raj Act, 1994. Section 5 of the 1955 Act provides that the Corporation shall consist of such number of elected members as may be notified from time to time by the Government of Andhra Pradesh and other persons specified in Sections 1-A, 1-B and 1-C. Sections 8 to 12 of the 1955 Act contain the procedure for holding election of members by dividing the city into single Member Wards on the basis of population. Similar provisions are contained in the Municipal Corporations Act, 1994. Elections to the Nagar Panchayats and Municipalities are held in accordance with the provisions contained in Sections 8 to 12 of the 1965 Act. It is thus, evident that voters list for election of members of the Hyderabad Municipal Corporation, other Municipal Corporations, Municipalities and Nagar Panchayats are different because these bodies operate in different geographical areas and represent different compartments of people living in the urban areas. There cannot be a Municipal Corporation and Municipality for the same urban area. This is not true of the villages. In terms of Article 243(d), "Panchayat" is an institution of self-government constituted for the rural areas. Article 243-B mandates the constitution of Panchayats at the village, intermediate and district levels. Gram Panchayat is the body constituted for local administration of a

village. Mandal Parishad is a body constituted for each Mandal, which is defined as an area in a district declared by the State Government to be a Mandal u/s 3 of the Andhra Pradesh Districts (Formation) Act, 1974 (for short, "the 1974 Act"). Zilla Parishad is a body constituted by the Government for a district which necessarily comprises Mandals notified by the State Government u/s 3 of the 1974 Act and the villages. To put it differently, the Gram Panchayat administers a smaller rural area, which is declared as a village under the 1994 Act. The Mandal Parishad is a Panchayat at intermediate level. It exercises power and discharges functions qua villages included within the Mandal and defined u/s 222 of the 1994 Act. Within a district, there are more than one Mandal and each Mandal has a Mandal Parishad. Zilla Parishad is a Panchayat at the district level. It is the representative of the entire population of the rural area of the district.

22. The most significant difference between the local bodies operating in the urban areas i.e., Municipal Corporations, Municipalities and Nagar Panchayats and similar bodies operating in the rural areas i.e., Gram Panchayats, Mandal Parishads and Zilla Parishads is that the geographical areas of urban bodies as well as their electors are distinct and separate whereas the area of the Mandal Parishads is inclusive of various villages for which separate Gram Panchayats are constituted and the area of every Zilla Parishad is a district, which comprises of the villages of different Mandals constituted in the particular district. The Electoral College which elects the members of the Gram Panchayat and the Sarpanch and Members of the Mandal Parishads and Zilla Parishads is the same. This is clearly evinced from a bare reading of Sections 8, 11, 12, 140, 151 and 179 of the 1994 Act. It is, thus, evident that while the Municipal Corporations, Municipalities and the Nagar Panchayats are representative of different segments of the urban area and different sets of people living in those geographical constituencies, the Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads represent the same set of people.

23. In view of the above, we hold that the non-inclusion of Gram Panchayats in the Fourth Schedule of the 1950 Act does not suffer from the vice of discrimination and is not violative of Article 14 of the Constitution.

27. The above decision of the Division of the High Court of Andhra Pradesh would apply with full force to facts of these cases. As noticed above, after the amendment to the Tamil Nadu Panchayats Act in 1994, a three tier system has been introduced, which involves direct election at Panchayat, Panchayat Unions and District Panchayat Levels. Therefore, we find no error in such classification and there is no discrimination so as to offend Article 14 and as such, there is no violation of Article 171(3).

28. Yet another contention was raised by the learned senior Counsel appearing for the Petitioner in W.P. No. 23144 of 2010 by stating that the Article 169 of the Constitution refers to abolition and creation of Legislative Council in various States is to be read along with Article 168 and Article 169 is not a provision, which is to be construed as enabling revival of Legislative Council in a State,

where there has been one and had been abolished. It is seen, that in terms of Article 168 of the Constitution a Legislative Council for the erstwhile State of Madras was envisaged and this Council was abolished w.e.f. 1.11.1986 by Central Act 4 of 1986 and ever since then, there has been no Legislative Council for the State of Tamil Nadu. By virtue of the power conferred under Article 169 of the Constitution, the Parliament enacted Act 16 of 2010 to provide for creation of Legislative Council for the State of Tamil Nadu and for matters supplemental, incidental and consequential thereto. Therefore, such creation of Legislative Council by Act of Parliament cannot be termed to be a revival of the Council which was abolished pursuant to Central Act 4 of 1986. Therefore, we are unable to accept the contention raised by the learned senior Counsel stating that Article 169 is not a provision, which is to be construed as enabling revival of Legislative Council when what has been done by virtue of Act 16 of 2010 is creation of a Council and not revival thereof.

29. In W.P. No. 25021 of 2010, prayer has been made to include the middle schools i.e., the schools having from classes 6 to 8 for the teachers constituency. In this regard, Article 171(3)(c) is relevant, in this regard and reproduced hereunder:

Article 171(3)(c): as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament.

30. A reading of the above provision makes it evidently clear that 1/12th shall be elected by the electorates consisting of persons, who have atleast three years of teaching experience in such educational institutions in the State, not lower in standard than that of secondary school. It is common knowledge that a secondary school is required to have classes 9 and 10 and it could be either from classes 1 to 10 or 6 to 10 or 8 to 10. The prayer made by the Petitioner to include the middle school teachers as part of electorate to the teachers constituency is misconceived in view of the Constitutional mandate under Article 171(3)(c). That apart, what is relevant is not the qualification of teachers concerned, but the school in which, he or she may be employed. Therefore, the real test lies in the category of the institution and the Constitutional mandate is that it shall be not lower in standard than that of the secondary school. Therefore, the prayer sought for in W.P. No. 25021 of 2010 cannot be granted.

31. At this stage, we wish to examine the objections raised by the Election Commission as regards the maintainability of the writ petitions. The learned senior Counsel appearing for the Election Commission would submit that the writ petitions challenging the Presidential Notification dated 30.9.2010 namely the Delimitation Order 2010 is not maintainable in view of Article 329(a) of the Constitution, which provides that notwithstanding anything in the Constitution, 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 327 or Article 328, shall not be called in question in any Court and the delimitation order dated 30.9.2010 being made under the provisions of Act 16 of 2010, is a law relating to delimitation under Article 327 and therefore, there is a bar for entertaining the writ petitions.

32. The learned Counsel appearing for the Petitioners while countering the said submission would contend that the bar under Article 329 applied only to delimitation of constituencies created in pursuance of a parliamentary law and in terms of Article 327, the Parliament make provisions to all matters relating to or in connection with election to either Houses of Parliament or Houses of Legislature of the State including preparation of electoral rolls, delimitation of constituencies and other matters necessary for securing the due constitution of such House or Houses and it is only the Parliamentary law that should govern the preparation of electoral rolls and not by Presidential Order which did not have the sanction of the parliament and therefore the bar under Article 329 does not operate.

33. In the preceding paragraphs, we have held that the delimitation order not being an order u/s 13 of the RP Act, 1950, is not required to be placed before the Parliament. In view of the said conclusion, the delimitation order dated 30.9.2010, is made under the provisions of Act 16 of 2010 is a law made by the Parliament under Article 327 and therefore, the bar under Article 329(a) would operate in these cases.

34. One of the earliest decision on this point is by the Constitution Bench of the Hon''ble Supreme Court in *Meghraj Kothari v. Delimitation Commission and Ors.* (supra). In the said case, a voter of Ujjain challenged the Notification published in the Gazette of India dated 24.7.1964, which showed Ujjain as a constituency reserved for the scheduled caste and the Notification was issued u/s 10(1) of the Delimitation Commission Act, 1962 and published for considering the objections and suggestions. A contention was raised that Ujjain City, which was there from the inception of the Constitution of India, was a general constituency and by conferring it as a reserved constituency, the Petitioner's right is taken away. The High Court of Madhya Pradesh which first dealt with the matter rejected the writ petition on the ground that under Article 329(a) of the Constitution, the Notification cannot be questioned and the Hon''ble Supreme Court while dismissing the appeal held as hereunder:

20. In this case, we are not faced with that difficulty because the Constitution itself provides under Article 329(a) that any law relating to the delimitation of constituencies etc. made or purporting to be made under Article 327 shall not be called in question in any Court. Therefore an order u/s 8 or 9 and published u/s 10(1) would not be saved merely because of the use of the expression "shall not be called in question in any Court". But if by the publication of the order in the Gazette of India it is to be treated as law made under Article 327, Article 329 would prevent any investigation by any Court of law.

21. In dismissing the petition under Article 226 of the Constitution the High Court of Madhya Pradesh relied exclusively on the decision of this Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, which proceeded on the basis of certain concessions made. There the Appellant was a person who had filed a nomination paper for election to the Madras Legislative Assembly from the Namakkal constituency which was rejected. The Appellant thereupon moved the High Court under Article 226 of the Constitution praying for a writ of certiorari to quash the order of the Returning Officer rejecting his nomination paper and to direct the said officer to include his name in the list of valid nominations to be published. The High Court dismissed the application on the ground that it had no jurisdiction to interfere with the order of the Returning Officer by reason of Article 329(b) of the Constitution. The Court pointed out (at p. 225):

A notable difference in the language used in Articles 327 and 328 on the one hand, and Article 329 on the other, is that while the first two articles begin with the words "subject to the provisions of this Constitution", the last article begins with the words "notwithstanding anything in this Constitution". It was conceded at the Bar that the effect of this difference in language is that whereas any law made by Parliament under Article 327, or by the State Legislatures under Article 328, cannot exclude the jurisdiction of the High Court under Article 226 of the Constitution, that jurisdiction is excluded in regard to matters provided for in Article 329.

22. Reference was also made by Counsel to certain other concessions which appear at pp. 233 and 237 of the report. It will be noted, however, that the decision in that case did not proceed on the concessions made. The Court examined at some length the scheme of Part XV of the Constitution and the Representation of the People Act, 1951 which was passed by the Parliament under Article 327 of the Constitution to make detailed provision in regard to all matters and all stages connected with elections to the various Legislatures in the country. It was there argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it could not bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution. This was turned down by the Court observing:

This argument, however, is completely shut out by reading the Act along with Article 329(b). It will be noticed that the language used in that Article and in Section 80 of the Act is almost identical, with this difference only that the Article is preceded by the words "notwithstanding anything in this Constitution", (p. 232)

23. The Court went on to observe at p. 23 3:

It may be pointed out that Article 329(b) must be read as complimentary to Clause (a) of that Article Clause (a) bars the jurisdiction of the Courts with regard to such law as may be made under Articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies....

If Part XV of the Constitution is a code by itself, i.e., it creates rights and provides for their enforcement by a special Tribunal to the exclusion of all Courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject matter of contest before the High Courts and thereby upset the time schedule of the elections. The more reasonable view seems to be that Article 329 covers all "electoral matters".

25. In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under Sections 8 and 9 were published in the Gazette of India and in the official gazettes of the States concerned, these matters could no longer be reagitated in a Court of law. There seems to be very good reason behind such a provision. If the orders made under Sections 8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from Court to Court. Section 10(2) of the Act clearly demonstrates the intention of the Legislature that the orders under Sections 8 and 9 published u/s 10(1) were to be treated as law which was not to be questioned in any Court.

In view of the above authoritative and binding pronouncement of the Constitution Bench of the Hon'ble Supreme Court, we are unable to accept the contentions raised by the learned Counsel for the Petitioners and we hold that Article 329(a) of the Constitution operates a bar for maintaining these writ petitions.

35. Identical issue came up for consideration before the Division bench of the Kerala High Court in Chief Electoral Officer and Secretary to Government v. Sunny Joseph and Ors. (supra). The Division Bench after taking note of the Constitution Bench judgment of the Supreme Court in Meghraj Kothari v. Delimitation Commission (supra), N.P. Ponnuswamy v. Returning Officer, Namakkal Constituency (supra); State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., ; Anugrah Narain Singh and Another Vs. State of U.P. and Others, ; Judgment of the Constitution Bench of the Hon'ble Supreme Court in L. Chandra Kumar Vs. Union of India and others, , and other decisions, has held as follows:

14. The above mentioned decisions would show even though judicial review is part of the basic structure of the Constitution, but Constitution could exclude judicial review in certain situations. Articles 31(4), 31(6), 136(2), 227(4), 262(2), 243-O, 243-ZG, 329(a) etc. have excluded the scope of judicial review with a laudable objective pointing that the judicial review in certain situations may not be regarded as an indispensable measure to determine the legality or propriety of actions. The difference in the phraseology used in Article 239(a) and (b) may give some room for challenging the orders passed under Article 329(b) under Article 226 of the Constitution of India on certain limited grounds but not

the orders relating to delimitation of constituencies which fall under Article 329(a). The words "shall not be called in question" are absent in Article 329(b) but very much present in Article 329(a). Article 329(b) enables aggrieved person to question the election by an election petition as provided for under any law. The decision in *Meghraj Kothari v. Delimitation Commission* (supra) case, in our view, is an authority for the proposition that orders passed under Sections 8, 9 and 10(2) of the Delimitation Act and have to be treated as law under Article 329(a) of the Constitution and therefore cannot be called in question in any Court. We therefore decline jurisdiction of this Court holding that the petition under Article 226 of the Constitution of India is not maintainable in view of the specific bar contained Article 329(a) of the Constitution. Preliminary objection is therefore upheld and W.P.C. No. 19772 of 2005 would stand dismissed and allow Writ Appeal 1495 of 2005.

36. As could be seen from the counter affidavit sworn to by the Chief Electoral Officer of the State of Tamil Nadu, the Election commission before finalising the delimitation order consulted recognised political parties on 28.8.2010, ascertained their views, revised its proposals and again consulted recognised national and State parties on 17.9.2010 and after such consultation, the proposal was forwarded for getting the Presidential Assent. In these batch of cases, we find that few Petitioners are such recognised National and State parties, who had participated in the consultative process of the Election Commission and in the absence of any denial to the averments in the counter affidavit, we have no hesitation to hold that such parties who were consulted in the decision making process cannot at this distance of time turn around and question such delimitation order on the grounds raised by them. Therefore on this ground also, such National and State parties are precluded from questioning the delimitation order.

37. In the result, we hold:

(i) that the Presidential order dated 30.9.2010 delimiting the constituencies has been made u/s Delimitation Commission of Act 16 of 2010 and not u/s 10 and 11 of the RP Act, 1950, and as Act 16 of 2010 does not provide for placing the order before the Parliament the same does not suffer from any illegality or unconstitutionality.

(ii) Act 16 of 2010, being a law relating to delimitation of constituencies made under Article 327 of the Constitution, the same cannot be questioned in a petition under Article 226 of the Constitution as there is a clear bar under Article 329(a) of the Constitution.

(iii) Act 16 of 2010 is a law enacted by the Parliament for creation of a Legislative Council in the State of Tamil Nadu under Article 169 of the Constitution and not revival thereof.

(iv) In view of the three tier system brought about by the 1994 amendment to the Tamil Nadu Panchayat Act, Section 4 of Act 16 of 2010 is not violative of

Article 14 of the Constitution.

(v) In view of the mandate in Article 171(3)(c) of the Constitution which states that 1/12th shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in educational institutions not lower in standard than that of secondary school question of including middle school teachers as part of electorate to the teachers constituency does not arise.

(vi) The action of the Election Commission is neither illegal nor unconstitutional.

38. For the above reasons, we are of the view that the Petitioners have not made out a case for interference and the writ petitions are not maintainable and accordingly, the same are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.