

(2018) 09 BOM CK 0122

In the Bombay High Court

Case No : Writ Petition No.6496, 7259, 9896 Of 2016,

Mr. Kiran Kadam

APPELLANT

Vs

State Of Maharashtra And Ors.

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

Maharashtra Municipal Corporation Act, 1949 — Section 2(10), 2(11), 5, 5(2), 5(3), 5A, 7A, 456A

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 — Section 10, 10(2), 11, 14(2), 51A(1A)

Representation of People? Act, 1951 — Section 62

Delimitation Act of 1952 — Section 8(2)(c), 32

Constitution of India, 1950 — Article 14, 15(1), 15(3), 15(4), 15(5), 40, 80, 81(2)(b), 243I, 243Q, 243R, 243R(1), 243R(2)(b), 243S, 243T, 243T(6), 243U, 243W, 243X, 243Y, 243ZA(2), 243ZB, 243ZE, 243ZF, 251, 254, 324, 325, 326, 334

Citation : (2018) 09 BOM CK 0122

Hon'ble Judges : S.C. Dharmadhikari, J;Bharati H.Dangre, J

Bench : Division Bench

Advocate : Prakash Ambedkar, Sandeep D. Rankhambe, B.V. Samant, Ganesh Bhujbal, Prashant Kulkarni, B.V. Samant, Mayur Jadhav

Final Decision : Dismissed

Judgement

BHARATI H. DANGRE, J

1 All the three Writ Petitions pose a challenge to Ordinance No.IX of 2016 and has sought a relief of declaring the said Ordinance as ultra vires,

arbitrary and capricious.Â Writ Petition No.9896 of 2016 and 7259 of 2016 came to be amended and seek to challenge Maharashtra Act No.IX of

2017. Since the writ petitions revolve around the same issue, they are clubbed together and heard together.

2 The Writ Petition No.7259 of 2016 filed by an Advocate and Office bearer of the political party i.e. â??The Bharip Bahujan Mahasanghâ?

registered with the Election Commission of India and also the State Election Commission, seeks Quashment of Act No.IX of 2017, which amends the provisions of the Maharashtra Municipal Corporation Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.Â

The challenge in the petition is to the amendment effected in Section 5 of the Maharashtra Municipal Corporation Act by inserting a proviso to subÂ?

section (3), thereby permitting election of four councillors, as far as possible, but not less than three and not more than five councillors in the general

election to the Corporation and enabling each voter to cast same number of votes as the number of councillors to be elected in his ward.Â Further,

the challenge is also posed to insertion of Section 51AÂ1A, to the Municipal Councils Act, thereby introducing a provision for direction election of

President. Similar provision introduced by way of proviso to Section 10 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial

Townships Act, 1965 is also assailed. By the said proviso, a provision for multiple councillors in a ward has been introduced in the enactment.Â

The Writ Petition also takes an exception to the State Government being conferred with the power to introduce two different election systems for the

municipal area under all the Municipal Acts and in particular to the Bombay Provincial Municipal Corporation Act 1949 and the challenges that two

different election system for different Municipal election violates Article 14 of the Constitution.Â Â The reliefs sought in the petition in the prayer

clause are reproduced below :

(a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ or Appropriate nature or direction or order in the nature of

quashing and or setting aside the impugned Act IX/2017 which is annexed as Exhibit â??Aâ?? hereto.

(b) That this Hon'ble court be pleased to declare that the State Government does not have the power to introduce two different election systems for

the Municipal Area either under the All the Municipal Act and in particular to the Bombay Provincial Municipal Act, 1949.

(c) That this Hon'ble Court be pleased to declare that State neither Government nor the State Legislature has the power to grant voting right to the

natural citizen.

(d) That this Hon'ble Court be pleased to declare that the granting of more than one vote is illegal and without necessary powers under the constitution.

(e) That it be declared that the preparation of the wards as stated in the Act IX/2017 at page no.64A to 64H Ex.â?Aâ? is alter Virus the Article 243R of the Constitution.

(f) Pending the hearing and final disposal of the Writ Petition, the Respondent No.1 be restrained from holding and conducting the municipal election when due.

(g) The Petitioner states that the amendment to subsection 3 of section 5 be declared as illegal and bad in law.

(h) That the amendment to subÂ?section 3 of sectionÂ be declared as beyond the power and jurisdiction of the respondent no.1.

(i) That it be declared that the Formation of the wards is a single member constituency under Article 243R.

(j) It be declared that the state legislature does not have the powers to interpretation Article 243R.

(k) It be declared that the Respondent No.1 has no right and powers under the constitution to grant right to vote.

(l) It is to be declared that the legislature does not have the powers to elect the Chairperson directly.

It be declared that amendment of subÂ?section 3 of Section 5 is unconstitutional (m) Pending the hearing and final disposal of the Writ Petition the

Respondent No.4 be restrained by order of stay from carrying out illegal order from Respondent No.1 for implementation of Act IX/2017 at page no.64A to 64H which is annexed as Exhibit â??Aâ?? heretoâ??.

3 The petition was instituted in this Court in the month of June 2016, being aggrieved by an ordinance issued by the State of Maharashtra on 19th May

2016, thereby amending Section 5(3) of the Maharashtra Municipal Corporation Act 1949 and also amending provisions of Maharashtra Municipal

Councils, Nagar Panchayats and Industrial Townships Act, 1965.Â However, during the pendency of the petition before this Court, the said ordinance

came to be replaced by an Act of State legislature in form of Act No.IX of 2017.Â The petitioner sought leave of this Court which was granted on

13th December 2017 and that is how the petitioner incorporated a challenge to

Act IX of 2017, more or less on the same grounds on which the attack was levelled against the ordinance.

4 It is the case of the petitioner that by introduction of the ordinance on 19th May 2016, the respondent State has introduced a system of

multiple/collective representation in the wards of Municipal Council/Municipal Corporation replacing the earlier single representation system.Â It is

the specific case of the petitioner that introduction of the said system has also resulted in formulation of different representative systems in different

Corporations/Nagarpalika/Nagar Panchayat.Â The petition proceeds to narrate the chronology of amendments which came to be introduced in the

two legislations.Â It is stated in the petition that the Maharashtra Municipal Corporation Act, the Bombay Provincial Municipal Corporation Act 1949,

the City of NagpurÂ Corporation Act, 1948 and the Maharashtra Municipal Council Nagar Panchayat and Industrial Township Act, 1965 were

amended by Ordinance No.XXVIII of 2001 and by the said amendment, the system of multiÂmember wards came to be introduced, replacing the

system of election of single councillor from one ward on the premise that it facilitated manipulation because of very small base and number of

electorate.Â The said amendment also introduced a provision of direct election of President in the wake of constant threat of No Confidence Motion

by the Councillors and resultantly, making the office of the President unstable and weak. Further, as per the petition, the Maharashtra Act No.XVI of

2004 was enacted to amend the Bombay Provincial Municipal Corporation 1949, City of Nagpur Corporation Act, 1948 and Maharashtra Municipal

Councils, Nagar Panchayats and Industrial Townships Act, 1965 and by the said amendment, the system of one councillor was again restored.Â The

petition further states that Ordinance No.XIII of 2011 again sought to amend three legislations in light of the decision of the State Government to

implement the policy of oneÂhalf reservation of women in the urban local bodies and therefore, the need was felt to introduce multiÂmember ward

system by amending the municipal laws.Â This amendment was introduced since the elections of most of the local bodies were due in the year

2011¹² and multiÂmember ward system was proposed to be implemented in the forthcoming elections, and since the legislature was not in session, the

Ordinance No.XIII of 2011 was promulgated. This amendment culminated into

Maharashtra Act No.XXVI of 2011 and multi-member ward system

was introduced in the Bombay Provincial Municipal Corporation Act 1949, City of Nagpur Corporation Act, 1948 and Maharashtra Municipal

Councils, Nagar Panchayats and Industrial Townships Act, 1965.

The said amendment effected in 2011 was subject matter of challenge in a writ petition before the Hon'ble Court in Writ Petition No.10354 of 2011

along with Writ Petition No. 7567 of 2011 and the petition states that the said challenge was turned down and the petitioner has placed on record the

judgment delivered by this Court at Annexure E of the petition. As per the petitioner, after completion of the elections by the respondent no.4, a

notification was issued thereby undoing the amendment and again re-introducing the single member constituency.

5 The grounds on which the petitioner builds his challenge to the ordinance No.IX of 2016 and subsequently Act No.IX of 2017 is to be found from

paragraph nos. 9 to 15 of the petition. The petitioner emphasize on Article 243R, which is contained in Part IX of the Constitution and it is the

specific contention raised in the petition that when Article 243R provides for filling up of a seat in a municipality by person chosen by direct election

from the territorial constituencies in the Municipal Area and when it provides that for this purpose the Municipal Area shall be divided into territorial

constituencies known as wards, then, the multi-member system is in direct conflict with Article 243R. Further, analogy is sought to be derived from

Article 81 of the Constitution which provides for composition of the House of People and heavy reliance is placed on sub-clause (b) of sub-Article 2

of Article 81. The thrust of the contention in assailing the provisions introduced by way of an amendment initially by an ordinance and then by a

legislation, the petitioner lays his emphasis on the introduction of Part IXA to the Constitution of India in the form of the municipalities. It is the

grievance of the petitioner as set out in the petition that the respondent no.1 has time and again interpreted Article 243R according to its own

convenience, whims and fancies and is thus playing Jingoism with the election system and it is alleged that this has resulted into arbitrary exercise of

power by respondent no.1. It is further stated in the petition that the power to codify the Article of the constitution relating to election system is the

responsibility of Union Government and then the local bodies/ panchayat election

are to be based on the same system formulated by the Union

Government and the State legislature is duty bound to follow the mandate of Article 243ZF and Article 251 and 254. The petitioner would urge

that the respondent no.1 has exercised the powers beyond its jurisdiction and therefore, the amendment effected to subsection (3) of Section 5 of the

Maharashtra Municipal Corporation Act is illegal and he prays for a declaration to that effect.

The challenge is further based on the ground that under Section 7A of the Bombay Municipal Corporation Act, the respondent no.1 and respondent

no.3 have no powers to prepare the electoral as preparation of Electoral Roll is a function assigned to the State Election Commission under Article

324. According to the petitioner, the State Election Commission established under the Enactment of 1994 is empowered to hold the elections and

conduct the same by relying on the electoral roll prepared by the Election Commission of India for the legislative assembly and the same is to be put to

use for conduct of panchayat election. It is therefore the specific submission of the petitioner that the State has no power, under the Constitution to

prepare the electoral roll and consequently, it is not empowered to use the same list of voters more than once, in any given election as the list of

electorate is governed by Representation of Peoples Act 1950.

Another ground of challenge is set out in the petition is that the right to vote is governed by Article 324 and the Amendment introduced by the

impugned Act permits the electorate to have as many votes as the number of candidates to be elected from the constituency. This argument is

based on a premise that right to vote is a constitutional right and this principle is settled by the Constitution Bench of the Hon'ble Apex Court. On

this ground also, the amendment sought to be introduced in the two enactments is clammed as unconstitutional. The contention further raised in the

petition is that the proposed system of multi-member ward is in contravention of the reservation of seat for Scheduled Tribes as laid down in the

Scheduled Tribe Reservation Act. It is stated in the petition that after introduction of the multi-member ward system in the municipal area, a

study was conducted and the findings of the report establish that multi-member ward system is unjust to smaller community within the majority Hindu

Religious Group and also the religious minority in allotting candidature from

recognized national political party and if a candidature is granted in getting elected in the said election. The Act IX of 2017 is sought to be declared unconstitutional, bad law and ultra vires of Article 243R of the Constitution of India.

6 In support of the petition, we have heard the learned counsel Dr. Prakash Ambedkar for the petitioner. He would submit that after introduction of

Chapter IX and IXA in the Constitution by the Constitutional Amendment Act of 1992 (73rd Amendment) which introduced the bodies of local

governance in form of Panchayat in Part IX and Municipalities in Part IX A, the State legislature is denuded of its power to legislate and he would

submit that the composition of the municipalities, its duration has been circumscribed by the Constitution itself. Shri Ambedkar would submit that

Article 243Q provides for Constitution of Municipalities in accordance with the provisions of Part IXA, similarly Article 243U fixes the tenure of

the Municipalities. Shri Ambedkar would invite our attention to Article 243Y which authorizes a Finance Commission constituted under Article

243I to review the financial position of the Municipalities and to make recommendation to the Governor about the distribution of the proceeds of the

taxes, duties, tolls, etc. as well as in regards to the grants in aid to the municipalities from the consolidated funds of the State. Learned counsel

would also invite our attention to Article 243ZE which provides for Constitution of the Metropolitan Planning Committee for every metropolitan area

to prepare a draft plan. He would submit that perusal of Part IXA would reveal that the entire regime of the municipalities has been determined

by the Constitutional provisions and the specific intention was to permit the municipalities to work and function in the framework as set out in Chapter

IXA. He would submit that Article 243ZB, therefore, made it imperative on part of any legislature in existence in relation to municipalities which

was in force in the State, immediately before the commencement of the Constitution Amendment Act of 1992 and which is inconsistent with the

provision with this part to continue only till it is amended or repealed by a competent legislature or until expiration of one year from such

commencement, whichever is earlier, which made it imperative for all the State legislatures to fall in line with the scheme engrafted in part IXA of

the Constitution.

The learned counsel for the petitioner would invite our attention to Article 243R and it is his specific submission that the said constitutional provision

provides that all the seats in a municipality shall be filled by persons chosen by direct election from the territorial constituencies in the municipal area

and for these purposes each municipal area shall be divided in the territorial constituencies to be known as wards.Â He would submit that the said

provision contemplated division of the municipal area into territorial constituencies and each constituency represented a seat in a municipality and thus

according to him the methodology for electing two or more councillors from one ward runs contrary to the spirit of Article 243R.Â He would submit

that the three judgments which he has annexed to the petition where a view taken by this Court earlier dealing with the provision of providing multiple

representation, do not take into consideration the spirit of the Article 243R and Shri.Ambedkar posed a question as to whether 243R provides for such

a diversion.Â According to him, the multiÂmember constituency contravenes the provisions contained in the Constitution and it is therefore ultra

viresÂ the Constitution.Â He would seek recourse to Article 81 of the Constitution which provides for composition of the house of people and he

would submit that the house of people consists of a fixed number of members chosen directly from territorial constituencies in the State.Â His precise

submission is that for the purposes of calculating the total number of members representing the territorial constituencies of the State, subÂclause(2) of

Article 81 provides for allocation to each State a number of seats in the house of peopleÂ in such a 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 each State is directed to be divided into territorial constituency in

such a manner that the ratio between population of each constituency and the number of seats allotted to it, so far as practicable, is the same

throughout the State.Â He would thus submit that the same analogy is intended to be applied while determining the territorial constituencies as

contemplated under Article 243R of the Constitution and according to him one territorial constituency is indicative of one seat, resultantly election of

only single member.Â He would thus submit that the creation of such a territorial constituency in terms of Article 81 which is to be followed in the

State for representing the territorial constituencies in the State in the House of

People has to be maintained qua the municipality also.Â According to him the impugned amendment in the statutes have violated the creation of such territorial constituencies throughout the State and therefore he would urge that the amendments effected by Act No.IX of 2017 be quashed and set aside.

7 Another limb of argument of Shri.Ambedkar is that right to vote is a constitutional right and it stands on higher pedestal then a statutory right provided by a legislature.Â He would submit that Section 62 of the Representation of People Act, 1951 recognizes this right to vote which flows from the Constitution.Â He would submit that this constitutional right cannot be diluted by a statutory provision which confers a right to multiple vote in the same territorial constituency and this is against the spirit of the principle â??One man, One vote, One valueâ?.Â Shri.Ambedkar would also submit that the impugned Amending Act is also in direct conflict with the Article 14 of the Constitution as its creates discrimination between the two statutes namely, the Mumbai Municipal Corporation Act, 1888 and the Maharashtra Municipal Corporation Act as it retains one ward in the Corporation in Mumbai whereas outside Mumbai, it has provided for multiple members to represent a Ward system.Â Resultantly, according to him it has created two different classes of voters in the same State and in fact every person in the State of Maharashtra must enjoy the same rights and if not, then, it createsÂ discrimination.Â Mr.Ambedkar would also invite our attention to typical practical situation where he would submit that the object which is sought to be achieved by the impugned legislation, which intends to provide 50% reservation for women, has not been in fact achieved in the State and by the impugned amendment the rights which are conferred on women are being defeated and it also amounts to discrimination and therefore he would submit that the impugned Act needs to be quashed and set aside.

8 In response to the Writ Petition, the State of Maharashtra through Urban Development Department has placed on record an affidavit filed by Deputy Secretary to the Government of Maharashtra in the said department.Â The said affidavit raises a preliminary objection to the maintainability of the petition.Â It is stated in the affidavit that the ordinance no.IX of 2016, impugned in the Writ Petition was already challenged by way of Writ Petition 3474 of 2016 before the Hon'ble Nagpur Bench and the Writ Petition

came to be dismissed by the Court. It is also stated that the identical provision that is amendment to Section 5 of the Bombay Provincial Municipal Corporation Act, 1949 and the Section 10 of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965, which provided for introduction of election of two or more councillors from the same ward instead of one councilor was also a subject matter of challenge in two Writ Petitions filed at the principal seat of this Court and the said Writ Petitions came to be dismissed. The copies of the judgments delivered by this Court have been placed on record. Further reliance is placed on the judgment of the Hon'ble Apex Court in the case of Keshoram and Company and Others V/s. Union of India (1989) 3 SCC 151 wherein the Hon'ble Apex Court has categorically held that the litigant may not be permitted to challenge the validity of the provisions of the Act or notification at different times or on different grounds and once the challenge to a particular provision in a statute is upheld, it must be presumed that all grounds which could be raised are considered by the Court.

9 We have perused the Writ Petition along with its annexures and have also considered the submissions advanced by Advocate Shri Prakash

Ambedkar and learned AGP Mr.B.V. Samant who represents the State Authorities in all the three writ petitions.

Perusal of the writ petition would reveal that the challenge was initially posed to Ordinance IX of 2016 dated 19th May 2016 and the entire petition

contains the grounds of challenge to the said ordinance. By an order dated 18th February 2017, the petitioner sought amendment to the writ petition,

which came to be granted and what is then challenged is Act No.IX of 2017. The petitioner has carried out the amendment in the prayer clause and

has also placed on record a copy of Act IX of 2017 and then the petition is argued as challenge to the Act No. IX of 2017.

10 Maharashtra Act No.IX of 2017 which received the assent of the Governor on 12th January 2017 is an Act which purports to amend the

Maharashtra Municipal Corporation Act, 1949 and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. It

makes a reference to the Ordinance No.IX of 2016 promulgated on 19th May 2016 and it also mentions that on re-assembly of the State Legislature,

the ordinance was transmitted to the Maharashtra Legislative Assembly in form

of L.A. Bill No. XXVI of 2016 for converting the said ordinance into an Act of State Legislature and it was passed by the Maharashtra Legislative Assembly on 26th July 2016.Â However, it could not be passed in the Maharashtra Legislative Council as its session was prorogued on 5th August 2016.Â The operation of the ordinance was continued and the amendment and continuance Ordinance 2016 was promulgated on 30th August 2016.Â However, then Act No. IX of 2017 replaced the continuance ordinance by an Act of State Legislature viz. the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2017Â and it came into force on 12th January 2017.

11 By the said Amendment Act, the provisions of the Maharashtra Municipal Corporation Act are sought to be amended.Â The challenge is posed to the amendment by which the election of multiple councillors has been introduced in the enactment, leading to a multiÂ?member ward system in place of a single councillor to represent a ward as was in existence in the earlier provision.Â The Maharashtra Provincial Municipal Corporation's Act, 1949Â provides for establishment of Municipal Corporation for all larger areas except that of Brihan Mumbai in the State of Maharashtra, so as to ensure better municipal governance.Â The Amendment Act 2017 seeks to amend Section 5 of the said Enactment and in particular, subsection (3). Section 5 provides for Constitution of Corporation and also provides for its composition.Â SubÂ?section (3) of Section 5 confers a power on the State Election Commissioner to specify for each city the number and boundaries of the ward into which cities shall be divided for the purpose of election of councillors so that so far as practicable, all wards shall be compact areas and the number of persons in each ward according to the latest census figure shall approximately be the same.Â It provides for election of one councilor for each ward. By the Amendment Act of 2017, a proviso has been inserted in subÂ?section (3) of Section 5 to the following effect :

â??Provided that, after the commencement of the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2016 in respect of the general elections to the Corporation, each of the wards shall elect as far as possible four Councillors but not less than three and not more than five Councillors, and each voter shall, notwithstanding anything contained in this

Act, be entitled to cast the same number of votes, as the number of Councillors to be elected in his ward??

A similar amendment has been effected in the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and a proviso

has been inserted to subsection (2) of Section 10 which has the effect of providing for election of, as far as possible of two councillors, but not more

than three councillors after the commencement of the Amendment Act 2016 in respect of General Elections to the council.Â Similarly, every voter

has been held to be entitled to cast the same number of votes as the number of councillors to be elected in this ward.Â The amendment reads thus :

5.In Section 10 of the Municipal Councils Act, to subsection (2), the following proviso shall be added, namely :Â?

â??Provided that, after the commencement of the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar

Â PanchayatsÂ Â andÂ Â IndustrialÂ Â Townships Amendment Act, 2016 in respect of the General elections to the Council, each of the wards

shall elect as far as possible two Councillors but not more than three Councillors, and each voter shall, notwithstanding anything contained in subÂ?

section (2) of Section 14 be entitled to cast the same number of votes, as the number of

Councillors to be elected in his ward??

Â Another amendment which has been introduced in the Act of 1965 by Amendment Act of 2016, is insertion of Section 51A1A which introduces a

provision for direct election of President and reads thus :

Â 51AÂ?1A (1)

After the date of commencement of the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and

Industrial Townships, (Amendment) Act, 2016 in respect of the General elections to the Council, subject to the provisions of section 51Â1A, every

Council shall have a President who shall be elected by the persons whose names are included in the municipal voters list prepared under Section 11â??

12 The grievance of the petitioner revolves around the aforesaid amendments, first one relating to the introductionÂ of multiÂmemberward system

introduced in the Maharashtra Municipal Corporation Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act,

1965 and also to the provision of direct election of President introduced in the Act of 1965.

We would first deal with the amendment in relation to the multi-member ward system as introduced in the two Enactments by the impugned

amending Act. The Maharashtra Municipal Corporation Act which extends to the areas to the Municipal Corporation constituted or deemed to be

constituted under the Act defines the term 'Corporation' in Section 2(10) to mean the municipal corporation constituted or deemed to have been

constituted for a larger urban area known as 'city'. The term 'Councilor' is defined in section 2(11) to mean a person duly elected as a member of the

Corporation and includes a nominated councilor. Section 5 of the said Act provides for Constitution of the Corporation which would be a body

corporate having perpetual succession and a common seal and which can sue and be sued. Subsection(2) of Section 5 provides that each

Corporation shall consist of such number of councillors elected directly at Ward elections as specified in the table enumerated in the said section.

What is apparent from the said subsection is that number of councillors are fixed by taking into consideration the population of a particular

corporation and different slabs have been provided. For a population about 3 lakhs and upto 6 lakhs, minimum number of elected councillors is slated to

be '65' and for every additional population of 15,000 above 3 lakhs, one additional councilor is provided, with a cap on the maximum number of elected

councilor not to exceed '85'. For a population above 6 lakhs and upto 12 lakhs in a particular corporation, the minimum number of elected councillors

is fixed at '85' and for additional population, a similar addition is permissible with a maximum ceiling of 115. Accordingly, the number of councillors

which would compose the corporation has been set out in the said section and the said councillors are to be elected directly at ward elections. As

per the scheme of Section 5, which can be discerned from subsection (3), each city would be divided into wards for the purposes of the election of

the councilor and this would be done by the State Election Commissioner by Notification in the Official Gazette who would specify for each city the

number and boundaries of the ward and it is to be fixed in such a manner so that all wards, as far as practicable, shall be compact areas and the

number of persons in each ward shall be approximately the same. The figures of the latest census would be the basis of calculating the population and

from each ward, one councilor is to be elected.

The precise submission of the learned counsel for the petitioner is that the whole mechanism which finds place in the said section prior to its

amendment is completely demolished by the introduction of the amendment. It is the submission of Shri Ambedkar that a city is divided into wards

and it permits election of one councilor from each ward and the number of wards in the city is already determined by subsection (2), which has a

direct nexus with the population of the said city and each ward would be represented by one councilor. His specific submission is that without touching

the said theme of 'One ward, One councilor' a proviso has been inserted which results in wiping out the provision of subsection (2) and subsection

(3) and partakes the form of a substantive provision by the Amendment Act 2016 and now, in respect of general elections of the Corporation, each

of the ward is to elect as far as possible four councillors, but not less than three and not more than five. He would submit that this is in total

contrast to Article 243R contained in Part IXA of the Constitution. The said argument of the learned counsel along with his submission that the

said amendment defeats the whole spirit of introduction of Part IXA in the Constitution, needs to be tested.

13 By Constitution (Seventy-third and Seventy-fourth Amendment) Act of 1992, Part IXA was introduced in the Constitution as it stands in the

present form of Panchayats and Municipalities. Perusal of the statement of objects and reasons of the 73rd Amendment, would reveal that they

have been introduced as institutions of self governance at the grass root level. Panchayats came to be introduced as institution of self government

within the territorial area of panchayat whereas the municipalities came to be introduced as institution of self government in the metropolitan area

having a population of 10 lakhs or more, comprised in one or more districts and consisting of two or more municipalities or panchayats specified to

be metropolitan area. Perusal of Chapter IXA introduced in the Constitution would reveal that Article 243Q provides for Constitution of

Municipalities. It provide for Constitution in every state of Nagar Panchayats for transitional area i.e. an area in transition from rural area to urban

area; a municipal council for smaller urban area and a municipal corporation for larger urban area.

In terms of Article 243T in every Municipality, seats are to be reserved for Scheduled Tribes and the number of seats so reserved is directed to

bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that municipality as the population of

Scheduled Castes in the municipal area or Scheduled Tribes in the municipal area bears to the total population of that area and such seats may be

allotted by rotation to different constituencies in a Municipality. The said Article then contains a provision for reservation of seats for women and

not less than one-third seat from those reserved for Scheduled Caste and Scheduled Tribe are directed to be reserved for women. The said Article

also provides for reservation of the offices of the Chair Persons in the municipalities in favour of Scheduled Caste, Scheduled Tribe and women in

such manner as the Legislature of a State may provide for, by a law. The said reservation of seats and the reservation of offices of the Chairman is

provided to cease to have effect on expiration of the period specified in Article 334. 243U then provides for duration of municipalities and

243W permits the State Legislature to enact a law so as to endow such power authority and responsibility on the municipality as is necessary for

them to function as institution of self governance which would specifically relate to planning for its economic development, ensuring social justice and

all other matters which are enumerated in Schedule 12. Article 243X and 243Y contains power in relation to finances. Another important

provision contained in the said part is Article 243ZF which provides that any provision of any law, relating to municipalities in force in a State

immediately prior to the commencement of the Constitution (74th Amendment) 1992 which is inconsistent with Part IXA shall continue to be in

force until amended or repealed by a competent legislature or other competent authority or until expiration of such commencement, whichever is

earlier.

14 Perusal of Part IXA of the Constitution would reveal that the municipalities have been created by the Constitution (74th Amendment) Act of 1992

as institutions of local self governance. The said chapter was introduced in the Constitution to give effect to one of the directive principles of State

Policy enshrined in Article 40 which makes it imperative for the State to take steps to organize village panchayats and endow them with such power

and authority as may be necessary to enable them to function as units of self governance.Â Perusal of Section 243W would reveal that by the Constitution itself,Â legislature of the State has been empowered to endow on the municipalities such power and authority as may be necessaryÂ to enable them to function as institution of self government, subject to the provisions of the Constitution.Â The legislature of a State may thus clothe the municipality with the necessary powers and authority to function as institutions of self government and which would include the powers of preparation of plans for economic development and social justice and also performance of the functions and implementations of the scheme which may be entrusted to them, including those enlisted under Schedule 12 of the Constitution which enlist several heads in relation to which the legislature may confer the powers on the municipalities.Â On perusal of the scheme as ingrained in PartIXA of the Constitution, it is clear that it provides for constitution of municipalities in either of its form i.e. Nagar Panchayats, a municipal council or a municipal corporation and it provides for its composition.Â It also provides for its duration. As far as its powers and authorities are concerned, PartÂIXA do not enlist them but empowers the legislature of the State to endow upon the municipality such powers and authorities as are necessary, by a law and also touching the subjects which are enumerated in 12th Schedule of the Constitution.Â

Thus, the argument of the learned counsel for the petitioner Shri Ambedkar to the effect that the powers have to be enumerated in Part IXÂA and a State legislature cannot legislate in relation of municipalities after the 74th Amendment, is wholly misÂconceived.Â It is the constitution which itself empowers the State Legislature to provide for the necessary details to make the municipalities functional and that is why in this chapter, it would be noted that the legislature of the State is empowered to make a law and to make a provision for representation in the municipalities under Article 243R, as well as for composition and the territorial area of wards committee under Article 243S.Â Further, by virtue of Article 243W, the legislature of a State is empowered to endow the municipalities with such power and authority as may be necessary to enable them to function as institutions of self government.Â An authority is also conferred on the municipality to levy, collect and appropriate taxes, duties, tolls and fees by the State legislature

under Article 243X.Â Thus, the Constitution has authorized the legislature of a State to make a law so as to make the municipalities functional and also clothe them with powers.Â This power has to be exercised subject to the provisions of the Constitution and has to necessarily fall in line with Chapter IXA and keep in mind that the municipalities are aimed to function as institution of local self governance.Â The legislature thus being empowered to make a law in relation to the municipalities, it cannot be said that it is denuded of its power in view of inclusion of the Municipalities in Part IXA in the Constitution.

15 Perusal of Article 243ZA which deals with "Election to the Municipalities" vests the power of superintendence and conduct of all elections to the Municipalities in the State Election Commission constituted in Article 243K.Â However, by virtue of subclause (2) of Article 243ZA, the legislature of a State is empowered to make a provision with respect to all matters relating in connection with the municipalities, by making a law.Â Thus, the intention of the Constitution is not to deprive the legislature of its role to be played in the election of the Municipalities but it continues to retain the power with the State Legislature to make a law with respect to all the matters relating to, or in connection with the Municipalities, although the Superintendence, direction and control of the preparation of electoral rolls for conduct of elections to Municipalities continue to vests in the State Election Commission.Â

In this backdrop, Article 243R and Article 243T will have to be viewed.Â Both the said Articles need a reproduction :

Article 243R Composition of Municipalities (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen be direct election from the territorial constituencies in the Municipal area, and for each purpose each municipal council shall be divided into territorial constituencies to be known as wards.

Â (2) The Legislature of a State may, by law, provide Â

Â (a) for the representation in a Municipality of

(i) persons having special knowledge or experience in Municipal administration;

(ii) The members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise

wholly or partly the Municipal area;

(iii) the Members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243A?S.

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

243ATÂ Reservation of seats :Â (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the

number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that

Municipality as the population of the scheduled castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total

population of that area and such seats may be allotted by rotation to different constituencies in an Municipality.

(2) Not less than one third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or,

as the case may be, the Scheduled Tribes.

(3) Not less than one third (including thenumber of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total

number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different

constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as

the Legislature of a State may, by law, provide

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under

clause (4) shall cease to have effect on the expiration of the period specified in article 334

(6) Nothing in this Part shall prevent theLegislature of a State from making any provision for reservation of seats in any Municipality or offices of

Chairpersons in the Municipalities in favour of backward class of citizens

16 The manner of reservation in the municipality and the number of seats to be reserved is contemplated by Article 243T of the Constitution and the

mandate is imposed to reserve not less than 1/3rd of total number of seats for women belonging to Scheduled Caste or Scheduled Tribes.Â The said

Article, however, in no way suggests what has been attempted to be suggested by the counsel for the petitioner.Â Article 243R which provides for

composition of municipalities provides that all the seats in the municipality shall be filled in by persons chosen by direct election from the territorial

constituencies in the municipal area and for this purpose, each municipal area shall be divided into territorial constituencies to be known as Wards.Â

This provision is subject to a provision which empowers the State legislature to provide for representation in a municipality and the manner of election

of chairperson of the municipality.Â Article 243T also does not contain anything to suggest that it is only one single member who is to be elected from

an area which is marked as 'ward' and it is this person who is chosen by direct election from the territorial constituency in the municipal area would be

representative of the said constituency.Â

The submission of the learned counsel to derive an analogy from Article 80 in relation to the composition of house of people cannot be made

applicable in case of municipality and that is not even the intention of the constitution makers, for had it been so, it would have specifically made a

provision to that effect.Â What is only a necessary concomitant which flows from Article 243R is that all the seats in the municipality shall be filledÂ

by persons chosen by direct election from the territorial constituencies in the municipal area and for the said purposes, each municipal area is to be

divided into territorial constituencies to be known as 'wards'.Â However, it does not provide that only one member should be elected from one

territorial constituency known as 'ward'.Â Thus, there is no constitutional bar for providing for multiple members to be elected from one ward.Â

When there is no prohibition imposed in the Constitution, to the above effect, then, the question remains is whether the legislature of the State is

empowered to provide for a multiÂ?member ward.Â Â Â

17 By the impugned amendment, as contained in Act No. IX of 2017, the provision for single member from each ward have been shifted to multiple

members from the same ward and this is what has been objected to by the petitioner. Perusal of the statement of objects and reasons introducing the

said amendment would reveal that the said provision has been introduced in

view of the fact that election of one councilor from one ward, facilitates manipulation because of very small base and number of electorate and that it was proposed to provide for multi member ward which would provide for a wider base and reduce the chances of manipulation.Â This system was introduced on the earlier occasion by an Amendment Act of 26 of 2011, which inter alia amended Section 5 of the Bombay Provincial Municipal Corporation Act, 1949 and Section 10 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and it introduced a provision for election of multiple councillors from each ward.Â The said amendment was subject matter of challenge in Writ Petition No.10354 of 2011 before this Court and the Division Bench of this Court after consideration of the scheme of Article 243R and also after due consideration of the judgment sought to be relied upon by Dr.Ambedkar in case of R.C.Poudyal vs. Union of India AIR 1993 SC 1807 Â Â concluded that no question of separate electorate arise in the case merely because of creation of multiÂmember ward.Â By making reference to entry 5 of list II of the Constitution, which empowers the State legislature to legislate in respect of the Constitution and powers ofÂ Municipal corporation and other local authorities for the purpose of local self government or village administration, this Court had turned down the challenge on the basis of the earlier judgment of this Court in Rajkumar s/o Marotrao Patait Vs. State of Maharashtra in Writ Petition No.4855/2011 decided on 23.8.2011 The Division Bench in the judgment of Rajkumar (supra) was dealing with a challenge to Ordinance No.XIII of 2011 promulgated by Government of Maharashtra, Urban Development Department, which sought to amend and incorporate the provisions of multiÂmember constituencies in theÂ Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, City of Nagpur Corporation Act, 1948 and Bombay Provincial Municipal corporation Act, 1949.Â The Division Bench by referring to Article 243R of the Constitution negated the challenge by a specific observation that there is nothing in the Constitution to prohibit the multimember constituency.Â The Hon'ble Division Bench observed thus :

â??Perusal of Clause (1) of Article 243ÂR of the Constitution would reveal that what has been provided under the said Article is that all the seats in a Municipality shall be filled by persons chosen by direct election.Â These

elections are required to be from the territorial constituencies in the Municipal area. It further provides that for this purpose, each Municipal area shall be divided into territorial constituencies to be known as wards. It can be seen what is provided under the Constitution is that a Municipal area has to be divided into territorial constituencies and all the seats in the Municipality are required to be filled by persons chosen by direct election. There is nothing in the Constitution which prohibits a multiple member constituency. In that view of the matter, we do not find any substance in the contentions of the petitioner in that regard.

Insofar as the contention regarding Subsection (2) of Section 14 of the Act is concerned, Subsection (2) of Section 10 of the Act, which is sought to be incorporated by way of amendment itself provides that notwithstanding anything contained in Subsection (2) of Section 14, a person would be entitled to cast the same number of votes, as the number of councillors to be elected in his ward. The intent of the Legislature is, thus, clear that it intends to supersede the provisions of Subsection (2) of Section 14 by specifically incorporating the provision in that regard of Subsection (2) of Section 10 of the Act.

By now, it is a settled principle of law that the statement of object and reasons of the particular enactment can be taken into consideration for interpreting the said enactment. The perusal of SOR would reveal that the Legislature has decided to incorporate 50% reservation for women and for the said purpose, it is felt necessary that the constituencies should be multi member constituencies. We, therefore, find that the amendment is in furtherance of the legislative intent of providing 50% reservation to the women.

18 Lately, an Ordinance IX of 2016 which was promulgated on 19th May 2016 and which has been replaced by the impugned Act IX of 2017 itself was assailed by the Ambedkarite Party of India through its authorized general secretary by invoking the writ jurisdiction of this Court at Nagpur Bench. By the said Ordinance, the amendments have been effected in the Maharashtra Municipal Corporation Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The amendment, inter alia, provided that as far as municipal corporation is concerned, each of the wards shall elect, as far as possible four

councillors, but not less than three and not more than five councillors.Â

It also further provided that each voter would be entitled to cast the same number of votes as the number of councillors to be elected in the ward.Â

While dealing with the said challenge, the Hon'ble Division Bench (B.R. Gavai and V.M. Deshpande, JJ) referred to the constituent assembly debates

and also made extensive reference to the judgment of the Hon'ble Apex Court in case of R.C.Poudyal vs. Union of India (supra) and concluded

thus :

8 No doubt that the arguments advanced by the learned counsel for the petitioner appears to be attractive at the first blush.Â Nobody would deny that

the Indian Constitution recognizes Secularism to be one of the basic concepts of it. With the development of law by Their Lordships of Hon'ble

Supreme Court and various High Court, it cannot be denied that Secularism will have to be construed to be a basic structure of the Constitution of

India.Â However, the question that would be required to be considered is as to whether the impugned Ordinance attacks the concept of Secularism

or not.

9 Another argument of the learned counsel regarding the concept of One Man One Vote and One Value' also finds place in the Indian constitution.Â

Learned counsel is right in relying upon various speeches of Dr.B.R. Ambedkar as well as other eminent members of the Constituent Assembly

wherein they have stated that the Indian constitution promises political democracies by adopting principle of One Man One Vote and One value.Â

However, again question would be as to whether the Multi Member Ward system attacks the said principle or not.

10 Insofar as the first submission is concerned, we are unable to understand as to how the Multi Member Ward System would attack the concept of

Secularism.Â The concept of Secularism could be said to have been attacked, if there was any communal reservation provided in the

Constituencies.Â What would not be permissible by the concept of Secularism is reservation for a particular community professing a particular

religion.Â Same would not be at all permissible under our Constitutional Scheme.Â However, none of the provisions of the impugned Ordinance

would show that any attempt is made in that regard.Â Needless to state that all the eligible candidates professing any religion would be entitled to

contest elections provided that they are otherwise eligible for contesting elections and insofar as the Constituencies which are reserved for various

categories are concerned, they belong to that category.Â Equally the person belonging to any religion would be entitled to cast vote for any candidate

though he may be belonging to different religion or communityâ??.

In light of the aforesaid authoritative judicial pronouncements, testing the validity of a provision, sought to be introduced either by way of an ordinance

or an enactment, prescribing multiÂmember constituency in a ward and upholding a provision prescribing the same, we are of the definite opinion that

the said issue as raised by the petitioner, is no more res integra and we have also cited the reasons in the above paragraphs to disagree with the

arguments of the learned counsel for the petitioner Dr. Ambedkar.

19 On a conjoint reading of the Articles which we had referred to in the above paragraphs as contained in PartÂIXA of the Constitution, the

necessary consequence which follows is apparent i.e. the power is conferred on the legislature to make a law in exercise of the legislative power

contained in entry 5 list II of the Constitution and specifically when there is no bar or an embargo created to provide for multiÂmember ward in a

constituency, we do not see how it defeats the basic feature of the constitution as has been attempted to be canvassed by Dr. Ambedkar.Â If the

legislature was empowered to legislate within its legislative field, it cannot be said that the power has been exercised without being conferred on it.Â

Once such power is to be traced to the State legislature, then, unless and until it is found to be ultraÂvires the Constitution or in utter violation of

Chapter III of the Constitution, it cannot be called in question and the petitioner has not been able to demonstrate before us that there has been any

violation of the fundamental rights. The argument of the learned counsel that there is no legislative competency, cannot be accepted since the power

of the legislature is clearly traced to entry 5 list II of the Constitution which reads thus :

â??Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement

authorities and other local authorities for the purpose of local selfÂgovernment or village administration.

The constitutional provisions thus, do not prohibit multimember wards and as

already noted, the State Legislature is competent to make laws with respect to the election to the municipalities and therefore, when such a law is made, it cannot be termed as ultra vires the constitution.Â The State legislature neither lacks the competence nor the constitutional provision either Article 243ÂR or 243ÂS creates any impediment in exercise of the said power by the State legislature.Â Once the competence of the legislature is not in doubt in view of the legislative field entrusted to it, we do not find substance in the argument of learned counsel Shri Ambedkar that the amending Act providing for multiÂmember wards suffers from any vires, qua the constitution.

20Â The statement of objects and reasons of the impugned enactment would reveal that the legislature necessitated conversion into multiÂmember wards and providing the same number of voters was in order to implement the provision for 50% reservation to woman and to practically implement it, it felt it necessary that the constituencies should be multiÂmember constituencies and since the amendment intends to give benefit of these reservations to the women, we do not feel it is offending Article 243T and rather it falls in tune with the said Article providing for at least 2/3rd reservation to women.

Though the learned counsel for the petitioner has also faintly attempted to canvass that the multiÂmember ward would defeat the right of the backward classes and women, we do not find substance in the said submission. Rather, we could gather from the statement of objects and reasons of the amending Act that the provision of multiÂmember ward has been introduced to accommodate the increased reservation in favour of women.Â

The feeble attempt onÂ part of Shri Ambedkar to practically illustrate the disadvantage cannot be tested at this stage when the vires of the provision is only being questioned, and if at all, any practical implementation of the said provision results into illegalities or inequalities, it can be questioned through appropriate legal proceedings.

Learned counsel for the State Mr.Samant has invited our attention to the notification issued by Urban Development Department in pursuance of the amended provision.Â In order to give effect to the said provision, the State has framed the rules regarding the manner of allotment and rotation of reservation of seats of councillors in wards in the Corporation for women and

candidates belonging to Scheduled Caste, Scheduled Tribe and backward classes of citizens, in exercise of power conferred by Section 5A r/w Section 456A of the Maharashtra Municipal Corporation Act and in supersession of all the other notifications, orders, rules etc. issued previously in this behalf.Â The said rules have been formulated after consultation with State Election Commission and are known as the Maharashtra Municipal Corporation (manner of allotment) and rotation of reservation of seats of councillors in wards (Rules) of 2016.Â The wards have been defined for the purpose of the Rules to mean the territorial constituencies into which the area of the Corporation is divided for the purposes of election of councillors.Â The apprehension expressed by the petitioner as to how the seats would be rotated is thus being put to rest since the Rules are in place to tackle with the changed mode of election of more than one councilor from each ward of the corporation.Â Â Similar rules have been framed by the State Government for the municipal council and titled as â??Maharashtra Municipal Councilâ? (manner of allotment) and rotation of reservation of seats of councillors in Wards (Rules) 2016, in order to give effect to the amended provision providing for election of multiple councillors from each ward in the municipal councils.

21 The petitioner's counsel argued with some vehemence that the impugned amendment would negate the mandate of Article 243ÂT of the Constitution of India.Â We have already discussed the scope and ambit of Article 243R, 243T as well as 243Q in the above paragraphs.Â In the instant case, the seats in the Municipality have to be filled in by person chosen by direct election from the territorial constituencies in the Municipal area and for this purpose, each Municipal area shall be divided into territorial constituencies to be known as wards. The seats in the Municipalities denote the number of representatives of the territorial constituencies, known as wards, and for the purposes of reservation in terms of Article 243ÂT, seats shall be reserved for the Scheduled Castes and Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election by that Municipality as the population of the Scheduled Castes in the Municipal area or the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by

rotation to different constituencies in the Municipality.Â Thereafter, by clauses (2) and (3), the reservation as contemplated by clause (1) is extended

to women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes.Â By clause (3), not less than one third, including the

number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes of the total number of seats to be filled by direct

election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.Â

Similar is the position with regard to offices of Chairpersons in the Municipalities and there is also reservation carved out in respect of Backward

Class citizens by clause (6) of Article 243Â?T.

We are, therefore, unable to understand the argument of Dr. Prakash Ambedkar appearing for the petitioner that by the impugned amendments, the

reservation for women has got clogged between other reservations in the same ward. There is no exclusivity then to such reservation of women.

Hence, the mandate of Article 15(3) of the Constitution of India is violated, is his contention.Â We are unable to appreciate this argument for more

than one reason.Â Article 15(3) enables the State to make a special provision for women and children. Despite what is set out in clause (1) of Article

15, the State is not prevented from making such special provision.Â If despite prohibition of discrimination, the State can make law as above and in

terms of clauses (3), (4) and (5) of Article 15 or further clauses, then, these independent enabling provisions in fact guarantee representation to

women and Backward Class so also downtrodden sections of the society in the affairs of local bodies.Â There is no question of any sandwiching of

the reservation of women between other reservations in the same ward.Â Quite to the contrary, in a multi member ward, it can so happen that a

women can contest the election if there is a reservation carved out for women and equally a Backward Class women will also be able to contest the

election if there is a reservation in favour of a Backward Class women.Â Likewise, even if seats are reserved for Scheduled Castes and Scheduled

Tribes, still, a woman can be a candidate in a general seat.Â For illustration, if in multi member constituency, some seats are reserved, still, as against

a general or open seat, a woman can be nominated.Â Equally, a candidate belonging to Scheduled Caste, Scheduled Tribe or Other Backward Class

category can contest a general seat.

In the case of Digambarrao Bindu vs. Devrao Kamble (1958) Vol. 60 BLR 1065, a Division Bench of this court held that the reservation of seats

for the Scheduled Castes does not mean that if there is a two member constituency and one seat is reserved for the Scheduled Caste, only one

member of the Scheduled Caste can be elected. Reservation means at least one member should be elected.

It is not Dr. Ambedkar's argument that earlier the territorial constituency/ward was reserved for the above sections of the society and that posed no

problem because there were single member wards, but now having made them multi member and providing reservation of seats and not territorial

constituencies, would result in a situation of all reservations being sandwiched. Even there, the answer provided by Digambarrao (supra) will

come into play. Reservation means, in the event one seat is reserved for the Scheduled Caste necessarily does not result in only one member of the

Scheduled Caste getting elected. It only means that at least one member should be elected. There is nothing in law to prevent both the seats

being held by member of the Scheduled Caste if the electors voting for two such members in a two member constituency. The argument of Dr.

Ambedkar is premised on the fact that the amendments replacing the system of election of single Councilor from a ward by the system of multi

member wards having been introduced, by itself and without anything more results in such sandwiching. That argument overlooks the prescription

by the proviso and which says that after the commencement of the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils and

Nagar Panchayat and Industrial Township Amendment Act, 2016 in respect of the general elections to the Council, each of the wards shall elect as

far as possible two Councilors, but not more than three Councilors and each voter, notwithstanding anything contained in sub-section (2) of section

14, would be entitled to cast same number of votes as the number of Councilors to be elected in his ward. This position has now been altered by the

Amendment Act of 2017, which introduced a proviso to sub-section (3) of section 5, which says that each of the wards shall elect as far as possible

four Councilors, but not less than three and not more than five. The words "as far as possible" have been completely ignored in making the

above arguments. Secondly, there is nothing in law to prevent, even when there is a multi member ward, a general seat being held by members of the Scheduled Caste and equally women belonging to Scheduled Caste/Scheduled Tribe or woman as such because the electors or voters have that much choice.Â It only means that the seats reserved for the Scheduled Caste should be held by a Scheduled Caste candidate.Â That does not prevent a Scheduled Caste from contesting a general seat and likewise would be the position for a woman.Â These submissions are founded on a presumption.Â There are no pleadings of violation of the mandate of any law, much less the Constitution of India. There are no particulars provided either andÂ of specific instances of discrimination.Â In all such matters, when a provision of the law or the law itself is challenged as discriminatory, it is incumbent upon the petitioner to specifically plead how the provision has resulted in discrimination or would result in discrimination in the event construed otherwise.Â We do not have any such pleadings nor we have specific instances or cases of sandwiching of reservation.Â We cannot presume that women would be discriminated or that the reservation guaranteed to the women belonging to Scheduled Castes, Scheduled Tribes or Backward Classes or citizens is nullified in a multi member ward.Â Such a broad and sweeping argument, as is canvassed, cannot be accepted.Â It would be always open for the aggrieved persons to challenge the elections in the event the provisions of law result in discrimination or denial of the benefit of reservation altogether.Â That aspect will have to be looked into in the facts of such a peculiar case.Â We cannot strike down any legislation only on the premise as noted above.

22 The Hon'ble Apex Court had an occasion to deal with an issue revolving around an election to the House of People from a double member constituency and the Constitution Bench in case of V.V. Giri Vs. Suri Dora & ors had held as back as in the year 1959 that once it was realized that the election was from the constituency as a whole, and not by a reference to two separate and distinct seats, there should be no difficulty in accepting the view taken by the Returning Officer when a Scheduled Caste candidate was declared to have been duly elected against a general seat.Â The peculiar facts which were involved in the petitionÂ revolved around an election to the parliamentary constituency of Parvati Puram in State of

Andhra Pradesh which was a double member constituency; one seat reserved for Scheduled Tribe and other for general.Â In the general election to the House of People held in 1957, four candidates had been nominated from the said constituency, two candidates were adopted by the Congress party and two were the candidates of the socialist party.Â When the results of the election were disclosed, the respondent no.2 was elected to fill the reserved seat since he secured highest number of votes and was a Scheduled Caste candidate.Â The dispute raised by the appellant was in respect of the second seat which was an open seat.Â Pursuant to the declaration of election of the respondent no.2 to fill the reserved seat, the respondent no.1 was declared elected to fill the general seat though he had offered himself as a candidateÂ for reserved seat. Taking exception to this action, the appellant filed an Election Petition challenging the validity of respondent nos.1's election. The thrust of the challenge was that respondent no.1 had offered himself as a candidate for reserved seat and therefore, he was not entitled to be elected to a general seat.Â His alternative submission was also that he was not a member of the Scheduled Tribe at the material time, so the declaration made by him was false.Â The respondent no.1 disputed the validity of the contentionÂ by making a submission that reservation of seats is intended as an additional special concessionÂ Â Â to the Scheduled Caste or Tribe, which do not affect the right of the member of the said caste or tribes in claim along with other citizens of the country, the right to be elected to the general seat.Â The respondent no.1 did not concede that he contested the election solely for the reserved seat.Â The Election Tribunal upheld the appellant's contention and allowed his election petition with costs.Â On appeal to the high Court, the respondent no.1 succeeded and the findings of the Tribunal and the declaration came to be reversed.Â That is how by way of Special Leave Petition, the matter came before the Hon'ble Apex Court.

The Hon'ble Apex Court framed a question to the following effect :

â??What then is the true constitution and legal position with regard to the election to the House of People from a double member constituency where one seat is reserved for the members of the Scheduled Tribe or Casteâ??

In search of an answer to the said question, Their Lordships referred to theÂ relevant articles of the constitution including Article 325 which provided

for one general electoral roll for every territorial constituency for election to the house of parliament.Â It also makes a reference to Article 326 which

provides for adult suffrage.Â It then makes a reference to Article 81(1) in relation to the composition of house of peopleÂ and it also makes

reference to the provisions of the Representation of Peoples Act.Â Their Lordships on consideration of the entire scheme records thus :

â??Thus, it is clear that election to the House of the People even from a doubleÂmember constituency where one seat is reserved for the members

of the scheduled tribes is one, and though the Constitution shows just anxiety to afford necessary protection to the members of the scheduled tribes, it

deliberately refused to adopt the system of separate electorates.Â The constituency is one and election is held to the said constituency from one joint

electoral roll prepared on the basis of qualifications which are of general and uniform application. In regard to doubleÂmember constituencies like

Parvatipuram theÂ Constitution has not even adopted the course of providing for a special constituency confined to the members of Scheduled

tribes.Â All that is done to provide for the reservation of seats for the members of the said tribes or castes in the manner already indicated. Even for

the reserved seat all voters in the constituency are entitled to vote.Â The reservation of a seat in a doubleÂmember constituency cannot therefore,

affect the main basis position that the constituency is one and for returning representatives to the House of the People it is the same joint electorate

that goes to the Pollâ??

23 While dealing with the appellant's argument based on Section 8(2)(c) of the Delimitation Act of 1952, the Hon'ble Apex Court observed thus :

Whilst we are dealing with S.54 we may incidentally refer to the appellant's argument based on S.8(2)(c) of the Delimitation Act, 1952 (81 of 1952)

which provides that in every twoÂmember constituency one seat shall be reserved either for the scheduled castes or for the scheduled tribes, and the

other seat shall not be so reserved. It is urged that in view of this provision the case contemplated by the illustration to S.52(4) is not likely to occur

any more and in that sense the illustration has become 'otiose'. That may be true. But even so the significance of the illustration lies in the fact that it

clarifies and explains concretely how the reservation of seats for the depressed castes and tribes will actually work out in elections in the relevant

constituencies.

There is one more section of the Act to which reference must be made. It is S.55. For the avoidance of doubt this section declares that a

member of the scheduled castes or scheduled tribes shall not be disqualified to hold the seat not reserved for members of those castes or tribes if he is

otherwise qualified to hold such seat under the Constitution and the Act. If the appellant's contention is upheld then the provisions of S.55 would be

inapplicable to a member of the scheduled tribe solely because he has made the prescribed declaration in his nomination form in order to claim the

benefit of the concession of the reserved seat in his constituency. We see no justification for adopting such an artificial and restricted construction of

S.55. In our opinion S.55, like S.54(4), is consistent with the other relevant provisions of the Constitution and the Act. A member of the scheduled

tribe is entitled to contest for the reserved seat and for that purpose he can and must make the prescribed declaration; but it does not follow that

because he claims the benefit of the reserved seat and conforms to the statutory requirement in that behalf, he is precluded from contesting the

election, if necessary, for the general seat. Once it is realised that the election is from the constituency as a whole and not by reference to two

separate and distinct Beats there would be no difficulty in accepting the view taken by the returning officer when he declared respondent I to have

been duly elected for the general seat?

24 Perusal of Part XVI of the Constitution which provides for reservation of seats for Scheduled Caste and Scheduled Tribes and contains provision

for reserving the seats in the House of People, and in the legislative assembly of the State, what is to be noted is that a seat is to be reserved.

When a candidate is duly elected from any constituency he fills a seat either in the House of People or legislative assembly and is looked upon as a

elected representative of the said constituency. Thus, this 'seat' is filled in by the said candidate. The Hon'ble Apex Court has observed that the use

of the word 'seat' or the expression 'fill the seat' is exactly similar by making reference to Section 32 of the Delimitation Act, Their Lordships had

observed that these sections do not mean that the nomination of a person as a candidate for election is for a seat, such nomination is for the

constituency and after the election is over, the elected candidate is qualified to fill

a seat in the house of people to which he is elected.Â It is in that sense the expression 'candidate for election to fill a seat' is used.Â The Hon'ble Apex Court has clarified that the use of the said expression or the reference to 'seat' in some of the articles of the constitution or Sections of the Act, does not mean that the elections to the house of people from a double member constituency is held not for the constituency as a whole, but by reference to the two seats.Â In this context,Â if we consider the argument of the learned counsel and refer to the term 'seat' as used in Article 243T of the Constitution, qua a municipality is concerned, a candidate elected against this seat would be considered to be elected from the territorial constituency and even if there is more than one candidate from the territorial constituency, the safeguard intended by Article 243T is still achieved.Â The ordinary dictionary meaning of the term or word 'seat' denotes that it fits in the legal scheme.Â It means, inter alia, a member's constituency.Â Moreover, it is for the State Election Commission to determine the territorial boundaries and Shri Samant had tendered before us one such notification issued by the Election Commission of India on 15th June 2016 in furtherance of Article 243ZA in relation to the elections of 195 Municipal Councils/Nagar Panchayats.Â The election commission in exercise of powers conferred by Section 10 of that relevant law has determined the constitution of wards and the reservation in such wards.Â We have no doubt in our mind that the State Government would undertake all the necessary steps for effectively implementing the amended provisions of the respective enactment, which provide for multi-member ward without offending the provisions of the constitution.

The other argument of Dr. Ambedkar should also be noted only to be rejected and that is that the amendments introduced by the impugned Amendment Act are not to be found in the Mumbai Municipal Corporation Act, 1888 and therefore, the impugned amendments are discriminatory in nature.Â In other words, his argument is that both laws made by the State legislature deal with Municipalities.Â Merely because for Mumbai Municipal Corporation, there is a separate law or legislation in the field does not mean that for elections to that Municipal Corporation, similar stipulations, as are made in the case of other Municipal Corporations or Councils, could not have been made.Â There is no justification for leaving out

the Municipal Corporation of Greater Mumbai from the prescription of multi member ward.Â That system not having been introduced in Municipal

Corporation of Greater Mumbai would make the impugned amendments unconstitutional and discriminatory is his argument.

This argument is flawed for the simple reason that the two Municipal Corporations are not comparable.Â The Municipal Corporation for a mega city

like Mumbai will have its own peculiarities and introduction of such a system may present practical difficulties.Â It is common ground that there are

about 272 wards electing as many Councilors in the Mumbai Municipal Corporation.Â It would not be impossible, but indeed difficult to implement a

system of the multi member ward in such a Municipal Corporation.Â Secondly, merely because this system is not introduced in Mumbai Municipal

Corporation would not render the impugned Amendment Act unconstitutional and discriminatory.Â By now, it is well settled that an amended

provision cannot be struck down as discriminatory unless it is established and proved by parties like the petitioner that equals have been treated

unequally or unequals have been treated equally.Â Article 14 of the Constitution of India permits reasonable classification and what it forbids is class

legislation.Â So long as there is a reasonable basis for the classification and that classification has a nexus with the object sought to be achieved, then,

a provision or a law cannot be struck down as violative of the mandate of Article 14 of the Constitution of India.Â That guarantees equality before

law and equal protection of laws.Â Once we have held that other Municipal Corporations in the State cannot be equated with Mumbai Municipal

Corporation, then, this argument must fail.

Finally, it is not the constitutional mandate that two legislations or laws on the same subject should be identical. There could be dissimilarities and for

justifiable reasons.Â So long as these dissimilarities are not established and proved to be discriminatory, there is no basis for the assumption that some

amendment being made in one law on the same subject, but not made in another law dealing with that subject would render the amended legislation

unconstitutional.Â For a conclusion of that nature to be reached, several preÂ requisites have to be held as satisfied.

If any judgment is required to be referred to, we can usefully refer to number of judgments mentioned in the footnote of Chapter IV titled as

â??External Aids to Constructionâ? in the classic work of Judtice G. P. Singh â?? Principles of Statutory Interpretationâ?, 14th Edition, which, at

page 342Â343 sum up the above legal principles with reference to several judgments.Â For illustration, the learned Judge refers to the famous

judgment rendered in the case of Dickerson v. Fletcher reported in (1873) LR 9 CP 1, Brett, J. says â??where two statutes dealing with the same

subject matter use different language, it is an acknowledged rule of construction that one may be looked at as a guide to the construction of the

other.Â If one uses distinct language, imposing a penalty under certain circumstances and other does not, it is always an argument that the legislature

did not intend to impose a penalty in the later, for where they did so intend they plainly said soâ?.Â Thus, there is definite intent of a departure of

deviation in the case of the Municipal Corporation of Greater Mumbai.Â There is no compulsion on the legislature to amend all the laws on

Municipalities.Â If one is not amended, then, the legislature being aware of pari materia statutes, is presumed to be deliberately taking a decision of

amending one and not the other.Â There is no compulsion to amend pari materia statutes and at any rate the same time. and of the nature canvassed.

Hence, even this argument must fail.

We may also usefully refer to a judgment of the Hon'ble Supreme Court in the case of Prabhakaran Nair and Ors. vs. State of Tamil Nadu and Ors. .

In para 14, while summing up the principles as enunciated above, the Hon'ble court has held as under:Â?

â??14. The other submission as noted above was that in most of the Rent Acts, there was provision for reinduction of the tenants but there was no

such provision in case of reconstruction in the Tamil Nadu rent Act.Â In State of Madhya Pradesh v. G. C. Mandawar (1995) 1 SCR 599: (AIR

1954 SC 493), a Constitution Bench of this Court observed that Art. 14 of the Constitution does not authorize the striking down of a law of one State

on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory.Â Nor does it contemplate a law of the

Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of two

enactments.Â The source of authority for the two statutes being different, Art. 14 can have no application it was observed.â??

25 If the power of the State legislature to enact in respect of conduct of election to the Municipalities is not to be disputed, then, even the argument of the learned counsel that the Constitution provides for one vote to one person and therefore, the State legislature cannot provide more than one vote to one person in election of local bodies, is also liable to be turned down.Â The right to vote is a right which flows from a statute and is governed by a statute and it can be curtailed or it can be taken to a higher pedestal by the statutory arrangement. This right to vote not being a constitutional right, but a statutory right and when the statute provides that a person can possess the right to tender more than one vote and elect more than one person in a ward, that does not in any way, violate any constitutional mandate.Â Â The argument of the learned counsel for the petitioner, therefore, deserves to be rejected.

26 The argument of Dr.Ambedkar is that by making a provision for multiple constituency ward, the democratic principle of 'One Man One Vote' is defeated. As far as Indian scenario is concerned, whenever a statute required selection of persons to be made by popular election to perform governmental functions, whether at Union or State or local level, each vote must have an equal value and when the members of such elected bodies are chosen from separate constituencies, each constituency must be established on a basis which will ensure, as far as practicable that equal number of constituents can vote for equal number of representatives.Â This Rule is deeply entrenched in our election jurisprudence and any deviation therefrom must be zealously guarded.Â Â The question involved in this petition is whether by prescribing multimember wards in municipal elections which elect multiple councillors, would this principle be breached.Â The principle of One man one vote, would convey that in every election, no matter whatever is the statutory scheme, each voter must cast vote in favour of only one candidate.Â As long as eligible voter is allowed to cast his vote and value of such vote, is no more or less than the value of other voter, the principle enshrined stands sufficiently safeguarded.Â The principle has its roots in the value of the vote and recognized the right to vote without any discrimination of caste, sex, creed or religion.Â The principle â??One man one voteâ? need not imply a rigid construction to restrict and convey that every citizen must vote once for a single candidate, but it must

convey a broader conspectus i.e. that each vote will have equal weightage. As far as the Indian scenario is concerned, "One man one vote" principle is applicable in number of situations. For election to the members of State legislature or house of people, every adult citizen who is otherwise qualified to vote, cast a vote in favour of one single candidate who gets elected by securing the maximum number of votes as against the other candidate. As far as Rajya Sabha is concerned and also the council of States, a method of single transferable vote is adopted where one candidate makes multiple choices and depending upon the quotient required for getting elected, the counting takes place so as to ensure that the single largest party in the assembly does not secure all the seats by mere majority. Thus, the principle of One man one vote, cannot be superficially applied to mean a single vote for a single candidate since it is within the legislative competence of the State Legislature in light of Entry 5 of List II to make laws concerning local government such as constitution and powers of the municipal corporations and other local authorities for self government. Article 243ZA, sub-clause(2) empowers the Legislature of a State to make law, making a provision for all matters relating to, or in connection with, elections to the Municipalities. By amending Act No.9 of 2017, the Legislature has exercised its power and introduced the system of multi-member ward in a municipal council and the municipal corporation.

27 As far as the argument of the learned counsel in relation to violation of principle of 'One man, one vote and one value' is concerned, it has also been dealt with by the Division Bench of this Court in WP No.3474 of 2016, Ambedkarite party of India vs. State of Maharashtra and the said argument was negated in para 12 and 13 in the following words :

12 Insofar as the second argument regarding the impugned Ordinance violating the principle of 'One Man One Vote and One Value' is concerned, in our considered view, the same is also without substance. If a particular ward is to elect five Councillors, then a person from the said ward will have to vote for different five persons contesting from the said ward. It is not as if, that the voter would be entitled to cast all his five votes in favour of one particular candidate. Had this been the position, then certainly the petitioner would have been justified in saying that the principle of 'One Man One Vote and One Value, is adversely affected. However, the learned counsel

fairly conceded that, that is not the position.

13 Insofar as the principle of 'One Man One Vote and One Value' is concerned, it would further be relevant to refer to the following observations of

Their Lordships of the Apex Court in the case of R.C. Poudyal (supra)

“The principle of one man, one vote envisages that there should be parity in the value of votes of electors”

28 In light of the aforesaid discussion, we do not agree with the submissions of the learned counsel for the petitioner that the principle of 'One Person

One Vote', which is a fundamental premise of democratic system is so inflexible, that even the legislature is competent to enact and when its

competency is not in question, still, it must be held to be so sacrosanct, though it do not violate any of the constitutional provision. As far as the

political equations are concerned and on which Dr.Ambedkar has harped upon repeatedly during the course of his arguments, do not impress us to

intervene at this stage as these considerations will have to be fought and sought in some different manner and surely not by invoking the writ

jurisdiction of this Court by assailing the impugned amending Act.

29 As far as the grievance of the petitioner in regards the provision introduced in the Maharashtra Municipal Nagar Panchayat and Industrial

Townships Act by inserting Section 51A which introduces a provision for direct election of President is concerned, since we have already

expressed an opinion that the State Legislature is competent to enact a law as regards the manner of election and since Article 243R clause 2(b)

permits the legislature to enact a law providing the manner of election of the Chairperson of the Municipality and the legislature has exercised such a

power, we do not deem appropriate to interfere in the same unless and until it suffers from arbitrariness. The Division Bench of this Court in

case of Ambedkarite Party of India Vs. State of Maharashtra & ors (supra) has dealt with the issue and concluded the same in the following words :

“Insofar as the third challenge regarding direct election of the Chairperson of a Municipality, it will be relevant to note that under Article 243 R

clause 2 (b) of the Constitution of India, it is for the Legislature of a State to enact law providing for the manner of the elections of the Chairperson of

the Municipality. It can thus be seen that the Constitution of India has itself it to the wisdom of Legislature to provide for the manner of election of

Chairperson of the Municipality. Unless there is any provision under the Constitution which prohibits election of the President of Municipal

Council by direct electorate, the statutory provision cannot be held to be unconstitutional. Learned counsel has not been in a position to point out to

us any provision in the Constitution which prohibits direct election of the President of Municipal Council??.

30 For the reasons aforesaid, we do not find merit in the submissions of the learned counsel for the petitioner and his challenge to the validity of the

Maharashtra Act No. IX of 2017, thereby amending the provisions of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships

Act of 1965 and the Maharashtra Municipal Corporation Act. and the petition deserves a dismissal for the reasons recorded above and it is

accordingly dismissed.