

(2006) 06 KAR CK 0051
In the Karnataka High Court
Case No : Writ Petition No. 7107 of 2006

T. Hanumanthappa and Others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 16-06-2006

Acts Referred:

Constitution of India, 1950 — Article 170, 243ZC, 243ZG, 82
Karnataka Municipalities Act, 1964 — Section 11, 13, 3, 4, 9 (1)

Citation : (2006) ILR (Kar) 2870 : (2006) 5 KarLJ 1 : (2006) 4 KCCR 2025

Hon'ble Judges : Cyriac Joseph, C.J;N. Kumar, J

Bench : Division Bench

Advocate : Jayakumar S. Patil for B. Sharana Basava, for the Appellant; A.N. Venugopala Gowda, GA for R1 and R3, K.N. Phanindra, Associates for R2 and Amaresh S. Roja, for R4, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—This Writ Petition is filed in public interest by the President, Vice President and three Councillors of the Town Municipal Council, Sindhanur, seeking a writ of mandamus directing respondents 1 to 3 not to hold elections to the Town Municipal Council, Sindhanur, till the completion of the process of delimitation/determination/constitution of wards as per the 2001 census and for other appropriate reliefs.

2. The facts in brief are as under :

In the last elections held in 2001 to the Town Municipal Council, Sindhanur, the number of wards/seats was 27 as statutorily determined under the provisions of Section 11 of the Karnataka Municipalities Act, 1964 (for short hereinafter referred to as "the Act"). The determination of the number of wards in a Town Municipal Council is based on the population of the Municipality. The election in 2001 was based on the population as ascertained in 1991 census. In 2001 census, as officially published, the population of Sindhanur Town Municipal Area is 61,262, as is clear from the Census Data, Annexure-A. On the basis of the

aforesaid population as per Section 11(1)(a) the number of Councillors for Town Municipal Council, Sindhanur, is 31. The Government has to determine/constitute 31 wards on the basis of the aforesaid population and then has to issue a notification u/s 13 of the Act determining the number of wards.

3. The State addressed a letter as per Annexure-B dated 3.5.2005 to the Deputy Commissioner of Raichur District bringing to his notice the aforesaid legal provisions and called upon him to determine the number of seats for each municipalities as per the table in Section 11 of the Act basing 2001 population figures. The Chief Officer of the Town Municipal Council as per Annexure-C prepared a sketch and map of the bifurcation of the wards and gave all the necessary information to the Deputy Commissioner by his letter dated 15.3.2006 for enabling the Deputy Commissioner for delimitation and determination of 31 wards. The State Election Commission by letter dated 13.1.2006 brought to the notice of the Principal Secretary, Urban Development Department, the fact that the term of five Corporations and 39 Urban Local Bodies will be expiring by June 2006 and similarly the term of Bangalore City Corporation will expire by November 2006 and the term of 48 Municipalities will expire by December 2006 and, therefore, the delimitation of wards is required to be done based on 2001 census in respect of Urban Local Bodies whose term is expiring. They called upon the authorities to complete this delimitation of wards and notifications regarding ward wise to be sent to the Commission well in advance and made it known that if there is any delay in issue of notifications regarding ward wise reservations it is difficult to complete the work pertaining to electorals, identification of polling booths and conducting elections to Urban Local Bodies, in time. The Deputy Secretary to the Government Urban Development Department sent a reply to the said letter informing that by letter dated 12.2.2004 the Delimitation Commission has directed that the existing boundaries of various administrative units such as Districts, Taluks, Hoblies, Villages, Wards, etc., as on 15.2.2004 shall not be altered or changed in any manner till the delimitation of the State is finally notified. Therefore, they sought a clarification whether in the light of the aforesaid directions of the Delimitation Commission whether they can enhance the number of wards on the basis of 2001 census. The Government of Karnataka addressed a letter dated 3.3.2006 to the Secretary, Delimitation Commission of India, in those circumstances seeking clarification. By letter dated 20.4.2006 the Delimitation Commission of India clarified that in view of the bar of reorganization of Administrative Units, the exercise of creation of wards and reorganization of municipal bodies may be deferred till the delimitation work is over in the State of Karnataka. Again a letter was addressed to the Delimitation Commission bringing to their notice the legal requirements and the opinion of the Law Department of Karnataka. In reply to the same the Delimitation Commission of India forwarded a copy of the letter dated 23.1.2004 wherein a direction was issued to all the State Governments not to alter or change boundaries of various administrative units including the Municipal Corporation Wards as on 15.2.2004 till the delimitation of State is finally notified. Therefore, the Government was

instructed not to alter the boundaries of the wards till the delimitation process is over in Karnataka. The State Election Commission by letter dated 4.5.2006 addressed to the Deputy Commissioners of all the Districts where elections had to be held in June 2006 and called upon them to take steps to prepare a voters' list as the State Government had decided to continue the wards which are existing presently without bifurcating/delimiting the City-Local Bodies Wards which are completing their term in the month of June. The Deputy Commissioner, Raichur, acting on the aforesaid letter called upon the Tahsildars of Manvi and Sindhanur to prepare the voters' list on the basis of the existing wards and polling booths on the basis of the voters' list of the legislative assembly dated 1.1.2006.

4. In those circumstances, as decision was taken to hold the elections only to 27 wards on the basis of the census figures of 1991, the petitioners have approached this Court seeking the aforesaid directions.

5. After service of notice respondents entered appearance. Respondents 1 and 3 - State of Karnataka and Deputy Commissioner, Raichur, contend that, in view of the mandate contained in Article 243-U and 243-ZA of the Constitution of India and the provisions contained in the Act, action was initiated to conduct elections to the fourth respondent Town Municipal Council and 39 other Municipal Bodies in the State. However, in view of the aforesaid controversies, when the Delimitation Commission by its letter dated 20.4.2006 directed that the exercise of creation of wards and reorganization of Municipal Bodies may be deferred till the delimitation work is over in the State of Karnataka and the further letter dated 26.5.2006 wherein they requested not to alter the boundaries of the wards till the delimitation process is over in Karnataka, a decision was taken to proceed with the election as per the existing wards based on 1991 census. Thus, the non-formation of wards based on 2001 census is on account of the orders/directions issued by the Delimitation Commission of India and not otherwise. There is no omissions of any nature on their part. They are bound to comply with the constitutional mandate of holding elections and, therefore, they contend the same cannot be prevented.

6. The Election Commission has also filed separate statement of objections contending that it is a constitutional authority under Article 243-K of the Constitution of India. The delimitation of wards for the elections to the municipalities is to be undertaken by the State Government. They cannot announce and conduct the elections to the fourth respondent and 39 other Municipalities before the expiry of the term of their office since they had not received any communication from the State with regard to the delimitation of wards as per Section 13 of the Act. Only on receipt of the letter dated 26.5.2006 they have taken immediate steps to convey meetings and have instructed the concerned officials to prepare the voters list of the said bodies for which elections are scheduled to be held during the month of June and July 2006. Thus, in total elections are scheduled to be held for 40 Municipalities in the State of Karnataka

during the month of June and July 2006 since the term of such bodies are expiring in the month of June 2006. They contend that they have made all preparations for the conduct of elections to the fourth respondent Town Municipal Council as well as 39 other Municipalities. The preparation of voters' list of all the wards has almost been completed and the only step remaining is the issuance of the calendar of events by the second respondent. It is their duty to conduct the elections of all the Municipalities under Article 243-ZA of the Constitution of India and as per Article 243U(3) the elections to constitute a Municipality shall be completed before the expiry of its duration. Therefore, they contend that if at this stage any direction is issued for fresh delimitation of wards as per 2001 census it would be time consuming and would result in the elections being postponed and the same would run contrary to Article 243-U of the Constitution of India. Therefore, they have sought for dismissal of the Writ Petition.

7. We have heard the learned Counsel for the parties. Sri Jayakumar S. Patil, the learned senior Counsel appearing for the petitioners contended that, as per Section 11 of the Act, the Municipal Council should consist of the number of Councillors as specified in the table to the said section which is based on the population of the municipal area. u/s 13 of the Act an obligation is cast upon the Government to determine the number of territorial wards into which the municipal area shall be divided and other factors mentioned in the aforesaid section before the election is conducted to such municipal council. The previous election in 2001 was conducted on the basis of 1991 census and having regard to the said population the Town Municipal Council, Sindhanur, was divided into 27 wards. According to 2001 census on the basis of which the elections have to be held in 2006 in view of the amendment to Section 11, 31 wards have to be formed. Contrary to the statutory provisions the Government is proceeding to hold elections on the basis of 1991 census without forming the additional four wards which is illegal and, therefore, the Government should be directed to determine the number of wards as per Sections 11 and 13 and then only elections are to be held.

8. Per contra, the learned Counsels appearing for the respondents, though they do not dispute the aforesaid legal position, contend that in view of the directions issued by the Delimitation Commission not to alter the existing wards and not to create additional wards they are prevented from giving effect to the aforesaid legal requirement. But under the Constitution of India they are bound to hold the elections and the term of these Bodies have come to an end. They have taken steps to hold the elections on the basis of the existing wards and, therefore, they cannot be found fault with. In view of the bar contained in Article 243-ZC this Writ Petition challenging their action of holding elections is not maintainable.

9. In view of the aforesaid rival contentions, the points that arise for our consideration are as under :

(i) Whether the Delimitation Commission has power to issue any direction to the

State Government not to create additional wards and not to alter the existing boundaries of the existing wards under the provisions of the Delimitation Act, 1972 or the Delimitation Act, 2002 and whether really any such direction is issued?

(ii) Whether the Government can hold elections in contravention of Sections 11 and 13 of the Act?

(iii) Whether this Writ Petition filed challenging the decision of the Government to hold elections is not maintainable in view of the bar contained in Article 243-ZG of the Constitution of India?

10. Point No. (i): Chapter-II of the Constitution deals with Constitution of Parliament whereas Chapter-III deals with the Constitution of the Legislature in States. Article 82 of the Constitution which deals with readjustment after each census provides that, upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine. Clause (3) of Article 170 provides that, upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine. It is to give effect to these constitutional provisions the Parliament enacted the Delimitation Act, 1972 to provide for the readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State, the division of each State into territorial constituencies for elections to the House of the People and Legislative Assemblies of the States and for matters connected therewith. The Act came into force from 30.12.1972. The said Act was repealed by the Delimitation Act, 2002 which received the assent of the President on 3.6.2002. The said Act provides for constitution of Delimitation Commission u/s 3 of the Act. Section 4 of the Act provides for duties of the Commission. Section 7 deals with the procedure and powers of the Commission. It is Section 8 which deals with readjustment of number of seats. Section 9 deals with readjustment of constituencies. A reading of the aforesaid Act and the various provisions referred to supra, coupled with the provisions of the Constitution referred to earlier, it is clear that the Delimitation Commission is constituted only for readjustment of number of seats and delimitation of constituencies in so far as the House of People and the Legislative Assembly of each State. Readjustment of number of seats or delimitation of wards within the Municipality do not fall within the jurisdiction of the said Commission. There is no provision in the entire enactment which empowers the Commission to direct the State Government not to alter the existing wards or create new wards in terms of the legislations governing elections to such municipalities or local bodies. In this context it is necessary to read the letter of the Commission dated 23.1.2004 on which reliance is placed in the correspondence by the Delimitation Commission as well

as the letter dated 19.8.2002 which is referred to in the said letter. They read as under :

DELIMITATION COMMISSION Nirvachan Sadan, Ashoka Road, New Delhi 110 001

----- No. 281/DL/2002 dated 19th August, 2002 To The Chief Secretaries of All States (excepting Jammu and Kashmir) and NCT of Delhi and UT of Pondicherry

Sub: Delimitation of Parliamentary and Assembly Constituencies-Ban on creation of new Administrative units. Sir,

The Delimitation Act, 2002 has been enacted by the Government of India and published in the Gazette of India Extraordinary dated 4th June 2002. A copy of the gazetted Act is enclosed herewith for your ready reference. The Delimitation Commission has started functioning with Mr. Justice Kuldip Singh, retired Judge of the Supreme Court as Chairman and Shri B.B. Tandon, Election Commissioner of India as ex-officio Member. The State Election Commissioners are also ex-officio Members of the Commission relating to the delimitation work of the State concerned.

2. The Commission proposes to complete the delimitation work assigned to it as expeditiously as possible.

3. Under the said Act administrative of development units are the basic units for carving out the constituencies. In this connection your attention is drawn to Clause (a) of Sub-section (1) of Section 9 of the Act which lays down that the constituencies shall be delimited having regard to the existing boundaries of administrative units. Therefore any changes made in the administrative or development units in the State when the delimitation work is in progress will not only hamper the time schedule of the Commission but also will cause a lot of confusion. It is therefore imperative that the existing administrative boundaries remain unaltered while the delimitation exercise is being undertaken.

4. The commission directs that the existing boundaries of various administrative units as on 1st August, 2002 shall not be altered or changed in any manner till the delimitation of the State is finally notified.

5. The Chief Electoral Officer of your State has already been directed to prepare the data of 1991 census population as per administrative and development units as on the 1st August, 2002. You are, therefore, requested to bring this to the notice of the State Government and also issue appropriate directions to the concerned departments as well as all local administrations in the State that there should not be any changes in the said units till the work relating to the delimitation of the constituencies is completed.

6. The Commission be informed of the action taken in the matter immediately and in any case before 31st August, 2002.

Yours faithfully Sd/- (S. Mendiratta) Dy.Election Commissioner

DELIMITATION COMMISSION Nirvachan Sadan, Ashoka Road, New Delhi 110 001

----- No. 281/DL/2004(ADU) dated
23rd January, 2004 To

The Chief Secretaries of All States (excepting Jammu and Kashmir) and NCT of Delhi and UT of Pondicherry

Sub: Delimitation of Parliamentary and Assembly Constituencies-Ban on creation of new Administrative units. Sir,

I am directed to invite your attention to the Commission's letter No. 281/DL/2002 dated 19th August, 2002 (copy enclosed) wherein it was directed by the Commission that the existing boundaries of the various administrative units as on 1st August, 2002 in the State shall not be altered or changed in any manner till the delimitation of the State is finally notified.

2. That in the meanwhile the Parliament passed Constitution (Eighty-Seventh Amendment) Act, 2003 whereby the delimitation exercise has to be redone on the basis of 2001 census Figures. Since the final 2001 census figures were not available at the time of Constitution amendment, the delimitation work had to be temporarily stopped. Under these circumstances the Commission relaxed the ban on the creation of new administrative units and examined the requests from the States for such changes/creation.

3. That final 2001 census figures have now been finally published showing the position as on 1st March, 2001. The Commission has accordingly, restarted the delimitation exercise on the basis of 2001 census figures.

4. For the reasons contained in para 3 of the letter dated 19th August, 2002, the Commission directs that the boundaries of various administrative units as on 15th February, 2004 shall not be altered or changed in any manner till the delimitation of the State is finally notified. However, if any modification/changes in administrative units in your State are already in process, the same may be expedited so that the process is completed before 15th February, 2004 from which date this directive shall be operative.

5. You are requested to bring this to the notice of the State Government and also issue appropriate directions to the concerned departments as well as all local administrations in the State that there should not be any changes in the said units till the work relating to delimitation of the constituencies in your State is completed.

Yours faithfully Sd/- (SHANGARA RAM) SECRETARY

11. A reading of the aforesaid two letters make it clear that the Commission wanted the States to know that, Clause (a) of Sub-section (1) of Section 9 of the Delimitation Act lays down that the constituencies shall be delimited having regard to the existing boundaries of the administrative units. Therefore, any changes made in the administrative or development units in the State, when the

delimitation work is in progress will, not only hamper the time schedule of the Commission, but also cause a lot of confusion. Therefore, the existing administrative boundaries should remain unaltered while the delimitation exercise is being undertaken. Therefore, the States were called upon not to make any changes in the said administrative units till the work of the delimitation of the constituencies is completed. Again in the letter dated 23.1.2004 it is reiterated that various boundaries of administrative units as on 15.2.2004 shall not be altered or changed in any manner till the delimitation of the State is finally notified. A ward within a Municipality is not an administrative unit. The administrative unit is the Municipality. By giving effect to Sections 11 and 13 of the Act and by creating additional wards, the boundaries of the said administrative unit will not be altered. The boundaries of the administrative unit continue to be the same but within those boundaries having regard to the increase in the population as per the table contained in Section 11 the wards have to be reorganized by creating a few more wards. In the process only the boundaries of the wards would stand altered. A few more wards have to be created. All this exercise would be done within the administrative unit and it would in no way alter the boundaries of the administrative unit. It is by misreading the aforesaid communications, subsequent communications have been sent by the Delimitation Commission preventing the State from proceeding with delimitation and determination of wards as required under Sections 11 and 13 of the Act. Therefore, in the first place, the Delimitation Commission has no power to issue a direction not to alter the boundaries of a ward or creation of a new ward in terms of Sections 11 and 13 of the Act. Secondly, as a matter of fact in the letters dated 19.8.2002 or 23.1.2004 no such direction has been issued. The direction is only in respect of administrative units and, therefore, there is no bar in law for the State Government to proceed with the delimitation and determination of wards as required under Sections 11 and 13 of the Act and the excuse given by the Government is untenable.

12. Point No. (ii): By Constitution (Seventy-Fourth) Amendment, 1992, the constitution was amended by inserting Part IX-A. It deals with Municipalities. Clause (e) of Article 243-P defines a "Municipality" as an institution of self-government constituted under Article 243-Q. Article 243-Q deals with Constitution of Municipalities. It provides that, there shall be constituted in every State, a Nagar Panchayat for a transitional area; Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area in accordance with the provisions of Part-IXA. Article 243-U which deals with duration of Municipalities, provides, that every municipality unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. An obligation is cast on the State under Sub-clause (3) of Article 243-U to constitute a Municipality before the expiry of its duration specified in Clause (1) and before the expiration of six months from the date of its dissolution. By virtue of these constitutional provisions the term of a Municipality comes to an end with the expiry of five

years from the date appointed for its first meeting and, therefore, an obligation is cast on the State to hold the elections before the expiration of the period of the said Municipality. Article 243-ZA which deals with election to Municipalities provides that, superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243-K. Article 243-K which deals with elections of Panchayats provides that all elections of the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Government. Thus, it is the State Election Commission which is vested with the power to hold elections to the Municipalities. Therefore, it is clear from these provisions that the State is under an obligation to hold elections to these municipalities before the expiry of the duration of the said municipalities.

13. Election to the municipalities is governed by the Act. Chapter II deals with Constitution of Municipal Areas. Section 11 deals with Constitution of Municipal Councils which reads as under:

11. Constitution of municipal councils: (1) The municipal council shall consist of, -

(a) Such number of directly elected Councillors specified in column (3) of the table below in respect of the municipal areas specified in the corresponding entries in column (2) thereof, namely:

TABLE	Sl.
No. Population of the Number of municipal area Councillors	
1. for a municipal area with a population of not less than 20,000 but less than 40,000	23
2. for a municipal area with a population of not less than 40,000 but less than 50,000	27
3. for a municipal area with a population of not less than 50,000 but less than one lakh	31
4. for a municipal area with a population of not less than one lakh but less than three lakhs	35
xxxxx	xxxxx
xxxxx	xxxxx

14. Section 13 of the Act deals with wards for elections which reads as under :

13. [Wards] for elections. (1) For the purposes of election of councillors to be elected to fill the seats under [Clause (1) of Sub-section (1) of Section 11, the Government shall by notification determine.-

(a) The number of territorial [wards] into which the [municipal area] shall be divided;

(b) The extent of each territorial [ward];

(c) The number of seats allotted to each territorial [ward] which shall be one; and

(d) The number of seats, if any, reserved for the [Scheduled Castes, Scheduled Tribes, Backward Classes and for Women] in each territorial ward.

[Provided that the territorial [wards] formed shall comprise, as far as may be, of contiguous blocks];

[(1-A) No notification under Sub-section (1) shall be called in question in any court of law];

xxxxxx xxxxxxxx xxxx

15. A conjoint reading of the aforesaid provisions make it clear that, a Municipal Council shall consist of such number of directly elected Councillors specified in column (3) of the table in respect of the municipal areas specified in the corresponding entries in column (2) thereof. The said table gives the number of Councillors to be elected on the basis of the population of the Municipal Area. Therefore, before an election is held for a Municipality, the Government shall by notification determine the number of territorial wards, into which the municipal area shall be divided, the extent of each territorial wards and other particulars mentioned in Section 13. Therefore, on the basis of the population of a municipal area, the Government has to determine first the number of territorial wards into which the municipal area shall be divided. It is thereafter they should take steps to hold the elections to the aforesaid wards. The determination of these territorial wards and the division of the Municipal Area on the basis of the population of the Municipal Area as given in the table to Section 11 is a condition precedent for holding the elections. When the constitution mandates that the State shall hold elections to these Municipalities before the expiry of the duration of such municipality, the State is under an obligation to hold the elections before such date in accordance with the law governing such elections. In derogation of the law governing the elections and in ignoring the statutory provisions, they cannot hold elections on the basis of the provisions which are repealed which provision was based on 1991 census. On the basis of 1991 census the number of the wards in the 4th respondent Municipality was 27 in terms of unamended Section 11. Section 11 stands amended by virtue of the present Section being inserted by Act 36/1994 which came into effect from 1.6.1994. The election is to be conducted on the basis of the 2001 census. Admittedly, the population of the 4th respondent as per the said census is 61,262. As per Sl. No. 3 of the Schedule in Section 11 number of councillors to be elected is 31 and, therefore, the Municipality has to be divided into 31 wards and then only elections could be held. Because of the inaction on the part of the Government in not holding the elections before the expiry of the duration of these municipalities, the term of these municipalities has come to an end, the present elected body can no longer hold the office. Therefore, the object of constitutional amendment is defeated. Inevitably administrators have to be appointed for these bodies till a newly elected body is duly constituted. Under these circumstances there is no virtue in the submissions on behalf of the respondents, that, if elections are postponed till the delimitation or determination of the wards, it would violate the constitutional

mandate. The State has already violated the constitutional mandate. Now it also wants to violate the law enacted by it. The same is impermissible in law. Having regard to the facts of this case, as already the term of the Municipalities is coming to an end, there won't be any further violation of any provision of the Constitution or any law if the State is directed to first conduct the delimitation/determination of the wards in terms of Sections 11 and 13 of the Act and thereafter to hold the elections to the Municipalities at the earliest. The State cannot be permitted to hold elections in contravention of Sections 11 and 13 of the Act. It would be a negation of rule of law.

16. Point No. (iii): It was contended that in view of the bar contained in Article 243-ZG this Court has no jurisdiction to entertain the Writ Petition and in support of the same reliance was placed on an interim order passed by the Supreme Court in Civil Appeal No. 4523/2005 in the case of Karnataka State Election Commission v. H.C. Yatheesa Kumar and Ors. where it is observed that, elections are ought to be held and cannot be kept in abeyance indefinitely and the State was permitted to hold the elections subject to the result of the appeal. Therefore, it was contended the State should be permitted to hold the elections without delimitation and determination of wards under Sections 11 and 13 of the Act and the said election could be made subject to the result of this Writ Petition.

17. In the aforesaid appeal what was challenged was the rules framed by the State of Karnataka providing for reservation of constituencies. In other words it is the validity of the law relating to delimitation of constituencies which was challenged. A Division Bench of this Court struck down the said Rules as being arbitrary. In appeal against the said judgment the aforesaid interim order came to be passed. In this context it is necessary to refer to Article 243-ZG which reads as under:

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

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

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

18. A reading of the aforesaid provision shows in what matters a bar is created for interference by courts in election matters. Clause (a) makes it clear that, the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies shall not be called in question in any court. Sub-clause (2) of Article 243-ZA empowers the legislature of a State to make law, make provisions with respect to all matters relating to, or in connection with, elections to the Municipalities. It is the validity of that law which cannot be gone into by the Courts. In the instant case the petitioners are not challenging the

validity of any such law. On the contrary their grievance is that elections are conducted contrary to the law made by the legislature of the State. In other words they want the elections to be conducted in accordance with the law made by the legislature and when elections are not conducted in accordance with law they are challenging such action of the State. Therefore, there is no bar for this Court to go into the said grievance of the petitioners, as they are not challenging the validity of any law passed by the State Legislature under 243-ZA.

19. Next it was contended in view of Clause (b) of Article 243-ZG, the grievance of the petitioner could be agitated in an election petition and, therefore, no election to any municipality shall be called in question in a writ proceedings. The aforesaid provision only reiterates the settled legal position that matters which should be agitated in an election petition, when State Legislature has provided a remedy, the same cannot be agitated in any other proceedings. The Act provides for a remedy by way of election petition as contained in Section 21, the reliefs that could be claimed in such an Election Petition as provided in Section 22 and the grounds on which such an Election Petition could be instituted as contained in Section 23. A reading of the aforesaid provision sets out what could be the subject matter of an Election Petition. It is only the election of a Councillor. What could be the subject matter of that Election Petition cannot be agitated or adjudicated in this Court. The bar contained in Clause (b) of Article 243-ZG is confined to the questions which could be the subject matter of an Election Petition only. The grievance made out by the petitioners in this Writ Petition cannot be the subject matter of an Election Petition. The Act does not provide for any machinery for adjudication of such dispute. No Election Petition is maintainable for redressing the grievance of the petitioners. Under these circumstances, Clause (b) of Article 243-ZG is no bar for this Court to entertain this Writ Petition.

20. For the aforesaid reasons, we pass the following order:

(a) Writ Petition is allowed.

(b) The first and third respondents are directed not to conduct the elections to the fourth respondent Town Municipal Council, Sindhanur, before determining the number of territorial wards into which the fourth respondent Municipality shall be divided on the basis of census figures of 2001 in accordance with Section 11 of the Act and before determining the extent of each territorial ward.

(c) The first respondent is directed to issue a notification as contemplated by Section 13 of the Act at the earliest, to enable the Election Commissioner-2nd respondent to conduct the elections in accordance with the mandate of the Constitution.

(d) Parties to bear their own costs.