

(2011) 12 AHC CK 0391

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 11226, 11339, 11359, 11162, 11352, 11260 and 11108 (M/B) of 2011

Sandeep @ Sandeep Mehrotra and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Census Act, 1948 — Section 3

Constitution of India, 1950 — Article 13(1), 13(2), 14, 141, 156

Uttar Pradesh Municipal Corporation Act, 1959 — Section 25, 4, 5, 53, 538

Uttar Pradesh Municipalities Act, 1916 — Section 10A, 2(16), 43D, 7, 8

Citation : (2011) 11 ADJ 670

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : Ravi Kiran Jain, R.K. Awasthi, Vivek Raj Singh, Mohd. Abid Ali, B.K. Singh, Arun Kumar Shukla, Pushkar Mehrotra, Abhishek Bhasin and R.K. Awasthi, for the Appellant; Jai Deep Narain Mathur, Rakesh Bajpai, C.S.C., C.S.C., Mukund Tiwari, Sanjay Sarin and N.C. Mehrotra, for the Respondent

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Present writ petition under Article 226 of the Constitution of India has been preferred to declare ultra vires the U.P. Act No. 23 of 2005, contained in Annexure 4 to writ petition No. 11226 (M/B) of 2011 and also direct the respondents not to interfere with the functioning and discharging of duty by the petitioners till the election to the municipality in question is held in accordance with law.

By the impugned Act No. 38 of 2006, u/s 1A, the first meeting has been defined as the meeting held for taking the oath of office.

The petitioners are the Chairman and Member of Municipal Council constituted under U.P. Municipalities Act, 1916 (in short, 1916 Act). The election was held in the year 2006 and thereafter, taking the oath of office in pursuance to the

statutory provisions, they have resumed duty and started to discharge their constitutional obligations. In connected writ petitions, some are Members and Chairman of the Municipal Corporations constituted under U.P. Municipal Corporation Act, 1959 (in short, 1959 Act). The provisions contained in both the Acts are *pari materia* and the writ petition No. 11226 (M/B) of 2011 is taken as leading writ petition.

2. The election was held in the year 2006 and the first meeting of municipality was convened on 16.11.2006 and entitled to operate upto 16.11.2011. u/s 10-A of 1916 Act, the term of municipality has been provided for the period of five years from the date appointed for its first meeting and no longer. The conduct of business under both the Acts (*supra*) is regulated by the provisions contained in Chapter III of the respective Acts, according to which the meeting of the municipal board or municipal corporation is called on for transaction of its business after notifying/circulating the Agenda.

3. However, by the impugned amendment, the State Legislator has amended Section 10-A of 1916 Act and provided therein that where the election is not held for any unavoidable circumstances of the municipality, then all powers, function and duties of municipality shall be exercised by the District Magistrate or by the gazetted officer not below the rank of Deputy Collector. Such officer shall be called administrator and the administrator shall be deemed in law to be municipality.

Similarly, Section 8 of the 1959 Act has been amended providing therein to appoint administrator for municipal corporations. The entire amendment as contained in Amending Act of 2005 under Act No. 23 of 2005 is reproduced as under:

STATEMENT OF OBJECTS AND REASONS

The terms of Urban Local Bodies are going to expire in the near future but the constitution of elected Urban Local Bodies and the election of their office bearers could not be possible within the stipulated period as fresh delimitation of wards, preparation of electoral rolls, and reservation of wards etc on the basis of census of 2001 would take time.

In the above circumstances it has been decided to amend the Uttar Pradesh Municipalities Act, 1916 and the Uttar Pradesh Municipal Corporation Act, 1959, to provide that, where due to unavoidable circumstances or in the public interest it is not practicable to hold an election to constitute an Urban Local Body before the expiry of its term then until the due constitution of such urban local body all the powers, functions and duties of such urban local body shall be exercised and performed by the District Magistrate who shall be called the Administrator of that urban local body to avoid any crisis.

2. Amendment of Section 10-A of U.P. Act No. 2 of 1916.--In Section 10-A of the Uttar Pradesh Municipalities Act, 1916, after sub-section (3) the following sub-

section shall be inserted, namely:

(4) Notwithstanding anything to the contrary contained in any other provision of this Act, where, due to unavoidable circumstances or in the public interest, it is not practicable to hold an election to constitute a Municipality before the expiry of its term, then until the due constitution of such Municipality, all the powers, functions and duties of the Municipality shall be exercised and performed by the District Magistrate or by a Gazetted Officer not below the rank of a Deputy Collector appointed by the District Magistrate in this behalf, and such District Magistrate or Officer shall be called the Administrator, and such Administrator shall be deemed in law to be the Municipality, the President or the Committee as the occasion may require.

CHAPTER III

AMENDMENT OF THE UTTAR PRADESH MUNICIPAL CORPORATION ACT, 1959

3. Amendment of Section 8 of U.P. Act No. 2 of 1959. In Section 8 of the Uttar Pradesh Municipal Corporation Act, 1959, after sub-section (3) the following sub-section shall be inserted, namely:

(4) Notwithstanding anything to the contrary contained in any other provision of this Act, where due to unavoidable circumstances or in the public interest, it is not practicable to hold an election to constitute a Municipal Corporation before the expiration of its duration, then until the due constitution of such Municipal Corporation, all powers, functions and duties of the Corporation, its Mayor, Deputy Mayor, Wards Committee, Executive Committee, Development Committee and other Committees established under clause (e) of Section 5 shall as from the specified date, be vested in and be exercised, performed and discharged by the District Magistrate who shall be called the Administrator and such Administrator shall be deemed in law to be the Corporation, the Mayor, the Deputy Mayor, Ward Committee, Executive Committee, Development Committee or other Committee as the occasion may require.

The Uttar Urban Local Self Government Laws (Amendment) Bill, 2005 is introduced accordingly.

By order, RAM HARI VIJAI TRIPATHI Pramukh Sachiv,

The impugned Amending Act No. 38 of 2006 is reproduced as under:

STATEMENT OF OBJECTS AND REASONS

With a view to making provisions of the Uttar Pradesh Municipalities Act, 1916 and the Uttar Pradesh Municipal Corporation Act, 1959 more effective, it has been decided to amend the said Acts mainly to provide for,--

(a) clarifying that the meeting of a Municipality or of a Corporation convened after its constitution or re-constitution for administration of oath or affirmation shall be the first meeting of that Municipality or Corporation as the case may be;

(b) empowering the Executive Officer of a Municipality or the Municipal Commissioner of a Corporation to direct, by general or special order, any regular, ad hoc or contractual employee of the Municipality or the Corporation, as the case may be, who goes or remains on or otherwise takes part in any prohibited strike to resume duty and to make new appointment to the posts held by the employees who have failed to comply with the said order;

(c) authorising the Corporation to impose tax on helicopters or any other type of planes when they land on or take off from the heli-pads, airports, airstrips or places made for this purpose situated within the Corporation instead of on animals used for riding, driving, draught or burden kept within the city;

(d) authorising the Corporation to impose tax on certain items in respect of which the Corporation is heitherto authorised to impose tax in addition to the items on which the Corporation is fully authorised to impose tax;

(e) exempting from levy of tax the fields, farms and gardens of Government, aided institutes of research and development, play-grounds of Government, aided or unaided recognised educational institutions and sports stadium.

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THE UTTAR PRADESH URBAN LOCAL SELF GOVERNMENT LAWS (SECOND AMENDMENT) ACT, 2006 (U.P. ACT NO. 38 OF 2006)

[As passed by the U.P. Legislature]

AN ACT

further to amend Uttar Pradesh Municipalities Act, 1916 and the U.P. Municipal Corporation Act, 1959.

IT IS HEREBY enacted in the Fifty-seventh Year of the Republic of India as follows:

CHAPTER-I Preliminary

1. This Act may be called the Uttar Pradesh Urban Local Self Government Laws (Second Amendment) Act, 2006.

CHAPTER-II Preliminary

Amendment of the Uttar Pradesh Municipalities Act, 1916.

2. In Section 43-D of the Uttar Pradesh Municipalities Act, 1916 hereinunder in this chapter referred to as the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:

(4) Within seven days of the constitution or reconstitution of the Municipality, the District Magistrate shall convene a meeting of the Municipality for the

Administration of oath or affirmation in the manner prescribed in this Section and such meeting shall be presided over by the District Magistrate or in his absence by a Deputy Collector nominated by him in this behalf. The Meeting, so convened shall be treated as the First Meeting of the Municipality.

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CHAPTER-III

Amendment of the Uttar Pradesh Municipal Corporation Act, 1959

4. In Section 85 of the Uttar Pradesh Municipal Corporation Act, 1959, hereinafter in this chapter referred to as the principal Act, for sub-section (1-A) the following sub-section shall be substituted, namely:

(1-A) Within seven days of the constitution u/s 9 or reconstitution u/s 538 of the Corporation the Municipal Commissioner shall convene a meeting of the Municipal Corporation. The commissioner of the Division or in his absence the District Magistrate shall administer the oath or affirmation to the Mayor and thereafter the Mayor shall administer the oath or affirmation to corporators who have been declared elected. Such meeting shall be presided over by the Commissioner of the Division or in his absence the District Magistrate. The meeting so convened shall be treated as the First Meeting of the Municipal Corporation.

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4. A perusal of the impugned amendment reveals that all powers conferred on Municipal Board and Municipal Corporations have been conferred on administrator appointed after the expiry of term of five years. According to deeming clause, the administrator shall be deemed to be municipality, the President or the Committee of the Municipal Board or the Corporation as the case may be. Meaning thereby all administrative and legislative functions by the impugned amendment have been conferred on the administrator.

5. Under 1916 Act as well as 1959 Act, the Municipal Council or the Municipal Corporation both have got the power to impose tax by passing resolution and discharge their obligation to provide public amenities under the respective Act. The Municipal Board as well as the Municipal Corporation conduct business under Chapter III which includes sanction of contract, preparation of budget, Constitution of Committees, manage the municipal property, impose taxes under Chapter V and prepare plan for the developmental work within their jurisdiction. The Chairman and Members of the Municipal Board are elected public representatives.

6. The power and function of the municipality has been given u/s 7 of 1916 Act.

Section 8 gives discretionary power to the Municipalities and the composition of Municipality has been dealt with in Section 9.

Section 4 of 1959 Act provides that the municipal corporation shall be a body

corporate and its obligation shall be discharged by the authorities created u/s 5 of the Act. The composition of corporation has been dealt with u/s 6. The Chairman and Members of the Corporation are elected public representatives.

Section 25-A of the 1959 Act creates bar to the Legislature becoming or continuing as Mayor or Corporator.

Section 85 deals with oath of allegiance to be taken as Mayor and Members.

7. By U.P. Act No. 38 of 2006, Section 1A in Section 85 has been added according to which within seven days of the constitution u/s 9 or reconstitution u/s 53 of the Corporation, the Municipal Commissioner shall convene a meeting of the Municipal Corporation to administer oath of office or affirmation to the Mayor and such meeting shall be treated as first meeting of the Municipal Corporation. The addition under U.P. Act No. 38 of 2006 in Chapter II u/s 85 is distinct to provisions contained in Chapter III of the Act which contains the Rules of business or the proceedings of Mahapalika, Executive Committee, Development Committee and other Committees, u/s 86 of 1916 Act, the meeting of the municipality has to take place every month.

8. Section 88 deals with meeting of Corporation which provides that the Corporation shall meet for the transaction of business six times at least in a year i.e. at the interval of every two months.

The Municipal Corporation has got same duties and functions as of Municipalities (supra) having right to impose taxes, prepare and pass budget, frame rules, regulations and bye-laws and deal with civil amenities in its own jurisdiction.

9. The Parliament to its wisdom to make local bodies which include Panchayats, Municipalities and Municipal Corporations more democratic and autonomous had amended the Constitution of India by Seventy Third and Seventy Fourth Amendment Act of 1992 giving effect from 24.4.1993 and 1.6.1993, respectively. Part IX deals with Panchayats and Part XI-A deals with Municipalities. Under Article 243-Q, Municipalities are constituted. According to Clause (b) of Article 243-Q, the Municipal Council is constituted for a smaller urban area whereas for a larger urban area in accordance with the provisions of Part IX-A of the Act.

10. Article 243-R deals with composition of Municipalities and Article 243-S deals with constitution and composition of Wards Committees, etc. according to which all the seats of Municipalities 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. The Legislature has been conferred power under Clause (2) of Article 243-R to legislate law for representation in Municipality of persons having special knowledge or experience in Municipal administration, 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. The Legislature has further given power under Clause (2) of Article 243-S to

legislate law with regard to composition of territorial area of Wards Committee and the manner in which the seats of the wards committees shall be filled. Clause (5) of Article 243-S further empowers the Legislature to make provision for the constitution of Committees in addition to the Wards Committees. For convenience, Article 243-R and Article 243-S are reproduced as under:

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 243-S:

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;

243-S. 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.

11. Article 243-T deals with reservation of seats in the Municipalities and Corporations whereas Article 243-U deals with duration of Municipalities. According to Article 243-U(1), 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. In case a Municipality is dissolved by Legislature, then appropriate opportunity should be given before such dissolution. Clause (3) of Article 243-U further provides that the election to constitute a Municipality shall be completed before the expiry of its duration specified in Clause (1) or before the expiration of a period of six months from the date of its dissolution as the case may be. However, in case the duration is less than six months after dissolution, no election will be required. A dissolved Municipality after fresh election shall continue for the remainder period. For convenience, Article 243-U is reproduced as under:

243-U. Duration of Municipalities, etc.--(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appoints for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1);

(3) An election to Constitute a Municipality shall be completed--

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution: Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constitute upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under, clause (1) had it not been so dissolved.

12. Article 243-V deals with disqualification of membership whereas Article 243-W deals with powers, authority and responsibilities of Municipalities, etc. Article 243-X empowers the Municipalities to impose taxes by, and funds of, the Municipalities. Under Article 243-X, with regard to power to impose taxes and

funds by Municipalities, the procedure may be prescribed by the Legislature of the State. For convenience, Article 243-X is reproduced as under:

243-X. Power to impose taxes by, and funds of, the Municipalities.--The Legislature of a State may, by law.--

(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making, such grants in aid to the Municipalities from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law.

13. Under Article 243-Y, the Constitution provides that the Finance Commission constituted under Article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor. The Governor has been empowered to refer the matter to the Finance Commission to manage the affairs of Municipalities and every recommendation shall be laid before the Legislature of the State.

14. Article 243-Z deals with audit of accounts of Municipalities and Article 243-ZA deals with elections to the Municipalities, according to which 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 243-K. For convenience, Articles 243-2 and 243-ZA are reproduced as under:

243-Z. Audit of accounts of Municipalities.--The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Municipalities and the auditing of such accounts.

243-ZA. 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 243-K.

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

Thus the Article 243-ZA confers power to State Legislature to make law relating to or in connection with the election of Municipalities.

15. There is involvement of Municipalities in the Committee for District Planning

under Article 243ZD as well as in the Committee for Metropolitan Planning under Article 243-ZE.

16. Article 243-ZF contains the deeming clause which provides that the provisions contained in U.P. Municipalities Act or Municipal Corporations Act as existing prior to Seventy-fourth Amendment Act, 1992 shall continue to be in force to the extent of repugnancy. The Legislature of the State has been commanded to amend or repeal the provisions contrary to Seventy-fourth Amendment. For convenience, Article 243-ZF is reproduced as under:

*[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.]

17. As observed, Article 243-ZA deals with elections to the Municipalities where the State Election Commission appointed under Article 243-K has been held responsible with the power, superintendence, direction and control of the preparation of electoral rolls. For convenience, Article 243-K is reproduced as under:

243-K. Elections to the Panchayats.--(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by Rule determine: Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) 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 Panchayats.

18. One of the issues raised in the present bunch of writ petitions relates to voter list. Under Article 243P(g), population with regard to Municipalities or Municipal Corporation has been defined which is as under:

243-P(g). "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

19. Thus, the position seems to be clear that with regard to municipal elections, the term of voter list shall be based on population as ascertained at the last preceding census of which the relevant figures have been published, meaning thereby the Parliament to its wisdom has taken all precautions to hold the election within the time of five years on the basis of available census report which has been duly published on the due date of election required under Article 243-U. The State Election Commission has not to wait for outcome of any census operation or its final result.

20. Both the Acts have been amended by the State Legislature in pursuance to Seventy-fourth constitutional amendment to make the Municipalities and Municipal Corporations more democratic and autonomous in terms of aforesaid constitutional provisions.

21. Coming to argument advanced by the parties' counsel on different issue. It shall be appropriate to deal with them under different heads. Learned counsel for the petitioners has relied upon cases in A.R. Antulay Vs. R.S. Nayak and Another, ; Lakhan Singh Vs. State of U.P. and others, ; The State of West Bengal Vs. Kesoram Industries Ltd. and Others, ; Sunita Devi Vs. State of Bihar and Another, ; Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and Others, ; P. Venugopal Vs. Union of India (UOI), ; The Commissioner, Karnataka Housing Board Vs. C. Muddaiah, ; Ref. by President, Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, ; Anugrah Narain Singh and Another Vs. State of U.P. and Others, ; In Re: Presidential Poll, ; Jagdish Singh Vs. Lt. Governor Delhi and others, ; Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, ; 2002 (8) SCC 237; The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, ; Anugrah Narain Singh Vs. State of U.P., Ministry of Nagar Vikas Anubhag-4 and State Election Commission ; Viswanath Chaturvedi v. Union of India and others, 2010 (10) ADJ 504 (DB)(LB) and Prem Kumar Singh and Others Vs. State of U.P. and Others, . Whereas learned counsel for the respondents has relied upon the cases in Anurag Narain Singh Vs. Shri (Dr.) Narendra Kumar Singh Gaur and Others, ; Zile Singh Vs. State of Haryana and Others, ; R. Rajagopal Reddy and Others (deceased by legal representatives) Vs. Padmini Chandrasekharan (deceased by legal representatives), ; J. Jayalalitha Vs. U.O.I. and Another, ; Shri Chaman Singh and Another Vs. Srimathi Jaikaur, .

(I) VOTOR LIST

22. We have taken note of the constitutional provisions under Article 243P(g), according to which, the "population" means the population as ascertained at the last preceding census of which the relevant figures have been published. Needless to say that the report of 2011 census has not been published till date. The Registrar General and the Census Commissioner, Government of India, Ministry of Home Affairs vide his letter dated 21.10.2011, a copy of which has been filed as Annexure 2 to the writ petition, informed that the outcome of census 2011 is under process and the targeted date for release of final figure relating to ward-wise figures of population is 31.3.2013. Keeping in view the volume of work and the various data processing steps involved, it is not possible to compile the figures before the targeted date. The Registrar General further informed that in the year 2001 also, it took two years to complete the census by enumeration exercise. Accordingly, one thing is clear that before 31.3.2013, it shall not be possible to publish the outcome of 2011 census report. Only, a provisional data of population, totals based on the manual abstracts prepared by the enumerators has been released on 30.3.2011 which contains only an estimate of the total population.

23. The question with regard to voter List and reservation was subject of dispute before Hon''ble Supreme Court in a case in Anugrah Narain Singh and Another Vs. State of U.P. and Others, . Their Lordships of Hon''ble Supreme Court upheld the aforesaid proposition that the word, "population" defined under Article 243P(g) means the population ascertained at the last preceding census of which the relevant figures have been published. However, in the case of Anugrah Narain Singh (supra), the election could not be held since the data with regard to Schedule Caste and Scheduled Tribes was not available. The census of 1991 has not enumerated the number of persons belonging to backward classes. Therefore, the State Government proceeded to ascertain the population of backward classes and the number of people belonging to such class and postponed the election. Hon''ble Supreme Court ruled that under Article 243-T of the Constitution, it is mandatory to ascertain the population of backward classes to provide reservation in election. The provision being mandatory, the State Government rightly deferred the election to ascertain the population of backward class. In such situation, shelter of Article 243-P(g) could not be taken to compel the State Government to hold the election. However, the facts and circumstances of the present case are entirely different. Here, 2001 census as enumerated the number of persons belonging to reserve and general category is available and hence, the election can be held in terms of Article 243-P(g).

24. Shri J.N. Mathur, learned Addl. Advocate General has submitted that since the census operation has completed in June, 2011, it shall be obligatory on the part of Government of India to provide particulars with regard to census. He further submits that under report released by the Registrar, Census, there is great shift of population from rural to urban area, hence it is necessary to include

all of them in the voter list. He further submits that Article 243-P(g) should be read with Section 3 of the Census Act, 1948 and Rules framed thereunder. According to him the State is making effort to obtain relevant material from the Registrar General, Census for which a direction has been issued by a Division Bench of this Court. However, he submits that in any case, the Registrar General, Census, failed to provide required material, the election shall be held within six months from the date of expiry of term and not beyond that in terms of the judgment of Anugrah Narain Singh (supra) keeping in view 2001 census report and the Administrator shall continue for the said period.

25. The census operation is notified u/s 3 of the Census Act, 1948 by the Central Government whenever it is considered necessary or desirable. He further submits that the word, "necessary" used in Section 3 makes it indispensable in view of definition given by Hon"ble Supreme Court in the case in the Jailalita v. Union of India, (1993) 5 SCC 138. He also submits that it is obligatory on the part of the Registrar General, Census to provide details so that the reservation may be applied and delimitation of the Wards may be done. Argument advanced by the learned Additional Advocate General does not seem to be sustainable for the reason that the definition of the word, "population" given in Part-IX-A of the Constitution deals with Municipalities and the census operation is to be considered by the Government of India under Census Act, 1948. The decision with regard to census and decision to hold election of the Municipalities has got no concern. Only link is that for the purpose of municipal election under Part IX-A, the relevant figure shall be as published in the last preceding census.

26. The other argument of the learned Addl. Advocate General that the census of 2001 is otios and is not applicable also seems to be mis-conceived. Once the constitution itself provided the definition of "population", then any statute, Rules or regulations shall not create a ground to interpret the word and language of the Constitution giving primacy to the statutory provisions.

It is settled Rule of construction that in case the words and language of the constitutional or the statutory provisions are clear, unambiguous, then external aid cannot be supplied.

27. The Registrar General, Census vide his letter dated 21.10.2011 informed that only by the end of March 2013 (31.3.2013), the figure shall be published. It has been admitted by the learned State Counsel that the figure is published in the form of a booklet. Any disclosure of material at interim stage shall not attain finality unless it is duly released by the Registrar General, Census in accordance with rules. Hence, the State cannot compel the Registrar General, Census to provide information with regard to it on the basis of tentative material collected by it during census operation.

28. In a case in Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and Others, , Hon"ble Supreme Court held that it is the obligation of the State Election Commission to ensure that new Municipality is constituted in

time and Municipal elections are conducted before the expiry of its duration of five years as specified in Clause (1) of Article 243-U. Their Lordships held that in case there is any problem with regard to voter list, then the election shall be carried out on the basis of the voter list available at the point of time. To quote relevant portion:

From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years" period as stipulated in Clause (5) Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of the duration of five years" period as stipulated in Clause (5) and not yield to situation's that may be created by vested interests to postpone elections from being held within the stipulated time.

29. In *Kisansing Tomer* (supra), their Lordships further proceeded to hold that it shall be responsibility of the State Election Commission to ensure that the election is held within the period specified by the Constitution. In case, the State Government does not cooperate, then it shall be incumbent on the Election Commission to approach the High Court or Hon"ble Supreme Court for issuance of a writ in the nature of mandamus. To quote relevant portion:

28. Also, for the independent and effective functioning of the State Election Commission, where it feels that it is not receiving the cooperation of the concerned State Government in discharging its constitutional obligation of holding the elections to the Panchayats or Municipalities within the time mandated in the Constitution, it will be open to the State Election Commission to approach the High Courts, in the first instance, and thereafter the Supreme Court for a writ of mandamus or such other appropriate writ directing the concerned State Government to provide all necessary cooperation and assistance to the State Election Commission to enable the latter to fulfill the constitutional mandate.

29. Taking into account these factors and applying the principles of golden Rule of interpretation, the object and purpose of Article 243-U is to be carried out.

30. Attention of this Court has been invited to a recent judgment of this Court dated 19.10.2011, passed in writ petition No. 53557 of 2011 whereby a Division Bench of this Court at Allahabad took note of the fact that the duration under Article 243-U of the Constitution is five years and it is not open for departure from the constitutional mandate but further proceeded to hold that the census operation started in 2011 is in offing, only some formalities required, hence the Court directed for publication of census data immediately and notified the election by 15.11.2011. The operative portion of the judgment of this Court is

reproduced as under:

According to us, balance should be struck in between two constitutional mandates, as the election cannot be held beyond the period as per Article 243U of the Constitution i.e. five years from the date appointed for its first meeting and similarly, the election cannot be allowed to be held on the basis of census of 2001 because in that case large number of people will remain unrepresented. Census with regard to population is admittedly a continuous process. The process has been started in the early part of year 2011 and admittedly it is finished excepting certain formalities. Therefore, there should not be any delay in publication of data on the part of the Census Commissioner, if not already published.

Hence, we direct that publication of census data giving ward-wise and caste-wise break-up of population including Scheduled Castes, Scheduled Tribes and Other Backward Classes will be made immediately, so that process of delimitation and reservation of seats can be made by the State on priority basis. Such process will be completed by the State on war-footing, irrespective of holidays, as expeditiously as possible giving priority to the areas where elections are to be held by 15th November, 2011 and so on and also in respect of the transitional areas. After completing such process, the election notification will be issued but issuance of the same will not be delayed beyond 31st October, 2011. Respective dates of election will be fixed as per the holding of first meeting of elected bodies of the Municipalities and/or Municipal Corporations in the last election. However, under no circumstances the election will be held beyond the period as prescribed in the Constitution read with several Constitution Bench judgments of the Supreme Court, as referred above, and by no means such election will be held as per Census-2001 but as per Census-2011. The State Election Commission is hereby directed to hold a meeting prior to the date of issuance of notification.

With the above observations and order, the writ petitions are disposed of.

No order is passed as to costs.

19.10.2011.

31. With profound respect, it appears that the attention of the Court was not drawn to Article 243-P(g) of the Constitution of India and the judgment of Hon''ble Supreme Court in Kisan Singh Tomer's case (supra). Once the Constitution itself provides that the population shall be ascertained from the last preceding census of which the relevant figure has been published, then the aforesaid direction seems to be per incuriam to the aforesaid provisions of the Constitution as well as the mandate of Hon''ble Supreme Court in the case of Kisan Singh Tomer (supra). Why the Election Commission of U.P. has not invited attention of the Division Bench of Allahabad High Court to the aforesaid constitutional mandate as well as judgment of Hon''ble Supreme Court in Kisan Singh Tomer's case (supra) is not understandable. In case, the definition of population as given in the Constitution would have been taken into account by

the Division Bench as well as the judgment of Hon''ble Supreme Court (supra) with regard to voter list, then the election would have been notified long back and the State would have been relieved from deferring the municipal election. It appears that either the State Election Commission or its counsel could not represent their cause effectively before the Division Bench of this Court at Allahabad.

32. Moreover, now the Director General and Census Commissioner, India, Ministry of Home Affairs, Government of India by his letter dated 21.10.2011 categorically stated that it shall not be possible to publish the outcome of census 2011 before 31.3.2013. Hence, there is no option except to proceed immediately to hold election on the basis of previous published census report. Half heartedly, it has been further submitted that the Division Bench while deciding the case by judgment dated 9.10.2011 (supra) has consented to wait the outcome of census 2011. It is stated that since it is a consented order, the State cannot be held responsible in delaying the municipal election. Again, it appears that the catena of judgments of Hon''ble Supreme Court have not been taken into account. It is a settled proposition of law that neither there can be consent or concession nor estoppel against the statutory or constitutional provisions. Once the Constitution itself define the population, then neither the government nor this Court has got jurisdiction to travel beyond the constitutional mandate, more so when Article 243-P(g) does not suffer from any ambiguity.

It is in pursuance to the provisions contained in Article 243-P(g) in the Constitution of India, Section 2(16) of the U.P. Municipalities Act, 1916 and 2(53-A) of the U.P. Municipal Corporations Act, 1959, "population" has been defined and the provision is pare materia to the constitutional provisions which is reproduced asunder:

2(16). "Population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

2(53-A). "Population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

33. Concession of law and concession of wrong on legal question are/is not binding vide B.S.N.L. and Others Vs. Subash Chandra Kanchan and Another, and U.P. Power Corporation Ltd. Vs. Ayodhya Prasad Mishra and Another, .

34. It is further settled proposition of law that there cannot be estoppel against the statute, against the Constitution, against the fundamental right and the officers have got no right to act beyond the authority conferred by law vide State of U.P. and Another Vs. U.P. Rajya Khanij Vikas Nigam S.S. and Others, ; Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, ; Banwari Lal Kotiya Vs. P.C. Aggarwal, ; Nookala Setharamaiah Vs. Kotaiah Naidu and Others, ; A.C. Jose v. Sivan Pillai, 1984 (2) SCC 656 and Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, .

35. Hon'ble Supreme Court in the case of Nookala Setharamaiah (supra) further held that any estoppel cannot override the law of land.

It is also settled proposition of law that the jurisdiction cannot be conferred by the parties where it does not exist. There cannot be jurisdiction by agreement or by consent. The jurisdiction defect cannot be cured even by consent of parties vide Kiran Singh and Others Vs. Chaman Paswan and Others, ; Modi Entertainment Network and Another Vs. W.S.G. Cricket PTE. Ltd., ; The United Commercial Bank Ltd. Vs. Their Workmen, ; Bhajahari Mondal Vs. The State of West Bengal, ; Harshad Chiman Lal Modi Vs. DLF Universal and Another, and Modi Entertainment Network and Another Vs. W.S.G. Cricket PTE. Ltd., .

36. Per incuriam means in ignorance of or without taking note of some statutory provisions or the constitutional mandate or the judgment of Hon'ble Supreme Court or the larger Bench, vide State of Bihar Vs. Kalika Kuer @ Kalika Singh and Others, ; State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, ; Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., ; Sunita Devi Vs. State of Bihar and Another, ; Ram Gopal Baheti v. Girdharilal Soni and Ors., (1999) 3 SCC 112; A.R. Antulay Vs. R.S. Nayak and Another, ; Sarnam Singh and Another Vs. Dy. Director of Consolidation and Others, ; State through S.P., New Delhi Vs. Ratan Lal Arora, .

37. In a case in A.R. Antulay Vs. R.S. Nayak and Another, , Hon'ble Supreme Court with regard to applicability of doctrine of per incuriam held as under:

44. It appears that when this Court gave the aforesaid directions on 16th February, 1984, for the disposal of the case against the appellant by the High Court, the directions were given oblivious of the relevant provisions of law and the decision in Anwar Ali Sarkar's case (supra). See Halsbury's Laws of England, 4th Edn., Vol. 26, page 297, para 578 and page 300, the relevant notes 8, 11 and 15; Dias on Jurisprudence, 5th Edn., pages 128 and 130; Young v. Bristol Aeroplane Co. Ltd, Also see the observations of Lord Goddard in Moore v. Hewitt-A and Penny v. Nicholas, "per incuriam" are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. See Morelle v. Wakeling. Also see State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, . We are of the opinion that in view of the clear provisions of Section 7(2) of the Criminal Law Amendment Act, 1952 and Articles 14 and 21 of the Constitution, these directions were legally wrong.

38. The Election Commission of U.P. while filing counter-affidavit expressed its readiness to hold election. During the course of proceeding, the Joint Election Commissioner Shri J.P. Singh appeared on 1.12.2011 before the Court and also made a statement that the Election Commission is ready to hold the election. It has been stated that the voter list was prepared and published on 1.6.2011.

While filing counter-affidavit, the Election Commission of U.P. also stated that it has made a request to the State Government on 5.9.2011 to notify the election programme from 24.9.2011. It shall be appropriate to reproduce para 12 of the affidavit filed by the State Election Commission:

12. That the State Election Commission has already prepared and notified the guidelines/directions for Returning Offices and Assistant Returning Officers for General Election, 2011 of the local bodies and also notified the list of the Symbols on 17.2.2011 for Members of Nagar Panchayat and Nagar Palika Parishad and similarly, the notification was issued regarding the list of Symbols for Chairman & Mayors of the local bodies. The State Election Commission has also issued the other orders and guidelines for Election Officers and employees and other guidelines and directions for Counting Officers and employees thereof.

Hence, there appears to be no justification on the part of the State Government to defer the election, more so when the State Election Commission is ready for the election right from September, 2011.

(II) DURATION

39. Under Article 243-U, duration of Municipalities is five years. Five years is to be (sic) the date appointed for its first meeting and no longer. Whether the date of subscribing of oath may be treated as the first meeting for the purpose of Article 243-U?

The opening word of Article 243-U is the date appointed for its first meeting.

40. Chapter III deals with conduct of business in the U.P. Municipalities Act, 1916 as well as U.P. Municipal Corporation Act, 1959. Sections 86 and 87 of the 1916 Act deals with the meeting of the Municipality. It provides that there shall be at least one meeting of Municipality in every month to be held on a day fixed by regulation upon a requisition made by not less than one-fifth of the members of the Municipality. No business shall be transacted unless previous notice of the intention to transact such business has been given. For convenience, Sections 86 and 87 are reproduced as under:

86. Meetings of a [Municipality].--(1) There shall be at least one meeting of the [Municipality] in every month to be held on a day fixed by regulation or of which notice has been given in a manner provided by regulation in this behalf.

[(2) the President may convene a meeting whenever he thinks fit and shall, upon a requisition made in writing by not less than one-fifth of the members of the [Municipality] and served on the President or sent by registered post acknowledgment due addressed to the [Municipality] at their office, convene a meeting within a period of [fifteen days] from the date of the service or receipt of such requisition.]

[Provided that the President may, for reasons to be recorded, postpone a meeting, other than a meeting convened on the requisition of members as

above, by giving such notice as may be provided by regulation in this behalf.]

(3) A meeting may be adjourned until the next or any subsequent day, and an adjourned meeting may be further adjourned in the like manner.

(4) Every meeting shall be held at the municipal office (if any) or other convenient place of which notice has been duly given.

(5) The President shall report to the District Magistrate the name of any member who has, without obtaining sanction from the [Municipality], absented himself from the meetings of the [Municipality] for more than three consecutive months or three consecutive meetings, whichever is the longer period.

87. Transaction of business at meetings.--Subject to any provision to the contrary made by regulation in this behalf, any business may be transacted at any meeting:

Provided that no business which is required to be transacted by a special resolution shall be transacted unless previous notice of the intention to transact such business has been given:

Provided also that nothing in this Section shall apply to the motion that the [Municipality] shall adopt a resolution expressing non-confidence in the President or to a motion that the [Municipality] shall adopt a resolution calling upon the President to resign.

41. Section 88 deals with quorum which provides that the quorum shall be not less than one-third of the total members of the Municipality. Section 88 is reproduced as under:

88. Quorum.--(1) It shall be necessary for the transaction of any business other than business which is required to be transacted by a special resolution that not less than one-third of the total members of the Municipality for the time being shall be present.

(2) It shall be necessary for the transaction of business which is required to be transacted by special resolution that not less than one-half of such members shall be present:

Provided that, when it is necessary to postpone any business at a meeting for want of the prescribed quorum, the President after the transaction of such business can be transacted, shall adjourn the meeting to another date, and the business postponed for want of the prescribed quorum shall be transacted on such date, or in the event of a further adjournment of the meeting to a subsequent date, on such subsequent date, notwithstanding any deficiency in the number of members present.

42. Shri Vivek Raj Singh while assailing the impugned amendment with regard to first meeting has invited the attention of this Court to Section 43D of the 1916 Act which provides that before taking seat in the Municipality, it shall be

incumbent for the elected representative to take oath of office. This provision further makes it clear that a person shall not be deemed to be a member of Municipality unless subscribe at a meeting of the Municipality an oath of affirmation of his allegiance to the Constitution in the prescribed form. To quote:

[43-D. Oath of allegiance and office.--(1) The President and every member of a [Municipality] shall, before taking his seat, make and subscribe at a meeting of the Municipality an oath or affirmation of his allegiance to the Constitution in the following form:

1. A.B., having been elected a member/President of this Municipality do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, and that I will faithfully and conscientiously discharge the duties upon which I am about to enter.

(2) The President or the members who fails to make within three months of the date on which his term of office commences or at any one of the first three meetings of the Municipality, held after the said date, whichever is later, unless this period is extended by the District Magistrate, the oath or affirmation laid down in and required to be taken by sub-section (1) shall cease to hold his office and his seat shall be deemed to have become vacant.

(3) Any person required under sub-section (1) to make an oath or affirmation shall not take his seat at a meeting of the Municipality or do any act as a member or President of the Municipality unless he has made and subscribed an oath or affirmation as laid down under sub-section (1).

(4) Within seven days of the constitution or reconstitution of the Municipality, the District Magistrate shall convene a meeting of the Municipality for the Administration of oath or affirmation in the manner prescribed in this Section and such meeting shall be presided over by the District Magistrate or in his absence by a Deputy Collector nominated by him in this behalf. The meeting, so convened shall be treated as the First Meeting of the Municipality.

(5) The Executive Officer shall, as soon as may be, report to the District Magistrate the name of the President or member, if any, who ceases to hold his office under sub-section (2).

Thus, the impugned amendment seems to be in violation of the other provisions of 1916 Act.

43. Thus, the meeting of the Municipality is convened in pursuance to the business notified in the form of agenda with specified quorum. By subscribing oath of office, a person becomes member of Municipality or Municipal Corporation. Subscribing of oath of the office is part and partial of the procedure to make a citizen or person member of Municipal Board or Municipal Corporation. Only by subscribing oath of office, a person becomes eligible to participate in the meeting convened to conduct the business of Municipal Board or Municipal

Corporation. This interpretation is supported by Section 43-D of 1916 Act (supra).

44. Article 243-U relates to the date appointed for its first meeting. Meaning thereby, after election, when a person becomes a member of the Municipality or Municipal Corporation, the meeting should be notified in pursuance to Chapter III of both the Acts and on the date when such meeting is convened shall be appointed date of its first meeting. Accordingly, the appointed date for first meeting means the date convened under the Rules of Business.

45. The procedure prescribed by Amendment Act No. 38 of 2006 to count the date of taking oath of office as first meeting seems to be violative of the Act itself. During the course of argument, it has not been disputed by the learned counsel for the State that unless a corporator or member takes oath of office, he shall not be eligible to participate in the business under Chapter III. Accordingly, taking oath of office is condition precedent and entitles and make a member to participate in the meeting of the Municipal Board or Municipal Corporation. After taking oath of office when the first meeting is convened and held shall be treated as first meeting for the purpose of Clause (1) of Article 243-U. The amendment done in the Act by Amending Act of 2006 seems to be ultra vires to the statutory provisions and Chapter III of the respective Acts as well as Clause (1) of Article 243-U.

Whether Act No. 38 of 2006 is incompetent affecting the finality of judicial decision?

46. Act No. 38 of 2006 by which the State has made amendment to count the date of taking oath of office as first meeting is also bad for one other reason. The legislatures are not competent to keep aside a judicial decision or re-open the past controversy though it can render a judicial decision ineffective but where a judicial decision is delivered by the Court after interpreting the Constitution, then unless the Constitution is amended, the legislatures lack jurisdiction to end the finality of judicial decision or reopen the past controversy.

47. In the case of Anugrah Narain Singh (supra), the Division Bench of this Court has interpreted the word, "meeting" as given in Article 243-U of the Constitution. The Division Bench opined that the first meeting means the meeting held with regard to business of Municipality. Adding to finding, the Division Bench also considered the statutory provisions which has been amended by the impugned Act. The observation made by the Division Bench in the case of Anugrah Narain Singh (supra) while interpreting Article 243-U is reproduced as under:

47. This leaves us to the question as to what meaning should be given to the words "the date appointed for its first meeting" as occurring in clause (1) of Article 243-U of the Constitution of India. According to the learned counsel for the petitioners the date appointed for the first meeting of the Municipality including Municipal Corporation and Nagar Panchayats, is the date on which the meeting has been called to transact some business and not the date on which the meeting has been called for administering oath to the elected members,

Mayor and Chairman respectively. The date appointed for its first meeting has not been defined either in the Constitution or in any of the provisions of the Municipalities Act or the Adhiniyam and, therefore, we have to consider the meaning as given in the dictionaries and other texts.

48. Meeting has been defined in Shorter Oxford Dictionary is an assembly of a number of people for entertainment, discussion or the like. The learned authors M. Kaye Kerr and H.W. King in their book titled "Procedures for Meeting and Organisations" 1984 Edition, at page 63, have stated that a meeting is a gathering of individuals, delegates, or representatives who desire to accomplish a particular common purpose. The purpose of the meeting must be clearly identified as the first stage in the planning process. Thus, meeting is an assembly of a number of people for discussion or the like.

48. While making the impugned amendment, the legislature has not taken note of the judgment of Anugrah Narain Singh (supra) whereby Article 243-U was interpreted as is evident from the statement of aims and object. Accordingly, by the impugned amendment, interpretation made by the Division Bench in the case of Anugrah Narain Singh (supra) with regard to first meeting has been nullified without considering the judgment and also in a situation when the provision is the same even today.

49. The constitutional interpretation made by the Division Bench in the case of Anugrah Narain Singh (supra) could not have been made redundant by the impugned amendment vide State of Orissa and another Vs. Gopal Chandra Rath and others, ; Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, ; Krishna Chandra Gangopadhyaya and Others Vs. The Union of India and Others, and Tirath Ram Rajindra Nath, Lucknow Vs. State of U.P. and Another, .

50. In a case in The State of Maharashtra and Others Vs. Kumari Tanuja, , Hon"ble Supreme Court ruled that where the State Government sought to overrule the High Court judgment without altering or neutralising the legal basis thereof by producing relevant additional material or by applying mind to the reasons given by the High Court, it was rightly held illegal by the High Court as unconstitutional.

Same principle has been held in State of Haryana and others Vs. The Karnal Co-op. Farmers" Society Limited, etc. etc. and others, .

51. In the present case, accordingly, since the constitutional interpretation given by this Court in the case of Anugrah Narain Singh (supra) with regard to first meeting could not have been invalidated by the Amending Act unless the Constitution itself is amended by the Parliament for the purpose as the effect of such attempted legislation would be to confer legislative competence on the State Legislature which it did not have under the Constitution vide Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others, .

52. In a case in P. Venugopal Vs. Union of India (UOI), , their Lordships of

Hon"ble Supreme Court has reiterated the aforesaid proposition that in case some judgment has been delivered by the Court deciding the issue, then that should be considered while taking any subsequent decision. To quote:

It may not be out of place to mention that the SLP of the respondent indicates that the term of office of five years of the writ petitioner as Director was not really in dispute. In the Statement of Objects and Reasons of the Act introducing the impugned proviso, it is stated that the same is being introduced with a view to comply with the direction of the High Court in the judgment and order dated 29th of March, 2007. It, however, appears that the Division Bench of the Delhi High Court has determined the question of tenure of the writ petitioner to be five years and there are writs in the nature of Mandamus and Prohibition issued by the Delhi High Court directing the right of the writ petitioner indicated in the respective orders. As in Madan Mohan Pathak's case (para 8), as quoted herein above, in the instant case also the Parliament does not seem to have been apprised about the pendency of the proceedings before the Delhi High Court and this Court and declaration made and directions issued by the Delhi High Court at different stages. In the impugned amendment, there is no non-obstante clause. The impugned amendment introducing the proviso, therefore, cannot be treated to be a validating Act.

53. While admitting the writ petition, we had passed an interim order dated 15.11.2011 holding that the first meeting shall be in accordance with the Rules of business. The reason behind it was that prima facie, we were satisfied that the legislatures were not competent to legislate law to nullify the finding recorded by the Division Bench of this Court in the case of Anugrah Narain Singh (supra). The judgment of Anugrah Narain Singh is based on constitutional interpretation of Article 243-U. Unless the Constitution is amended or finding recorded by the Division Bench in the case of Anugrah Narain Singh (supra) is set aside by higher forum, it was not open to nullify the judgment of Anugrah Narain Singh in view of settled proposition of law by catena of judgments of Hon"ble Supreme Court as referred to above. Things would have been different in case the petitioners would have not challenged the constitutional validity of Act No. 38 of 2006. Since the constitutional validity has been challenged in one of the connected writ petitions and being prima facie satisfied, the interim order was passed. In the case before the Division Bench at Allahabad, decided on 19.10.2011, the constitutional validity is not in issue. Hence, the judgment delivered by their Lordships was on the basis of the law as it stands. This fact again has not been considered nor attention of the Court has been invited by the State or State Election Commission in one other judgment decided on 30.11.2011 passed in writ petition No. 67467 of 2011 Ajmal Kha alias Chhote v. State of U.P. and others where finding has been recorded keeping in view the effect of impugned amendment under Act No. 38 of 2006 which seems to be rightly adjudicated on the basis of existing law and impugned statutory provisions.

(III) WHETHER THE TERM OF MUNICIPALITY MAY BE EXTENDED BEYOND FIVE

YEARS IN ABSENCE OF ELECTION?

54. It has been vehemently argued by learned Senior Counsel Sri Ravi Kiran Jain, assisted by Shri R.K. Awasthi appearing on behalf of the petitioners that the term of municipality or Municipal Corporation is liable to continue till the election is held, afresh since there is no provision with regard to dissolution of Municipal Board or Municipal Corporation under Article 243-U. The petitioners' counsel has emphasised that under the Constitution the Parliament and State Legislature shall be deemed to be dissolved after period of five years but it is not with the Municipal Board or Municipal Corporation.

55. Argument advanced by the petitioners' counsel does not seem to be sustainable for the reasons that under Article 243-U, the Parliament to its wisdom has used the word, "no longer" in Clause (1) of Article 243-U. Once the Article 243-U provides that the term of Municipality shall not continue beyond the period of five years, then neither by the fiction of law nor by process of judicial review or by the order of the Court, the period may be extended even if the election is not held within the said period of five years.

Needless to say that it shall be responsibility of the State and its State Election Commission to hold election within a period of five years but failure of State or State Election Commission shall not be a ground to extend the period of Municipalities. The provisions contained in Clause (3) of Article 243-U is mandatory and the State Election Commission or the State Government both have no option except to hold election within a period of five years.

56. A Division Bench of this Court in a case in Anugrah Narain Singh v. State of U.P. and others, 2006 (2) ADJ 90 (DB) has recorded a finding that the Municipality cannot continue beyond the period of five year for any reason whatsoever keeping in view the words, "no longer" used in Clause (1) of Article 243-U. There appears to be no ground to record disagreement with the Division Bench's judgment of this Court in Anugrah Narain Singh's case (supra). For convenience, relevant portion from the aforesaid judgment is reproduced as under:

From the plain reading of the aforesaid provision we find that every Municipality unless sooner dissolved shall continue for five years from the date appointed for its first meeting and no longer. The period of five years starts from the date appointed for its first meeting and moment the period of five years comes to an end the duration of that Municipality will also come to an end. The Parliament had used the words "no longer" in clause (1) of Article 243-U of the Constitution of India to which some meaning has to be assigned. The natural meaning which can be ascribed to the said phrase is that the duration of the Municipality cannot extend even for a single second beyond the stipulated five years" period from the date appointed for its first meeting. The words "no longer" has been used in the negative sense and, in view of decision of the Apex Court referred to above it is mandatory and therefore, in any event the duration cannot extend beyond the

stipulated period. The plea that sub-clause (a) of clause (3) of Article 243-U be read as proviso to clause (1) of Article 243-U of the Constitution of India and that the term of a Municipality shall continue till the election to constitute a new Municipality has been completed is wholly misconceived and is liable to be rejected.

The interpretative principle of the Constitution has been discussed in the proceeding paras.

57. This Court further opined (*supra*) that in case the constitutional framers would have intended to continue the Municipality till successor takes charge, then would have made specific provision in the Constitution itself like Clause(c) of the proviso of Article 56(1) of the Constitution of India which deals with the President who shall hold office till the successor enters upon their office. Similar provision contained in Article 156 with regard to Governor as well as Article 94 with regard to Speaker of the House of People. Accordingly, there appears to be no good ground to uphold the argument advanced by the petitioners' counsel with regard to continue all members of Municipality or the corporators till arrival of fresh incumbents. They shall cease to be member exactly after expiry of five years after the completion of the term.

58. Shri Ravi Kiran Jain, learned Senior Counsel while comparing the tenure of legislative assembly and Parliament under the constitutional provisions contained in Articles 83, 172 with 243-E and 243-U has submitted that there is specific provision with regard to dissolution of the Assembly but in Article 243-U, there is no such provision. Hence, the Municipal and Corporation Members shall continue to remain in office till the next body comes on seat. He further submits that under service law and as per Article 309 of the Constitution, the duty of the municipality cannot be assigned to administrator.

59. So far as the assignment of day is concerned, we are of the view that the administrator could not be appointed since the impugned amendment lacks legislative competence. However, with regard to continuance of Municipality and Corporation till the next election, we do not agree to accept the said argument. According to own argument of Shri Ravi Kiran Jain, under Article 83, the Council of State has not been subjected to dissolution but such provision does not exist in Article 243-U.

However, Shri Jain has relied upon the case reported in a case of Canadian Supreme Court (*Canada Sugar Refining Co. v. R.*, (1989) AC 735 and the judgment of Hon''ble Supreme Court in *Gammon India Ltd. and Others Vs. Union of India (UOI) and Others*, and some other cases as given in paragraphs 47, 48 and 49 of the writ petition with submission that Article 243-U should be read with reference to the context and harmonious consideration should be given so that the Municipality should run till fresh incumbent by next election joins.

Acceptance of the argument of Mr. Jain would amount to supplying cautious omissus or applying the principle of reading down. We have referred number of

cases in later part of the judgment with regard to settled proposition of law that harmonious construction does not mean to supply words, supply cautious omission in case the language of the statute or the Constitution is clear. Accordingly, the submission of Shri Jain with regard to contrivance of Municipality or Municipal Corporation till newly elected members resume works seems to be not sustainable.

(IV) OBJECT AND REASONS

60. According to the object and reasons, of the impugned amendment, under Act No. 23 of 2005, provision with regard to appointment of Administrator was made keeping in view the fact that the Constitution of elected urban bodies and the election of the office bearers could not be possible within the stipulated period as fresh delimitation of wards, preparation of electoral roll and resolution of wards etc on the basis of census 2001 was to take place. It was necessary to find out the fresh delimitation of wards to provide reservation in view of Article 243-T of the Constitution.

Now, the condition provided therein no more exists since the report of census 2001 has already been published and available with the government. Thus, the entire aims and object necessitated for the impugned amendment no more exists.

61. Privy Council in *Emperor v. Benoari Lal*, 1913 PC 36 held that the history of legislation and the facts which give rise to the enactment may usefully be employed to interpret the meaning of the statute, though they do not afford a conclusive argument.

62. In a case in *M.K. Ranganathan and Another Vs. Government of Madras and Others*, , Hon"ble Supreme Court observed that though the Statement of Objects and Reasons is not admissible as an aid to the construction of a statute but it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the bill to introduce the same and the extent and urgency of the evil which he sought to remedy.

63. In *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, , their Lordships of Hon"ble Supreme Court held that when the terms of statute are ambiguous or vague, the statement of Objects and reasons may be resorted to for the purpose of arriving at true intention of the legislature.

64. In *S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others*, , Hon"ble Supreme Court held that the Statement of Objects and Reasons may be referred to for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation sought to remove is aimed at.

65. In *State of West Bengal Vs. Union of India*, , Hon"ble Supreme Court observed that the statement of Objects and Reasons may be used (sic) purpose of understanding the background and the antecedent State of affairs, leading up to the legislation.

Same principle has been reiterated in A.C. Sharma Vs. Delhi Administration, .

66. In Kameshwar Singh Srivastava Vs. IV Addl. District Judge, Lucknow and Others, . Hon"ble Supreme Court has widened the scope of object and reasons and observed that the Court may strive to so interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Courts must therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case.

67. In R.S. Nayak Vs. A.R. Antulay, , while considering the purpose of Prevention of Corruption Act, 1947 and mode of construing a provision of the Act, their Lordships observed that the purpose of Act is to make more effective provisions for prevention of bribery and corruption. To quote:

18. The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive such construction at the hands of the Court as would advance the object and purpose underlying the Act and at any rate not defeat it..... The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the statute would be self-defeating. The Court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This Rule of construction is so universally accepted that it need not be supported by precedents. Adopting this Rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of 47 a provision, it would be the duty of the Court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it.

68. In a case in Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others, , Hon"ble Supreme Court observed that while interpreting the statutory provisions, the Court has to ascertain the intention of the legislature, actual or imputed and the Court must strive to interpret the statute as to promote and advance the object and purpose of the enactment. To reproduce relevant portion, to quote:

9. So we see that the primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the Rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the Court would be well justified in departing from the so-called golden Rule of construction so as

to give effect to the object and purpose of the enactment by supplementing, the written word if necessary.

69. Hon"ble Supreme Court in a case in State v. Govindan Thampi Bhaskaran Thampi, AIR 1957 SC 29 observed that resort to the history of the legislation to construe the meaning of any provisions therein is more often taken exception to than not. At the same time it is common knowledge that when the words of a statute are ambiguous, attempts are not infrequently made to ascertain their true meaning by reference to the state of the law at the time the statute was passed, the mischief sought to be avoided and the stages through which the concerned legislation passed.

70. Allahabad High Court in a case Kunwar Murli Manohar Vs. State of Uttar Pradesh and Others, , observed that in the interpretation of a statute, the history of the legislation and the surrounding circumstances which existed at the time and demanded a change of law or the enactment of a new one, can all be taken into consideration.

71. A Full Bench of Patna High Court in a case reported in 1993 Cri. LJ 3246 on a reference made by Ravinandan Sahai, Sessions Judge, Patna held that while interpreting the Prevention of Corruption Act, 1988, the legislative history of object and reasons though do not contain meaning of any expression used in the statute but can be used for interpreting the meaning of the statute.

72. As stated by the petitioner's counsel, the question cropped up whether the impugned amendment is based on non-existence, unreal and imaginary purpose and whether the power conferred on the State Government to make amendment under Articles 245 and 246 of the constitution of India has been exercised in the present context, arbitrary for imaginary purpose?

73. Hon"ble Supreme Court in the case in Indian Council of Legal Aid and Advice, etc. etc. Vs. Bar Council of India and another, , ruled that the cut off date fixed for registration of Advocate is without any reliable statistical or without material and, therefore, bad in law.

In the case in Sube Singh and Others Vs. State of Haryana and Others, , their lordships ruled that classification of land in different categories for the purpose of classification Act exemption found to be based on no material hence suffers from vice of arbitrariness.

In Kailash Chand Sharma Vs. State of Rajasthan and Others, , Hon"ble Supreme Court ruled that preferential treatment given to rural candidates for the post of teachers without there being any study or survey for the purpose, is unconstitutional.

74. In Dr. K. R. Lakshmanan Vs. State of Tamil Nadu and another, , their lordships of Hon"ble Supreme Court found that object and reason and preamble of the impugned Act was to provide for classification for the public purpose and approval of undertaking of Madras Race Club and for matters connected

therewith are incidental thereto. Their lordships found that Club does not contain or own any resource of the Committee and even does not have any income from betting money except 5% commission hence the aims and object was imaginary and based on unfounded fact. There is no nexus with the provisions of the Act connected with the object contained therein. Hence Hon''ble Supreme Court reversed the judgment of High Court and restored the allotment of land.

75. In the case in Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc., , the question cropped up before a Constitution Bench of Hon''ble Supreme Court whereby the action of taking over the management of the three cotton Mills, was upheld. High Court declared the acquisition unconstitutional. Their lordships held that legislature in modern State is actuated with some policy to curb some public evils or to effectuate some public benefit. Their lordships relied upon the case of Madras Race Club (supra) and reaffirmed the proposition with regard to supporting the material for object and reason while enacting a statute. It is different thing that in the said case material was found supporting the arms and object, to quote relevant portion of Para 14 as under:

14. The Legislation in a modern State is actuated with some policy to curb some public evils or to effectuate some public benefit. The Legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But from the very nature of things, it is impossible to anticipate fully, the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite reference are bound to be in many cases, lacking in clarity and precision, and thus giving rise to the controversial question of construction. Bearing in mind the aforesaid general principles, let us now examine the five questions formulated earlier.

76. In Sarbananda Sonowal Vs. Union of India (UOI) and Another, , Hon''ble Supreme Court had reiterated the settled proposition of law that there must be a nexus with the objects sought to be achieved. If geographical consideration becomes the sole criterion completely overlooking the other aspect of "rational nexus with the policy and object of the Act" [from Para 70 of Sarbananda Sonowal (Supra)].

Keeping in view the aforementioned broader principle with regard to aims and object, in case the impugned amendment is referred weighing its constitutional validity, it seems to suffer from unconstitutionality.

(V) LEGISLATIVE FIELD

77. The Legislative competence of the Legislature is ascertained with reference to the provision contained in Entries under Seventh Schedule of the Constitution. Under Lists I and II, the election has been dealt with, which areas under:

List I

72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.

73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.

74. Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.

75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.

78. The Union of India has been conferred further power under Entry 97 of List-I which is residuary power and for any matter which is not enumerated in Lists II and III, Union of India or the Parliament may make law. Entry 97 under List-I is as under:

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

LIST-II

79. List II is the State List. Entry 5 relates to Local government and entries 37 to 39 relate to elections to the Legislature, salary, allowances etc. For convenience, entries 5, 37, 38 and 39 are reproduced as under:

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

37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.

38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.

39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

80. Thus, the power conferred on the State Government to legislate law with regard to local bodies, Municipalities and Municipal Corporation flows from Entry 5 of List II. Under Entry 5, the jurisdiction of the State Government relates to constitution and powers of municipal corporations improvement trusts, district boards and others for the purpose of Local Self Government or village administration. However, by Seventy-fourth Amendment, the Parliament has specifically provided the areas of function of the State Legislature. The Parliament has confined the power of the State Legislature under Article 243R(2) with regard to representation in Municipality and under Sub Clause (b) with regard to manner of election of the Chairperson of a Municipality.

81. Article 243-S(2) further empowered the State Government to legislate law and make provision with regard to composition and territorial area of a Wards Committee and the manner in which the seats in a Wards Committee shall be filled. Under Clause (5) of Article 243-S, the State Legislature has been further empowered to make law for constitution of Committees in addition to the Wards Committees.

82. Article 243-T further empowers the State Government to reserve seat for the Scheduled Castes and the Scheduled Tribes in every Municipality.

83. The State has been further empowered to make law with regard to disqualification of membership under Article 243-V and subject to provision of Constitution make law with regard to power, authority and responsibilities of Municipalities. The State shall be further empowered under Article 243-X to make law to impose taxes and funds of the Municipalities.

84. Under Article 243-Z, the legislature of a State has been empowered to make law for maintenance of accounts by the Municipalities and the auditing of such accounts.

85. Article 243-ZA provides that the superintendence, direction and control of the preparation of electoral rolls shall vest in the State Election Commission referred in Article 243-K and under Clause (2), subject to the provisions of the 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.

86. In case a combined reading of Article 243-U and Article 243-ZA is given, the power of the State Government cannot travel beyond the constitutional provision. The State or Election Commission cannot defer the election for any reason whatsoever to create vacuum. The provision contained in Article 243-U is mandatory and under Clause (3) of Article 243-U, it shall be the liability of the Election Commission and the State Government to ensure that the Municipality is constituted before expiry of duration of five years specified in Clause (1) of Article 243-U. The Constitutional framers had not visualised the situation that the power may be abused or the State Government may avoid to hold election for political reasons or the State Election Commission may not discharge its constitutional obligation to hold election to constitute new body within a period of

five years. Meaning thereby, it has been presumed that the State Government and the State Election Commission shall discharge their constitutional obligation to hold election within a period of five years.

87. Neither Article 243-U nor Article 243-ZA or any provision under Part-IX-A empowers the State Government to legislate law to create the post of Administrator as has been done by the impugned amendment. The power conferred on the State Government under Entry 5 List II may be exercised within the letter and spirit of Article 243-U read with Article 243-ZA and not beyond that.

88. Hon''ble Supreme Court in a case in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, , held that while interpreting the Constitution, every word should be taken into account and no expression should be rendered redundant.

89. In S.R. Bommai and others Vs. Union of India and others etc. etc., , a Constitution Bench of Hon''ble Supreme Court held that while interpreting the Constitution, Courts should not fill in gaps of the constitutional provision when the language is clear.

90. In S.P. Gupta Vs. President of India and Others, , their Lordships of Hon''ble Supreme Court ruled that the Courts cannot supply any omission based on its own concept than what the Constitution has provided. The Court must interpret the Constitution as it is and not as it ought to be. To quote relevant portion:

199. But there is one principle on which there is complete unanimity of all the Courts in the world and this is that where the words or the language used in a statute are clear and cloudless, plain, simple and explicit unclouded and unobscured, intelligible and pointed so as to admit of no ambiguity, vagueness, uncertainty or equivocation, there is absolutely no room for deriving support from external aids. In such cases, the statute should be interpreted on the face of the language itself without adding, subtracting or omitting words therefrom.

200. It is equally well settled that it is not the duty of the Court to import words which have been omitted deliberately or intentionally in order to fill up a gap or supply omissions to fit in with the ideology of concept of the Judge concerned. The words and the language used must be given their natural meaning and interpreted in their ordinary and popular sense.

201. There may be a third type of cases which may be on the border line--where the language may admit of two interpretations in which case the Court may consider the desirability of resorting to external aids in order to catch and delve into the spirit and object of the statute.

202. These principles have been enunciated over the years by several authorities of various Courts to which I shall refer hereafter. Before, however, going to the authorities, it may be necessary to refer to extracts from the various books of legal scholars of the interpretation of Statutes.

203. Crawford in his book captioned "Statutory Construction" (1940 Edition) in para 158 Purpose of Interpretation and Construction (pp. 244-245) has observed thus: The basic principle has been announced time after time that if the statute is plain certain and free from ambiguity a bare reading suffices and interpretation is unnecessary.

204. At page 344, it has also been pointed out by the author that alteration, interpolation or elimination of words are not permissible. In this connection, the author makes the following observations while dealing with an American case:

As we have already stated, the intention of the legislature must be primarily ascertained from the language used. This obviously means, as a general rule, that the Courts have no power to add to, or to change, alter, or eliminate the words which the legislature has incorporated in a statute, not even in order to provide for certain contingencies which the legislature failed to meet, or to avoid hardship flowing from the language used, or to advance the remedy of the statute.

205. At pages 368-389, the author further observed thus:

Where the meaning of a statute is in doubt, the Court may resort to contemporaneous construction--that is, the construction placed upon the statute by its contemporaries at the time of its enactment and soon thereafter -- for as (sic) in removing any doubt. Similarly, resort may also be had to the usage or course of conduct based upon a certain construction of the statute soon after its enactment and acquiesced in by the Courts and the legislature for a long period of time. As is obvious, the meaning given to the language of a statute by its contemporaries is more likely to reveal its true meaning than a construction given by men of another day or generation. Even words change in meaning with the march of time. And the meaning given by contemporaries can be revealed with no more certainty than by resort to the common usage and practice under the statute itself over a considerable period of time.

206. The author has rightly observed that sometimes it so happens that words change in meaning with the march of times. If this is so, it is manifest that the Court while interpreting a statute dealing with socialism cannot ignore the temper of the times and the modern trends of legal thought.

207. Similarly, while dealing with the circumstances and the history of the Statute, the author says thus:

According to the weight of authority and surely the better view, the Court may consider the general history of a statute, including its derivation that is the various steps leading up to and attending its enactment, as shown by the legislative journals, in its effort to ascertain the intention of the legislature where it is in doubt. Conversely, the legislative history cannot be considered where the statute's meaning is plain. (p. 383)

212. Craies on "Statute Law" (6th Edn.) while quoting Jervis C.J., at p. 86

observes thus:

It is clear that "if", as Jervis C.J. said in *Abiey v. Dale*, (1850) 20 LJCP 33, 35 the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense, even though it does lead to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure, but, we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning.

213. Similarly, the author has categorically observed that in the interpretative process *casus omissus* is not to be added or supplied. In this connection, the following observations have been made at p. 70:

A second consequence of this Rule is that a statute may not be extended to meet a case, for which provision has clearly and undoubtedly not been made....Although in construing an Act of Parliament the Court must always try to give effect to the intention of the Act and must look not only at the remedy provided but also at the mischief aimed at, it cannot add words to a statute or read words into it which are not there and quoting Lord Parker, the author says thus:

Where the literal reading of a statute...produces an intelligible result...there is no ground for reading in words or changing words according to what may be the supposed intention of Parliament.

215. Lord Bacon says that the function of a Judge is *jus decere* and not *jus dare*, i.e., to interpret the law and not to make it. Similarly, Marshal, C.J. observed that we must remember that "it is the Constitution that we are expounding". These observations aptly apply to the instant case where we are construing a constitutional provision, viz., Article 222, particularly when a provision like this is not to be found in any Constitution of any other country of the world.

216. According to Maxwell, the golden Rule of interpretation is to adhere to the ordinary meaning of the words used unless it is in direct conflict with the intention of the Act. In this connection, the author in his book "Interpretation of Statutes" (Ist 2nd Edition) observes thus:

It is a corollary to the general Rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express.

220. The authorities-on the question of interpretation of the constitutional provisions may roughly be divided into four categories which may not exactly be absolutely separate or independent so as to be confined in a watertight compartment but in some cases may overlap, yet they generally lay down the law on the subject categorised by us:

Categories

(A) Where the language of a statute is plain, explicit and unambiguous, no external aid is permissible.

(B) Where the language is vague and ambiguous or does not clearly spell out the object and the spirit of the Act, external aids in the nature of parliamentary debates, reports of Drafting or Select Committees may be permissible to determine and locate the real intention of the legislature.

(C) Where certain words are omitted from the statute, the Court cannot supply the omission or add words to the statute on a supposed view regarding the intention of the legislature.

(D) Any speech made by a Minister or a Member in the Parliament is not admissible or permissible to construe a statutory or a constitutional provision.

91. In *District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another*, , Hon"ble Supreme Court held that the function of the Courts is only to expound the law and not to legislate. A statute has to be construed according to the intent of them and make it the duty of the Court to act upon true intention of the legislature.

92. In *Dadi Jagannadham Vs. Jammulu Ramulu and Others*, , it has been held that while interpreting a statute the Court must start with the presumption that legislature did not make any mistake and must interpret so as to carry out the obvious intention of legislature. It must not correct or makeup a deficiency, neither add nor read into a provision which are not there particularly when literal reading leads to an intelligent result.

93. In a case in *Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore*, , Hon"ble Supreme Court held that where language is clear, Court cannot abstain from giving it effect to it merely because it would lead to some hardship.

94. In *Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others*, , it has been held that the legislature is presumed to have made no mistake and that it intended to say what it said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, especially where a literal reading there of produces an intelligible result. The Court is not authorised to alter words or provide a *casus omissus*.

95. In *Navjot Singh Sidhu Vs. State of Punjab and Another*, , Hon"ble Supreme Court held that the Court has to interpret a statute as it stands and not on consideration which may be perceived to be morally more correct and ethical.

96. While considering the aforementioned law under the constitutional statutory interpretation, it should not be oversighted that by Seventy-fourth Amendment, the Parliament has established democracy at the root of our system where administrator has no place. In case no word is applied to Article 243-U and Article 243-ZA, then it shall not be open to the State Government to appoint

administrator. Any dilution to Clause (3) of Article 243-U will make the entire democratic system at panchayat and local bodies level fragile and create a gallery to abuse the power whimsically by party in power.

97. The law is very well settled that when the language of the statute is clear and unambiguous, then cautious omissus cannot be supplied vide *State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another*, ; *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, ; *Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders*, ; *R. Rudraiah and Another Vs. State of Karnataka and Others*, ; *Molar Mal (Dead) Through L.Rs. Vs. M/s. Kay Iron Works(P) Ltd.*, ; *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, and *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, .

98. Each and every word of Article 243-U and 243-ZA is clear and does not suffer from any ambiguity. Like State Legislature wherein in the event of dissolution of Assembly, a Governor Rule may be imposed under Article 356 of the Constitution of India, no provision has been made under Article 243-U with regard to appointment of administrator and once the Parliament itself has not made any provision in Article 243-U or Article 243-ZA, then it is not open for the State Government to provide it by impugned amendment inferential process while exercising power conferred by Entry 5 List II of the Constitution.

(VI) LEGISLATIVE COMPETENCE

99. Learned Additional Advocate General while defending the legislative competence of the State Government submitted that in the case of *Anugrah Narain Singh (supra)*, the Division Bench of this Court upheld the validity of impugned amendment with regard to administrator. However, he could not invite the attention of the Court towards a finding with regard to legislative competence though the amendment with regard to administrator has been upheld.

100. On a query made by the Court as to how under Entry 5 List II, the State can exercise power with regard to appointment of administrator, learned Additional Advocate General has submitted that the Entry 5 is the original provisions existing in the Constitution, hence after addition by the 74th Amendment, the situation changed. Accordingly, he submits that Entry 5 should be interpreted keeping in view the constitutional amendment done so that the vacuum may not be created.

101. We are afraid to accept the argument advanced by the learned Additional Advocate General. It is for the Parliament to make necessary amendment in the Constitution and the principle of reading down or cautious omissus cannot be supplied to Entry 5 List II to create jurisdiction. The State Government would also not be competent to create jurisdiction beyond the purview of Entry 5 List II of Seventh Schedule in its own favour. It falls within the legislative domain of the Parliament to fill up the vacuum by amending the Constitution.

102. While considering the federal structure of the country in the case in *S.R.*

Bommai and others Vs. Union of India and others etc. etc., , their Lordships of Hon"ble Supreme Court held that the essential character of the Indian federalism is to place the nation as a whole under the control of the national government while the States have been allowed to exercise their sovereign power within their legislative and co-extensive executive and administrative function which must be exercised within the specific area for national good keeping in view the division of power. To quote relevant portion:

107. The federal state is a political convenience intended to reconcile national unity and integrity and power with maintenance of the state's right. The end aim of the essential character of the Indian federalism is to place the nation as a whole under control of a national Government, while the states are allowed to exercise their sovereign power within its legislative and coextensive executive and administrative sphere. The common interest is shared by the center and the local interests are controlled by the state. The distribution of the legislative and executive power within limits and coordinates authority of different organs are delineated in the organic law of the land, namely the Constitution itself. The essence of the federalism, therefore, is distribution of the force of the state among its coordinate bodies. Each is organised and controlled by the constitution. The division of the power between the union and the states is made in such a way that whatever has been the power distributed, legislative and executive, be exercised by the respective units making each a sovereign in its sphere and the Rule of law requires that there should be a responsible Government. Thus the state is a federal status. The state qua the center has quasi-federal unit. In the language of Prof. K.C. Wheare in his Federal Government, 1963 Edition, at page 12 to ascertain the federal character, the important point is, "whether the powers of the Government are divided between coordinate independent authorities or not", and at page 33 he stated that the systems of Government embody predominantly on division of powers between center and regional authority each of which in its own sphere is coordinating with the other independent as of them, and if so is that Government federal?

103. It has been rightly submitted by learned Senior Counsel Shri Ravi Kiran Jain that the constitutional post and constitutional duties may be assigned by the Constitution itself and not by the State Legislature. Once the Constitution itself provides the sphere of working of the State Legislature, then they cannot travel beyond that for any reason whatsoever.

104. It has been vehemently argued by Mr. J.N. Mathur, learned Additional Advocate General that the Entry 5 is part and parcel of the Constitution existing before addition of Part IX-A. There shall be presumption that after the amendment, power has been delegated. Relying upon Articles 243-R, 243-S, 243-U and 243-ZF, learned Additional Advocate General submits that since different provisions of Part IX confer power on the State Legislature to legislate law it shall be presumed that the power to legislate law with regard to appointment of administrator has been conferred on the State Legislature. We are afraid to

accept the argument advanced by the learned Additional Advocate General.

105. Creation of the constitutional post or constitutional duty must flow from the Constitution itself. The provision referred by learned Additional Advocate General specify the post and duties. No inference can be drawn to create any other post which does not fall within the State legislative function. In case it is permitted to do by applying the principle of reading down or any other interpretative method, the entire constitutional scheme may be abused and in due course of time, being a cosmopolitan country, every State will proceed to continue interpreting the Constitution in their own way.

106. Hon"ble Supreme Court in the case in *Behram Khurshed Pesikaka Vs. The State of Bombay*, , ruled that the statute may be declared void in view of Article 13(1) and may be nullified in case it is not legislated in pursuance to statutory power conferred by Seventh Schedule read with Articles 245 and 246 of the Constitution of India.

107. Article 245 provides that subject to provision of the Constitution, the Parliament and the State Legislature may make laws for the whole or any part of the country or the State as the case may be. Article 246 further provides that notwithstanding anything in clause (3), and subject to Clause (1), State has power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule. However, with regard to subjects under List II of Seventh Schedule, the State has exclusive jurisdiction to make laws in view of Clause (3) of Article 246 of the Constitution.

108. The words, "subject to" denotes the requirement necessary to be complied with while exercising legislative power by the Legislatures. Meaning thereby the Legislature may make laws subject to constitutional provision or power conferred by the Constitution in itself, in the present context, Part-XI-A of the Constitution read with Entry 5 of List II.

109. In *Words and Phrases Permanent Edition*, Vol. 40A, the words, "subject to" have been defined as under:

Conn. App. 1985. "Subject to," for purposes of extended coverage provision indicating that provision applies to newly acquired property for period of 90 days "subject to following limits of liability and all other forms and conditions," means likely to be conditioned, affected, or modified in some indicated way; having contingent relation to something.--*Ryiz v. Federal Ins. Co.*, 497 A. 2d 1001, 5 Conn. App. 179.?Insurance 2138(1).

110. In *Blacks Law Dictionary*, Ninth Edition, the words, subject, subjection, subject matter, subject matter test are defined as under:

Subject, adj. Referred to above; having relevance to the current discussion. The subject property was then sold to Smith.

Subjection. (14c) 1. The act of subjecting someone to something. 2. The

condition of a subject in a monarchy the obligations surrounding such a person,
3. The condition of being subject, exposed, or liable; liability.

Subject matter. (16c) 1. The issue presented for consideration; the thing in which a right or duty has been asserted; the thing in dispute. 2. PATENTABLE SUBJECT MATTER.--Sometimes written (as a noun) subject-matter.

Subject-matter test. (1974) A method of determining whether an employee's communication with a corporation's lawyer was made at the direction of the employee's supervisors and in the course and scope of the employee's employment, so as to be protected under the attorney-client privilege, despite the fact that the employee is not a member of the corporation's control group.

111. Hon"ble Supreme Court in a case in Vallabh Das Vs. Madan Lal and Others, , while defending the words, "subject matter" ruled that the expression given includes the cause of action and relief claimed.

112. Entry 5 of List II empowers the State Government to legislate law with regard to constitution of Local Bodies. The Constitution, as we have observed (supra), does not seem to include the appointment of administrator.

113. In a case relied upon by Mr. Ravi Kiran Jain, learned Senior Counsel in Lakhan Singh Vs. State of U.P. and others, , a Division Bench of this Court keeping in view the dictionary meaning had interpreted the word, "constitute" as under:

54. The word "constitute" or "constituted" occurring in Article 243B and clause (3) of Article 243E of the Constitution of India and sub-section (3) of Section 20 and Section 22 (1) of Adhiniyam, 1961 does not mean that the Zila Panchayat would not be deemed to be constituted, if the Adhyaksh or Pradhan, under the provision of Adhiniyam, 1961 or U.P. Panchayat Raj Act is not elected or the first meeting of the Zila Panchayat is not held. The literal meaning of the word "constitute" is, to form or to make up, to establish or found, to set up, to appoint. The word "constitute" also means to set or station in a given situation, state, or character, to fix or determine, as a trait or characteristic. In a statute providing that a city council may "make, ordain, constitute, establish and pass" ordinances, etc. all these verbs mean the same thing, and may one of them would have been sufficient. The word "constitute" also means to appoint or depute either of a body or an individual to constitute employs the act of making as well as choosing. The word "constituted" does not necessarily mean "created" or "set up" though it may mean that it also includes the idea of clothing the agreement in a legal form. In the Oxford English Dictionary, Vol. II at pages 875 and 876, the word "constitute" is said to mean, inter alia, "to set up, establish, found (an Assembly, etc.)". Thus, the word in its wider significance would include both the idea of creating or establishing and the idea of giving a legal form to, a partnership.

114. The Words and Phrases Permanent Edition 8B defines the word, "constitute"

as under:

Constitute. W.D.Pa. 1949. The word "constitute" means to set or station in a given situation, state, or character, or to fix or determine, as a trait or characteristic--U.S. v. Segelmen, 86 F. Supp. 114.

115. A plain reading of Entry 5 List II reveals that the Parliament empowers the State Government to legislate law to constitute and powers of Municipal Corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration. It does not include the power to create an extra constitutional post of administrator.

116. Moreover, on account of use of words, "subject to" in Articles 245 and 246 while exercising power under Entry 5 List II of the Seventh Schedule, the State Legislature cannot travel beyond the letter and spirit of Part IX-A of the Constitution.

117. While considering Articles 245 and 246 of the Constitution, Hon'ble Supreme Court in a case in The State of Bombay Vs. R.M.D. Chamarbaugwala, held that the State can make law in view of Articles 245 and 246 without overstepping the limit provided therein. Their Lordships observed as under:

24. The next point urged by the petitioners is that under Articles 245 and 246 the Legislature of a State can only make a law for the State or any part thereof and, consequently, the Legislature overstepped the limits of its legislative field when by the impugned Act it purported to affect men residing and carrying on business outside the State. It is submitted that there is no sufficient territorial nexus between the State and the activities of the petitioners who are not in the State. The doctrine of territorial nexus is well established and there is no dispute as to the principles. As enunciated by learned counsel for the petitioners, if there is a territorial nexus between the person sought to be charged and the State seeking to tax him the taxing statute may be upheld. Sufficiency of the territorial connection involves a consideration of two elements, namely (a) the connection must be real and not illusory and (b) the liability sought to be imposed must be pertinent to that connection.

118. In one another case in Deep Chand Vs. The State of Uttar Pradesh and Others, , their Lordships of Hon'ble Supreme Court ruled that the fundamental concept of doctrine of eclipse to legislate Act is enacted in excess of the power possessed by the legislature. Hon'ble Supreme Court has relied upon the Cooley's book, namely "Constitutional Limitation" and ruled that while dealing with power of legislature, a distinction cannot be made between affirmative provision and negative provision as both are limitation at the power. To quote relevant portion:

(14) Cooley in his book "Constitutional Limitations" (Eighth Edition, Volume I), states at page 379:

From what examination has been given to this subject, it appears that whether a statute is constitutional or not is always a question of power; that is, a question whether the legislature in the particular case, in respect to the subject-matter of the act, the manner in which its object is to be accomplished, and the mode of enacting it, has kept within the constitutional limits and observed the constitutional conditions.

The Judicial Committee in *The Queen v. Burah* observed at page 193 as under:

The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted.

The Judicial Committee again in *Attorney-General for Ontario v. Attorney-General for Canada* crisply stated the legal position at page 583 as follows:

.....if the text is explicit the text is conclusive, alike in what it directs and what it forbids.

The same idea is lucidly expressed by Mukherjea, J., as he then was, in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, . It is stated at page 11 as follows:

If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers.

The learned Judge in the aforesaid passage clearly accepts the doctrine that both the transgression of the ambit of the entry or of the limitation provided by the fundamental rights are equally transgressions of the limits of the State's constitutional powers.

(15) It is, therefore, manifest that in the construction of the constitutional provisions dealing with the powers of the legislature, a distinction cannot be made between an affirmative provision and a negative provision; for, both are limitations on the power. The Constitution affirmatively confers a power on the legislature to make laws within the ambit of the relevant entries in the lists and negatively prohibits it from making laws infringing the fundamental rights. It goes further and makes the legislative power subject to the prohibition under Article 13(2). Apparent wide power is, therefore, reduced to the extent of the prohibition.

(17) A reference to these decisions brings out in bold relief the distinction between the two classes of cases referred to therein. It will be seen from the two

decisions that in the former the Act was void from its inception and in the latter it was valid when made but it could not operate on certain articles imported in the course of inter-State trade. On that distinction is based the principle that an after acquired power cannot, *ex proprio vigore*, validate a statute in one case, and in the other, a law validly made would take effect when the obstruction is removed.

119. In *Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another*, , Hon"ble Supreme Court ruled that while considering the words of Seventh Schedule, a liberal approach may be adopted but the Court has to get themselves against extending the meaning of the words beyond their reasonable connotation in an anxiety to preserve the power of legislature. The Court should not extend the limit of power by way of interpretation. To quote relevant portion:

Our task being to ascertain the limits of the powers granted by the Constitution, we cannot extend these limits by way of interpretation. But if there is any difficulty in ascertaining the limits, the difficulty must be resolved so far as possible in favour of the legislative body. The presumption in favour of constitutionality which was stressed by the learned counsel for the respondents does not take us beyond this.

120. In *State of Gujrat v. Ambika Mills*, AIR 1974 SC 1308, their Lordships of Hon"ble Supreme Court ruled that if a statute contravenes the provisions of the Constitution, it shall be void and when a statute is void within the meaning of Article 13(2) is not existing for all purposes including repeal amendment or enforceability.

121. In a case in *Koluthara Exports Ltd. Vs. State of Kerala and Others*, , their Lordships ruled that when any statute or any provision therein questioned on the ground of lack of legislative competence, the State cannot claim legitimacy for enacting the impugned provision with reference to Part-IV of the Constitution. The legislative competence must be demonstrated with reference to one or more of the entries in Lists II and III of the Seventh Schedule of the Constitution.

122. In *Koluthara Exports Ltd. Vs. State of Kerala and Others*, , while considering Articles 245 and 246 of the Constitution, a Constitution Bench of Hon"ble Supreme Court held that for judging the true nature of the enactment to establish legislative competence, the Court will have to examine not only the object of the Act as stated in the statute but its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State.

123. While considering the constitutional validity with regard to welfare fund, Supreme Court ruled that though it is enumerated in Part-IV of the Constitution but being not falling within the legislative field under Entries II and III of the Seventh Schedule is an instance of lack of competence taking shelter of Part IV of the Constitution.

124. Again in the case in *E.V. Chinnaiah Vs. State of Andhra Pradesh and Others*,

Hon'ble supreme Court ruled that while considering the legislative competence, the Court has to examine the true character of enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State.

125. Apart from Article 243-R and Article 243-S, Article 243P further defines the Municipality which is as under:

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

Article 243Q as we have considered does not contain the post of administrator.

126. A conjoining reading of Articles 243P(e), 243Q, 243-R and 243-S undoubtedly makes it clear that the elected representative can discharge the obligation of Municipality and not the administrator. The post of administrator is alien to Part XI-A of the Constitution.

127. Shri Vivek Raj Singh, learned counsel for the petitioners in a petition while assailing the impugned amendment with regard to appointment of administrator emphasised that under Part-IXA of the Constitution, the post of administrator has not been provided. Hence, the State Legislature cannot create a post alien to the post enumerated in Part-IXA of the Constitution. He invited attention to Articles 243-R and 243-S of the Constitution of India. Article 243-R of the Constitution deals with composition and empowers the legislature to constitute municipality by persons chosen by direct election from territorial constituencies in the municipal area. Article 243-S deals with the composition of wards committees etc.

128. There appears to be no doubt that the State legislature does not possess any jurisdiction to constitute a post alien to Articles 243-R and 243-S, that too with delegation of legislative function which has been conferred to elected representative of the municipality and municipal corporation.

129. Subject to aforesaid broader proposition of law with regard to legislative competence, there appears to be no doubt to hold that the legislative competence of the State Legislature under Entry 5 List II of the Seventh Schedule cannot travel beyond the ambit, scope, letter and spirit of Part-IXA of the Constitution. The legislatures cannot apply the principle of reading down in Articles 243-U, 243-R and 243-S to acquire power to legislate law with regard to appointment of administrator. Even if there is some hardship or vacuum in the field of legislation, the State Government cannot transgress the constitutional provisions.

130. While defending the Act No. 38 of 2006, Mr. Jaideep Narain Mathur, learned Additional Advocate General submitted that the impugned amendment with regard to first meeting is clarificatory in nature, hence shall be retrospective in view of the cases reported in Shri Chaman Singh and Another Vs. Srimathi Jaikaur, , Zile Singh Vs. State of Haryana and Others, , R. Rajagopal Reddy and Others (deceased by legal representatives) Vs. Padmini Chandrasekharan

(deceased by legal representatives), and also retro active in nature. The submission of the learned Addl. Advocate General is well settled proposition of law. However, since the impugned amendment itself is held to be unconstitutional, the argument advanced is not sustainable.

131. Otherwise also, we are afraid to accept the argument advanced by the learned Addl. Advocate General. Whether it is positive or negative enactment or clarificatory, it cannot transgress beyond the limit provided by Part-IXA of the Constitution. In *Deep Chand* (supra), their Lordships of Hon''ble Supreme Court categorically ruled that while considering the exercise of power under legislative field, State cannot exceed its jurisdiction on the ground to remove an ambiguity in the present case with regard to first meeting provided under Article 243-U. Unless the legislatures are competent to legislate law under the Seventh Schedule, read with Part-IXA in the present context, they have no right to make clarificatory amendment in the State Act legislated in pursuance to Seventy Fourth Constitution Amendment. A clarificatory enactment or order may be passed only in case the State legislature is competent to legislate law in the field to exercise power.

(VII) THE LEGISLATURE CANNOT DELEGATE THEIR ESSENTIAL FUNCTION

132. By the impugned amendment, all powers, duties and liabilities have been conferred by the State Legislature on the administrator. Under Article 243-W, the duties and work field of Municipalities has been given under Schedule XII which includes urban planning, town planning and varieties of work. Municipality impose taxes, prepare budget and provide civil amenities.

Question cropped up whether the legislative function of the Municipality may be conferred on the administrator, that too when such post has not been provided under Part-IXA of the Constitution. The legislative function has been defined in Black''s Law Dictionary, 9th Edition as follows:

legislative function. 1. The duty to determine legislative policy. 2. the duty to form and determine future rights and duties.

133. Learned Addl. Advocate General has defended the impugned amendment which confers also legislative function on the administrator under the term "fiction of law".

134. While considering the function of Panchayat and Municipalities, Hon''ble Supreme Court in the case in *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others*, interpreted the aims and objects of Parts IX and IX-A of the Constitution in the following words:

26. The Gram Panchayats, the Zilla Parishads and municipalities are local bodies. Parts IX and IXA of the Constitution have brought, through Articles 243 to 243ZG, the Panchayats, Zilla Parishads and municipalities as constitutional instrumentalities to elongate the socio-economic and political democracy under the Rule of law. Articles 243G and 243W enjoin preparation of plans for economic

development and social justice. The State, i.e., the Union of India and the State Governments and the local bodies constitute an integral executive to implement the directive principles contained in Part IV through planned development under the Rule of law. The appellant-Corporation, therefore, has Constitutional duty and authority to implement the directives contained in Articles 38, 39 and 46 and all cognate provisions to make the fundamental rights available to all the citizens as meaningful. It would, therefore, be the duty of the appellant to enforce the schemes in a planned manner by annual budgets to provide right to residence to the poor.

Obviously, as held by Hon''ble Supreme Court aforesaid functions are legislative functions and in any case it cannot be delegated to any person whosoever may be holding any office of whatever name. It is for the legislature, in the present case, corporators and municipal members to fulfil the wishes of the constitutional framers keeping in view the provisions contained in Parts IX and IX-A read with Schedule XII of the Constitution. In no way, the administrator comes into picture to exercise such power.

135. In the case in S.R. Bommai and others Vs. Union of India and others etc. etc., their Lordships of Hon''ble Supreme Court had considered the aims and objects of Parts-IX and IXA of the Constitution and observed that the surrender of right of governance to executive amount to direct encounter with the electoral process to choose the representative for the resolution of the common problem and social welfare. To quote:

The Constitution decentralises the governance of the States by a four tier administration i.e. Central Government. State Government, Union territories, Municipalities and Panchayats. See Constitution for Municipalities and Panchayats: Part IX (Panchayats) and Part IX-A (Municipalities) introduced through the Constitution 73rd Amendment Act, making the peoples participation in the democratic process from grass root level a reality. Participation of the people in governance of the State is sine qua non of functional democracy. Their surrender of rights to be governed is to have direct encounter in electoral process to choose their representatives for resolution of common problems and social welfare. Needless interference in self-governance is betrayal of their faith to fulfil self-governance and their democratic aspirations. The constitutional culture and political morality based on healthy conventions are the fruitful soil to nurture and for sustained growth of the federal institutions set down by the Constitution. In the context of the Indian Constitution federalism is not based on any agreement between federating units but one of integrated whole as pleaded with vision by Dr. B.R. Ambedkar on the floor of the constituent assembly at the very inception of the deliberations and the Constituent Assembly unanimously approved the resolution of federal structure. He poignantly projected the pitfalls flowing from the word "federation".

Shri Ravi Kiran Jain relying the aforesaid two cases seems to have rightly convinced that the power conferred on the municipalities and corporations cannot

be delegated to the administrator by the impugned amendment. The legislative function must be exercised by the elected representative in terms of Part IX-A read with Schedule II of the Constitution.

136. Attention of the Court has not been invited to any case where legislative function may be conferred on the bureaucracy. Hon''ble Supreme Court long back in the case reported in *In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, ruled that the legislature cannot delegate their essential function. The aforesaid proposition has been followed in *State of Bombay Vs. Narothamdas Jethabai and Another*, ; *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, ; *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*, and *Kiran Gupta and Others Vs. State of U.P. and Others Etc.*, .

137. In the case of *Kiran Gupta (supra)*, Hon''ble Supreme Court has relied upon the case of *Delhi Laws (supra)* and observed as under:

12. A perusal of Section 9 shows that it enumerates the powers and duties of the Commission which include preparation of guidelines on matters relating to the method of recruitment and promotion of teachers. It is the validity of clause (a) of Section 9 that is impugned on the ground of delegation of essential legislative functions. In our view, the contention is wholly misconceived. It is too late in the day to question the delegation of legislative functions to the Government or a subordinate authority. However, what cannot be delegated is essential legislative functions. It will be useful to reproduce here the observations of Mukherjea, J. In *re The Delhi Laws Act, 1912 the Ajmer-Merwara (Extension of Laws) Act, 1947*, *In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, :

If the legislature hands over its essential legislative powers to an outside authority that would, in my opinion amount to a virtual abdication of its powers and such an act would be in excess of the limits of permissible delegation. The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding Rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of that policy.

The essence of the essential legislative function lies in the legislature formulating a policy in respect of a matter within its field of legislation and translating it into words of an enactment to clothe it with binding authority. The legislative policy, as could be gathered from the aforementioned provisions, appears to us to constitute a Commission which is a statutory body consisting of experts and leave the question as to how it should proceed with the method of recruitment and promotion of Teachers to the posts of Principals/Headmasters to that Commission.

138. In *Vasu Dev Singh and Others Vs. Union of India (UOI) and Others*, , their Lordships while considering the delegated legislation ruled that the delegated legislation must be exercised within the para meter of essential legislative policy but delegation of essential delegation function is impermissible.

139. While reiterating the aforesaid proposition of law, their Lordships of Hon"ble Supreme Court in *Kishan Prakash Sharma and Others etc. Vs. Union of India and Others*, held as under:

18. So far as the delegated legislation is concerned, the case law will through light as to the manner in which the same has to be understood and in each given case we have to understand the scope of the provisions and no uniform Rule could be laid down. The legislatures in India have been held to possess wide power of legislation subject, however, to certain limitations such as the legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding Rule of conduct. The Legislature cannot delegate uncanalised and uncontrolled power. The Legislature must set the limits of the power delegated by declaring the policy of the law and by laying down standards for guidance of those on whom the power to execute the law is conferred. Thus the delegation is valid only when the legislative policy and guidelines to implement it are adequately laid down and the delegate is only empowered to carry out the policy within the guidelines laid down by the Legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of the policy. When the Constitution entrusts the duty of law-making to Parliament and the Legislatures of States, it impliedly prohibits them to throw away that responsibility on the shoulders of some other authority. An areas of compromise is struck that Parliament cannot work in detail the various requirements of giving effect to the enactment and, therefore, that area will be left to be filled in by the delegatee. Thus, the question is whether any particular legislation suffers from excessive delegation and in ascertaining the same, the scheme, the provisions of the statute including its preamble, and the facts and circumstances in the background of which the statute is enacted, the history of the legislation, the complexity of the problems which a modern State has to face, will have to be taken note of and if, on a liberal construction given to a statute, a legislative policy and guidelines for its execution are brought out, the statutes, even if skeletal, will be upheld to be valid but this Rule of liberal construction should not be carried by the Court to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on the executive.

140. Framing of policy, passing of a budget, imposition of taxes are all legislative functions. The different provisions of U.P. Municipalities Act read with various provisions contained in Part-IXA and Schedule XII of the Constitution makes it clear that it is for the Municipal Council and Municipal Corporation to prepare

budget and deal with subject. Such legislative function cannot be delegated to administrator under the fiction of law.

141. The argument advanced by the learned Additional Advocate General that the legislative function could be delegated by fiction of law is not sustainable. We should not foresight in historical context that Adolf Hitler in got passed a resolution delegating all legislative power of Reichstag in to himself and thereafter he becomes a dictator and the "Parliament in himself". Now, by impugned amendment, "Administrators" have become "municipal corporation" and "Municipal Council" themselves. The Supreme Court of India had consistently taken the view that the legislative function cannot be delegated (supra). Hence, the impugned amendment on this ground alone seems to be not sustainable.

(VIII) DUTY OF THE ELECTION COMMISSION AND OF THE STATE GOVERNMENT

142. Learned Additional Advocate General while placing reliance on the Division Bench's judgment of this Court in Anugrah Narain Singh's case (supra) vehemently argued that not only the government has got right to appoint administrator but also has right to hold election within six months from the date of expiry of term. He has submitted that the judgment of Kishansing Tomer (supra) does not overrule the judgment of Anugrah Narain Singh (supra) with regard to State's right to hold election within maximum period of six months from the date of expiry of term. He further submits that the State shall hold election before the period of six months from the date the term of Municipality and Municipal Corporation expired in the State of U.P. i.e. in between 15th and 20th November, 2011.

143. At the outset, we do reject the contention of the learned Additional Advocate General apart from the finding recorded in the preceding paras, coupled with the reasons discussed hereinafter.

144. In the case of Anugrah Narain Singh (supra), the Division Bench has recorded a finding exclusively keeping in view Clause (1) of Article 243-U of the Constitution without considering the other constitutional provisions including Entry 5 List-II, Articles 245, 246, 243P(f)(g), read with other provisions of Part IX-A of the Constitution, The Division Bench with regard to State's right to hold election even after expiry of period of term held as under:

36. It appears that the framers of the Constitution wherever they wanted that holder of the elected office should continue till his successor takes charge, have made specific provision in this regard in the Constitution itself. Reference may be invited to clause (c) of the proviso of Article 56(1) of the Constitution of India which says that the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. Likewise, in the case of Vice President, clause (c) of the proviso to Article 67 of the Constitution of India provides that the Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. Likewise, the proviso to Article 156, which deals with the term of office of

governor provides that a Governor shall, notwithstanding the expiration of his term continue to hold office until his successor enters upon his office. The second proviso to Article 94, which deals with vacation and resignation of, and removal from, the office of Speaker and Deputy Speaker of the House of People provides that whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution. Likewise in respect of vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker of an Assembly, the second proviso to Article 179 of the Constitution of India provides that whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution. No such provision has been made in Article 243U(1) of the Constitution of India and, therefore, necessary corollary is that the framers of the Constitution did not want that the elected Municipality should be allowed to continue to hold the office till new elected body assumes charge.

145. With regard to constitutional validity of the State's right to appoint administrator without adventing to different provisions of the Constitution and the judgment of Hon"ble Supreme Court referred and discussed in the preceding paras, finding recorded by the Division Bench in the case of Anugrah Narain Singh is as under:

We, therefore, are of the considered opinion that the Amendment Act does not violate any of the constitutional provisions and is a valid piece of legislation. However, we are of the considered opinion that the intention of the Parliament by enacting sub-clause (b) of clause (3) in Article 243-U had made its intention clear that the election should be held not later than six months in the case of dissolution of a Municipality. Applying the principle laid down by the Apex Court in Special Reference Case No. 1 of 2002 (supra), if the elections are not held before the expiry of the duration of the Municipalities due to unavoidable reasons, beyond the control of the State Government, the elections should at any cost be held within a period of six months.

146. While extending to approach to the State Government to hold election within six months, reliance has been placed to the case reported in Ref. by President, Special Reference No. 1 of 2002. The controversy before the Supreme Court was with regard to dissolution of legislative assembly and the Parliament dealt with by different provisions of the Constitution. To quote relevant portion from Reference No. 1 (supra):

44. Article 174(1) shows that it does not provide that its stipulation is applicable to a dissolved legislature as well. Further, Article 174 does not specify that interregnum of six months period stipulated between the two sessions would also apply to a new legislature vis-a-vis an outgoing legislature. If such be the case, then there was no need to insert the proviso to Article 172(1) and insertion of the said proviso is rendered meaningless and superfluous.

45. Further, if Article 174 is held to be applicable to a dissolved House as well it would mean that Article 174(2) is controlled by Article 174(1) inasmuch as the power has to be exercised under Article 174(2) in conformity with Article 174(1). Moreover, if the House is dissolved in 5th month of the last session, the election will have to be held within one month so as to comply with the requirement of Article 174(1) which would not have been the intention of the framers of the Constitution.

46. Yet, there is another aspect which shows that Article 174(1) is inapplicable to a dissolved Legislative Assembly. It cannot be disputed that each Legislative Assembly after Constitution is unique and distinct from the previous one and no part of the dissolved House is carried forward to a new Legislative Assembly. Therefore, Article 174(1) does not link the last session of the dissolved House with the newly formed one.

147. In the same case (*supra*), Hon"ble Supreme Court further considered rights and duties of Election Commission after referring the speech given by Dr. B.R. Ambedkar before the Constituent Assembly. It shall be appropriate to reproduce relevant portion:

76. When the question, who would conduct the elections under Indian Constitution was debated upon before the Constituent Assembly, concerns were expressed by the members of the Constituent Assembly in entrusting the same in the hands of the Executive and, in fact, there was unanimity among the members that an independent Constitutional Authority be set up for superintendence, direction, control and the conduct of elections to Parliament and Legislature of every State. In this connection, Dr. B.R. Ambedkar stated before the Constituent Assembly thus:

But the House affirmed without any kind of dissent that in the interest of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day. In pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental Rights and put it in a separate part containing Articles 289, 290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive Government, there has been no dispute. What Article 289 does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission.

77. It is in light of the aforesaid discussion, Article 324 was enacted and the superintendence, direction, control and conduct of election was no more left in the hands of the Executive but was entrusted to an autonomous Constitutional Authority i.e. the Election Commission. It appears that since the entire matter

relating to the elections was entrusted to the Election Commission, it was found to be a matter of no consequence to provide any period of limitation for holding fresh election for constituting new Legislative Assembly in the event of premature dissolution. This was deliberate and conscious decision. However, care was taken not to leave the entire matter in the hands of the Election Commission and, therefore, under Article 327 read with Entry 72 of List I of VIIth Schedule of the Constitution, Parliament was given power subject to the provisions of the Constitution to make provisions with respect to matters relating to or in connection with the election of either House of Parliament or State Legislature, as the case may be, including preparation of electoral roll. For the States also, under Article 328 read with Entry 37 of List II, the Legislature was empowered to make provisions subject to the provisions of the Constitution with respect to matters relating to or in connection with election of either House of Parliament or State Legislature, including preparation of electoral roll. Thus, the Parliament was empowered to make law as regards matters relating to conduct of election of either Parliament or State Legislature, without affecting the plenary powers of the Election Commission. In this view of the matter, the general power of superintendence, direction, control and conduct of election although vested in the Election Commission under Article 324(1), yet it is subject to any law either made by the Parliament or State Legislature, as the case may be which is also subject to the provisions of the Constitution. The word "election" has been interpreted to include all the steps necessary for holding election. In *M.S. Gill v. Chief Election Commissioner* (supra); *A.C. Jose v. Sivan Pillai and others*; *Kanhiya Lal Omar v. R.K. Trivedi and others*. It has been consistently held that Article 324 operates in the area left unoccupied by legislation and the words "superintendence, "control" "direction" as well as "conduct of all elections" are the broadest of the terms. Therefore, it is no more in doubt that the power of superintendence, direction and control are subject to law made by either Parliament or by the State Legislature, as the case may provided the same does not encroach upon the plenary powers of the Election Commission under Article 324.

148. After the aforesaid judgment of Anugrah Narain Singh (supra), Hon"ble Supreme Court has decided the case of Kishansing Tomer (supra).

149. In Kishansing Tomer (supra), the question before Hon"ble Supreme Court was with regard to municipal election. While holding the election and constitutional responsibility of the State, their Lordships of Hon"ble Supreme Court loudly with firmness commanded that the election must be held within a period of five years and in case the State Government does not notify in pursuance to its request, it may approach the Court for issuance of appropriate order. To quote relevant portion:

20. The majority opinion in *Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others*, held that the fact that certain claims and objections are not finally disposed of while preparing the electoral rolls or even assuming that

they are not filed in accordance with law cannot arrest the process of election to the Legislature. The election has to be held on the basis of the electoral rolls which are in force on the last date for making nomination. It is true that Election Commission shall take steps to prepare the electoral rolls by following due process of law, but that too, should be done timely and in no circumstances, it shall be delayed so as to cause gross violation of the mandatory provisions contained in Article 243U of the Constitution.

21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election Commission would be justified in delaying the process of election after consulting the State Government and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article 243U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the Municipality for such period.

22. In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new Municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State governments to recognize the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for the Parliament and State Legislatures. In fact, in the domain of elections to the Panchayats and the Municipal bodies under the Part IX and Part IXA for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.

23. In terms of Article 243K and Article 243ZA(1) the same powers are vested in the State Election Commission as the Election Commission of India under Article 324. The words in the former provisions are in pari materia with the latter provision.

24. The words, "superintendence, direction and control" as well as "conduct of elections" have been held in the "broadest of terms" by this Court in several decisions including in *Ref. by President, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, and the question is whether this is equally relevant in respect of the powers of the State Election Commission as well.

25. From a reading of the said provisions it is clear that the powers of the State Election Commission in respect of conduct of elections is no less than that of the Election Commission of India in their respective domains. These powers are, of course, subject to the law made by Parliament or by State Legislatures provided the same do not encroach upon the plenary powers of the said Election Commissions.

26. The State Election Commissions are to function independent of the concerned State Governments in the matter of their powers of superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections to the Panchayats and Municipalities.

27. Article 243K(3) also recognizes the independent status of the State Election Commission. It states that upon a request made in that behalf the Governor shall make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by Clause (1). It is accordingly to be noted that in the matter of the conduct of elections, the concerned government shall have to render full assistance and co-operation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted.

150. In view of above, the argument advanced by the learned Addl. Advocate General that the State has right to hold election within six months even after expiry of its term seems to be unfounded. In view of judgment in Kishansing Tomer (supra), the State cannot take shelter of the Division Bench of this Court in the case of Anugrah Narain Singh (supra).

151. Learned Additional Advocate General submits that the judgment of Kishansing Tomer relates to Gujarat where there is no post of administrator and accordingly, could not be applied to the State of U.P. or other States where the administrator has been appointed. He also submits that Kishansing Tomer does not overrule the case of Anugrah Narain Singh (supra).

152. The argument advanced by the learned Additional Advocate General seems to be incorrect. Once, the Supreme Court interpreted the different provision of the Constitution in Part IX-A, then it is not open for any subordinate Court of the country or the High Court or the government to take a different view. Ratio disendi of the case is with regard to power conferred to the State Government and the State Election Commission to conduct election in terms of Article 243-U and duration of municipality.

153. Hon'ble Supreme Court held that immediately after expiry of term election would be held and in case the State does not cooperate the Election Commission may approach the High Court or Supreme Court for issuance of a writ in the nature of mandamus.

154. The judgment of Hon'ble Supreme Court is binding on all authorities including the Courts and become law of land under Article 141 of the Constitution

and it is the constitutional obligation of the State Election Commission and the State Government to be abide by the mandate of Supreme Court in the case of Kishansing Tomer (supra).

155. In a case in State of Bihar Vs. Kalika Kuer @ Kalika Singh and Others, . Hon"ble Supreme Court ruled that in case earlier decision is not correct delivered by Coordinate Bench it may be referred to a larger bench. However, in the same judgment, principle of per incuriam has been held to be applicable in case in the earlier judgment, the Court had not considered the statutory or constitutional provision and judgments of higher forum. To quote relevant portion:

5. At this juncture we may examine as to, in what circumstances a decision can be considered to have been rendered per incuriam. In Halsburry's Laws of England (Fourth Edition) Vol. 26: Judgment and Orders Judicial Decisions as Authorities (pages 297-298, Para 578) we find it observed about per incuriam as follows:

A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a Court of coordinate jurisdiction while covered the case before it, in which case it must decide which case to follow Young v. Bristol Aeroplane Co. Ltd. In Huddersfield Police Authority v. Waton or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or Rule having statutory force Young v. Bristol Aeroplane Co. Ltd. See also Lancaster Motor Co. Ltd. v. Aumann & Co. Ltd. For a Divisional Court decision disregarded by that Court as being per incuriam, See Nicholas v. Penny. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, Morville Ltd. v. Wakeling; C. or because the Court had not the benefit of the best argument, Bryers v. Canadian Pacific Steamships Ltd., Per Singleton LJ, affd Sub nom. Canadian Pacific Steamship Ltd. v. Bryers and, as a general rule, the only cases in which decision should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority A. and J. Muklow Ltd. v. IRC, 508 CA; Morelle Ltd. v. Wakeling. See also Bonsor v. Musicians Union, where the per incuriam contention was rejected and on appeal to the house of lords although the House overruled the case which bound the Court of Appeal, the House agreed that Court had been bound by it see: Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake. Williams v. Glasbrook Bros Ltd.

Lord Goadard CJ in Huddersfield Police Authorities case observed that where a case or statute had not been brought to the Court's attention and the Court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.

6. In a decision of this Court in Government of Andhra Pradesh and another v. B.

Satyanarayana Rao (Dead) by Lrs., it has been held as follows:

Rule of Per incuriam can be applied where a Court omits to consider a binding precedent of the same Court or the superior Court rendered on the same issue or where a Court omits to consider any statute while deciding that issue. We therefore find that the Rule of per incuriam cannot be invoked in the present case. Moreover a case cannot be referred to a larger Bench on mere asking of a party. A decision by two judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law.

7. According to the above decision, a decision of the coordinate Bench may be said to be ceased to be good law only if it is shown that it is due to any subsequent change in law.

8. In State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, this Court observed:

Incuria" literally means "carelessness". In practice per incuriam appears to mean per ignoratium. English Courts have developed this principle in relaxation of the Rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". (Young v. Bristol Aeroplane Co. Ltd.): Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.

9. In Fuerst Day Lawson Ltd. v. Shivaraj V. Patil, this Court observed:

A prior decision of the Supreme Court on identical facts and law binds the Court on the same points of law in a latter case. In exceptional instances, where obvious inadvertence or oversight a judgment fails to notice a plain statutory-provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment "per incuriam". It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of per incuriam.

156. In the present controversy, in the case of Anugrah Narain Singh (supra), the Division Bench had not considered the legislative competence by interpreting Entry 5 List II of the Seventh Schedule read with Articles 245 and 246 of the Constitution. The Division Bench also not considered various pronouncements of the Hon"ble Supreme Court referred to in the preceding paras that the legislative function cannot be delegated. The Division Bench also not considered that the power conferred on the State Legislature is to discharge their obligation within the sphere of Articles 245 and 246 after considering catena of judgments of Supreme Court referred in the preceding paras. However, the case of Anugrah Narain Singh virtually seems to be overruled by the judgment of Supreme Court in the case of Kishansing Tomer (supra) to the extent of holding of election.

Accordingly, not only the judgment of Anugrah Narain Singh (supra) is per incuriam to the extent above but also its finding with regard to holding of election has been overruled by the Supreme Court.

157. Of course, in case Anugrah Narain Singh (supra) would have been a well considered judgment of the constitutional provisions alongwith the law settled by the Supreme Court, then there was no option except to refer the case to larger bench in view of settled proposition of law vide Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, ; Safiya Bee Vs. Mohd. Vajahath Hussain alias Fasi, .

158. In identical situation, where constitutional provision was not considered, a Constitution Bench of Supreme Court relied upon by the learned counsel for the petitioners in The State of West Bengal Vs. Kesoram Industries Ltd. and Others, , Hon"ble Supreme Court, observed as follows:

59. We Would like to avail this opportunity for pointing out an error, attributable either to a stenographer's devil or to sheer inadvertence, having crept into the majority judgment in India Cement Ltd.'s case (supra). The error is apparent and only needs a careful reading to detect. We feel constrained - rather duty-bound - to say so, lest a reading of the judgment containing such an error - just an error of one word - should continue to cause the likely embarrassment and have adverse effect on the subsequent judicial pronouncements which would follow India Cement Ltd.'s case, feeling bound and rightly, by the said judgment having the force of pronouncement by seven-Judges Bench. Para 34 of the report reads as under:

In the aforesaid view of the matter, we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State legislature because Section 9 of the Central Act covers the field and the State legislature is denuded of its competence under Entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of land.

159. In one another case in Sunita Devi Vs. State of Bihar and Another, , their Lordships of Hon"ble Supreme Court while interpreting the word, "per incuriam" observed, to quote:

20. "Incuriam" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. English-Courts have developed this principle in relaxation of the Rule of stare decisis. The "quotable in law", as held in Young v. Bristol Aeroplane. Co. Ltd., is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution of India, 1950 (in short the "Constitution") which embodies the doctrine of precedents as a matter of law. The above position was highlighted in State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, . To perpetuate an error is no

heroism. To rectify it is the compulsion of the judicial conscience.

160. In view of above, submission of learned Addl. Advocate General to abide by the finding recorded in Anugrah Narain Singh (supra) seems to be not sustainable. After the case of Kishansing Tomer (supra), the Election Commission or the State Government cannot defer the election beyond the period of five years, that too on man-made ground.

161. While defending its action to defer the election, the State Government relied upon the judgment and order dated 19.10.2011 (supra) passed by a Division Bench of this Court at Allahabad. Even in that case, the Division Bench directed to complete all formalities and issue notification for election by 31.10.2011 but it has not been complied with.

162. Mr. Ravi Kiran Jain submits that another direction was issued by the Division Bench of this Court at Allahabad to hold election on or before 30.11.2011 but that too has not been complied with. As per State version, the term of Local Bodies expired in between 15th and 20th November, 2011. We have also directed by interim order dated 15.11.2011 to issued notification within two weeks but that has also not been complied with.

163. While filing counter-affidavit on behalf of State, reason assigned has been given in paras 18. For convenience, same is reproduced as under:

18. That in view of the fact that the Application for clarification/modification of the judgment and order dated 15.11.2011 is pending for adjudication by this Hon'ble Court at Allahabad, coupled with the fact that the hearing had already commenced in writ petition No. 64369 of 2011 before this Hon'ble Court at Allahabad, the State Government is not in a position to comply, till date, the direction (I) contained in paragraph 22 of the Interim Order dated 15.11.2011 passed in the present writ petition and connected writ petitions. It is in the interest of justice that the interim order dated 15.11.2011 passed in the present writ petition may kindly either be vacated or at least be modified/clarified inasmuch as that the State Government be granted time to issue notification till the decisions are taken by this Court on the application preferred before this Hon'ble Court at Allahabad in writ petition No. 53557 of 2011 for modification/clarification in the judgment and order dated 15.11.2011, which is the judgment passed in Review Petitions preferred against the judgment and order dated 19.10.2011 by which the writ petition No. 53557 of 2011 and writ petition No. 55520 of 2011 were initially disposed.

164. The reasons assigned by the State Government seem to be an attempt to defer the election. The issue before this Court at Allahabad in Ajeet Jaiswal Vs. State of U.P. and Another, was not the constitutional validity of the impugned amending Acts with regard to appointment of administrator and the first meeting of the municipal corporations and municipalities. The issue seems to be was for a mandamus to hold election whereby the Division Bench by judgment and order dated 19.10.2011 had directed to hold election before 31.10.2011, in case it is

not feasible in no circumstance, the election shall be held beyond the period prescribed by the Constitution. Whereas in the present case, the writ petition is based on different issue involving the Constitutional validity of the impugned amendment. Moreover, in case the letter of the Registrar General & Census Commissioner is dated 21.10.2011, then instead of moving of an application for extension of time or modification of judgment, the State should have apprised the Court at Allahabad inviting attention to the letter dated 21.10.2011 of the Registrar General, Census immediately and in case the Bench was not constituted, the learned Advocate General could have approached the Hon''ble Chief Justice for immediate constitution of Bench since it is a case of upholding the mandate of Constitution. But it appears that the State relaxed under the pretext of pendency of the application, defied the interim order dated 15.11.2011, passed by this Court, Under the garb of pendency of application, the State Government has not only defied the interim order dated 15.11.2011 (supra) but also the mandamus issued by other Bench at Allahabad.

165. On behalf of the Election Commission, a statement was made that the voter list was made ready on 1.6.2011 Appropriate step was taken in September, 2011 to hold election but the State Government has done nothing to discharge its constitutional liability. To quote relevant portion from the affidavit if Election Commission:

12. That the State Election Commission has already prepared and notified the guidelines/directions for Returning Officers and Assistant Returning Officers for General Election, 2011 of the local bodies and also notified the list of the Symbols on 17.2.2011 for Members of Nagar Panchayat and Nagar Palika Parishad and similarly, the notification was issued regarding the list of Symbols for Chairman & Mayors of the local bodies. The State Election Commission has also issued the other orders and guidelines for Election Officers and employees and other guidelines and directions for Counting Officers and employees thereof.

13. That it is relevant to mention here that after making all the preparations for General Election, 2011 of the local bodies, The State Election Commission vide letter No. 1395/Ra. Ni. Aa. Anu-5/2011 dated 5.9.2011 has sent the recommendations regarding notifying the election programme from 24th September, 2011 to November, 2011 and the State Government was requested to issue the notification by 23.9.2011.....

14. That in view of the above, it is crystal clear that the State Election Commission has performed its duties and has never wasted any time either to prepare the election process or to hold the election, so there is no reason or any occasion or any ground to make the allegations that the State Election Commission has failed to perform its duties in holding the election.

15. That the deponent is further advised to state that much before the proposed date for notification i.e. 23.9.2011 a writ petition was filed on 13.9.2011 before this Hon''ble Court at Allahabad regarding holding the election, therefore, there

was no occasion for the State Election Commission to rush or approach any other forum including the Hon''ble High Court. Thereafter, in this regard, several other petitions were also filed. However, in respect of writ petitions which were filed at Allahabad as well as at Lucknow, the State Election Commission has further considered the matter and again sent a letter to the State Government bearing No. 1566 Ra. Ni. Aa. Anu-5/2011 dated 16.11.2011, a true copy of which is being filed herewith and marked as ANNEXURE B-2 to this counter-affidavit. The deponent is further advised to state that since this Hon''ble Court has already directed the State government for issuing the notification within two weeks, therefore, it is expected that in compliance of the order passed by this Hon''ble Court the State Government will issue the notification and the State Election Commission is ready to hold the election as he has already prepared all the process.

166. On 2.12.2011, Shri J.N. Mathur, learned Additional Advocate General, on the basis of the instructions received from the Principal Secretary, Urban Planning Shri D.S. Mishra stated that the State Government shall wait for a week to obtain information from the Registrar General, Census and thereafter it will take 45 days to make necessary preparation for the election to provide ward-wise reservation and thereafter shall notify the election which may be held in the next 60 days. In response to the argument made by learned Addl. Advocate General, learned Senior Counsel appearing for the petitioners submits that the State is adopting dilatory tactics and does not intend to discharge its constitutional obligation in terms of the judgment of Hon''ble Supreme Court in the case of Kishansing Tomer (supra). He submits that the statement given before the Court is politically motivated and to defer the election. He also submits that the general election with regard to State Assembly is likely to be taken in the first part of next year, so it may not be possible to hold the election of local bodies in case request of State Government is accepted.

167. Before the Division Bench of this Court at Allahabad, the validity of impugned provision was not challenged with regard to appointment of administrator and the manner in which the State proceeded to prolong the case under the garb of moving application for clarification or extension of time creates a reasonable doubt with regard to bona fide intention of the State Government.

168. As far back as on 21.10.2011, the Registrar General, Census, Government of India informed the State of U.P. that it shall not be possible to publish the final figure relating to ward-wise figures of population on or before 31.3.2013. Under Census Act, no one can compel the Registrar General to cut short the proceedings against the statutory provisions. Census being a highly skilled exercise is a matter which falls within the domain of Registrar General, Census Commissioner, Government of India. In case the State Government would have been clear in its view and realised its constitutional responsibility, then instead of prolonging the matter in one or other way should have immediately notified the election accepting the request of State election Commission but it has not been

done. The contents of letter dated 21.10.2011 filed with Writ petition No. 11226 (M/B) of 2011 (Annexure-2) is reproduced as under:

Dr. C. Chandramouli

MOST IMMEDIATE COURT MATTER

Registrar General & Census Commissioner

India, Ministry of Home Affairs, Government of India

D.O. No. 7124/RG(O)

21st October, 2011

Dear Ms. Sharma,

Please refer to your letter dated 21.10.2011 regarding the orders of the honorable High Court, Allahabad in Civil Misc. Writ petition No. 53557/2011 and 55520/2011 directing publication of Census data giving ward-wise and caste-wise break-up of population by 31.10.2011.

The said orders appear to have been issued under the impression that the entire process of 2011 census is finished except certain formalities. We therefore need to apprise the Honorable Court of the factual position urgently and seek a review of the decision.

As you are well aware, after the population enumeration exercise is over, a series of activities are to be undertaken for arriving at the final figures of population - its ward-wise break-up and the figures of Schedule Caste and Scheduled Tribe population. This involves scanning of crores of schedules canvassed during the Census, data processing through ICR technology, Data processing, editing, Computer Assisted Coding, Quality Checking etc. This is a time taking process and the targeted date for release of final figures relating to ward-wise figures of population, Schedule Caste and Scheduled Tribe population is 31.3.2013. Looking into the volume of work and the various data processing steps involved, it is not possible to compile the figures before the targeted date. It is pertinent to mention here that for Census 2001 also, these figures were released after two years of completion of enumeration exercise. The Census does not collect any data relating to Backward Classes.

As per the past practice, and keeping the importance of timely release of Census data for framing various Government policies and programmes, the provisional population totals based on the manual abstracts prepared by the enumerators has already been released on 30.03.2011 which gives an estimate of the total population, child population in the age-group of 0-6 years and literates by sex and residence. No other data is available at present.

You are advised to apprise the State Government of the above position immediately and also take action to file a review petition bringing the above facts to the kind notice of the Honorable High Court for review of the said orders.

With best wishes,

Yours sincerely, Sd/- (C. Chandramouli)

Ms. Neena Sharma, IAS

Director of Census Operations

Uttar Pradesh, Lekhraj Market III

Indira Nagar, Lucknow-226 016.

Directorate of Census Operations,

Uttar Pradesh

169. In case the State Government does not comply with the request of the State Election Commission or comply the judgment of the Supreme Court, then what are the option open to the State Election Commission? The option seems to be:

(1) to approach the High Court under Article 226 of the Constitution of India in view of judgment of Kishansing Tomer (supra) or Supreme Court;

(2) Being independent constitutional functionary, send a report to the Governor with regard to failure of constitutional machinery and non-compliance of its request by the State Government and the Governor of State may proceed in accordance with law;

170. The situation with regard to breaking of constitutional machinery have been considered by Hon"ble Supreme Court in the case of S.R. Bommai (supra). To quote relevant portion:

While it is not possible to exhaustively catalogue diverse situation when the constitutional break down may justifiably be inferred from, for instance (i) large scale break down of the law and order or public order situation; (ii) gross mismanagement of affairs by a State Government; (iii) corruption or abuse of its power; (iv) danger to national integration or security of the state or aiding or abetting national disintegration or a claim for independent sovereign status, and (v) subversion of the Constitution while professing to work under the Constitution or creating disunity or disaffection among the people to disintegrate democratic social fabrics.

The Supreme Court further held, to quote:

The title to the article "failure of constitutional machinery in the States" means a situation where the Government of the State and not one or a few functions of the Government cannot be carried on in accordance with the Constitution. The inability or unfitness may arise either on account of the non-performance or malperformance of one or more functions of the government or on account of abuse or misuse of any of the powers, duties and obligation of the Government.

171. The law is settled that free and fair election in terms of the constitutional provision is basic feature of the Constitution. The State or its authorities cannot defy the constitutional mandate for any reason whatsoever. In case they fail then it is for the Union of India to look into the matter. It is the constitutional obligation of the Union to uphold the Constitution under Articles 355 and 356 of the Constitution. The provision has been made to ensure that the Constitutional provisions are not abused by the authority and the autonomy given to them under the Constitution.

172. Needless to say that the aforesaid options open to the State election Commission should have been exercised at least before the expiry of term or within a period of six months as envisaged by Article 243-U. In case the State Election Commission does not discharge its obligation in the manner above, then it shall be a case of serious mis-conduct and the Court may also issue appropriate direction or the government may take appropriate action in accordance with law for misconduct.

173. It may be noted that the State or its authorities are constitutionally bound to implement a direction issued by the higher judiciary subject to appellate order passed by the Supreme Court. Non-compliance of the order passed by the High Court is not only an incident of contempt of Court but also shall be an attempt on the part of the State Government to break the constitutional machinery that too when the matter relates to holding of an election in terms of the constitutional provisions. In a case in *The Commissioner, Karnataka Housing Board Vs. C. Muddaiah*, , Hon''ble Supreme Court has held as under:

31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceeding's known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

In the present context, State Government had failed to comply with the directions issued by a Division Bench by the final judgment at Allahabad as well as by interim order dated 15.11.2011, passed by this Bench with intention to defer the election and continue with administrator. In any case, the essential legislative function of the Municipalities and Municipal Corporations cannot be delegated to an extra constitutional authority.

(IX) VACUUM

174. Learned Additional Advocate General submits that in case the election is not

held for any natural calamity or mis-happenings, then there shall be vacuum and the State has right to appoint administrators. We have already discussed different provisions of the Constitution that the State lacks legislative competence to legislate law on a subject which is not covered by Entry 5 List II of the Constitution. Supreme Court also observed that the difficulty in holding the election should not be man-made but it appears to be man-made. Though Shri Ravi Kiran Jain imputed the petitioners who approached this Court at Allahabad stating it to be collusive act of the State Government but we are of the view that such argument should not have been advanced. Suppose because of natural calamity or public unrest, election is not held, then who is to legislate law to deal with situation?

175. We have also held that the State is not legislatively competent to legislate law. In such a situation, Entry 97 of List I read with other provisions empowers the Union of India to legislate law or issue appropriate direction or order to protect the failure of Constitution within the four corners of Part IX and IXA of the Constitution. It is not so that there is no way out. Remedy lies in Entry 97 List I of the Constitution and as held by Supreme Court in S.R. Bommai case (supra), being a federal government, ultimate liability is on the shoulder of the Union of India to protect and preserve the Constitution subject to judicial review of its action.

176. Accordingly, the Union of India has got ample power to legislate law under Entry 97 to fill up the vacuum, if any under Parts IX and IX-A of the Constitution. This may be looked into by the Union of India and a copy shall be sent to the Secretary, Law and Justice by the Registrar.

177. Allan in his treatise "Constitutional Justice", p. 219, observed that there is general commitment to the Rule of law not just in ordinary doctrines of judge-made law or law made by Parliament but implicitly in the official consensus that constitutes Britain's constitutional foundation. What Allan said is also relevant with reference to Indian context governed by written Constitution. To quote:

.....legal validity ultimately depends on compliance with basic constitutional values or assumptions: for it is these values, reflecting considerations of justice and propriety (however conceived), that account for the consensus, at least among officials, on which the survival of any system of government depends.

178. K.V. Rao in his celebrated treatise, "Parliamentary Democracy of India", published by the World Press Pvt. Ltd., Calcutta, 1961, page 213 remarked, "In a democracy public opinion is passive, and in India it is still worse, and that is all the reason why it is imperative that judiciary should come to our rescue. Otherwise... the Constitution becomes ill-balanced, and leans heavily on Executive Supremacy, and tyranny of the majority; and that was not the intention of the Makers."

179. In a country where constitutional provisions are outraged for immediate or long term political gain or Rule of law is distorted with some extra constitutional

motive, then in due course of time, such country faces irreparable loss and injury which may be noticed from some other countries facing public agitation. One wrong or one crack in the constitutional morality may cause pain and suffering to coming generation for centuries.

180. A Urdu poet of District Muzaffarnagar, Kairana, District-Muzaffar Razmi in a couplet expressed the views as under:

181. Virtually the judgment of Hon^{ble} Supreme Court in the case of Kishansing Tomer (supra) is a message to persons involved in governance of the country to stick to constitutional values and enforce the constitutional mandates in letter and spirit without deviating for any reason whatsoever with regard to election. The election must be held in time. India is a cosmopolitan country and the electorates get a chance only in five years to elect its representatives. There is no provision to reject or recall the peoples' representatives once elected. Deferment of election prolong the peoples' right to exercise their option for and against the persons holding office. Hence, strict compliance of Article 243-U is necessary and mandatory.

182. From the facts and circumstances, discussed hereinabove, it seems to be amply clear that the government seems to have deliberately not adhered to the request made by the State Election Commission, particularly after receipt of letter sent by the Registrar General, Census (supra) dated 21.10.2011. In such a situation, no much time may be given as prayed by learned Additional Advocate General on 2.12.2011 to hold election. The District Magistrates of the State and other authorities must work round the clock in consultation with the State Election Commission to make ready all relevant materials in accordance with Rules to hold election at an early date.

183. Since we have also held that the impugned amendment is ultra vires to the Constitution, then who should manage the affair of Municipalities and Municipal Corporations during the intervening period? The District Magistrates are not only involved in the Local Body election but also they have to ensure the next general election apart from bearing different other responsibilities. They cannot take personal care to ensure civil amenities to citizens.

184. In such a situation, the more democratic way is to permit the Municipalities and Municipal Corporations to be managed by the respective executive officers and municipal Commissioners who are the statutory authorities under U.P. Municipalities Act, 1916 and U.P. Municipal Corporations Act 1959. In the State of U.P., the Executive Officers belong to centralise services whereas the Commissioners are senior PCS officers or IAS officers. Being statutory authority, the executive officers and municipal Commissioners shall be accountable to the Municipalities and Municipal Corporations and shall be answerable to the newly elected peoples' representatives whenever they take their seats. For any misconduct, they may be charged in accordance with law by the Municipal Council and Municipal Corporations. Accordingly, the executive officers and

municipal corporations shall be permitted to discharge their duty and to provide civil amenities to the citizens in accordance with Rules and on the basis of resolutions, circulars and orders passed by the Municipalities and municipal corporations before the end of their term under Article 243-U(1) of the Constitution.

185. To make it more democratic, we further provide that the executive committee of the Municipal Council and Municipal Corporation constituted under U.P. Municipalities Act, 1916 and U.P. Municipal Corporation Act, 1959 shall have supervisory role to ensure civil amenities to the citizens and will have advisory opinion by majority decision to executive officers and municipal commissioners.

The Union of India should consider the aforesaid proposition to make necessary amendment to deal with eventualities in case the election is not held within time for natural calamities or because of Act of God.

ORDER

186. Subject to aforesaid direction and finding these writ petitions are allowed to the extent above. The impugned amendment under Act No. 23 of 2005 is declared ultra vires to the Constitution, illegal, inoperative and void with all consequences. The impugned amendment under Act No. 38/2006 u/s 1-A to the extent of interpretation of first meeting is also declared ultra vires, unconstitutional, illegal and void with consequential benefits. A writ in the nature of mandamus is issued directing the State of Uttar Pradesh to complete all necessary formalities by round the clock working within a period of 10 days or maximum by 18.12.2011. Let a notification be issued on or before 19.12.2011 and submit a compliance report to this Court. The Registry to constitute Bench to peruse the compliance report immediately thereafter. Till newly elected peoples' representatives resume work, the affairs of the Municipalities and Municipal Corporations shall be managed in the manner provided in the body of the present judgment by the Executive officers and Municipal Commissioners.

In case no notification is issued, the State Election Commission shall send a report to His Excellency the Governor of the State of U.P. who may proceed to uphold the Constitution in accordance with law. The State Election Commission shall also move appropriate application before the Court in terms of the judgment of Kishansing Tomer (supra) in case no notification is issued or action taken in the manner observed in the body of judgment.

(3) A further writ, order or direction in the nature of mandamus is issued directing the Chief Secretary, Government of UP as well as the Principal Secretary, Nagar Vikas Anubhag and all the District Magistrates of the State of U.P. and other authorities to make necessary preparation in effective consultation with the State Election Commission to hold election on issuance of appropriate notification and enable the State Election Commission to hold the election. All the executive officers and Municipal Commissioners working in the State of U.P. henceforth shall not be transferred except with the permission of the State

Election Commission.

The Principal Secretary, Nagar Vikas Anubhag shall communicate the order to all the District Magistrates by FAX and other means immediately within two days. Learned Chief Standing Counsel and other counsels shall inform the opposite parties including the Chief Secretary of the State, Principal Secretary, Nagar Vikas Anubhag today itself.

Registry shall also send a copy of the present judgment within two days to the Chief Secretary, Government of U.P., Principal Secretary, Nagar Vikas Anubhag, State Election Commission and Secretary, Ministry of Law and Justice, Government of India.

To the extent above, the writ petitions are allowed. No order as to costs.