

Ravi Jagan Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Dec-04-2020

Judge : Abhay Shreeniwas Oka (Cj) and S Vishwajith Shetty

Appeal No. : WP 11077/2020

Appellant : Ravi Jagan

Respondent : The State Of Karnataka

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE4H DAY OF DECEMBER, 2020 PRESENT THE HONBLE SHRI ABHAY S. OKA, CHIEF JUSTICE AND THE HONBLE SHRI JUSTICE S. VISHWAJITH SHETTY WRIT PETITION No.10216 OF2020(LB-BMP) PIL C/W WRIT PETITION No.11077 OF2020(LB-BMP) PIL AND WRIT PETITION No.1892 OF2020(LB-BMP) PIL IN WRIT PETITION No.10216 OF 2020 BETWEEN:

1. SRI M SHIVARAJU S/O N MAHADEVAPPA AGED46YEARS CORPORATOR, WARD NO.75 (SHANKAR MUTT) 16, 1ST MAIN, 1ST CROSS, GRIHALAKSHMI LAYOUT II STAGE KAMALANAGAR, BANGALORE-560079.

2. SRI ABDUL WAJID S/O ABDUL KHUDUS AGED52YEARS LEADER OF THE OPPOSITION, BBMP AND CORPORATOR WARD NO.33 (MANORAYANAPALYA) 8, HARRIS ROAD, BENSON TOWN BANGALORE-560046. . . . PETITIONERS (BY PROF RAVIVARMA KUMAR - SENIOR

ADVOCATE FOR SMT. SHARADA BAI - ADVOCATE) 2 AND:

1. THE STATE OF KARNATAKA REPRESENTED BY ITS CHIEF SECRETARY VIDHANA SOUDHA BANGALORE-560001.

2. THE STATE ELECTION COMMISSION REPRESENTED BY ITS COMMISSIONER NO.8, 1ST FLOOR, K.S.C.M.F. BUILDING ANNEXE CUNNINGHAM ROAD BENGALURU-560052. . . . RESPONDENTS (BY SHRI. PRABHULING K. NAVADGI - ADVOCATE GENERAL A/W SHRI VIKRAM HULIGOL - ADDITIONAL GOVERNMENT ADVOCATE FOR R1. SHRI K.N. PHANINDRA - SENIOR ADVOCATE A/W SMT. VAISHALI HEGDE - ADVOCATE FOR R2) THIS WRIT PETITION IS FILED UNDER ARTICLES-226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENTS TO FULFILL THE CONSTITUTIONAL MANDATE OF CONDUCTING TIMELY ELECTIONS TO THE BRUHAT BENGALURU MAHANAGARA PALIKE BEFORE THE EXPIRY OF THE FIVE YEAR TERM OF THE CURRENTLY EXISTING COUNCIL, AS STIPULATED IN ARTICLE 243U AND AS PER ARTICLE 243ZA OF THE CONSTITUTION OF INDIA AND TO DECLARE THAT THE KARNATAKA MUNICIPAL CORPORATION ACT (THIRD AMENDMENT) 2020 (KARNATAKA ACT OF 17 OF 2020 PUBLISHED VIDE NOTIFICATION NO.DPAL57SHASANA2020 BENGALURU DATED 03.10.2020 HAS NO APPLICATION TO THE ELECTIONS TO BE CONDUCTED IN RESPECT OF BBMP COUNCILLORS WHOSE TERM CAME TO AN END ON 10.09.2020. IN THE ALTERNATIVE, STRIKE DOWN THE KARNATAKA MUNICIPAL CORPORATION ACT (THIRD AMENDMENT) 2020 (KARNATAKA ACT OF 17 OF 2020 AS ULTRA VIRES. 3 IN WRIT PETITION No.11077 OF 2020 BETWEEN: RAVI JAGAN AGE 64 YEARS SON OF MR V K JAGANATHAN RESIDING AT NO 222 5TH A CROSS KALYAN NAGAR 3D BLOCK BANGALORE - 560043 PH 934124029 MAIL RAVIJAGAN2001@YAHOO.COM . . . PETITIONER (PARTY-IN-PERSON) AND:

1. . THE STATE OF KARNATAKA REPRESENTED BY ITS CHIEF SECRETARY, VIDHANA SOUDHA BENGALURU - 560001 2 . THE COMMISSIONER STATE ELECTION COMMISSION 1 FLOOR, KSCMF BUILDING ANNEX NO 08

CUNNINGHAM ROAD BENGALURU - 560052 . . . RESPONDENTS (BY SHRI. PRABHULING K. NAVADGI - ADVOCATE GENERAL A/W SHRI VIKRAM HULIGOL - ADDITIONAL GOVERNMENT ADVOCATE FOR R1. SHRI K.N. PHANINDRA - SENIOR ADVOCATE A/W SMT. VAISHALI HEGDE - ADVOCATE FOR R2) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENTS TO FULFILL THEIR RESPECTIVE STATUTORY AND CONSTITUTIONAL DUTIES AS PRESCRIBED UNDER ARTICLES 243U AND 243ZA OF THE CONSTITUTION AND CONDUCT ELECTIONS TO THE BRUHAT BENGALURU MAHANAGARA PALIKE, WITHOUT ANY FURTHER DELAY. 4 IN WRIT PETITION No.1892 OF 2020 BETWEEN: THE STATE ELECTION COMMISSION, KARNATAKA REPRESENTED BY ITS UNDER SECRETARY K S C M F BUILDING, 1ST FLOOR, NO 8 CUNNINGHAM ROAD, BANGALORE 56005 . . . PETITIONER (BY SHRI. K.N. PHANINDRA - SENIOR ADVOCATE A/W SMT. VAISHALI HEGDE - ADVOCATE) AND:

1. THE STATE OF KARNATAKA REPRESENTED BY ITS CHIEF SECRETARY, VIDHANA SOUDHA, DR AMBEDKAR ROAD, BANGALORE 56000 2. THE STATE OF KARNATAKA REP. BY ITS ADDITIONAL CHIEF SECRETARY URBAN DEVELOPMENT DEPARTMENT VIKASA SOUDHA, DR. AMBEDKAR ROAD BANGALORE 56000 3. THE COMMISSIONER BRUHAT BANGALORE MAHANAGARA PALIKE N R SQUARE, CORPORATION CIRCLE BANGALORE 56000 . . . RESPONDENTS (BY SHRI. PRABHULING K. NAVADGI - ADVOCATE GENERAL A/W SHRI VIKRAM HULIGOL - ADDITIONAL GOVERNMENT ADVOCATE FOR R1 AND R2. SHRI BHATHE GOWDA K.V - ADVOCATE FOR R3) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE STATE GOVERNMENT TO TAKE IMMEDIATE ACTION AND ISSUE THE FINAL NOTIFICATION OF DELIMITATION OF 198 WARDS OF BRUHAT BENGALURU MAHANAGARA PALIKE UNDER SECTION 21 OF THE KARNATAKA MUNICIPAL CORPORATIONS ACT, 1976 AND ALSO IMMEDIATELY ISSUE THE FINAL NOTIFICATION OF RESERVATION OF SEATS TO ALL THE 198 WARDS OF BRUHAT BENGALURU MAHANAGARA PALIKE UNDER SECTION 7(2) OF THE KARNATAKA MUNICIPAL CORPORATIONS ACT, 1976, PURSUANT TO THE

REQUESTS DATED 04.07.2018, 11.09.2018, 25.10.2018, 16.04.2019, 12.09.2019 AND 27.09.2019 OF THE STATE ELECTION COMMISSION VIDE ANNEXURE-A, B, C, D, D1, G AND H. THESE WRIT PETITIONS, HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF

ORDER

, THIS DAY, THE CHIEF JUSTICE PRONOUNCED THE FOLLOWING:

ORDER

FACTUAL MATRIX These petitions concern the general elections of the Bruhat Bengaluru Mahanagara Palike (for short the BBMP) which is a Municipal Corporation constituted in accordance with Sections 6 and 7 of the Karnataka Municipal Corporations Act, 1976 (for short the said Act of 1976). The BBMP is a Municipality within the meaning of clause (e) of Article 243P of the Constitution of India (for short the Constitution). As per clause (1) of Article 243U, the term of BBMP is for a period of five years from the date appointed for its first meeting. The term of the office of the Councillors of a Corporation constituted under the said Act of 1976 is of five years. There is no dispute that the term of five 6 years of BBMP, as contemplated by clause (1) of Article 243U, has expired on 10th September 2020 and the election to constitute BBMP ought to have been completed before the expiry of its duration specified in clause (1) of Article 243U. As per the Constitutional mandate incorporated in sub-clause (a) of clause (3) of Article 243U, the elections of BBMP ought to have been held before 10th September 2020.

2. Prior to 14th October 2020, as per clause (a) of sub-section (1) of Section 7 of the said Act of 1976, BBMP consisted of one hundred and ninety eight (198) elected Councillors. For holding the general elections of BBMP, a notification of delimitation of Wards was issued on 23rd June 2020 by the State Government in accordance with clause (a) of sub-section (1) of Section 21 of the said Act of 1976. A draft notification of reservations of Wards was issued as per clause (c) of sub-section (1) of Section 21 of the said Act of 1976 and the same was published on 14th September 2020. The draft of the Ward-wise electoral rolls has been published by the State Election Commission (for short the SEC) on 19th October

2020 and final electoral roll is scheduled to be published on 30th November, 2020.

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3. The main controversy in these petitions arises as a result of the amendment which is brought into force with effect from 3rd October 2020 to the provisions of the said Act of 1976. The amendment was made by the Karnataka Municipal Corporations (third Amendment) Act, 2020 (for short the Amendment Act) which has been published in the official Gazette on 3rd October 2020. Prior to coming into force of the said Amendment Act, sub-clause (a) of sub-Section (1) of Section 7 provided that the number of elected Councillors of a Corporation shall not be less than thirty and more than two hundred as the Government may, by a notification, determine. By the Amendment Act, a proviso was added after sub-clause (a) of sub-section (1) of Section 7, providing that BBMP shall consist of not less than 225 but not more than 250 Councillors, as the Government may decide by issuing a notification. As per sub-section (1) of Section 21, the power to determine the number of Wards into which the city shall be divided and the extent of each division is vested in the State Government. The Amendment Act added sub-section (2A) to Section 21 providing that the State Government shall constitute a Delimitation Commission consisting of such number of members, as may be prescribed, to recommend the State Government the manner of delimitation of Wards in each Corporation. On 14th October 2020, the State Government issued a notification by exercising its power under proviso to clause (a) of sub-section (1) of Section 7 of the said Act of 1976 for determining the number of Councillors for BBMP. By the said notification, it was provided that the BBMP shall have 243 Councillors. In view of issuance of the said notification, the contention of the State Government is that the area within BBMP will have to be divided into 243 Wards.

4. Though there is a challenge to the provisions of the Amendment Act, the main question which arises is whether the general election of BBMP which was due to be completed prior to 10th September, 2020 is required to be held as per the provisions of the said Act of 1976, as amended by the Amendment Act. If it is held that the general elections which ought to have been completed as per the Constitutional mandate before 10th September, 2020 will have to be held as per

the Amendment Act, there will be no possibility of the elections being held in the near future. The reason is that the Delimitation Commission, which was recently constituted, has not yet submitted its recommendations for dividing the area of BBMP into 243 Wards. The said exercise will take considerable time, as earlier, there were 198 Wards. Thereafter, the State Government will have to take actual decision of dividing the area into 243 Wards after considering the recommendations which may be made by the Delimitation Commission. After the notification of delimitation is issued, the SEC will have to undertake the huge task of preparation of fresh electoral roll for 243 Wards and simultaneously, the State Government will have to start exercise of declaring the reservation of seats.

FACTS IN EACH INDIVIDUAL CASE⁵ There are three writ petitions filed on the issue with which we are dealing with. The first writ petition is W.P.No.1892/2020 filed by the SEC. In the said writ petition, as originally filed on 24th January, 2020, a writ of mandamus was prayed for directing the State Government to take immediate action for issuing the final notification of delimitation of 198 Wards, as required by sub-section (1) of Section 7 and to issue the final notification of reservations of seats as required by sub-section (2) of Section 7. Thereafter, after coming into force of the Amendment Act, the petition was amended incorporating an additional prayer for a declaration that the elections of BBMP shall be held for electing 198 Councillors in terms of the delimitation notification dated 23rd 10 June 2020. A direction is sought that the election process should continue irrespective of the provisions of the Amendment Act.

6. Writ Petition No.10216/2020 is filed by two elected Councillors of BBMP whose term has expired on 10th September 2020. The prayer in the said writ petition is for issuing a writ of mandamus against the State Government and the SEC to hold the elections of the BBMP before the expiry of the term of BBMP as per the Constitutional mandate of Article 243U of the Constitution.

7. We may note here that Writ Petition No.10216/2020 was amended by incorporating the two additional prayers. The first prayer is for a declaration that the Amendment Act has no application to the elections to be conducted in respect of the BBMP. A prayer in the alternative was incorporated for striking down the Amendment Act by contending that it is unconstitutional.

8. Writ petition No.11077/2020 is filed by the petitioner appearing in person who is an Advocate. The prayer sought in the petition is the same, as sought in W.P.No.10216/2020. 11 SUBMISSIONS:

9. We have heard the submissions of Professor Ravivarma Kumar, the learned Senior Counsel representing the petitioner in W.P.No.10216/2020, Shri K.N. Phaneendra, learned Senior Counsel representing the petitioner (the SEC) in W.P.No.1892/2020 and the petitioner appearing in person in W.P.No.11077/2020. SUBMISSIONS OF THE PETITIONERS:

10. The gist of the submissions of the petitioners is as under: (a) The mandate of clause (3) (a) of Article 243U of the Constitution is that election to constitute a Municipality must be held before the expiry of its term of five years; (b) The Amendment Act is prospective which will apply from 3rd October 2020 and it will not apply to election of a Municipality which is overdue; (c) The issue is covered by the decisions of this High Court in the cases of Professor B.K. Chandrashekar and others v. State of Karnataka¹ and K.C. Kondaiah and others v. 1ILR 1999 KLR251512 The State of Karnataka and others². Even in the past, the election of BBMP was considerably delayed and an attempt is always made by the State Government to delay the elections thereby defeating the mandate of Article 243U of the Constitution. The delimitation notification as contemplated by sub-clause (a) of sub-section (1) of Section 21 of the said Act of 1976 was published way back on 23rd June 2020 and even a draft reservation notification in accordance with clause (c) of sub- section (1) of Section 21 was published on 14th September 2020. (d) It is pointed out by the SEC that Standard Operating Procedure for the conduct of general election of BBMP has been published on 14th September 2020 in the context of COVID-19. The final electoral roll is scheduled to be published on 30th November 2020. It is pointed out that huge expenditure has been incurred on the finalization of the ward-wise electoral roll. (e) The State Government cannot interfere with the process of election of BBMP in view of the Constitutional mandate. It is pointed out that ward wise draft electoral roll has been published on 19th October 2020 and approval for printing of ward-wise final electoral roll has been granted. 2W.P.No.7987/2020, dated 13.11.2020 13 (f) Details of the activities conducted by the SEC for holding the election of BBMP are set out in

Annexure-M to the amended W.P.No.10216/2020. SUBMISSIONS OF THE STATE GOVERNMENT¹¹ The submissions of learned Advocate General can be summarized as under; (a) The Bruhat Bengaluru Mahanagara Palike Bill (2020) (for short the said Bill) was placed before the Councillors of legislature. The said bill is of a separate enactment dealing with Constitution of BBMP. The said bill was referred to Joint Select Committee of the Karnataka Legislature. The report of the Joint Select Committee dated 15th September 2020 records that extension of time has been granted to submit a special report. But, the committee recommended the amendment of Section 7 of the said Act of 1976 for increasing the maximum number of wards to 250. (b) He pointed out that the said Act of 1976 was amended by the Amendment Act for giving effect to the recommendations of the Joint Select Committee. The Amendment Act came into force on 3rd October 2020. The 14 amended provisions cannot be ignored and will have to be given effect. (c) Reliance was placed on a Constitution Bench judgment of the Apex Court in the case of K.S. Puttaswamy and another v. Union of India³. He relied upon paragraph 101 and submitted that importance has been given to Constitutional democracy. He submitted that object of amending Section 7 is to ensure that the citizens of Bengaluru get a larger representation. He submitted that the population within the limits of BBMP has rapidly increased and now the population is more than 1.30 crores. (d) A legislation can be challenged only on one of the three grounds. (i) Lack of legislative competence, (ii) the legislation is in violation of fundamental rights or any other Constitutional provision and (iii) The legislation is manifestly arbitrary. He submitted that none of the three grounds are established in these cases for substantiating the challenge to the Amendment Act. He submitted that notwithstanding the amendment of the Constitution incorporating parts IX and IXA, the power of the State legislature to legislate as per entry 5 of list- 3(2019) 1 SCC115 II of seventh schedule of the Constitution is not taken away. He pointed out that clause (5) is in respect of local Governments, its constitution and powers. He invited our attention to Article 368 of the Constitution and submitted that if any entry in any of the lists in the seventh schedule is to be changed or amended, such amendment requires ratification by the legislatures of not less than one half of the States. (e) He relied upon observations made in paragraph 12 of the decision of the Apex Court in the case

of Drawida Munnetra Kazhagam (DMK) v. Secretary, Governors Secretariat and another⁴. He submitted that the Apex Court has held that the object of part IX cannot be achieved unless delimitation exercise is done properly. The submission is that the delimitation exercise will have to be done properly in the light of the Amendment Act. He relied upon a decision of Gujarat High Court in the case of Rajendra N. Shah v. Union of India and another⁵ on the power of the State Legislature. (f) The learned Advocate General invited attention of the Court to the statement of objections filed by the State Government in W.P.No.1892/2020. He pointed out that the 4(2020) 6 SCC5485(2013) SCC online Gujarat 2242 16 population of the BBMP limits has been recorded in 2011 census as 84,43,675 which is now more than 1.30 crores. Consequently, demographics recorded in the year 2011 have been changed. He submitted that by electing 243 Councillors, a larger representation will be given to the citizens. (g) He submitted that the decision of this Court in the case of Professor B.K. Chandrashekar is per incuriam. He submitted that the provisions of law cannot be ignored and the Court is bound to give effect to the provisions of law. (h) However, the learned Advocate General has stated that the Court may put a time limit for completing the exercise of delimitation of wards, declaration of reservation and finalization of voters list. He submitted that the State Government is prepared to abide by directions issued by this Court in this behalf. CONSIDERATION OF SUBMISSIONS¹² We have given careful consideration to the submissions made across the Bar. The BBMP is a Municipality within the meaning of clause (e) of Article 243P of the Constitution. Article 243U is most material for our consideration which reads thus:

17. 243-U. Duration of Municipalities, etc.-(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer: Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution. (2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1). (3) An election to constitute a Municipality shall be completed,- (a) before the expiry of its duration specified in clause (1); (b) before the expiration of a period of six months from the date of its dissolution: Provided that where the

remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period. (4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of 18 the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved. (Underlines supplied) 13. In the case of Kishansing Tomar -vs- Municipal Corporation of the City of Ahmedabad and others⁶, the Constitution Bench of the Apex Court had an occasion to consider Article 243U. In paragraph 12, the Apex Court referred to the statement of objects and reasons of the bill by which Part IX-A was incorporated in the Constitution. Paragraph 12 of the said decision reads thus: 12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Constitution (Seventy-fourth) Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. These views were expressed by 6 (2006) 8 SCC35219 the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections. In the Statement of Objects and Reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated: In many States, local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersession and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-government. Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for: (i) putting on a firmer footing the relationship between the State Government and

the urban local bodies with respect to: (a) the functions and taxation powers, and (b) arrangements for revenue sharing. (ii) ensuring regular conduct of elections, 20 (iii) ensuring timely elections in the case of supersession; and (iv) providing adequate representation for the weaker sections like the Scheduled Castes, Scheduled Tribes and women. Accordingly, it has been proposed to add a new part relating to the urban local bodies in the Constitution to provide for- *** (f) fixed tenure of 5 years for the municipality and re- election within a period of six months of its dissolution. (Underline supplied) Paragraphs 13 and 14 are also material which read thus: 13. The effect of Article 243-U of the Constitution is to be appreciated in the above background. Under this article, the duration of the municipality is fixed for a term of five years and it is stated that every municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243-U states that election to constitute a municipality shall be completed-(a) before the expiry of its duration specified in clause (1), or (b) before the expiration of a period of six months from the date of its dissolution. Therefore, the constitutional mandate is that election to a municipality shall be completed 21 before the expiry of the five years' period stipulated in clause (1) of Article 243-U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner. A proviso is added to sub-clause (3) of Article 243- U that in case of dissolution, the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the municipality for such period. It is also specified in clause (4) of Article 243-U that a municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued under clause (1) had it not been so dissolved.

14. So, in any case, the duration of the municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new municipality is constituted in time and elections to the municipality are conducted before the expiry of its duration of five years as specified in clause (1) of Article 243-U. (Underlines supplied) 22 In paragraphs 19

and 21 the Apex Court held thus: 19. From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years' period as stipulated in clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the municipality, but they are exceptional circumstances and under no (sic other) circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and 23 other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects. It is only when the municipality is dissolved for any other reason and the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the municipality for such period. (underlines supplied) 14. Hence, the mandate of clause 3 (a) of Article 243U of holding elections of a Municipality before its term expires must be followed strictly. It is the obligation of the SEC to do so. If the finalization of voters list is delayed, the election must be held as per existing voters list. The SEC should not yield to a situation created by the vested interests for delaying the elections. In this case, the State Government or the SEC have not come forward to give an excuse of spread of pandemic COVID-19 for delaying the election of the BBMP. It is the SEC which moved this Court first in point of time for seeking a writ of mandamus well in advance 24 on 24th January, 2020 by filing Writ Petition No.1892/2020.

Paragraphs 2 to 9 of the order dated 18th February, 2020 passed by this Court in the said writ petition read thus: 2. Notice has already been issued to the first and second respondents. For the time being, notice to the third respondent is dispensed with.

3. The State Election Commission has been constituted under Section 308 of the Karnataka Panchayat Raj Act, 1993. The State Election Commission has been constituted on the basis of the constitutional mandate under Article 243-ZA of the Constitution of India. It is shocking to note that the State Election Commission, which is established under the constitutional mandate, is forced to approach the writ court for seeking a writ of mandamus against the State Government on account of failure to the State Government to perform its statutory duties under the Karnataka Municipal Corporation Act, 1976 (for short the said Act of 1976).

4. The term of office of Bengaluru Bruhat Mahanagara Palike will expire on 10th September 2020. Therefore, the State Election Commission will have to hold election well within time. The process of election has to be completed before 10th September 2020 in accordance with the constitutional mandate. 25

5. So far as the State Government has not done the exercise of determination of wards as contemplated under Section 21 of the said Act of 1976 and reservation of seats as provided under sub-Section (2) of Section 7 of the said Act of 1976.

6. The State Government must file statement of objections to set out whether the exercise of determination of wards of BBMP was earlier done on the basis of 2011 census. The State Government also to state when the process of determination of wards was commenced by it.

7. The statement of objections shall be filed on or before the 3rd March 2020. Let this petition be listed for final disposal on 4th March 2020 in the afternoon.

8. Prima facie, it is a fit case to impose exemplary cost on the State Government for forcing the State Election Commission to take recourse to a remedy under Article 226 of the Constitution of India.

9. Needless to add that the work of determination of wards and fixing the reservations for the seats of all the wards shall be completed by the State Government at the earliest. Prima facie, there was no impediment at all to do this exercise much earlier. (Underlines supplied) 26 Thereafter, the order dated 4th March 2020 was passed in the said petition which reads thus: The learned Additional Government Advocate states that a draft notification of determination of the wards in accordance with Section 21 of the Karnataka Municipal Corporations Act 1976 (for short the said Act of 1976) has been published yesterday and time of 15 days has been given to submit the objections. After the wards are determined, the exercise of reservation as contemplated under sub-section (c) of sub-section (1) of Section 21 of the said Act of 1976 will be undertaken. The State must give an undertaking on oath to the Court specifying the outer limit for completion of the work of not only determination of the wards but, also the determination of reservation as provided in clause (c) of sub-section (1) of Section 21 of the said Act of 1976. The result of the election will have to be announced much prior to 10th September 2020. The State Election commission needs time of minimum one month to complete the actual process of the election. Time of four months will be required by the State Election Commission to finalise the voters list. Thus in all, a minimum period of five months will be required by the State Election Commission to hold the elections. So, they will require time from at least 1st April 2020 till the end of August, 2020. 27 Keeping in mind, the time required by the State Election Commission as aforesaid, the State Government will give an undertaking. Such an undertaking shall be filed on or before 13th March 2020. The petition will be listed at 2.30 p.m. on 13th March 2020 for that purpose. (Underlines supplied) 15. On 13th March, 2020, this Court noted that the learned Additional Government Advocate sought time of one week to file an undertaking on oath, in terms of the order dated 4th March 2020. In paragraph four of the order dated 13th March 2020, it was observed thus: The learned AGA seeks time of one week to file an undertaking on oath, as directed under the order dated 4th March 2020.

2. The order of 4th March 2020 makes it very clear that the work of determination of the wards and determination of reservation has to be completed before 1st April 2020.

3. We had given time till 13th March 2020 to enable the State to file the undertaking specifying the outer limit for completing the determination of the wards and determination of reservation. 28

4. We must note here that the fact that the State Election Commission constituted on the basis of Article 243A of the Constitution of India, is required to approach the writ Court seeking a writ of mandamus against the State Government, is most unfortunate and this is a fit case where the State should be directed to pay heavy cost to the petitioner.

5. As time is sought by the learned AGA, finally we grant time till 20th March 2020, to be listed at 2.30 p.m. (Underline supplied) When the matter was called out on 20th March, 2020, it was adjourned till 30th March, 2020. From 30th March, 2020, the writ petition was not listed due to restricted functioning of the Court due to pandemic COVID - 19. On 22nd September 2020, when the said writ petition was listed, the following order was passed by this Court: The Learned Advocate General appears before the court and confirms the following facts which are already placed on record by the memo dated 16th September 2020 filed by the petitioner: (a) Final notification of delimitation of 198 wards has been issued on 23rd June 2020; 29 (b) The State Election Commission has stated that the draft ward-wise electoral rolls will be published on 19th October 2020 and final voters list will be published on 30th November 2020; (c) The State Government has published draft reservation notification dated 14th September 2020.

2. The Learned Advocate General states that more than 900 objections have been received to the draft notification. He states that final notification will be issued probably within a period of two weeks from today. Let the petition be listed on 12th October 2020 for ascertaining further progress made.

16. Thus, as per the said order, final notification of reservation of seats was required to be issued within two weeks from 22nd September, 2020. When the said order dated 22nd September 2020 was passed, the outer limit provided under Article 243U of the Constitution for holding election had already expired. As stated earlier, the final voters list is to be declared on 30th November, 2020. Therefore, in normal course, by the end of this year, the process of elections could have

commenced. The Amendment Act came into force on 3rd October 2020. The 30 following were the changes made by the Amendment Act to the provisions of the said Act of 1976: (a) A proviso is added to clause (a) of sub-section (1) of Section 7 of the said Act of 1976 providing that in case of BBMP, the Councillors shall not be less than 225, but not more than 250, as the Government by a notification determine; (b) Sub-Section (2A) was added in Section 21, providing for the State Government constituting a Delimitation Commission for recommending to the State Government the manner of delimitation of Wards in each Corporation and (c) Clause (a) of Sub-Section (1) of Section 21 was amended to provide that finalization of the Wards (Delimitation of Wards) shall be made by the State Government on the basis of the recommendation of the Delimitation Commission. The first amendment is only as regards BBMP. As pointed out earlier, on 14th October 2020, the State Government exercised its power under proviso to clause (a) of sub-section (1) of Section 7 of the said Act of 1976 and declared that there shall be 243 Councillors for the BBMP. So the number of Wards have been now increased to 243. On the same day, by another 31 notification, the Delimitation Commission was constituted consisting of four members.

17. Admittedly, as per the constitutional mandate of Article 243U, the elections of BBMP ought to have been completed before 10th September 2020. If the election is to be held as per the amended provisions of the said Act of 1976 as amended by the Amendment Act, it is obvious that the elections will be further delayed for the following reasons: a) Firstly, the Delimitation Commission will have to make recommendations for constituting 243 Wards for BBMP. Prior to 14th October, 2020 there were 198 Wards. This process itself will take a long time; b) Secondly, after recommendations are made by the Delimitation Commission, the State Government will have to pass an order by issuing a notification in accordance with clause (a) of Sub-Section (1) of Section 21 for determination of 243 Wards into which BBMP area shall be divided by specifying the extent of each division; c) Thereafter, a huge exercise will have to be undertaken by the State Election Commission of preparation of draft of the electoral roll of each of 243 Wards. As noted in the order dated 4th March 2020, the SEC will take at least four months to do so; and 32 d) The exercise of fixing reservations will have to be undertaken by the State Government in accordance with clause (c) of Section 21 of the said Act

of 1976.

18. Thus, even by a conservative estimate, the election of BBMP cannot be held in near future. Thus, there cannot be any dispute that if the general elections of the BBMP are to be held after giving effect to the provisions of the said Act of 1976 as amended by the Amendment Act, even by a most conservative estimate, the elections of BBMP cannot be held at least for minimum eight to nine months. Thus, there will be a gross violation of Constitutional mandate under Article 243U. In fact, as of today, there is already a violation of the said Constitutional mandate.

19. At this stage, it will be necessary to make a reference to the decision of the Division Bench of this Court in the case of Professor B.K. Chandrashekar (*supra*). The prayer before this Court in the writ petition was that a writ of mandamus be issued for holding elections to the Grama Panchayats in the State of Karnataka well within time, as provided in Article 243E of the Constitution. The Constitutional validity of the Karnataka Panchayat Raj Amendment Ordinance No.1/1999 was also 33 challenged. In the facts of the case, if the elections were to be held as per the provisions of the said Ordinance, the same could not have been held within the time frame provided under Article 243E. The Division Bench, in paragraph 29 of the said decision held thus: 29. During the course of arguments we had asked Mr. Acharya, learned Counsel appearing for State Election Commission as to within how much time Election Commission would be able to hold elections, if the ordinance is given effect to. According to him it will take in all at least 7 months to hold the elections as fresh notifications under Section 5(1)(2) and (5) have to be issued. On the expiry of the period of five years, the present elected bodies would become *functus officio*. The Grama Panchayats will not be having any elected body which would result in break down of the democratic set up envisaged by the Constitution. In order to prevent such a situation it would be necessary to direct the respondents to hold elections to the Grama Panchayats in the State of Karnataka immediately. We are not holding that the State Legislature does not have the competence to amend Sections 4 and 5 of the Panchayat Raj Act. If it has the power to enact it has necessarily the power to amend those provisions as well. But as the amendment results in 34 nullifying the mandate of the Constitution of India specially when the process of election had begun, the same is held to be

not applicable to the present elections to Grama Panchayats due to be held in the Month of March/April 1999. If there is conflict between the Mandatory provisions of the Constitution and the right of the State Legislature to enact laws which falls within its legislative competence and which results in nullifying the mandate of the Constitution then in such a case provision of the Constitution would take precedence. If such a view is not taken then the Mandate of the Constitution can be flouted with impunity by the State Legislature on one pretext of the other. Constitution is Supreme and the laws by the legislature have to be enacted subject to the provisions of the Constitution of India and therefore subservient to it. Press note annexure B issued by the Election Commission attached in W.P. 3826/99 is quashed. (Underlines supplied) 20. If the law laid down by the Division Bench of this Court is to be followed in the present case, a writ of mandamus will have to be issued directing the SEC to hold elections of BBMP in terms of the un-amended provisions of the said Act of 1976. The learned Advocate General contended that what is held in the case of 35 Professor B.K. Chandrashekar (supra) is per incuriam. He relied upon the Entry-5 of List II in Schedule VII to the Constitution by submitting that the State has a power to enact laws relating to local authorities including the Municipal Corporations. Therefore, we will have to deal with this contention.

21. Entry-5 in List II of Schedule VII to the Constitution reads thus: 5. 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 well settled position of law that while exercising the legislative power, the State Legislature cannot frame laws which are inconsistent with or contrary to the express provisions of the Constitution. One of the objects of introducing Part IX-A in the Constitution was to avoid any delay in the conduct elections to the Local Authorities and to ensure that the State Government has no role to play in the elections. Clause (3)(a) of Article 243U mandates that elections of every Municipality shall be completed before the expiry of its duration. Any law which tinkers with the express provisions of clause (3) (a) of Article 243U will be open to the vice of un-constitutionality.

22. Article 243ZF which is also relevant to decide the issue involved in this case reads thus: 243-ZF. Continuance of existing laws and Municipalities.- Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement 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: Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State. The mandate of Article 243ZF of the Constitution is that existing laws relating to Municipalities must be in conformity with the provisions of Part IX-A of the Constitution. Therefore, the power of the State Legislature to enact the laws on Municipalities 37 cannot be exercised by making a legislation which will defeat the provision incorporated in clause (3) (a) of Article 243U. The State Legislature cannot make a law which defeats the said provision.

23. As per the Constitutional mandate, the general elections of the BBMP ought to have been completed before 10th September 2020. Undisputedly, the process of delimitation of Wards of the BBMP has been completed by the State Government much prior to introduction of the Amendment Act by issuing a notification on 23rd June 2020. The final electoral roll is almost ready. What remained to be completed as on 3rd October 2020 was the issuance of the final notification on reservations of the Wards which was required to be issued within two weeks from 22nd September 2020 as per the assurance given by the State Government which has been recorded in the order dated 22nd September 2020. There is no provision in the Amendment Act which requires reopening of a Notification already issued under clause (a) of sub-section (1) of Section 21. If it is held that the election of the BBMP which is now overdue ought to be held in accordance with the provisions of the said Act of 1976 as amended on 3rd October 2020, the provisions of the Amended Act will infringe the 38 Constitutional mandate of the provision of clause (3) (a) of Article 243U of the Constitution inasmuch as there will be no possibility of

holding the elections of BBMP in the near future.

24. As stated earlier, in one of the three writ petitions, even the constitutional validity of the Amendment Act has been questioned. It is well settled proposition of law that if there are two interpretations possible of a statute which is under a challenge, the one which will make the statute valid will have to be accepted. Moreover, an endeavor of the Court should be to save a legislation, if possible, by reading down the same. In the present case, if the Amendment Act is interpreted to mean that it will apply even to the elections which ought to have been held much prior to coming into force of the Amendment Act, such an interpretation will make the Amendment Act unconstitutional being in contravention of clause 3 (a) of Article 243U. Therefore, the other interpretation that the amended provision is prospective in nature and will not apply to the elections which are overdue needs to be accepted to save the Amendment Act from being declared as unconstitutional. The process of conducting election of BBMP was initiated much prior to coming into force of the amendment Act. In fact, the State Government itself has published a notification of delimitation of 198 BBMP Wards way back in June, 2020. The draft notification on reservation was published in September 2020. Therefore, it will have to be held that the provisions of the said Act of 1976 as amended by the Amendment Act will not apply to the election of a Corporation which was overdue before the date of coming into force of the Amendment Act. If such interpretation is not accepted, the provisions of the Amendment Act will be applied to the election of the BBMP which is overdue and in all probability, the elections may not be held even before 10th September 2021, though it ought to have been held prior to 10th September 2020. Thus, such an interpretation will do violence to the provisions of the clause (3) (a) of Article 243U of the Constitution.

25. Another argument was canvassed by the learned Advocate General based on a recent decision of the Apex Court in the case of *Drawida Munnetra Kazhagam* (supra). In paragraph 12 of the said decision, it was observed thus: 12. It is, thus, clear that the constitutional object of Part IX cannot be effectively achieved unless the delimitation exercise for constitution of local bodies at all levels is properly undertaken. Such exercise in the State of Tamil Nadu must keep in view the criteria for delimitation of wards prescribed under the Tamil Nadu Local Bodies

Delimitation Regulations, 2017 (formulated under the Tamil Nadu Delimitation Commission Act, 2017), which criteria must itself not be contrary to Article 243-C read with Article 243-B(1) of the Constitution.

26. The object of Part IX-A of the Constitution cannot be achieved unless the delimitation exercise is properly undertaken by the Government. In this case, the delimitation exercise has already been undertaken by the State Government itself by issuing the notification regarding delimitation of the Wards way back on 23rd June, 2020. No one has questioned the legality of the said notification. Hence, the decision in the above case cannot be made applicable to the facts of the present case.

27. Another argument was canvassed on behalf of the State Government that the population within the limits of the BBMP has grown substantially after the last census which is now more than 1.3 crores. On this aspect, it must be borne in mind that as provided in Section 23, the electoral roll of each Ward is required to be prepared solely on the basis of the electoral roll of the Karnataka State Legislative Assembly for the time being in force. Therefore, even if the delimitation of the Wards is made as per 41 the Amendment Act, while preparing the ward-wise electoral roll, the existing electoral roll of the Karnataka Legislative Assembly will have to be taken into consideration. There are no additions or alteration made to the limits of BBMP. Therefore, even if the elections are held for 198 Wards or 243 Wards, the same set of voters are going to vote who have voted in the general election of the State Assembly. Even if the elections are held as per the Amendment Act, only those voters whose names appear in the existing electoral roll of Karnataka Legislative Assembly will be entitled to vote. Therefore, no voter will be denied right to vote even if the election is held without applying the Amendment Act.

28. Therefore, apart from the decision of the Division Bench in the case of Professor B.K. Chandrashekar (supra), if the general election of the BBMP is held as per the said Act of 1976 as amended, there will be violation of the provisions of clause (3) (a) of Article 243U. For the purposes of upholding of the validity of the said Act of 1976, as amended with effect from 3rd October, 2020, it will have to be

held that the provisions of the said Act of 1976 as amended on 3rd October, 2020 cannot apply to the general election of BBMP which is overdue. We do not see how the decision in the case of Professor B.K. Chandrashekar is per 42 incuriam. It gives effect to mandate of Article 243E applicable to panchayats which requires elections of the panchayats to be held before expiry of its term.

29. The decision of Gujarat High Court in the case of Rajendra N. Shah (supra) deals with constitutional validity of Part IXB of the Constitution dealing with co-operative societies. In this case, we are not concerned with validity of Part IXA of the Constitution, as no one has challenged the same.

30. Therefore, the State Government will have to be directed to publish the final reservations on the basis of the draft notification already issued on 14th September, 2020 and thereafter, the SEC will have to be directed to hold the elections of BBMP.

31. We have already extensively referred to the several orders passed by this Court in W.P.No.1892/2020 filed by the SEC. Anticipating that there will be an inordinate delay on the part of the State Government in publishing the notification of delimitation of the wards and the notification in respect of the reservations of the Wards, nearly seven and half months before the last term of BBMP expired, the aforesaid writ petition was filed by the SEC in the month January, 2020. In fact, on 22nd September 2020, 43 there was an assurance given on behalf of the State Government to the Court that the final notification of reservation will be published within two weeks from 22nd September, 2020. In fact, under the earlier order dated 4th March, 2020, the State Government was directed to file an undertaking, specifying the outer limit for completing the delimitation of Wards and determination of the reservations. Though no such undertaking was filed, a notification regarding the delimitation of wards was published on 23rd June, 2020. The submission of the learned Advocate General recorded in paragraph 2 of the order dated 22nd September 2020 will have to be treated as an undertaking of the State Government which is not complied with on the pretext of coming into force of the Amendment Act. Even in the past, elections of the BBMP were delayed. In case of some other Municipal Corporations also, the elections have not been held

within the time fixed by Article 243U of the Constitution. Therefore, it is unfortunate that the SEC is forced to invoke the writ jurisdiction of this Court for compelling the State Government to perform its statutory duties under section 21 of the said Act of 1976. In normal course, the Court would have been justified in imposing exemplary costs on the State Government. However, 44 we will have to take a judicial notice of the fact that the State Government is facing financial crunch due to the lockdown and spread of COVID-19. It is only for that reason, we refrain from imposing costs on the Government. In any case, the State Government will have to provide requisite funds to the SEC for holding of elections to the BBMB.

32. Under clause 39A of Section 2 of the said Act of 1976, the SEC is defined to mean the SEC as constituted under section 308 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (for short the said Act of 1993). Therefore the powers of the SEC will be governed by Section 308 of the said Act of 1993. On this aspect what is held in paragraphs 14 and 15 of the decision of this Court in the case of Shri K.C. Kondaiah (supra) is relevant which will apply to the elections of Municipalities as well. Paragraphs 14 and 15 read thus: 14. At this juncture, it is necessary to make a reference to sub-section (1) of Section 308 of the said Act of 1993 which reads thus: 308. State Election Commission.- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Grama Panchayat, Taluk Panchayat 45 or Zilla Panchayat and the power of delimitation of territorial constituencies and enforcement of the code of conduct in respect such elections shall be vested in the State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. (2) The conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a judge of a High Court and conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. (2-A) The commissioner may resign his office by writing under his hand and addressed to the Governor, but he shall continue in the office until his resignation is accepted by the Governor. (2-B) A casual vacancy created by the resignation of the commissioner under sub-section (5) or for any other reason may be filled by fresh appointment: Provided

that such appointment shall be made as soon as may be, within one month from the date of the vacancy. 46 (2-C) The Government shall prescribe the financial powers of the State Election Commissioner and allocate funds commensurate with the functions and responsibilities, for incurring establishment and election related expenditure ensuring flexibility for getting procurements needed for conduct of elections and also freedom to divert funds between different heads of account. (2-D) The State Election Commission shall determine its own procedure. (3) The Governor shall when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission under sub-section (1). Provided that the State Election Commissioner may also draft employees of state undertakings in the public sector for conducting elections to panchayats and to exclude any class of public servants including the local police from being employed in election duties relating to Panchayats.

15. Hence, the legal position appears to be crystal clear that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats absolutely vests in the SEC. The State Government has no role to play in conducting elections of the Panchayats. Sub- 47 section (1) of Section 308 of the said Act of 1993 is consistent with clause (1) of Article 243K. Even if government staff is required to be requisitioned by the SEC for holding of elections, the requisition has to be submitted by the SEC to the Honble Governor of the State and not to the State Government. Article 243K (3) leaves no choice to the Honble Governor but to make available the required staff when a request comes from the SEC. Sub-Section 2C of Section 308 of the said Act of 1993 makes obligatory for the State Government to allocate funds to the SEC for running the establishment and for conduct of elections. Freedom to divert funds allocated by the State Government is conferred on the SEC. By invoking the concept of transformative constitutionalism, a role cannot be created for the State Government in conduct of the elections of Panchayat as the said concept cannot be invoked to defeat the constitutional provisions of conferring independence and autonomy on the SECs. The control of the State cannot be introduced by a backdoor method which will set at naught the very object of the seventy-third constitutional amendment. (Underline supplied) 33. Considering what we have

held in the discussion made above, our conclusions are as under:

48. (a) We hold that the Karnataka Municipal Corporations (third Amendment) Act, 2020 is valid. But, it will have to be read down by holding that it will not apply to the elections of the Corporations which ought to have been held as per the mandate of Article 243U (3) (a) of the Constitution before the Amendment Act came into force. (b) If it is accepted that the overdue elections of the Corporations must be held by giving effect to the provisions of the Amendment Act, the provisions thereof will infringe clause (3) (a) of Article 243U of the Constitution. Hence, the provisions of the said Act of 1976 as amended by the Amendment Act will apply only to the cases of the Municipal Corporations in respect of which the term will expire after 3rd October 2020.

34. Hence, we pass the following:

ORDER

i) We direct the State Government to publish the final notification of reservations as per clause (c) of sub-section (1) of Section 21 of the said Act of 1976 for 198 Wards as per the delimitation notification dated 23rd June, 2020. We grant time of one month from today to publish the final 49 notification, though, as per the assurance given by the Government, as recorded in the order dated 22nd September 2020, the same was to be published within two weeks from 22nd September 2020; ii) We direct the State Election Commission to hold election of BBMP as expeditiously as possible by publishing the election programme within a maximum period of six weeks from the date on which final reservation Notification is published; iii) We make it clear that elections shall be held for 198 Wards as per the notification of delimitation of Wards already published on 23rd June, 2020; iv) The petitions are allowed on the above terms with no orders as to the costs. Sd/- CHIEF JUSTICE Sd/- JUDGE Vr

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