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**(1986) 02 KAR CK 0044**

**In the Karnataka High Court**

**Case No : W. P. Nos 1602, 1879 and 2280 of 1986**

Town Municipal Council

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 11-02-1986

**Acts Referred:**

**Citation :** (1987) ILR (Kar) 1369

**Hon'ble Judges :** K.A. Swami, J

**Bench :** Single Bench

**Advocate :** B. Veerabhadrappe, M.N. Hegde and H. Subrahmanya Jois, for the Appellant; B.J. Somayaji, HCGP, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K.A. Swami, J.—In W.P. 1602/86 the petitioner No. 1 is a Municipal Council and petitioner No. 2 claims to be an Ex-Municipal Councillor. In W.P. 1879/86 the petitioner claims to be a resident of Koppa Town in Chickmagalur Dist. The petitioner in W.P. 2280/86 are citizens of India and they also claim to be rate-payers of Town Municipalities of Krishnarajapet and Bellur in Mandya Dist.

2. In W.P. 1602/86 there is an application filed by the petitioners seeking an amendment to the Writ Petition. By the amendment the petitioners want to add a prayer regarding the validity of Section 128 of Karnataka Act No. 20 of 1985 as amended by Karnataka Ordinance No. 19 of 1985 and also for issue of a writ in the nature of mandamus directing the Respondents not to implement the notifications issued pursuant thereto.

3. As in all these petitions the validity of Section 126 of the Karnataka Zilla Parishads, Taluk Panchayats Samithis, Mandal Panchayats & Nyaya Panchayats Act, 1983(Karnataka Act 20 of 1985) (hereinafter referred to as the Act) as amended by Karnataka Ordinance No. 16 and 19 of 1985 is challenged, the amendment sought for by the petitioners in W.P. 1602/86 is necessary. Accordingly, the application is allowed.

4. In all these petitions, the respondents have put in appearance through Sri Somayaji, learned Government Pleader, on the direction of the Court.

5. In all these petitions, the petitioners have sought for striking down Sub-section (1) of Section 128 of the Act as amended by Karnataka Ordinance No. 19 of 1985.

6. The main contention of the petitioners is that Subsection (1) of Section 128 of the Act, as substituted by Karnataka Ordinance No. 19 of 1985 does not contain any guideline for exercise of the power, thereunder therefore, it is bad in law inasmuch as it is violative of Article 14 of the Constitution; that the scope and object of the Act is only to convert the Village Panchayats and Town Panchayats into Mandal Panchayats, whereas by Sub-section (1) of Section 128 of the Act as substituted by Karnataka Ordinance No. 19 of 1985 the State Government is enabled to convert Municipal Councils into Mandal Panchayats, that it is nothing but retrograde step, inasmuch as the Municipalities are created because they are not the villages and satisfy the requirement of the Karnataka Municipalities Act, 1964, therefore, Subsection (1) of Section 128 of the Act empowers the State Government to exercise the power arbitrarily. It is also the case of the petitioners that no hearing is afforded to the Municipalities which are being converted into Mandal Panchayats, and as a result of such conversion the rights of the Councillors and the Municipal Councils are adversely affected, therefore, they ought to have been afforded an opportunity of hearing. Hence, it is submitted that even if Sub-section (1) of Section 128 of the Act as substituted by Karnataka Ordinance No. 19 of 1985 is held to be valid, the Notification issued thereunder without affording an opportunity of hearing is null and void and as such the impugned Notification issued thereunder without affording an opportunity of hearing is null and void and as such the impugned Notification which is produced as Annexure-C in W.P. 1602/86 is liable to be quashed.

7. On the contrary, it is submitted on behalf of the State by Sri Somayaji, learned Government Pleader, that Subsection (1) of Section 128 of the Act as substituted by Karnataka Ordinance No. 19 of 1985 is a conditional legislation, therefore, the question of affording an opportunity of hearing either to the Municipal Councils or to the Councillors does not arise ; that virtually the Municipal Councils, which have been converted into Mandal Panchayats are not at all affected except the change in their name inasmuch as the Municipal Councils which have been now converted will hereafter be known as Mandal Panchayats and the Councillors will also continue as members of the Mandal Panchayats until the expiry of their term and all the Rules and Regulations governing them will continue; therefore, it is submitted that they are not affected in any manner. Even otherwise, it is submitted that the question of affording an opportunity of hearing does not arise as they are not affected. It is also further submitted that the Act itself contains sufficient guidelines for the purpose of exercise of power u/s 128(1) of the Act inasmuch as the criteria for converting a Municipal Council into a Mandal Panchayat will be the same which are applicable to formation of villages into

Mandal Panchayats for which the minimum and maximum population as provided u/s 4 of the Act is the basis. In addition to this, the power is conferred upon the highest authority on the executive side viz., the State Government which is expected to exercise the power on consideration of all the relevant aspects. Therefore, there is no question of arbitrary exercise of the power. That as per the objects of the Act, the Mandal Panchayats are created for the purpose of entrusting to them the greater powers. In other words, it is submitted that with a view to decentralise the powers, Zilla Parishads and Mandal Panchayats are created and they are to be entrusted with all developmental works in the Districts to Zilla Parishads at the District level and to Mandal Panchayats at the Mandal level. Therefore, it is submitted that the Act is a progressive step taken towards decentralisation of power and to achieve speedy and effective rural development. Learned Government Pleader has relied upon the objects of the Act as enumerated in the preamble to the Act.

8. Having regard to the aforesaid contentions, the following points arise for consideration ;

1. Whether Sub-section (1) of Section 128 of the Act as substituted by Karnataka Ordinance No. 19 of 1985 is violative of Article 14 of the Constitution ?

2. Whether the Notification dated 17-1-1986 bearing No. RDP 237 VAC 85 published in the Karnataka Gazette on 17-1-1986, issued in exercise of the power under Sub-section (1) of Section 128 of the Act is bad in law in view of the fact that the same is issued without affording an opportunity of hearing to the Municipal Councils and the Councillors to whom the notification is applicable ?

POINT NO. 1 :

9. There is no doubt and it is a settled position in law that if an enactment vests power or authority whether it be an individual or a body or an executive or any other authority concerning the affairs of the State and affecting a person, groups of persons or a body corporate, without prescribing or providing guidelines or norms for exercise of that power, such a provision will be bad in law and it will be directly hit by Article 14 of the Constitution. But in such cases it is not only the provision that enables exercise of such power, is a deciding factor, but several other provisions of the enactment having a bearing on the exercise of such power and also the aims and objects of the statute and the policy underlying therein are required to be taken into consideration for the purpose of determining whether such a provision is hit by Article 14 of the Constitution. If on examining the aims and objects and the relevant provisions of the statute, in the instant case the Act, having a bearing on the exercise of power under the impugned provision and keeping in view the legislative policy embodied therein, the Court is not able to come to a conclusion that there is guideline provided for exercise of such power, such a provision is liable to be struck down. In the instant case, Sub-section (1) of Section 128 of the Act as substituted by Karnataka Ordinance No. 19 of 1985 reads thus :

"Notwithstanding anything in this Act, or any other law for the time being in force, the Government may, after previous publication, by notification, direct that the local area constituting any municipality shall, from such date as may be specified therein, (hereinafter referred to as the specified date), be a mandal and in respect thereof, on and from such specified date, the following consequences shall ensue namely ;-"

Thus, the aforesaid provision empowers the State Government convert the local area constituting any Municipality into a mandal from a specified date by notification. If it is not possible to hold that there is no other provision in the Act or the objects of the Act having a bearing on or governing, the exercise of this power probably the provision would be liable to be struck down as unconstitutional being violative of Article 14 of the Constitution. In the instant case as it will be pointed out hereinafter it is possible to hold that the power under Sub-section (1) of Section 128 of the Act is liable and is required to be exercised only in accordance with the objects contained in the Act and on the criteria laid down for creation of mandals.

10. In the State of Karnataka hiterto, the Village Panchayats and Taluk Boards were governed by the Karnataka Village Panchayats and Local Boards Act, 1959. On the coming into force of the Act, the Karnataka Village Panchayats and Local Boards Act, 1959, stands repealed. Similarly, the Municipal Councils in the State except Municipal Corporations are governed by the Karnataka Municipalities Act, 1964. This enactment is not repealed because all the Municipal Councils are not to be converted into Mandal Panchayats under the Act. It is only such of the Municipalities which are in exercise of the power under Sub-section (1) of Section 128 of the Act are directed to be constituted as Mandal Panchayats, cease to exist and in their place, Mandal Panchayats come into existence.

11. The preamble to the Act which contains the aims and objects of the Act and embodies the Legislative Policy and helps to interpret and understand the Act in the correct perspective is as follows :

"Whereas it is expedient to provide for the establishment in rural areas, of Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats to assign to them local government and judicial functions and to entrust the execution of certain works and development schemes of the State Five Year Plans to the Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and to provide for the decentralisation of powers and functions under certain enactments to those local bodies for the purpose of promoting the development of democratic institutions and securing a greater measure of participation by the people in the said plans and in local and governmental affairs and for purposes connected with and incidental thereto."

It is also necessary to refer to the statement of objects and reasons which led to the passing of the Act. The same is as follows :

"The Karnataka Village Panchayat and Local Boards Act, 1959 was brought into

force from 1st November 1959 and Village and Town Panchayats, Taluk Boards and District Development Councils were constituted under the provisions of the Act.

During 1977 the Government of India adopted a policy decision which accords the highest priority to Rural Development so as to increase agricultural production, create employment, eradicate poverty and bring about an all-round improvement in the rural economy. The Government considered that the maximum degree of decentralisation both in Planning and in implementation is necessary for the attainment of more objectives.

Accordingly, a committee under the Chairmanship of Sri Ashoka Mehta was set up to inquire into the working of the Panchayat Raj Institutions and to suggest measures to strengthen them so as to enable a decentralised system of planning and effective implementation of Development Programmes.

The Ashoka Mehta Committee examined the matter and recommended a two tier system of Panchayat Raj Institutions. They recommended the constitution of a Zilla Parishad as a fully elected body at the district level with a non-official chairman and the transfer of the entire District Administration except law and order to the control of the Zilla Parishad and the formation of the Mandal Panchayat by further grouping a population of 15,000-20,000. They also recommended the transfer of the functions of the TDB to the Mandal Panchayat and the abolition of both the TDBs and VPs.

Based on the recommendations of Sri Ashoka Mehta Committee this comprehensive Panchayat Raj Bill is proposed to consolidate and amend the laws relating to Panchayats and Taluk Boards and to provide for the constitution of Zilla Parishads and Mandal Panchayats in the State of Karnataka and also to make the Panchayat Raj Institutions more effective, really democratic and self-sufficient resulting in the genuine transfer of power and finances to the people."

Thus, from the statement of objects and reasons and the preamble to the Act it is clear that the Mandal Panchayats and Zilla Parishads are created for the purpose of giving highest priority to Rural Development so as to increase agricultural production, create employment, eradicate poverty and bring about an all round improvement in the rural economy, and also to provide maximum degree of decentralisation both in Planning and in implementation. In addition to this, the Act also provides for Nyaya Panchayats. On examination of the various provisions contained in the Act, it is also clear that wide financial powers have also been given to these bodies so that they can decide about the development of the area in all respects and execute the work. Thus, the Act is definitely a progressive step and it is brought into being with an avowed object of, ensuring development of rural areas of the State.

12. Chapter III of the Act provides for Establishment and Constitution of Mandal Panchayats. Section 4 which occurs in Chapter III of the Act provides for Declaration of Mandal and establishment of Mandal Panchayats. This Section is

also amended by Karnataka Ordinance Nos. 16 and 19 of 1985. Section 4(1) of the Act as amended by the aforesaid two Ordinances, provides that the Deputy Commissioner of the District subject to the general or special orders of the Government if he is of the opinion that it is expedient to declare he may declare any area comprising a village or group of villages having a population of not less than eight thousand and not more than twelve thousand to be a mandal. This declaration is required to be made only after previous publication of the same. The provisos to Sub-section (1) of Section 4 of the Act also further empower the Deputy Commissioner in respect of certain Districts, even to declare the village or villages having less than eight thousand population to declare it as a Mandal. The population figures that has been made a basis for the purpose of declaration of the Mandals are those that are available as per 1971 census. Thus, the Act provides that normally in the case of a village or group of villages having a population of not less than eight thousand and not more than ten thousand can be declared as Mandal. In special cases it is also open to declare a village or group of villages having a population of less than eight thousand as a Mandal. After the declaration of the area as a Mandal, the Mandal Panchayat is constituted as per Section 5 of the Act, which provides for determination of number of members to be elected to a Mandal Panchayat, reservation of the seats for Scheduled Castes and Scheduled Tribes proportionate to their population and reserving 25 per cent of the total number of the members of the Mandal Panchayats for women in every Mandal Panchayat. It also further provides that out of the seats reserved for women one seat shall be reserved for a woman belonging to Scheduled Castes or Scheduled Tribes. The Mandal Panchayat is made a body corporate as per Section 6 of the Act. The term of the Mandal Panchayat is for five years. The Act also further provides for establishment of Taluk Panchayat Samithis, consisting of members of the State Legislature representing a part or whole of the Taluk, members of the Zilla Parishad representing a part or whole of the Taluk, Pradhanas of the Mandal Panchayats in the Taluk, President of the Taluk Agricultural Produce Co-operative Marketing Society and Primary Land Development Bank and five members belonging to Scheduled Castes, Schedule Tribes, backward classes and one woman member co-opted by the resolution of the Taluk Panchayat Samithi and approved by the Zilla Parishad. At the District level, Zilla Parishad is constituted. It is a body corporate. It is composed of three category of members (i) elected, members (ii) associate member and (iii) other category of members as per Sections 139 and 140 of the Act. The functions and powers of the Mandal Panchayats are enumerated in Chapter IV of the Act, Very wide powers are given to Mandal Panchayats. Similarly, very wide powers are given to Zilla Parishads, Taluk Panchayat Samithis and Nyaya Panchayats. All these provisions read together go to show that the first three bodies have been empowered to take decisions regarding the developmental activities in the areas within their jurisdiction, and control and regulate the progress of the area and to ensure proper development. The powers conferred upon Zilla Parishad and Mandal Panchayats and functions and duties entrusted to them are so wide that almost

all the fields of development are covered. Thus, it is clear that the Zilla Parishads and Mandal Panchayats are created for the purpose of ensuring speedy and effective all-round development of the rural areas.

13. One of the criteria for creating a Mandal is the population of the area as per 1971 census. Local area is normally taken to be compact and contiguous area. In the Districts of Belgaum, Chikkamagalur, Dakshina Kannada, Dharwad, Hassan, Kodagu, Shimoga and Uttara Kannada, Mandal can be created in an area with a population of four thousand. In these Districts irrespective of population whenever it is found necessary as a special case the Government by Notification can create a Mandal for an area with a radius of eight Kilometers (diameter of sixteen Kilometers) from the Centre of a village. Thus, the guidelines for creating Mandal Panchayats are laid down in Section 4 of the Act.

14. Similarly, if a Town Municipal Council has to be converted into a Mandal Panchayat it is the population within the municipal limits that has to be taken into account as the basis. In order to find out whether the State Government has proceeded on any basis for the purpose of converting Town Municipal Councils into Mandal Panchayats, learned Government Pleader was directed to file a memo regarding the population of each one of the Municipalities which have been converted into Manual Panchayats. By the impugned Notification about 71 Town Municipal Councils have been converted into Mandal Panchayats. Learned Government Pleader has filed a memo dated 8-2-1986 giving the names of the Municipalities and the population of each of the Municipalities as per the 1971 census. On going through the population figures, it is noticed that there are some municipalities the population of which is less than three thousand and there is no Municipality whose population is more than ten thousand. Thus, the State Government has followed the criteria laid down in Section 4 of the Act, in convening some of the Town Municipal Councils into Mandal Panchayats. In this regard, it is relevant to notice that Chapter VI of the Act in which Section 128 occurs is a complete enactment by itself. It contains eight Sections. The very heading of Chapter VI indicates that it contains provisions for conversion of a Municipality, or a Notified Area Committee into a Mandal Panchayat and for the Amalgamation and Division of Mandal Panchayat. If Chapter III relates to Establishment and Constitution of Mandal Panchayats in the area comprising village or group of villages, Chapter VI provides for conversion of municipalities and Notified Area Committees in to Mandal Panchayats and for the Amalgamation and Division of Mandal Panchayats. Section 127 of the Act provides a key for interpretation of that Chapter in as much as it defines for the purpose of Chapter VI, Municipal Council, Notified Area Committee, Town Board or Sanitary Board and Mandal Panchayat. Section 128 provides for conversion of Municipalities into Mandals and the consequences flowing therefrom. Section 129 provides for term of office of members of interim Mandal Panchayat and their powers. Section 130 provides for effect of amalgamation of Mandals. Section 131 provides for the effect of division of Mandal. Section 132 provides for dissolution and reconstitution of Mandal Panchayat on alteration of limits of Mandal. Section 133

provides for vesting of property etc., of Mandal Panchayat which has been dissolved and reconstituted or established as Mandal Panchayat. Lastly, Section 134 provides for the removal of difficulties arising in giving effect to the provisions of Sections 130, 131, 132 and 133 and the State Government is empowered to remove the difficulties by publication of the order in the Official Gazette as and when the occasion arises. Thus, creation and establishment of, Mandal Panchayat on conversion of the Municipal Council into a Mandal Panchayat and amalgamation and division of Mandal Panchayat are provided by Chapter VI. The tenure and powers of the Mandal Panchayats, as it is already pointed out, Chapter IV of the Act deals with them. Therefore, the contention of the petitioners that the Act does not provide a criterion or criteria or guidelines for exercise of the power, cannot at all be accepted. This is not a case in which it is possible to hold that the Act does not contain any criterion. The criteria provided for constitution of Mandal Panchayats are also the criteria for conversion of Municipality into Mandal Panchayat. Therefore, the contention of the petitioner that it is possible that the State Government may convert any Municipality into a Mandal Panchayat and it may even be possible to convert City Municipal Councils and Corporations into Mandal Panchayats, therefore, Section 128(1) of the Act enables the State Government to exercise the power in a very arbitrary manner, hence it is opposed to Article 14 of the Constitution, cannot at all be accepted. The power u/s 128(1) of the Act has to be exercised in the light of and on the basis of the guidelines contained in Section 4 of the Act. The Municipalities which have been converted as Mandals cannot be considered bigger or better, than villages having regard to the population of each one of them. They can, at the most, be termed as bigger villages. The memo filed by the State is as follows ;

#### MEMO

The population (According to 1971 census) of 71 Municipalities which have been constituted as Mandals, by the Government under Notification No, RDP 237 VAC 85, dated 17-1-1986, are as follows :

Sl. No. Municipalities Population according to 1971 census

1 2 3

Bangalore District

1. Nelamangala 8781

2. Kengeri 3611

Bellary District

3. Kudligi 8755

4. Saadur 9258

Bidar District

5. Aurad 6633

Bijapur District

6. Bilgi 7629

7. Kamatgi 9144

Chickmagalur District

8. Koppa 4238

9. Mudagere 4980

10. Narasimharajapura 5911

11. Sringeri 3739

12. Ajjampura 6716

Chitradurga District

13. Mayakonda 3897

14. Holalkere 7776

15. Hosadurga 8753

16. Jagalur 7573

17. Molakalmuru 6347

Dakshina Kannada District

18. Belthangadi 4595

19. Sullia 7107

Dharwad District

20. Hirekerur 8463

21. Kalaghatgi 6109

22. Shirahatti 9278

Ralchur District

23. Deodurg 9674

24. Kushtagi 9048

25. Yelaburga 6175

Shimoga District

26. Channagiri 9655

27. Honnali 8413

28. Nyamathi 6531

29. Hosanagar 3841

30. Shiralakoppa 9262

31. Kumsi 4680

32. Sorah 5439

Tumkur District

33. Gubbi 9537

34. Koralagere 5794

35. Pavagada 9004

36. Turuvekere 6536

37. Adityapatna 1577

38. Y.N. Hosakote 6177

Uttara Kannada District

39. Mundagod 6898

40. Siddapur 9906

41. Yellapur 6275

Hassan District

42. Alur 3720

43. Arakalagud 8728

44. Banavara 4404

45. Sravanabelagola 3627

46. Konanur. 5533

Kodaga District

47. Somawarpet 6251

48. Kushalnager 5000

49. Shuntikoppa 1499

50. Sanivarasantha 2003

51. Kodlipet 2059

52. Virajpet 9782

53. Ponnampet 3265

54. Gonikoppal 2757

Kola District

55. Bagepalli 5400

56. Gudibanda 5085

57. Srinivasapur 8737

58. Manchenahalli 4863

Mandya District

59. Nagamangala 8583

60. Krishnaraja pet 9631

61. Melkote 2730

62. Belakawadi 5537

63. Bellur 4323

Mysore District

64. Heggadadevanakote 4392

65. Sargur 5587

66. T. Narasipur 6820

67. Periyapatna 7411

68. Yelandur 5132

Gulbarga District

69. Afzalpur 9309

70. Chincholi 7380

71. Jewargi 5698

In the view I take on the interpretation of the provisions of the Act and more especially Section 4 read with Section 128 (1) of the Act it is not possible to hold that Sub-section (1) of Section 128 of the Act is violative of Article 14 of the Constitution.

15.1. Learned Counsel appearing for the petitioners have relied upon several decisions. I now proceed to consider the same.

15.2. The following decisions are relied upon by learned Counsel for the petitioners :

1960CriLJ671, [1962]2SCR169, [1962]2SCR659, [1967]1SCR1012,  
(1979)IILLJ217SC, [1980]2SCR260, [1981]1SCR746, (1983)ILLJ104SC,  
[1985]2SCR129 and AIR1986SC180.

On behalf of the State Sri Somayaji, learned Government Pleader has relied upon [1981]1SCR206, [1962]2SCR659 and (1979)IILLJ217SC .

15.3. In State of Maharashtra Vs. Mrs. Kamal Sukumar Durgule and Others, the validity of the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975 was considered. On examination of the various provisions of the Act, the Court came to the conclusion that the Act did not contain any provision whatsoever which was directed at ensuring public health and sanitation or the peaceful life of the inhabitants of the concerned locality which was the true purpose and object of the Act. It was also further held that the last item in the schedule to that Act included public roads and highways in Greater Bombay which could not be regarded as constituting grave danger to public health, sanitation or peaceful life of the citizens. The Court was also of the view that it was not clear from the Statement that the evil which was sought to be remedied by the Act was not danger to the public health or sanitation or to the peaceful life of the inhabitants of the metropolis of Bombay. On the whole the Court was of the view that the Act did not provide for any safeguard against the arbitrary exercise of discretion conferred upon the competent authority to declare a land as a vacant land. The Court even went into the Rules framed under the Act and came to the conclusion that even the Rules also did not provide for safeguard against the arbitrary exercise of discretion. Accordingly it was held that the Act was violative of Article 14 of the Constitution. Consequently, the Judgment of the High Court of Bombay was confirmed.

15.4. It emerges from the aforesaid decision of the Supreme Court that before declaring any provision of the Act as violative of Article 14 of the Constitution on the ground that it does not provide for safeguard against the arbitrary exercise of the discretion conferred upon the authority empowered to enforce the enactment, the Court is required to examine the relevant provisions of the Act and the statement of objects and reasons and the intendment of the enactment to find out whether any guidelines or safeguards are provided for exercising the discretionary power conferred upon the authority by the enactment. It is already pointed out on examination of the various provisions of the Act in question that there are guidelines and safeguards provided for exercise of the power under Sub-section (1) of Section 128 of the Act. Therefore, examination of the validity of Section 128(1) of the Act, made as stated above, is in conformity with this decision, State of Maharashtra Vs. Mrs. Kamal Sukumar Durgule and Others, .

16.1. In the case of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, the enactment namely the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 was considered. It enabled the Central Government to include "any other disease or condition which may be specified in the Rules made under the Act." On examination of the provisions of the enactment, the Supreme Court held that it conferred uncanalised and uncontrolled power on the executive, therefore it was

bad in law.

16.2. In the Case of LaLa Hari Chand Sarda Vs. Mizo District Council and Another, Section 6 of the Lushai Hills District (Trading by non-Tribals) Regulation was held to be bad in law because it did not provide a criterion for the executive committee to refuse to renew any licence granted to a non-tribal trader after the commencement of the Regulation. The Supreme Court even went into the Rules framed under the Regulation, and found that Rules also did not provide any criterion. Accordingly, it was held that the provision was bad in law being violative of Article 19(1)(g) of the Constitution.

17. In the case of Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others, it was held that one of the aspects of Rule of law was that every executive action, if it were to operate to the prejudice of any person, must be supported by some legislative authority. That such a law would be void, if it discriminated or enabled an authority to discriminate between the persons without just classification. It was also further held that what a Legislature could not do, the executive could not obviously do. An arbitrary prevention of a person from travelling abroad would certainly affect him prejudicially. Thus, the said decision was concerned with the arbitrary exercise of power in relation to personal liberty. For the exercise of it no guidelines were laid down. Therefore, it was held that such a provision was bad in law.

18. In the case of D.S. Nakara and Others Vs. Union of India (UOI), regarding the scope, content and meaning of Article 14 of the Constitution it was held thus :

"The scope, content and meaning of Article 14 of the Constitution has been the subject matter of intensive examination by this Court in a catena of decisions. It would, therefore, be merely adding to the length of this judgment to recapitulate all those decisions and it is better to avoid that exercise save and except referring to the latest decision on the subject in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, from which the following observation may be extracted :

".... what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as, well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

The decisions clearly lay down that though Article 14 forbids class legislation, it

does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group ; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question. [See *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, ]. The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be nexus i.e., causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

As it is already pointed out in the instant case the guidelines have been laid down and the exercise of power under Subsection (1) of Section 128 of the Act is controlled by the criteria laid down u/s 4 of the Act. It is not open to the State Government to convert such Municipalities, the population of which is more than twelve thousand, into Mandal Panchayats. Therefore, the aforesaid decision is of no assistance to the petitioners.

19. In the case of *S.L. Kapoor Vs. Jagmohan and Others*, the Supreme Court was concerned with the action taken under Sub-section (1) of Section 238 of the Punjab Municipal Act. The New Delhi Municipal Committee was superseded in exercise of the power under Sub-section (1) of Section 238 of the Punjab Municipal Act by the Government. Therefore, in that case invalidity of a provision of an enactment being violative of Article 14 of the Constitution was not a subject matter for consideration. It was only the validity of the action taken in exercise of power under the enactment was considered and held that the exercise of power was arbitrary. As such it was the action of the Government that was struck down. Therefore, the said decision is not relevant to the point at issue.

20. In the case of *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, the Supreme Court considered the validity of Section 55 of the Constitution of India (42nd Amendment) Act 1976. In that case the Court was concerned with the fundamental rights and specially those guaranteed under Articles 41 and 19 and the effect of Articles 31C and 43 of the Constitution on those rights. It was held that both those provisions were to be read harmoniously inasmuch as it was pointed out that the fundamental rights constituted basic structure of the Constitution. It was also further held that any interpretation which has the effect of destroying the guarantees given by Part III in order, purportedly, to achieve the goals of Part IV is plainly to subvert the Constitution by destroying its basic structure. Therefore, it is clear that the said decision is not on the point.

21. In the case of *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, the Supreme Court was concerned with

the executive act in the matter of disposal of Contracts and it was held therein that disposal of the contract was violative of Article 14 of the Constitution as the authority did not adhere to the criteria which it had laid down for the purpose of acceptance of the contract. That being so, the said decision also is not on the point.

22. In the case of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, it has been held by the Supreme Court that Sections 314, 312(1), 313, 313(1)(a) of the Bombay Municipal Corporation Act are valid. One of the provisions therein provide that without a notice an encroachment on the public road can be removed. Though the said decision contains several propositions of law based upon Articles 14, 16, 19 and 21 and 226, but it is not possible to hold that the said decision has any bearing on the question with which we are concerned.

23. In the case of *P.J. Irani Vs. The State of Madras*, it has been held by the Supreme Court that for the purpose of finding out whether a particular provision in the enactment is violative of Article 14 of the Constitution, because the provision as such does not contain or prescribe guidelines for exercise of the power, it has to be first examined by the Court with reference to several provisions of the Act and also those challenged including the preamble to it in order to find out any guidelines are provided by the Act for the purpose of exercise of such power. Paras 12 and 13 of the decision are relevant in this regard and the same are as follows ;

"We find ourselves in complete agreement with the approach and conclusion of the Learned Judges of the High Court to the consideration of the question of the constitutional validity of Section 13 of the Act.

The meaning and scope of Article 14 of the Constitution has been the subject of several decisions of this Court, a number of which have been considered by us in some detail in *Jyoti Pershad v. Administrator of Union Territory* (Writ Petition 67 etc., of 1959) in which we have pronounced Judgment today In view of this we find it unnecessary to traverse the same ground except to say that in the case before us enough guidance is afforded by the preamble and operative provisions of the Act, for the exercise of the discretionary power vested in Government so as to render the impugned Section not open to attack as a denial of the equal protection of the laws. In our judgment, the provision now impugned belongs to the class numbered (v) in the analysis of the decision on Article 14 by Das C.J. in *Ram Krishna Dalmia v. Justice Tendolkar* (1).

"A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does

not proceed on or follow such policy or principle,.... the executive action but not the statute should be condemned as unconstitutional"

Possibly even a more apt precedent is that furnished by *Sardar Inder Singh v. State of Rajasthan* (1) where, among others, the validity of Section 15 of the Rajasthan (Protection of Tenants) Ordinance, 1949, was upheld. That Section authorised the Government to exempt any person or class of persons from the operation of the Act, and it was urged before this Court that this offended Article 14. This argument was repelled, observing :

"It is argued that that Section does not lay down the principles on which exemption could be granted, and that the decision of the matter is left to the unfettered and uncanalised discretion of the Government, and is therefore repugnant to Article 14. It is true that that Section does not itself indicate the grounds on which exemption could be granted, but the preamble on the Ordinance sets out with sufficient clearness the policy of the Legislature ; and as that governs Section 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided. Vide *Harishanker Bagla v. The State of Madhya Pradesh* "

The Learned Judges of the High Court were therefore, correct in their conclusion that Section 13 of the Act was constitutionally valid but that individual orders of Government passed under that Section could be the subject of judicial review in the manner already indicated.

24. In the case of *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, the provisions of Section 29 of the Bombay Agricultural Produce Markets Act, 1939 were considered. It empowered the State Government, by a notification published in the Official Gazette, to add or amend or cancel any of the items of agricultural produce specified in the Schedule to the Act. The Court took the view that though the Section did not provide any criterion for exercise of the power, but there were sufficient guidelines contained in the various provisions of the Act itself. Therefore, it was held that the provision was not hit by Article 14 of the Constitution. It was also further noticed that the power was given to the State Government and not to any inferior authority.

It is also relevant to notice that In *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, Section 60 of the Madras Co-operative Societies Act, 1932 has been held to be valid. Section 60 of that Act empowers the State Government to amend the Act in its operation as applicable to various Co-operative Societies. No criterion is laid down in the Section. Even then the Supreme Court has held it valid because the said Act contains sufficient guidelines for the purpose of exercise of power u/s 60 of the Act. Therefore, having regard to the aforesaid two decisions of the Supreme Court in *P.J. Irani Vs. The State of Madras*, and *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, and also the decision in the aforesaid *The Registrar of Co-operative Societies, Trivandrum and Another*

Vs. K. Kunjabmu and Others, and the conclusion reached by me on examining several provisions of the Act including the preamble that the Act contains sufficient guidelines for exercise of power under Sub-section (1) of Section 128 of the Act, I hold that Sub-section (1) of Section 128 of the Act is not violative of Article 14 of the Constitution. Accordingly, Point No. 1 is held against the petitioners.

Point No. 2.

26. No doubt the Municipalities have been converted into Mandal Panchayats. As per the provisions contained in Clauses (a) to (j) of Sub-section (1) of Section 128 of the Act, neither the powers of the Municipalities which have been converted into Mandal Panchayats nor the term of the Councillors have been in any manner affected. The Councillors become the members of the interim Mandal Panchayats and they can continue till the expiry of their term of office. The area of the Municipality is also not reduced. Thus, except the change in the name of the local authority from that of the Municipality to Mandal Panchayat the conversion has not in any way affected the Municipalities, This itself is sufficient to hold that no question of affording an opportunity of hearing arises in the case. However, there is one another approach to the problem. Sub-section (1) of Section 128 of the Act as contended by learned Government Pleader is a conditional legislation. It enables the State Government to exercise the power in the case of Municipalities by previous publication of the notification in the Official Gazette. The Supreme Court in the case of the Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, has considered the validity of Section 3 of U.P. Town Area Act, 1914. The said provision reads as follows :

"3. Declaration and definition of Town areas :

1) The State Government may, by notification in the Official Gazette :

a) declare any town village, suburb, bazar or inhabited place to be town area for the purpose of this Act, and may unite, for the purpose of declaring the area constituted by such union to be a town area, the whole or a portion of town, village, suburb, bazar or inhabited place with the whole or a portion of any other town, village, suburb, bazar or inhabited place ;

b) define the limits of any town area for the like purposes ;

c) include or exclude any area in or from any town area so declared or defined ;  
and

d) at any time cancel any notification under this section ;

Provided that an agricultural village shall not be declared, or included within the limits of a town area ;

2) The decision of the State Government that any inhabited area is not an agricultural village within the meaning of the proviso to Sub-section (1) of this section shall be final and conclusive, and the publication in the official Gazette of

a Notification declaring such area to be a town area or within the limits of a town area shall be conclusive proof of such decision."

The aforesaid provisions as contained in Section 3 of U.P Town Area Act and those contained in Section 128 (1) of the Act are substantially similar. Such provisions have been held by the Supreme Court as a conditional legislation and it has been further held that the principle of "Audi alteram partem" does not apply to such a case. The said decision equally applies to the case on hand. Therefore, it is not possible to hold that in view of the fact that no opportunity of hearing is afforded to the Municipalities before converting them into Mandal Panchayats it has in any way affected the validity of the Notification in question.

27. Sri Subramanya Jois, learned Counsel for the petitioners in W.P. 2280/86 has also urged that Sub-section (1) of Section 128 of the Act is violative of Article 40 of the Constitution. Article 40 of the Constitution which occurs in Chapter IV of the Constitution relating to Directive Principles of State Policy, directs the State to take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government. It may be pointed out that the Act in question is intended to implement the direction contained in Article 40 of the Constitution. The Act in question has been enacted, to implement the direction contained in Article 40 of the Constitution. As revealed from the statement of objects and reasons to which a reference has already been made, the Act is a step in this direction. The Mandal Panchayats Zilla Parishads, Taluk Panchayats Samithis have been entrusted with several powers and functions which are directly connected with the all round development of the area. Therefore, it is not possible to hold that Sub-section (1) of Section 128 of the Act is in any way violative of Article 40 of the Constitution. In addition to this, it has also to be remembered that provisions contained in Chapter IV of the Constitution are only the Directive Principles. They cannot be placed in par with the Fundamental Rights guaranteed in Chapter III of the Constitution.

28. There is yet one more contention of Sri Subramanya Jois which has remained to be considered. It is contended that Mandals are created u/s 4 of the Act by the Deputy Commissioner on publication of the Notification in the Gazette, whereas sub-section(1) of Section 128 of the Act empowers the State Government to create Mandals. Secondly, it is only the villages that have to be created as Mandals as per Section 4 of the Act and not a Municipal Council. Therefore, there is repugnancy between the two provisions. It is submitted that Sub-section (1) of Section 128 of the Act is inconsistent with the provisions contained in Section 4 of the Act. It is not possible to accept this contention. Section 4 of the Act deals with the local area comprising the villages, whereas Sub-section (1) of Section 128 of the Act deals with the local area comprising the Municipalities. As the Municipalities are governed by a different enactment and cannot be classed with the Village Panchayats, the power for conversion of the Municipalities into Mandals has been given to the higher authority viz., the State Government,

whereas, in respect of the conversion or creation of the Mandals in the local area comprising the villages has been given to the Deputy Commissioner. The object sought to be achieved by both the provisions is the same viz. creation of Mandals. That being so, it is not possible to hold that there is any conflict between the two provisions nor Sub-section (1) of Section 128 of the Act is inconsistent with Section 4 of the Act. It is not uncommon to entrust power to different authorities in respect of different areas. Therefore, it is not possible to accept the contention of Sri Subramanya Jois.

29. All the contentions urged by the petitioners fail. No other contention is urged.

30. For the reasons stated above, it is held that Sub-section (I) of Section 128 of the Act is not violative of Article 14 of the Constitution and it is valid. The Notification dated 17-1-1986, bearing No. RDP 237 VAC 85, published in the Karnataka Gazette on 17-1-1986, issued in exercise of power under Sub-section (1) of Section 128 of the Act is also valid and it does not call for interference. Accordingly, the Writ Petitions fail and the same are dismissed.