
(2010) 07 KL CK 0186

In the High Court Of Kerala

Case No : Writ Petition (C) No. 14160 of 2010 and connected cases

Sreekala, K.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Constitution of India, 1950 — Article 13(3), 154, 154(1), 161, 163

General Clauses Act, 1897 — Section 3(29), 3(6)

Kerala Municipalities Act, 1994 — Section 2, 3, 4, 4(1), 4(2)

Citation : (2010) 07 KL CK 0186

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : K. Ramakumar, N. Nandakumara Menon, V. Chittambaresh, George Poonthottam, A. Sudhi Vasudevan, V.V. Nandagopal Nambiar, P.P. Jacob, Kaleeswaram Raj and C.P. Mohammed Nias, for the Appellant; C.P. Sudhakara Prasad, General, T.B. Hood, Government Pleader and Murali Pururshothaman, S.C. for Election Commission, for the Respondent

Judgement

T.R. Ramachandran Nair, J.—These writ petitions concern the challenge against the notifications whereby certain Panchayats have been added to Thiruvananthapuram and Kozhikode Corporations; the addition of certain Panchayats to the existing Municipalities and challenge against the conversion of a Panchayat as a Municipality itself. Since common questions arise for consideration, they are disposed of by a common judgment.

2. First I will deal with the challenge against the addition of certain Panchayats to two existing Corporations, viz., Thiruvananthapuram and Kozhikode. These writ petitions are: W.P. (C) Nos. 18019/2010, 18167/2010, 18543/2010, 18931/2010, 19508/2010 and 20079/2010. The notifications putting forth the proposal, order rejecting the objections and the subsequent final notifications are common in respect of all these Panchayats.

3. The narration of the facts as stated in W.P. (C) Nos. 18019/2010 show the following: By Ext.P-1 dated 9-12-2009 published in the Gazette, the Government

proposed to add Sreekaryam, Vattiyoorkavu, Kudappanakunnu, Kazhakkootam and Vizhinjam Grama Panchayats to Thiruvananthapuram Corporation and Elathur, Cheruvannur-Nallalam and Bepur Grama Panchayats to Kozhikode Corporation. Objections/suggestions were invited from individuals, Village Panchayats and Municipal Corporations in the matter. By Ext.P-5 order No. 102/10/LA dated 22-5-2010 these objections were considered and it was decided to implement the proposal and to issue appropriate notification, to be effective from 1-10-2010. The Petitioners are residents within Sreekaryam Grama Panchayat and the first Petitioner had filed an objection to the proposal. The Petitioner in W.P. (C) No. 18931/2010 challenges the addition of Kazhakottam Grama Panchayat to Thiruvananthapuram Corporation and the Petitioners in W.P. (C) No. 20079/2010 challenge the addition of Vizhinjam Grama Panchayat to the Thiruvananthapuram Corporation. The notification and the orders are the same. In W.P. (C) No. 18167/2010 the challenge is against the addition of Elathur, Cheruvannur-Nallalam and Bepur Grama Panchayats to Kozhikode Corporation, in W.P. (C) No. 18543/2010 the challenge is against the addition of Cheruvannur-Nallalam Grama Panchayat to Kozhikode Corporation and in W.P. (C) No. 19508/2010 the Petitioner challenges the addition of Bepur Grama Panchayat to Kozhikode Corporation. The exhibits are referred to hereinafter with reference to W.P. (C) No. 18019/2010.

4. Heard Shri K. Ramakumar, Shri N. Nandakumara Menon and Shri V. Chitambaresh, learned Senior Counsel, and learned Counsel Shri V.V. Nandagopal Nambiar, Shri P.P. Jacob, Shri C.P. Mohammed Nias, Shri George Poonthottam, Shri Kaleeswaram Raj and Shri Sudhi Vasudevan, for the Petitioners, and learned Advocate General Shri C.P. Sudhakara Prasad for the State and Shri Murali Purushothaman learned Standing Counsel appearing for the Delimitation Commission.

5. The questions raised in these writ petitions are many fold, requiring interpretation of the relevant provisions of the Constitution of India and that of the Municipalities Act. The main contentions are the following: Article 243Q provides constitution of three types of local bodies, viz. Nagar Panchayat, Municipal Council and Municipal Corporation. The Village Panchayats herein are really rural areas and if at all there is a transition to an urban area, going by Article 243Q, they can be formed only as a Nagar Panchayat which is envisaged for a "transitional area" and there is no provision to add them to a Municipal Corporation. Therefore, it is contended that a Grama Panchayat cannot be directly added to/or converted as a Municipal Corporation. Section 4(2)(e) of the Kerala Municipality Act, 1994 (hereinafter referred to as "the Act"), providing such merger of a Panchayat area geographically lying adjacent to a Municipality, is unconstitutional, as it is in contravention of Article 243Q. If at all Section 4(2)(e) is applicable, then the Grama Panchayat can only be added to a Municipality and there is no provision for including it in a Municipal Corporation. It is mainly contended that the Governor of the State will have to notify under Article 243Q a "transitional area" a "smaller urban area" or a "larger urban area" based on the

yardsticks provided therein and in the absence of a notification, the Government cannot propose merger of those Grama Panchayats with a Municipality. The proposal by the Government in that regard is therefore without jurisdiction, as the Government cannot take such a decision even going by the proviso to Section 4(2)(e) of the Kerala Municipality Act. It is further pointed out that there is absence of consultation with the Village Panchayats, which is mandatory. One of the contentions raised is that the unification of a Village Panchayat to a Corporation will deprive large sections of the society the benefits distributed by Village Panchayats including the benefit of the scheme, viz. "National Rural Employment Guarantee Scheme" which are being implemented by the Panchayats concerned, with the funds provided by the Central Government and State Government. It is also contended that none of the Panchayats can be termed as having any urban character and the decision otherwise taken by the Government is politically motivated, ignoring the relevant aspects and without applying the mind.

6. After the writ petitions were admitted, the Respondents produced along with a statement, the notification issued by the Government with the approval of the Governor under Article 243Q(2) dated 8-6-2010 and the notification issued by the Government u/s 4(2)(e) of the Municipality Act, uniting Village Panchayats with the two Corporations which is also dated 8-6-2010 and accordingly the writ petitions have been amended by adding new grounds. It is contended that the notification under Article 243Q is issued by the Government itself and not by the Governor and there is still violation of the Constitutional provisions. Detailed counter-affidavits have been filed by the Respondents.

7. Part IX of the Constitution concerns Panchayats and Part IXA concerns Municipalities. As far as Municipalities are concerned, the provisions relevant herein are Articles 243P and 243Q, which are reproduced below:

243P. Definitions.--In this Part, unless the context otherwise requires,--

- (a) "Committee" means a Committee constituted under Article 243S;
- (b) "district" means a district in a State;
- (c) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;
- (d) "Municipal area" means the territorial area of a Municipality as is notified by the Governor;
- (e) "Municipality" means an institution of self-government constituted under Article 243Q;
- (f) "Panchayat" means a Panchayat constituted under Article 243B;
- (g) "population" means the population as ascertained at the last preceding

census of which the relevant figures have been published.

243Q. Constitution of Municipalities.--(1) There shall be constituted in every State.--

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township,

(2) in this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

Article 243P defines "Municipal area" as the territorial area, of a Municipality as is notified by the Governor and Sub-article 243(e) defines "Municipality". It gives the meaning of the "population" as follows: " "population" means the population as ascertained at the last preceding census of which the relevant figures have been published." Section 4 of the Kerala Municipality Act provides for constitution, alteration and conversion of municipalities and Sections 4(1) and 4(2) are extracted below:

4. Constitution, alteration and conversion of Municipalities.--(1) The Government shall, by notification in the Gazette, constitute with effect from such date as specified in the notification,--

(a) a "Town Panchayat" for a transitional area;

(b) a "Municipal Council" for a smaller urban area; and

(c) a "Municipal Corporation" for a larger urban area, and specify the name of such Municipalities.

(2) The Government may, by notification,--

(a) exclude any municipal area from the operation of this act; or

(b) exclude from a municipal area comprised therein and defined in the notification; or

- (c) divide any municipal area into two or more municipal areas; or
- (d) unite two or more municipal areas; or
- (e) unite the territorial area of a Panchayat geographically lying adjacent to a Municipal area, with the Municipality; or
- (f) convert a Village Panchayat into a Town Panchayat or a Municipal Council; or
- (g) convert a Town Panchayat into a Municipal Council; or
- (h) convert a Municipal Council into a Municipal Corporation:

Provided that, before issuing such a notification the requirements under Article 243Q Sub-section (1) shall be fulfilled and the suggestions and opinions of the Village Panchayat or Town Panchayat or Municipal Council or Municipal Corporation concerned, shall be considered.

Provided further that any notification issued under this sub-section shall not be brought into force except in such a way as to coincide with the expiry of the term of the existing Municipal Council or Village Panchayat in that territorial area.

8. The first question to be considered is whether a Village Panchayat can be converted only as a Nagar Panchayat. It is argued that there is a hierarchy provided as per the Constitution as "Nagar Panchayat", "Municipal Council" and "Municipal Corporation" in Article 243Q(1); a Nagar Panchayat has to be constituted for an area in transition from a rural area to an urban area; a Municipal Council for a smaller urban area; and a Municipal Corporation for a larger urban area. It is therefore relevant to consider whether there is any restriction under the Constitution to merge/unite a Village Panchayat to a Municipal Corporation.

9. Learned Advocate General submitted that Municipality or Municipal Corporation is not defined u/s 4 of the Act and under Article 243P(e), "Municipality" means an institution of self-government constituted under Article 243Q. All the three institutions will come within the definition of "Municipality" itself. Therefore, once the area of a Village Panchayat is notified either as a transitional area, smaller urban area or larger urban area, it will be one coming within the definition of a "Municipality" and therefore going by Section 4(2)(e) of the Act, such a Panchayat which is geographically lying adjacent to a "Municipal area", can be united with the "Municipality". The word "Municipality" there in takes in Municipal Corporation also.

10. It is true that the words "Municipality" and "Municipal Corporation" are not defined under the Act. Section 3 of the Act provides that words and expressions used but not defined in this Act and defined in Part IXA of the Constitution of India shall have the meanings respectively assigned to them in that Part. The word "Municipal area" as defined under Article 243P(d) means the territorial area of a Municipality as is notified by the Governor. The combined effect of Articles 243Q(1) and (2) is that institutions notified therein by the Governor will

constitute themselves as "a Nagar Panchayat", a "Municipal Council" and "a Municipal Corporation". u/s 4(2)(e) of the Act, the Government can, by notification unite the territorial area of a Panchayat geographically lying adjacent to a Municipal area with the Municipality. Therefore, when the definition of the term "Municipality" in Article 243P takes in the institutions constituted under Article 243Q(1) and (2), it can be seen that there is no embargo in uniting a Village Panchayat notified as a larger urban area, to a Municipality, meaning a Municipal Corporation, if it is lying geographically adjacent to it. Hence, the absence of the words "Municipal Corporation" in Section 4(2)(e) of the Act will not affect the exercise of the said power.

11. The Apex Court in *Saij Gram Panchayat Vs. The State of Gujarat and Others*, , has considered the true concept emanating from the expression "Municipality" under Article 243Q. In para 18 Their Lordships explained thus:

Article 243Q deals with Constitution of Municipalities. Municipality is defined under Article 243P(e) to mean "an institution of self-government constituted under Article 243Q. Article 243Q constitutes three types of Municipalities--(a) a Nagar Panchayat (b) a Municipal Council and (c) a Municipal Corporation.

12. In *K.P. Raveendran and Another Vs. State of Kerala and Others*, , this Court had occasion to analyse Part IXA of the Constitution, which exclusively concerns itself with Municipalities. While considering the question whether an area notified as urban area by the Governor, can again be renotified as a rural area, and as Panchayat by the Government, it was held that the same is impermissible under the Constitution. The Constitution of Municipalities was held as a mandate of the Constitution itself. Thottathil B. Radhakrishnan, J. held thus in para 12:

In so far as Municipalities in Part IXA are concerned, having regard to the population of the area as defined in Article 243P(g), the density of population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, the Governor may specify by public notification "a transitional area", "a smaller urban area" or "a larger urban area". On such notification being issued under Article 243Q(2), a Municipality, meaning an institution of self-government as defined in Article 243P(e) comes into being. By the mechanism provided under Article 243Q(1), a Nagar Panchayat gets constituted for a transitional area, a Municipal Council gets constituted for a smaller urban area and a Municipal Corporation gets constituted for a larger urban area. The constitution of such Municipalities is the mandate of the Constitution and does not depend on any law made by the Legislature. As is in the case of Panchayats, the making of law by the State gets confined to subjects commencing only from the composition of Municipalities, as provided from and inclusive of Article 243R.

It was further held in para 14 thus:

While Article 243(g) gives no constitutional yardstick for the Governor to

ascertain and specify a village, Article 243Q(2) provides yardsticks to identify transitional area, smaller urban area and larger urban area. It has been held by the Apex Court in *State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc.*, that in specifying villages for the purpose of Part IX, the Governor is not bound by any particular yardsticks. Article 243Q(2) provides the yardsticks for the three types of areas mentioned in Article 243Q(2) and the municipal area as defined in Article 243P(d) is the territorial area of a Municipality as is notified by the Governor. These provisions would show that there cannot be a transition of the constitutionally created smaller urban area, larger urban area and a transitional area, to be a village, to fall into Part IX of the Constitution and such an exercise cannot be done under Part IXA of the Constitution. This is because the Municipality in relation to a transitional area or a smaller urban area, or a larger urban area, on its coming into existence, becomes a constitutional institution and cannot be abolished by an act of the Legislature without specific authorisation in that regard in the Constitution.

Therefore, a Municipality becomes a constitutional institution in relation to a transitional area or a smaller urban area or larger urban area. The word "Municipality" therefore, obviously takes in, going by Article 243P(e), a Nagar Panchayat, a Municipal Council and a Municipal Corporation. Thus, Section 4(2) (e) of the Act gives power to the Government to unite the territorial area of a village panchayat which is declared as a larger urban area by the Governor, in exercise of the power under Article 243Q(2), with a Municipal Corporation. It is not as if, as contended by the learned Counsel appearing for the Petitioners, that if at all there is a power u/s 4(2)(e) of the Act, it can be united only to a Municipality. Therefore, the contention that a village panchayat can only be constituted as a Nagar Panchayat and cannot be formed as a part of a Municipal Corporation directly, cannot hold good and hence the said argument is rejected.

13. Learned Counsel appearing for the Petitioners then submitted that Section 4(2)(e) of the Act is unconstitutional, as it goes against the provisions of the Constitution in Part IXA. It is contended that going by Article 243Q(1), there is a hierarchy of local self-government institutions and so on and therefore when a rural area is sought to be transformed from the status of a Village Panchayat, initially only a Nagar Panchayat alone can be formed and the provisions of the Act, viz. Section 4(2)(e) to unite such area with the Municipal Corporation is unconstitutional. The transformation as a Municipal Council and lastly as a Municipal Corporation can only be by step by step.

14. Learned Advocate General submitted that Section 4(2)(e) is not violative of any of the provisions of the Constitution and therefore the contention cannot be accepted. True, that in Article 243Q three types of institutions of local self-government will have to be constituted, after undergoing an exercise under Article 243Q(2), by the Governor of the State. There is no prohibition under any of the provisions of Part IXA of the Constitution against the power of the Government to unite a Village Panchayat which has been declared as a larger

urban area, to a Municipality. As already noticed, the word "Municipality" takes in all the three institutions. Therefore, once it forms the character of a larger urban area it is open to the Government to unite it to a Municipal Corporation if the same is lying adjacent to the municipal area. Therefore, the contention that Section 4(2)(e) is unconstitutional, as it is in violation of Article 243Q, is clearly unsustainable. It was also contended that merger of a Grama Panchayat straight away to a Municipal Corporation is also illegal. The argument is that only the word "Municipality" alone is available u/s 4(2)(e) and the merger of a panchayat with a Municipal Corporation is not envisaged. As already held, the word "Municipality" takes in all the three institutions including a Municipal Corporation and therefore the said contention also does not merit any consideration. It is not the law that the transformation of a Village Panchayat, once it gains the urban character should be as Nagar Panchayat, then as Municipal Council and as Municipal Corporation, in that pattern. It depends on the notification by the Governor under Article 243Q(2). There is no indication therein that arural area, on getting urban character and by fulfilling the yardsticks contained therein, can only be declared as a transitional area.

15. Learned Senior Counsel Shri K. Ramakumar vehemently contended that the proposal by the Government notified way back in December 2009 that the Village Panchayats named therein have acquired the character of larger urban area and smaller urban area, as the case may be, clearly goes against the scheme under Article 243Q(2), as the Governor alone has the power to issue such a notification. It is therefore submitted that the entire exercise leading to the notifications dated 8-6-2010 produced as Exts.R-1(c) and (d) are clearly illegal and unconstitutional. It is pointed out that a notification u/s 4(2)(e) can be published, going by the proviso to Section 4(2)(e), after fulfilling the requirements under Article 243Q and after considering the suggestions and opinions of the village panchayat, etc. It is therefore submitted that the entire exercise done by the Government cannot be supported in law as it goes against the constitutional as well as the statutory schemes. The learned Counsel appearing for the other Petitioners also supported the said argument.

16. Learned Advocate General submitted that the Governor has to act under the advice of the Council of Ministers and it not a case where the Governor is taking a decision in accordance with his discretion under the specified provisions of the Constitution and therefore the initial notification dated 9-12-2009 (Ext.P-1) is perfectly within jurisdiction. Reliance is placed on the decision of the Apex Court in State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., . The further contention taken by the learned Counsel for the Petitioners that the principles of natural justice have been violated in not granting an opportunity for submitting objection, etc. and for a hearing before the final notification was issued, was opposed by the learned Advocate General contending that the declaration made by the Governor and the notification published, is a legislative function and the principles of natural justice are alien to such a legislative exercise. The decisions of the Apex Court in AIR 1981 1127

(SC) and State of Punjab Vs. Tehal Singh and Others, were relied upon in this context, whereas learned Counsel for the Petitioners relied upon the decisions of the Apex Court in Baldev Singh and Others Vs. State of Himachal Pradesh and Others, , State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., and The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, and K.P. Raveendran and Another Vs. State of Kerala and Others, .

17. Herein, the statutory scheme u/s 4(2) of the Act and the proviso shows that the Government can issue a notification uniting the territorial area of a Panchayat to a Municipality, but the proviso stipulates that before issuing such a notification, "the requirements under Article 243Q and Sub-section (1) shall be fulfilled and the suggestions and opinions of the Village Panchayat or Town Panchayat or Municipal Council or Municipal Corporation concerned, shall be considered". As far as the fulfillment of the requirement under Sub-section (1) of Section 4 is concerned, various institutions have already been constituted. Therefore, the requirements u/s 243Q(2) as well as consideration of the suggestions and opinions of Village Panchayats, etc. have to be fulfilled, before issuing a notification u/s 4(2) of the Act.

18. Herein, evidently, while issuing Ext.P-1 dated 9-12-2009 itself, objections have been invited from individuals, Grama Panchayats and Municipal Corporations and they have been disposed of by Ext.P-6 dated 22-5-2010. The Additional Secretary to Government, Local Administration Department conducted a personal hearing based on the objections received and after considering various objections, the order is passed. Finally, the two notifications under Article 243Q, viz. Exts.R-1(c) and R-1(d) have been issued. The yardsticks for declaration of an area as a transitional area, smaller urban area or larger urban area, going by Article 243Q(2), are the population of the area, the density of the population therein, the revenue generated for local administration, percentage of employment in nonagricultural activities, the economic importance or such other factors, as the Governor may deem fit. Ext.R-1(c) shows that having regard to these aspects, the Governor was pleased to notify the areas covering various Village Panchayats to be smaller urban areas and larger urban areas with effect from 1st day of October, 2010 and the notification dated 20-4-1994 has been consequently amended. A consequential notification has been issued by the Government u/s 4(2) of the Act, as Ext.R-1(d).

19. The question is whether, since the notifications Exts.R-1(c) and R-1(d) are dated 8-6-2010, the Government should have invited the suggestions and opinions of the Village Panchayats, etc. afresh after the notification under Article 243Q(2) was issued by the Governor. It is submitted that in the absence of a consultation with the Panchayat concerned, the notification u/s 4(2)(e) of the Act is clearly illegal.

20. The first question is whether the Governor is exercising the power under Article 243Q(2) in his discretion or he is acting on the advice of the Council of

Ministers. The decision of the Apex Court in *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, is to the point. It was held that in view of the provisions of Articles 154 and 163 read with Article 166 of the Constitution, the "Governor" means the Government of the State and all executive functions which are exercised by the Governor except where he is required under the Constitution, to exercise the functions in his discretion, are exercised by him on the aid and advice of the Council of Ministers. Paragraphs 36 to 38 of the above decisions are apposite in this context which are reproduced below:

36. As regards the objection of the High Court that whereas Article 243(g) requires the Governor to specify the village, the Act gives this power to the State Government to do so, the High Court has failed to notice the provisions of the Constitution which equate the Governor with the State Government in exercise of his functions except where he is by or under the Constitution required to exercise the functions in his discretion. In this connection, we may refer to the provisions of Article 163 of the Constitution which state that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions except when they are to be exercised by him under the Constitution in his discretion. It is also not disputed that when a Minister takes action, according to the rules of business, it is both in substance and in form the action of the Governor. Under the Constitution, therefore, while exercising the non-discretionary functions, the Governor cannot act without the aid and advice of the Council of Ministers. To do so will cut at the very root of the cabinet system of Government we have adopted. In this connection, we may refer to the decision of this Court in *Samsher Singh v. State of Punjab* where the Constitution Bench of Seven learned Judges has held that the executive power of the State is vested in the Governor under Article 154(1) of the Constitution. The expression "State" occurs in Article 154(1) to bring out the federal principle embodied in the Constitution. Any action taken in the exercise of the executive power of the State vested in the Governor under Article 154(1) is taken by the Government of the State in the name of the Governor as will appear in Article 166(1). There are two significant features in regard to the executive action taken in the name of the Governor. First, Article 300 states, among other things, that the Governor may sue or be sued in the name of the State. Second, Article 361 states that proceedings may be brought against the Government of the State but not against the Governor. The reason is that the Governor does not exercise the executive functions individually or personally. Executive action taken in the name of the Governor is the executive action of the State. Para 48 of the said judgment explains the position of law in that behalf succinctly as follows: (SCC p.847 para 48)

The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the

Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or Officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President or the Governor.

37. Admittedly, the function under Article 243(g) is to be exercised by the Governor on the aid and advice of his Council of Ministers. Under the rules of business made by the Governor under Article 166(3) of the Constitution, it is in fact an act of the Minister concerned or of the Council of Ministers as the case may be. When the Constitution itself thus equates the Governor with the State Government for the purposes of the relevant functions, the provision in Section 2(f) which realistically gives the power of declaring the village to the State Government, cannot be said to be inconsistent with or contrary to Article 243(g). Further, Section 3(6)(c) of the General Clauses Act, 1897 defines "State Government" to mean Governor which definition is in conformity with the provisions of the Constitution. We are, therefore, unable to appreciate the conclusion of the High Court that Section 2(f) is ultra vires Article 243(g) of the Constitution.

38. We are also unable to appreciate the reasoning of the High Court that under the Act the State Government cannot declare the village by special or general order as required by Section 2(f) because Article 243(g) of the Constitution requires the Governor "to specify the village by a public notification". Admittedly, the general or special order issued by the State Government is always published in the Official Gazette. In any case, the order declaring the villages for the purposes of Section 2(f) in the present case was gazetted. There is a hierarchy of legal instruments such as law, ordinance, order, bye-law, rule, regulation and notification. It is recognised even by Article 13(3)(a) of the Constitution and Section 3(29) of the General Clauses Act, 1897. All the orders, rules, regulations and notifications when made or issued by the State Government are made or issued in the name of the Governor by the functionary of the Ministry concerned named in the rules of business as per the provisions of Article 166 of the Constitution. We have already pointed out that in view of the provisions of Article 154 and of Article 163 read with Article 166 of the Constitution "Governor" means the Government of the State and all executive functions which are exercised by the Governor except where he is required under the Constitution to exercise the functions in his discretion, are exercised by him on the aid and advice of the Council of Ministers. Hence, whether it is a notification issued by

the Government or a general or special order issued by the State Government, constitutionally both are the acts of the Governor.

Therefore, it is clear that the Governor is not exercising an executive function on his own at his discretion as held by the Apex Court therein. Evidently, the exercise of the functions under Article 243Q(2) is not in his discretion. Therefore, the rules of business of the Government under Article 166 governs the field in the matter of advice rendered by the Government to the Governor, who can act only with the aid and advice of the Council of Ministers.

21. In that view of the matter, the Government was well within its rights to issue the notification Ext. P-1 as a proposal and inviting objections thereon. The order passed as per Ext. P-6 is after considering the objections and suggestions which were invited from individuals, Village Panchayats, Municipalities and Municipal Corporations. What is mentioned under the proviso to Sub-section (2) of Section 4 of the Act is that suggestions and opinions of the Village Panchayats should be considered which evidently, have been complied with. No further consultation with the Village Panchayat concerned is provided, going by the above proviso. Even though the publication of a proposal is not a statutory requirement u/s 4(2), the same was adopted by the Government and personal hearing was also conducted.

22. Learned Counsel for the Petitioners in this context, relied upon the decision of the Apex Court in *The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others*, to contend that consultation with the Panchayat is mandatory. My attention is invited to para 38 of the said judgment wherein it was held that consultation with the Municipal Council was mandatory.

23. Herein, the question is whether the principles of natural justice have been violated. It was argued by the learned Counsel for the Petitioners, by relying upon various decisions, that it is mandatory to comply with the principles of natural justice and a proper hearing ought to have been given to the members of the public and the Panchayats concerned.

24. The nature and content of the principles of natural justice applicable in such cases have been the subject-matter of consideration by the Apex Court in various cases. The same question arose in AIR 1981 1127 (SC). Therein, the declaration of an area as principal market area under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 was subject of controversy. It was contended that the affected persons were not heard before issuing the notification. Their Lordships held that being a legislative act, it does not oblige the observance of rules of natural justice. The principle was laid down thus in para 17:

17. ...We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the

declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice. In *Bates v. Lord Halsham*, Megarry, J., pointed out that the rules of natural justice do not run in the sphere of legislation, primary or delegated, and in *Tulsipur Sugar Co. v. Notified Area Committee*, our brothers Desai and Venkataramiah, JJ., approved what was said by Megarry, J., and applied it to the field of conditional legislation too. In Paul Jackson's *NATURAL JUSTICE* (2nd Edn.), it has been pointed out (atp.169):

There is no doubt that a minister, or any other body, in making legislation, for example, by statutory instrument or by law, is not subject to the rules of natural justice--*Bates v. Lord Hailsham of St. Marylebone*--any more than is Parliament itself; *Edinburgh and Dalkeith Ry. v. Wauchope* per Lord Brougham; *British Railways Board v. Pickin*. Prof. H.W.R. Wades has similarly pointed out in his *ADMINISTRATIVE LAW* (4th Edn.): "There is no right to be heard before the making of legislation, whether primary or delegated, unless it is provided by statutes". There is, therefore, no substance in the invocation of the rules of natural justice.

25. In *Baldev Singh and Others Vs. State of Himachal Pradesh and Others*, , the constitution of a notified area u/s 256(3) and (4) of the Himachal Pradesh Municipal Act, 1968 arose for consideration. It was held that the principles of natural justice applies in such cases and the people who will be affected by the change, should be given an opportunity of being heard. Paragraphs 4 and 5 therein lays down the dictum as follows:

4. ...People residing within Gram Panchayats have their electoral rights to exercise and in exercise of such rights, they have elected their representatives. Citizens of India have a right to decide what should be the nature of their society in which they live--agarian, semi-urban or urban. Admittedly, the way of life varies, depending upon where one lives. Inclusion of an area covered by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances it is necessary that people who will be affected by the change should be given an opportunity of being heard, otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidence of tax and the like.

5. ...We accept the submission on behalf of the Appellants that before the notified area was constituted in terms of Section 256 of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have been taken after considering the views of the residents. Denial of such opportunity is not in consonance with the scheme of the Rule of Law governing our society. We must clarify that the hearing contemplated is not required to be oral and can be by

inviting objections and disposing them of in a fair way.

Significantly, it was held that an oral hearing is not required and an opportunity can be given by inviting objections and disposing of them.

26. In *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, with regard to the above aspect, Their Lordships held in para 51 that it is obligatory on the State Government to hear the objections before the panchayat areas were finalised and in matters which are urgent, even a post-decisional hearing is a sufficient compliance of the principle of natural justice.

27. Again, the very same point came up for consideration in *State of Punjab Vs. Tehal Singh and Others*, wherein it was held that determining the territorial area of a Grama Sabha and thereafter establishing a Grama Sabha for that area is an act legislative in character in the context of the provisions of the Act and hence it is not subjected to rule of natural justice. But it was also held that particular enactments may provide for observance of natural justice and if provisions are there, the same should be observed and if provisions are absent, the residents in the area cannot insist for giving an opportunity of hearing. Paragraphs 7 and 9 of the judgment laid down the principles thus:

7. The principles of law that emerge from the aforesaid decisions are: (1) where provisions of a statute provide for the legislative activity i.e., making of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the Government that certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into action forthwith which provide for certain consequences; (2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of an individual and it relates to public in general or concerns with a general direction of a general character and not directed against an individual or to a particular situation; and (3) lay down future course of actions, the same is generally held to be legislative in character.

9. Once it is found that the power exercisable under Sections 3 and 4 of the Act respectively is legislative in character, the question that arises is whether the State Government while exercising that power, the rule of natural justice is required to be observed. It is almost settled law that an act legislative in character--primary or subordinate, is not subjected to rule of natural justice. In case of legislative act of legislature, no question of application of rule of natural justice arises. However, in case of subordinate legislation, the legislature may provide for observance of principles of natural justice or provide for hearing to the residents of the area before making any declaration in regard to the territorial area of a Gram Sabha and also before establishing a Gram Sabha for that area. We have come across many enactments where an opportunity of hearing has been provided for before any area is excluded from one Gram Sabha and included in different Gram Sabhas or a local authority. However, it depends

upon the legislative wisdom and the provisions of an enactment. Where the legislature has provided for giving an opportunity of hearing before excluding an area from a Gram Sabha and including it in Anr. local authority or body, an opportunity of hearing is sine qua non and failure to give such an opportunity of hearing to the residents would render the declaration invalid. But where the legislature in its wisdom has not chosen to provide for any opportunity of hearing or observance of principles of natural justice before issue of a declaration either u/s 3 or Section 4 of the Act, the residents of the area cannot insist for giving an opportunity of hearing before the area where they are residing is included in Anr. Gram Sabha or local authority. In *Rameshchandra Kachardas Porwal v. State of Maharashtra*. This Court held as thus: (SCC P741, para 17)

In one of the Bihar cases it was further submitted that when a market yard was disestablished at one place and established at Anr. place, it was the duty of the authority concerned to invite and hear objections. Failure to do so was a violation of the principles of natural justice and the notification disestablishing the market yard at one place and establishing it elsewhere was therefore, bad. It was said that even as there was express provision for inviting and hearing objections before a "market area" was declared under the Act, so should objections be invited and heard before a "market yard" was established at any particular place. The principles of natural justice demanded it. We are unable to agree. We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice.

In para 10, after analysing the provisions of the Act, it was held that "the provisions therein do not provide for any opportunity of hearing to the residents before any area falling under a particular Grama Sabha is excluded and included in Anr. Grama Sabha and that in the absence of such a provision, the residents of that area which has been excluded and included in a different Grama Sabha, cannot make a complaint regarding denial of opportunity of hearing before issue of declarations under Sections 3 and 4 of the Act respectively. However, the position would be different where a house of a particular resident of an area is sought to be excluded from the existing Grama Sabha and included in Anr. Grama Sabha". It was further held in para 10 that "there the action of the Government being directed against an individual, the Government is required to observe principles of natural justice". The notifications issued in the said case simultaneously, were held perfectly justified and not erroneous.

28. The decision in *The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others*, , turned on the specific provisions of the Statute considered therein itself. A reading of the judgment shows that under the relevant provisions of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, viz., Section 3, before publication of a notification announcing the intention of the Government to specify any local area as a smaller urban area, etc., objections to the same should be invited in writing with the reasons therefor, to be submitted to the Collector of the District, within two months from the date of publication of the proclamation in the Official Gazette. Proviso to Section 6(1) specifically provided that before issuing the final notification altering the limits of a Municipal area, etc. the local authorities including Municipal Council or Councils concerned will have to be consulted. It is in this context the question whether the principles of natural justice are attracted to the fact situation therein was analysed by the Apex Court. In para 29 it was answered thus:

29. The requirement of inviting all persons who entertained any objection to the proposal of a Municipal Area ceasing to be so and being classified as a larger urban area to be administered by a Municipal Corporation as required by Sub-section (3) of Section 3 read with Section 6 of the MRMC Act has to be complied with for two reasons: firstly, it is recognition by statute of the principles of natural justice and, secondly, it is mandatory procedural requirement which must be satisfied as a precondition for the validity of subsequent final decision on the principle that if the statute requires a particular thing to be done in a particular manner then it shall be done either in that manner or not at all.

In para 38, with regard to the consultation with the Municipal Council also, it was held that consultation with the Municipal Council is mandatory, in the light of the specific stipulations contained in the proviso to Sub-section (1) of Section 6.

29. Therefore, the contention by the writ Petitioners relying upon the said decision cannot be accepted, as the consultation with the Municipal Council was found mandatory in the light of the specific provisions contained in the Act itself, whereas herein u/s 4(2) of the Act, there is no express provision to consult the Village Panchayats, Municipal Council, etc. In fact, in the said decision itself, Their Lordships further held that for publishing a proposal, no consultation is necessary. In para 39 it was held that "However, no provision of law has been brought to our notice which requires that even a proposal for constitution of a Municipal Corporation cannot be published without consultation". This observation is significant in the context of the fact situation herein also. The proposal herein, as per Ext. P-1 published by the Government cannot therefore be held erroneous for want of any consultation with the Village Panchayat or absence of any notice to the people in the locality before publishing the proposal itself. What is required under the proviso to Section 4(2) of the Act is evident and clear. The only thing is that the requirements under Article 243Q have to be fulfilled and the suggestions raised by different parties and opinions of the Village

Panchayat will have to be considered by the Government before publishing the final notification u/s 4(2)(e). Going by Ext. P-6 order by the Government, various objections and suggestions have been considered and therefore there is no violation of the requirements contained in the proviso in that regard. The notification under Article 243Q also was issued by the Governor. Herein, Shri K. Ramakumar, learned Senior Counsel submitted that both the final notifications are issued by the Government and the notification under Article 243Q is not issued by the Governor and therefore it cannot be treated as a notification under Article 243Q. As already noticed, the Governor is acting on the advice of the Government and the Council of Ministers and therefore the rules of business under Article 166(3) squarely comes into play and therefore Ext. R-1(c) cannot be said to be erroneous.

30. One of the vehement contentions raised by the learned Counsel for the Petitioners is that the conversion of a Village Panchayat into a part of the Corporation will deprive the people various benefits under the different schemes including the National Rural Employment Guarantee Scheme. It is pointed out that when it forms part of the Municipal Corporation, the people will have to travel more to reach the headquarters for various purposes, the liabilities towards taxes will be higher, major part of the agricultural activities in the rural areas will be affected and the people will be deprived of the benefit of the various schemes. In the counter-affidavit, these aspects have been answered by the Government by submitting that in the Budget for the year 2010-2011 it has been declared by the State Government that the Employment Guarantee Scheme will be extended to urban areas also and that the urban areas, especially Thiruvananthapuram Corporation, are getting funds under the JNNURM project and other schemes, which will facilitate massive development programmes and would naturally generate employment opportunity for the local residents as well. In fact, a similar argument was raised before the Apex Court in *The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others*, which was repelled by the Apex Court thus in para 35:

35. So far as the objections preferred by the Municipal Council collectively and the individual 239 objectors are concerned, no one has alleged that any one of the factors contemplated as relevant by Article 243Q proviso of the Constitution was absent or non-existent. None has disputed the correctness of the population figure as totalled by the census. The contentions raised are that the development works initiated by the Municipal Council may be adversely affected or that the taxes would increase while the quantum of the State's financial aid or grant may be reduced. Though it is for the State Government to apply its mind to the relevance and weight of the objections preferred, still we may note the submissions made by the learned Counsel for the Appellant State Government that a mere change in the constitution of the local self-government does not necessarily entail discontinuance of development projects and there is no reason to apprehend that they would not be continued. A change in governance is involved at every election though the administration continues with the Municipal

Council. At the time of an election certain development works would be pending in progress which would naturally be taken over by the successor Municipal Council. Just as any new Municipal Council would take over the ongoing projects initiated by the predecessor Municipal Council so also a Municipal Corporation newly brought into being shall take over the continuing projects of the previous Municipal Council. Every change in mode of governance needs some readjustments. Need for switching over from a Municipal Council to a Municipal Corporation mode of administration is occasioned by growth of population and prosperity in any particular urban area. People share the prosperity and so must be prepared to pay the additional price by way of additional taxes, submitted the learned Counsel for the State Government and we found substance therein.

Therefore, the said contention also cannot hold good.

31. It is also argued that there was no material for the Governor to declare the Village Panchayats as larger urban areas and no proper study was conducted and no sufficient material was available before the Government also. In the counter-affidavit it is contended that Ext. P-1 notification was preceded by a study on urban scenario to facilitate delimitation of boundaries of urban local bodies in the State. The study was conducted by the Chief Town Planner, Department of Town and Country Planning and true copy of the report has been produced as Ext. R-1(b).

32. Ext. R-1(b) shows that the study has concentrated on the various aspects of population as per the last census, area, density, percentage of employment in agricultural and non-agricultural fields and revenue generated for local administration. It is mentioned in the counter-affidavit that the percentage of employment in non-agricultural activities and revenue generated for local administration are indicative of economic importance of the area. The report palpably shows that almost all the parameters of urban characteristics pertaining to Sreekaryam Panchayat qualify for its declaration as a larger urban area. The Government considered the said report and issued Ext. P-1 notification and obviously, a decision in this regard was taken by the Council of Ministers. The figures in respect of each Panchayats have been given as a table along with the report. The said figures have not been disputed by the Petitioners in the writ petitions. No other material has also been produced to show that the above details are in any manner incorrect and in the objections also, no such details have been furnished to show that the population, area and density, etc. will not justify the inclusion of the respective areas in the Corporation. In fact, a reading of Ext. R-1(b) shows that the criteria mentioned in the report of the Committee on Decentralisation of Powers, have been taken as the one for testing a local body as larger urban area and smaller urban area and transitional area. Various other details are also mentioned in Ext. R-1(b) report.

33. The question is whether this Court, in exercise of judicial review, can consider the validity of the same which was relied upon by the Council of Ministers for inviting the proposal. It was argued that in the light of the decision

of the Apex Court in *Satpal and Another Vs. State of Haryana and Others*, , if the decision taken by the Government is without any application of mind, this Court can quash the resultant order. Therein, the power to grant pardon or remission of punishment under Article 161 came up for consideration. It was held thus in para 4:

4. ...the power of granting pardon under Article 161 is very wide and does not contain any limitation as to the time on which and the occasion on which and the circumstances in which the said powers could be exercised. But the said power being a constitutional power conferred upon the Governor by the Constitution is amenable to judicial review on certain limited grounds. The Court, therefore, would be justified in interfering with an order passed by the Governor in exercise of power under Article 161 of the Constitution if the Governor is found to have exercised the power himself without being advised by the Government or if the Governor transgresses the jurisdiction in exercising the same or it is established that the Governor has passed the order without application of mind or the order in question is a mala fide one or then Governor has passed the order on some extraneous consideration.

The circumstances which justifies judicial review are therefore delineated in the above decision. One of the circumstances is that the Governor exercises the power without being advised by the Government, which is clearly absent here. The question is whether there is any non-application of mind also. Evidently, there is a material in the form of a report made by the Chief Town Planner. The provisions of Article 243Q enables the Governor to declare an area as a larger urban area having regard to the population, density of population, revenue generated for local administration, percentage of employment or such other factors. When the details are made available in the form of a report by the Chief Town Planner, which was relied upon by the Respondents and the Governor in exercise of the power under Article 243Q, has chosen to declare that area in terms of the above criteria, unless it is shown that those are really absent, this Court will not be justified in interfering with the same. Here, there is no case that the essential details are lacking or that the figures are not correct. In that view of the matter, I do not find any reason to agree with the contentions raised by the learned Counsel for the Petitioners that there is total non-application of mind. The report of the Committee on Decentralisation of Powers, was also placed for perusal by the learned Advocate General.

34. It was noticed that the report of the Town Planner refers to the criteria for being a larger urban area, smaller urban area and transitional area under the caption "Scenario 1". It is mentioned therein that as far as "Larger Urban Area" is concerned, it is "an area of Municipal Council, together with or without the area of one or more neighbouring Village Panchayats or Town Panchayats, in which the total population is above 3,00,000, the density of population per square kilometer is 5000, not less than 70 per cent of the population is engaged in professions other than agriculture and fisheries, the probable revenue that can

be generated for local administration from taxes and the share of taxes, fees, etc. (other than grants from Government) is not less than Rs. 25 lakhs per annum."

35. Whether each of the Village Panchayats which are sought to be added to the Corporations concerned, should have a total population above three lakhs? Learned Advocate General explained that the Committee on Decentralisation of Powers in its final report, has adopted certain criteria for incorporation in the Act. The Act has not been amended, but the same has been accepted as a guideline and the guidelines cannot be said to be arbitrary. It is further pointed out that the figure three lakh will be the bench-mark for population of the existing Corporation along with the Village Panchayats which are sought to be added to it and it is not that of each Village Panchayat which are sought to be united to the Corporation. Learned Senior Counsel Shri N. Nandakumara Menon submitted that going by Article 243Q, only the population of the area to be declared as a smaller urban area or larger urban area, is relevant.

36. Evidently, Section 4(1)(b) confers power to unite a Village Panchayat to a Municipal Corporation which is geographically lying adjacent to it. Article 243Q considers various factors like population of the area and its density, revenue generated for local administration, percentage of employment in non-agricultural activities" and economic importance. It cannot be said that the figure three lakhs for a declaration of an area to be included as a larger urban area, is in respect of the individual Panchayat itself, as otherwise the provision will be meaningless as even after fulfilling all other criteria, for want of the population figure alone, the same cannot be merged or added to a Municipal Corporation or be declared as a Municipal Council or Municipal Corporation. In that view of the matter, nothing turns upon the same.

37. One thing relevant to be noticed is that as far as Section 4(2)(e) is concerned, the Government can unite the territorial area of a Panchayat geographically lying adjacent to the Municipal area, to the Municipality. The definition of "Panchayat area" is given in Article 243(e) that "Panchayat area means the territorial area of a Panchayat". Therefore, the same will serve the purpose of Section 4(2)(e) of the Act in the light of Section 3 of the Act itself. In that view of the matter, the contentions raised by the learned Counsel for the Petitioners cannot hold good and the writ petitions are hence liable to be dismissed.

W.P. (C) Nos. 14160/2010, 17104/2010 & 18883/2010

38. The first writ petition concerns the merger of Thiruvankulam Panchayat to Tripunithura Municipality. W.P. (C) No. 17104/2010 relates to merger of Nattakom Grama Panchayat to Kottayam Municipality. As far as W.P. (C) No. 18883/2010 is concerned, the conversion of Karunagappally Grama Panchayat into a Municipality, is under challenge. The Petitioners are elected members and residents of the Panchayats concerned. Ext. P-2 in W.P. (C) No. 14160/2010 is

the notification dated 9-12-2009 containing the proposal for merger and conversion of the above Grama Panchayats. It is contended that the relevant aspects including the over all rural nature of the Panchayats, have not been considered.

39. As far as Nattakom Grama Panchayat is concerned, which is the subject-matter of W.P. (C) No. 17104/2010, averments therein are to the effect that it is spread over 25 sq. kms. and the total population is 45000. Around 1300 hectares of land is covered by paddy fields and agriculture is the main source of income of the people. About 7000 houses are occupied by the people below the poverty line. It is absolutely a rural area and not even a transitional area and there is no urban character also. Kottayam Municipality is having only 14 sq. kms. as territorial area. The Panchayat passed a resolution opposing the merger, as per Ext. P-4. It was forwarded to the Government and the first Petitioner also filed a detailed objection before the Government as per Ext. P-6. Even though the Petitioners were personally heard, the Panchayat was never invited for a hearing. It was mainly alleged that the Government has not complied with the statutory provisions contained in the Municipality Act and Article 243Q while passing Ext. P-II order disposing of the objections and confirming the proposal. Later, after the notifications under Article 243Q and Section 4(2) of the Act were produced by the Respondents in the writ petition, the Petitioners amended the writ petition by challenging the same also.

40. On behalf of the Panchayat and Kottayam Municipality also, counter-affidavits have been filed and Shri P. Kuruvila Jacob and Shri Siby Mathew appeared for the respective parties.

41. Shri N. Nandakumara Menon, learned Senior Counsel appearing for the Petitioners contended that the whole exercise is illegal. It is pointed out that if at all the power u/s 4(2)(e) can be exercised, only the territorial area of a Panchayat geographically lying adjacent to the Municipality, alone can be united and if so, only two wards alone are lying adjacent to the Kottayam Municipality. It is also contended by relying upon Section 6 of the Act that if the number of Councillors of Nattakom and Kumaranellor Grama Panchayats are finally reckoned along with the population of Kottayam Municipality, then Section 6(3) (a) of the Act would be violated, as the maximum number of Councillors can only be 52 and large number of voters will be unrepresented. It is also pointed out that there was no consultation with the village panchayat.

42. These contentions have been opposed by the Government in their counter-affidavit and learned Advocate General submitted that the contentions are unsustainable.

43. The first question is whether the addition of the Panchayat to the Municipality is violative of Article 243Q. The contention that the area can only be considered as a transitional area and therefore a Nagar Panchayat alone can be formed, has already been adverted to. Therefore, there is no bar under Article 243Q to

convert the area as part of a Municipality, since the word "Municipality" will take in all the three institutions like Nagar Panchayat, Municipality and Municipal Corporation.

44. It is vehemently argued that the power, if any, u/s 4(2)(e) is only to unite the area of a panchayat geographically lying adjacent to a Municipal area with the Municipality. Herein, the words "territorial area of a Panchayat" are not defined under the Act. But the definition of "Panchayat area" is available under Article 243(e) of the Constitution. Going by the same, the Panchayat area means "the territorial area of a Panchayat". Therefore the term "territorial area of a Panchayat geographically lying adjacent" in Section 4(2)(e) will take in the whole Panchayat and not a part of the Panchayat which is lying adjacent to the Municipal area. If the contention raised by the learned Senior Counsel is accepted, then there will be division of wards of the existing Panchayat leading to formation of a different Municipality for the remaining part. Such is not the intention of Section 4(2)(e), evidently. Section 4(2) of the Act gives power to the Government to deal with various institutions differently and Section 4(2)(e) is one of the contingencies envisaged under the Act. There is nothing unconstitutional in the provisions, since none of the provisions of Part IX or Part IXA have been violated by enacting such a provision also.

45. One of the major contentions raised is that the Panchayat was not issued a notice and was not heard and the Panchayat was also not consulted. Evidently, the Panchayat had opposed the proposal as per Ext. P-4 resolution and this was forwarded to the Government also. The Petitioners attended the personal hearing. It is contended by the learned Counsel for the Panchayat that no separate notice was issued to the Panchayat. Along with the counter-affidavit the first Respondent has produced a copy of the notice said to have been sent to the President of the Panchayat, as Ext. R-1(a).

46. To consider the above arguments, the substance of the objections raised by the Panchayat as per Ext. P-4 is relevant. In the resolution, no specific objections have been pointed out by the Panchayat. It was only informed that the Panchayat opposes the merger. No dispute has been raised by the Panchayat either with regard to the population, density, revenue generated for local administration, percentage of employment in non agricultural activities, etc. The details with regard to the rural character, if any, were also not placed. It is contended by the learned Counsel for the Panchayat that they were expecting a further hearing in the matter. As already noticed, going by the decision of the Apex Court in Baldev Singh and Others Vs. State of Himachal Pradesh and Others, , what is necessary for compliance of the principles of natural justice is an opportunity to furnish objections, which was given by the Government as per Ext. P-2. Obviously, the Panchayat did not avail of it and they had only sent a resolution merely recording their objection. But the details of the objections raised by the Petitioners have been considered on merits by the Government while passing Ext. P-11 order. Then, the question is whether there is any

violation of the provisions of Section 4(2) of the Act. As already held, therein also no personal hearing is provided and what is envisaged is only considering the suggestions and opinions of the Village Panchayats. Any consultation with the Panchayat is not provided or made mandatory under the above proviso also. Therefore, the notifications are not bad for want of consultation with the Panchayats concerned herein in these writ petitions.

47. The objection that the Panchayat is not a transitional area or a smaller urban area, cannot hold good in the light of the report of the Chief Town Planner, wherein all the parameters have been shown and the population figures, area, density, percentage of non agricultural activities and income, etc. were all taken into consideration for declaration as a smaller urban area. As already held, the relevant aspects have been considered by the Governor under Article 243Q and no interference is called for on the same, especially in the absence of any other materials. The contention that the provisions under Article 243Q have not been fulfilled, is also evidently not correct in the light of the notification issued as Ext. R-1(b).

48. The next contention is whether there is violation of Section 6(3)(a)(ii) which is in the following terms:

6. Constitution of Council.--

(1) * * * * *

(2) * * * * * (3) The number of seats of Councillors notified under Sub-section (1) or Sub-section (2) shall be.--

(a) in the case of a Town Panchayat or a Municipal Council,--

(i) * * * * * (ii) Where the population of the Town Panchayat or Municipal Council exceeds twenty thousand, twenty five Councillors for the population of first twenty thousand and one each for every two thousand and five hundred of the population exceeding twenty thousand, subject to a maximum of fifty two Councillors.

Evidently, the said section provides for constitution of Council in the method provided therein. The contention raised by the learned Senior Counsel for the Petitioners is that already the total number of Councillors has reached the maximum and going by the total population, there will be 72 Councillors, but the maximum number of Councillors can only be 52 and therefore it is an impossibility to constitute a Municipal Council with new Panchayats and this aspect was not considered at all. In fact, Sub-sections (1) and (2) of Section 6 give the method for prescribing the number of Councillors. Up to the population of 20,000, twenty-five is the strength of the Councillors. With regard to the addition of Councillors for the number exceeding 20000, it can be seen that the same is provided to fix the maximum number of Councillors. It is of importance to notice that there is no restriction with regard to the population that can be included in respect of each wards; i.e. the maximum population each ward can

maintain. In the absence of such a prescription the total population can be distributed with the total number of wards represented by Councillors. If that be so, there will not be any problem for working out the number as per Section 6(3) (a). Therefore, the said contention also is not sustainable. The general principles with regard to the observance of the principles of natural justice, the exercise of the power by the Governor under Article 243Q, as already discussed, are applicable herein also and I find no violation of the same, going by the facts of the cases also. While rejecting the objections, all the aspects have been considered by the Government in Ext. P-11.

49. In W.P. (C) No. 14160/2010, a voter in Thiruvankulam Grama Panchayat who had raised objection to the proposal to merge Thiruvankulam Panchayat with Tripunithura Municipality, is the Petitioner. She is an unemployed housewife who is residing within the limits of Thiruvankulam Grama Panchayat. It is mainly contended that the proposal is bad in law for violation of Article 243Q of the Constitution. It is further pointed out that the Petitioner will have to pay tax to the revenue by a higher rate as prescribed under the Municipality Act. She was also heard by the Government while rejecting the objections. In the light of the principles already discussed above, the contentions of the Petitioner cannot be countenanced. Further, the final notification as per Exts. R-1(a) and R-1(b) have not been separately challenged also.

50. W.P. (C) No. 18883/2010 is in respect of Karunagappally Grama Panchayat. Petitioners 1 and 2 are members of the Panchayat and the third Petitioner is a resident therein. It is proposed to be converted as a Municipality. They had earlier approached this Court by filing W.P. (C) No. 36466/2009 which was disposed of by directing the Respondents to take a final decision on the question of conversion after hearing them. It is contended that the total area of the Panchayat is only 18.65 sq. kms. and the population is less than 50000 and there are no major establishments or educational institutions in the Panchayat. It is mentioned that various schemes for poor people are being implemented by the Panchayat and mainly the people depend upon agriculture and fishing. The challenge is based on violation of Article 243Q.

51. Shri Kaleeswaram Raj, learned Counsel appearing for the Petitioners contended that going by the provisions of the Constitution, a hierarchy like Nagar Panchayat, Municipal Council and Municipal Corporation are provided and therefore there cannot be a conversion of a Village Panchayat as a Municipality and only a Nagar Panchayat alone can be formed. It is contended that Section 4(2)(f) which permits conversion of a Village Panchayat to a Municipal Council, is clearly against the provisions of Article 243Q(1)(a). It is therefore pointed out that the amendment brought out to the said Section by Act 14 of 1999 adding the words "or a Municipal Council" is ultra vires of the Constitutional provisions. It is also pointed out that after issuance of the notification under Article 243Q by the Governor, no fresh opportunity was given to the Panchayat and the Panchayat was not consulted in the matter.

52. The Respondents have filed a counter-affidavit answering the contentions raised. It is pointed out that the objections were duly considered. The figures of population, density, percentage of population in non agricultural activities and the revenue generated for local administration justified the conversion of the Panchayat as a Municipality. The report of the Chief Town Planner has been produced as Ext. R-1(c). It is pointed out that there are various schemes for the poor people and welfare scheme are also there even for implementing in the Municipality. Section 4(2)(f) of the Act confers power on the Government to convert a Village Panchayat into a Town Panchayat or a Municipal Council. u/s 4(1) of the Act, the Government is given power to constitute a Town Panchayat for a transitional area, a Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area. As already held, the three institutions will come within the definition of Municipality under Article 243P(e). In that view of the matter, and as there is no provision in the Constitution under Part IXA restricting the power of the Government to convert a Village Panchayat as a Municipal Council, it cannot be said that Section 4(2)(f) is unconstitutional. In fact, if a rural area fulfills the criteria for declaration as a smaller urban area, the same can be done and it cannot be contended that a Village Panchayat has initially to be declared as transitional area for constituting a Nagar Panchayat. It is not the law that the provisions under the Constitution are to convert a rural area into the three different institutions in a phased manner.

53. Evidently, a Municipal Council can be formed for a smaller urban area, going by Article 243Q(b). Herein, going by the report of the Chief Town Planner, the Panchayat fulfills the criteria for declaration as a smaller urban area and accordingly a notification was issued by the Government. There is no contention that the figures like population, area, density, etc. are not correct. Therefore, the same are relevant for issuing such a notification and accordingly, it was issued also.

54. With regard to the contention that the Panchayat was not consulted, as already held, such a consultation is not mandatory, going by the proviso to Section 4(2) of the Act and the same principles will apply herein also. Therefore, the above writ petition also fail.

For all these reasons, the writ petitions fail and the same are dismissed. No costs.