
(1957) 12 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petns No"s. 864, 896 and 1015

T. Venkateswara Rao

APPELLANT

Vs

State Andhra Pradesh and others

RESPONDENT

Date of Decision : 18-12-1957

Acts Referred:

Representation of the People Act, 1950 — Section 9

Citation : AIR 1958 AP 458

Hon'ble Judges : K. Subba Rao, C.J.;Srinivasacha, J

Bench : Division Bench

Advocate : D.P. Narayana Rao, for the Appellant; M. Seshachalapathi), for the Respondent

Judgement

K. Subba Rao, C.J.—These are three Writ Petitions arising out of the same election process in different stages in respect of the elections to the Vijayawada Municipality.

2. Vijayawada is one of the important towns in the State of Andhra Pradesh. After the Indian Constitution came into force, the wards of that Municipality were redistributed to bring them in conformity with the provisions of the Constitution and elections were held in. 1952 when Vijayawada was in the Madras State. On 1-10-1953, the Andhra State was inaugurated and in ordinary course, elections should have been held to the Municipal Council in 1955.

But the Government extended its life along with that of other Municipal Councils in the State till July, 1956. Thereafter, on 5-5-1956, after following the prescribed formalities, the Government effected a redistribution of the wards in the Vijayawada Municipality for the purpose of holding the next elections. On 22-6-1956, for reasons which we need not particularise, the Vijayawada Municipal Council was superseded for a period of one year.

The period of supersession was extended for another six months & will expire by 21-12-1957. In the order extending the period of supersession, it was specifically

mentioned that the new elections would be held and the reconstituted Council would come into being on 21-12-1957. Indeed, the Government directed the Inspector-General of Local Administration to conduct the elections and to reconstitute the Council by that date and steps were being taken towards that end.

But, on 5-11-1957, the Government issued another notification redistributing once again the wards in the Vijayawada Municipality. On 12-11-1957 new electoral rolls on the basis of the redistribution of the wards were published. On 13-11-1957, a notification was issued by the Government fixing the election programme, whereunder 21st, 22nd and 23rd November, were the dates fixed for receiving nominations, 25th November for scrutiny, 16th December for polling and 17th December for counting. The authorities concerned are proceeding to conduct the elections in accordance with the aforesaid programme.

3. W. P. No. 864 of 1957 is filed by T. Venkateswararao, who claims to be a rate-payer in the Vijayawada Municipality and a resident of Ward No. 28 as constituted in the redistribution of the wards effected on 5-5-1956. He was a Councillor till the date of the supersession of the Municipality on 22-6-1956. He is also a member of the secretariat of the communist party, Vijayawada. which is setting up candidates for election in the several wards.

The petition was filed on 4-11-1957 for the issue of a Writ of mandamus or other appropriate writ to direct the respondents to hold the elections to the Vijayawada Municipality on the basis of the wards fixed under G. O. Ms. No. 674 L. A. dated 5-5-1956.

4. On 11-11-1957, the said Venkateswara Rao filed another Writ petition, W. P. No. 896 of 1957, for issuing a Writ of Certiorari to quash G. O. Ms. No. 1976 L. A. dated 5-11-1957, published in the Andhra Pradesh Gazette dated 6-11-1957 redistributing the wards on the eve of the new elections.

5. T.V. P. Ramachandra Rao and Dr. T.V. S. Chalapati Rao filed W. P. No. 1015 of 1957, for issuing a Writ of certiorari or other appropriate order to quash the notification issued by the Government dated 5-11-1957, and published in the Andhra Pradesh Gazette dated 6-11-1957, the proceedings relating to the preparation and publication of the electoral rolls and the consequents election proceedings on the basis of such ward and rolls.

6. The three writs were filed in respect the three stages of the election process questioning the holding of the elections on the basis the redistributed wards effected in November, 1957 and for conducting the elections on the basis the earlier redistribution of wards effected May, 1956.

7. At the outset, it will be convenient deal with two preliminary points raised by t Government Pleader, against the maintainabil of the petitions. His first objection is that t(sic) petitioners have no legal interest in the mat(sic) to maintain the petitions. In the counter-a(sic) davit, it is stated that the petitioners are o(sic)

rate-payers, that they have no specific legal interest in the matter, that neither of them (sic) filed nomination papers for councillorship and (sic) that, therefore, they are not in any way aggrieved by the redistribution of the municipality into wards.

In the affidavits filed by the petitioners, following facts are disclosed. Both the petitioners in W. P. No. 1015 of 1957 are rate-payers. The first petitioner Ramachandra Rao owns houses and lands in the Vijayawada Municipality and the second was Chairman of the Vijayawada Municipality from 1947 till July, 1955. The petitioner in Writ Petitions Nos. 864 & 896 of 1957 apart from his being a rate-payer in the Vijayawada Municipality, a member of the Secretariat of the Communist Party in Vijayawada & his intention is to set up candidates for election in several wards.

All the three are, therefore, vitally interested in seeing that the elections are properly held in accordance with the provisions of the statute and the rules made thereunder. They are vested with the right to stand for election and the good administration of the Municipality depends on the right men being elected to it. A submission was not accepted by a Division Bench of the Andhra High Court in Venugopalan Commissioner, Vijayawada Municipality, Andh WR 711: (AIR 1957 Andh Pra 833) Viswanatha Sastry, J., who delivered the judgment on behalf of the Bench, in advertently said contention, observed at page 714 (of the judgment) : (at p. 836 of AIR):

It cannot be said that the applicants have no specific legal right to be enforced or their right would not be affected or infringed by the act of the respondents in holding the elections. The matter may be looked at in two ways. The applicants are electors in constituencies to which the proposed elections relate.

They can rightly claim that in a democratic set up it is their valuable right not only to exercise their vote but also to see that their wards are properly represented in the municipal council and for that purpose elections conducted in accordance with the law framed for that purpose. A violation of the statutory rules of election affects the applicants who are voters in the wards and it is for this reason that voters are given equal right with the candidates, to call in question an illegal and invalid election.

The applicants have another and a more substantial right as rate-payers who contribute to the municipal fund and they have a right to prevent the municipal authorities from spending municipal funds on unauthorised and illegal elections. Under R. 42 (e) of the Taxation and Finance Rules, Part II framed under the District Municipalities Act, a municipal council is authorised to incur expenses in connection with elections, that is to say, elections authorised by law.

As rate payers the applicants have a specific legal interest which entitles them to come to court for the protection of that interest and in order to prevent the mis-application of Municipal funds on elections held contrary to law. This

(sic)pect of the matter is well brought in the Irish (sic)se of the Queen v. Drury, (1894) LR 2 Ir 489 (sic), extracted in The Municipal Corporation for the City of Bombay Vs. Govind Laxman Savant, te-payers who have contributed to the Municipal rates are injured in their property within (sic) meaning of the rules regulating the issue of Writ of Mandamus if the rates are misapplied (sic) unlawful enterprises.

8. We have cited the passage in extenso(sic) it clearly lays down the principles governing (sic) maintainability of Writ Petitions at the instance of rate payers in the context of elections. (sic) entirely and with respect accept the afore(sic) observations as laying down the correct law the subject. It follows that the petitions are maintainable.

Nor can we sustain the second preliminary obligation. It is said that the division of the wards (sic) the fixing of the programme for the elections (sic) administrative acts and, therefore, the Writs not maintainable. We have no doubt that the (sic)sion of the Municipality into wards and the (sic)ng of steps for holding elections are administrative acts of the Government. But that in it is not a ground for rejecting the petitions. Writ Petition No. 864 of 1957 is for a Writ Mandamus and the other two petitions are the issue of Writs of Certiorari. But all the (sic)e petitions contain a prayer for the issue other appropriate order or direction against respondents. In the circumstances, the form (sic)ot material but the substance matters. When petitioner prays for alternative reliefs, the (sic)rt will have to issue that Writ which would (sic)in with the facts established. There is an (sic)ntial distinction between a writ of certiorari a writ of mandamus. A writ of certiorari available for the removal of any judicial act quasi-judicial act of an inferior tribunal. (sic)eas a writ of mandamus is issued to compel performance of duties of a public nature. condition that the act complained of should (sic) judicial act applies to the former relief not to the latter.

In this case, should we hold that the respondents have not discharged the duties enjoined on them under the District Municipalities Act and that they purported to perform the duties contrary to the provisions of the Act, a writ of mandamus will certainly issue to direct them to discharge their duties in compliance with the provisions of the Act. In this view, there are no merits in the second preliminary objection either. We, therefore, reject the same.

9. Mr. Ekbote and Mr. Narayana Rao, who followed him, raised various Contentions questioning the validity of the orders made by the respondents and the conduct of the election proceedings which we will consider seriatim.

10. The first argument is that the election programme fixed by the Government does not provide for any machinery for hearing objections and for deciding them in respect of voters included in or excluded from the electoral rolls and, therefore the whole proceedings leading up to the polling are invalid. To appreciate this argument, some relevant facts may be recapitulated.

The electoral rolls were published on 12-11-1957. The Notification fixing the

programme of elections was issued on 13-11-1957. The 21st, 22nd and 23rd November, 1957 were allotted for the filing of nominations. On and between 12th November and 21st November, 1957, no notification was issued by the Government prescribing any machinery enabling the voters to raise objections and enabling any officer to decide them.

On the said ground, the argument proceeds, the absence of any such machinery vitiates the election process. So stated, there is plausibility in the argument. But, before this argument, it would be necessary to scrutinise the relevant provisions of the Madras District Municipalities Act (hereinafter referred to as the Act) and the notifications issued by the Government relating to the preparation and publication of electoral rolls, the qualification of a voter to be placed on the municipal rolls, the objections available and open to a voter and the opportunity given to an aggrieved party to raise objections in respect of an electoral roll.

11. The material provisions of the Act are as follows:

Section 44:

(1) Every person whose name is included in such part of the electoral roll for any Assembly constituency as relates to the municipality or any portion thereof, shall be entitled to be included in the electoral roll for the municipality prepared for the purpose of this Act and no other person shall be entitled to be included in such roll.

Explanations-

Where in the case of any Assembly constituency there is no distinct part of the electoral roll relating to the municipality, all persons whose names are entered in such roll under the registration area comprising the municipality and whose addresses (as entered in such roll) are situated in the municipality shall be entitled to be included in the electoral roll for the Municipality prepared for the purposes of this Act. Explanation 2:

No person's name shall be included in the electoral roll for the municipality in more than one place.

(2) As soon as may be, after the electoral rolls for the assembly constituencies which consists of, or comprise, the municipality or any portion thereof, have been published, revised or amended in pursuance of the Representation of the People Act, 1950, the person authorised by the election authority in this behalf shall publish in such manner as the State Government may direct, the portions of the said rolls which relate to the municipality or of the alterations therein, as the electoral roll for the municipality or as alterations to such roll as the case may be.

(3) When municipality has been divided into wards, the electoral roll for the municipality shall be divided into separate lists for each ward.

(4) Where after the electoral roll for a municipality or any alterations thereto have been published under sub-s. 2, the municipality is divided into wards for

the first time (or the division of the municipality into wards is altered or the limits of the municipality are varied) the election authority shall, as soon as may be after such division or alteration or variation, as the case may be, in order to give effect to the division of the municipality into wards or to the alteration of the wards or to the variation of the limits as the case may be authorise a re-arrangement and re-publication of the electoral roll for the municipality or any part of such roll, in such manner as the (State) Government may direct.

(5) The electoral roll for the municipality published under sub-s. 2, as revised by any alterations thereto subsequently published under that sub-section or under sub-section 4 shall remain in force until the publication of a fresh electoral roll for the municipality under sub-section 2.

(6) Every person whose name appears in the electoral roll for the municipality, as so revised, shall, so long as it remains in force, be entitled subject to the provisions of this Act, to vote at an election; and no person whose name does not appear in such roll shall vote at an election. Explanation:

In this section and S. 45, the expression "assembly constituency" shall mean a constituency provided by order made under S. 9 of the Representation of the People Act, 1950, for the purpose of elections to the Madras Legislative Assembly. Section 45:

Notwithstanding anything contained in S. 44, the election authority may, after making such inquiry as he thinks fit publish in such manner as the State Government may direct, amendments to the electoral roll for any municipality for the purpose of bringing it into accord with the electoral roll for the relevant assembly constituency.

12. Under the aforesaid provisions, the Act prescribed a simplified procedure for preparing and publishing electoral rolls for a Municipality. Every person, whose name is included in the electoral roll of that part of the Assembly constituency, is entitled to be included in the electoral roll of the Municipality. The only qualification for a person to be included in the Municipal electoral roll is that his name should be included in the corresponding part of the roll of the Assembly constituency.

The municipal electoral roll is divided into separate lists for each ward. The person authorised by the election authority has to publish in the manner prescribed parts of the rolls which relate to the Municipality or their alterations. If there is alteration of wards, a republication of the electoral roll in the prescribed manner is made. The electoral roll published as revised remains in force until the publication of fresh electoral rolls.

Only persons, whose names appear in a(sic) electoral roll are entitled to vote. The election authority is empowered to make an enquiry and publish in the prescribed manner amendments t(sic) the electoral roll for the purpose of bringing i(sic) into accord with the electoral roll for the Assembly constituency.

Pursuant to the power conferred on the Government under Ss. 44 and 45 of the Act, the Government passed an order dated 5-5 1952 prescribing the manner of publishing electoral rolls for a Municipality.

Under paragraph 4 of that order, the amendments to the electoral roll for a municipality which may be made by the election authority under S. 45 of the Madras District Municipalities Act, 1920 (Madras Act V of 1920), shall be published in the manner mentioned in paragraph 1 (a). Under paragraph 5:

The election officer, on application made (sic) him for the correction of an existing entry (sic) the electoral roll for municipality for the ti(sic) being in force, shall, if he is satisfied after su(sic) enquiry as he thinks fit that the entry relates the applicant and is erroneous or defective any particular, on account of any clerical accidental mistakes or misprints rectify the m(sic) take or defect. Such corrections shall be published in the form in Annexure in the manner mentioned in paragraph 1 (a).

13. Paragraph 4 prescribes the manner publishing the amendments made by an electi(sic) authority, whereas paragraph 5 deals with amendments made by an election officer. What election officer is authorised to do is only to (sic)rect clerical or accidental mistakes or mispri(sic) But substantial amendments can be publish only by the election authority in the manner (sic) scribed under S. 45 of the Act.

The aforesaid procedure prescribed by Act and the notification thereunder issued by Government enable an election authority to m(sic) an enquiry for the purpose of bringing i(sic) accord the municipal electoral roll with the e(sic) toral roll of the relevant Assembly constituted. As the qualification of a person to be include in the municipal roll depends upon the fact his name being in the corresponding Assen(sic) roll, the following objections only can be ra(sic) by an aggrieved person:

- (i) As name is in the relevant legislature electoral roll but is not included in the municipal electoral roll
- (ii) As name is not in the legislative toral roll but is included in the correspond municipal electoral roll and
- (iii) There are clerical mistakes in regard the description of a voter.

The first two can be amended by an election thority only and the third can be done only a person authorised by an election authority the third objection relates only to a clerical take, it is allowed to be done in the routine ner by some subordinate officer. But the stantial objection both under S. 45 and under notification issued thereunder can only be fled by an election authority.

It is true that neither S. 45 nor the (sic)flcation issued thereunder prescribing the m(sic) of publication provides for the filing of application by aggrieved parties. But when the power to a(sic) after enquiry is conferred on the election (sic) rity,

it necessarily implies that the person aggrieved can approach that authority with a prayer to take the necessary amendments.

Section 45, though it empowers the election authority to make amendments suo motu, does not preclude his acting on an objection made by aggrieved person. We, therefore, cannot say that there is no machinery provided under the Act for hearing the objections raised by the person in the locality in respect of municipal electrical rolls.

14. In the present case, from the aforesaid statement of facts, it is manifest that between 1-1-1957 and 21-11-1957, there were nine days preferring objections. The Government also not issue any notification calling upon the persons in the locality to file objections within a particular time. As an electoral roll is final and the basis for the election, it is necessary to the public not only a notice calling for sections but also giving a reasonable time with which such objections should be filed, though provisions of the Act do not enjoin on the government specifically to make any such provision for amendments after enquiry by an electoral authority necessarily imply that there should sufficient time for the said enquiry and reasonable opportunity for the persons affected to the officer concerned to make such an enquiry.

But, as no statutory provision has been made, we cannot say that the entire election process is vitiated by any error. It is for the petitioners to prove that they were not able to file objections within the short time available to them. The petitioners are not ignorant villagers. They are all experienced politicians well-versed in ways of election. One of them was the man of the Vijayawada Municipality for eight years.

The record placed before us shows that print copies of the legislative electoral rolls are added as municipal electoral rolls with necessary indications. There is, therefore, no scope for a name which is in the legislative electoral roll but not included in the municipal electoral roll name not included in the legislative electoral roll being included in a municipal electoral roll. It is not suggested that there is any such case.

Only those persons, whose names are in the legislative electoral roll are entitled to be included in the municipal electoral roll, and there is no scope for any objection in this regard, whether objection will be in the nature of accidental or clerical mistakes. A provision has been made for their rectification by the Government punishing the election officer for doing so. Such correction of mistakes cannot be equated to that amendments which could only be done by an electoral authority under S. 45.

Accordingly, under R. 4 of the Rules for the Conduct of Elections of Municipal Councillors, the Officer may interpret an entry in the electoral roll so as to overlook merely clerical or errors and under R. 7, in scrutinising nomination papers, he shall not reject any nomination paper merely on the ground of an incorrect description of his name or of the name of proposer or seconder or of any other particulars to the candidate or his proposer or seconder entered on

the electoral roll, if the identity candidate, proposer or seconder, as the (sic)y be, is established beyond reasonable

The rules, therefore, rightly make a distinction between substantial and accidental minor errors and enable the election officer to accept a candidate's name despite the incorrect description of his name if his identity is established. The correction of accidental minor mistakes, therefore, is not considered by the legislature or the rulemaking authority as an amendment to the electoral roll.

The mistake in the name of Dr. Chalapath Rao in the municipal electoral roll illustrates the nature of clerical mistakes that can be rectified. Some of the documents placed before us show that, as a matter of fact other persons filed applications, for correcting mistakes and the election officer corrected them and published them in accordance with the rules prescribed.

While we appreciate the contention of the learned Counsel that the Government or the authority concerned should have made a provision by prescribing a reasonable time for filing objections before an election authority, we are satisfied, having regard to the qualifications prescribed for a person entitled to be placed on the municipal electoral roll, the manner in which the electoral rolls of the Municipalities are prepared and the time, as a matter of fact, available to the petitioners and others to raise objections if they chose, that the electorate, in the present case have not in any way been prejudiced.

15. In this context, strong reliance is placed by the learned counsel for the petitioners on the judgment of the Supreme Court of Chief Commissioner, Ajmer Vs. Radhey Shyam Dani,). As this decision is the sheet-anchor of the learned Counsel's argument, it is as well that We should scrutinise the decision with close attention and care. The facts in the case were :

In view of the impending election to the Ajmer Municipal Committee, the Chief Commissioner, Ajmer, framed the Ajmer State Municipalities Election Rules and published them in the Government Gazette dated 4-8-1955. On 8-8-1955, he notified the election programme and also authenticated and published an electoral roll. The relevant provisions of the Ajmer-Merwara Municipalities Regulation were as follows:

Section 30:

(1) A person shall not be deemed to be an elector for any purpose of this regulation or of any rule unless he is enrolled as an elector.

(2) Every person who would be entitled under the Representation of the People Act, 1950 (XLIII of 1950) to be registered in the electoral roll for a Parliamentary constituency if that constituency had been co-extensive with the Municipality, and whose name is registered in the electoral roll for the Parliamentary Constituency comprising the Municipality shall be entitled to be enrolled as an elector of the Municipality.

Section 43:

The Chief Commissioner may, by notification, make rules consistent with this Regulation for the purpose of regulating all or any of the following matters, namely:

XX XX XX XX

(e) the preparation and revision of electoral rolls and the adjudication of claims to be enrolled and objections to enrolment.

Adverting to the scope of the provisions, the Supreme Court observed at p. 194 (of SCJ) : (at pp 306 and 307 of AIR):

It is clear from S. 30, sub-s. 2 of the Regulation that in order to be entitled to be enrolled as an elector of a Municipality, a person has to fulfil two conditions viz.; (1) that he should be entitled under the Representation of the People Act, 1950 (XLIII of 1950) to be registered in the electoral roll for a Parliamentary constituency if that constituency had been co-extensive with the Municipality, and (2) that his name should be registered in the electoral roll for the Parliamentary constituency comprising the Municipality....

The latter condition does not require any scrutiny for its fulfilment. The act of his being registered in the electoral roll for the Parliamentary Constituency would be apparent on the face of the electoral roll itself. The fulfilment of the first condition, however, would be subject to scrutiny and it would be open to any resident of the Municipality to object to the enrolment of a particular person as an elector of the Municipality.

Even in the case of the electoral roll for the Parliamentary constituency it would be open to a person to apply for a revision of that roll by applying for a correction of the mistakes or misdescriptions which might have crept therein as also to supply to have his name registered provided he fulfilled the first condition viz., that he was entitled to be registered in the electoral roll for the Parliamentary constituency.

Objections could also be filed to the enrolment of particular persons as electors in the Parliamentary Constituency & also in the Municipality. Apart from the preparation of the electoral roll for the Municipality it would therefore be necessary to have a revision of such electoral rolls and also the adjudication of claims to be enrolled therein and objections to such enrolment.

It is, clear from the aforesaid provisions that a scrutiny should be made at the instance of the parties concerned on the following two points (i) whether the person, whose name was registered in the electoral roll for the Parliamentary constituency was in fact, entitled under the Representation of the People Act, 1950, to be registered and (ii) whether he possessed the qualification prescribed under that Act in this behalf. In that context, the Supreme Court observed:

It is of the essence of these elections that proper electoral rolls should be

maintained and in order that a proper electoral roll should be maintained, it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinise whether the persons enrolled as electors possessed the requisite qualifications.

Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned.

They concluded:

If that was the true position the electoral roll of the Municipality which had been authenticated and published by the Chief Commissioner on 8-8-1955, was certainly not an electoral roll prepared in accordance with law on the basis of which the elections and poll to the Ajmer Municipal Committee could be held either on 9-9-1955, or at any time thereafter.

Superficially looked at, this judgment appears to support the contention of the petitioners. But, a deeper scrutiny brings out the essential differences between the provisions of the Act under the review of the Supreme Court and those the District Municipalities Act. While in the Ajmer Regulation, a voter must satisfy two conditions namely, that his name is entered on the Parliamentary electoral rolls and that he is entitled to be put on those rolls, in S. 44 of the District Municipalities Act the only qualification a person to be put on the electoral roll of municipality is that his name is included in some part of the electoral roll for any assembly constituency as relates to the municipality or parts thereof.

While S. 45 of the District Municipalities empowers an election authority to amend an electoral roll after making such enquiry as he thinks fit, under the Ajmer Regulations, though S. 3 authorises the Chief Commissioner to make rules for the adjudication of claims to be enrolled objections to enrolment, no rule has been made under the Section.

Whereas the Government of Andhra Pradesh issued an order authorising an election officer to correct clerical mistakes and accidental omissions in the electoral roll, there does not seem to be any corresponding order made by the Commissioner. While under the rules for Conduct of Election of Municipal Councillors made under the District Municipalities Act, the election officer is advised not to reject a candidate on the ground of incorrect description of their name or the names of their proposer or seconder such a rule is made under the Ajmer Regulation.

The aforesaid differences are not mere form but in substance. Under the Madras in the words of the Supreme Court, "the fact as his being registered in the electoral

roll for Parliamentary Constituency would be apparel the face of the electoral roll itself." In this only printed copies of the Assembly electoral were utilised for preparing the municipal toral rolls.

Obviously, therefore, there would not be commissions or additions, which are not four the Assembly roll. Unlike under the Ajmer (sic)lation, under the Madras Act, there is no for any enquiry whether a person is entitle be placed on the Assembly electoral roll. If were any omissions or illegal additions t(sic) Assembly electoral roll, it is not suggested there is no procedure prescribed under the (sic)sions of the Representation of the People 1950, to get them corrected.

The scope of the enquiry under the (sic) Act is, therefore, very limited and S. 45 p(sic) ample safeguard for bringing the municipal toral roll into accord with the electoral the relevant assembly constituency. Further provision has already been made for cor(sic) clerical mistakes. In the circumstances, (sic) not be said that an opportunity was not for the parties concerned to scrutinise (sic) persons enrolled as electors possessed the site qualifications, for the qualification of son to be placed on the Municipal electo(sic) under the Madras Act is a simple and ea(sic) ascertainable one, namely whether his name the corresponding Assembly roll.

In our view, sufficient opportunity h(sic) given, in the present case, for scrutinis(sic) fact and indeed it is not suggested that the any disparity between the two rolls, (sic) bound by the decision of the Supreme Court the principles laid down therein. But, resent ease, the principles laid down have not (sic) any way, been violated. We, therefore, reject (sic)e first contention.

16. The next argument is that as the Government issued a notification in May, 1956, reconstituting the wards and directed that the said (sic)terations should take effect from the date of the (sic)xt ordinary elections, they have no power to constitute the wards or make any changes there (sic). so as to take effect from the date of the said sections. By notification dated 5-5-1956, the Government revised the wards and re-allocated the (sic)ats in the said wards. The relevant part of the notification reads:

The Vijayawada Municipality shall with (sic)ect on and from the date of next ordinary elec(sic) to the council be divided into 30 wards as down in Schedule I and that the wards shall (sic)urn the number of councillors specified against (sic)em in schedule II.

(sic) 6-11-1957, the Government again passed ano(sic) G. O. in supersession of the previous notifications on the subject and directed that the vijayawada Municipality shall with effect on and (sic)m the date of the next ordinary elections to (sic) council, be divided into 30 wards as shown schedule. I and that the wards shall return the (sic)mber of councillors specified against them in schedule II, annexed to that order. Admittedly, (sic)der this G. O. the boundaries of some wards (sic)e been changed and the number of councillors (sic)be returned in some wards has been increased (sic)reduced. The question is

whether the Government has power to redistribute the wards before date of the ordinary elections to the Council. (sic)tion 43 which governs the situation says:

For the purposes of election of councillors (sic)a municipal council, the State Government (sic)er consulting the Municipal Council may, by notification:

- (a) divide the municipality into wards,
- (b) determine the wards in which the seats, (sic)ny, reserved under sub-s. 3 of S. 7 shall be apart and
- (c) declare for whom such seats are reserv(sic)

(sic) section 4 gives a discretion to the Government to direct, in case the notification materially (sic)rs the existing division of the Municipality (sic) wards, that the alteration shall take effect (sic) the date of the next ordinary elections. A (sic)bined reading of these provisions shows that Government has power to divide the Municipality into wards and fix the seats in each of (sic)e wards.

Sub-section (4) only confers a discretion on Government to postpone the date of the notification taking effect to the next ordinary elec(sic) i.e., if the Government so exercised the dis(sic) on any casual vacancy in the Municipal (sic)cil will be filled up on the basis of the old (sic)s. If it does not exercise the discretion, the (sic)cation comes into effect immediately operate not only upon ordinary elections but also on (sic)ions to casual vacancies.

Sub-section 4 does not, therefore, limit or (sic)wise circumscribe the power of the Government to divide the Municipality into wards on (sic) than one occasion if S. 43 confers such (sic)r on them. The short question, therefore, whether the power conferred on the Government under S. 43 can be exercised on more than occasion between two elections.

17. The provisions of the District Municipalities Act do not afford any guide to answer this question. For that purpose we must turn to the Madras General Clauses Act 1899. Section 13 of that Act says:

Where an Act confers a power or imposes a duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires.

The terms of this section are clear and unambiguous and they enable the authority on whom a power is conferred to exercise that power from time to time as occasion requires. Section 43 admittedly confers a power on the Government to divide the Municipality into wards, to determine the wards in which the seats shall be set apart and declare for whom such seats are reserved.

This power, though exercised once in May 1956, was not exhausted. In view of the supervening circumstances viz., the supersession of the Council, the postponement of the elections and th exigencies of the changed situation, the Government thought a modification of the previous notification was necessary, and on that basis exercised the power conferred on them under S. 43 once

again. S. 13 of the Madras General Clauses Act clearly confers such a power on the Government. This objection is overruled.

18. It is then contended that a necessary condition for the exercise of the power under S. 43 is the previous consultation of the Municipal Council and as the Municipal Council was superseded, the power thereunder could no longer be exercised till a new council was constituted. The legal effect of the supersession of a Municipal Council is embodied in S. 41 (3) (a) and (b) of the Act. They read: Section 41:

(3) Supersession shall take effect from noon on the date of publication of the notification, if no date is therein specified, and thereupon the following consequences shall ensue:

(a) All the members of the Council as well as its chairman and vice chairman shall forthwith be deemed to have vacated their offices.

(b) All or any of the functions of the Council and of its chairman including where the chairman is also the executive authority, its functions as such, may, during the period of supersession, be exercised and performed as far as may be, and to such extent as the State Government determine by such persons as the State Government appoint in that behalf and any such person who is not a District Collector or Revenue Divisional Officer may, if the State Government so direct, receive payment for his services from the municipal fund; the State Government may determine the relations of such person with the municipal secretary if any with the district controlling officers and with themselves and where there is a commissioner the State Government may direct him to exercise and perform any powers and duties of the council in addition to his own.

19. Pursuant to the provisions of this Section, the Vijayawada Municipal Council was superseded by order dated 22-6-1956. The material part of that order reads:

Under Clause (b) of sub-s. 3 of S. 41 of the Madras District Municipalities Act, 1920, the Governor of Andhra hereby appoints for the present Sri Y. Guru Reddi, Commissioner, Vijayawada Municipality as Special Officer of the Vijayawada Municipality to exercise the powers discharge the duties and perform the functions of the council and its chairman, in addition to his own duties of Commissioner of the Municipality except those relating to appeals (taxes and others). The Regional Inspector of Municipal Councils and Local Boards Central Range, Vijayawada, shall exercise the powers and discharge the duties relating to such appeals.

This order in terms appointed the Commissioner as Special Officer of the Vijayawada Municipality to exercise the powers, discharge the duties and perform the functions of the Council and its chairman. One of the duties of the Municipal Council is to give advice if consulted by the Government under S. 43 of the Act. It is said that the Municipal Council has no duty to give advice and indeed may refuse to give advice when asked by the Government.

This interpretation of the provisions of S. 43 (1) is, in our view, not in consonance with the spirit of the provisions. The previous consultation of the Municipal Council by the State is a condition precedent for the exercise of the powers conferred on it under S. 43. The legislature could not have visualised an attitude of non-co-operation on the part of a statutory body in enacting a provision.

When a statute confers a power on the highest executive authority in the State to exercise it in consultation with a statutory body, which is subject to the general control of that authority, it is implicit, in the conferment of that power, that the consultant has a duty to give advice. The condition is imposed in public interests and the representatives of the city or town cannot obviously refuse to reply if they are consulted on the question of the division of the Municipality into wards and other connected questions under S. 43.

We would, therefore, hold that the section, by necessary implication, imposes a duty on the Municipality to express their opinion on a question in regard to which they are consulted.

20. Though giving advice or expressing an opinion, if consulted may not be a duty, it would, in any event, be a function of the Municipal Council. The dictionary meaning of "function" in its broad sense is the doing of a thing or "activity". In relation to an office, it means the duty peculiar to that office.

But it is said that though the notification dated 22-6-1956 appoints the Commissioner, Vijayawada Municipality to exercise the powers, discharge the duties and perform the functions of the Council and its chairman, Section 41 (3) (b) does not authorise the Government to confer on the Commissioner power to perform the functions of the Council. Section 41 (3) (b) is in the following terms:

All or any of the functions of the council of its chairman, including where the chairman is also the executive authority, its functions as such may during the period of supersession, be exercised and performed as far as may be and to such extent as the State Government may determine by such person as the State Government appoint in that behalf and any such person who is not a District Collector or Revenue Divisional Officer, may, if the State Government so direct, receive, payment for his services from the municipal fund; the State Government may determine the relations of such person with the municipal secretary if any with the district controlling officers and with themselves, and where there is a Commissioner the State Government may direct him to exercise and perform any powers and duties of the council in addition to his own.

It is argued that, while the State Government may appoint any person other than the Commissioner to discharge the functions of the council and of its chairman, it can only direct the Commissioner to exercise and perform any powers and duties of the council in addition to his own. The word "functions" the argument proceeds, is 0(sic) wider import than powers and duties.

We do not think the legislature intended to make any distinction in the content of the power exercisable by a special Officer other than a Commissioner and a Commissioner. The only distinction is that, in the case of a Special Officer the Government has to prescribe the extent (sic) the functions exercisable by him, whereas in the case of a Commissioner, they can direct him to (sic) exercise the powers and duties of a council.

The last limb of the sub-section only enable the Government to direct the Commissioner appointed already to run the administration of the Municipality to perform the functions of the Council. It cannot be construed to mean that the powers of the Commissioner are less than those of a Special Officer appointed under the Act.

That part, the section does not prevent the Commissioner from being appointed as Special Officer under the 1st limb of the Section. The Government Order dated 22-6-1956 appointed the Commissioner as Special Officer to exercise the powers, discharge the duties and perform the functions of the council. This order expressly (sic) trusts the functions of the Council, to the Commissioner and it is one of the functions of the (sic) council to give advice if consulted by the State under S. 43. The Commissioner takes the place (sic) of the Municipal Council and if he is consulted the statutory requirement is satisfied.

21. Nor can we accede to the argument that a single officer nominated by the Government could not in law be equated to a Municipal Council for the purpose of S. 43 of the Act. When as (sic) the Act expressly states that, in a particular contingency, the Commissioner can discharge the duties (sic) or perform the functions of a Council, it is (sic) for the courts to state that the policy underlying the section is not sound.

That apart, there is nothing astounding or (sic) repugnant to public interests in such a provision (sic) being made in an emergency. We, therefore, hold (sic) that the Commissioner takes the place of Council and, if he is consulted the condition (sic) laid down in S. 43 of the Act is complied with.

Even so, the learned Counsel contends (sic) that the State Government has not consulted the Commissioner within the meaning of S. 41(1) of the Act. Reliance is placed on the judgment of one of us (The Chief Justice) in *British India Steam Navigation Co. Ltd. Vs. T.P. Sakkalal Ram Sait* by agent K.A. Hariganga Ram, in support of the contention. That Bench only defines the meaning of the word "consult" S. 43 of the Act. After considering the case law consulting dictionaries on subject, it is observed p. 90 (of MLJ) : (at p. 393 of AIR) thus :

The word "consult" implies a conference of two or more persons or an impact of two or (sic) minds in respect of a topic in order to enable (sic) them to arrive at a correct, or at least a satisfactory (sic) solution. Such a consultation may take place at a conference table or through correspondence. The form is not material but substance (sic) is important.

It is necessary that the consultation should be directed to the essential points and to the content of the subject involved in the discussion, consultation must enable the consultor to consider the pros and cons of the question before coming to a decision... Many instances may be found in statutes when an authority entrusted with a duty is directed to perform the same in consultation with another authority which is qualified to give advice in respect of that duty.

It is true that the final order is made by and the ultimate responsibility rests with, the former authority. But it will not, and cannot be, performance of duty if no consultation is made and, even made, is only informal compliance with the provisions. In either case, the order is not made in compliance with the provisions of the Act.

23. We agree with the aforesaid observation. But the question in this case is whether the Government consulted the Commissioner in the sense indicated in the aforesaid observations. In the case of Municipalities not superseded, the government passed a G. O. No. 1040 dated 28-10-1955 prescribing the mode of consultation. Under the notification,

the Commissioner of each Municipality could work out proposals for re-distribution of wards and where necessary for re-allocation of reserved seats. The proposals so worked out could be placed before a committee consisting of the Municipal Chairman, the Revenue Divisional Officer having jurisdiction over the Municipality and the Regional Inspector of Municipal councils and Local Boards concerned.

The committee will scrutinise the proposals placed before it by the Commissioner and submit report to the Inspector General of Local Administration. The Inspector General of Local administration will examine the proposals submitted by the committee and forward the proposals with his remarks thereon to the Municipal Council. The Municipal Council should consider proposals of the committee with the remarks of the Inspector General thereon and make its recommendations in respect of the proposals.

The recommendations should be forwarded to the Inspector General who will submit the proposals of the committee with the recommendations of the council and his own remarks to Government. The Government will thereafter issue orders on the proposals.

The mode of consultation prescribed under that Act. it is admitted, was in accord with the principle laid down in the aforesaid decision. The contention is that the Commissioner is not acting in accordance with the mode prescribed, obviously the mode of consultation should differ in the case of a commissioner, for the procedure prescribed would not be suitable in the case of consultation with a commissioner.

The question, therefore, is not whether the prescribed procedure was followed but whether as a matter of fact the Commissioner in the present case was consulted in

accordance with the (sic)iples laid down in the aforesaid decision. In affidavit filed in W. P. No. 896 of 1957, it is (sic)d that at the instance of certain interested (sic)es the Commissioner and Special Officer pro(sic)d to Hyderabad with his staff and that a re(sic)bution of the wards was worked out in (sic)rabad by the respondents hurriedly in three (sic) resulting in the notification now sought to (sic)ashed.

These allegations are denied in the counter, assuming they are true, apart from the question of collusion, the facts alleged Show that the (sic)ssioner was as a matter of fact, consulted before the redistribution was made. In the counter filed by the Government in W. Ps. 864 and 896 of 1957, they have described the manner in which the Commissioner was consulted. The Government received representations on 6-5-1957, to the effect that the distribution of the wards was not equitable.

On 26-9-1957, the Special Officer sent a report to the Inspector General of Municipal Councils and Local Boards suggesting certain modifications to the scheme of division of the wards and the allotment of the reserved seats. On 28-10-1957, the Inspector General of Municipal Councils and Local Boards forwarded the report of the Special Officer to the Government with his detailed remarks thereon.

Government, after considering the Special Officer's report and the Inspector General's remarks, issued the notification dated 6-11-1957 making amendments in the scheme of redistribution that was effected earlier. On the aforesaid facts, it is manifest that the Government exercised the power under S. 43 of the Act after consulting the Special Officer, who was acting in the place of the Municipal Council.

24. The next contention of the learned Counsel is that the electoral rolls were not prepared in the form prescribed by G. O. No. 904 dated 5-5-1952. It is contended that the following defects are found in the electoral roll.

1. In the title page the names of the streets are not entered in the order in which they appear in the electoral roll.
2. The title pages do not show the number and the name of the street to which the number in the electoral roll refers.
3. The enumeration of the house numbers in the street included In the wards where only parts of the streets are included in the ward is not made.
4. The boundaries of some wards in the title page do not tally with the boundaries mentioned in the notification dated 6-11-1957.

The respondents in their counter deny the allegations made in the affidavit and aver that the title pages do refer to the names of the streets and that the door numbers and the corresponding voters numbers are also enumerated in the fly sheet. In support of the allegation in the affidavit during the arguments, learned

counsel for the petitioners filed before us some lists tabulating the defects found in the title page of the electoral roll.

The G. O. on which reliance is placed is not a statutory rule but embodies the administrative directions for preparing an electoral roll in such a way that it is intelligible to the voters. The title page is intended to be the index of the Est useful for easy reference. The learned counsel appearing for both parties have taken us through the electoral rolls.

Though there are some defects as indicated by the learned counsel for the petitioners, we found that the electoral rolls were prepared to substantial compliance with the Instructions. In the title page, the names of the streets and the numbers of voters in that street are recorded. In the electoral roll, the numbers and names of the voters are given according to streets. Though in some cases the order of the streets in the title page do not correspond with the order in the electoral roll, in most of the cases they do correspond.

We are satisfied that the instructions given in the aforesaid G. O. have been substantially complied with and that the electoral roll has been clearly prepared and that it is not likely to cause any confusion during elections. We negative this contention.

25. Lastly, it is contended that the division of the wards was effected by the Government arbitrarily and capriciously and therefore the elections held on the basis of the new wards are illegal. In the affidavit filed in support of W. P. No. 896 of 1957, it is stated that the Congress party, being the ruling party, in order to facilitate their return, has deliberately manipulated the wards so as to impair the chance of the rival parties succeeding in the elections and that power has been exercised mala fide with ulterior motives.

These allegations are denied in the counter. To appreciate this contention, some of the facts leading to the holding of the present elections may be recapitulated. The previous elections to the municipal council were held in 1952 on the basis of the wards redistributed prior to the holding of those elections. The next general elections in the ordinary course should have taken place in 1955.

But, for some reasons, Government extended the life of the municipal councils in the State till July, 1956. In September 1955, the Municipal council Vijayawada, passed a resolution for the redistribution of the wards. The Government passed G. O. No. 1040 dated 28-10-1955, giving certain instructions to be followed for the re-constitution of the wards.

The instructions therein were followed and the Government, by their order dated 5-5-1956, effected a redistribution of the wards in the Vijayawada Municipality and also stated the number of Councillors to be returned. By the said order, the said redistribution was directed to come into effect on and from the date of the next ordinary elections. On 22-6-1956, the Vijayawada Municipality Council was superseded for a period of one year and that period was extended by six months

which would expire by 21-12-1957.

As the time for new elections was fast approaching the authorities concerned were instructed to take steps for holding the elections. Indeed on 25-10-1957, the Inspector-General of Local Administration gave a press statement to that effect. But on 5-11-1957, the Government issued an extraordinary notification redistributing once again the wards in the Vijayawada Municipality and published the same in the gazette dated 6-11-1957.

The electoral rolls were published on 12-11-1957 and the election programme was notified on 13-11-1957 to the effect that nomination will be received on 21-11-1957. The argument of the learned Counsel is that the redistribution of the wards was made hurriedly and capriciously by the Government just before the elections with a view to shift the voting strength in favour of the nominees.

It is argued by the learned Government Pleader that on representations made by the affected parties, slight modifications like boundary adjustment were made in order to achieve homogeneity, territorial contiguity and to reduce the difference in population. Learned counsel for the petitioners filed a statement in an attempt to show that redistribution was not influenced by any of the aforesaid considerations but was done only arbitrarily for ulterior purposes. The statement gives the following particulars.

INEQUALITY.

Inequality is more prominent under 1956 notification than under 1956; for example the maximum voting strength under 1956 was 4,000/ the minimum was 2500, where as under 1957 the maximum voting strength was 5400 and the minimum was 1900 or less.

HOMOGENEITY.

If by homogeneity is meant that areas inhabited by Muslims, Indian Christians, Schedule Castes and caste Hindus should be carved into one electoral ward, that is disturbed by the notification.

1. The 12th ward had a population which formed 80 per cent., of the voters. Now under the new arrangement of 1957 Haddu Sahib Street and Drain Street of the old 12th ward where the Muslims formed about 95 per cent., was removed from it and a predominantly Hindu area named Abotu Appanna Pakalu from the old 13th ward was tacked to the 12th ward.

The result is that a ward with over-whelming Muslim voters has been converted into one where the preponderance was of Muslims considerably reduced.

2. The 16th ward was exclusively inhabited by Indian Christian and scheduled castes, Keda swarapet and Satyanarayanapuram of ward was a predominantly caste Hindu and Brahmin locality. This Kedareswarapet has been added to the Baptistpalem (16th ward) which was exclusively inhabited by

Christians and schedule castes.

3. Similarly to ward No. 11, which was P(sic) dominantly inhabited by vysyas was added a p(sic)tion of the 30th ward inhabited mostly by scheduled castes etc.

BOUNDARIES.

A comparison of the boundaries of was in 1956 and that carved in 1957 would show that the boundaries were more clear-cut in 1956 than 1957.

17th Ward.

1956

G. O. No. 674.

1957

G. O. No. 1976

Southern boundary : Ryves canal from the junction with Marupillai Chetty's Street to Railway Bridge on main canal.

South : - Start from the south-east corner (Besant Road) westwa(sic) along the right bank of Ryves canal to meet the bridge on Ryves canal near (sic) Station and go round Ranga Statue mound and then go eastward al(sic) Gopalkrishnayya Road unto the junction with G. N. T. Road, go southw(sic) along Bandar canal regulator bridge and then turn westwards along G. N Road, go upto its junction with Sivasankara Road and go along Sivasankara Road to meet railway line at Krishna Bridge.

23rd Ward.

East : - Masid Road and Museum Road from Ryves canal to BandarCanal.

East: Start from the left bank of Ryves canal opposite to north corner of Gollapudi Narasimha Rao's buildings and proceed southwards a the street to meet Annadana Samajam road. Crossing Annadana Samajam proceed further in Janda Street to meet Eluru road. Crossing Eluru road go a Venkateswara Rao street into Prakasam street, turn east and go along the street leading to the Court to meet Gopalareddy road to meet Rajarajeswaramma street to southwards along Rajarajeswaramma street to meet the left bank of Bandar canal.

24th Ward.

East : - Dr. Ramachandra. Rao Road. Murty street, straight line running to Mission Bungalow, P. W. D. Offices police parade grounds, Masulipatam-Hyderabad Road to Bandar canal.

East:- From the point of the left bank of Ryves canal opposite to junction of Annadana Samajam road and Veeramachaneni Gangadhara Rao Road to the

above road junction. Then crossing Annadana Samajam road proceed southwards in Veeramachaneni Gangadhara Rao Street upto G. N. T. Road. Then go eastwards along the G. N. T. road to meet the continuation road of Middi Sowbhagayarayudu road, go along the same road to meet Prakasam road then go eastwards along the same road to meet Dornakal mission road then go along. Dornakal mission road and the P. W. D. private road to meet Bandar road, go westwards along Bandar Road to meet the land leading to St. Anne's Hospital, go along the lane to meet the left bank of Bandar canal"

26. The Government Pleader filed the following statement giving the changes that were made in the redistribution of the wards and the circumstances under which they were made.

1. Total number of wards G. O. Ms. No. 674 (sic). A. dated 5-5-1956 were 30. Under G. O. Ms. No. 1976 L. A. dated 5-11-1957 they are also 30.(sic) So no change in the total number of wards.

2. The total strength for the council under the G. O. No. 674 dated 5-5-1956 was 36. Under G. O. No. 1976 it is also 36. No change.

3. (a) Under G. O. No 674. three seats were reserved for women and three seats for the scheduled caste. Under G. O. No. 1976 also the same umber of seats are reserved for both the classes.

(b) One seat was reserved for the scheduled castes in each of ward No. 6 and 14 under G. O. No. 674/56. No change now. The third seat was reserved in ward No. 30 under G. O. No. 674. Under G. O. No. 1976 it is reserved in ward No. 17 because the voting strength of the scheduled caste in that ward is 658. Voting strength of the scheduled castes in the present ward No. 30 is (sic)6. The congress and the elite of the town (sic)ggested reservation in wards Nos. 5, 15 and (sic).

(C) One woman seat was reserved in each of (sic)e wards Nos. 5, 20 and 23 under G. O. No. (sic)4. One seat is reserved in each of the wards Nos. 3, 6 and 24 under G. O. No. 1976. The (sic)ngress and elite of the town asked for reservation in ward Nos. 3, 21 and 24.

4. (a) There is no alteration of wards Nos. 4, 5, 6, 7, 8, 9, 10, 22, 28 and 29 under G. O. (sic). 1976.

(b) Modification in respect of wards Nos. 12 (sic)d 13 was made only in conformity with the proposals of the committee of which Sri T. V. S. (sic)alapathi Rao and T. Venkateswara Rao, the present petitioners were members.

(c) The boundaries of wards Nos. 15 and 27 (sic) fixed as in 1952.

(d) The congress and the elite of the town suggested alteration of wards Nos. 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14. 18, 20, 22, 23. 24, 25, 26, 27, and 30 (total 21 wards). The Government did (sic) agree to it in respect of ward Nos. 1, 4, 6, 7, 8, 9, 10, 14 and 22 (9 wards). In addition no (sic)nge was made in ward Nos.

5, 28 and 29. In (sic)ds Nos. 12, 13, 15 and 27 modification was (sic)de as stated supra. The proposals of the con(sic)ss in respect of wards Nos. 2, 3 and 11 were also accepted by the Government.

(sic) will be seen from the aforesaid statement (sic)t there was no alteration of wards Nos. 1, 4, (sic), 7. 8, 9, 10, 14, 22, 28 and 29, that the alteratives were made in respect of the other wards (sic)r the Government satisfied themselves on the (sic)s of the representations made to them and that in regard to some wards, reservations made to women and the scheduled castes were changed from one ward to another to give representation to that ward where the members of the scheduled castes or women as the case may be are of greater strength than in the other wards.

The proceedings show that on the representations made by the members of the public, the Inspector General of Local Administration called for suggestions of the Special Officer, and after receiving the suggestions he made recommendations to the Government who accepted them. The State Government has jurisdiction under S. 43 to divide the Municipality into wards and to determine the wards in which reserved seats should be set apart.

They have redistributed the wards in consultation with the commissioner and the Inspector General of Local Boards for the reasons mentioned by them. The said redistribution is purely an administrative act. It cannot be challenged except by alleging and establishing that the Government did it mala fide, capriciously or arbitrarily.

Though the last-minute change, which has the effect of changing the voting strength of the wards and shifting the special representation from one ward to another, may give rise to some suspicions it may also have been done in bona fide exercise of the power to rectify some obvious defeats before the elections are held. Once it is conceded that the modifications were made bona fide, it was necessary to do them quickly in view of the impending elections.

It has not been established that the modifications were made to increase the voting strength of the congress party in any particular ward or to decrease the strength of the rival parties in other wards. On the material placed before us it is not possible to hold that the Government acted mala fide or capriciously in exercising the power under S. 43 of the Act.

27. In the result, the petitions fall and are dismissed with costs. Advocate's fee Rs. 150/- in each.