PARMAR SAMANTSINH UMEDSINH AND OTHERS

v.

STATE OF GUJARAT & ORS.

(Civil Appeal No. 706 of 2021)

FEBRUARY 24, 2021

[ASHOK BHUSHAN, R. SUBHASH REDDY AND M. R. SHAH, JJ.]

Gujarat Provincial Municipal Corporation Act, 1949 – s.5(3)(iii)(a) and s.29A – Bombay Provincial Municipal Corporations (the Delimitation of Wards in the City and Allocation of Reserved Seats) Rules, 1994 – rr. 4 and 5 – Present two appeals arise out of the judgments of the High Court in two separate Writ Petitions – The first appeal was filed against the judgment of Gujarat High Court in the writ petition filed challenging the vires of s.5(3) (iii)(a) and s.29A of the Gujarat Provincial Municipal Corporation Act, 1949 as well as Rule 4 and 5 of the Bombay Provincial Municipal Corporations (the Delimitation of Wards in the City and Allocation of Reserved Seats) Rules, 1994 – High Court dismissed the said petition noticing that earlier the vires of said sections and Rule 4 were upheld by the earlier Division Bench judgment of the High Court – The second appeal was filed by State Election Commission against the judgment of High Court in the writ petition challenging the Clauses (3), (4) and (5) of Ordinance No.3 of 2015 promulgated by the Governor of Gujarat by which s.7A of the Gujarat Provincial Municipal Corporations Act, 1949, s.8A of Gujarat Municipalities Act, 1963 and s.257 of the Gujarat Panchayats Act, 1993 have been substituted – The High Court held that the s.7A of the GPMC Act, s.8A Gujarat Municipalities Act and s.257 of the Gujarat Panchayats Act brought by Ordinance No.3 of 2015 was unconstitutional and the action of the State Election Commission for postponement of the election of all local bodies in the State was illegal – Besides above mentioned two civil appeals, a writ petition was also filed challenging the notifications issued by the Governor of Gujarat in exercise of power u/s. 5(3)(iii)(a) of the Act, 1949 determining the number of Wards, seats including the seats reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and women in several Provincial Corporations – The two civil appeals

A *and writ petition are tagged and heard together – Held: The provisions of s.5(3) (iii)(a) and s.29A of Act, 1949 and Rule 4 and 5 of Rules, 1994 and Rule 2(b) of Rules, 2007 are not ultra vires to Part IXA of the Constitution, the Division Bench of the High Court did not commit any error in dismissing the writ petition filed by the*
B *appellants – Hence, the first civil appeal and Writ Petition are dismissed – The civil appeal filed by the State Election Commission is dismissed as having become infructuous as the directions of the Division Bench to initiate process of holding the election of the local bodies was carried out and nothing remains to be decided in this appeal.*

C *Constitution of India – Art 243R and 243S – Whether Arts. 243R and Art. 243S of the Constitution of India contains any limitation to the effect that there shall be only one member from one ward – Held: The constitutional provisions of Art. 243R, which provides for composition of Municipalities and that of Art. 243ZA*
D *does not give any indication as to whether from territorial constituency, i.e., the Wards, whether only one member has to be elected in the Municipality or it can be multiple member constituency – There is no limitation in provision of Art. 243S, which limits the State Legislature for requiring multi-member seats in a Ward – The*
E *only requirement is that a member of the Municipality representing a Ward shall be a member of the Ward Committee – Thus, constitutional requirement or limitation engrafted in sub-Article(3) of Art. 243S is that a member of the Municipality representing a Ward shall be a member of the Ward Committee, it cannot be read to mean that it mandates that from one Ward more than one members*
F *cannot be made representatives.*

Gujarat Provincial Municipal Corporation Act, 1949 – ss. 5(3)(iii)(a), 29A – Bombay Provincial Municipal Corporations (the delimitation of wards and allocation of reserved seats) Rules, 1994 – rr. 4 and 5 – Gujarat Municipal Corporation's Ward Committees
G *Functions, Duties, Territorial Areas and Procedure for Transaction of Business Rules, 2007 – r. 2(b) – Whether the provisions of ss. 5(3)(iii)(a), 29A of the Gujarat Provincial Municipal Corporation Act, 1949 and Rules 4 and 5 of Bombay Provincial Municipal Corporations (the delimitation of wards and allocation of reserved seats) Rules, 1994 and Rule 2(b) of Gujarat Municipal Corporation's*
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Ward Committees Functions, Duties, Territorial Areas and Procedure for Transaction of Business Rules, 2007 are ultra vires to the provisions of Articles 243R and 243S of the Constitution? – Held: The composition of Municipality has been dealt separately by Art. 243R and for composition of Municipality, the provisions of Art. 243S cannot be said to be applicable or intended to provide any limitation or prohibition with regard to composition of the Municipalities – The Rule 2(b) of Rules, 2007 which provides for election of Chairperson, by following which rule, in case of multi-member Ward, Chairperson can be elected, which may apply both to Art. 243S(4) as well as Rule 2(b) of the Rules, 2007 – Thus, Rules 4 and 5 of Rules, 1994 as well as Rule 2(b) of Rules, 2007 does in no manner disobey the mandate of Art. 243S(4), both can be complied with without any conflict between the two different provisions – Thus, the provisions of s. 5(3)(iii)(a) as well as Rules 4 and 5 of Rules, 1994 and Rule 2(b) of Rules, 2007 are not inconsistent with provisions of Art. 243R and Art.243S.

The Gujarat Delimitation of Wards and Allocation of Reserved Seats in Municipal Borough Rules, 1994 – Whether having more than one representative from a Ward negates the empowerment of weaker sections, i.e. women, Schedule Castes and Schedule Tribes – Held: The Gujarat Delimitation of Wards and Allocation of Reserved Seats in Municipal Borough Rules, 1994 has been amended by Amendment Rules, 2015 – As per clauses 2 and 3, now it is 4 member Ward, 2 seats are to be reserved for women including seats reserved for women belonging to Scheduled Castes, Scheduled Tribes and Back Ward Classes – The entire purpose and object of reserving seats for weaker sections is to empower the weaker sections, i.e., women, Scheduled Castes and Scheduled Tribes, when there are more numbers are reserved for weaker sections their participation in municipality is bound to increase giving strength to their voice and effective participation which is nothing but empowerment of weaker sections – By the Rules, 1994 as amended in 2015 now the voice of weaker sections can be felt from every Ward which clearly enhances of presence and participation of weaker sections does not in any manner, negate the empowerment of weaker sections.

A **Disposing of the appeals, this Court**

HELD: 1. Both these questions being interrelated are being taken together:

i. Whether Article 243R and Article 243S of the Constitution of India contains any limitation to the effect that there shall be only one member from one Ward?

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ii. Whether the provisions of Sections 5(3)(iii)(a), 29A of the Gujarat Provincial Municipal Corporations Act, 1949 and Rules 4 and 5 of Bombay Provincial Mu- nicipal Corporations (the delimitation of wards and allocation of reserved seats) Rules, 1994 and Rule 2(b) of Gujarat Municipal Corporation's Ward Committees Functions, Duties, Territorial Areas and Procedure for Transaction of Business Rules, 2007 are ultra virus to the provisions of Articles 243R and 243S of the Constitution?

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Article 245, which deals with distribution of legislative powers, begins with the words "subject to the provisions of this Constitution". Thus, laws made by the Parliament and by the Legislature of the State, have to be subject to the provisions of the Constitution. Article 246 deals with subject-matter of the laws made by the Parliament and by the Legislature of the State. Reading Articles 245 and 246 together, it is abundantly clear that the legislative power to be exercised by the Parliament and the State Legislatures as enumerated in List I, List II and List III of Seventh Schedule are subject to the provisions of the Constitution. Thus, when the Constitution expressly or impliedly contains a limitation in exercise of legislative power, the legislative power is subject to such Constitution limitations. For example, Article 13(2) contains a limitation that State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of this clause shall, to the extent of the contravention, be void. [Paras 22, 32, 33][108-A-C; 111-G-H; 112-B-D]

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2. Article 243ZF provides that 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 Part IXA, shall not continue beyond expiration of one year from

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commencement of the constitutional amendment. Thus, Part IXA of the Constitution categorically contemplated that any law made by State Legislature, which is inconsistent with the provisions of Part IXA shall cease to operate on the expiration of one year or till amended or repealed by a competent Legislature, whichever is earlier. The Constitution provisions, thus, mandates that any law of the State, which is inconsistent, cannot continue. Thus, this limitation shall also govern any law made after enforcement of Constitution (Seventy-fourth Amendment) Act. Thus, a law, which is inconsistent with Part IXA cannot be framed by the State Legislature. [Para 36][113-H; 114-A-C]

3. One of the meanings of expression "inconsistent" as approved by this Court is mutually repugnant or contradictory. Article 254 of the Constitution contains a heading "inconsistency between laws made by the Parliament and the laws made by the Legislature of the State" whereas under Article 254(1) and Article 254(2) the words used are repugnant. The Constitution itself, thus, has used the words inconsistency and repugnancy interchangeably. To find out as to whether a law made by State Legislature is inconsistent with provisions of Part IXA of the Constitution, the principles which have been laid down by this Court to determine the repugnancy between the law made by the Legislature of a State and law made by Parliament can be profitably relied on. This Court, thus, need to notice the principles on which the repugnancy of law made by State and law made by the Parliament is found out. [Para 38][114-E-G]

4. The Constitution of India is a paramount law to which all other laws are subject. One of the important tests to find out as to whether or not there is repugnancy is to ascertain the intention of the Legislature regarding the fact that the dominant Legislature allowed the subordinate Legislature to operate in the same field paripasu the State Act and there will be no inconsistency when the State Act and Central Act are supplemental to each other. Things are inconsistent when they cannot stand together at the same time and one law is inconsistent with another law, when the command or power or provision in the law conflicts directly with the command or power or provision in the other law. While

A **legislating on a particular subject matter, the paramount Legislature may evince the intention to cover only certain specific matters leaving it to the State Legislature to deal with the rest. One more preposition need to be noticed is that there is always a presumption that Legislature does not exceed its jurisdiction and Court should make every attempt to reconcile the provisions**
B **of apparently conflicting enactment. [Para 39] [114-H; 115-A-C]**

5. Sub-article(1) of Article 243R contains two constitutional requirements:- (i) all the seats in a Municipality shall be filled by persons chosen by direct election and (ii) from the territorial
C **constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards. Sub-article (2) of Article 243R provided for the representation in a municipality of four categories of persons which is a constitutional requirement required to be adopted by State Legislature. It may be noted that sub-article (2) of Article**
D **243R does not deal with seats in the Municipalities, which shall be filed up by persons chosen by direct election. Article 243ZA deals with elections to the Municipalities, thus, direct election, as contemplated under Article 243R has to be as per Article 243ZA. [Para 49][119-F-H]**

E **6. Thus, the Legislature of a State may by lay has to provide all matters relating to or in connection with election to the Municipalities, which includes filling of the seats in the Municipality by person chosen by direct election. Articles 243R and 243ZA does not give any indication as to whether from**
F **territorial constituency, i.e., the Wards, whether only one member has to be elected in the Municipality or it can be multiple member constituency. The constitutional provisions of Article 243R, which provides for composition of Municipalities and that of Article 243ZA does not give any indication to the above. The provisions of Article 243ZG, which deals with bar to interference by courts**
G **in electoral matters throws some light. Article 243ZG(a) used two expressions: "any law relating to the delimitation of constituencies or the allotment of seats to such constituencies" may be read as allotment of more than one seat to one constituency but it can be said that the above provision also do**

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not provide that in one constituency, there may be more than one seats. Article 243S deals with Constitution and Composition of Wards Committees. [Paras 50, 51, 52][120-B-D, F-G]

7. When carefully analysed the extent and purpose of Article 243S, this court does not find any such limitation in provision of Article 243S, which limits the State Legislature for requiring multi-member seats in a Ward. Reverting to sub-article (3) of Article 243S, the requirement is that a member of the Municipality representing a Ward shall be a member of the Ward Committee. Thus, constitutional requirement or limitation engrafted in sub-article(3) is that a member of the Municipality representing a Ward shall be a member of the Ward Committee. The provision of Article 243S(3) is not a provision regarding composition of Municipality rather the provision is for constitution and composition of Wards Committee. In Wards Committee, a member representing a Ward in Municipality has to be the member. Sub-article(3) of Article 243S cannot be read to mean that it mandates that from one Ward more than one members cannot be made representatives. In cases, where there are more than one member from one Ward all will become the member of the Committee. When all the members of the Municipality representing a Ward are members of the Committee, there is no breach of Article 243S(3). [Para 53][121-G-H; 122-A-C]

8. This court may now examine, if there are multi-members in one ward, whether Constitutional provisions of Article 243S(4) are breached when Chairperson is to be elected. The requirement is that member representing the Ward shall be the Chairperson of the Committee and if there are more than one members and one member out of multi-member Ward is elected as Chairperson, the provision of Article 243S(4) shall be applied. When the constitutional provisions under Article 243S(4)(a) does not provide for election for electing Chairperson in case of a multi-member Ward, the same is supplemented by the State legislation. In the present case, this court noticed that Rule 2(b) of Rules, 2007, which provides that Chairperson of a Ward Committee is the person elected by the members of the Wards Committee.

The Rule, thus, contemplate an election of Chairperson amongst the members of the Wards Committee, which shall also be applicable in a case where there are more than one members from one Ward. When out of multiple members in a Ward, one member is elected as Chairperson, the mandate of Article 243S(4)(a) is complied with. The requirement is that member representing the ward in the Municipality shall be the Chairperson. The above provision cannot be read in providing any prohibition or limitation that in one Ward, there cannot be more than one member. The composition of Municipality has been dealt separately by Article 243R and for composition of Municipality, the provisions of Article 243S cannot be said to be applicable or intended to provide any limitation or prohibition with regard to composition of the Municipalities. The Rule 2(b) of Rules, 2007 which provides for election of Chairperson, by following which rule, in case of multi-member Ward, Chairperson can be elected, which may apply both to Article 243S(4) as well as Rule 2(b) of the Rules, 2007. Thus, Rules 4 and 5 of Rules, 1994 as well as Rule 2(b) of Rules, 2007 does in no manner disobey the mandate of Article 243S(4), both can be complied with without any conflict between the two different provisions. This Court, thus, come to the conclusion that provisions of Section 5(3)(iii)(a) as well as Rules 4 and 5 of Rules, 1994 and Rule 2(b) of Rules, 2007 are not inconsistent with provisions of Article 243S. [Para 55][122-F-G; 123-A-D]

9. This Court has analyzed the provisions of Article 243R, 243S and have come to the definite conclusion that no limitation in Article 243S can be found of which contains any prohibition of having more than one member for a Ward. When the State Legislature has been given preliminary power of legislation with regard to composition of the Municipalities, there has to be express or implied limitation, which may prohibit the State Legislature to make a law providing for multi-member Ward. [Paras 59, 61][125-E-F; 126-F-G]

10. This Court, in the present case, after analysing the relevant provisions of Part IXA of the Constitution has come to the conclusion that there is no prohibition or limitation in Part IXA of the Constitution prohibiting the State Legislature from

making a law providing for election of more than one member from one territorial constituency, i.e., Ward. This Court, thus, answer Question Nos. i and ii in following manner:-

(1) Article 243R and 243S of the Constitution of In dia does not contain any limitation to the effect that there shall be only one member from one Ward.

(2) Provisions of Section 5(3)(iii)(a) and Section 29A of the Act, 1949 and Rules 4 and 5 of the Rules, 1994 and Rule 2(b) of Rules, 2007 are not ultra vires to the provisions of Articles 243R and 243S of the Constitution.[Para 63][127-D-F]

iii) Whether having more than one representative from a Ward negates the empowerment of weaker sections, i.e., women, Scheduled Castes and Scheduled Tribes?

11. The entire purpose and object of reserving seats for weaker sections is to empower the weaker sections, i.e., women, Scheduled Castes and Scheduled Tribes, when there are more numbers are reserved for weaker sections their participation in municipality is bound to increase giving strength to their voice and effective participation which is nothing but empowerment of weaker sections. This court is not able to subscribe to the submission that when there are only one representation from one Ward only then empowerment of weaker sections can be made. By the Rules, 1994 as amended in 2015 now the voice of weaker sections can be felt from every Ward which clearly enhances of presence and participation of weaker sections and does not, in any manner, negate the empowerment of weaker sections. This Court, thus, do not find any substance in the above submission. This Court answer Question No.iii) in the following manner: Having more than one representation from a Ward in no manner negates the empowerment of weaker sections rather it increases the empowerment of weaker sections. [Paras 69, 70][129-G-H; 130-A-C]

iv) Whether when the draft rules for amendment of Bombay Provincial Municipal Corporations (the delimitation of wards and allocation of reserved seats) Rules, 1994 were issued on 27.11.2014 which were to be published after noting of objections

A **on or expiry of thirty days, the State Government could have issued notification dated 04.12.2014 before expiry of thirty days?**

12. A perusal of the above notification indicates that the said notification was a draft notification to amend the Delimitation of Wards and Allocation of Reserved Seats (Amendment) Rules, B **2014 wherein Rule 4, for the word "three", the word "four" was sought to be substituted. The notification dated 04.12.2014 has been issued in exercise of powers conferred by sub-clause (a) of clause (iii) of sub-section (3) of Section 5 of Act, 1949. A bare perusal of the notification dated 04.12.2014 indicates that the said notification is not in reference to the notification dated** C **27.11.2014 rather the said notification was issued regarding determination of number of Wards and Councillors' seats reserved for Scheduled Castes and Scheduled Tribes and women. Thus, the argument that notification dated 04.12.2014 issued before expiry of 30 days is wholly misconceived. The appellants** D **themselves have brought on record a notification dated 15.01.2015 as Annexured to the paper book which is the notification issued in reference to the notification dated 27.11.2014. [Paras 72, 73 and 74][132-C-D; 134-B-C]**

13. Thus, in reference to notification dated 27.11.2014, the E **notification was issued on 15.01.2015, Rules, namely, Bombay Provincial Municipal Corporation (Delimitation of Wards in the City and Allocation of Reserved Seats) (Amendment) Rules, 2015 were issued which specifically mentioned that objections and suggestions in pursuance of draft have been considered by the Government. Thus, this court does not find any infirmity in the** F **above notification.[Para 75][134-G-H]**

Civil Appeal (arising out of SLP(C)No.30635 of 2015-State Election Commission vs. Virendrasinh Mafaji Vaghela & Ors.)

15. The appeal has been filed against the Division Bench G **judgment of the Gujarat High Court dated 21.10.2015 by which writ petition filed by the respondents was allowed. The High Court found the Ordinance No.3 of 2015 as unconstitutional and void. The action of the State Election Commission for postponement of the election of all local bodies in the State was held to be illegal and set aside. The State Election Commission was directed to**

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initiate process of holding the election of the local bodies forthwith. In pursuance of the Division Bench judgment of the High Court dated 21.10.2015 Elections for the local bodies were held in November/December, 2015. The direction of the Division Bench dated 21.10.2015 having been carried out nothing remains to be decided in this appeal. The tenure of the Local Body constituted in pursuance of the impugned direction of the High Court dated 21.10.2015 having come to end, this Court see no necessity to enter into issue raised in this appeal. Thus, the appeal is dismissed as having become infructuous. [Para 78][135-D-F]

Ch. Tika Ramji and Others, etc. v. The State of Uttar Pradesh and Others, **AIR 1956 SC 676 : [1956] SCR 393;** M*aharaj Umeg Singh and Ors. v. State of Bombay and Ors.*, **AIR 1955 SC 540 : [1955] SCR 164;** *Jindal Stainless Limited and Anr. v. State of Haryana and Ors.,* **(2017) 12 SCC 1 : [2016] 10 SCR 1;** *Deep Chand and Ors. v. The State of Uttar Pradesh and Ors.,* **AIR 1959 SC 648 : [1959] Suppl. SCR 8;** *M. Karunanidhi Vs.Union of India and Anr.*, **(1979) 3 SCC 431 : [1979] 3 SCR 254;** *K.T. Plantation Private Limited and Anr. Vs. State of Karanataka,* **(2011) 9 SCC 1 : [2011] 13 SCR 636 – followed.**

Basti Sugar Mills Co. Ltd. v. State of Uttar Pradesh and Anr., **(1979) 2 SCC 88 : [1979] 1 SCR 590;** *M/s. Ram Chandra Mawa Lal, Varanasi and Ors. v. State of Uttar Pradesh and Ors.*, **(1984) Suppl. SCC 28 : [1984] SCR 348 – relied on.**

Manoj Narula v. Union of India, **(2014) 9 SCC 1 : [2014] 9 SCR 965;** *Chief Justice of Andhra Pradesh and Others v. L.V.A. Dixitulu and Ors.,* **(1979) 2 SCC 34 : [1979] 1 SCR 26;** *M.T. Khan and Ors. v. Govt. of A.P. and Ors.,* **(2004) 2 SCC 267 : [2004] 1 SCR 117;** *Karnataka Bank Ltd. v. State of Andhra Pradesh and Ors.,* **(2008) 2 SCC 254 : [2008] 1 SCR 986;** *Kasambhai F. Ghanchi v. Chandubhai D. Rajput and Others,* **(1998) 1 SCC 285 : [1997] 5 Suppl. SCR 401 – referred to.**

A *Pankajsinh Waghela v. State Election Commission through Election Commissioner & Others* **(Special Civil Application No.12084 of 2015) – referred to.**

Case Law Reference

B	**[1956] SCR 393**	**followed**	**Para 31**
	[1955] SCR 164	**followed**	**Para 33**
	[2016] 10 SCR 1	**followed**	**Para 34**
	[1979] 1 SCR 590	**relied on**	**Para 37**
C	**[1959] Suppl. SCR 8**	**followed**	**Para 41**
	[1979] 3 SCR 254	**followed**	**Para 42**
	[1984] SCR 348	**relied on**	**Para 43**
	[2011] 13 SCR 636	**followed**	**Para 44**
D	**[2014] 9 SCR 965**	**referred to**	**Para 56**
	[1979] 1 SCR 26	**referred to**	**Para 60**
	[2004] 1 SCR 117	**referred to**	**Para 62**
	[2008] 1 SCR 986	**referred to**	**Para 62**
E	**[1997] 5 Suppl. SCR 401**	**referred to**	**Para 67**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 706 of 2021.

From the Judgment and Order dated 29.07.2015 of the High Court of Gujarat at Ahmedabad in Special Civil Application No. 12084 of 2015.

F With

Civil Appeal No. 707 of 2021

With

G Writ Petition (Civil) No. 786 of 2020

Tushar Mehta, SG Kapil Sibal, Harin P. Raval, Maninder Singh, Ms. Manisha Lavkumar, Sr. Advs. Anirudh Sharma, Abhaid Parikh, Sameer Sawarn, Kartikeya Kanojiya, Ms. Sukanya Singh, Alio Joseph, Anando Mukherjee, Shwetank Singh, Koshy John, Ms. Ranjeeta Rohatgi, Prabhas Bajaj, Ms. Samten Doma, Aniruddha P. Mayee, Ms. Aastha

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Mehta, Kanu Agarwal, Maulik Nanavati, Ms. Deepanwita Priyanka, M/S. A P & J Chambers, Ms. Jesal Wahi, Ms. Hemantika Wahi, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. Leave granted.

2. The civil appeals and writ petition, being tagged, all three matters have been heard together.

3. We need to notice the facts and pleadings in the first matter, i.e., **Civil Appeal (arising out of SLP(C)No. 24950 of 2015-Parmar Samantsinh Umedsinh vs. State of Gujarat & Ors.)**. The abovesaid appeal has been filed against the judgment of Gujarat High Court dated 29.07.2015 in Special Civil Application No.12084 of 2015 dismissing the writ petition following an earlier Division Bench judgment dated 13.08.2010 in **Pankajsinh Waghela v. State Election Commission through Election Commissioner & others.** The writ petition was filed by the appellant herein challenging the vires of Section 5(3)(iii)(a) and Section 29A of the Gujarat Provincial Municipal Corporation Act, 1949 (hereinafter referred to as "Act, 1949") and other statutory provisions including Rules framed thereunder and the notifications. In the writ petition following reliefs were claimed:

"(A) Issue a writ of declaration, declaring that:

a) Section 5(3)(iii)(a) and 29A of the Gujarat Provincial Municipal Corporation Act, 1949 and

b) Sections 2 and 3 of the Gujarat Local Authorities Laws (Amendment) Act, 2009 as being ultra vires the Constitution of India as it violates one member one ward mandate.

(B) Issue a writ of declaration, declaring that Rule 4 and Rule 5 of the Bombay Provincial Municipal Corporation (Delimittaion of Wards in the City and Allocations of Reserved Seats) Rules, 1994 (including amendment of 2015) as being ultra vires the Constitution of India.

(C) Issue a writ of declaration, declaring Notification No.KV-194 of 2014-ELE-102014-17010P dated 04.12.2014 as well as other Notification dated 15.01.2015 issued by State of Gujarat as ultra

A vires the Constitution of India and/or Gujarat Local Authorities Laws (Amendment)Act, 2009 and/or Gujarat Provincial Municipal Corporation Act, 1949.

(D) Quash and set aside the order dated 11.12.2014 passed by the State Election Commission under Section 5(3)(iii)(b) of the
B Gujarat Provincial Municipal Corporation Act, 1949.

(E) Pending admission, hearing and final hearing, be pleased to stay Notification No.KV-194 of 2014-ELE-102014-1701-P dated 04.12.2014 issued by the State of Gujarat as well as order dated 11.12.2014 passed by the State Election Commission under Section
C 5(3)(iii)(b) of the Gujarat Provincial Municipal Corporation Act, 1949.

(F) Pending admission, hearing and final hearing, be pleased to stay the election process for the election due in October 2015 for Municipality in the State of Gujarat.

D (G) Costs.

(H) Such other and further relief or relieves as may be deem fit, just and proper, in the facts and circumstances of the case."

4. The Division Bench of the High Court dismissed the writ petition
E noticing that earlier the vires of Section 5(3)(iii)(a) and Sections 29A(2)(a) and 29A(3)(a) of the Act, 1949 as well as Rule 4 of the Bombay Provincial Municipal Corporations (the Delimitation of Wards in the City and Allocation of Reserved Seats) Rules, 1994 were challenged and were upheld and the issues in the writ petition being covered by the earlier Division Bench judgment of the High Court in the case of **Pankajsinh**
F **Waghela v. State Election Commission and others,** the writ petition is to be dismissed.

5. Aggrieved against the judgment of the Division Bench dated 29.07.2015 Civil Appeal (arising out of SLP(C)No.24950 of 2015) has been filed.

G 6. The Civil Appeal (arising out of SLP(C)No.30635 of 2015) has been filed against the Division Bench judgment of the High Court dated 21.10.2015 by which judgment Special Civil Application No.16313 of 2015 filed by the respondents has been allowed. In the writ petition Clauses (3), (4) and (5) of Ordinance No.3 of 2015 promulgated by the

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Governor of Gujarat were under challenge. A mandamus was also sought seeking a direction to the State Election Commission to declare the dates of holding Elections of Panchayats in the State of Gujarat forthwith. On 03.10.2015 on the same date when Ordinance No.3 of 2015 was issued by which Section 7A of the Gujarat Provincial Municipal Corporations Act, 1949, Section 8A of Gujarat Municipalities Act, 1963 and Section 257 of the Gujarat Panchayats Act, 1993 have been substituted an order was issued by the State Election Commission that the Elections of 6 Municipal Corporations, 53 Municipalities, 3 newly constituted Munipalities, 23 Taluka Panchayats and 31 District Panchayats which were to be held in October/November, 2015 were decided not to be held at present. The Division Bench had disposed of the writ petition by recording its conclusion in paragraph 72 which was to the following effect:

> "72.In view of the above observations and discussions, the following conclusions:-
>
> (a) Section 15(1) of the Gujarat Panchayats Act inserted by Ordinance No.2 of 2015 is read down in a manner that the Election Commissioner must initiate the process of election at least 45 days prior to the expiry of the term of the respective Panchayats so as to enable the newly elected body to hold the first meeting and assume the power by replacing the outgoing elected body. If Section 15(1) is not interpreted and read accordingly, Section 15(1) would unconstitutional and void.
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> If there is failure on the part of the State Election Commission to initiate the process for elections 45 days in advance, any citizen affected thereby would be at liberty to approach this Court under Article 226 of the Constitution for seeking appropriate direction against the State Election Commission.
>
> (b) Section 7A of the GPMC Act, Section 8A of Page 86 of 89 Downloaded on : Sat Feb 20 15:44:28 IST 2021 C/SCA/16313/ 2015 CAV JUDGMENT Municipalities Act and Section 257 of the Act brought about by Ordinance No.3 of 2015 are held to be unconstitutional and void.
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> (c) The action of the State Election Commission for postponement of the election of all local bodies in the State is held to be illegal and is set aside. Respondent No.2 Election Commission is directed

A to initiate process of holding the election of the local bodies forthwith.

Respondent No.1 State Government is directed to render all cooperation and assistance, including providing necessary police force and reserved force or any other force as may be requisitioned by the Election Commission for ensuring the election at the earliest in a free and fair atmosphere."

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7. The State Election Commission aggrieved by the judgment of the High Court has come up in this appeal.

8. Writ Petition(C)No.786 of 2020 has been filed challenging the notifications dated 08.07.2020 issued by the Governor of Gujarat in exercise of power under Section 5(3)(iii)(a) of the Act, 1949 determining the number of Wards, seats including the seats reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and women of Vadodara Provincial Corporation, Ahmedabad Provincial Corporation, Bhavnagar Provincial Corporation, Ghandhinagar Provincial Corporation, Jamnagar Provincial Corporation, Rajkot Provincial Corporation and Surat Provincial Corporation. Writ order or declaration declaring Section 5(3)(iii)(a) and 29A of Act, 1949 as unconstitutional was also prayed for. Section 5(3)(iii)(a) and 29A, Rule 4 and Rule 5 of Rules, 1994 as amended in 2015 has also been challenged. Notification dated 04.12.2015 as well as 15.01.2015 was also sought to be challenged including challenge to Sections 2 and 3 of the Gujarat Local Authorities Laws (Amendment) Act, 2009. By order of this Court dated 25.08.2020 the writ petition has been tagged with Civil Appeal arising out of SLP(C) No.24950/2015.

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9. We have heard Shri Kapil Sibal, learned senior counsel and Shri Harin P. Raval, learned senior counsel appearing in the first appeal and writ petition for the appellants and petitioner.

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10. We have heard Shri Maninder Singh, learned senior counsel appearing for the appellant in the appeal filed by the State Election Commission. Shri Tushar Mehta, learned Solicitor General and Ms. Manisha Lavkumar, learned senior counsel have been heard for the State of Gujarat.

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11. Shri Kapil Sibal has led the arguments on behalf of the appellants in the first matter. Referring to provisions of Article 243R and 243S of the Constitution of India, Shri Sibal submits that the constitutional

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scheme does not permit multi member representation from a Ward in the Municipal Corporation/Municipality. Shri Sibal submits that Article 243S sub-clause (3) and sub-clause (4) uses expression "a member and the member", which indicates that from one Ward there can only be one member in the Municipality. Similarly, Section 29A sub-clause 2 of the Act, 1949 is inconsistent with Article 243S of the Constitution. He submits that Article 243R does not contemplate/mandate a multi member Ward.

12. Shri Sibal submits that in the case of Lok Sabha it is rule of election of one Member of Parliament is to be from one unit of representation from one constituency. Similarly, is the case of Vidhan Sabha only one member is to be elected from one constituency. It is submitted that Article 243S of the Constitution mandates that only one member be elected from one Ward and it does not allow for more than one member to be elected from the same Ward and the impugned provisions and notifications are in contravention of this cardinal constitutional principle enshrined in Article 243S of the Constitution. It is submitted that the election to a Municipal Corporation ought to be conducted in the same manner as State Legislative Assembly, wherein different constituencies are represented by one member and no more. Further, Article 243R cannot be interpreted to give wide, unguided and uncontrolled powers to the State Legislature ignoring other Constitutional provisions enshrined in the Constitution of India. The State Legislature is empowered to make laws with regard to representation in a Municipality and also composition and territorial area of Wards Committees and the manner in which the seats are to be filled. However, in its exercise of legislative powers, the State Legislature cannot make laws violative of the Constitutional principles and mandate.

13. Shri Sibal submits that there has to be thematic consistency while interpreting the provisions of Part IXA of the Constitution. The thematic flow of the Constitution is of election of only one member from one Ward constituency/unit of representation. Multi member representation from a Ward is against the principle of empowerment of down-trodden and woman. One member Ward enables exclusive representation of the women/other backward classes/Scheduled Castes/ Scheduled Tribes resulting therein empowerment which cannot be achieved by a multi member Ward. Shri Sibal further submits that a holistic schematic interpretation of the Constitution has to be advanced. Shri Sibal submits that words occurring in the Constitution should be

A read in their ordinary, natural and grammatical meaning. Wordings of Article 243S(4) would mean adding words to the plain language and intent to Article 243S(4) of the Constitution of India.

14. It is submitted that singular cannot be read plural in Article 243S. Applicability of the General Clauses Act is restricted to the B interpretation of the Constitution of India by Article 367 itself. One of the submissions of Shri Sibal is that Draft Rules for Amendment of Delimitation Rules, 1994 were issued on 27.11.2014 inviting objections within 30 days of the publication of Draft Rules, 1994. However, before expiry of 30 days notification was issued on 04.12.2014 which is not in accordance with law.

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15. Shri Sibal submits that the Municipal Laws which are prevalent in 28 States provide for one representation from one Ward whereas Municipal Laws in Gujarat provide for multi member Ward. It is submitted that in the Municipal Laws of Bombay which provide for multi member Ward now in 2019 it has reverted back to one member representation.

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16. Shri Harin P. Raval adopting the arguments of Shri Kapil Sibal submits that if the words are clear Rule of literal interpretation shall apply. He submits that Section 29A of Act, 1949 is inconsistent with Article 243S of the Constitution. Shri Raval further submits that without reference to notification dated 27.11.2014, the notification dated E 04.12.2014 was published which is a colourable exercise of power.

17. Shri Tushar Mehta, learned Solicitor General submits that in Gujarat there were always multi member Wards. Shri Mehta submits that an Act can be challenged on the grounds of (1) substantive ultra vires, i.e, competence; (2) procedural ultra vires; (3) ultra vires and F arbitrariness and (4) runs contrary to the constitutional provisions. He submits that under Entry 5 List II of Seventh Schedule of the Constitution, "the State Legislature is competent to legislate local on Governments. Shri Tushar Mehta submits that the expression "the member" used in sub-clause (4) of Article 243S is used in reference to the Chairperson. G Article 243S does not contain any provision that there shall be only one member for one Ward. He submits that Article 243S deals with constitution and composition of Wards Committees and the provisions therein have to be confined to constitution and composition of Wards Committees and cannot be read in reference to constitution and composition of a Municipality. He submits that the constitutional provision of Article 243T H contemplates reservation of seats for the Scheduled Castes and the

Scheduled Tribes has to be seat wise and not Ward wise. Reservation of 50% is the object of empowering the women. Increase of seats for reserved category is a step towards empowering the SC/ST and these provisions cannot be read, in any manner, to hamper the empowerment of women, SC/ST. By the amendments made in 2015 in each Ward two seats are to be reserved for women which is with the intent and purpose of empowerment of women and increasing women representation in a Municipality.

18. Elaborating on Article 243R, Shri Mehta submits that it is Article 243R which provides for composition of Municipalities and there is no prohibition in the constitutional provision in providing representation of more than one member from one Ward. In interpretation of provision of the Constitution by virtue of Article 357 of the Constitution a singular can also be read as plural. He submits that Constitution does not provide for any thematic mode and manner, the election to Lok Sabha and Rajya Sabha is entirely different. In Lok Sabha members are elected by direct Election whereas in Rajya Sabha members are elected by indirect Election. There is complete different mode of election of President of India. Even in Parliament there is no thematic schematic.

19. The power of competent Legislature, i.e., State Legislature in the light of enabling provisions provided in the Constitution with regard to framing of laws concerning Legislature cannot be whittled down by way of restrictive interpretation as contended by the appellants. The State Legislature in federal set up specially in the matter of local Government are to enable enough seats to adopt the reservation based on local body.

20. The overarching scheme of Article 243D and 243T is to ensure the fair representation of social diversity in the composition of elected local bodies so as to contribute to the empowerment of the traditional weaker sections in Society. The preferred means for pursuing this policy is the reservation of seats and Chairperson positions in favour of SC/ST, women and Backward Class candidates.

21. Learned counsel for the parties have also placed reliance on various judgments of this Court which shall be referred while considering the submission in detail.

22. From the submissions of the learned counsel for the parties following questions arise for consideration:

A (1) Whether Article 243R and Article 243S of the Constitution of India contains any limitation to the effect that there shall be only one member from one Ward?

(2) Whether the provisions of Sections 5(3)(iii)(a), 29A of the Gujarat Provincial Municipal Corporations Act, 1949 and Rules 4 and 5 of Bombay Provincial Municipal Corporations (the delimitation of wards and allocation of reserved seats) Rules, 1994 and Rule 2(b) of Gujarat Municipal Corporation's Ward Committees Functions, Duties, Territorial Areas and Procedure for Transaction of Business Rules, 2007 are ultra virus to the provisions of Articles 243R and 243S of the Constitution?

(3) Whether having more than one representative from a Ward negates the empowerment of weaker sections, i.e., women, Scheduled Castes and Scheduled Tribes?

(4) Whether when the draft rules for amendment of Bombay Provincial Municipal Corporations (the delimitation of wards and allocation of reserved seats) Rules, 1994 were issued on 27.11.2014 which were to be published after noting of objections on or expiry of thirty days, the State Government could have issued notification dated 04.12.2014 before expiry of thirty days?

Question Nos. 1 and 2

23. Both these questions being interrelated are being taken together. We need to first notice the relevant constitutional as well as statutory provisions which are up for consideration before us. The provisions of the Gujarat Provincial Municipal Corporations Act, 1949 and the rules framed thereunder are under challenge. The Legislation under challenge is referable to Entry 5 of List II, i.e., State List under Seventh Schedule of the Constitution. Entry 5 is as follows:-

"5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

24. By Constitution (Seventy-fourth Amendment) Act, 1992, Part IXA "The Municipalities" have been inserted in the Constitution of India.

Bill No.159 of 1991 was introduced in the Lok Sabha for inserting new Part IXA. The Bill, which was published in the gazette on 16.09.1991, contains the Statement of Objects and Reasons for insertion of Part IXA in the Constitution. Paragraph 3(b) of the Statement of Objects and Reasons provides as follows:-

"3. XXXXXXXXXXXXX

b) composition of Municipalities, which will be decided by the Legislature of a State, having the following features:

(i) persons to be chosen by direct election;

(ii) representation of Chairpersons of Committees, if any, at ward or other levels in the Municipalities;

(iii) representation of persons having special knowledge or experience of Municipal Administration in Municipalities (without voting rights);

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25. The provisions of Part IXA of the Constitution, which are relevant for the present case are Articles 243P, 243R, 243S, 243ZA and 243ZG, which shall be noticed hereinafter. The appellant has also laid challenge to Section 5(3)(iii) sub-clause(a) of the Act, 1949, which is to the following effect:-

"5. XXXXXXXXXXXXXXXXXXX

(3) Where general election is to be held immediately after,—

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(iii) the limits of a City are altered,—

(a) the State Government shall, by notification in the Official gazette, determine the number of wards into which the City shall be divided, the number of councillors to be elected to the Corporation and the number of seats to be reserved in favour of the Scheduled Castes, the Scheduled Tribes, the Backward Classes and Women as provided in this section, and

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26. Section 29A of the Act, 1949, which is also under challenge, is to the following effect:-

A "**29A. Composition of Wards Committee.-**(1) Where the population of the City is three lakhs or more, there shall be constituted by the Municipal Corporation, Subject to the rules made by the State Government Wards Committee or Committees consisting of one or more wards within the territorial area of a Corporation.

B (2) Each Wards Committee shall consist of –

(a) Councillors of the Corporation representing a ward within the territorial area of the Ward Committee;

[* * * * * * * * *]:

C Provided that a person shall be disqualified for being appointed, and for being a member of the Wards Committee, if under the provisions of this Act or any other law for the time being in force, he would be disqualified for being elected as, and for being, a councillor.

D (3) The Wards Committee shall at its first meeting after its constitution under subsection (1) and at its first meeting in the same month in each succeeding year shall elect,-

where the Wards Committee consists of-

E (a) one ward, the Councillor representing that ward in the Corporation; or

(b) two or more wards, one of the Councillors representing such wards in the Corporation elected by the members of the Wards Committee, to be the Chairperson of

F that Committee.

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27. Rules 4 and 5 of Bombay Provincial Municipal Corporations (the Delimitation of wards in the city and allocation of Reserved Seats) Rules, 1994, as it existed prior to 2015 amendment are as follows:-

G "**4.** All wards shall be multi-member wards with three councilors to be elected from each ward.

5. In each and every ward one seat shall be reserved for women (including seats to be reserved for women belonging to

H Scheduled Castes, Scheduled Tribes and Backward Classes) and

one seat shall remain unreserved. The remaining third seat may be reserved, depending upon the requirement of reservation as notified by the State Government under Section 5 of the said Act."

28. Another rule challenged before us is the Gujarat Municipal Wards Committees Functions, Duties, Territorial Areas and Procedure for Transaction of Business Rules, 2007. Rule 2(b) provides:-

"2(b) "Chairperson" means the persons elected by the members of the Wards Committee as the Chairperson of that Committee;"

29. The notifications issued in exercise of powers under Section 5(3) as well as the Rules, 1994 have also been challenged. The ambit and scope of legislative power of the State being under consideration, we need to first notice the rules of interpretation of a legislative entry.

30. It is well settled that legislative entries as contained in Lists under Seventh Schedule of the Constitution have not to be read in a narrow or restricted manner and each general word occurring in the entries should be held to extend to all ancillary or subsidiary matters, which can fairly and reasonably be said to be comprehended in it. In construing an entry in a List conferring legislative power, the widest possible construction according to their ordinary meaning must be put upon the words used therein.

31. We may refer to the Constitution Bench judgment of this Court in **Ch. Tika Ramji and Others, etc. Vs. The State of Uttar Pradesh and Others, AIR 1956 SC 676** where the principles for interpretation of a legislative entry has been enumerated in following words:-

"Each entry in the Lists which is a category or head of the subject-matter of legislation must be construed not in a narrow or restricted sense but as widely as possible so as to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it……"

32. Article 245, which deals with distribution of legislative powers, begins with the words "subject to the provisions of this Constitution". Thus, laws made by the Parliament and by the Legislature of the State, have to be subject to the provisions of the Constitution. Article 245(1) is as follows:-

A "**245. Extent of laws made by Parliament and by the Legislatures of States**.-(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State."

B 33. Article 246 deals with subject-matter of the laws made by the Parliament and by the Legislature of the State. Reading Articles 245 and 246 together, it is abundantly clear that the legislative power to be exercised by the Parliament and the State Legislatures as enumerated in List I, List II and List III of Seventh Schedule are subject to the provisions of the Constitution. Thus, when the Constitution expressly or C impliedly contains a limitation in exercise of legislative power, the legislative power is subject to such Constitution limitations. For example, Article 13(2) contains a limitation that State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of this clause shall, to the extent of the contravention, be D void. A Constitution Bench of this Court in **Maharaj Umeg Singh and Ors. Vs. State of Bombay and Ors., AIR 1955 SC 540** had categorically laid down that the legislative competence of the State Legislature can only be circumscribed by express prohibition contained in the Constitution itself. In paragraphs 12 and 13 following was laid down:-

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"12. ……..The legislative competence of the State Legislature can only be circumscribed by express prohibition contained in the Constitution itself and unless and until there is any provision in the Constitution expressly prohibiting legislation on the subject either absolutely or conditionally, there is no fetter F or limitation on the plenary powers which the State Legislature enjoys to legislate on the topics enumerated in the Lists 2 and 3 of the Seventh Schedule to the Constitution.

13. The fetter or limitation upon the legislative power of the State Legislature which had plenary powers of legislation within G the ambit of the legislative heads specified in the Lists 2 and 3 of the Seventh Schedule to the Constitution could only be imposed by the Constitution itself and not by any obligation which had been undertaken by either the Dominion Government or the Province of Bombay or even the State of Bombay. Under Article 246 the H State Legislature was invested with the power to legislate on the

topics enumerated in Lists 2 and 3 of the Seventh Schedule to the Constitution and this power was by virtue of Article 245(1) subject to the provisions of the Constitution.

The Constitution itself laid down the fetters or limitations on this power e.g. in Article 303 or Article 286(2). But unless and until the court came to the conclusion that the Constitution itself had expressly prohibited legislation on the subject either absolutely or conditionally the power of the State Legislature to enact legislation within its legislative competence was plenary. Once the topic of legislation was comprised within any of the entries in the Lists 2 and 3 of the Seventh Schedule to the Constitution the fetter or limitation on such legislative power had to be found within the Constitution itself and if there was no such fetter or limitation to be found there the State Legislature had full competence to enact the impugned Act no matter whether such enactment was contrary to the guarantee given, or the obligation undertaken by the Dominion Government or the Province of Bombay or even the State of Bombay.

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34. Justice R. Banumathi in her separate opinion in a Constitution Bench in **Jindal Stainless Limited and Anr. Vs. State of Haryana and Ors., (2017) 12 SCC 1** laid down following in paragraph 316:-

"316. In Umeg Singh v. State of Bombay [AIR 1955 SC 540], this Court held that since the power of the State to legislate within its legislative competence is plenary and the same cannot be curtailed in the absence of an express limitation placed on such power in the Constitution itself, there is no express prohibition on the legislative powers of the State to levy taxes on the goods entering into a local area for consumption, use or sale therein. Taxes being the lifeblood of the State, they cannot be decimated by implication."

35. The ratio which can be culled out from the above judgment is that power of the State to legislate within its legislative competence is plenary and the same cannot be curtailed in the absence of an express limitation placed on such power in the Constitution itself.

36. Article 243ZF provides that any law relating to municipalities in force in a State immediately before the commencement of the

A Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of Part IXA, shall not continue beyond expiration of one year from commencement of the constitutional amendment. Thus, Part IXA of the Constitution categorically contemplated that any law made by State Legislature, which is inconsistent with the provisions of Part IXA shall cease to operate on the expiration of one year or till B amended or repealed by a competent Legislature, whichever is earlier. The Constitution provisions, thus, mandates that any law of the State, which is inconsistent, cannot continue. Thus, this limitation shall also govern any law made after enforcement of Constitution (Seventy-fourth Amendment) Act. Thus, a law, which is inconsistent with Part IXA cannot C be framed by the State Legislature.

37. Explaining the expression "inconsistent", this Court in **Basti Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Anr., (1979) 2 SCC 88** where following was laid down in paragraph 23:-

D **"23.**……"Inconsistent", according to *Black's Legal Dictionary*, means "mutually repugnant or contradictory; contrary, the one to the other so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other"……"

E 38. One of the meanings of expression "inconsistent" as approved by this Court is mutually repugnant or contradictory. Article 254 of the Constitution contains a heading "inconsistency between laws made by the Parliament and the laws made by the Legislature of the State" whereas under Article 254(1) and Article 254(2) the words used are F repugnant. The Constitution itself, thus, has used the words inconsistency and repugnancy interchangeably. To find out as to whether a law made by State Legislature is inconsistent with provisions of Part IXA of the Constitution, the principles which have been laid down by this Court to determine the repugnancy between the law made by the Legislature of a State and law made by Parliament can be profitably relied on. We, G thus, need to notice the principles on which the repugnancy of law made by State and law made by the Parliament is found out.

39. The Constitution of India is a paramount law to which all other laws are subject. One of the important tests to find out as to whether or not there is repugnancy is to ascertain the intention of the Legislature

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regarding the fact that the dominant Legislature allowed the subordinate Legislature to operate in the same field paripasu the State Act and there will be no inconsistency when the State Act and Central Act are supplemental to each other. Things are inconsistent when they cannot stand together at the same time and one law is inconsistent with another law, when the command or power or provision in the law conflicts directly with the command or power or provision in the other law. While legislating on a particular subject matter, the paramount Legislature may evince the intention to cover only certain specific matters leaving it to the State Legislature to deal with the rest. One more preposition need to be noticed is that there is always a presumption that Legislature does not exceed its jurisdiction and Court should make every attempt to reconcile the provisions of apparently conflicting enactment. This Court in **Ch. Tika Ramji and Others, Etc. Vs. The State of Uttar Pradesh and Others, AIR 1956 SC 676** had occasion to consider the repugnancy between a State legislation, U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 and the Central Legislation namely the Industries (Development and Regulation) Act, 1951 as well as the Essential Commodities Act, 1955. It was held by this Court that repugnancy falls to be considered when the law made by the Parliament and the law made by the State Legislature occupies the same field. This Court quoted with approval three tests as referred by Nicholas in his Australian Constitution and one test referred by Isaacs, J. in paragraphs 27 and 28 of the judgment, which are to the following effect:-

> **"27.** Nicholas in his *Australian Constitution*, 2nd Ed., p. 303, refers to three tests of inconsistency or repugnancy:—
>
> (1) There may be inconsistency in the actual terms of the competing statutes (*R.* v. *Brisbane Licensing Court*, [1920] 28 CLR 23).
>
> (2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code (*Clyde Engineering Co. Ltd.* v. *Cowburn*, [1926] 37 CLR 466).
>
> (3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter (*Victoria* v. *Commonwealth*, [1937]

A 58 CLR 618; *Wenn* v. *Attorney-General (Vict.)*, [1948] 77 CLR 84)

28. Isaacs, J. in *Clyde Engineering Company, Limited* v. *Cowburn* [(1926) 37 CLR 466, 489] laid down one test of inconsistency as conclusive: "If, however, a competent B legislature expressly or implicitly evinces its intention to cover the whole field, that is a conclusive test of inconsistency where another Legislature assumes to enter to any extent upon the same field"."

40. This Court after referring to the provisions of State Legislation as well as Central Legislation held that none of these provisions do overlap, C the Centre being silent with regard to some of the provisions, which have been enacted by the State, hence no repugnancy was found. Following was laid down in paragraph 36:-

"(36). XXXXXXXXXXXXXXXX

Suffice it to say that none of these provisions do overlap, D the Centre being silent with regard to some of the provisions which have been enacted by the State and the State being silent with regard to some of the provisions which have been enacted by the Centre. There is no repugnancy whatever between these provisions and the impugned Act and the Rules framed thereunder E as also the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 do not trench upon the field covered by Act 10 of 1955."

41. Another Constitution Bench in **Deep Chand and Ors. Vs. The State of Uttar Pradesh and Ors., AIR 1959 SC 648** speaking F through K. Subba Rao, J. after referring to the earlier judgments of this Court and other precedents laid down following three principles for ascertaining the repugnancy between two statutes:-

"(29). XXXXXXXXXXXX

Repugnancy between two statutes may thus be ascertained G on the basis of the following three principles:

(1) Whether there is direct conflict between the two provisions;

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the H State Legislature and

(3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field." A

42. Again a Constitution Bench of this Court in **M.Karunanidhi Vs.Union of India and Anr., (1979) 3 SCC 431** reiterated the principles to determine the inconsistency between two Statutes. In paragraph 35, following prepositions were laid down:- B

"35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or C operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the D same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes E continue to operate in the same field."

43. Thakkar, J. speaking for himself and Fazal Ali, J. in **M/s. Ram Chandra Mawa Lal, Varanasi and Ors. Vs. State of Uttar Pradesh and Ors., 1984 (Supp.) SCC 28** had occasion to elaborately consider the principles to determine inconsistency between two Statutes. F The principles were stated in following words in paragraph 47:-

47. ……..The principle may be stated thus. The Centre and the State both cannot speak on the same channel and create disharmony. If both speak, the voice of the Centre will drown the voice of the State. The State has to G remain "silent" or it will be "silenced". But the State has the right to "speak" and can "speak" (with unquestionable authority) where the Centre is "silent, without introducing disharmony……..."

44. The last judgment which needs to be noticed is another Constitution Bench judgment in **K.T. Plantation Private Limited and** H

A **Anr. Vs. State of Karanataka, (2011) 9 SCC 1** where on repugnancy, following was laid down in paragraph 108:-

> "**108.** The question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are fully inconsistent or are absolutely irreconcilable and it is impossible
B without disturbing the other, or conflicting results are produced, when both the statutes covering the same field are applied to a given set of facts. Repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by Parliament and the law made by the State Legislature occupy the same field. Reference may be made to
C the decisions of this Court in Deep Chand v. State of U.P. [AIR 1959 SC 648], Prem Nath Kaul v. State of J&K [AIR 1959 SC 749], UkhaKolhe v. State of Maharashtra [AIR 1963 SC 1531], Bar Council of U.P. v. State of U.P. [(1973) 1 SCC 261], T. Barai v. Henry Ah Hoe [(1983) 1 SCC 177], Hoechst
D Pharmaceuticals Ltd. v. State of Bihar [(1983) 4 SCC 45], LingappaPochannaAppelwar v. State of Maharashtra [(1985) 1 SCC 479] and Vijay Kumar Sharma v. State of Karnataka [(1990) 2 SCC 562]."

45. After noticing the principles laid down by this Court in above
E noted cases to find out repugnancy between law made by State Legislature and that of Parliament, we need to apply the above prepositions to find out as to whether the provisions of Act, 1949 and the Rules framed thereunder are inconsistent with constitutional provisions as contained in Part IXA of the Constitution of India.

F 46. We, now, proceed to notice the relevant constitutional provisions contained in Part IXA. Article 243P is a definition clause. Article 243P(a) defines the "Committee" in following words:-

> "(a)"Committee" means a Committee constituted under Article 243S;

G 47. Article 243(e) defines "Municipality" in following words:-

> "(e) "Municipality" means an institution of self-government
>
> constituted under Article 243Q;"

48. Article 243Q provides for constitution of Municipalities. Article
H 243R deals with composition of Municipalities, which is as follows:-

"**243R. 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 as electors within the Municipal area;

iv. the Chairpersons of the Committees constituted under Clause (5) of Article 243S:

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

b. the manner of election of the Chairperson of a Municipality."

49. Sub-article(1) of Article 243R contains two constitutional requirements:- (i) all the seats in a Municipality shall be filled by persons chosen by direct election and (ii) 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. Sub-article (2) of Article 243R provided for the representation in a municipality of four categories of persons which is a constitutional requirement required to be adopted by State Legislature. It may be noted that sub-article(2) of Article 243R does not deal with seats in the Municipalities, which shall be filed up by persons chosen by direct election. Article 243ZA deals with elections to the Municipalities, thus, direct election, as contemplated under Article 243R has to be as per Article 243ZA. 243ZA(2) provides as follows:-

A **"243ZA Elections to the Municipalities—**

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(2) Subject to the provisions of the Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the
B Municipalities."

50. Thus, the Legislature of a State may by lay has to provide all matters relating to or in connection with election to the Municipalities, which includes filling of the seats in the Municipality by person chosen by direct election. Articles 243R and 243ZA does not give any indication
C as to whether from territorial constituency, i.e., the Wards, whether only one member has to be elected in the Municipality or it can be multiple member constituency. The constitutional provisions of Article 243R, which provides for composition of Municipalities and that of Article 243ZA does not give any indication to the above. The provisions of Article 243ZG,
D which deals with bar to interference by courts in electoral matters throws some light. Article 243ZG is as follows:-

"**243ZG Bar to interference by Courts in electoral matters-** Notwithstanding anything in this Constitution,-

a. the validity of any law relating to the delimitation of
E constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243ZA shall not be called in question in any Court;

b. ……"

F 51. Article 243ZG(a) used two expressions: "any law relating to the delimitation of constituencies or the allotment of seats to such constituencies" may be read as allotment of more than one seat to one constituency but it can be said that the above provision also do not provide that in one constituency, there may be more than one seats.

G 52. Now, we turn to Article 243S, which is sheet anchor of the argument of Shri Kapil Sibal, learned senior counsel. Article 243S deals with Constitution and Composition of Wards Committees. Article 243S is as follows:-

"**243S Constitution and composition of Wards Committees, etc.—(1)** There shall be constituted Wards Committees, consisting
H

of one or more Wards, within the territorial area of a Municipality having a population of three lakhs or more.

(2) The Legislature of a State may, by law, make provision with respect to –

a. the composition and the territorial area of a Wards Committee;

b. the manner in which the seats in a Wards Committee shall be filled.

(3) A member of a Municipality representing a ward within the territorial area of the Wards Committee shall be a member of that Committee.

(4) Where a Wards Committee consists of -

a. one ward, the member representing that ward in the Municipality; or

b. two or more wards, one of the members representing such wards in the Municipality elected by the members of the Wards Committee,

shall be the Chairperson of that Committee.

(5) Nothing in this article shall be deemed to prevent the Legislature of a State from making any provision for the Constitution of Committees in addition to the Wards Committees."

53. On sub-article(3) and sub-article (4) of Article 243S great emphasis has been laid down. It is submitted by Shri Sibal that sub-article (3) uses the expression "a member of a Municipality representing a ward". It is submitted that the expression "a member" clearly means that only one member shall represent a ward. He further submits that sub-article (4) sub-clause(a) uses the expression "the member representing that ward" which again reinforces that one ward shall be represented by only one member. On a first blush, the argument appears to be attractive but when we carefully analysed the extent and purpose of Article 243S, we do not find any such limitation in provision of Article 243S, which limits the State Legislature for requiring multi-member seats in a Ward. Reverting to sub-article (3) of Article 243S, the requirement is that a member of the Municipality representing a Ward shall be a member of the Ward Committee. Thus, constitutional requirement or

A limitation engrafted in sub-article(3) is that a member of the Municipality representing a Ward shall be a member of the Ward Committee. The provision of Article 243S(3) is not a provision regarding composition of Municipality rather the provision is for constitution and composition of Wards Committee. In Wards Committee, a member representing a Ward in Municipality has to be the member sub-article(3) of Article 243S cannot B be read to mean that it mandates that from one Ward more than one members cannot be made representatives. In cases, where there are more than one member from one Ward all will become the member of the Committee. When all the members of the Municipality representing a Ward are members of the Committee, there is no breach of Article C 243S(3).

54. Now, we come to sub-article (4) of Article 243S. Article 243S(4) is a provision indicating as to who shall be the Chairperson of Wards Committee. Sub-article(4) says that where Wards committee consists of one ward, the when it consists of two or more wards, one of D the members representing such wards in the Municipality elected by the members of the Wards Committee. Shri Sibal submits that sub-article(4) of Article 243S uses the expression "the member" which means that with regard to one Ward only one member has to represent in the Municipality and in case of multi-member Ward, no election is contemplated to elect Chairperson with regard to one Ward and election E is contemplated to elect one person only when there are two or more Wards. It is true that under sub-article (4)(a), in case of one Ward member representing that Ward shall be the Chairperson.

55. We may now examine, if there are multi-members in one ward, whether Constitutional provisions of Article 243S(4) are breached F when Chairperson is to be elected. The requirement is that member representing the Ward shall be the Chairperson of the Committee and if there are more than one members and one member out of multi-member Ward is elected as Chairperson, the provision of Article 243S(4) shall be applied. When the constitutional provisions under Article 243S(4)(a) does G not provide for election for electing Chairperson in case of a multi-member Ward, the same is supplemented by the State legislation. In the present case, we have noticed that Rule 2(b) of Rules, 2007, which provides that Chairperson of a Ward Committee is the person elected by the members of the Wards Committee. The Rule, thus, contemplate an election of Chairperson amongst the members of the Wards Committee, H

which shall also be applicable in a case where there are more than one members from one Ward. When out of multiple members in a Ward, one member is elected as Chairperson, the mandate of Article 243S(4)(a) is complied with. The requirement is that member representing the ward in the Municipality shall be the Chairperson. The above provision cannot be read in providing any prohibition or limitation that in one Ward, there cannot be more than one member. The composition of Municipality has been dealt separately by Article 243R and for composition of Municipality, the provisions of Article 243S cannot be said to be applicable or intended to provide any limitation or prohibition with regard to composition of the Municipalities. The Rule 2(b) of Rules, 2007 which provides for election of Chairperson, by following which rule, in case of multi-member Ward, Chairperson can be elected, which may apply both to Article 243S(4) as well as Rule 2(b) of the Rules, 2007. Thus, Rules 4 and 5 of Rules, 1994 as well as Rule 2(b) of Rules, 2007 does in no manner disobey the mandate of Article 243S(4), both can be complied with without any conflict between the two different provisions. We, thus, come to the conclusion that provisions of Section 5(3)(iii)(a) as well as Rules 4 and 5 of Rules, 1994 and Rule 2(b) of Rules, 2007 are not inconsistent with provisions of Article 243S.

56. Now, we come to the cases, which have been relied by Shri Kapil Sibal in support of his submissions. Shri Sibal has placed reliance on judgment of this Court in **Manoj Narula Vs. Union of India, (2014) 9 SCC 1** for the preposition that doctrine of implication has to be applied to explain the constitutional concepts. He has referred to paragraph 17 of the judgment, which is to the following effect:-

> **"17.** Recently, in *Subramanian Swamy* v. *CBI* [(2014) 8 SCC 682], the Constitution Bench, speaking through R.M. Lodha, C.J., while declaring Section 6-A of the Delhi Special Police Establishment Act, 1946, which was inserted by Act 45 of 2003, as unconstitutional, has opined that: (SCC pp. 725-26, para 59)
>
> "*59*. It seems to us that classification which is made in Section 6-A on the basis of status in the government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public

A servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988."

B And thereafter, the larger Bench further said: (SCC p. 726, para 60)

"*60*. Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary C mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences."

D And again: (SCC pp. 730-31, paras 71-72)

"*71*. Office of public power cannot be the workshop of personal gain. The probity in public life is of great importance. How can two public servants against whom there are allegations E of corruption of graft or bribe-taking or criminal misconduct under the PC Act, 1988 can be made to be treated differently because one happens to be a junior officer and the other, a senior decision maker.

72. Corruption is an enemy of nation and tracking down F corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoers and have to be tracked down by G the same process of inquiry and investigation."

57. No exception can be taken to the preposition laid down by this Court as above. But this Court in subsequent paragraph 71 while explaining the doctrine of implication has held that this doctrine has its own limitations. Interpretation has to have a base in the Constitution. The H relevant observations made in Paragraph 71 are as follows:-

"**71.** .....Thus, the said principle can be taken aid of for the purpose of interpreting constitutional provision in an expansive manner. But, it has its own limitations. The interpretation has to have a base in the Constitution. The Court cannot rewrite a constitutional provision. In this context, we may fruitfully refer to Kuldip Nayar case [Kuldip Nayar v. Union of India, (2006) 7 SCC 1] wherein the Court repelled the contention that a right to vote invariably carries an implied term i.e. the right to vote in secrecy. The Court observed that where the Constitution thought it fit to do so, it has itself provided for elections by secret ballot e.g. in the case of election of the President of India and the Vice-President of India. ....."

58. In paragraph 72, the Court rejected the submission of petitioner that while interpreting the words "advise of the Prime Minister" a prohibition to think of a person as a Minister, if charges have been framed against him cannot be inferred. In paragraph 72, following has been laid down:-

"**72.** Thus analysed, it is not possible to accept the submission of Mr Dwivedi that while interpreting the words "advice of the Prime Minister" it can legitimately be inferred that there is a prohibition to think of a person as a Minister if charges have been framed against him in respect of heinous and serious offences including corruption cases under the criminal law.

59. We have analysed the provisions of Article 243R, 243S and have come to the definite conclusion that no limitation in Article 243S can be found of which contains any prohibition of having more than one member for a Ward.

60. Next judgment relied by Shri Kapil Sibal is **Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Ors., (1979) 2 SCC 34.** In the above case, this Court has reiterated the principles of interpretation of a constitutional provision. In paragraphs 66 and 67 following has been laid down:-

"66. The primary principle of interpretation is that a Constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise

A and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the Rule of strict grammatical construction ceases to be a sure guide to reach at the real B legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the and literal confines of the provision and to call in aid other well recognised rules of construction, such as its legislative/history, the basic scheme and framework of the C statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

67. Where two alternative constructions are possible, the D court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction apply E to the interpretation of our Constitution with greater force, because the Constitution is a living, integrated organism having a soul and consciousness of its own……"

61. There can be no dispute to the above preposition which has been laid down for interpretation of a constitutional provision. Applying F the above principle of interpretation on the Constitution, we may notice that when the State Legislature has been given preliminary power of legislation with regard to composition of the Municipalities, there has to be express or implied limitation, which may prohibit the State Legislature to make a law providing for multi-member Ward.

G 62. Another judgment relied by Shri Sibal is **M.T. Khan and Ors. Vs. Govt. of A.P. and Ors., (2004) 2 SCC 267.** This Court in the above case had occasion to consider Articles 165 and 367 of the Constitution. Article 367 provides that the General Clauses Act could be applied in dealing with interpretation unless the context otherwise requires. H This Court held that the Advocate General referred to in Article 165

cannot be read in plural sense. The Advocate General discharges the constitutional functions and if more than one person is appointed to discharge the constitutional functions, different Advocate Generals may act differently, resulting in a chaos. The office of Advocate General is a public office, hence, Additional Advocate General appointed by the State cannot be said to have been appointed under Article 165 but that appointment has to be traced to the source of the State's power under Article 162 of the Constitution of India. No exception can be taken to the preposition as laid down by this Court in the above judgment. Similarly, in **Karnataka Bank Ltd. Vs. State of Andhra Pradesh and Ors., (2008) 2 SCC 254.** This Court held that the definition of person under Section 3(42) of the General Clauses Act is not applicable automatically to interpret the provision of the Constitution unless the context so requires and makes the definition applicable. Again, there can be no dispute to the preposition as laid down in the above case.

63. We, in the present case, after analysing the relevant provisions of Part IXA of the Constitution has come to the conclusion that there is no prohibition or limitation in Part IXA of the Constitution prohibiting the State Legislature from making a law providing for election of more than one member from one territorial constituency, i.e., Ward.

64. We, thus, answer Question Nos.1 and 2 in following manner:-

(1) Article 243R and 243S of the Constitution of India does not contain any limitation to the effect that there shall be only one member from one Ward.

(2) Provisions of Section 5(3)(iii)(a) and Section 29A of the Act, 1949 and Rules 4 and 5 of the Rules**,** 1994 and Rule 2(b) of Rules, 2007 are not ultra vires to the provisions of Articles 243R and 243S of the Constitution.

Question No.3

65. The submission of Shri Sibal is that having more than one representative from a Ward negates the very concept of empowerment of weaker sections, i.e., women, Scheduled Castes and Scheduled Tribes. He submits that when there is only one member from a Ward and if the Ward is reserved for women, Scheduled Castes and Scheduled Tribes, it is empowerment of women, Scheduled Caste and Scheduled Tribes and if there are 4 members in a Ward, women, Scheduled Castes and Scheduled Tribes shall not be able to effectively espouse the cause of

A weaker sections. The Statement of Objects and Reasons of the Bill No.159 of 1991 which was introduced in the Lok Sabha for inserting Part IX in the Constitution, in paragraph 2 stated:

> "2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are
B incorporated in the Constitution particularly for-
>
> (i) putting on a former 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;
C
> (ii) ensuring regular conduct of elections;
>
> (iii) ensuring timely elections in the case of supersession; and
>
> (iv) providing adequate representations for the weaker
D sections like Scheduled Castes, Scheduled Tribes and women."

66. Article 243T of the Constitution of India included in Part IXA, provides for reservation of seats. The provision in the Constitution for providing reservation of seats is a provision for empowering the women, Scheduled Castes and Scheduled Tribes. The Gujarat Delimitation
E of Wards and Allocation of Reserved Seats in Municipal Borough Rules, 1994 has been amended by Amendment Rules, 2015. Clauses 2 and 3 of which provide as follows:

> "2. In the Delimitation of Wards and allocation of Reserved Seats in Municipal Borough Rules, 1994 (hereinafter referred to the "the said rules"), in rule 4, for the word "three", the word
F "four" shall be substituted.
>
> 3. In the said rules, for rule 5, the following rule shall be substituted, namely:-
>
> "5. (1) In each Ward two seats shall be reserved for women
G (including seats to be reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes) and the remaining seats shall be allocated taking into consideration the requirement of reservation as provided under Section 6 of the said Act.
>
H

(2) While determining the number of seats to be reserved for the different reserved categories as provided in sub-rule (1);-

(a) if it is not feasible to exactly divide the number of seats evenly, then, after such division the remaining one seat, or

(b) if in case only one seat is required to be reserved for any of the reserved categories, then, such seat,

Shall first be allocated to a male candidate and then a women by rotation in the general elections to be held after coming into force of the Delimitation of Wards and Allocation of Reserved Seats in Municipal Borough (Amendment) Rules, 2015".”

67. As per above provision now it is 4 member Ward, 2 seats are to be reserved for women including seats reserved for women belonging to Scheduled Castes, Scheduled Tribes and Back Ward Classes.

68. This Court in **Kasambhai F. Ghanchi vs. Chandubhai D. Rajput and others, (1998) 1 SCC 285,** had held that the idea of providing reservation for the benefit of weaker sections of the society is not only to ensure their participation but it is an effort to improve their lot. Following observations were made in paragraph 13:

“13. The idea of providing reservation for the benefit of weaker sections of the society is not only to ensure their participation in the conduct of the affairs of the municipality but it is an effort to improve their lot. The reservation ensures that the specified minimum number of persons belonging to that category become members of the municipality. If because of their popularity a larger number of Scheduled Castes, Scheduled Tribes, Backward Classes or women get elected to the municipality than the number of reserved seats that would be welcome. ……”

69. The entire purpose and object of reserving seats for weaker sections is to empower the weaker sections, i.e., women, Scheduled Castes and Scheduled Tribes, when there are more numbers are reserved for weaker sections their participation in municipality is bound to increase giving strength to their voice and effective participation which is nothing but empowerment of weaker sections. We are not able to subscribe to the submission of Shri Sibal that when there are only one representation from one Ward only then empowerment of weaker sections can be made.

A By the Rules, 1994 as amended in 2015 now the voice of weaker sections can be felt from every Ward which clearly enhances of presence and participation of weaker sections and does not, in any manner, negate the empowerment of weaker sections. We, thus, do not find any substance in the above submission of Shri Sibal.

B 70. We answer Question No.3 in the following manner:

Having more than one representation from a Ward in no manner negates the empowerment of weaker sections rather it increases the empowerment of weaker sections.

C **Question No.4**

71. The submission of Shri Sibal is that before expiry of 30 days from the date of publication of notification dated 27.11.2014, the notification has been issued on 04.12.2014 itself which is illegal. He submits that notification dated 04.12.2014 has been issued without considering the objection which was contemplated to be filed within 30
D days. The notification dated 27.11.2014 as well as notification dated 04.12.2014 has been brought on record as Annexure P-1 and Annexure P-2 to the paper book. It is useful to notice the notification dated 27.11.2014 along with draft notification which is to the following effect:

"NOTIFICATION

E Urban Development and Urban Housing Department,

Sachivalaya, Gandhinagar

Dated: 27.11.2014

F No.KV/184 of 2014/MISC/102014/5640/P:- The following draft of rules which is proposed to be issued under sub-section (1) of section 456, read with section 5 of the Gujarat Provincial Municipal Corporations Act, 1949 (Born.LIX of 1949) is hereby published as required by subsection (2) of the said section 456 of the said Act, for informatioria all persons likely to be affected thereby and
G notice is hereby given that the said draft rules will be taken into consideration by the Government of Gujarat on or after the expiry of thirty days from the date of publication of this notification in the *Official Gazette.*

2 Any objection or suggestion which may be received by the
H Additional Chief Secretary to the Government of Gujarat, Urban

Development and Urban Housing Department, Sachivalaya, Gandhinagar, from any person with respect to the said draft notification before the expiry of the aforesaid period will be considered by the Government.

DRAFT NOTIFICATION

No. KV/184 of 2014/MISC/102014/5640/P:- In exercise of the powers conferred by sub-section (1) of section 456 read with section 5 of the Gujarat Provincial Municipal Corporations Act, 1949 (Born. LIX of 1949), the Government of Gujarat hereby makes the following rules further to amend the Delimitation of Wards and Allocation of Reserved Seats Rules, 1994, namely:-

1. These rules may be called the Delimitation of Wards and Allocation of Reserved Seats (Amendment) Rules, 2014.

2. In the Delimitation of Wards and Allocation of Reserved Seats Rules, 1994 (hereinafter referred to as "the said rules"), in rule 4, for the word "three", the word "four" shall be substituted.

3. In the said rules, for rule 5, the following rule shall be substituted, namely:-

"5.(1) In each ward two seats shall be reserved for women (including seats to be reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes) and the remaining seats shall be allocated taking into consideration the requirement of reservation as provided under section 5 of the said Act.

(2) While determining the number of seats to be reserved for the different reserved categories as provided in sub-rule (1),-

(a) if it is not feasible to exactly divide the number of seats evenly then after such division the remaining one seat, or

(b) if in case only one seat is required to be reserved for any of the reserved categories, then, such seat-

shall first be allocated to a male candidate and then a woman by rotation in the general elections to be held after coming into force

of the Delimitation of Wards and Allocation of Reserved Seats (Amendment) Rules, 2014."

4. In the said rules, in rule 8, for the words, brackets and figures "recognized for the purposes of Representation of Peoples Act, 1951 (43 of 1951)", the words "registered with the State Election Commission" shall be substituted.

By order and in the name of the Governor of Gujarat,

(Ashoksinh Parmar)

Deputy Secretary to Government."

72. A perusal of the above notification indicates that the said notification was a draft notification to amend the Delimitation of Wards and Allocation of Reserved Seats (Amendment) Rules, 2014 wherein Rule 4, for the word "three", the word "four" was sought to be substituted.

73. The notification dated 04.12.2014 has been issued in exercise of powers conferred by sub-clause (a) of clause (iii) of sub-section (3) of Section 5 of Act, 1949. The notification dated 04.12.2014 reads:

"NOTIFICATION

Urban Development and Urban Housing Department Sachivalaya.

Gandhinagar.

Dated the 4th December, 2014

No.KV-194 of 2014 -ELE – 102014 – 1701 – P: WHEREAS the Government of Gujarat in exercise of powers conferred by sub-clause (a) of clause (iii) of sub-section (3) of section 5 read with sub-sections (4), (5), (6) and (7) of the said section 5 of the Gujarat Provincial Municipal Corporations Act, 1949(Born. LIX of 1949) (hereinafter referred to as "the said Act") under the Government Notification, Urban Development and Urban Housing Department No.KV-47 of 2010-ELE102009-526-P, dated the 23rd March, 2010 has determined the numbers of Wards and Councillors, numbers of Seats reserved for Scheduled Tribes, Backward Classes and Women for the Ahmedabad Municipal Corporation.

AND WHEREAS, the number of Wards and Councillors, number of seats to be reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and Women is required to be ascertained in accordance with the figures of the population as declared on the basis of Census-2011 as also in view of the provisions of section 5 of the said Act;

AND WHEREAS, the General Election of the Municipal Corporation of the City of the Ahmedabad is to be held;

NOW, THEREFORE, in exercise of the powers conferred by sub-clause (a) of clause (iii) of sub-section (3) of section 5 read with sub-sectoins (4), (5), (6) and of the said section 5 of the said Act, so far as the City of Ahmedabad is concerned, the Government of Gujarat hereby determines the numbers of Wards and Seats as follows:-

1. The areas of the City of Ahmedabad shall be divided into Forty-eight (48) Wards and the Municipal Corporation of the City of Ahmedabad shall consist of One Hundred and Ninety – two (192) Councillors;

2. Out of One Hundred and Ninety-two (192) Seats-

   (i) Twenty (20) Seats shall be reserved for persons belonging to the Scheduled Castes out of which Ten (10) Seats shall be reserved for women belonging to the Scheduled Castes;

   (ii) Two (2) Seats shall be reserved for the persons belonging to the Scheduled Tribes out of which One(1) seat shall be reserved for women belonging to the Scheduled Tribes;

   (iii) Nineteen (19) Seats shall be reserved for the persons belonging to the Backward Classes out of which Nine (9) Seats shall be reserved for women belonging to Backward Classes;

   (iv) Ninety-six (96) Seats shall be reserved for the women (including the number of seats reserved for the women belonging to Scheduled Castes, Scheduled Tribes and the Backward Classes referred to as above).

By order and in name of the Governor of Gujarat.

(Ashoksinh Parmar)

Deputy Secretary to Government."

74. A bare perusal of the notification dated 04.12.2014 indicates that the said notification is not in reference to the notification dated 27.11.2014 rather the said notification was issued regarding determination of number of Wards and Councillors' seats reserved for Scheduled Castes and Scheduled Tribes and women. Thus, the argument that notification dated 04.12.2014 issued before expiry of 30 days is wholly misconceived. The appellants themselves have brought on record a notification dated 15.01.2015 as Annexure P-9 to the paper book which is the notification issued in reference to the notification dated 27.11.2014. Notification dated 15.01.2015 reads:

"NOTIFICATION

Government of Gujarat

Urban Development and Urban Housing Department

Sachivalaya, Gandhinagar

Dated 15th January, 2015

NO.KV-38 of 2015 – MISC – 102014 – 564- - P: WHEREAS, the certain draft rules were published as required by sub-section (2) of section 456 of the Gujarat Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949), at pages 76-1 and 76-2, Part I-A, in the Central Section of the Gujarat Government Gazette, Extra Ordinary, dated the 27th November, 2014 under the Government Notification, Urban Development and Urban Housing Department No.KV/184 of 2014, inviting objections or suggestions from all persons likely to be affected thereby, within a period of thirty days from the date of publication of the said notification in the Official Gazette.

Xxx xxx xxx xxxx"

75. Thus, in reference to notification dated 27.11.2014, the notification was issued on 15.01.2015,Rules, namely, Bombay Provincial Municipal Corporation (Delimitation of Wards in the City and Allocation of Reserved Seats) (Amendment) Rules, 2015 were issued which specifically mentioned that objections and suggestions in pursuance of draft have been considered by the Government. We, thus, do not find any infirmity in the above notification.

76. In view of the above discussion, we answer Question No.3 in the following manner:

> Notification dated 04.12.0214 being not in reference to notification dated 27.11.2014 which notification was on entirely different subject, there is no illegality in issuing notification dated 04.12.2014.

77. We having found that the provisions of Section 5(3) (iii)(a) and Section 29A of Act, 1949 and Rule 4 and 5 of Rules, 1994 and Rule 2(b) of Rules, 2007 are not ultra vires to Part IXA of the Constitution, the Division Bench of the High Court did not commit any error in dismissing the writ petition filed by the appellants. We, thus, do not find any merit in the Civil Appeal arising out of SLP(C)No.24950 of 2015 and the Writ Petition (C)No.786 of 2020. Hence, the civil appeal and writ petition are dismissed.

Civil Appeal (arising out of SLP(C)No.30635 of 2015-State Election Commission vs. Virendrasinh Mafaji Vaghela & Ors.)

78. The appeal has been filed against the Division Bench judgment of the Gujarat High Court dated 21.10.2015 by which writ petition filed by the respondents was allowed. The High Court in paragraph 72 has issued directions which we have noted above. The High Court found the Ordinance No.3 of 2015 as unconstitutional and void. The action of the State Election Commission for postponement of the election of all local bodies in the State was held to be illegal and set aside. The State Election Commission was directed to initiate process of holding the election of the local bodies forthwith. In pursuance of the Division Bench judgment of the High Court dated 21.10.2015 Elections for the local bodies were held in November/December, 2015. The direction of the Division Bench dated 21.10.2015 having been carried out nothing remains to be decided in this appeal. The tenure of the Local Body constituted in pursuance of the impugned direction of the High Court dated 21.10.2015 having come to end, we see no necessity to enter into issue raised in this appeal. Thus, the appeal is dismissed as having become infructuous.

Ankit Gyan Appeals disposed of.