

(2010) 08 GUJ CK 0200

In the Gujarat High Court

Case No : Special Civil Application No. 4394 of 2010 and Civil Application No. 6587 of 2010

Pankajsinh Waghela

APPELLANT

Vs

State Election Commission and Others

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Bombay Provincial Municipal Corporation (Delimitation of Wards and Allocation of Reserved Seats) Rules, 1994 — Rule 2, 4

Bombay Provincial Municipal Corporations Act, 1949 — Section 2, 29A, 29A(2), 29A(3), 456(1)

Constitution of India, 1950 — Article 1, 14, 170, 243ZG, 55

Gujarat Municipal Corporation Wards Committee Functions, Duties, Territorial Areas and Procedure for Transaction of Business Rules, 2007 — Rule 2

Citation : AIR 2010 Guj 161 : (2010) 3 GLH 523 : (2011) 52 GLR 175

Hon'ble Judges : S.J. Mukhopadhyaya, C.J.; Akil Kureshi, J

Bench : Division Bench

Advocate : Y.N. Oza and Srushti A. Thula, for the Appellant; N.V. Anjaria, for Respondent 1, Trivedi and Gupta for Respondent 2, Kaushal D. Pandya, for Respondent 3, R.M. Chhaya, for Respondent 4, Premal R. Joshi, for Respondent 5, H.S. Munshaw, for Respondent 6, Nilesh A. Pandya, for Respondent 7, Government Pleader for Respondent 8 and K.B. Trivedi, for Respondent 8, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—This petition filed in the nature of public interest litigation raises challenge to the manner in which the respondents-the State Government as well as the State Election Commission have decided to conduct election of councillors to different Municipal Corporations in the State of Gujarat. Sole objection of the petitioner is that when the local area of Municipal Corporation is divided into different wards, each ward must have one Councilor and policy of having multi-member wards (three number in present case) is constitutionally invalid.

Briefly stated, facts are as follows:

2.1 Undisputedly in six Municipal Corporations situated in the State of Gujarat namely, Ahmedabad, Surat, Rajkot, Jamnagar, Bhavnagar and Vadodara, term of elected bodies of the Corporations would be over in October December 2010 and the elections for the new Corporations therefore, would be held shortly to elect new bodies of the Corporations. For such a purpose, the State Election Commission has already undertaken task of delimitation by issuing notification on 29.1.2010. The election programme is not yet announced. For holding such elections, State Government has issued notifications determining the number of wards and the number of councillors in the different Municipal Corporations as also providing for reservation of seats in favour of different reserved categories. By way of example, we have on record one such notification dated 7.5.2010 filed along with the affidavit dated 11.6.2010 at Annexure-G which reads as follows:

Now, Therefore, in exercise of the powers conferred by sub clause (a) of Clause (iii) of Sub-section (3) of Section 5 read with Sub-sections (4), (5), (6) and (7) of the said Section 5 of the said Act so far as the City of Surat is concerned, the Government of Gujarat hereby determines that.-

(1) the City of Surat shall be divided into Thirty-eight Wards having one Hundred Fourteen councillors and the Municipal Corporation of Surat shall consist of One Hundred Fourteen elected Councilors.

(2) out of the One Hundred Fourteen seats of councilors;-

(i) Four seats shall be reserved for persons belonging to the Scheduled Castes out of which One seat shall be reserved for women belonging to the Scheduled Castes.

(ii) Four seats shall be reserved for persons belonging to the Scheduled Tribes out of which One seat shall be reserved for women belonging to the Scheduled Tribes;

(iii) Eleven seats shall be reserved for the persons belonging to the Backward Classes out of which Four seats shall be reserved for women belonging to Backward Classes;

(iv) Thirty-eight seats shall be reserved for the women (including the number of seats reserved for the women belonging to Scheduled Castes, Scheduled Tribes and the Backward Classes referred to as above.)

2.2 It is primarily the case of the petitioner that provision for electing three councillors from each ward is unconstitutional and even otherwise legally impermissible. In the original form, entire thrust of the petitioner's challenge was that above formula of three councillors representing one ward is violative of democratic principle of "one man one vote". The petitioner contended that by virtue of Constitutional amendment and addition of various provisions made for conduct of elections to different local bodies of self-governance and in particular by addition of Article 243R in the Constitution, elections to Municipalities have to be held in the same manner as elections to State Legislative Assembly. The

petitioner has therefore, contended in the petition that:

...It is stated that as already provided by Article 243R, seats in a Municipality have to be filled up by persons chosen by direct elections from territorial constituencies. These territorial constituencies although are constituencies in their nature equivalent to the constituencies as bifurcated in a Vidhansabha or in a Legislative Assembly, however, constituencies in a municipal area are known as Wards. Thus, only nomenclature of the constituencies changes whereas in all manner and procedure the constituencies remain the same as the State and the Central elections. Therefore, there should be only one representative who can be elected in one constituency. However, the scenario today is that in every constituency in a municipal area, known as Wards, 3 people are elected as representative of one single territorial constituency, thereby 3 votes are cast by one person for election of three people on one, which should be in the right spirit only one person i.e. only one representative should be elected from one constituency i.e. Ward.

2.3 The petitioner has relied on several decisions of this Court as well as the Apex Court to contend that principle of "one man one vote" is accepted as one of the basic principles of democracy in India.

2.4 The sole substantive prayer made in the petition, therefore, at the time of filing of the petition was as follows:

11 In the premises aforesaid, the petitioner therefore, prays as under:

(A) This Hon"ble Court may be pleased to issue appropriate writ of mandamus or any other appropriate writ, order and/or direction directing the respondents to follow the mandate of the Constitution of India, 1950 and follow the rule of one man one vote in the coming elections.

2.5 While the arguments in this petition were being heard, certain provisions were pointed out by the respondents which permitted Municipal wards to be multi-member wards. The petitioner therefore, filed Civil Application No. 6587/2010 seeking amendment in the petition challenging vires of such statutory provisions. In the amendment application, petitioner has prayed for addition to corresponding prayers as also for addition of certain grounds in support of such prayers.

2.6 Considering the fact that the challenge of the petitioner to statutory provisions rested entirely on legal contentions, we had proceeded to hear learned advocates for all sides on such issues without calling for formal reply. We had also issued notice to learned Advocate General in view of challenge to the statutory provisions and heard him as well.

2.7 Civil Application No. 6587/2010 for amendment however, to complete the formalities is hereby allowed. Petitioner shall carry out the amendments accordingly without any delay.

2.8 In the amended form, petitioner has challenged vires of Section 5(3)(iii)(a) and Sections 29A(2)(a) and 29A(3)(a) of the Bombay Provincial Municipal Corporation Act, 1949 (here-in-after referred to as "the BPMC Act") as also Rule 4 of the Bombay Provincial Municipal Corporations (Delimitation of Wards in the City and Allocation of Reserved Seats) Rule, 1994 (here-in-after referred to as "the Delimitation Rules of 1994" and Rule 2(b) of Gujarat Municipal Corporation Wards Committee Functions, Duties, Territorial Areas and Procedure for Transaction of Business Rules, 2007 (here-in-after referred to as the Wards Committee Rules 2007).

2.9 In nutshell, the case of the petitioner is that providing for three councillors to be elected from each ward of the Municipal Corporation violates the principle of "one man one vote". Same is opposed to the Constitutional mandate of holding elections to the Municipalities in the same manner as State Legislative Assembly and lastly the statutory provisions providing for multi-member wards are in conflict with provisions of Article 243R and 243S(4)(a) and (4)(b) of the Constitution of India.

2.10 Respondents have opposed the petition by filing different replies. Different Municipal Corporations joined as respondents are largely formal parties. Main contesting parties however, are the State Election Commission and the State Government.

2.11 On behalf of the State Election Commission, its Deputy Election Commissioner has filed affidavit dated 19.6.2010. Relying on various statutory provisions, it is contended that determination of number of wards and number of councillors to be elected from each ward is a function statutorily vested in the State Government. It is pointed out that under Article 243ZA of the Constitution, the State Legislature is competent to make provisions with respect to all matters relating to or in connection with the elections to Municipalities and the State Election Commission has to hold and conduct the elections only in accordance with the law made by the State Legislature. It is further stated that notifications have been issued by the State Government in exercise of powers u/s 5 of the BPMC Act dividing different Municipal Corporations into number of wards. For example, by notification dated 23.3.2010, city of Ahmedabad is divided into 64 wards and number of councillors to be elected is 192. Notification also provides for number of reserved seats in different categories. Similar notifications have also been issued with respect to other Municipal Corporations also. It is further contended that preliminary notifications delimiting the wards for various Corporations have been issued on 2/3.6.2010. It is pointed out that entire exercise of conducting election is to be completed within a rigid time frame.

2.12 State Government has also filed an affidavit dated 23.6.2010 contending inter-alia that petitioner has neither shown his locus standi nor is the petition filed bona fide. It is pointed out that in exercise of powers u/s 5 of the BPMC Act, State Government has already published notification dividing the Municipal Corporation into different wards and number of councillors to be elected from

each ward. Reference is made to Article 243ZG, wherein it is provided that validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243ZA shall not be called in question in any Court. It is contended that process of election has already commenced and the present petition therefore, in view of provisions contained under Article 243ZG is not maintainable.

Appearing for the petitioner, learned senior advocate Shri Yatin Oza vehemently contended that electing three councillors from each ward of a Municipal Corporation is directly in conflict of democratic principles of "one man one vote". He further contended that the election to the Municipal Corporation is to be conducted in the same manner as State Legislative Assembly, wherein different constituencies is represented by one single member and no more. He relied on the provisions contained under Article 243R and 243S(4) of the Constitution to contend that constitutional provisions for conducting of election to Municipal Corporation does not envisage multi-member wards. He therefore, contended that the statutory provisions particularly, Section 5 of the BPMC Act and Rule 4 of the Delimitation Rules of 1994, providing to the contrary is unconstitutional and therefore, invalid.

3.1 Counsel for the petitioner relied on decision of the Division Bench of this Court, in case of Rameshchandra Ramanbhai Patel and Anr. v. Collector, Kheda and Ors. reported in 20 GLR 191 wherein the Bench examined the question of applicability of the principle of "one man one vote" in India.

3.2 Counsel further referred to Division Bench decision of this Court in case of Vishnubhai Natwarlal Patel and Others Vs. State of Gujarat and Another, wherein the principle of "one man one vote" was applied in context of question of what basis should be adopted for delimitation of constituencies for election to Municipal Corporations under the BPMC Act.

3.3 Counsel also relied on decision in case of Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and Others, wherein the Apex Court emphasized the need to hold timely election to Municipal Corporation and to ensure that newly elected body is brought into existence before the term of the outgoing elected councillors is over.

On the other hand, learned Advocate General Shri Kamal Trivedi appearing in response to the notice of the Court regarding the vires of the statutory provisions contended that none of the provisions of the Constitution and in particular Article 243R or 243S prohibit multi-member wards in the Municipal Corporation. As per the statutory scheme of elections to the Municipal Corporations, it is left to the State Legislature to make laws in respect of all matters relating to or in connection with elections to the Municipalities. He further pointed out that Entry-5 of List-II of the Constitution pertains to local Government i.e. constitution and powers of Municipal Corporations etc. and other local authorities for the purpose of local self-government or village administration. He therefore,

contended that the statutory provisions contained in the BMC Act and Rules made thereunder providing for multi-member wards in Municipal Corporations is within the competence of the State Legislature and is not opposed to any of the Constitutional provisions. Vires of such provisions are therefore, required to be upheld.

4.1 He pressed in service the principles of harmonious construction for interpretation of statute, and contended that statutory provisions under challenge can harmoniously coexist with the provisions made in Article 243R and 243S of the Constitution. In support of his contention, he relied on the decision of the Apex Court in case of *Ashoka Kumar Thakur Vs. Union of India (UOI) and Others*, wherein it is observed that "it is a well settled principle of the Constitutional interpretation that while interpreting the provisions of the Constitution, effect shall be given to the all the provisions of the Constitution and no provision shall be interpreted in a manner as to make any other provisions in the Constitution inoperative or otiose."

4.2 He further contended that in view of provisions made in Article 243ZG of the Constitution challenge to statutory provisions is not maintainable. He relied on the decision of the Apex Court in case of *State of U.P. v. Pradhan Sangh Kshettra Samiti* reported in 1995 Supp (2) SC 305, wherein the Apex Court observed that:

45. What is more objectionable in the approach of the High Court is that although clause (a) of Article 243O of the Constitution enacts a bar on the interference by the courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243R and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them.

Learned Additional Advocate General Shri Tushar Mehta appearing for the State in addition to adopting the arguments made by the learned Advocate General further elaborated on the interpretation of Article 243R and 243S(4) of the Constitution and contended that even within the language used in the said provisions, multi-member wards in Municipal Corporation can be envisaged.

On behalf of the State Election Commission, learned advocate Shri Anjaria contended that the Election Commission is required to undertake the process of delimitation and allocation of seats as per the statutory provisions. The Constitutional provisions require the State Election Commission to constitute newly elected body to such Corporation before the expiry of the term of the outgoing elected body. He pointed out that term of the existing body of Ahmedabad Municipal Corporation expires in October 2010 and for other Municipal Corporations in December 2010. Any intervention by the Court at this stage would delay the process of holding elections.

6.1 He further contended that provisions of Article 243R are independent of

Article 243S and interpretation of Article 243S cannot govern the interpretation of Article 243R. Constitution of wards committees has nothing to do with the question whether the Municipal Corporation can have multi-member wards or a single member ward.

Having thus heard learned advocates for the parties, we find that in the present petition we are called upon to decide two issues. First question is whether the prescription of multi-member wards in the Municipal Corporation violates democratic principle of "one man one vote". Second controversy is whether statutory provisions which provide for multi-member wards in different Municipal Corporations in the State are ultra vires the Constitution.

Before considering the rival submissions and recording our interpretation, it would be useful to take note of relevant Constitutional and statutory provisions.

8.1 In the year 1993, through amendments to the Constitution, Part-IX and Part-IXA as they stand in the present form were introduced containing Articles 243 to 243ZG. Whereas Part-IX pertains to Panchayats, Part-IXA pertains to Municipalities. Different Articles in these parts contain detailed provisions for constitution and composition of bodies of self-governance such as Panchayats and Municipalities.

Article 243P(a) defines the term "Committee" as follows:

(a) "Committee" means a Committee constituted under Article 243S;

Term "Municipality" is defined under Article 243P(e) as follows:

(e) "Municipality" means an institution of self-government constituted under Article 243Q;

Article 243Q provides for constitution of Municipalities and envisages a Municipal Corporation for a larger urban area.

Article 243R provides for composition of Municipalities. Article 243R reads as follows:

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

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

(a) for the representation in a Municipality of-

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

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

partly the Municipal area;

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

(iv) the Chairpersons of the Committees constituted under Clause (5) of Article 243S:

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

(b) the manner of election of the Chairperson of a Municipality.

Article 243S pertains to constitution and composition of Wards Committees etc. Article 243S reads as follows:

243S. Constitution and composition of Wards Committees, etc.- (1) There shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2) The Legislature of a State may, by law, make provision with respect to-

(a) the composition and the territorial area of a Wards Committee;

(b) the manner in which the seats in a Wards Committee shall be filled.

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

(4) Where a Wards Committee consists of-

(a) one ward, the member representing that ward in the Municipality; or

(b) two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee, shall be the Chairperson of that Committee.

(5) Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the constitution of Committees in addition to the Wards Committees.

Article 243U pertains to duration of Municipalities. In particular clause (1) of Article 243U provides that every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

Article 243ZA pertains to elections of Municipalities. Article 243ZA reads as follows:

243ZA. Elections to the Municipalities.- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

Article 243ZF gives extension for a limited period to laws which are inconsistent with the provisions contained in Part-IXA. Article 243ZF read as follows:

243ZF. Continuance of existing laws and Municipalities.-Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

Article 243ZG bars interference by courts in electoral matters. Article 243ZG reads as follows:

243ZG. Bar to interference by courts in electoral matters.-Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243ZA 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.

Entry 5 to List-II i.e. State List to Schedule 7 to the Constitution pertains to local Government and reads as follows:

5. Local government, that is to say, the constitution and powers of municipal corporation, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

8.2 Section 5 of the BPMC Act pertains to constitution of Corporation. Relevant provisions thereof read as follows:

(2) Each Corporation shall consist of councillors chosen by direct election.

(3) Where general election is to be held immediately after,-

(i) "a larger urban area" as specified under clause (2) of Article 243Q of the

Constitution of India, is made, or

(ii) the census is taken under the Census Act, 1948 and the relevant figures of which have been published, or

(iii) the limits of a City are altered-

(a) the State Government shall, by notification in the Official gazette, determine the number of wards into which the City shall be divided, the number of councillors to be elected to the Corporation and the number of seats to be reserved in favour of the Scheduled Castes, the Scheduled Tribes, the Backward Classes and Women as provide in this section, and

(b) the State Election Commission thereafter shall carry out the determination of the boundaries of the wards and the allocation of seats reserved in favour of the Scheduled Castes, Scheduled Tribes, the Backward Classes and Women among the wards in the prescribed manner.

Section 29A of the BPMC Act pertains to constitution of Wards Committee. Part of Section 29A insofar as the same is relevant for our purpose reads as under:

29A.(1) Where the population of the City is three lakhs or more, there shall be constituted by the [Municipal Corporation, subject to the rules made by the State Government] Wards Committee or Committees consisting of one or more wards within the territorial area of Corporation.

(2)Each Wards Committee shall consist of -

(a) councillors of the Corporation representing a ward within the territorial area of the Ward Committee;

Provided that a person shall be disqualified for being appointed, and for being a member of the Wards Committee, if under the provisions of this Act or any other law for the time being in force, he would be disqualified for being elected as, and for being, a councillor.

(3) The Wards Committee shall at its first meeting after its constitution under Sub-section (1) and at its first meeting in the same month in each succeeding year shall elect,-

where the Wards Committee consists of -

(a) one ward, the Councillor representing that ward in the Corporation; or

(b) two or more wards, one of the Councillors representing such wards in the Corporation elected by the members of the Wards Committee, to be the Chairperson of that Committee.

8.3 In exercise of powers conferred under Sub-section (1) of Section 456 read with Section 5 of the BPMC Act, the State has framed the Delimitation Rules of 1994. Rule 2 of the Delimitation Rules of 1994 provides for constitution of wards.

Rule 2 reads as follows:

2. The Wards shall be constituted in such a manner that the population in all the wards is, as far as practicable, equal, in particular, the population of a ward shall not vary by more than ten percent from the average wards population of the city.

9. Rule 4 of the Delimitation Rules of 1994 reads as follows:

4. All Wards shall be multi-member wards with three councillors to be elected from each ward.

10. First advertent to the issue of one man one vote, we may recall that it is the case of the petitioner that by providing for multi-member wards, the State as well as Election Commission have breached the said democratic principle.

11. Insofar as applicability of one man one vote in our Country is concerned, even the counsel for the respondents did not raise any serious dispute. This principle having its origin in American judgments, is also accepted in Indian context as held by the Division Bench of this Court in case of Rameshchandra Ramanbhai Patel and Anr. (supra), observing:

24. It would thus appear that the principle, which must be taken to have been established beyond doubt or debate, so far as this country is concerned, is that whenever the statute requires selection of persons to be made by popular election to perform governmental functions, whether at the Union or State or local level, each vote must have an equal value and that when members of such elected bodies are chosen from separate constituencies, each constituency must be established on a basis which will ensure, as far as practicable, that equal number of constituents can vote for proportionately equal number of representatives. The rule is so deeply entrenched in our election jurisprudence that any deviation therefrom would require strict justification on rational or permissible grounds and any wrongful dilution thereof must be jealously guarded against.

12. Question however, is whether the prescription of multi-member wards in Municipal elections breaches this principle. We are unable to concur with the contention of the counsel for the petitioner that one man one vote means in all its rigidity that in every election no matter what the statutory scheme, each voter must cast vote in favor of only one candidate and any deviation therefrom invariably and necessarily be considered as breach of the said principle. "One man one vote" principle has many manifestations and as long as each eligible voter is allowed to cast his vote and the value of such vote is no more or less than the value of other voters, this principle would be sufficiently protected. In large number of elections to different democratic institutions in our Country, as well as outside there are different methods of voting which have all stood the test of "one man one vote" principle. This issue was examined at considerable length by a Single Judge of this Court in Special Civil Application No. 1870/2006 and connected matters by order dated 4-6.9.2006. In the said decision

examining the applicability of "one man one vote" principle for election of Federal Cooperative Society, following observations were made:

43. In order to do so, one may notice the concept of one man one vote principle. Though the democratic governments have existed in the world since a fairly long time, right to vote without any discrimination of race, caste, creed or religion is of a relatively recent development. Till quite recently, in number of countries, certain communities did not have full voting rights. Right to vote for women also was recognized much later on. One man one vote principle in its refined form is an origination of United States of America. From the Article titled "Defying One-person, One-Vote: Prisoners and the "Usual Residence" Principle by Rosanna M. Taormina, one finds that on the basis of the Article 1, Section 2 of the United States Constitution which provides that the House of Representatives shall be composed of Members chosen every second year by the People of the several States and representatives shall be apportioned among the several States according to their respective members, the Supreme Court of United States has formulated the principle of one person one vote. In doing so, the Court relied on the equal protection clause of the Fourteenth Amendment to extend the one-person, one-vote requirement to state legislative districts. In the year 1963 and 1964, the US Supreme Court decided three landmark redistricting cases which are credited with the development of the phrase and principle, "one person, one vote". History and development of this principle of one-man one-vote have been noted by a Division Bench of this Court in the case of Harji Chaku v. Mamlatdar, Lalpur 15 GLR 64 (supra). It is further observed that this principle is accepted as valid principle by our Courts also. The Court however hinted that in federal analogy, some compromise or concession is inherent.

43.1 In United States of America, election to the President is held based on plurality voting which has come to be known as first-past-the-post method in which a candidate getting majority of votes in a State irrespective of the margin of majority carries the entire electorate of the State in his tally for the Presidential election. It can be easily seen that under such a system, it is possible to envisage a situation, and in fact situations have arisen in the past when a candidate getting lesser number of popular votes gets elected to the Presidential post whereas his rival while getting higher number of votes may get defeated. (Source: On Democracy by Robert A. Dahl)

44. One-man one-vote principle has many facets. It does not carry a rigid meaning that every citizen shall vote once for one single candidate and every such vote shall have equal weightage. Under the Indian democracy itself, one-man, one-vote principle manifests in number of situations. For election to the members of the State Legislature or to the house of the people, every adult citizen who is otherwise qualified to vote casts a vote once in favour of one single candidate. This system, however, is criticized by the critics since in multi-facet contests in large number of cases, candidates with less than 50 per cent popular votes end up getting elected. In other words, though majority of the voters

exercising their franchise may have voted against a candidate, he gets elected by having cornered more votes than any other candidate. To eliminate this element, in some of the European countries for Presidential elections, a different pattern of franchise is adopted whereby initially voters vote for a single candidate. Upon counting if a candidate gets more than 50% votes, he is declared elected. If not, only two candidates with highest number of tally of votes remain in fray and rest of the candidates get eliminated. For these two candidates, the electors vote all over again and whoever gets majority of the votes is declared elected. (Source: Voting Procedures Under Uncertainty: By Hannu Nurmi)

45. For election to the members of the Upper House of Parliament also called council of States, a complex method of single transferable vote is adopted. In this method, one candidate makes multiple choices and depending on the quotient required for getting elected, the counting takes place to ensure that the single largest group in the Assembly does not corner all seats by its sheer majority.

46. For election to the President of the Country, a very different methodology is adopted. Article 55 of the Constitution provides inter alia, that as far as practicable, there shall be uniformity in the scale of representation of different States at the election of the President. To ensure that, following provisions are made in Article 55 of the Constitution:...

...It can thus be seen that in democratic set up, one-man one-vote is being implemented in different fashion to suit different requirements. Every system is open to criticism of not being able to fully fulfill the aspirations of the electorates. Often, allegations are made of manipulation in arrangement of constituencies in such a way that prospects of election of a candidate are improved. This method of redistricting (referred to as delimitation in India) in American parlance, is called "Gerrymandering".

47. The crux of the matter is that one-man one-vote principle cannot be seen superficially providing for simple formula where one single voter votes for a single candidate but it has many different manifestations.

It may be noted that the said decision came to be confirmed by the Division Bench of the High Court.

13. In the present case, statutory provisions provide that three Councillors shall be elected from each ward of a Municipal Corporation. Each voter has to cast vote once but has to indicate his preference for three candidates, who according to him are best suited to represent the ward. We do not see how this methodology is opposed to principle of "one man one vote". Weightage of vote casted by each voter is the same. Simply because each voter is asked to show his preference for three candidates to represent the ward, that by itself does not bring about any inequality in weightage of the votes casted by different voters. This contention of the petitioner therefore, deserves to be turned down.

Coming to the question of validity of statutory provisions, as already noted, List-II i.e. State List to Schedule-7 pertains to local government i.e. constitution and powers of Municipal Corporations etc. and other local authorities for the purpose of self-government or village administration. It can thus be seen that the State Legislature is competent to make laws concerning local government such as constitution and powers of Municipal Corporations and other local authorities of local self-government. The State Legislature thus was competent to provide for laws governing the constitution of Municipal Corporations which necessarily include the manner and method of holding elections to such Municipal Corporations. It was therefore, in exercise of such powers that the State Legislature has made provisions for constitution of Corporations u/s 5 of the BPMC Act.

13.1 Under Sub-section (1) of Section 456 of the BPMC Act, the State Government has the power to make rules for carrying out the purposes of the Act. In exercise of such powers read with Section 5 of the BPMC Act, the Delimitation Rules of 1994 have been framed.

13.2 Under Sub-section 5(3)(iii)(a) of the BPMC Act, the State Government is authorized by notification in the official gazette to determine the number of wards into which the city shall be divided, number of Councillors to be elected to the Corporation and number of seats to be reserved in favor of Scheduled Castes, the Scheduled Tribes, the Backward classes and women. We may briefly note at this stage that this provision itself envisages multi-member wards. If each Municipal ward had to have one and only one Councillor, there was no need to authorise the Government separately to determine number of wards in a city and number of councillors that to be elected to the Corporation.

13.3 This position is made further clear under Rule 4 of the Delimitation Rules of 1994, where it is provided that all Wards shall be multi-member wards with three councillors to be elected from each ward.

14. We do not find that the above provisions contained in the BPMC Act and Rules framed thereunder are in any manner opposed to the Constitutional provisions. Clause (1) of Article 243R provides that all seats in the Municipality shall be filled by persons chosen by direct election from the territorial constituencies for which purpose Municipal area shall be divided into territorial constituencies called wards. Clause (1) of Article 243R thus provides for division of larger municipal area into different wards and for direct election to elect representatives from such wards

14.1 Sub-clause (2) of Article 243R permits the State Legislature to make laws for representation in a Municipality by nomination of persons having special knowledge or experience in municipal administration and such other categories.

14.2 Article 243R thus provides for composition of municipalities through elected as also nominated members, if so, provided by the State Legislature. Article 243R is thus complete code for composition of Municipalities.

14.3 On the other hand, Article 243S pertains to constitution and composition of Wards Committees. It provides inter-alia for constitution of Wards Committees consisting of one or more wards within the territorial area of Municipality having a population of three lakhs or more. Clause (3) of Article 243S provides that a member of a Municipality representing a ward within the territorial area of the Wards Committee, shall be a member of that Committee. Clause (4) of Article 243S in particular, provides that where a Wards Committee consists of one ward, the member representing that ward shall be the chairperson of that Committee and if the Wards Committee consists of two or more wards, one of the members representing such wards in the Municipality who is elected by members of the Wards Committee, shall be the Chairperson of that Committee. It is true that clause (4) of Article 243R is worded in such a way that it refers to wards of the Municipalities having a single representative. However, Clause (2) of Article 243S permits the State Legislature to make laws making provisions with respect to composition and territorial area of the Wards Committee and the manner in which the seats shall be filled. It is therefore, for the State Legislature to make suitable legislation providing for composition of the Wards Committee and the manner in which the Wards committee of a multi-member wards shall elect its chairperson. In any case, we are of the view that such difficulties in working out the provisions of Article 243S in case of multi-member wards cannot govern the interpretation of Article 243R of the Constitution. As already noted, Article 243R pertains to composition of Municipalities whereas Article 243S pertains to constitution and composition of Wards Committee. Both operate in different fields. Interpretation of Article 243S therefore, cannot govern the provisions contained in Article 243R.

14.4 To reiterate, in our view Article 243R which makes detailed provision for composition of Municipalities nowhere restricts the power of State Legislature to provide for multi-member wards in Municipalities. The Constitutional provisions do not prohibit multi-member wards and as already noted the State Legislation is competent to make laws with respect to election to the Municipalities. Therefore, providing for multi-member wards through validly formulated State Legislation, in our view is not impermissible. None of the provisions contained in the BPMC Act or the Delimitation Rules of 1994 which are under challenge in this petition violate constitutional provisions. We have already held that State is competent to make laws with respect to municipal elections. Thus when we find that State neither lacks competence nor in our view any of the statutory provisions are in conflict with Article 243R or 243S of the Constitution or any other provision, challenge to the vires of said provisions must fail. We therefore, hold that Section 5(3)(iii)(a) and Sections 29A(2)(a) and 29A(3)(a) of the Bombay Provincial Municipal Corporation Act, 1949, as also Rule 4 of the Bombay Provincial Municipal Corporations (Delimitation of Wards in the City and Allocation of Reserved Seats) Rule, 1994 and Rule 2(b) of Gujarat Municipal Corporation Wards Committee Functions, Duties, Territorial Areas and Procedure for Transaction of Business Rules, 2007 are constitutionally valid.

15. In case of *Goa Glass Fibre Limited v. State of Goa and Anr.* reported in (2010) 6 SCC 499, it was observed that:

15. It is well settled that a statute can be invalidated or held unconstitutional on limited grounds viz. on the ground of the incompetence of the legislature which enacts it and on the ground that it breaches or violates any of the fundamental rights or other constitutional rights and on no other grounds. (See *State of A.P. v. Mc. Dowell and Co.* and *Kuldip Nayar v. Union of India.*)

15.1 Principle of presumption of Constitutionality of a statutory provision has been long accepted by the Courts in India. In case of the *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, five Judge Bench of the Apex Court noted that with approval observations made in the previous judgment in case of *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, as under:

That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Article 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration." The burden thus is on the respondents to set out facts necessary to sustain the plea of discrimination and to adduce "cogent and convincing evidence" to prove those facts for "there is a presumption that every factor which is relevant or material has been taken into account in formulating the classifications.

It was further observed that:

25. Thus, it is no part of the appellant's burden to justify the classification or to establish its constitutionality. Formal education may not always produce excellence but a classification founded on variant educational qualifications is, for purposes of promotion to the post of an Executive Engineer, to say the least, not unjust on the fact of it and the onus therefore cannot shift from where it originally lay.

Above principles of presumption of constitutionality would also persuade us not to declare the statutory provisions challenged in the present petition as ultra vires.

We have discussed at some length the scheme of the statutory provisions including the Constitutional provisions for conducting elections to the Municipal Corporation and found that no illegality has been committed. Reference to Article 170 of the Constitution which pertains to composition of the Legislative Assemblies, therefore, would not be necessary.

We may recall that counsel for the respondents have relied on Article 243ZG to contend that validity of above statutory provisions cannot be called in question. We are doubtful whether the provisions under challenge can be stated to be those relating to "the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies". Prima facie, it appears that providing for multi-member wards in Municipalities is neither a law

relating to delimitation of constituencies nor allotment of seats to such constituencies. However, in view of our conclusion that even otherwise said statutory provisions are not ultra vires, we do not dilate any further on this aspect of the matter leaving it open to be judged in an appropriate case in future.

In the result, petition fails. Same is dismissed. Civil Application also stands dismissed accordingly.