

(1995) 11 AHC CK 0074

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 29614, 29061, 28447 and 27300 of 1995

Mukesh Ram Chandani and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-11-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 143ZD, 15, 226, 243
Representation of the People Act, 1951 — Section 100, 100(1), 82
Uttar Pradesh Mahapalika Adhiniyam, 1994 — Section 2(51)
Uttar Pradesh Municipal Corporation (Reservation and Allotment of Seats) Act, 1994 — Section 7
Uttar Pradesh Municipal Corporation (Reservation and Allotment of Seats) Rules, 1994 — Rule 4(1), 4(2), 5, 5(1)
Uttar Pradesh Municipalities (Reservation and Allotment of Seats and Officers) Rules, 1994 — Rule 5

Citation : AIR 1996 All 219 : (1996) 1 AWC 153 : (1995) 3 UPLBEC 2006

Hon'ble Judges : U.P. Singh, J;I.M. Quddisi, J

Bench : Division Bench

Advocate : Navin Sinha and V.B.S. Negi, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Anugrah Narain Singh and Another Vs. State of U.P. and Others, (1996) 7 AD 477 : (1996) 8 JT 733 : (1996) 7 SCALE 56 : (1996) 6 SCC 303 : (1996) 5 SCR 719 Supp

U.P. Singh, J.—At the very threshold, the common question raised in all these petitions is as to whether in terms of Article 243ZG of the Constitution there is complete and absolute bar in considering any matter relating to Municipal election on any ground whatsoever after the publication of the notification for holding Municipal election.

The provisions contained in Article 243ZG may be noticed which reads:

"243 ZG. Notwithstanding anything in this Constitution, --

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made Article 243ZG shall not be called in question in any Court;

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

Considering the importance of the matter, when the petitions were taken up for hearing, several interveners, who were interested in the Municipal elections, filed petitions for intervention and they were allowed to intervene and were fully heard in the matter for number of days.

2. These ten petitioners in this main petition and others in the connected writ petitions have questioned the fairness of the action of the authorities concerned in publication of the notification dated 10th October, 1995 and 13th October, 1995 contained in Annexures 6 & 7 of the writ petition in pursuance of which they are proceeding to hold and conduct the election of the Municipal Corporations, which are in fact yet to come into existence in the manner provided by the 74th Amendment of the Constitution. In this main petition the petitioners belong to the districts of Kanpur, Bareilly, Lucknow, Gorakhpur, Ghaziabad Agra, Varanasi, Aligarh, Moradabad and Meerut. In the other connected Writ Petitions they belong to Varanasi and Bhadohi.

3. The State Government as also the Election Commission have filed their counter-affidavits and the petitions have been filed by the interveners. On one hand the respondents are contending that after the publication of the Notification calling the Municipal election Article 243ZG operates as a complete bar and, therefore, even this Court is not competent under Article 226 of the Constitution to entertain these petitions, and on the other hand, the petitioners, who are willing to participate in the ensuing election are crying hoarse and contending that the contemplated so called election is a complete farce and the action of respondents and its Authorities concerned has shaken the confidence of the people at large when the constitutional mandates as provided in Part IX A of the Constitution introduced by 74th Amendment has been thrown to winds. Arbitrariness in the Action of the then Government is writ large on the fact of the record itself, such being the situation, can this provision contained in Article 243ZG treated as Great Wall of China setting up an absolute bar so impregnable that it can not be by-passed even by Article 226. This in a sense, is the key question that governs the fate of these petitions.

4. For the working of the electoral machinery and understanding of the powers and duties vested in the functionaries constituting the infra-structure it is essential to sketch the ambit and import of Article 243 in its totality as contained in Part IX A of the Constitution. Article 243ZG halts the judicial intervention provided the act possesses the pre-requisite of "election" in its semantic sweep.

That is to say, immunity is conferred only if the act impeached is done for the apparent object of furthering a free and fair election and the protective armour drops down if the act challenged is either unrelated to or thwarts or taints the course of the election.

5. A free and fair election based on universal adult franchise is the basic: the regulatory procedures vis-a-vis the repositories of functions and the distribution of legislative, executive and judicative roles in the total scheme, directed towards the holding of free elections are the specifics. Before, an election machinery can be brought into operation, there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made.

6. In the case of Indira Gandhi, AIR 1975 SC 2299, Mathew, J. has observed (Paras 337 -- 338 of AIR):

"In the opinion of some of the Judges constituting the majority in Bharti's Case AIR 1973 SC 1461, rule of law is a basic structure of the Constitution apart from democracy.

The Rule of law postulates the pervasiveness of the spirit of law throughout the whole range of Government in the sense of excluding arbitrary official action in any sphere."

Lord Denning's words are instructive:

"Law does not stand still. It moves continually. Once this is recognised, then the task of the judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time, must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect --thinking of the structure as a whole building for society a system of law which is strong, durable and just. It is on his work that civilised society itself depends".

7. When a high functionary is vested with wide powers the law expects him to act fairly and legally, Part IX A of the Constitution comprising of Articles 243P to 243ZG is geared to the accomplishment of free and fair election expeditiously. As held in Virendra, AIR 1957 SC 896 discretion vested in a high functionary may be reasonably trusted to be used properly, not perversely. If it is misused, certainly the Court has power to strike down the act. This is well established and does not need further case law confirmation. It is useful to remember the warning of Chandrachud, J. at page 2965 in the case of Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, ;

"But the electorate lives in the hope that a sacred power will not so flagrantly be abused and the moving finger of history warns of the consequences that inevitably flow when absolute power has corrupted absolutely. The fear of perversion is no test of power."

8. In this background let us examine if the act impeached in the present petitions has been done for the apparent object of furthering a free and fair election or has it thwarted or tainted the course of election. This consideration has an important bearing on the question as to whether immunity conferred by Article 243ZG and relied vehemently by the respondents including the Election Commission is like the Great Wall of China, so impregnable that it cannot be by passed even by Article 226.

9. The petitioners have not pleaded for staying the election nor have they argued as such but their anxiety and effort was to demonstrate the unfairness in action culminating in thwarting the constitutional mandates and throwing the laudable objects to words and hold the Municipal election in the way they want and not what the law commands them to do.

10. The facts presented in the petition are now to be noticed: the petitioners are the residents of different Nagar Nigams. Their names have been duly entered as voters in the electoral roll of their respective Wards and all the respective Municipal areas and they are keen to contest the election for the post of Members and also the office of the Chairperson in the Nagar Nigam. However, they have become ineligible on account of allocation and reservation of Wards and the Municipal areas from which they want to contest.

11. The earst while Nagar Mahapalika were established under the U. P. Nagar Mahapalika Adhiniyam, 1959. The Jast election in the said Nagar Mahapalika was held in or about July 1989. The Constitution, (74th Amendment) Act, 1992 by which Part IX A was inserted in the Constitution of India, made vital provisions for strengthening of the local self Government in the country. These included provisions relating to restructuring of Municipalities and conferred upon them such powers as to enable them to function as Institution of the Local Self Government which included the powers specifically mentioned in Schedule 12th appended to the Constitution (which term includes Municipal Corporations), reservation of seats for the Scheduled caste and Scheduled Tribes and reservation for women, appointment of State Election Commission etc. Article 243-T(6) also laid down nothing in Part IX A of Constitution shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chair-person in the Municipalities in favour of backward class of citizens.

12. Consequent upon the 74th Amendment of the Constitution, various amendments were introduced in the Nagar Mahap-palika Adhiniyam, 1959 to bring it to accord with the constitutional amendment. The name and the title of the U.P. Nagar Mahapalika Adhiniyam, 1959 was changed to U.P. Municipal Corporation Act, 1959 (hereinafter referred to as the Act.)

13. Part IX A inserted in the Constitution by 74th Amendment Act of 1992, enforced with effect from 31st May, 1994 envisages the constitution of Municipality as an institution of Local X Self Government, under Article 243 Q

according to which, there shall be constituted in every State "a Municipal Corporation" for a larger urban area, in accordance with the provisions of Part IX A. According to Clause (d) of Article 243 P, Municipal area means, the territorial area of a Municipality, as notified by the Governor. Furthermore, according to clause (d), of Article 243 P the Metropolitan area means, an area having a population of ten lakhs or more comprised in one or more districts and consisting of two or more Municipalities or Panchayat or contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of the said Part IX A of the Constitution.

14. Article 243 Q envisages the constitution of Nagar Panchayats, Municipal councils and Municipal Corporation, as the Urban local bodies and the same are defined respectively as a transitional area, a smaller urban area or a larger urban area which may be declared and notified having regard to the population of the area, the density of the population, the revenue generated for local administration, the percentage of employment, in the non-agricultural activities, the economic importance or such other factors, as may be deemed fit.

15. The provisions for Metropolitan Planning Committee are enshrined in Article 143ZD which provides that the legislature of a State may by law make provision with respect to the composition of the Metropolitan Planning Committee. The manner in which the seats in such committees shall be filled up as well as the representation in such committee, the functions relating to planning and co-ordination and the manner in which the Chair person of such committees shall be chosen (sic). It is evident that such a committee was necessarily required to have been constituted no sooner than the U.P. Urban Local Self Government Laws (Amendment) Act, 1994 was enforced w.e.f. 30th May 1994.

16. The controversy includes the process of delimitation of the constituencies as made after the commencement of the U.P. Act 12 of 1994 by which the U.P. Nagar Mahapalika Adhiniyam was amended and the reservations made in furtherance thereof and the allocation of reserve seats in the eleven Municipal areas in the State of Uttar Pradesh namely, Allahabad, Agra, Aligarh, Bareilly, Gorakhpur, Ghaziabad, Kanpur, Lucknow, Moradabad, Meerut and Varanasi. These Municipal areas, after the Amendment of 1994 are known as Nagar Nigams.

17. It is worth considering that the 12th Schedule to the Constitution since inserted by the Amending Act of 1992 provides for eighteen subjects which are liable to be devolved upon the urban local bodies in accordance with Article 243 W, which lays down that subject to the provisions of the Constitution, the legislature of a State may by law endow the Municipality with such powers and Authority as may be necessary to enable them to function as "institution" of the Self Government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities subject to such conditions as may be specified therein.

18. Section 6Z of the Adhiniyam provides that besides nominated members the Corporation shall consists of Sabhasad, whose number shall be such, as may be determined by the State Government and which shall not be less than 60 and not more than 110.

19. Section 31 of the Adhiniyam provides that for the purposes of elections of Sabha-sads, city shall be divided into territorial constituencies to be known as Wards in the manner as provided in Section 32 and for each Ward there shall be a separate electoral roll. Each Ward is to be represented by one Sabhasad.

20. Section 32 of the Adhiniyam lays down the manner and guidelines by which the city is to be divided into territorial constituencies or Wards with population being the sole guiding factor.

21. Section 32 and Section 33 of the Adhiniyam provides for delimitation of Wards and alterations and amendment thereof.

22. Section 7 of the Adhiniyam provides for the reservation of seats. It enable the State Government to provide for reservation of seats in favour of the Scheduled Caste, Scheduled tribes, backward class and woman candidates both from reserved categories as well as from general categories.

23. In accordance with the provisions contained in Section 7 read with Section 540 of the Adhiniyam, the State Government frames rules which were initially called as U.P. Municipal Corporation (Reservation and Allotment of Seats) Rules 1994. These Ruels were subsequently amended and came to be known as U.P. Municipalities (Reservation & Allotment of Seats and Offices).

24. While Section 7 of the Adhiniyam, as amended by Oridinance No. 15 of 1995 provides for the reservation of seats in favour of the scheduled caste, scheduled tribes and backward classes in the Municipal area, Rule 5 of the Rule of 1995 provides for the manner of allotment, reserved and non-reserved category of seats by laying down the manner in which the wards are to be arranged. That being on population wise basis of the relevant class in the descending order.

25. Section 7 of the Adhiniyam and Rule 5 of the Rules, as substituted by the U.P. Municipal Corporation (Reservation & Allotment of Seats) (IInd Amendment) Rules of 1995 are relevant to be quoted for the purposes of the present petition.

"Section 7 of the Adhiniyam as amended by Ordinance No. 15 of 1995 -- Reservation of Seats in every Corporation -

(1) In every Corporation, Seats shall be reserved for the Scheduled castes, the Scheduled Tribes and the Backward Classes" and the number of seats so reserved shall as nearly as may be, bear the same proportion to the total number of seats to be filled by direct election in the Corporation, as the population of the Scheduled caste in the Municipal area or of the Scheduled Tribes in the Municipal area or of Backward Classes in the Municipal area bears to the total population of such area, and such seats may be allotted by rotation to

different wards in a Corporation in such order as may be prescribed by rules.

Provided that the reservation for the backward classes shall not exceed twenty seven per cent of the total number of seats in a Corporation:

Provided further that if the figures of population of the backward classes are not available, their population may be determined by carrying out a survey in the manner prescribed by rules."

(3) Not less than one-third of the seats reserved under sub-sec. (1) shall be reserved for the women belonging to the Scheduled Castes, the Scheduled Tribes or the backward classes, as the case may be.

(4) Not less than one-third of the total number of seats to be filled by direct election in a Corporation, including the number of seats reserved under sub-sec. (3), shall be reserved for women and such seats may be allotted by rotation to different wards in the Corporation in such order as may be prescribed by rules.

(5) The Offices of the Nagar Pramukhs of the Corporations in the State shall be reserved for the Scheduled Castes, the Scheduled Tribes and the Backward Classes and women in such manner as may be prescribed by rules.

(6) The reservation of the seats and the offices under this section for the Scheduled Castes and the Scheduled Tribes shall cease to have effect on the expiry of the period specified in Art. 334 of the Constitution.

Explanation -- It is clarified that nothing in this section shall prevent the persons belonging to the Scheduled Castes, the Scheduled Tribes, the Backward Classes and the women from contesting elections to unreserved seats and offices."

Rule 5 of the Rules provides for allotment of seats which reads as under:

(1) Subject to the provisions of other sub-rules, the number of seats determined under Rule 4 shall be allotted to different wards in a Municipality in the manner hereinafter provides:

(a) The wards of the municipality shall be first arranged. In accordance with the population of the Scheduled Castes in the Municipal area in descending order and the number of seats determined under sub-rule(1) of Rule 4 for the Scheduled Castes, including the number of seats determined under sub-rule (2) of the said rule for the women belonging to the Scheduled Castes, shall be allotted to such wards which have the largest population of the Scheduled Castes in the municipal area:

Provided that the number of seats determined for the women belonging to the Scheduled Castes shall be first allotted to such wards;

(b) the wards, excluding those to which seats have been allotted under clause (a), shall then be arranged in accordance with the population of the Scheduled Tribes in the Municipal area in descending order and the number of seats determined under sub-rule (1) of Rule 4 for the Scheduled Tribes, including the

number of seats determined under sub-rule (2) of the said rule for the women belonging to the Scheduled Tribes, shall be allotted to such wards which have the largest population of the Scheduled Tribes in the Municipal area:

Provided that the number of seats determined for the women belonging to the Scheduled Tribes shall be first allotted to such wards:

(c) the wards, excluding those to which seats have been allotted under clause (a) and (b) shall then be arranged in accordance with the population of the backward classes in the Municipal area in descending order and the number of seats determined under sub-rule (1) of Rule 4 for the Backward Classes, including the number of seats, determined under sub-rule (2) of the said Rule for the women belonging to the Backward Classes, shall be allotted to such wards which have the largest population of the backward classes in the municipal area;

Provided that the number of seats determined for women belonging to the backward classes shall be first allotted to such wards;

(d) the wards, excluding those to which seats have been allotted under clauses (a), (b) and (c) shall then be arranged in accordance with the population of wards in the Municipal area in descending order and the number of seats determined under sub-rule (3) of Rule 4 for the women, excluding the number, of seats determined under sub-rule (2) of the said Rule for the women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes, shall be allotted to such first and alternate wards.

Explanation: For the purposes of clauses (a), (b) or (c) of this sub-rule, the arrangement of wards in descending order shall be done in the manner that the ward having the largest population of the Scheduled Castes, the Scheduled Tribes or the Backward Classes, as the case may be, in the municipal area shall be placed first and the ward having lesser population of such castes, tribes or the classes than the first shall be placed next and so on and for the purposes of clause (d), the wards shall be arranged in the like manner keeping in view the population of the wards in the Municipal area."

26. Thus, a bare perusal of the above provisions quoted above, and the provisions of the Constitution contained in Part IX A would show that for the entire process of the Self-Government in the form of Municipalities or Municipal Corporation, the population has been made the sole guiding factor. The expression "population" has been defined not only in S. 2(53-A) of the Adhiniyam but the same has also been defined in Art. 243P(g) of the Constitution and reads as follows:

""Population" means -- the population as ascertained at the last preceding census at which the relevant figures have been published."

27. The undisputed fact is that in the entire State of Uttar Pradesh, the last census was carried in the year 1991 and the only published figures available are that of the census of 1991.

28. In Writ Petitions 29614 of 1995 and 29061 of 1995, it was contended that consequent upon the Amendment made in the Adhiniyam in the year 1994, a separate draft "Delimitation Order" were published for each of the eleven Municipal areas in the State of Uttar Pradesh. To each of them objections were filed. However, ultimately the State Government called notification to be issued under the provisions of S. 32(3) of the Adhiniyam purporting to contain the final list of delimitation of wards.

29. In that notification the State Government also indicating the allocation of seats reserved for scheduled castes, scheduled tribes, backward classes, as also the women candidates.

The copies of the delimitation notification for some of the Municipal areas have been annexed and collectively marked as Annexure-1 to the writ petition.

30. Mr. S. N. Varma and Mr. K. N, Tripathi, learned senior counsel appearing for the petitioners have pointed out that by the said Delimitation Orders as notified in 1995, number of wards in all the Municipal areas have been increased so as to bring the number of wards in accordance with the provisions of S. 6 of the Adhiniyam.

Name of Municipal area.

Wards as existing at the time of census of 1991 and prior thereto when the last elections took place.

Number of wards as per the last Delimitation Order of 1995 done consequent to the Constitution (74th Amendment) Act of 1992.

1

2

3

Kanpur

50

110

Lucknow

40

110

Varanasi

30

80

Agra

30

70

Allahabad

40

70

Meerut

30

60

Bareilly

30

60

Ghaziabad

30

60

Gorakhpur

30

60

Aligarh

30

60

Moradabad

30

60

31. It was contended that the population figures as ascertained in the census of 1991, which is the only published figure available, no census has been carried out nor any figures have been published after 1991. In the census of 1991 the population in the entire State including the Municipal Corporation and the Municipal areas were carried out and determined on wardwise basis as they existed at that point of time and that no locality-mohallawise census was carried out. The consequence of carving out and increasing the number of ward is that not only the locality has been reorganised but some of them have been splitted in a manner that part of the locality-mohalla falls in one ward while the other part has been included in other ward. The census of 1991 contains the figures of

population wardwise and not localitywise i.e. mohallawise or part of the locality or mohalla. In other words, census of wards as they existed earlier, was not carried out on the basis of such territorial divisions that each of those territories would now be put separately and completely for making the new territorial constituencies i.e. wards as notified in 1995. Except for the census of 1991 no population survey has been carried on by any authority which may provide a guiding factor for determination of population for either the general category or that of the scheduled castes.

32. There was no material before the State Government which could provide the legal basis for the determination of wardwise population and which may enable the State Government to provide for allocation of reserve seats. Without making any determination of real wardwise population either by the actual survey or on any other basis pertaining to 1991 census, the State Government has proceeded with the delimitation of wards and the allocation of reserve seats on the basis of imaginative and hypothetical figures for which there does not exist any authoritative date in any records. In other words, there does not exist any basis for putting the figures of population in each of the newly carved out wards, nor is there any basis to put the figures of the population of scheduled castes in any of the above wards.

33. The delimitation of wards and the allocation of reserve seats has been done by the State Government without making any wardwise survey of general population and without making any determination of the wardwise population of scheduled castes. The State Government while increasing the number of wards has proceeded to carve out wards merely by doing pen exercise on the map and not by taking into consideration the population of locality or pan of the locality constituting each of the wards. For the delimitation of wards as published by the notifications in 1995, the population figures which were sent by the District Magistrates of the respective Municipal areas to the State Government were only those of the census of 1991. The wardwise population of wards as submitted by the District Magistrate only show imaginative and random figures. The reasons being that no determination of population as contemplated by law, according to census of 1991 was possible on the basis of the census carried on wardwise basis for wards as they existed in the year 1991.

34. By way of example, a copy of the extract of the informations sent by the District Magistrate, Allahabad to the State Government and which forms the basis for the Delimitation Order of 1995 as well as for the allocation of the reservation of seats has been annexed with this petition and marked as Annexure-2.

35. The contention raised on behalf of the petitioners that in the census of 19/94 only wardwise population has been determined and no locality-mohallawise population census was carried out, stands substantiated from the bare perusal of the census report of 1991 for the Municipal areas. A photostat copy of the same has been annexed to the petition collectively marked as Annexure-3.

36. Referring to the extract of the census report annexed above, the petitioners have pointed out the wards as they then existed at the time of last census. The wards mentioned therein constituted the entire Municipal areas in question. According to the information of the petitioners, each of the aforesaid constituent areas, known as wards, included locality (mohalla) by different descriptions and names. In support of the above submission, it has been pointed out that the constituency Phaphamau in Allahabad at serial No. 20 included localities namely (Phaphamau Bazar, Phaphamau Gram, Shivkuti, Chilla, Silekhana, Mehdauri, Rasoolabad and Teliarganj etc.). The present Phaphamau ward which exists at serial No. 22 in the notification of 7th April, 1995, there are only four mohalla locality out of nine or more localities.

37. There are no published figures of any of the mohalla or locality which have been included in the aforesaid wards as a consequence of delimitation. The published figures of the population are only of erstwhile wards (which were in existence at the time of census of 1991). The census report of 1991 does not contain figures of population localitywise i.e. constituent areawise. In other words, there is no break-up of figures of population of the constituent area pertaining to the constituent locality.

38. For example in the case of Allahabad Municipal area out of 70 wards which have now been carried out from the same old municipal areas of Allahabad, the following wards did not exist in the census of 1991 and they are as follows:

S.No.

Name of new wards

Ward. No.

1.

Mundera

1

2.

Malak Raj

2

3.

Govindpur

3

4.

Harwara

4

5.

Rajrooppur

5

6.

Nihalpur

6

7.

Bhardwaj Puram

62

8.

Elangaoj

21

9.

Sultanpur Bhawa

53

10.

Rani Mandi

59

11.

Karela Bagh

12

12.

Nairn

25

13.

Kareli

31

14.

Pura Dakhu

52

15.

Pura Padain

23

16.

Muirabad

27

17.

Sarai Gadi

50

18.

Meerganj

70

19.

Pura Dalel

65

20.

Salori

28

21.

Himmatganj

63

22.

Tulsipur

48

23.

Dairashah Ajmai

67.

24.

New Katra

60

25.

Bakhtiyari

45

26.

Umai jiwa

30

27.

Shahrarabad

35

28.

Darbhangra Kaushal

38

29.

Teliarganj

34

30.

Beniganj

49

31.

Azad Square

41

32.

Chak Bhatia

32

33.

Chak Raghunath

35

34.

Chaukhandi

57

35.

Rambagh

39

39. That although, in the present seventy wards as notified on 7th April, 1995, Mohalla-localities of each of them have been described but the similar description never existed in the Census of 1991 even in respect of such constituent areas (wards) which are to be found by the same name in the census report of 1991.

40. In so far as, the allotment of seats for reserved as well as unreserved categories of candidates is concerned, according to Rule 5 of 1995 Rules, the same is to be made on the-basis of population of wards.

41. A bare perusal of Rule 5 of 1995 would show that while clauses (a), (b) and (c) of Rule 5(1) provides for reservation of seats on the basis of the population of reserve categories of person, clause (d) of the said Rule provides for the allocation of non-reserve seats for general categories and seat reserved for women. In terms of Rule 5(1)(d) of the Rules, the remaining seats after allocation under clauses (a) to (c) are required to be arranged in accordance with the population of those wards in the descending order and thereafter they have to be located alternatively as unreserved and for female candidates. Thus, in the absence of their being a determination of the population of newly carved out wards it is not legally possible to reserve seats under any category.

42. In so far as the backward classes are concerned, the undisputed fact is that a rapid survey was got done in the year 1994-95 while the delimitation of the wards was in process. That no such survey has been got done for the scheduled castes population. No material on the record in possession of the respondents has been placed on the basis of which wardwise population of scheduled castes can be determined nor has been so determined. Likewise, no census has been carried out for the determination of the population of the wards as carved out by the notifications in 1995.

43. That wardwise determination of population is required not only for the arrangement of the wards in the descending order of population, as required by Rule 5(1)(d) but also for allocation of reserved seats for Scheduled Castes, Scheduled Tribes and Backward Classes. Thus, unless and until wardwise population of Scheduled Castes and Scheduled Tribes as also the Backward Classes is determined separately, it was not possible to comply with the mandatory requirement of law as contained in R. 5(1)(a) to (c) of 1955 Rules.

44. The communication dated 11th August, 1994 annexed as Annexure-4 to the writ petition demonstrates that in fact what was made available to the State Government by the District Magistrate was total population figures based on census of 1991 and that too wardwise and not localitywise or mohallawise. It is apparent from the communication dated 11th August, 1994 issued by the State Government to all the District Magistrates of Uttar Pradesh.

45. Rule 5 of the Rules provided for the allocation of reserved seats for the Scheduled Castes on the basis of the population of the Scheduled Castes in the wards. But in the present case, while the allocating seats have been reserved for Scheduled Castes on the basis of the population of Scheduled Castes in those wards, it has been done arbitrarily as no basis existed for arranging the wards for that purpose. There is no real determination of population of Scheduled Castes from the record of census of 1991 or from any other relevant basis.

46. In so far as the reservation of the backward classes is concerned, the State Government has not yet laid down any valid criteria for the identification and exclusion of the creamy layer. Section 2(51-A) defines the backward, "to mean backward classes of the citizens specified in Schedule 1 of the U.P. Public Service (Reservation of Scheduled Castes and Scheduled Tribes and other Backward Classes) Act of 1974. In the said Act, for identifying the creamy layer in backward classes Schedule II was appended. However, Schedule II of the Act providing for the identification of the creamy layer has been struck down by Hon"ble Supreme Court as ultra vires and illegal in the case of Ashoka Kumar Thakur Vs. State of Bihar and others, .

47. Thus, it is contended that once the criterion laid down for the creamy layer has been struck down and fresh norms have not yet been laid down, it was not legally possible to provide for any reservation for any class of persons on the basis of their social and educational backwardness. In the absence of there being any norm for identification : of creamy layer, even the rapid survey of the Backward Classes carried out by the State Government on the basis of which the wards have been reserved for them stands vitiated, inasmuch as, the creamy layer which ought to have been excluded while making the survey of the Backward Classes has not been so excluded.

48. Annexure 5 to the writ petition is a photocopy of the news item published in the daily newspaper "pioneer" dated 15th October, 1995 stating that a formula for identification of the creamy layer has been evolved in the cabinet meeting of the State Government held on 13th October, 1995. But, this decision is yet to take the shape of Ordinance. These norms have not yet been published nor are the contents thereof in the knowledge of the public at large except to the extent to which they are published in the newspaper. It may be noticed that the said norm has been prescribed after the issuance of the notification of 11th October, 1995 as also 18th October, 1995 whereby it has been declared that the election shall be held in all the Municipal areas of Uttar Pradesh within a certain time specified therein.

49. Thus, the creamy layer as prescribed for the identification and exclusion of persons from the Backward Classes is of no consequence, since it has not yet been enforced nor it could be so enforced because of the manner and the deliberate mechanism of those in power. The nominations are required to be filed by 19th October, 1995. During the intervening period neither it was possible to enforce the said norms nor it was possible by the candidates to abide by the

same. The consequence being that all those forming creamy layer of the Backward Classes shall get elected as Members in the Municipal area. Even otherwise, the laying down of describing the criteria for identification of creamy layer after the publication of the notification for holding of election is futile in view of the facts that reservation for Backward Classes is to be done on the basis of the Backward Classes in any Municipal, area and the proportion on which it exists to the total population.

50. Article 243T(6) of the Constitution enables the State legislature to provide for representation of Backward Classes but it does not make it mandatory for the State legislature to do so. On the contrary, it is apparent from the scheme of the Constitution (74th Amendment) Act of 1992 that while reservation for Scheduled Castes and Scheduled Tribes is a constitutional mandate, in so far as the Backward Classes are concerned, the same has been left to the discretion of the State legislature to provide for the reservation in favour of the Backward Classes, if it is so expedient in the given circumstances of any State.

51. According to the U. P. Reservation of Scheduled Castes. Scheduled Tribes and Backward Classes Act; 1994, a flat rate of reservation of 27% was prescribed in the services of the State as well as the Urban Rural Bodies and this flat rate reservation of 27% was provided in order to Section 7 of the Adhiniyam by the Amendment Act, of 1994. Accordingly, the provisions were made in the U.P. Municipal Corporation (Reservation and Allotment of Seats and Offices) Rules, 1994; for the reservation being provided to the members of the Backward Classes at a flat rate of 27%.

52. The question for reservation for the Backward Classes raised in various writ petitions before this Court was decided by this Court in the case of Pradhan Sangh Khetra Samiti v. State of U. P. (1994) 3 UPLBEC 2051. The said judgment was modified by Hon"ble Supreme Court in which the Supreme Court ordered for survey of Backward Classes in Panchayat and the Backward Classes were given representation according to the ratio of their population specially to a maximum of 27%.

53. In pursuance of the aforementioned provisions made for the Gram Panchayat, U. P. Ordinance No. 28 of 1995 amended Section 7 of the Act providing for the representation of Backward Classes in the ratio of their population specially to a maximum of 27% and the survey of the Backward Classes to be conducted in accordance with the Rules to be enforced on this subject. However, no Rules were framed and the survey since ordered in October, 1994 having unduly prolonged was completed in March, 1995.

54. The survey was based upon the existing population of Backward Classes and it might be in February, 1995 as against the total population and the population of the Scheduled Castes and Scheduled Tribes recorded in 1991. The figures of backward population as per the survey of February, 1995 can never be comparable to the census report of February, 1991. The reason being that

against the growth rate of 4.5% in the urban area between 1971 to 1981, such a growth rate was 3.42% during the 1981 to 1991 and, therefore, the survey rules of Backward Classes drawn in February, 1995 within three fold increase in the urban population at the growth classes reported in March, 1995 is on the higher side as compared to the total population and the population of Scheduled Castes as recorded in February, 1991.

55. Thus, as a consequence of the population figures of 1995 being taken as the base figure for Backward Classes, an anomaly has crept in, in so far as reservation of seats, are concerned, as well as the allocation of wards. This anomaly is more amply borne out from the chart annexed and marked as Annexure 8 to the writ petition. The chart shows that at least 16 seats have been reserved for Backward Classes in excess of what they are entitled to.

56. Therefore, the increase of backward seats is not only violative of the mandate of Article 243P(g) providing for the basis of the population being the census report of 1991 and the same being a flagrant violation of Articles 14 to 15 of the Constitution, the same is illustrative of favour having been extended to the Backward Classes of people under the patronage of the then Samajwadi Party of the Government of Uttar Pradesh. This is discriminatory because the Scheduled Castes have been accorded seats on the basis of their population in the year 1991 while the Backward Classes have been accorded on the basis of their population recorded in February, 1995 which includes the growth of their population at the average rate of 3.4% per annual.

57. These are the examples on the basis of which the petitioners have contended that the then Government acted in such a haste that it has not even bothered to complete the entire exercise even to determination of actual population and thus the entire exercise stands vitiated being violative due process of law and ultra vires of the Constitution.

58. In reply to these averments pertaining to the reservation for the Backward Classes and exclusion of the creamy layer, the return filed by the State Government in paragraph 31 have thus stated:

"In this connection this Hon'ble Court (Lucknow Bench) has since held on 9-95 in the Writ Petition No. of 1995 (sic) the provisions of Article 243-T of the Constitution of India as well as Section 7 of the Act are consistent with clause (iii) of Article 15 of the Constitution and that providing creamy layer of the Backward Classes not having been excluded while providing the reservation for the Backward Classes the principle of exclusion of creamy layer was meant to exclude the public servants from the benefit of reservation who belong to higher income group the principle laid down by the Hon'ble Supreme Court in the case of Indira Sahney pertains to the public Servants only. As the elected candidates hold the office of Zila Panchayats, Municipalities and Corporations without any remunerations or salary, the principle of exclusion of creamy layer on such elected office, will not be available and on this consideration as well, this Hon'ble

Court (Lucknow Bench) dismissed all the 15 writ petitions filed against the delimitation of wards and the reservation and allotment of seats and offices and did not even grant certificate for filing a SLP before the Hon'ble Supreme Court. In the circumstances, the arguments advanced in the paras under reply cannot subsist in the eye of law, for the same suffering from res judicata."

In paragraph 32, the stand taken by the State Government is:

"that the reservation for Backward being within the discretion of the State Government, in accordance with Clause (6) of Article 243(T) of the Constitution, the provisions, having already been made by the State Government for reservation for Backward Classes at 27% in the U. P. Reservation for S.C./S.T./B.C. Classes Act; 1994. On the same analogy, 27% reservations provided in the Act for the Backward Classes in U. P. Act No. 12 of 1994 and the same was amended by U. P. Ordinance No. 28 of 1994, as enacted by U. P. Act No. 26 of 1995 and, therefore, the reservation provided for the , Backward Classes in the ratio of their population required as survey in the municipal area which was conducted up to February, 1994 and no sooner than the results of the survey were available, the delimitation orders were proposed and finalised after duly considering the objections received. No objection, howsoever, was made as regards the population of Backward Classes taken on the basis of population in 1995 as against the Census Figures of 1991."

59. On the question of reservation of seats under Article 243T of the Constitution, and Section 7 of the U. P. Municipal Corporation Act, 1959, Sri K. N. Tripathi, the learned counsel supporting the case of the petitioners contended that such reservation of seats as contemplated under Article 243T read with Section 7 of the Act is to be done on the basis of the proportion which the population of Scheduled Castes, Scheduled Tribes and other Backward Classes bears to the total population of the Municipal area. Referring to Article 243T, it was pointed out that the municipal area has to be divided into territorial constituency which are to be known as wards. Section 32 of the Act casts a duty upon the State Government to divide the municipal area into wards and fix the number of wards to be reserved for Scheduled Castes, Scheduled Tribes and Backward Classes, Rule 5 of the U. P. Municipalities (Reservation and Allotment of Seats and Offices) Rules, 1994, as amended in June, 1995 prescribes the detailed procedure as to which seat will be reserved for which class and which shall remain unreserved. The relevant factor for reservation of the seats is population of Scheduled Castes and Scheduled Tribes and other Backward Classes in different wards. It is the quantum of population of the Scheduled Castes Scheduled Tribes and other Backward Classes which will determine as to which ward is to be reserved for them. For example the ward which has the highest population of Scheduled Castes will be numbered as Ward No. 1. The ward with the next: highest scheduled castes population will be numbered as ward No. 2 and so on. All the wards in a Municipal area are to be numbered on the basis of Scheduled Castes population, even though all wards are not to be

reserved. Thus, the first ward in a Municipal area will be that ward which has the highest population of Scheduled Castes and the last ward will be that which has the lowest Scheduled Castes, population.

60. Therefore, it is contended that the first step is to find out what is the population of Scheduled Castes, Scheduled Tribes and other Backward Classes population, viz. a viz. the total population of the municipal area. After this proportion is worked out, the number of seats, which are to be reserved in accordance with the proportion of population is to be determined. At first, the wards to be reserved for Scheduled Castes are to be identified in proportion of their population to the population of the Municipal area. Out of these wards, the first 1/3rd. Wards for Scheduled Castes will be reserved for Scheduled Castes women. The remaining Scheduled Castes wards will be reserved for Scheduled Castes (men). Thereafter the wards-seats are to be reserved for other Backward Classes, The ward which bear the next serial number after the wards reserved for Scheduled Castes will be reserved for other Backward Classes in accordance with the proportions of their population (but not on the basis of highest population of other Backward Classes). It is to be done to the extent of seats to be reserved for them on proportional basis viz. the entire population of the municipal area. The wards left out after reservation of wards for Scheduled Castes, Scheduled Tribes and other Backward Classes will be unreserved wards.

In support the following table has been produced clarify the position:

Suppose that:

1. There are 100 wards in a Municipal area, each ward having a population of 10,000 approx.
2. Scheduled Caste population is 9% on the basis of 1991 census.
3. Backward Classes population is 18% on the basis of rapid survey carried out up to February, 1994.

Result is that:

1. 9 seats will be reserved for Scheduled Castes. These will be the first 9 wards in the municipal area.
2. Out of these 9 seats, first 3 seats will be reserved for Scheduled Caste Women. These will be first 3 seats in the municipal area. (Reservation seats for women is to the extent of one-third).
3. 18 seats will be reserved for Backward Classes and out of these 6 seats will go to women belonging to Backward Classes.
4. The remaining seats will be unreserved but out of them one-third will be reserved for women.

Table for illustration with imaginary figures

Serial number of wards

Number of total population

Number of S.C. population

Number of O.B.C. population

Reserved for general

(1)

(2) "

(3)

(4)

(5)

1.

(Approx) 10,000

(Approx) 4000

(Approx) 1700

Reserved for S.C. (women).

2.

"

3800

1800

?do?

3.

"

3600

2000

?do-

4.

"

3500

1600

Reserve for S.C.

5,

"

3300

1100

? do?

6.

"

3000

900

? do?

7.

"

2900

1300

-do-

8.

"

2750

1200

-do-

9.

"

2600

2100

? do-

10.

"

2500

700

Reserved for OBC

11.

"

2450

1900

Reserved for OBC (Women)

12-

"

2400

400

?do-

13.

"

2350

1500

Reserved OBC

14.

"

2200

1850

? do?

15.

"

2100

800

? do?

16.

"

2000

750

-do-

17.

"

1900

1150

Reserved for OBC (Women)

IS.

"

1800

1230

?do? ? do?

19.

"

1700

1190

?do? ?do ?

20.

"

1600

600

? do?

21.

"

1550

930

? do?

22.

"

1900

300

-do?

23.

"

1450

790

? do?

24.

"

1450

560

? do ?

25.

"

1350

250

? do?

26.

"

1300

325

? do?

27.

"

1250

775

?do-

28.and onwards up to 100

"

1200

1700

Unreserved but first one : third unreserved seats reserved for general category

women.

Note 1.-- The number of O.B.C. population in wards reserved for Backward Classes is irrelevant.

2. If creamy layer is excluded from the O.B.C. population, then there will be variance in the proportion of OBC population qua the total population and the number of wards/ seats reserved for them will be reduced.

3. The reservation for women in unreserved category will be one-third beginning from that unreserved ward which has the largest general population."

61. In support of their contentions, on the basis of the facts and the charts quoted above, the petitioners have further relied on the statement of the State Government in their counter-affidavit in paragraphs 6 and 7 which may be quoted:

"6. That it is respectfully submitted that the entire constitutional mandates and the and the scheme of the Constitution for holding the elections have been carried out in its letter and spirit and contentions to the contrary cannot with stand the test of law for the facts, circumstances and the legal position stated hereunder:

(a) That Article 243-P to Article 243P inserted in the Constitution through the Constitution (74th Amendment) Act, 1992, in respect of the Constitution of the Municipal Corporation and the manner of their constitution, the formation of committee and the reservation are provided as follows:

(a) Article 243-P(g) lays down that the "population" means the population as ascertained by the last preceding census of which the relevant figures have been published;

(ii) Article 243-Q provides for there being Nagar Panchayat for a transitional area, Municipal Council for a small urban area and a Municipal Corporation for a larger area;

(iii) Article 243-R provides for all seats in a Municipality being filled in by direct election, parliamentarians and the legislators being the ex-officio members and the nomination without right to vote of the persons having special knowledge or experience in Municipal Administration;

(iv) Article 243-A provides for the Constitution of Ward Committee in the Municipalities having a population exceeding three lakhs;

(v) Article 243-T provides for reservation of Scheduled Castes and Scheduled Tribes in proportion to their population in the total population of the Municipal area and also provides for reservation of not less than one third of the total number of seats for the women. It does not prevent the State Legislature from making any provisions for reservation of seats in any municipality or office of chair persons in favour of backward class of citizens. There is no provision

however, for creamy layer in the backward classes.

(vi) Article 243-U provides for duration of Municipalities being five years and in the event of dissolution, the same being reconstituted within six months;

(vii) Article 243-V pertains to the disqualification of members;

(viii) Article 243-W lays down that the Legislature of State may by law endow the Municipalities with such powers and authority as may be necessary to enable them to function as the institution of self-Government including those in relation to the matters listed in the Twelfth Schedule;

(ix) Article 243-Y lays down that the Finance Commission constituted under Article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor as regards the principal for distribution of proceeds of taxes, duties, tolls, and such recommendations being placed before the Legislature;

(x) Article 243-ZA provides for the super- intendence, direction and control of the preparation of electoral rolls for and the conduct of, all elections to the Municipalities by the State Election Commission;

(xi) Article 243ZD and 243ZE provides for the constitution of committees for district planning and metropolitan planning;

(xii) Article 243ZE provides for the existing municipal laws continuing for one year of the commencement of the Constitution (74th Amendment) Act, 1992.

(xiii) Article 243G provides that notwithstanding anything in the Constitution, the validity of law relating to the delimitation of constituencies or the seats to such constituencies made or purporting to be made under Articles 243ZA shall not be called in question in any Court and no election to any Municipality being called in question except by an election petition;

(xiv) Twelfth Schedule provides for 18 subjects which may be endowed to the Municipalities by the State legislature.

7. That it is submitted that almost all the powers and authority enumerated in the Twelfth Schedule exist in the U. P. Municipal Corporation Act, 1959, hereinafter referred to as the Act. The provisions for urban planning including town planning, area given in Chapter XIV of the Act, regulation of the land use and construction of buildings are the subject-matter of Chapter XIII of the Act, planning for economic and social development are the part of Chapter XIV, Roads and bridges are the functions already assigned; water supply is the subject-matter of Chapter XI of the Act, Fire Service is the subject already existing in Section 114 (xxiii) and so on so forth. The other entries of the Twelfth Schedule as were non-existent in the Act have since been incorporated in Section 114 of the Act through U. P. Act No. 12 of 1994 enforced from 30-5-1994. Thus the provisions of the Act in so far as the Twelfth Schedule is concerned, are fully equipped and any contentions to the contrary cannot subsist in the eye of law."

62. In so far as the question raised by the petitioners regarding the principle adopted by the State Govt. in determining the population as envisaged by the Constitution in Part IXA is concerned, it has been pointed out that the statement made by the State government in paragraph 19, "that the wards were carved out on the basis of the population ascertained from 1991 census report which was prepared after undertaking localities and mohallawise census", it has been pointed out that the said statement is wrong and is contrary to their own statement made in paragraph 25 of the counter-affidavit. In fact, the census was carried out ward wise and not locality wise and mohallawise, as stated in paragraph 19. The same becomes obvious when one carefully reads the statement made by the State Government in paragraph 25 of the counter-affidavit and the same may be quoted:

"25. That in reply to the contents of paras 43 to 50 of the writ petition, it is stated that the figures of census report available for the erstwhile wards, while carving out the new wards has been utilised in determining the population of localities included in such, no wards and the new wards have been renamed wherever necessary. As such even though figures of mohalla, localitiwise population were, not published in the census report of 1991, but the figures of erstwhile wards being available, the new wards population could be read just taking into account the figures of population in the census report. The Constitution (7th Amendment) Act, 1992 having come into force after the publication of the Census report of 1991 and the said Amendment Act not providing for any survey to ascertain the population and also providing for the determination of wards based on the population of law preceding census of 1991. The averments as advanced in the para under reply cannot subsist unless and until the same are interpreted in term of the mandates of the Constitution carried out in the Act."

63. These statements amply prove the case of the petitioners that the localitywise or mohallawise population were not published in the census report of 1991.

64. The stand taken by the learned counsel appearing on behalf of the State Election Commission is based on a bald assertion made in the counter-affidavit that everything was done in the proper manner before the notification for holding the election was issued in the present case. The submission on behalf of the Commission was based on perusal and reading of the notification alone and by reading the notification, the Election Commission was satisfied that the notification for general election has been made after Constitutional mandate regarding delimitation and reservation have been carried out.

65. Therefore, the learned counsel for the State Commission could not improve upon the facts stated by the State Government in their counter-affidavit either in the manner of delimitation of the constituencies or reservation or allocation of seats to the Backward Classes and other general classes of persons. The State Commission have accepted the non-compliance of the provisions of amended

Rule 5 and the non-compliance of the requirement of Section 7 and has further proceeded to submit that even if it is proved to have not been followed in relation to Backward Classes, it will only be non-compliance of the provisions of Section 2(51-A) or any part of Section 7 of the Municipal Corporation Adhiniyam but it will not be contravention or non-compliance of any provisions of the Constitution in relation to Backward Class seats. It has further accepted that though rapid survey was made in accordance with the Government notification dated 4-10- 1994 and on the basis of 1991 survey census --it was not made upon 1994 or 1995 population and, therefore, even if it is proved to have been made illegally-incorrectly, it does not amount to non-compliance of any provision of the Constitution. According to it, the number of wards, the name of wards and the territorial limits of wards in first order of delimitation dated 7-4-1995 (Annexure 1 to the writ petition) and the other dated 13-9- 1995 (Annexure 9 to the writ petition) are the same without any change except the change of allotment of reserved seats from and to different wards.

66. In so far as the bar under Article 243ZC is concerned, the learned counsel for the Commission adopted the same contention as raised by the learned counsel appearing for different intervenes, Which we shall presently deal with.

67. The learned counsel appearing for the intervener led by Sri Ravi Kiran Jain, Sri L. P. Naithani and Sri Ravi Kant, referred to the provisions contained in Art. 243ZG which reads:

"243ZG. Notwithstanding anything in this Constitution.-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made Art. 243ZG shall not be called in question in any Courts;

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

68. While interpreting Cl.(a) of Article 243ZG it was contended that the validity of any law, which shall include even notification, Act, the Rules and census etc., relating to delimitation of constituencies or the allotment of seats to such constituencies cannot be challenged on any grounds whatsoever after the notification for holding the election has been issued.

69. According to their contention, in terms of Cl. (b) of Art. 243ZG, no election to any Municipality can be challenged except by election petition presented to such authority and in such manner as provided by law made by the Legislature of the State. In other words, the Municipal election is to be challenged by way of an election petition on the grounds mentioned in S. 71 of the Act, before the authority, which is a District Judge and in the manner provided under S. 71 of the Act.

70. The grounds for declaring an election to be void is provided in S.71 of the Act

and the same may be noticed:

"71. Grounds for declaring an election to be void.-- If the District Judge is of the opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act, or

(b) that any corrupt practice specified in S. 78 has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, or

(c) that any nomination has been improperly rejected, or that the result of the election, in so far as it concerns a returned candidate, has been materially effected-

(i) by the improper acceptances of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of this Act or of any rules or orders made thereunder.

the District Judge shall declare the election of the returned candidate to be void.

71. In support, of the contention reliance has been placed on Art. 329 of the Constitution, which is in the same terms as Art. 243ZG. Therefore, all the decided cases dealing with Art. 329 of the Constitution read with Ss. 82 and 100 of the Representation of the People Act have been relied upon. Starting from the N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, which has dealt with the scope, amplitude, rationale and limitations of Article 329(b), the ratio of the said, case has been consistently followed by the Supreme Court in several rulings through Durga Shanker Mehta AIR 1952 SC 520 and Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, down to Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, , Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , Meghraj AIR 1967 SC 669, Election Commission of India Vs. Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , Election Commission of India Vs. Shivaji and Others, , Laxmi Charan Sen v. A. K. Me. Hasan Uzzaman AIR 1985 SC 1233, Presidential Election Reference AIR 1974 SC 1682 and Indrajit Barua and Others Vs. Election Commission of India and Others, .

72. Since the same ratio enunciated in Ponnuswami's case has been consistently followed in all the subsequent cases, there is no necessity of dealing with the facts of these cases in details and what has been summarised in the case of

Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, may be noticed.

"The factual setting in that case may throw some light on the decision itself. The appellants nomination for election to the Madras Legislative Assembly was rejected by the Returning Officer and so he hurried to the High Court praying for a writ of certiorari to quash the order of rejection, without waiting for the entire elective process to run its full course and, at the end of it, when the results also were declared, to move the election Tribunal for setting aside the result of the election conducted without his participation. He thought that if the election proceeded without him irreparable damage would have been caused and, therefore, sought to intercept the progress of the election by filing a writ petition. The High Court dismissed it as unsustainable, thanks to Art. 329(b) and this Court in appeal, affirmed that holding. Fazal Ali, J., virtually spoke for the Court and explained the principle underlying Article 329(b). The ambit of spirit of the bar imposed by the Article was elucidated with reference to the principle that "it does not require much argument to show that in a country with a democratic constitution in which the legislatures have to play a very important role, it will lead to serious consequences if the elections are. unduly protracted or obstructed. In the view of the learned Judge, immediate individual relief at an intermediate stage when the process of election is under way has to be scarified for the paramount public good Of promoting the completion of elections, Fazal Ali, J. ratiocinated on the ineptness of interlocutory legal hold ups. He posed the issue and answered it thus N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, .

"The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a Special Tribunal and should not be brought up at an intermediate stage before any Court. It seems to be that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to describe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and

errors, if any are rectified, there will be no meaning in enacting a provision like Art. 329(b) and in setting up a special Tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the Election Tribunal, which is to be an independent body, at the stage when the matter is brought before it."

73. In the case of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, while dealing with the bar contained in Art. 329(b) and the scope of S. 100 of the Representation of the People Act it was held:

"On the assumption, but leaving the question of the validity of the direction for re-poll open for determination by the Election Tribunal, we hold that a writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step in "election" and is, therefore, barred by Art. 329(b). If no re-poll had been directed the legal perspective would have been very different. The mere cancellation would have then thwarted the course of the election and different considerations would have come into play. We need not chase a hypothetical case.

Our conclusion is not a matter of textual interpretation only but a substantial assurance of justice by reading S. 100 of the Act as covering the whole basket of grievances of the candidates. Sri P. P. Rao contended that the Court should not deny relief to a party in the area of elections which are the life breath of democracy and people's power. We agree. This dilemma, does not arise in the wider view we take of S. 100(1)(d)(iv) of the Act. Sri Rao's attack on the order impugned is in substance based on alleged non-compliance with a provision of the Constitution viz. Art. 324 but is neatly covered by the widely worded, residual catch-all clause of S. 100. Knowing the supreme significance of speedy elections in our system the framers of the Constitution have, by implication, postponed all election disputes to election petitions and Tribunals. In harmony with this scheme S. 100 of the Act has been designedly drafted to embrace all conceivable infirmities which may be urged. To make the project fool proof S. 100(1)(d)(iv) has been added to absolve everything left over. The Court has in earlier rulings pointed out that S. 100 is exhaustive of all grievances regarding an election."

74. It may thus be noticed, on reading of all the aforesaid decisions of the Supreme Court considering the provisions of Article 329(b) and S. 100 of the Representation of the People Act, that S. 100 of the Representation of the People Act covered the entire grievances and the attack on the order impugned in the said case. Even the alleged non-compliance with the provisions of the Constitution i.e. Art. 324. Section 100 of the Representation of the People Act is so widely worded that it renders substantial assurance of justice covering the whole basket of the grievances of the candidates including the non-compliance of

the provision of the Constitution. Section 100 of the Representation of the People Act has been designedly drafted to embrace all conceivable infirmities which may be urged. To make the project foolproof S. 100(1-d)(iv) has been added to absolve everything left over. The Supreme Court has in earlier rulings, pointed out that S. 100 is exhaustive of all grievances regarding the election.

75. Even then what has been further said in Mohinder Singh's case (AIR 1978 SC 851) may be noticed:

"But what is banned is not anything whatsoever done or directed by the Commissioner but everything he does or directs in furtherance of the election, not contrary wise. For example, after the President notifies the nation on the holding of elections under S. 15 and the Commissioner publishes the calendar for the poll under S. 30 if the latter orders the returning officers to accept only one nomination or only those which come from one party as distinguished from other parties or independents, is that order immune from immediate attack. We think not. Because the Commissioner is preventing an election, not promoting it and the Court's review of that order will facilitate the flow, not stop the stream. Election wide or narrow be its connotation, means choice from a possible plurality, monolithis politics not being our genius or reality/and if that concept is crippled by the Commissioner's act, he holds no election at all."

76. In this view what has been challenged or questioned in the present petition is not the validity of any law relating to delimitation of constituencies or the allotment of seats and there is no challenge to any provisions of the Act and the Rules but the action of the Authorities under the law. The action of the Authorities in all its fairness to the people must possess the pre-requisites of "election" in its semantic sweep. The immunity can be conferred only if the act impeached is done for the apparent object of furthering a free and fair election. If the action of the authorities concerned is preventing an election and not promoting it and if the concept of furthering a free and fair election is crippled in any manner by such act of the authorises, they hold no election at all.

77. In the facts of the present case, as demonstrated quite elaborately and depicted in the charts mentioned above as to how the population has been considered and the manner in which the wards have been constituted, the seats have been reserved for the Scheduled Castes, Scheduled Tribes and Backward Classes, and the constitutional mandates dealing with these matters as envisaged in various Articles starting from 243P contained in Part IXA of the Constitution have been thrown to winds, it cannot be said that the action taken by the respondents and its authorities concerned is promoting the election and not preventing it. It has virtually crippled the concept of fair election.

78. It is not a case complaining that a voter's name has been omitted or wrongly inserted in the electoral roll or a nomination has been wrongly rejected or that the law is invalid but the challenge here is on the very substantial grounds which goes to the root of the matter as to whether the constitutional mandate

enshrined in various Articles of 243P have been followed in its true spirit and the objects behind such constitutional mandate have been carried with an apparent object of furthering a free and fair election and as to whether the action of the authorities possessed the pre-requisites of election and the act impeached can be protected.

79. The facts of the present case fully demonstrate that there did not exist any material or basis either in the census of 1991 or with the respondents on the basis of which the general population or the population of Scheduled Castes could be assessed or determined from any of the wards notified. The State Government acted arbitrarily in delimiting the wards and allocation of reserve seats without undertaking any survey operations for determining the actual population which alone could be the sole criterion provided under the Act, both for the purposes of delimitation of constituencies as also for reservation and for allocation of reserved seats. The act of putting the figures of population-general and reserved category in each of the newly carved out wards has been done on mere imagination on the basis of the census of 1991 and which was only for the erstwhile wards and was not based on mohallas or localities or part of the locality which have now been included in the new wards.

80. On account of the failure of the State Government to determine the ward wise population, which was absolutely essential for the purposes of allocation of seats and for making reservations in their favour, the reservation of seats for the Scheduled Castes stands vitiated.

81. This survey of the backward class population made during the year 1994 and 1995 when delimitation of constituencies was in process, also stands vitiated on account of the fact that survey of their population have been done without either identifying or excluding those persons who fall in the category of creamy layer. In fact, there does not exist any norm for excluding the creamy layer. The State Government has not yet framed any valid norms for identification of the creamy layer and their exclusion and, therefore, it is not permissible in law to provide reservation in favour of the backward classes.

82. On account of the failure to determine the actual population, the entire process of delimitation of the constituencies as also the reservation of seats and election thereof as envisaged in Part IXA of the Constitution stands nullified.

83. In the teeth of these facts the learned Advocate-General appearing for the present Government could not conceal these facts nor could he improve upon these facts as it existed during the time of the erstwhile Government of Samajwadi Party and the factual position could not be disputed that the wards were carved out on the basis of population ascertained from the 1991 census report which was prepared wardwise and not locality or mohallawise.

84. In all fairness to the Court, he rendered his valuable assistance and contended that if the challenge is made on violation of the constitutional mandate then an election petition is no remedy. The remedy provided under S.

71 of the Act is not comprehensive. The doctrine of alternative remedy is available only when that remedy fully covers the challenge to the election. Reliance was placed on the case of Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, and on the case of Bar Council of Delhi and Others Vs. Surjeet Singh and Others, .

85. The learned Advocate-General relied on paragraph 12 of the judgment of the Supreme Court rendered in the case of Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, in which it was held that the electoral roll of the Ajmer Municipality which was authenticated and published by the Chief Commissioner was not in conformity with the provisions of sub-section (2) of S. 30 of the Ajmer Merwara Municipalities Regulation, 1925 (6 of 1926) and the relevant provisions of the Regulation and could not form the basis of any valid elections to be held to the Ajmer Municipal Committee. Paragraph 12 may be noticed:

"12. It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless, this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned. It was in our opinion, therefore, necessary for the Chief Commissioner to frame rules in this behalf and in so far as the rules which were thus framed omitted these provisions they were defective."

86. Sri Ravi Kiran Jain appearing for one of the interveners pointed out that in a subsequent decision rendered in the case of Indrajit Barua and Others Vs. Election Commission of India and Others, , the said decision in Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, , was not accepted. This is not the correct reading of the judgment in the case of Indrajit Barua. That was again a case under the Representation of the People Act and while dealing with the case of Bar Council of Delhi and Others Vs. Surjeet Singh and Others, , it was held; that in the said case the validity of Municipal elections was under consideration, Obviously, provisions of Art. 329(b) of the Constitution had no application to such election and this Court was dealing with statutory requirements for holding of the elections.

87. Thus, it may be seen that the decision of the Supreme Court in the case of Chief Commissioner of Ajmer, relied upon by the learned Advocate-General was distinguished since the validity of Municipal election was under consideration in the said case and Art. 329(b) had no application to such election.

88. The respondents then contended that the remedy provided under S. 71 of

the Act is the only remedy which has been provided under the Statute.

89. On a proper construction of the provisions of S. 100 of the Representation of the People Act and S.71 of the Act, we find ourselves unable to accept the contention of the respondents. Section 71 of the Act is limited in its scope and not widely worded as S. 100 of the Representation of the People Act. Section 100 of the Representation of the People Act has been designedly drafted to embrace all conceivable infirmities, which may be urged by a candidate challenging the election. It is quite exhaustive of all grievances regarding an election but the same is not the position regarding the challenge of Municipal elections under S. 71 of the Act. Therefore, the alternative remedy provided in S.71 of the Act is not adequate, if the challenge is based on violation of the constitutional mandate. The remedy provided under S. 71 of the Act is not comprehensive, Accordingly the emphasis laid on an observation in the case of Election Commission of India Vs. Shivaji and Others, .

"that it is not the law that every non-compliance with the provisions of the Act or of the Constitution will vitiate the election, "is of no assistance to the respondents, for the reasons that the said case was under Art. 329(b) of the Constitution and in accordance with S. 100 of the Representation of the People Act, the election could be challenged even on the ground of violation of the Constitution and the same is comprehended within the ambit of S. 100 of the Representation of the People Act.

The remedy provided under S. 71 of the Act is not comprehensive. The doctrine of alternative remedy is available where that remedy fully covers the challenge to election. The election under the Representation of the People Act cannot be compared with the Municipal election, If for certain reasons, the Municipal elections are not held or postponed for some time, such a situation is taken care of by the provisions contained in S. 579-A, which envisages a provision until the Constitution of the Municipal Corporation and reads as follows:

"579-A. Provision until the Constitution of Municipal Corporation-

(1) Notwithstanding anything in this Act, during the period between the commencement of the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1994, and the Constitution of the Municipal Corporation under this Act, the Nagar Maha-palika and its Nagar Pramukh, Upa Nagar Pramukh and members shall respectively exercise, perform and discharge the powers, functions and duties of the Municipal Corporation, its Nagar Pramukh, Upa Nagar Pramukh and members and shall be deemed respectively to be the Municipal Corporation, its Nagar Pramukh, Upa Nagar Pramukh and members.

(2) Where the term or the extended term of Corporation expires within six months from the commencement of the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1994 and a new Corporation is not constituted under the provisions of this Act, then on such expiry and until the date appointed for the first meeting after the Constitution of new Corporation-

(a) notwithstanding anything in this Act, the Nagar Pramukh, the Upa Nagar Pramukh, the Sabhasads and the members of all Special Committees, Joint Committees and, Sub-Committees constituted or appointed under Ss. 95 and 97 and the Mukhya Nagar Adhikari of the Corporation shall vacate their respective offices, and all such Special Committees, Joint Committees and Sub-Committees shall stand dissolved;

(b) all powers, functions and duties of the Corporation, its Nagar Pramukh, Upa Nagar Pramukh, Executive Committee, Development Committee and other Committees appointed under Cl, (c) and of the Mukhya Nagar Adhikari shall vest in and be exercised, performed and discharged by an officer in that behalf by the State Government (hereinafter referred to as the Administrator), and the Administrator shall be deemed in law to be the Corporation, the Nagar Pramukh, the Upa Nagar Pramukh, Executive Committee Development Committee, other Committees or the Mukhya Nagar Adhikari as the occasion may require;

(c) subject to any general or special orders of the State Government, the Administrator may, in respect of all or any of the powers conferred on him by Cl. (b),--

(i) consult such Committee or other body if any, constituted in such manner as may be specified by him in that behalf; or

(ii) delegate, subject to such conditions as he may think fit to impose, the powers so conferred, to any person or to any committee or other body constituted under Sub-clause (i), to be specified by him in that behalf;

(d) such salary and allowances of the Administrator as may be fixed by general or special order of the State Government in that behalf shall be paid out of the Corporation Fund.

(3) The elections to constitute the Corporation in accordance with the provisions of this Act shall be held within a period of six months from the commencement of the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1994 and the provisions of Cls. (b), (c) and (d) of sub-section (2) shall cease to have effect on the Constitution of the Corporation on such election or on the expiration of the period of six months from such commencement, whichever is earlier.

(4) The provisions of sub-sections (2) and (3) shall also apply where the term of a Corporation had already expired before the commencement of the Uttar Pradesh Local Self-Government Laws (Amendment) Act, 1994 and where an Administrator has been appointed prior to such commencement, he shall be deemed to have been appointed under this section."

90. Mr. Naithani, learned counsel appearing for one of the interveners referred to a Full Bench decision of this Court, rendered in the case of Hira Lal v. District Magistrate, Etah 1975 ALJ 419 wherein this Court exercised its extraordinary jurisdiction under Art. 226 of the Constitution even though alternative remedy was open by filing an election petition and contended that the said decision was

reversed by the Supreme Court, which is reported in *Nanhoo Mal and Others Vs. Hira Mal and Others*, . The said decision was rendered on the principle enunciated in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, . We have already held above that the remedy by way of election petition under S. 71 of the Act is not comprehensive to include the challenge on the ground of violation of the constitutional mandate.

91. Our finding that in breach of the constitutional criteria in composition of Municipalities would not create an absolute bar for the Courts to interfere with the same under Art. 226 of the Constitution, finds support from the decision of the Supreme Court rendered in the case of *State of U.P. v. Pradhan Sangh Kshettra Samiti*, AIR 1995 SC 1512 and the relevant passage may be quoted (at pp. 1527 and 1528 of AIR):

"We are unable to appreciate the reasoning of the High Court. Article 243(e) defines "panchayat area" to mean "territorial area of panchayat" and Art. 243-C speaks about the composition of panchayats and leaves it to the Legislature of a State to make provisions with respect to it. The only condition that the latter Article imposes on the composition of panchayat is firstly, the ratio between the population of the territorial area of the Panchayat at any level and the number of seats in the panchayat to be filled by election shall, as far as practicable, be the same throughout the State. Secondly, the seats in the panchayat have to be filled by direct election from the territorial constituencies in a panchayat area and for this purpose the panchayat area has to be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it have as far as practicable to be the same throughout the panchayat area. So long as these conditions are complied with, the composition of the panchayat that may be evolved by the State Legislature cannot be faulted. We do not see any material before us to suggest that these two criteria are breached or are sought to be breached."

"It is for the Government to decide in what manner the panchayat areas and the constituencies in each Panchayat area will be delimited. It is not for the Court to dictate the manner in which the same would be done. So long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the Courts cannot interfere with the same."

92. Our view that the provision making for reservation must receive such construction so as to advance the purpose and intendment underlying the provision making the reservation is further found support from the observation of the Supreme Court in the case of *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, and the same may be noticed (at p. 196 of AIR):

"The felt necessities of the time and the historical perspective of class domination led to the constitutional guarantee of reservation so that India can be

truly a Sovereign Socialist Secular Democratic Republic. A republic is made up of man and institutions. That is why democratic institutions have to be set up by providing for election and to make the democratic institutions truly representative, reservation of seats for those who on account of their backwardness, exploitation and unjust treatment both social and economic cannot obtain representation because of class domination. This is the genesis of reservation. Therefore, any provision making for reservation must receive such construction as would advance the purpose and intendment underlying the provision making reservation and not thwart it."

93. We have already held that what is challenged in the present case is not the validity of any law relating to delimitation and the reservation but the act of the respondents in not following the constitutional mandate in these matters and throwing them to winds. The act of the respondents was not possessed of pre-requisites but it proceeded on whims. The act of the respondents and its authorities concerned in these matter is beyond the scope of the constitutional mandate, such as not following the mandate to constitute the Corporation, not following the mandate regarding reservation of seats according to the population mohallawise and so on so forth which have been discussed in detail in the preceding paragraphs. Therefore, a notification may be valid, but the action purported to be taken thereunder contrary to the terms of that notification or going beyond the scope of that notification would be bad in law without affecting in any manner the validity of the notification. Our approach finds support from the decision of the Supreme Court rendered in the case of State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, and the observation is useful to be quoted.

"The question of validity of the impugned provisions had nothing to do with the legality of any action taken thereunder to make eligible to tax a particular transaction. If a notification is invalid all actions taken under it would be invalid also. The converse, however, is not true, where a notification is valid, an action purported to be taken thereunder contrary to the terms of that notification or going beyond the scope of that notification would be bad in law without affecting in any manner the validity of the notification."

94. The contention raised by the respondents that exclusion of creamy layer from the backward classes is not going to affect the seats and the affected person may file an election petition and further that the creamy layer is sketchy since under S. 2(51 A) of the Act the backward class means those described in Schedule I is equally fallacious, in view of the decision of the Supreme court rendered in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., and the question has now been finally settled by the Apex Court and on this question we need not detain ourselves since the question has been fully determined in paragraphs 83 to 88A of the said case. Reliance placed on the decision of this Court (in the Lucknow Bench) in the case of K. K. Shukla v. State of U.P. in Writ Petition No. 2997 of 1995 and analogous cases decided on 18-10-1995 holding

that the principle of exclusion of creamy layer was meant to exclude the public servant from the benefit of reservation, who belongs to higher income group and the principle laid down by Hon''ble Supreme Court in the case of Indra Sawhney pertains to the public servants only. We need not say anything more except to make the reference of the judgment of the Supreme Court in Indra Sawhney''s case in paragraphs S3 to 88A. That the said decision is quite distinguishable since many of the points urged in the present case were neither raised nor considered. The said judgment is subsilentio.

95. Much emphasis has been laid by the counsel appearing for the respondents on a judgment of the Division Bench of this Court dated 25-5-1995 rendered in the case of Anugrah Narain Singh v. State of U.P. (Civil Misc. Writ Petn. No. 38469 of 1994, reported in 1995 All LJ 2085) in which the direction was given for holding the election by a particular date. Of course, there cannot be any quarrel with the proposition that elections are meant to be held within the scheduled time. But the direction of the Court in the said judgment cannot be interpreted to mean that the election should be held on the whims of the respondents and according to their desire and not according to the constitutional mandate. Therefore, we do not see any reason as to how the said judgment is of any assistance to the respondents on the question involved in the present writ petition.

We are conscious of our limitations and jurisdiction under Art. 226 of the Constitution. We have been well informed of all the judgments of the Supreme Court dealing with the elections under Art. 329(b) and S, 100 of the Representation of the People Act and after considering the true ambit and scope of the provisions containing bar under Art. 243ZG of the Constitution and the remedy provided by way of election petition under S. 71 of the Corporation Act, for various reasons stated in the body of this judgment, we are unable to hold that the bar created under Art. 243ZG is a complete bar.

96. This case has presented exceptional circumstances where the act of the respondents and its authorities concerned were not possessed of the prerequisites of holding the election and the mandate of the Constitution as enshrined in Part IXA has been thrown to winds. The election has been called to be held on the whims of the authorities and not on the dictate and command of the law. The rule of law is all pervasive and democracy will not survive without rule of law. Since we find that the acts of the respondents are not being carried out with a view to promote a fair and free election but to thwart the same, this Court will not be a silent spectator. In this anxiety of ours we find that it would not be in the interest of the people at large to give allowance to the flagrant violation of the constitutional mandates in the name of holding the Municipal elections.

97. Thus, we are left with no option but to command the respondents not to proceed with the elections in pursuance of the notifications dated 11th October, 1995 and 13th October, 1995, contained in Annexures-6 and 7 to the writ

petition and postpone the same until the exercise of determination of the actual population of the Scheduled Castes, Scheduled Tribes and Backward Class and the total population on ward basis is completed. We direct the respondents to delimit the wards, determine the real strength of population -- general as well as of Scheduled Castes, Scheduled Tribes and Backward Classes and, thereafter, reserve the seats and allocate the wards according to law before starting the process of election.

98. We may not be misunderstood to postpone the elections for any longer time and hope and trust that the exercise which we have indicated above shall be carried out by the State Government with promptitude and as expeditiously as possible.

99. In the result, the petitions are allowed with the directions indicated above,

100. After the judgment was delivered in open Court, an oral prayer was made by Sri Ravi Kiran Jain, appearing for one of the interveners to grant certificate for leave to appeal to Supreme Court. In our opinion, the prayer is not fit to be granted, it is accordingly refused.

101. As prayed for, let the copy of this judgment be made available to the parties within twenty four hours on payment of usual charges.

102. Petition allowed.