

M. Pramila and Others Vs. State of Karnataka, Urban Development Department and Others

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Court : Karnataka

Decided On : Nov-27-2015

Judge : Raghvendra S. Chauhan

Appeal No. : Writ Petition Nos. 37111-37115 of 2015 c/w Writ Petition Nos. 38001-38002 of 2015, 38074, 37949-37951, 38522-23, 40453, 39123 & 42084 of 2015 (LB-ELE)

Appellant : M. Pramila and Others

Respondent : State of Karnataka, Urban Development Department and Others

Judgement :

(Prayer: These writ petitions are filed praying to issue a writ declaring Sec.7 of the Karnataka Municipal Corporations Act, 1976 insofar as it enables the member of the house of the people, MLA, members of legislative council and members of council of states to vote in the meeting called for the purpose of the electing the offices of mayor, dy. mayor and other office bearers of the corporation, as unconstitutional and issue a writ declaring that the issues relating to election of mayor and deputy mayor more particularly and the election of chairman and members of the standing committees has to be done only on the basis of the votes cast by the directly elected councillors and not on the basis of the votes given by the MP, MLA, MLCS and etc.

These writ petitions are filed praying to declare that ex-officio members under Section 7(C) and (D) do not have right to vote in the election of the mayor/dy. mayor and standing committees and etc., this wp filed praying to declare Article 242R of the constitution and the seventy third amendment of the constitution 1992 as violative of the basic structure of the constitution, as provided for in the decision of Kesavananda Bharati Vs. State Of Kerala [1973] 4 SCC 225 in so far as it allows voting rights for MPS, MLC'S AND MLA'S in functioning of the municipal corporation, which is also extended and allowed in the election for the post of mayor, deputy mayor and chairpersons of standing committees and etc.

These wps are filed praying to declare Section 7 of the Karnataka Municipal Corporation Act, 1976 in so far as it enables the member of the house of the people, MLA, members of legislative council and members of council of states to vote in the meeting called for the purpose of the electing the offices of mayor, deputy mayor and other office bearers of the corporation, as unconstitutional and etc.

these wps are filed praying to issue an order or direction or writ in the nature of writ of quo-warranto against respondent nos.8 and 9 being councilor/corporator of bbmp as they are voters in more than one constituency which bars under Section 17 OF RP Act, 1950 and direct the R-1 TO 7 more particularly R-4 and 5 to delete the names of R-8 and 9 from the list of voters of BBMP for the ensuing election to mayor/dy.mayor/standing committee scheduled to be held on 11.9.2015 as per representation dt.8.9.2015 at annexure-'e' and etc.)

1. The heat and dust of the Mayor's and Deputy Mayor's elections for the Bruhat Bengaluru Mahanagara Palike ('the BBMP', for short) have raised a host of intriguing legal issues before this Court:

1) Whether Article 243-R of the Constitution of India is unconstitutional, as it violates the purpose for which the 74th Amendment of the Constitution of India was brought into force or not?

2) What is the inter-relationship between Article 243-R of the Constitution of India, and Sections 7 and 10 of the Karnataka Municipal Corporation Act, 1976, ('the Act'

for short)?

3) In the election for the posts of Mayor and Deputy Mayor whether the Members of Parliament ('MPs', for short), Members of Legislative Assembly ('MLAs', for short), and the Members of Legislative Council ('MLCs', for short) are allowed to vote under Sections 7 and 10 of the Act or not ?

4) If these two provisions do permit them to vote in the said election, whether these two sections are in violation of Article 243-R of the Constitution of India or not, and thus unconstitutional ?

5) If there is a conflict between Section 7 of the Act and Rule 72-D of the Karnataka Municipal Corporations (Election) Rules, 1979 ('the Election Rules', for short), on the one hand, and Section 10 of the Act on the other hand, whether the word "Corporation" used in Section 10 of the Act should be read down to mean "only the elected councilors" so as to harmonize the provisions of law or not?

6) Whether the word "Councilor" used in Section 7 of the Act, and Rule 72-D of the Election Rules should be confined only to "the directly elected councilors" or not ?

7) If the word "Councilor" used in Rule 72-D of the Election Rules is confined only to "the directly elected councilors", whether the said provision is in conflict with Section 10 of the Act or not?

8) If the word "Councilor" used in Rule 72-D of the Election Rules is expanded to include the MP's, the MLA's and the MLC's, whether the said rule is in violation of Article 243-R of the Constitution or not?

9) Whether the elections for the posts of Mayor and Deputy Mayor of BBMP held on 11-9-2015 are legal or not?

2. Raising these legal issues, eight writ petitions have been filed before this Court. While Writ Petition Nos. 37111-37115/2015, 40453/2015, 39123/2015, have challenged the constitutional validity of Article 243-R of the Constitution of India, Writ Petition Nos. 37111-37115/2015, 40453/2015, 37949-951/2015, 42084/2015, 39123/2015, 38001/2015 and 38074/2015 have challenged the constitutional

validity of Section 7 and Section 10 of the Act. Writ Petition Nos. 38522-523/2015 has been filed questioning the participation of two MLCs in the elections for the posts of Mayor and Deputy Mayor to be held on 11.09.2015. Meanwhile, Writ Petition Nos.42084/2014 and 40453/2015 have challenged the actual election held for the posts of Mayor and Deputy Mayor of BBMP on 11.09.2015. Since all the petitions arise out of the same set of facts, as the legal submission overlap, at times, and as all of them are inter-related, therefore, all these petitions are being decided by this common judgment.

3. Within a narrow compass, the factual matrix of these cases is being taken from W.P.No.37111-37115/2015 and from W.P. No. 38074/2015. Bengaluru is divided into 198 wards for the purpose of holding election to the BBMP. Thus, the BBMP consists of 198 directly elected councilors. The election for the post of councilors, for the term 2015-16 to 2020-21, was held on 20.08.2015; the election results were declared on 25-8-2015. The Bharatiya Janata Party ('the BJP', for short) won 100 seats out of 198 seats. The Indian National Congress Party ('the Congress', for short) won 76 seats; the Janata Dal (S) ('the JDS', for short), 14 seats; Socialist Democratic Party of India ('SDPI', for short), 1 seat; the independents, 7 seats. Since the BJP had won 100 seats out of 198 seats, it claimed that it had won the majority of the seats. Thus, it was hopeful that it would win the election for the posts of Mayor and Deputy Mayor for BBMP. However, by notice dated 1-9-2015, the MPs, the MLAs and the MLCs, who total 62 members, were permitted to vote in the election for the posts of Mayor and Deputy Mayor. Thus, the Electoral College consisted of 260 members. In such a scenario, the equation could be different for the BJP. Under these circumstances, W.P.Nos. 37111-37115/2015, 38522-523/2015, 37949-951/2015, 39123/2015, 38001/2015 and 38074/2015 were filed prior to holding of the election for the posts of Mayor and Deputy Mayor.

4. By order dated 09.09.2015 this court permitted the holding of the election on 11.09.2015 for the posts of Mayor and Deputy Mayor. But this court made it amply clear that the election for the said two posts would be subject to the decision of these cases.

5. The elections for the posts of Mayor and Deputy Mayor were held on 11.09.2015. The Electoral College consisted not only of the 198 directly elected councilors, but also consisted of 8 MPs from the Rajya Sabha, 5 MPs from the Lok Sabha, 28 MLAs, and 21 MLCs. Therefore, the total number of members of the Electoral College was 260. Thus, any party, or parties having 131 or more votes in its/their favour would have the majority of the votes for the posts of Mayor and Deputy Mayor.

The break-up of the voting is as under:

(Table ?)

6. The combination of the Congress (100), the JD(S) (21), the SDPI (1) and of the independent candidates (10) totaled 132 votes. A perusal of the chart, given above, clearly reveals that a single vote cast by one independent candidate, an MLC, in favor of the Congress, tipped the scale in favor of the Congress and its allies. Since the BJP lost the election for the posts of Mayor and Deputy Mayor, W.P.Nos.42084/2014 and 40453/2015 were filed immediately after the election was over. The said writ petitions have challenged the validity of the election for the said posts. Hence, these eight petitions before this court.

7. Before setting out the contentions of the parties, it would be fruitful to first quote the relevant provisions of the Constitution of India, of the Act, and of the Election Rules. For, the contentions raised by the learned counsel for the parties revolve around these relevant provisions of the law.

8. Article 243-R of the Constitution of India is as under:

243-R. Composition of Municipalities - (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide a) for the representation in a Municipality of

- (i) persons having special knowledge or experience in Municipal administration;
- (ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;
- (iii) the members of the Council of States and the members of the Legislative Council of the State registered electors within the Municipal area;
- (iv) the Chairpersons of the Committees constituted under clause (5) of article 243-S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality Section 2(7) of the Act defines the word 'Councilor' as under:

Section 2 (7): "Councilor" means a Councilor referred to in Section 7.

Section 7 of the Act prescribes the Constitution of the Corporation. The relevant portion of Section 7 is as under:

7. Constitution of the Corporation - (1) The Corporation shall consist of,-

(a) such number of elected councilors not being less than thirty and more than two hundred as the Government may, by notification determine;

(b) not exceeding ten persons of the total number of councilors in the case of Bruhat Bangalore Mahanagara Palike and not more than five persons in case of other City Corporations nominated by the Government from amongst the residents of the city,-

(i) who are persons having special knowledge and experience in municipal administration or matters relating to health, town planning or education; or

(ii) who are social workers;

(c) the members of the Houses of People and the members of the State Legislative Assembly representing a part or whole of the city whose constituencies lie within the city 2 [x x x];

(d) the members of the Council of State and State Legislative Council who are registered as electors within the city:

Provided that the persons referred to in clause (b) shall not have right to vote in the meetings of the Corporation.

(2) XXXXXXX

a) XXXXXXX

(b) XXXXXXX (3) XXXXXXX (4) XXXXXXX (5) XXXXXXXX (6) XXXXXXX Section 10 of the Act deals with the election of the Mayor and Deputy Mayor. The relevant portion is as under:

10. Mayor and Deputy Mayor (1) Subject to the provisions of subsection (1A) the Corporation shall, at its first meeting after a general election of councilors and at its first meeting in the same month in each year thereafter, elect,-

(a) one of its councilors [referred to in clause (a) of sub-section (1) of section 7] to be the Mayor, and

(b) one other councilor [referred to in clause (a) of sub-section (1) of section 7] to be the Deputy Mayor.

(1A) XXXXXXXXX

(a) XXXXXXXXXX

(b) XXXXXXXXXX

(c) XXXXXXXXXX (2) XXXXXXXXX (2-A) XXXXXXXX (3) XXXXXXXXX (4) XXXXXXXXX (5) XXXXXXXXX (6) XXXXXXXXX (7) XXXXXXXXX

Rule 72-D of the Election Rules deals with the procedure in contested and uncontested election for the posts of Mayor and Deputy Mayor, Members of the Standing Committee, and the Chairman of the Standing Committee. The said provision is as under:

72-D Procedure in contested and uncontested elections.- (1) After the time fixed for withdrawal is over, if there is only one candidate who has been validly nominated, and had not withdrawn his candidature in the manner and within the time specified, the Presiding Officer shall forthwith declare such candidate to be duly elected as Mayor.

2) If the number of candidates who have been validly nominated and who have not withdrawn their candidature are more than one, then the Presiding Officer shall proceed to conduct the election as hereinafter provided.

(3) Votes shall be taken by show of hands and the Councilors voting for and against any candidate shall record their votes in the Proceedings register, by signing it or by affixing the left hand thumb impression at the appropriate column.

(4) Any member present at the meeting may refrain from voting if he so chooses.

(5) After voting by all the Councilors, present and wishing to vote, the Presiding Officer shall declare that the candidate to whom the highest number of valid votes have been given has been duly elected.

(6) When an equality of valid votes is found to exist between any two or more candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the Presiding Officer shall forthwith decide between those candidates by lot, in such manner as he may determine, and proceed as if the candidate on whom the lot falls has received an additional vote. He shall thereafter declare the candidate on whom the lot falls to have been duly elected.

(7) The Presiding Officer shall cause a record of the minutes of the meeting which shall contain the names of all the Councilors present and in the case of a division the manner of their voting including abstentions. The minutes shall be signed by the Presiding Officer as well as the Councilors present. The minutes shall be made

available to any Councilor for inspection."

9. Mr. Ashok Haranahalli, the learned Senior Counsel in W.P.No.37111-37115/2015, has challenged the constitutional validity of Article 243-R of the Constitution of India itself. The learned Senior Counsel has raised the following contentions before this court: firstly, prior to the 74th Amendment of the Constitution of India, it was felt that institutions of local self-government, such as the Municipalities, have become dysfunctional. Therefore, in order to strengthen these local self-government institutions, in order to give the local population a voice in its own governance, in order to respect the will of the people at the grass-root level, the 74th Amendment to the Constitution of India was introduced. The said amendment inserted Part IX-A into the Constitution of India. In order to buttress this contention, the learned Senior counsel has relied on the case of *Bondu Ramaswamy and Others v. Bangalore Development Authority and Others* [(2010) 7 SCC 129]. Therefore, while interpreting the constitutional validity of Article 243-R of the Constitution of India, the purpose for introducing Part IX-A, brought in by the 74th Amendment into the Constitution, has to be kept in mind.

Secondly, Article 243-R of the Constitution of India can be divided into two different parts: Article 243-R (1) divides a Municipality into wards. It provides that each seat for the Municipality shall be filled by direct election from the territorial constituencies in the Municipal area.

The second part, namely Article 243-R (2) is sub- divided into Article 243-R (2) (a), and Article 243-R (2) (b). Article 243-R (2) (a) leaves it to the wisdom of a Legislature of a State to provide, by law, for representation in a municipality, (i) of persons having a special knowledge or experience in municipal administration, (ii) the MP's from Lok Sabha and MLA's representing constituencies which compromise wholly or partly the municipal area, (iii) MP's from Rajya Sabha and MLC's of the State registered as electors within the municipal area, and (iv) the Chair Persons of the Committee constituted under Article 243-S of the Constitution of India. The proviso to Article 243-R (2) (a) of the Constitution of India denies the right to vote, in the meetings of the Municipality, to those persons who have been nominated by the Government due to their special knowledge or experience in

municipal administration.

The second sub-part of Article 243-R of the Constitution of India is Article 243-R (2) (b) of the Constitution of India. The said sub-clause of the sub-article permits the Legislature to provide, by law, the manner of election of the Chairperson of a Municipality.

Thirdly, since the proviso to Article 243-R (2) (a) prohibits the nominated members from voting in the meetings of the Municipality, by implication, the MP's, the MLA's, the MLC's mentioned in Article 243-R (2) (a) (ii) (iii) are permitted to vote in the meetings of the Municipality. However, since the purpose of bringing Part IX-A into the Constitution of India was to strengthen local self-government by direct election, to give the will of the people a chance to express itself in local governance, to give the right to vote to the MPs, MLAs and MLCs defeats the very purpose for which 74th Amendment was brought into force. Moreover, if by granting such a right to vote to the MPs, MLAs and MLCs, the will of the local people is defeated, then Article 243-R (2)

(a) (ii) and (iii) is unconstitutional. For, by granting such a right to these three classes of persons, "Democracy" -- a basic structure of the Constitution of India --- is being violated.

Fourthly, in order to save the constitutionality of 243-R (2) (a) (ii) and (iii) of the Constitution of India, the only possible way is to interpret the said provision in light of 243-R (2) (a) (i). In other words, even the MPs, the MLAs and the MLCs should be seen as "nominated members". Since they are also "nominated members", therefore, they too should be debarred from voting in the meetings of the Municipality.

In the alternative, the learned Senior Counsel has also argued that since these persons, the MPs, the MLAs and the MLCs are the members of the Corporation on the basis of their holding their respective office of MP, MLA and MLC, therefore, they too should be deemed to be "nominated". In order to buttress this contention, the learned Senior Counsel has relied on a Full Bench decision of the Hon'ble Punjab and Haryana High Court in the case of Sanjeev Kumar Verma v. The

Director, Urban Local Bodies, Chandigarh and Others (AIR 2015 P and H 98).

Mr. Haranahalli has further pleaded that some of the members of the State Legislative Councils are, in fact, "nominated" by the Government. Thus, to give these persons the right to vote in the meeting of the corporation is to overlook the fact that these persons are MLCs only on the basis of being "nominated" to the State Legislative Council by the Government. Hence, according to the learned Senior Counsel, a person who is once "nominated" is always "nominated".

Fifthly, the Act makes a distinction between the first meeting to be held for the purpose of electing a councilor to the posts of Mayor and Deputy Mayor under Section 10 of the Act, and the subsequent meetings of the Corporation which are held after the Corporation comes into being. Therefore, keeping in mind the will of the people as expressed in the direct election of the Councilors, the MPs, the MLAs and the MLCs should not be permitted to vote in the first meeting held under Section 10 of the Act, although they may be permitted to vote in the subsequent meetings of the Corporation.

Sixthly, under Section 10 of the Act, only the directly elected councilors are permitted to stand for the office of Mayor and Deputy Mayor, the MPs, the MLAs and MLCs are not permitted to do so. Those who are not permitted to run for the posts of Mayor and Deputy Mayor cannot be permitted to vote for the election to the said posts. To grant them the right to vote for the said posts would create a self-contradiction within the scope of Section 10 of the Act. Thus, the right to vote has to be restricted to only the directly elected councilors.

Seventhly, relying on the case *Kuldip Nayar and Others v. Union of India and Others* [(2006) 7 SCC 1], the learned Senior Counsel has pleaded that the purpose of including the MPs, the MLAs and MLCs as members of the Corporation is to merely give them knowledge of the problems at the grass-root level at the urban centers. But, their inclusion as member of the Corporation would not give them the right to vote.

Lastly, relying on the case of *Mohinder Singh Gill v. Chief Election Commissioner* (AIR 1978 SC 851) the learned Senior Counsel has submitted that through the

process of direct election, "the voter does a social audit of the Parliament". Similarly, in the case of the BBMP election, the voter does a social audit of the directly elected councilors. Therefore, his voice cannot be muffled by giving the right to vote to the unelected members, such as the MPs, the MLAs and the MLCs.

10. While Mr. Ashok Haranahalli has challenged the constitutional validity of Article 243-R of the Constitution of India, Mr. K.G. Raghavan, the learned Senior Counsel in Writ Petition No.37111-37115/2015, has restricted his arguments to the constitutional validity of Sections 7 and 10 of the Act. According to Mr. Raghavan, Sections 7 and 10 of the Act are in violation of Article 243-R of the Constitution of India. In order to buttress the said plea, the learned Senior Counsel has submitted the following arguments:-

Firstly, Article 243-R (1) of the Constitution of India recognizes that a Municipality shall consist of seats to which there shall be direct election. Thus, the mandate of Article 243-R (1) of the Constitution of India is to ensure that the Municipal Corporation consists of seats where the councilors are directly elected by the people. Thus, the Municipal Corporation would reflect the will of the people. It, therefore, consists of only "directly elected councilors". This was in the logic of things as the very purpose of bringing the 74th Amendment was to strengthen the voice of the people at the grass-root level.

Further, Article 243-R of the Constitution of India begins with the words "Save as provided in clause (2)". Thus, the provision begins with a saving clause. But a saving clause cannot be permitted to bring in "a Trojan Horse" in order to topple the mandate of Article 243-R (1) of the Constitution of India. Hence, Article 243-R (2) of the Constitution of India cannot be interpreted in such a way as to give the MPs, the MLAs, and the MLCs the right to vote in the election for the posts of Mayor and Deputy Mayor.

Secondly, Article 243-R (2) (a) (i) and (ii) of the Constitution of India does not increase the 'seats' mentioned in Article 243-R (1) of the Constitution of India. The former clauses and sub-clauses merely provide for "add-ons". Therefore, "the add-ons" do not have the same power, that is, the power to vote, as the original seat holders have.

Thirdly, Article 243-R (2) of the Constitution of India neither uses the word 'nominated' or the word 'nomination'. Instead, it uses the word "representative". A "representative" merely represents the institution he/she comes from. But such a person does not become part and parcel of the institution to which the person is sent as a "representative". The person is merely an envoy from the institution which the person represents.

Fourthly, the word nomination is used for the first time in Section 7 of the Act. Section 7 (1) (b) speaks of two categories of persons who can be "nominated" by the Government, to a maximum number of 10 persons, to the BBMP; Section 7 (1) (c) and (d) does not treat the MPs, the MLAs and the MLCs as "nominated" persons. Therefore, they continued to have the characteristic of merely being "representative" as clothed by Article 243-R of the Constitution of India.

Further, a distinction has to be made between a "nominee" and a "representative". While, the former becomes part and parcel of the institution to which the person is "nominated", the latter continues to be in the capacity of a "representative"--- representing the institution which has sent him as the "representative". Thus, the latter person does not become a part of the institution to whom he/she is sent. Hence, such a person would not have the right to vote, unless the larger body which had sent him as the representative has the equal right to vote.

Fifthly, while Article 243-R of the Constitution of India does not bestow the right to vote upon MPs, MLAs and MLCs, a co-joint reading of Sections 7 and 10 of the Act impliedly gives the right to vote to the MPs, the MLAs and the MLCs. For, Section 7 of the Act defines the Constitution of the Corporation as not only consisting of the directly elected councilors, but also of the nominated members, and of the MPs, the MLAs and the MLCs. Of course, the proviso added to Section 7 (1) of the Act does debar the nominated members from voting in the meeting of the Corporation. But, Section 10 of the Act clearly stipulates that the "Corporation" shall at its first meeting after the General Election of the Corporation, "elect one of the directly elected councilors as the Mayor and the Deputy Mayor". The use of the word "Corporation" seems to suggest that even the MPs, the MLAs and MLCs, who are members of the Corporation, are bestowed with the right to vote.

However, as argued above, according to the learned Senior Counsel, since under Article 243-R of the Constitution of India, the said persons are merely "representatives", they cannot be granted the right to vote. In case, the word "Corporation" as used in Section 10 of the Act is interpreted to include MPs, MLAs and MLCs and is seen as granting the right to vote to these three classes of persons, then Sections 7 and Section 10 of the Act would be violative of Article 243-R of the Constitution of India. Thus, these provisions are unconstitutional.

Sixthly, there is a presumption with regard to the constitutionality of provisions of law. Therefore, the Courts are required to harmonize the provisions in such a way as to dilute the apparent conflict between different provisions of law. Since there is a conflict between Article 243-R of the Constitution of India, on the one hand, and Sections 7 and 10 of the Act, on the other hand, the Court has to harmoniously read the Constitutional provisions and the statutory ones. The learned Senior Counsel suggests that the provisions of the Constitution and provision of the statute can be read harmoniously, if the word "Corporation" as used in Section 10 of the Act is read down to mean "only the directly elected councilors" and not the MPs, the MLAs and the MLCs.

Mr. Raghavan has further argued that the definition of the word "Corporation" has to be read in the context in which it is used as the definition clause contained in Section 2 of the Act clearly states, "unless the context otherwise requires". Therefore, the word "Corporation" used in Section 10 of the Act will have to be interpreted in the context in which it is used, namely dealing with the first meeting of the Corporation for the purpose of electing the Mayor and the Deputy Mayor. By reading down the word "Corporation" as suggested by the learned Senior Counsel, the constitutional provision and Sections 7 and 10 of the Act can peacefully co-exist, without having to strike down Sections 7 and 10 of the Act as being unconstitutional.

The learned Senior Counsel has further submitted that the object of the 74th Amendment was to recognize and to respect the will of local people in local self-government. The directly elected councilors, undoubtedly, represent the will of the people. Even the election to the posts of Mayor and Deputy Mayor is restricted to

the directly elected councilors. For, only a directly elected councilor is permitted under Section 10 of the Act to run for the offices of the Mayor and Deputy Mayor. Thus, even the Mayor and the Deputy Mayor indirectly represent the will of the people. Keeping in mind the purpose for which 74th Amendment was introduced, the word "Corporation" in Section 10 of the Act would necessarily have to be restricted to mean only "the directly elected councilors".

The learned Senior Counsel has further pleaded that by reading down the word "Corporation" in Section 10 of the Act, by harmoniously interpreting the co-relation between Article 243-R of the Constitution of India and Sections 7 and 10 of the Act, this Court will be fortifying and forcefully implementing the object behind the 74th Amendment which was to respect the will of the people in their local governance through the local self-government institutions. Therefore, the harmonious interpretation would be in consonance with the purpose for which the 74th Amendment of the Constitution of India was introduced.

Seventhly, the provisions of the Act make a clear distinction between the first meeting as prescribed by Section 10 of the Act, and the other regular meetings of the Corporation where the general business of the Corporation would be transacted. According to the learned Senior Counsel, while the MPs, MLAs and MLCs do not have the right to vote in the first meeting held under Section 10 of the Act, they would have the right to vote in the general meetings where the Corporation carries out its statutory functions.

Eighthly, the learned Senior Counsel has questioned the power of the State to bestow the right to vote upon the MPs, MLAs and MLCs. According to the learned Senior Counsel, Article 243-R of the Constitution of India merely permitted the State by law to clothe the MPs, the MLAs and MLCs with the capacity of "representatives" of their respective institutions where they were coming from. Thus, Article 243-R (2) (a) did not permit the Legislature of the State to bestow the right of vote upon the MPs, the MLA's and the MLCs. Moreover, Article 243-R (2) (b) does not permit the Legislature to bestow the right of vote upon the MPs, the MLAs and the MLCs. For, Article 243-R (2) (b) used the word "the manner of election" of the Chairperson of a Municipality. The words "manner of election"

would merely mean the procedure for holding the election. But, in the garb of prescribing the procedure, the substantive right to vote cannot be bestowed. Furthermore, while prescribing the procedure for holding the election, the composition of the Electoral College cannot be changed. Since Article 243-R (1) divides the municipal area into wards and prescribes the direct election for the councilors from the ward, the Electoral college is limited only to "the directly elected councilors". Hence, in the garb of prescribing the procedure for holding election under Article 243-R (2) (b) of the Constitution of India, the Electoral College cannot be increased to include the MPs, the MLAs and the MLCs.

Lastly, a harmonious construction is also required between Article 243-R of the Constitution of India, Section 10 of the Act, and Rule 72-D of the Election Rules. As argued above, Article 243-R of the Constitution of India does not bestow the right to vote upon the MPs, the MLAs and the MLCs. If the word "Corporation" in Section 10 of the Act is not read down, and is given an extended meaning to include the MPs, the MLAS and the MLCs, then both Section 10 of the Act, and Rule 72-D of the Election Rules would be in violation of Article 243-R of the Constitution of India. For, Rule 72-D permits the councilors to vote in the election for the post of Mayor and Deputy Mayor. However, if the word "Corporation" is restricted to mean "the directly elected councilor" in terms of Article 243-R (1) of the Constitution of India, then certainly, Rule 72-D of the Election Rules is also in consonance with Article 243-R of the Constitution of India.

11. Mr. Tejasvi Surya, learned counsel assisting Mr. Raghvan, the learned Senior Counsel, has taken the arguments to a different trajectory. According to Mr. Tejasvi Surya, both Municipalities and the Panchayaths fall under the same topological space as both the institutions are institutions of local self-government. Moreover, after the 73rd and the 74th Amendments of the Constitution of India, both the institutions have been given constitutional recognition. Thus, while interpreting Article 243-R of the Constitution of India, help can be had from Article 243-C of the Constitution of India. Article 243-C of the Constitution of India deals with composition of Panchayaths. Article 243-C (5) while dealing with the election of the Chairperson of a Panchayath at the village level does not provide for giving the right to vote to the MPs, MLAs, and the MLCs. Therefore, the right to vote as

denied to these persons in relation to the election of the Chairperson of a Panchayath would also have to be read in Article 243-R of the Constitution of India.

Secondly, Article 243-C of the Constitution of India makes a distinction between a regular meeting and a meeting for holding election of the Chairperson of a Panchayath. While Article 243-C (4) of the Constitution of India bestows a right to vote upon the MPs, MLAs, and MLCs in a regular meeting of the Panchayath, Article 243-C (5) of the Constitution of India denies them the right to vote in the election of the Chairperson of the Panchayath. This same scheme should also be read into Article 243-R of the Constitution of India.

Thirdly, if Sections 7 and 10 of the Act are read as bestowing the right to vote upon the MPs, the MLAs, and the MLCs, then the said provisions are in violation of Article 243-R of the Constitution of India. Thus, the only way to harmonize the constitutional provisions and the statutory ones is to read down the word "Corporation" used in Section 10 of the Act to mean only "the directly elected councilors" and none other.

12. Similarly, Mr. G. R. Gurumath, the learned Counsel in W.P.Nos.38001-38002/2015, has also challenged the constitutional validity of Section 7 of the Act. He has raised the following contentions: firstly, the right to vote is not a fundamental right, but a statutory one. In order to buttress this plea the learned Counsel has relied upon the judgment in the case of Jyoti Basu and Others v. Debi Ghosal and Others [AIR 1982 SC 983] and in the case of People's Union for Civil Liberties and Another v. Union of India and Another [2013 (5) Kar. L. J. 545 (SC)]. Thus, the said right has to be conferred expressly by a statute. It cannot be inferred from the provisions of a statute. Secondly, sub-section (c) and (d) of Section 7 of the Act do not confer the right to vote upon the MPs, MLAs, and the MLCs. Thus, these classes of persons do not have the statutory right to participate and vote in the election for the posts of Mayor and Deputy Mayor. Thirdly, in case Section 7 of the Act were to be interpreted as conferring the right to vote, it would be in violation of Article 243-R of the Constitution of India. Fourthly, according to Article 243-ZF of the Constitution of India "any provision of law relating to

Municipalities in force in a State immediately before the commencement of the of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier." Thus, if Section 7 of the Act is inconsistent with Article 243-R of the Constitution of India, it could not be operative after one year of the 74th Amendment coming into being. Therefore, Section 7 of the Act would cease to exist by virtue of Article 243-ZF of the Constitution of India.

13. Mr. D.R. Ravishankar, the learned counsel in Writ Petition No. 37949-951/2015, has also challenged the constitutional validity of Section 7 of the Act. According to him, since Section 7 of the Act includes MPs, MLAs, and MLCs within the constitution of the Corporation and seems to give them the right to vote in the election for the post of Mayor and Deputy Mayor, it violates Article 243-R of the Constitution of India. According to the learned counsel, Article 243-R (1) mandates that councilors should be directly elected by the people. Article 243-R (2) (a) of the Constitution of India does permit the State Legislature to grant representation to "the person with special knowledge or experience in the Municipal Administration", and to the MPs, MLAs, and MLCs within the Municipalities. But it does not bestow the right to vote on these persons. The purpose of including "the nominated persons" within the Municipalities is to provide assistance for better administration or functioning of the Municipality by enabling the participation of persons having special knowledge or experience in Municipal Administration. The purpose of including the MPs, the MLAs, and the MLCs is to provide a linkage between the local body and the Legislature of the State and the Union. It is to ensure that when matters of the Municipalities are discussed within the State, or the Union Legislature, they have sufficient experience and knowledge about the difficulties of the Municipalities. Therefore, while legislating about the Municipalities or while funding the Municipalities, the State and the Central Legislature would be well aware of the problems of the Municipalities. However, this does not mean that Article 243-R (2) of the Constitution of India can be stretched to the extent of granting the right to vote to the MPs, the MLAs and the MLCs in the election for the posts of Mayor and the Deputy Mayor.

Secondly, a Municipal Corporation can be limited to merely "the directly elected councilors." It does not require the presence of other person in order to carry out the functions assigned to it under the Act. Therefore, "the directly elected councilors" stand on a higher footing than the MPs, the MLAs, and the MLCs. Therefore, to equate the two distinct categories as is being done in Section 7 of the Act is to violate the mandate of Article 243-R of the Constitution of India.

Thirdly, the Panchayath under the Panchayath Raj Act and the Municipalities under the Karnataka Municipalities and the Municipal Corporation under the Act are all local self-government institutions. All the three institutions stand on the same footing. However, while in the first two institutions the persons other than the directly elected members are not allowed to vote, thus even in the Municipal Corporation they should not be allowed to vote.

Lastly, since Article 243-R of the Constitution of India was introduced in order to protect and promote the voice of the people in local self-government institution, Section 7 of the Act undermines this purpose by giving the voice of the MPs, the MLAs and the MLCs a greater role. Thus, Section 7 of the Act violates the purpose of the 74th Amendment in general, and the philosophy of Article 243-R of the Constitution of India in particular. Hence, Section 7 of the Act is clearly unconstitutional.

14. Ms. Lakshmi Iyengar, the learned counsel in W.P. Nos. 39123/2015 and 40453/2015, while challenging the constitutionality of Section 7 of the Act, brought in a fresh interpretation both to Article 243-R of the Constitution of India, and to Section 7 of the Act. According to the learned counsel, Article 243-R of the Constitution of India is in three parts: Article 243-R (1) provides for direct election of the councilors from each ward; Article 243-R (2) permits the state legislature to include the persons mentioned in Article 243-R (2) (a) (i), (ii), (iii) and (iv) as representatives in the Municipalities; Article 243-R (2) (b) permits the state legislature to prescribe, by law, the manner of election of the Chairperson of a Municipality.

Secondly, per force under Article 243-R (1) of the Constitution of India all Municipalities have to have directly elected councilors. However, different states

have different manner of electing the Mayor in a Municipal Corporation. While some States, such as Andhra Pradesh, Uttar Pradesh, Madhya Pradesh, and Tamil Nadu, have direct election for the said office, other States, such as Karnataka, Rajasthan, Himanchal Pradesh etc., have indirect election. In the former States where the election is a direct one, the question of the MPs, the MLAs, and the MLCs voting in the election of the Mayor does not even arise. In such States, the MPs, the MLAs, and the MLCs have a representative capacity in the Municipality. They are permitted to vote in the regular meetings of the Municipalities. Therefore, the question of their participation and voting in the election for the post of Mayor would be relevant only in those states where the election to the said post is an indirect one. Thus, it cannot be that in some States these persons have no right to vote, yet in other states, where there is an indirect election for the post of Mayor, these persons would have the right to vote. The same provision of law, namely Article 243-R (2) (a) could not be bestowing the right to vote on the MPs, the MLAs and the MLCs, in some of the States, and not bestowing the said right in other States. Thus, the only logical conclusion is that even in those States where the election of the Mayor is an indirect one, the MPs, the MLAs and the MLCs do not have the right to vote. These three classes of persons would enjoy the right to vote only in the regular meetings of the Municipality, but not in the first meeting where the Mayor is to be elected such as the one under Section 10 of the Act.

Thirdly, it is only Article 243-R (2) (b) which deals with the manner of election of the Chairperson of a Municipality. The word "manner" means "the procedure to be followed". The "procedure" would include the declaration of the date of holding of the election for the posts of Mayor and Deputy Mayor, the nomination of the candidates, the holding of the election, and the declaration of the election result for the said posts. But in the garb of prescribing "the procedure" for holding the election to the post of Chairperson, the right to vote cannot be bestowed upon the MPs, the MLAs, and the MLCs. To do so would tantamount to colorable exercise of power. It would tantamount to malice in law.

Fourthly, Section 7 of the Act seems to bestow the right to vote to the MPs, the MLAs, and the MLCs, when it includes them as part of "the Corporation". Section

10 of the Act further states that "the Corporation shall elect" the Mayor and the Deputy Mayor. Thus, Section 7 of the Act is contrary to Article 243-R (2) (a) of the Constitution of India. For it goes against the mandate of the said Article.

In her written arguments, Ms. Iyenger has raised other contentions. However, the written arguments were submitted after the case was reserved for judgment. Since these arguments were not raised in the court, these arguments are not being considered by this court. To consider them, without giving the respondents a chance to reply to these arguments, would be unfair and unjust with the respondents. A court cannot deal with an argument ex-parte, especially when these arguments were not raised before the court orally.

15. Mr. Ravi Prakash, the learned counsel in W.P.No.42084/2015, has challenged the Notification dated 01-09-2015 whereby the right to vote has been bestowed upon the MPs, the MLAs and the MLCs. According to the learned counsel while interpreting the scope and ambit of Article 243-R of the Constitution of India, the mischief rule of interpretation should be kept in mind. Considering the fact that the local self-government institutes had fallen into disuse, considering the fact that local self-government institutes no longer reflected the will of the people, the 74th Amendment of the Constitution of India was introduced. Thus, Article 243-R of the Constitution of India tries to get rid of the mischief of a weak local self-government institute and tries to strengthen the same by giving prominence to the voice of the people.

Secondly, the Act nowhere bestows the right to vote upon the MPs, the MLAs, and the MLCs. It is being done through the Notice dated 01-09-2015. But the right to vote is a statutory right. Therefore, it cannot be bestowed by a Notice. It is merely by misreading the scope and ambit of Section 7 of the Act, that the impugned Notification has been issued. Thus, the impugned Notification deserves to be set aside.

16. Mr. Abraham T. J., the petitioner-in-person, has appeared in W. P. No. 38074/2015. He, too, has challenged the constitutional validity of Article 243-R of the Constitution of India, of Section 7 of the Act, and the legality of Notification dated 01-09-2015, whereby the first meeting for electing the Mayor and the Deputy

Mayor was called for. Mr. Abraham has pleaded that the purpose of including "nominated members" and the MPs, the MLAs, and the MLCs was limited to the purpose that they should assist the elected councilors in running the Municipal Corporation. It was merely to aid and advice the councilors and nothing more. Thus, in the garb of Article 243-R of the Constitution they could not be bestowed with the right to vote. In case Article 243-R of the Constitution of India were interpreted as giving the right to vote to these three classes of persons, it would be contrary to the basic structure of the Constitution of India. Hence, Article 243-R of the Constitution of India deserves to be declared as unconstitutional.

Secondly, by allowing these three classes of persons to vote in the election of the Mayor and the Deputy Mayor, the voice of the electorate is being silenced. For, the people of Bengaluru have voted for the BJP party in the majority. To permit these three classes of people to subvert the will of the people would be to weaken the local self-government institution. Thus, Section 7 of the Act, which permits such subversion, and the Notice dated 01-09-2015, by which the will of the people is being subverted need to be declared as unconstitutional.

17. In W. P. No. 38522-23/2015, Mr. S. N. Sameer has challenged the participation of two MLCs, namely Mr. Jaggesh and Mr. D. S. Veeraiah, in the election for the post of Mayor and Deputy Mayor. According to him, since both these MLCs were registered as electorate in other places also, they are ineligible to vote in the election for the said posts. Therefore, they could not participate in the election for the two posts mentioned above.

18. This completes the contentions raised by the learned counsel for the petitioners and by the petitioner-in- person. Hereinafter, let us consider the contentions raised by Prof. Ravi Varma Kumar, the learned Advocate General for the State of Karnataka, and other learned counsel for different respondents. Mr. S. Vijay Shankar, the learned Senior Counsel has argued on behalf of BBMP; Mr. Udaya Holla, the learned Senior Counsel has argued on behalf of respondents Nos. 5 and 6 in W. P. Nos. 37111-37115/2015 and on behalf of respondent Nos. 4 and 5 in W. P. No. 40453/2015; Mr. Krishna S. Dixit has argued on behalf of the Union of India.

19. The learned Advocate General, Prof. Ravi Varma Kumar has raised the following contentions before this court: firstly, the power to legislate about local self-government does not emanate from Article 243-R of the Constitution of India. In fact, it is a plenary power. The source of the power to legislate about local self-government originates from Article 246 (3) of the Constitution of India read with Entry 5, List II in the Seventh Schedule of the Constitution of India. Entry 5, List II, empowers the State to legislate on "Local Government, that is to say, the Constitution and powers of Municipal Corporations, Improvement Trust, District Boards, Mining Settlement Authorities and other Local authorities for the purpose of local self-government or village administration." It is under Article 246 (3) of the Constitution of India read with this particular entry that the laws relating to the Panchayath Raj, Municipalities and Municipal Corporations were enacted even before Part IX-A was introduced in 1993. Hence, it is incorrect to argue that the source of power for legislating with regard to the Municipalities and Municipal Corporation is contained in Article 243-R of the Constitution of India.

Secondly, a provision of the constitution can be declared as unconstitutional only under three circumstances: firstly, if the Parliament lacks the competence to enact the law or amendment; secondly, if the amendment violates the fundamental rights of the people; thirdly, if it violates the basic structure of the Constitution of India. However with regard to the constitutional validity of Article 243-R of the Constitution of India, it can safely be submitted that the said Article does not fall under any of the three circumstances enumerated above. Under Article 368 of the Constitution of India, the Parliament has the constituent power to amend, by way of addition, any provision of this Constitution. Thus, the Parliament had the competency to enact the 74th amendment of the Constitution of India.

Moreover, the learned counsel for the petitioners have not pleaded that Article 243-R of the Constitution of India violates any of the fundamental rights of the people. Mr. Ashok Haranahalli has mere argued that the said Article is contrary to the purpose for which the 74th Amendment was introduced. He has theoretically argued that if Article 243-R of the Constitution of India were interpreted as granting the right to vote to the MPs, the MLAs and the MLCs, then the said Article will be contrary to the idea of "democracy." Thus, it will be against the basic structure of

the Constitution of India.

However, Part IX-A of the Constitution of India, in fact, strengthens democracy at the grass-root level of the urban areas. Article 243-R (1) of the Constitution of India makes it imperative that the Municipality should be divided into wards, and the wards should elect their Councilors through direct election. Thus, it strengthens the voice and the will of the people. Moreover, as the local self-government institutions had become weak and inefficient over a period of time, the Parliament in its wisdom felt that it is essential that the MPs, the MLAs and the MLCs, with their vast political experience and knowledge, should be included as a part and parcel of the Municipal Corporations. The purpose of including these three classes of persons was not only to guide the Municipal Corporation, but also to voice the concern and interest of the Municipal Corporation in the State Legislature, and in the Parliament. Since the Mayor and the Deputy Mayor represent the Municipal Corporation, it is imperative that the MPs, the MLAs and the MLCs should be given the right to vote for the election of Mayor and the Deputy Mayor. Hence, Article 243-R of the Constitution of India concretizes and strengthens the basic structure of the Constitution of India. Thus, it is not an unconstitutional provision.

Relying on the case of *Kuchchh Jal Sankat Nivaran Samiti and Others v. State of Gujarat and Another* [(2013) 12 SCC 226] the learned Advocate General has pleaded that the issue whether the introduction of the MPs, the MLAs and the MLCs into the constitution of the Municipal Corporation dilutes or weakens the local self-government or not, such an issue cannot be decided by the judiciary. For, the judiciary is not equipped with any manageable standards for adjudicating the said issue, or for giving a judicial finding on the said issue.

Article 243-R (2) of the Constitution of India does permit the Legislature to provide, by law, the right to vote to the MPs, the MLAs and the MLCs. In case, the Parliament wanted to debar these three classes of persons from the right to vote, it could have clearly stated so in Article 243-R (2) (a) of the Constitution of India, itself. Since a bar is not contained in the said Article, the same cannot be read by this court. To do so, would tantamount to judicial legislation

--- a power not vested in the judiciary. Therefore, it is a misplaced contention that Article 243-R (2) (a) of the Constitution of India does not bestow the power to legislate on the right to vote to the MPs, the MLAs and the MLCs, by the state legislature.

Even if these three classes of persons are part of a Municipal Council as "representatives", there is no bar in law that such "representatives" cannot be granted the right to vote. While persons who are nominated by the Government who have a special knowledge or experience in Municipal Administration have been barred from voting in the meetings of the municipalities, no such bar exists qua the MPs, the MLAs and the MLCs. Therefore, to argue that these three classes of people should equally be treated as "nominated members" and should equally be debarred from voting in the election for the post of Mayor and Deputy Mayor is to misread the plain and grammatical meaning of Article 243-R (2) (a) of the Constitution of India.

Since both Entry 5, List II in the Seventh Schedule of the Constitution of India, and Article 243-R (2) of the Constitution of India bestow ample powers on the State Legislature to grant the right to vote to the MPs, the MLAs and the MLCs, the said right has been granted under Section 10 of the Act. Section 10 of the Act clearly states that "the Corporation shall... elect the Mayor and the Deputy Mayor" from those councilors who are directly elected from the Ward. Therefore, the right to vote has been granted under Section 10 of the Act. In fact, Sections 7 and 10 of the Act are in conformity with the enabling provisions of Article 243-R of the Constitution of India. Therefore, these provisions are not unconstitutional.

Even if there is a conflict between Sections 7 and 10 of the Act on the one hand, and Rule 72-D of the Election Rules on the other hand, the Election Rules being sub-ordinate to the parental Act cannot be contrary to the parental Act. In case, the Election Rules were, even then, the Act would have a predominance over the Rules. Thus, the mandate of the Act has to be followed. Since Section 7 of the Act makes the MPs, the MLAs and the MLCs part and parcel of the Corporation, since Section 10 of the Act bestows the right to vote upon them, the said right cannot be

denied to them under Rule 72-D of the Election Rules.

Since the right to vote has been granted under Section 10 of the Act, Mr. Ravi Prakash, the learned counsel is unjustified in claiming that the right is being bestowed by the Notice dated 01.09.2015.

Lastly, that the Constitution itself contains different concepts of the word "democracy" while dealing with different institutions. The right to vote, the right to contest, and the composition of the Electoral College varies from institution to institution and from legislation to legislation. For example, the election to the post of President of India under Article 54 of the Constitution of India contains a different methodology, than for the election for the post of Vice-President of India under Article 66 of the Constitution of India. Similarly, if the Panchayath Raj Act and the Municipalities Act, on the one hand, prescribe a different procedure for election to the post of Chairperson of a Panchayath, and to the post of Chairperson of Municipality, from the procedure prescribed for the election to the posts of Mayor and Deputy Mayor of a Municipal Council, it would not make Sections 7 and 10 of the Act unconstitutional. Since each of these institutions are self-contained institutions, they are in class by themselves. Thus, the different procedure for elections prescribed under different statutes does not violate Article 14 of the Constitution of India.

20. Mr. Vijay Shankar, the learned Senior Counsel for BBMP, has raised a single contention before this court, namely the word "may" used in Article 243-R (2) of the Constitution of India should be read as the word "shall". According to the learned Senior Counsel, while enacting a law the Parliament cannot dictate terms to the State Legislature; it has to show deference to the State Legislature. Thus, the Parliament has used a polite word like "may", although it means to direct the State Legislature that it "shall" enact a law. The fact that the word "may" is not directory in nature, but is mandatory in nature, is amply clear from Article 243-ZF of the Constitution of India. The said Article in unequivocal terms lays down that any existing law dealing with Municipalities in a State immediately before the commencement of the 74th Amendment, which is inconsistent with the constitutional provision shall continue to be in force for a maximum period of one

year. Thereafter, it shall stop to be in force.

21. Mr. Krishna Dixit, the learned Assistant Solicitor General of India, has echoed the argument of Prof. Ravi Varma Kumar, the learned Advocate General, as far as the source of legislative power to enact a law with regard to local self-government is concerned. But Mr. Dixit has further pleaded that ever since the 74th Amendment was brought into force, the constitutional validity of Article 243-R of the Constitution of India has never been challenged either before the Apex Court, or before any of the High Courts. Further, relying on the case of *Shri Ram Krishna Dalmia and Oths. v Shri Justice S. R. Tendolkar and Oths.* [AIR 1958 SC 538], the learned counsel has pleaded it must be presumed that the legislature understands and correctly appreciates the need of the its own people, and that its laws are directed to problems made manifest by experience. Thus, there is a presumption in law about the constitutional validity of the law. Lastly, the learned counsel has contended that the learned counsel for the petitioners have failed to point out which "basic structure" of the Constitution of India is violated by Article 243-R of the Constitution of India. According to the learned counsel Article 243-R of the Constitution of India, in fact, strengthens the concept of democracy. Thus, it is constitutional.

22. Mr. Udaya Holla, the learned Senior Counsel, submits that through the art of rhetoric, through semantic and epistemology an illusion of forceful arguments have been created by the learned counsel for the petitioners. However, the web of arguments so woven can be brushed aside by applying "the Golden Rule" of interpretation, namely to read the plain and grammatical meaning of the words employed in the provisions of law. If Section 2 (7) of the Act is juxtaposed with Sections 7 and 10 of the Act, then the meaning of the word "Councilor" becomes amply clear. Once, the meaning of the word "Councilor" shines forth, the pall of darkness brought by the arguments of the learned counsel for the petitioners stands dispelled.

According to the learned Senior Counsel, earlier Section 2 (7) of the Act defined the word "Councilor" as meaning "a person who is duly elected as a member of the Corporation under this Act." However, after Part IX-A was inserted into the

Constitution of India, the definition of "a Councilor" contained in Section 2 (7) has been changed. Presently it means "a Councilor referred to in Section 7 of the Act". Thus, the amendment itself is a pointer to the fact that now "councilor" is not restricted to merely "the directly elected councilor", but means more than that. In order to understand who is a "Councilor", one necessarily has to refer to Section 7 of the Act.

Section 7 of the Act defines the constitution of the Corporation. But while defining the constitution of the Corporation, Section 7 deals with three sets of Councilors: firstly, those who are directly elected; secondly, those who are nominated by the Government because of their special knowledge and experience in Municipal administration or matters relating to health, town planning or education or who are social workers; thirdly, the MPs, MLAs and the MLCs. Thus, there is a distinction between the set of councilors who are directly elected, and a set of councilors who are non-elected by the ward members. But nonetheless, even the non-elected members of the Corporation are "Councilor" under Section 2 (7) of the Act.

Further, according to the learned Senior Counsel once the definition of the word "councilor" is understood in its plain and grammatical meaning, all the contentions raised by the learned counsel for the petitioners with regard to the contradiction between Article 243-R (2) of the Constitution of India, and Sections 7 and 10 of the Act, and the contradiction contained within Sections 7, 10 of the Act and Rule 72 - D of the Election Rules fall apart.

The fact that the Corporation does consists of directly elected councilors, and councilors who are non-elected, is further clarified by the fact that Section 10 of the Act clearly lays down that the Mayor shall be elected from one of its Councilors who are referred to in clause (a) of Sub-section 1 of Section 7, namely "the directly elected councilors". The clarification that the election to the posts of Mayor and Deputy Mayor is limited only to "the directly elected councilors" clearly indicates that the word "Councilors" also includes the non-elected members of the Corporation.

Since the Corporation consists of both the sets of Councilors as mentioned in Section 7 of the Act, the words "the Corporation shall elect" contained in Section

10 of the Act clearly bestow the right to vote upon the MPs, the MLAs and the MLCs. Moreover, Rule 72-D of the Election Rules also uses the word "Councilors" but without restricting the category of "Councilors" to only "the directly elected" ones. Therefore, even Rule 72-D of the Election Rules envisages the participation of the non-elected councilors, namely the MPs, the MLAs and the MLCs, in the election for the posts of Mayor and Deputy Mayor. Under the proviso contained in Section 7 (1) (b) of the Act, the nominated persons are certainly debarred from voting in the meeting, but Sections 7 and 10 of the Act and Rule 72-D of the Election Rules bestows ample right to vote and the right to participate in the election of Mayor and the Deputy Mayor, upon the MPs, the MLAs and the MLCs. Therefore, it is a misnomer to plead that the right to vote has not been bestowed expressly by the statute. Further, it is equally a misnomer to plead that the Act and the Election Rules are contradictory to each other. Furthermore, it is a misnomer to plead that Sections 7 and 10 of the Act are in violation of Article 243-R of the Constitution of India. Relying on the case of Kuldip Nayar and Others (supra) the learned Senior Counsel has pleaded that the inclusion MPs, MLAs and MLCs in fact strengthens the working of the Municipal Council. Considering the fact that under Article 243 (w) of the Constitution of India, vast responsibilities have been bestowed on the Municipalities, considering the fact that under Schedule XII of the Constitution of India a large number of responsibilities have been saddled on the Municipalities, it was essential to include the MPs, MLAs and the MLC's within the Municipal Council. After all, the Municipal Council would benefit from their deep political experience and knowledge.

Lastly, the learned Senior Counsel has pleaded that instead of piecemeal analysis of the legal provisions, a holistic view has to be taken of all the provisions put together both constitutional and statutory. Seen on a larger canvass and juxtaposed together, all the pieces of the jigsaw fall into pieces.

23. Heard the learned counsel for the parties, perused the provisions of the law, and considered the case law cited at the Bar.

24. Before examining the contentions raised by the learned counsels, it would be fruitful to deal with some of the principles which govern the interpretation of law,

and govern the examination of the Constitutional provision when its constitutional validity is under challenge.

25. It is trite to state that the first and foremost principle of interpretation, called the Golden Rule of Interpretation, is to go by the plain and grammatical meaning of the provisions of law. In case of *Union of India and Another v. State of Tripura and Another* [AIR 2002 SC 3240], in Para 4 of the Report, the Hon'ble Supreme Court opined as under:

It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

Similar view was also expressed in *Shivram Anand Shiroor v Mrs. Radhabia Shantram Kowshik and Ano.* [(1984) 1 SCC 588], in Para 3 of the Report, when the Apex Court observed as under:

Where the words of a statute are clear and unambiguous, there can arise no question of construction. Such words ordinarily speak for themselves. A court should give effect to the plain words because plain words may be expected to convey plainly the intention of the Legislature.

The Hon'ble Supreme Court further opined that where "the intention of the Legislature is expressed with sufficient vocabular (sic) clarity" the individual version of what may appear reasonable cannot be accepted.

Moreover, "when the Legislature has spoken, the judges cannot afford to be wiser." [Ref. to *Shri Mandir Sita Ramji v Lt. Governor of Delhi* (1975) 4 SCC 298]. Similarly, in the case of *AFCONS Infrastructure Ltd. and Ano. v Cherian Varkey Construction Company Private Limited and Others* [(2010) 8 SCC 24], the Hon'ble Supreme Court has observed that "Legislative wisdom cannot be replaced by the Judge's views."

In the case of *Nathi Devi v Radha Devi Gupta* [(2005) 2 SCC 271], in Para 11 of the judgment, the Apex Court held as under:

The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute, the Court must, if the words are clear, plain, unambiguous and reasonable susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain, and unambiguous and admit of only one meaning, no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only, then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

(Emphasis added) Thus, when there is no ambiguity in the language used by the legislature, then the Courts are required to implement the law according to the plain and grammatical meaning of the provision of law.

26. However, "there is an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance with a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions

than with reference to substantive provisions. [Ref. to AFCONS Infrastructure Ltd. (supra)].

27. Thus, a Court is required to discover the intention of the legislature by applying other rules of interpretation only when there is ambiguity in the language used by the legislature. Similarly, a Court is invited to harmonize the possible discord amongst the provisions, if disharmony is established. But in absence of cacophony, the Court should not disturb the score of the provisions composed by the legislature in its wisdom. The sanctity of the legislation should not be disturbed lightly. The Court should step in only when it is obvious that gaps exist in the law, or the creases in the law need to be ironed out.

Secondly, there is always a presumption in favor of the constitutionality of the provisions of law; the burden is upon the party who attacks it to show that there has been a clear transgression of the Constitutional principles. [Ref. to Shri Ram Krishna Dalmia and Others. (supra)] This is so, as there is a presumption that "the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds." [Ref. to Shri Ram Krishna Dalmia and Others. (supra)]. Thus, a provision of law is presumed to be constitutionally valid, unless otherwise proven to be so. Therefore, the court should be circumspect before pronouncing a provision of law as unconstitutional.

Thirdly, each word used in the enactment must be allowed to play its role howsoever significant or insignificant the same may be in achieving the legislative intent and promoting legislative object. [Ref. to Union of India and Others v. Brigadier P. S. Gill (2012) 4 SCC 463].

Fourthly, "where the Court is dealing with two sub- sections of a section...it is necessary that the two sub-sections must be construed as a whole 'each portion throwing light, if need be, on the rest.' The two sub-section must be read as part of an integral whole and as being inter-dependent; an attempt should be made in construing them to reconcile them if it is reasonable possible to do so, and to avoid repugnancy." [Ref. to Madanlal Fakirchand Dudhediya v Shree Changdeo Sugar Mills Ltd. and Others. (AIR 1962 SC 1543)].

Fifthly, where the language of a provision of law is unambiguous, and clear, then the reading down of a provision is impermissible. [Ref. to *Nelson Motis v Union of India and Ano.* (AIR 1992 SC 1981)].

Sixthly, an amendment of the Constitution may be declared as unconstitutional only in extremely limited circumstances. Firstly, if it is beyond the competence of the Parliament; secondly, if it violates the fundamental rights of the people; thirdly, if it violates the basic structure of the constitution.

28. Thus, while adjudicating on the constitutional validity of Article 243-R of the Constitution, and the provisions of the Act and of the Election Rules, one would have to keep these principles in mind.

29. The object of introducing the 74th Amendment into the Constitution of India was to ensure that urban local bodies are able to perform effectively as "vibrant democratic units of self-government." In order to transform the otherwise weak urban local bodies into a vibrant ones, Article 243-R of the Constitution envisaged the inclusion of two sets of persons as members of the Municipalities, although these persons were not directly elected by the local people. Firstly, those nominated by the Government for their "Special knowledge or experience in Municipal administration." Secondly, those who have a deep and wide political experience, who are trained to voice the concerns of the people, and who can act as a bridge between the Municipalities and the State Legislature, and between the Municipalities and the Parliament. Thus, the endeavor was to create a seamless fabric between the urban local bodies, the State Legislature and the Parliament. Further, according to the Hon'ble Supreme Court, "the purpose sought to be achieved is to give the Members of the State Legislature and Parliament access to the grass-root level, equipping them with knowledge about local problems, issues, opinions and aspirations, thereby strengthening democracy." [Ref. to *Kuldip Nayar* (supra)]. Thus, the 74th Amendment was brought into the Constitution with multiple visions and with multi-pronged strategies for strengthening the local self-government in the urban areas, for strengthening democracy.

30. Article 243-R of the Constitution of India can be divided into three parts: firstly, Article 243-R (1) begins with the words, "Save as provided in clause (2)". Hence,

the first part begins with an exception clause: making clause (2) to be an exception to clause (1). Clause (1) mandates that the municipal limits should be divided into wards; each ward must directly elect a councilor. The first part, therefore, ensures that the local people will have a voice in the functioning of the Municipality.

31. The second part consists of Article 243-R (2) of the Constitution of India. Clause (2) uses the word "may". It, therefore, bestows a discretionary power on the State Legislature to provide, by law, for 'representation in the Municipality' of certain categories of persons, enumerated thereafter.

32. Clause (2) (a) enumerates different categories of persons who may be included in the Municipality as members. Clause (2) (a) is further sub-divided into two parts: firstly, under Article 243-R (2) (a) (i), those who are nominated by the Government due to their vast knowledge and experience; secondly, those classes of persons contained in Article 243-R (2) (a) (ii) (iii) and (iv), namely the MP's, the MLA's and the MLC's and the Chairpersons of the Committees.

33. Interestingly, the proviso attached to Article 243-R (2) of the Constitution of India clearly debars "the nominated members " from voting in the meetings of the Municipalities. However, no such bar has been prescribed by the Parliament on the right of the MPs, the MLAs, and the MLCs to vote. If the Parliament, in its wisdom, wanted to equally deprive the MPs, the MLAs and the MLCs, of the right to vote, it could have clearly prohibited these three classes of persons from voting, as it had done in case of "the nominated persons". Since a bar has not been placed upon the right of the MPs, the MLAs and the MLCs to vote, naturally the bar cannot be read into Article 243-R (2) of the Constitution of India. Needless to say, the Court has to go by "the plain and grammatical meaning of a provision". Moreover, although the court cannot supply casus omissus, but it is equally clear that the court should not interpret a statute so as to create casus omissus when there is really none. [Ref. to Ramesh Mehta v Sanwal Chand Singhvi and Others. (2004) 5 SCC 409]. To do so, would firstly tantamount to doing violence to the plain and grammatical meaning of the provision. Secondly, it would tantamount to judicial legislation---a power not vested in the judiciary. Therefore, under Article 243-R (2) of the Constitution of India the State Legislature has been granted a

discretionary power to bestow the right to vote upon the MPs, the MLAs and the MLCs by law. It is an enabling provision.

34. The third part of Article 243-R consists of Article 243-R (2) (b). The said sub-clause permits the State Legislature to prescribe "the manner of election of the Chairpersons of the Municipality". Undoubtedly, the word "manner" means the procedure for holding the election for the post of Chairperson of the Municipality. Therefore, Article 243-R (2) (b) of the Constitution of India cannot be utilized for bestowing the right to vote upon the MPs, the MLAs and the MLCs. However, as Article 243-R (2) (a) of the Constitution of India does enable the State Legislature to give or not to give the right to vote to the MPs, the MLAs and the MLCs, the State Legislature would be competent to bestow the said right upon these three classes of persons. In order to bestow the said right upon these three classes, the State Legislature need not take recourse to Article 243-R (2)

(b) of the Constitution of India.

35. As far as the constitutional validity of Article 243-R of the Constitution of India is concerned, Mr. Ashok Haranahalli, the learned Senior Counsel, has merely argued that the said Article is against the purpose for which the 74th Amendment was brought into force. According to the learned Senior Counsel by giving right to vote to the MPs, the MLAs and the MLCs, the will of the local people is muffled; the Municipal Corporation, an institution of local self- government, is weakened. "Democracy" is threatened.

36. The issue whether the inclusion of the MPs, the MLAs and the MLCs weakens the Municipal Corporation or not cannot be decided by this Court. For, in order to decide the said issue empirical data would be essential. No evidence has been provided by the learned Senior Counsel to prove that the inclusion of these three classes of persons, in fact, weakens the democratic structure of the Municipal Corporation. He has merely argued theoretically that such would be the consequence, but without supporting evidence. Thus, the entire contention is based on conjectures and surmises. Hence, it is unacceptable.

37. Even theoretically, such a contention is untenable. For the purpose of the 74th Amendment was to strengthen the local self-government. In order to make it vibrant, the Parliament has permitted the State Legislature to include those persons, with special knowledge, to be nominated to the Municipality by the Government. Keeping the same goal in mind, the Parliament has also permitted the State Legislature to include the MPs, the MLAs, and the MLCs in the Municipality. As the relationship between the directly elected councilors, and these three categories of persons is symbiotic one--as each learns from the problems and experiences of the other the inclusion of these three categories of persons only "strengthens" the Municipalities. Thus, it does not muffle the voice of the people.

38. Moreover, there are conflicting views about the said issue. According to the Apex Court inclusion of MLAs strengthens the functioning of the Municipal Councils [Ref. to Kuldip Nayar and Others (supra)]. But there are certain reports of a few Committees which hold a contrary view. Obviously, the issue is a complicated disputed question of fact, which cannot be gone into by this court in its writ jurisdiction. Furthermore, this court does not have any manageable judicial standards for deciding such an issue. Only fools rush in, where even angels fear to tread. Therefore, this court is not in a position to decide the said issue without convincing and cogent evidence. But this much is sure that merely on a theoretical interpretation, Article 243-R of the Constitution of India cannot be declared to be unconstitutional.

39. Furthermore, the contention raised by some of the counsels that these three categories of persons should not be given the right to vote in the first meeting convened for the election of Mayor and the Deputy Mayor, but can be given the said right for other "general meetings", such a contention is self-contradictory. For, if by giving the right to vote to these three categories of person in the first meeting "muffles the voice of the people", then by the same logic to give them the right of vote in the "general meetings of the Municipal Corporation" would also "muffle the voice of the people". Such a contention is clearly untenable.

40. Mr. Ashok Haranahalli has also argued that in order to save Article 243-R from being declared unconstitutional, one of the possible solutions is to treat the MPs, the MLAs and the MLCs as also "nominated persons". In order to buttress this contention, he has further pleaded that some of the MLCs, in fact, are not elected by the people, but are merely "nominated" to the State Legislative Council by the Government. It is because of their being "nominated members of the State Legislative Council" that they become members of the Municipal Corporation. Thus, according to the learned Senior Counsel, "once nominated is always nominated".

41. But such a contention is misplaced. For, Article 243-R (2) (a) (iii) does not make any distinction between the Members of the Legislative Council of the State who are "elected", and those who are "nominated". Since the law does not make the said distinction, the same cannot be read into Article 243-R (2) (a) (iii) of the Constitution of India. To do so, again would be to do violence to the plain and grammatical meaning of the Article. Therefore, according to Article 243-R (2) (a) (iii), although the Members of the Legislative Council of the State may be "nominated" by the State, but because of such "nomination" they do not partake of the character of being "a nominated persons" under Article 243-R (2) (a) (i) of the Constitution of India. Therefore, the contention that a member "once nominated is always nominated" is unacceptable.

42. Mr. Ashok Haranahalli, learned Senior Counsel has not contended that Article 243-R of the Constitution of India is beyond the competency of the Parliament, or that it violates the fundamental right of the people. As far as the issue with regard to basic structure of the constitution is concerned, undoubtedly, "democracy" is part of the basic structure of the Constitution. By requiring that municipal area should be divided into wards, and the councilor should be directly elected by the people, Article 243-R of the Constitution of India certainly strengthens democracy. For, it validates and implements the basic criteria of democracy, that is, "Government by the people, of the people, and for the people". By bringing in expert persons with knowledge and experience in the area of Municipal administration, by including three classes of persons with a deep understanding of the political process, with an deep comprehension of the peoples' needs,, the

efficiency of the Municipal Council is being strengthened. Thus, "democracy" is further being strengthened at the grass-root level of the urban centers. Hence, it does not violate the basic structure of the Constitution of India. Thus, it is not an unconstitutional provision of the constitution.

43. Mr. Raghavan, the learned Senior Counsel, has of course pleaded that Article 243-R of the Constitution of India does not increase "the seats" of the Municipality. Therefore, by giving the right to vote to these three classes of persons would tantamount to increasing "the seats" of the Municipality/ Municipal Corporation. This argument overlooks the fact that Article 243-R (1) begins with the words "Save as provided in clause (2)...". These words clearly indicate that the composition of the Municipality is not confined only to the directly elected councilors as mentioned in Article 243-R (1), but it would also include those categories of persons who are mentioned in clause (2) of the Article. Therefore, the said Article clearly makes a distinction between those who represent "the seats" and those who are members of the Municipality, but do not represent any "seat". For such "members" are either those who are not elected at all, i.e. the nominated members, or they are not elected directly by the people in the Municipal election, i.e. the MPs, the MLAs, and the MLCs. But nonetheless, these classes of persons mentioned in Article 243-R (2) (a) of the Constitution of India are members of the Municipality. Thus, by counting them as "members" of the Municipality, "the seats" are not being increased by the said Article.

44. Furthermore, except for the bar placed on "the nominated members", with regard to right to vote, there is no bar which prevents these three classes of persons from voting as "members of the Municipality". By bestowing the right to vote on these three categories of persons, the number of "seats" is not being increased; only the membership of the Municipality is being increased. Hence, to argue that by bestowing the right to vote upon these three classes of persons would "increase the number of seats" in the Municipality is an unacceptable contention.

45. Mr. Raghavan has further pleaded that in the garb of a saving clause mentioned in Article 243-R (1) of the Constitution of India, "a Trojan Horse" cannot

be brought in, by granting the right to vote under Article 243-R (2) (a) of the Constitution of India, so as to topple the will of the people. The argument is certainly tempting one, but like all temptations, this, too, must fail. For while interpreting the plain and grammatical meaning of a provision, the Court is not concerned with the consequences. [Ref. to Nathi Devi (supra)]. Therefore, merely because presently a single vote of a MLC has tipped the scale in favour of a particular political party, this fact by itself would not change the judicial interpretation of a constitutional provision. For, the court is concerned with the intention of the legislature, and not, with a peculiar consequence of the law. If the intention of the Legislature is clear, the court is bound to interpret the provision accordingly.

46. Further, the learned Senior Council has strenuously stressed on the word "representation" used in Article 243-R (2)(a) of the Constitution of India in order to plead that the MPs, the MLAs and the MLCs enjoy only "a representative capacity" in the Municipality. They continue to merely "represent" the institution they individually came from. Therefore, in the garb of enacting a law for including these three classes of persons as "representatives" in the Municipality, they cannot be granted the right to vote.

47. However impressive as this argument may be, it is untenable. For, firstly, it overlooks the fact that under Article 243-R (2) (a) both "the nominated members" and these three classes of persons are to be included as "representatives" in the Municipality. But while the Parliament has forbidden the State Legislature from granting the right to vote to "the nominated members", it has not prohibited the State Legislature from granting such a right to these three classes of persons, although these three classes of persons are "representatives". Thus, "representative" as they may be, the State Legislation is still enabled to grant the right to vote on these three classes of person. Hence, merely because these three classes of persons are "representatives" would not mean that ipso-facto they have been denied the right to vote. Hence, their character as "representatives" does not denude the State Legislature of its power to bestow the said right through a piece of Legislation. If the State Legislature does bestow the right to vote upon these three classes of persons, it does not violate the mandate of Article 243-R of the

Constitution of India. They continue to "represent" their respective institutions, but with the right to vote.

48. Carrying the argument of Mr. Raghavan, Mr. Tejasvi Surya, the learned counsel has pleaded that Article 243-R of the Constitution should be interpreted in light of Article 243-C of the Constitution of India. For, according to the learned counsel, the Panchayath, the Municipality and the Municipal Corporation are inhabitants of the same topography. They are all institutions of local self-government. But such an argument is also unacceptable. Such an exercise would be warranted in case there were any ambiguity in the phraseology used in Article 243-R of the Constitution of India. Since the plain and grammatical meaning of the Article is clear, the exercise suggested by Mr. Tejaswi Surya need not be undertaken: it would be an exercise in futility.

49. Considering the constitutional validity of Sections 7 and 10 of the Act, the first issue is whether the State Legislature has the competency to enact the said provisions or not Secondly, does the competency flow from Article 243-R of the Constitution, or from some other source in the Constitution of India?

50. Prof. Ravivarma Kumar, the learned Advocate General, is certainly justified in claiming that the power to legislate with regard to local self-government does not emanate from Part IX-A of the Constitution of India. For, even prior to the introduction of the 74th Amendment, the State Legislature had ample power to legislate about the local self-government institution under Entry 5, List II in the Schedule VII attached to the Constitution of India. Under Article 246 (3) of the Constitution of India, the State Legislature has the exclusive power to make laws for the State with regard to the matters enumerated in List II in the Schedule VII of the Constitution of India. Thus, the State has the plenary power to legislate with regard to the local self-government institution under Article 246 (3) of the Constitution of India read with Entry 5, List II in the Schedule VII of the Constitution of India. Hence, the State Legislature is competent to enact Sections 7 and 10 of the Act under the aforementioned Constitutional provisions. Therefore, Article 243-R of the Constitution of India is not the source of power for the State Legislature to bestow the right to vote upon the MPs, the MLAs, and the MLCs. It is merely an

enabling provision which bestows a discretionary power upon the State Legislature to legislate or not to legislate about the inclusion of certain classes of persons as members of the Municipality. Thus, the arguments with regard to whether Article 243-R (2) of the Constitution of India bestows the power on the State legislature to legislate with regard to giving the right to vote on these three classes of persons are highly misplaced arguments. By raising these arguments the fallacy of red herring is being committed.

51. Mr. Raghavan, the learned Senior Counsel, has strenuously stressed on the apparent contradiction between Section 7 and Section 10 of the Act, and also between Section 10 and Rule 72-D of the Election Rules. According to him, while Section 7 restricts the word "Councilors" to merely "the directly elected" persons, Section 10 of the Act uses the word "Corporation shall elect", thereby implying that all the members of the Corporation, and not just "the directly elected councilors", shall elect the Mayor and the Deputy Mayor. Thus, Sections 7 and 10 are speaking in contradictory terms.

52. Further to compound the matter, Rule 72-D permits "the councilors" to vote in the election for the posts of Mayor and Deputy Mayor. Hence, there is a contradiction between "the Corporation shall elect", and "the councilors shall vote". Therefore, there seems to be a contradiction between Section 10 of the Act, on the one hand, and Rule 72-D of the Election Rules, on the other hand. Of course, the learned Senior Counsel has pleaded that such a glaring contradiction calls for a harmonious reading of the provisions. But he has also offered an escape route out of this labyrinth by suggesting that the word "Corporation" used in Section 10 of the Act should be read down to mean only "the directly elected councilors". By reading down the word "Corporation" it would be in tune with both Section 7 of the Act and with Rule 72-D of the Election Rules. It would also harmonize Section 10 of the Act with Rule 72-D of the Election Rules. Thus, reading down is the only way to harmonize the different provisions of the law.

53. The issue, therefore, before this court is whether there is a glaring contradiction between the two Sections of the Act, and between Section 10 of the Act and Rule 72-D of the Election Rules or not?

54. At the first blush the contention raised by Mr. Raghavan are impressive, indeed. However, on closer scrutiny, the argument falls apart like a house of cards. For, the argument ignores the fact that the original definition of the word "Councilor" given under Section 2 (7) of the Act of 1976 defined the word "Councilor" as meaning 'a person who is duly elected as a Member of the Corporation under this Act.' However, the said definition was subsequently changed with effect from 01.06.1994, that is after the 74th Amendment to mean 'a Councilor referred to in Section 7 of the Act.' Therefore, obviously the amendment brought in the definition is clearly a pointer to the fact that Councilors are no longer restricted to only the limited members of the Corporation. The definition is being enlarged to include those who are the members of the Corporation as defined in Section 7 of the Act. Although Section 7 of the Act does not define the word "Councilor", it does define the constitution of "Corporation" as consisting of various classes of people, namely the directly elected councilors, the nominated persons, and the MPs, the MLAs and the MLCs, and the Chairpersons of the Standing Committees. Therefore, Section 7 of the Act clearly stipulates that "the Corporation" shall consists of three classes of people, namely the directly elected councilors, the nominated persons and the MPs, MLAs and MLCs. Taking the constitution of "the Corporation" and plugging it back into Section 2 (7) of the Act, it is amply clear that the word "Councilors" would include the directly elected Councilors, the nominated persons, and the MPs, MLAs and MLCs. Hence, while some of the Councilors are directly elected in the light of Article 243-R (1) of the Constitution of India read with Section 7 (1) (a) of the Act, there are other "Councilors" who are either nominated by the Government in the light of Article 243-R (2) (a) (i) of the Constitution of India read with Section 7 (i) (b) of the Act, and indeed, there are still the non- elected "Councilors", namely the MPs, MLAs and MLCs in the light of Article 243-R (ii) (a) (ii) (iii) of the Constitution of India read with Section 7 (1) (c) and (d) of the Act. Most importantly, all these sets of persons are part and parcel of the definition of the word "Councilor". Therefore, the argument that the word "Councilor" should be limited only to "the directly elected councilor" is clearly unacceptable. For, to accept this argument is to overlook the definition of the word "Councilor" given in Section 2 (7) of the Act. Moreover, to accept this argument is to do violence with the plain and grammatical meaning of

Section 2 (7) read with Section 7 of the Act. Most importantly, if the word "Councilor" as defined under Section 2 (7), read with Section 7 is accepted in its plain and grammatical meaning, then all the provision of law quietly fall into their proper places. Unquestionably, an interpretation which leads to a peaceful existence of law, which does not disturb the ambit and scope of the law has to be preferred over an interpretation which would lead to needless tinkering with the law.

55. Before interpreting Section 10 of the Act, it is essential to note that Section 9 contained in the Act prior to the 74th Amendment clearly debarred the Members of the State Legislative Assembly and nominated member of a State Legislative Assembly from the right to vote on any subject or to contest any elected post in the Corporation. However, after the introduction of 74th Amendment, Section 9 was deleted with effect from 01.06.1994. Therefore, the deletion of the said provision clearly reveals the intention of the State Legislation in granting the right to vote to the MPs, the MLAs and the MLCs.

56. Section 10 of the Act uses the word "the Corporation shall elect". Obviously, the word "Corporation" has to be given the same meaning as the word is defined in Section 7 of the Act. Thus, Section 10 clearly bestows the right to vote upon all the members of the Corporation namely, the directly elected Councilors, and the non-elected Councilors. Since proviso to Section 7 (1) of the Act prohibits the nominated members from voting, naturally they are debarred from electing the Mayor and the Deputy Mayor under Section 10 of the Act. But, as far as the right to vote of the MPs, the MLAs and the MLCs is concerned, the said right has been expressly bestowed upon these three classes of persons by Section 10 of the Act. Thus, Section 2 (7) read with Sections 7 and Section 10 of the Act are in harmony with each other.

57. Furthermore, although Section 10 of the Act prescribes that "the Corporation shall elect", and Rule 72-D of the Election Rules lays down that "the Councilors" shall vote, but there is no contradiction between these two provisions of law. For, the word "Councilors" in Rule 72-D would have to import the definition of the said word from Section 2 (7) of the Act. Section 2 (7) read with Section 7 of the Act

make even the non-elected members, such as the MPs, the MLAs, and the MLCs as "Councilors". Thus, under Rule 72-D of the Election Rules, these three categories of persons, being "Councilors", would also have the right to cast their vote. Hence, "the Corporation shall elect " as used in Section 10 of the Act. Of course, proviso to Section 7 makes it abundantly clear that the nominated members shall not have the right to vote. However, the issue before the court is whether the MPs, the MLAs and the MLCs have the right to vote or not? Co-jointly reading Sections 7 and 10 of the Act, and Rule 72-D of the Election Rules, undoubtedly these three categories of persons do have the right to participate and to vote in the election for the posts of Mayor and the Deputy Mayor.

58. Seen in this light, there is no contradiction between the provisions of law as canvassed by Mr. Raghavan, the learned Senior counsel. Hence, the question of harmonizing or of reading down the word "Corporation" would not even arise. In fact, reading down a provision is impermissible when the language is unambiguous and crystal clear. [Ref. to Nelson Motis (supra)].

59. Vociferous contentions and counter contentions were raised by the learned counsel for the parties with regard to the relationship between the Act and the Election Rules. According to the learned counsel for the petitioners even if Rule 72-D of the Election Rules was contradictory to Sections 7 and 10, it was still applicable as it was the part of the Act itself. However, according to Prof. Ravivarma Kumar, the learned Advocate General Rule 72-D of the Election Rules was part of the sub-ordinate legislation. Therefore, in case there were contradictions between the parental Act and the sub-ordinate legislation, the Election Rules will have to give way to the Act.

60. Having appreciated the provisions of the Act and the Elections Rules holistically, having concluded that there is no contradictions between these provisions, this court need not enter into the issue whether the Election Rules violate the provisions of the parental Act or not Moreover, in case the Elections Rules do violate the Act, what would be the repercussions? However, in light of the interpretation made by this court, the aforementioned issues have become superfluous. Hence, these issues need not detain us.

61. The next question is whether Sections 7 and 10 of the Act, and Rule 72-D of the Election Rules are in violation of Article 243-R of the Constitution of India or not? Obviously, in light of the interpretation given above, the answer to the said issue is in the negative. Article 243-R of the Constitution of India had enabled the State Legislature to both include certain classes of persons as members of the Municipality, and to lay down "the manner of election of the Chairperson" of the Municipality. Sections 7 of the Act includes the MPs, the MLAs, and the MLCs as members of the Municipal Corporation; Section 10 of the Act bestows them with the right to vote; Rule 72-D of the Election Rules merely prescribes the procedure of election for the post of Mayor and Deputy Mayor. Rule 72-D (3) of the Election Rules prescribes the procedure for voting by Councilors. Here the word 'Councilors' would have to be given the same meaning as contained in Section 2 (7) of the Act. Thus, according to Rule 72-D (3) both the directly elected councilors and the non-elected councilors would have the right to participate and to vote in the election for the post of Mayor and Deputy Mayor. Moreover, Rule 72-D (5) of the Election Rules uses the word after voting by "all the councilors", thereby indicating that both the directly elected councilors and the non-elected councilors are to vote. After counting their votes, the Presiding Officer shall declare the candidate to whom the highest number of valid votes have been given as having been duly elected.

62. Therefore, a co-joint reading of Sections 2 (7), 7 and 10 of the Act, and Rule 72-D of the Election Rules clearly bestow the right to vote, and to participate in the election for the post of Mayor and Deputy Mayor of BBMP. Sections 7 and 10 of the Act, and Rule 72-D of the Election Rules are merely in furtherance of the discretionary power bestowed upon the Legislature under Article 243-R (2) (a) and (b) of the Constitution of India. Hence, Section 7 and 10 of the Act do not violate the mandate of Article 243-R of the Constitution of India. Thus, Sections 7 and 10 of the Act are constitutionally valid.

63. Mr. G. R. Gurumath, the learned Counsel, did claim that in case sub-section (c) and (d) of Section 7 of the Act were to be interpreted as granting the right to vote upon the three classes of persons mentioned therein, then said Section of the Act would be contrary to Article 243-R of the Constitution of India. However, in

light of the discussion aforementioned, the said contention is clearly unacceptable.

64. Ms. Lakshmi Iyenger, the learned counsel, has raised an interesting argument with regard to the unconstitutionality of Sections 7 and 10 of the Act. According to her, Article 243-R (2) (a) could not be interpreted to bestow a power on the State Legislature to grant the right to vote upon the MPs, the MLAs, and the MLCs. For, in many States the election to the posts of Mayor is directly by the people. It is only in few States, like Karnataka, where the election to the said post is indirectly done. Therefore, in the former set of States where the election is a direct one, the question of the MPs, the MLAs, and the MLCs voting in the election for the post of Mayor would not even arise. Thus, even in the case of the latter States, where the election to the said post is an indirect one, these three classes of persons cannot be granted the right to vote. After all, Article 243-R of the Constitution of India has to be the same for all the States. Hence, while granting the right to vote upon these three classes of persons, Sections 7 and 10 of the Act violate the mandate of Article 243-R of the Constitution of India. Therefore, these two provisions are unconstitutional.

65. Impressive as this argument is, it is based on misunderstanding of the nature, the scope and ambit of Article 243-R of the Constitution of India. Firstly, as discussed above, Article 243-R of the Constitution of India is merely an enabling provision; it is not the source of competency of the State Legislature for enacting laws about the local self-government. The source is Article 246 (3) of the Constitution of India, read with Entry 5 List II in the Schedule VII of the Constitution of India. Thus, the constitutional validity of Sections 7 and 10 of the Act would have to be tested on the touchstone of Article 246 (3) read with Entry 5, List II in the Schedule VII of the Constitution of India.

Secondly, the argument presumes that law covers all the permutations and combinations of circumstances. In fact, law is always contextual. It applies only when the circumstances are such where it can be applied. Where the circumstances do not permit the application of the law, it continues to be inapplicable. Thus, in those States where the election to the post of Mayor is directly by the people, naturally the MPs, the MLAs and the MLCs in those states

would not have the right to elect the Mayor. In fact, in such a scenario even the directly elected councilors would not have the right to elect the Mayor in the first meeting of the Municipality. For, the question of indirectly electing the Mayor would not even arise in such States. In such States the applicability of Article 243-R of the Constitution of India would be a limited one: it would merely enable the State Legislature to include, by law, the different categories of persons mentioned in Article 243-R (2) (a) (i) (ii) and (iii) as members of the Municipality. But even then, while "the nominated members" would not have the right to vote in the regular meetings of the Municipality, the MPs, MLAs, and the MLCs may be given the right to vote in the regular meetings of the Municipality.

Thirdly, naturally the question of granting right to vote to the MPs, the MLAs and the MLCs in the election for the post of Mayor and Deputy Mayor would arise only in those States where the election to the said posts is an indirect one. It is, thus, in these States the question would be whether Article 243-R (2) (a) of the Constitution enables the State Legislature to bestow the right to vote upon these three classes of persons in the indirect election for the posts of Mayor and Deputy Mayor or not? It is only in such a scenario that the issue becomes relevant. Thus, the mere existence of some States where the election to the said posts is a direct one, would not denude the State Legislature of its enabled power in granting the right to vote to these three classes of persons where the election to the posts is an indirect one.

Fourthly, if the Parliament wanted to debar the MPs, the MLAs, and the MLCs from the right to vote in the indirect election for the post of Mayor and Deputy Mayor, so as to ensure that in all the States of the Union these three classes of persons would have no role to play in the election of Mayor, then the Parliament would have clearly prescribed the prohibition in Article 243-R (2) of the Constitution of India. Thus, the Parliament was well aware that in some of the States where the election to the post of Mayor was a direct one, the question of grant of voting right to these three classes of persons would not even arise. In such a situation, the Parliament merely enabled the State Legislature to grant the right to vote in the regular meetings of the Municipality. Hence, Article 243-R (2) (a) of the Constitution cannot be interpreted as prohibiting the State Legislature

from granting the right to vote to these three classes of persons in the election for the post of Mayor, where the election is an indirect one. Since the said Article contains no such bar, Section 10 of the Act is not contrary to Article 243-R of the Constitution of India.

66. Since Section 10 of the Act grants the right to vote to these three categories of persons, Mr. Ravi Prakash, the learned counsel, is unjustified in claiming that none of the provisions of the Act bestow such a right upon these three categories of persons. Moreover, his contention that the said right is being granted under Notification dated 01-09-2015 is equally misplaced. Hence, his contentions are unacceptable.

67. Although in different circumstances, the issues whether the MPs, the MLAs, and the MLCs form part of Municipality or not, whether they have the right to vote in a no confidence motion against the Chairperson of a Municipality, the role of these three classes of persons has engaged the judicial attention. In the case of Ramesh Mehta (supra) the issue was whether the nominated members have to be taken into consideration while counting "the whole number of members of the Municipal Board" or not? Although the Hon'ble Supreme Court expressed its opinion about the role and importance of "the nominated members", it did express its opinion that according to the Rajasthan Municipalities (Motion of No-confidence against Chairman or Vice-Chairman) Rules, 1974, the MPs, the MLAs and the MLCs would have the right to vote in a no confidence motion. Hence, they are included in "the whole number of members of the Municipal Board."

68. Similarly, in the case of Sultan Ali and Others v. Shahajaha and Others (W.A. Nos. 200299-300/2015 (LB-RES), decided on 8-10-2015, by the Kalaburagi Bench of the Hon'ble Karnataka High Court), this court also dealt with the issue whether the MPs, the MLAs and the MLCs have the right to vote in a no-confidence motion of a Municipal Council or not? The learned Division Bench has answered the issue in the affirmative.

69. It is only in the case of Kiran Krishnarao Saynak and Others. v State of Karnataka and 3 Others (W. A. No. 100469/14 (LB-ELE) decided on 09-04-2015 by the Dharwad Bench of the Hon'ble Karnataka High Court), this court was

specifically seized with the issue whether the MPs, the MLAs, and the MLCs have the right to vote in the election of the Mayor in the Municipal Corporation or not? This Court answered the issue in the affirmative. The Court held as under:

The legislature has excluded only the persons mentioned in Section 7 (1) (b) from voting in a meeting. The corollary of Section 7 (1) (b), shall only mean that all persons who are bracketed in sub-clause (a), (c) and (d) of section 7 (1) of the Act shall have a right to vote in the meeting. Further, the mandate of Section 10 that the Mayor and the Deputy Mayor are required to be elected in the first meeting shall also mean without any scope for ambiguity that the election is required to be conducted in the first meeting and except those persons mentioned in Section 7(1) (b), all persons shall have a right to vote in the first meeting.

Thus, the said judgment clearly covers the present controversy.

70. This Court has not discussed the contentions raised by Mr. Gurumath Gangadhar, the learned counsel, Mr. D.R. Ravishankar, the learned counsel, and Mr. Abraham T. J., the petitioner-in-person, in particular. Since their contentions were similar to the ones raised by the other learned counsel for the petitioners, their contentions have been dealt with and answered by this court through the interpretation given hereinabove. Hence, their contentions are not being discussed separately.

71. Mr. S.N. Sameer in W.P. Nos. 38522-523/2015 has challenged the participation of two MLCs. As far as W. P. Nos. 38522-523/2015 is concerned, this court has made it amply clear to Mr. S.N. Sameer that whether these two MLCs are entitled to vote in the election for the posts of Mayor and Deputy Mayor is a disputed question of fact which would require evidence. Thus, this court would not invoke its writ jurisdiction as highly disputed questions of facts are involved. Moreover, the petitioner in this writ petition has other efficacious alternative remedy for challenging the elections for these two posts. Thus, the said writ petition is dismissed as not maintainable.

72. Thus to summarize the interpretation and findings of this court:

1) The Article 243-R of the Constitution of India is constitutional. Since it strengthens the concept of "democracy" at the grass-root level of the urban areas, it is in conformity with the basic structure of the Constitution of India.

2) Sections 7 and 10 of the Act are also constitutionally valid. They could be enacted by the State Legislature both under its plenary power under Article 246 (3) of the Constitution of India read with Entry 5, List II in the Schedule VII of the Constitution of India, and under the enabling provisions of Article 243-R of the Constitution of India. Since Sections 7 and 10 of the Act are in furtherance of the enabling provision of Article 243-R of the Constitution of India, they are constitutionally valid.

3) Section 7 of the Act makes the MPs, the MLAs, and the MLCs, "the non-elected members" of the Municipal Corporation; under Section 2(7) of the Act, these three classes of persons are included in the definition of the word "Councilors."

4) Section 10 of the Act bestows the right to vote upon the MPs, the MLAs, and the MLCs in the election for the posts of Mayor and the Deputy Mayor. For, the Section uses the words "the Corporation shall elect..." thereby implying that the members of the Corporation, both "the directly elected councilors" and "the non-elected councilors", shall elect the Mayor and the Deputy Mayor.

5) There is no conflict between Section 7 and 10 of the Act on one side, and Rule 72-D of the Election Rules on the other side. While Section 7 of the Act declares the MPs, the MLAs, and the MLCs to be members of the "Corporation", Section 10 of the Act bestows the right to vote on members of the Corporation, including these three classes of persons; Rule 72-D of the Election Rules permits these three classes of persons to participate in the election process of electing the Mayor and the Deputy Mayor.

6) Since there is no conflict between these provisions of law, there is no need to read down the word "Corporation" as used in Section 10 of the Act as meaning merely "the directly elected councilors."

7) The Notice dated 01-09-2015 did not bestow the right to vote on these three classes of persons. It merely followed the mandate of Sections 7 and 10 of the Act; it merely ensured that the process of election, as prescribed by the Election Rules, is followed. Thus, Notice dated 1-9-2015 is legally valid.

8) The election for the posts of Mayor and Deputy Mayor held on 11-09-2015 is not vitiated due to the participation of and the voting by the MPs, the MLAs, and the MLCs. However, this finding shall not influence the decision of any Election Petition that has been filed, or may be filed, challenging the said election on any other ground available under law. The Election petition shall be decided uninfluenced by any observation of this court in this order, and strictly in accordance with law.

For the reasons stated above, this Court does not find any merit in the writ petitions. Therefore, they are hereby dismissed. No order as to cost.

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