

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.09.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE K.RAVICHANDRA BAABU

W.P. NOS. 23411, 23417, 23418, 28370, 28371, 29060 & 29797 OF
2016

1 DRAVIDA MUNNETRA KAZHAGAM
REP. BY ITS ORGANIZATION SECRETARY R.S.
BHARATHI DMK HEAD QUARTERS ANNA ARIVALAYAM
367 & 369 ANNA SALAI CHENNAI-600 018
... PETITIONER in WP No.23411,23417,23418, of 2016

1 PATTALI MAKAL KATCHI
REP. BY ITS STATE DEPUTY GENERAL SECRETARY
MR.A.TAMILARASU S/O.VEERAPPA GOUNDER
OMALUR TOWN SALEM 636 455
... PETITIONER in WP No.28370 of 2016

1 MR.A.TAMILARASU
S/O.VEERAPPA GOUNDER STATE DEPUTY GENERAL
SECRETARY PATTALI MAKAL KATCHI (PMK)
OMALUR SALEM 636 455
... PETITIONER in WP No.28371 of 2016

1 R.JOTHISWARAN ... PETITIONER in WP No.29060 of 2016

1 S.SUGUMAR ... PETITIONER in WP No.29797 of 2016

vs

1 THE SECRETARY TO GOVERNOR
RAJ BHAVAN GUINDY CHENNAI-22

2 GOVERNMENT OF TAMILNADU
REP. BY THE PRINCIPAL SECRETARY TO GOVT.
DEPARTMENT OF MUNICIPAL ADMINISTRATION AND
WATER SUPPLY SECRETARIAT CHENNAI-9

3 COMMISSIONER OF MUNICIPAL
ADMINISTRATION EZHILAGAM CHEPAUK CHENNAI-5

4 THE SECRETARY TO GOVERNMENT
RURAL DEVELOPMENT AND PANCHAYAT RAJ
DEPARTMENT GOVERNMENT OF TAMILNADU
SECRETARIAT FORT ST. GEORGE CHENNAI-9

5 TAMILNADU STATE ELECTION
COMMISSION REP. BY TAMILNADU STATE ELECTION
COMMISSIONER NO.208/2 JAWAHARLAL NEHRU
ROAD OPP. TO CMBT ARUMBAKKAM CHENNAI-106

6 MR.S.P.VELUMANI
HONOURABLE MINISTER FOR MUNICIPAL ADMN. AND
RURAL DEVELOPMENT IMPLEMENTATION OF SPECIAL
PROGRAMME GOVT. OF TAMILNADU SECRETARY
CHENNAI-9

... RESPONDENTS in WP No.23411 of 2016

1 THE SECRETARY TO GOVERNOR
RAJ BHAVAN GUINDY CHENNAI-600 022

2 THE SECRETARY TO GOVERNMENT
RURAL DEVELOPMENT AND PANCHAYAT RAJ
DEPARTMENT GOVERNMENT OF TAMILNADU
SECRETARIAT FORT ST. GEORGE CHENNAI-600 009

3 THE SECRETARY TO GOVERNMENT
LAW DEPARTMENT GOVERNMENT OF TAMILNADU
SECRETARIAT FORT ST. GEORGE CHENNAI-600 009

4 TAMILNADU STATE ELECTION
COMMISSION REP. BY TAMILNADU STATE ELECTION
COMMISSIONER NO.208/2 JAWAHARLAL NEHRU
ROAD OPP. TO CMBT ARUMBAKKAM
CHENNAI-600 106

... RESPONDENTS in WP No.23417 of 2016

TAMILNADU STATE ELECTION
COMMISSION REP. BY TAMILNADU STATE ELECTION
COMMISSIONER NO.208/2 JAWAHARLAL NEHRU
ROAD OPP. TO CMBT ARUMBAKKAM CHENNAI-600
106

... RESPONDENT in WP No.23418 of 2016

1 THE SECRETARY TO GOVERNMENT
DEPARTMENT OF LAW GOVERNMENT OF TAMILNADU
SECRETARIAT CHENNAI-9

- 2 THE GOVT. OF TAMILNADU
REP. BY ITS PRINCIPAL SECRETARY TO GOVT.
DEPT. OF MUNICIPAL ADMN. AND WATER SUPPLY
SECRETARIAT CHENNAI-9
- 3 THE GOVERNMENT OF TAMILNADU
REP. BY ITS SECRETARY TO GOVERNMENT RURAL
DEVELOPMENT AND PANCHAYAT RAJ DEPARTMENT
SECRETARIAT CHENNAI-9
- 4 TAMILNADU STATE ELECTION
COMMISSION REP. BY SECRETARY NO.208/2
JAWAHARLAL NEHRU ROAD OPP. TO CMBT
ARUMBAKKAM CHENNAI -106
... RESPONDENTS in WP No.28370 of 2016
- 1 THE SECRETARY TO GOVERNMENT
LAW DEPARTMENT GOVERNMENT OF TAMILNADU
SECRETARIAT FORT ST. GEORGE CHENNAI-9
- 2 THE STATE OF TAMILNADU
REP. BY ITS SECRETARY TO GOVERNMENT RURAL
DEVELOPMENT AND PANCHAYAT RAJ DEPARTMENT
FORT ST. GEORGE CHENNAI-9
- 3 TAMILNADU STATE ELECTION
COMMISSION REP. BY TAMILNADU STATE ELECTION
COMMISSIONER NO.208/2 JAWAHARLAL NEHRU
ROAD OPP. TO CMBT ARUMBAKKAM CHENNAI -106
... RESPONDENTS in WP No.28371 of 2016
- 1 THE SECRETARY
THE GOVERNORS SECRETARIAT RAJ BHAVAN
GUINDY CHENNAI-32.
- 2 THE STATE OF TAMIL NADU
REP. BY THE PRINCIPAL SECRETARY TO
GOVERNMENT DEPARTMENT OF MUNICIPAL
ADMINISTRATION AND WATER SUPPLY FORT ST.
GEORGE CHENNAI-9.
- 3 THE SECRETARY TO GOVERNMENT
RURAL DEVELOPMENT AND PANCHAYAT RAJ
DEPARTMENT GOVERNMENT OF TAMIL NADU FORT
ST. GEORGE CHENNAI-9.
- 4 THE TAMIL NADU STATE ELECTION
COMMISSION REP. BY THE STATE ELECTION
COMMISSIONER NO.208/2 JAWAHARLAL NEHRU
ROAD ARUMBAKKAM CHENNAI-106.

5 THE DISTRICT COLLECTOR
DINDIGUL DISTRICT.

... RESPONDENTS in WP No.29060 of 2016

1 THE PRINCIPAL SECRETARY TO
GOVERNMENT OF TAMIL NADU RURAL DEVELOPMENT
AND PANCHAYAT RAJ SECRETARIAT FORT ST.
GEORGE CHENNAI-600 009.

2 THE STATE ELECTION COMMISSION
NO.208/2 JAWAHARLAL ROAD ARUMBAKKAM
CHENNAI-600 106.

3 THE DIRECTOR OF RURAL
DEVELOPMENT PANAGAL BUILDING SAIDAPET
CHENNAI-600 015

4 THE DISTRICT COLLECTOR
THIRUVALLUVAR

5 THE PROJECT DIRECTOR
DISTRICT RURAL DEVELOPMENT AGENCY
COLLECTORATE CAMPUS THIRUVALLUR- 602 001

... RESPONDENTS in WP No.29797 of 2016

Prayer in W.P. No.23411 of 2016 has been filed praying this Court to issue a writ of Declaration declaring the impugned amendment Acts, viz., "The Tamil Nadu Municipal Laws (Second Amendment) Act, 2016" and "The Tamil Nadu Panchayats (Second Amendment) Act, 2016, as unconstitutional, ultra vires the Constitution of India particularly part IX and IX A of the Constitution of India and consequentially direct respondents 2, 4 and 5 to conduct the Urban and Rural Local Bodies Election 2016 based on the delimitation of wards to be made based on 2011 census with corresponding reservation to Women, Scheduled Caste and Scheduled Tribe in the respective posts of Chairpersons, Councillors and Members of the respective local bodies.

W.P. No.23417 of 2016 has been filed praying this Court to issue a writ of mandamus directing respondents 1 to 3 to take necessary and appropriate steps for compulsory usage of Electronic Voting Machines by the 4th respondent in the election for all posts of Rural Local Bodies besides Urban Local Bodies in the State of Tamil Nadu in the forthcoming Local Body Election.

W.P. No.23418 of 2016 has been filed praying this Court to issue a writ of mandamus directing the respondent to (1) appoint independent District Election Officers who are not working under

the State Government such as officials of Central Government or Public Sector Undertakings or deputed from Out-States exclusively for Local Body Election to conduct free and fair election instead of the present District Collectors; (ii) appoint independent observers to be deputed for each District who are not working under the State Government such as officials of Central Government or Public Sector Undertakings or deputed from Out-States equal to the rank of District Collector; (iii) appoint officials who are not working under the State Government such as officials of Central Government or Public Sector Undertakings or deputed from Out-States equal to the cadre of Commissioner of Corporation to act as the Returning Officer of the respective Corporations; (iv) order that no Executive Officer shall be allowed to act as the Returning Officer of the same council and they shall be deputed to a place in another region beyond the territorial control of the present higher official; (v) to upload the nomination and affidavit of all candidates contesting for all posts of all local bodies in the official website of the Tamil Nadu State Election Commission in respect of the Tamil Nadu Local Bodies Election, 2016 and (vi) to have simultaneous counting of votes for all wards in a local body particularly all Urban Local Bodies.

W.P. No.28370 of 2016 has been filed praying this Court to issue a Writ of Declaration declaring that the impugned Amendment Acts, viz., (i) Tamil Nadu Municipal Laws (2nd Amendment) Act, 2016 and (ii) The Tamil Nadu Panchayat (2nd Amendment) Act, 2016, issued by the 1st respondent published in the official gazette as unconstitutional, motivated, unreasonable and ultra vires the Constitution of India particularly Part IX and IXA of the Constitution of India and consequently direct respondents 2 to 4 to conduct the Urban and Rural Local Bodies Election, 2016 by effecting delimitation of wards and reservation in terms of 2011 census and thereby providing reservation to women, schedule caste and schedule tribe in respect of posts of Mayors, Presidents, Chairpersons, Councillors and other members of the respective local bodies in the State of Tamil Nadu.

W.P. No.28371 of 2016 has been filed praying this Court to issue a writ of mandamus directing respondents 1 and 2 to take necessary and appropriate steps for compulsory usage of Electronic Voting Machines by the 3rd respondent in the election for all posts of Rural Local Bodies besides Urban Local Bodies in the State of Tamil Nadu in the forthcoming Local Body Election.

W.P. No.29060 of 2016 has been filed praying this Court to issue a writ of mandamus directing the respondents herein to appoint Independent Central Government Officials in the conduct of Local Body Election 2016 with the help of independent

Observers of the Central Government and Central Police Force instead of officials working under the Tamil Nadu State Government and also to appoint the Central Government Officials as the Electoral Officers to ensure free and fair conduct of Urban and Local Body Election 2016-21 for all candidates in the State of Tamil Nadu.

W.P. No.29797 of 2016 has been filed praying this Court to issue a writ of mandamus directing the respondents to maintain and ensure transparency in following allotment of reservation seats for the offices of Village Panchayat Presidents throughout the State of Tamil Nadu in forthcoming local body elections October 2016 by holding due and valid deliberations at the levels of grama sabha, Union Council and District Council Meetings pursuant to the petitioner's representation dated 9.8.2016 made to the respondents by strictly adhering to the descending order by allotting General Category to the Office of President of petitioner's Village, Malakkondaiyar, Tiruvallur Taluk and District as per Rule 7 of the Tamil Nadu Reservation of Seats on rotation basis.

For Appellant: Mr. R. Shanmugasundaram, SC &
Mr. N.R. Elango, SC for Mr. R. Girirajan
in WP Nos. 23411, 23417 & 23418/16
Mr. N.L. Rajah, SC, for Mr. K. Balu
in WP Nos. 28370 & 28371/16
Mr. Veerakathiravan
Senior Counsel for M/S. Veera Associates
in W.P. No. 29060 of 2016
Mr. D. Murthy
in W.P. No. 29797 of 2016

For Respondents: Mr. R. Muthukumaraswamy, AG,
assisted by Mr. M.K. Subramanian, GP
and Mr. P.D. Adhikesavalu for RR-1 to 4 & 6
in WP No. 23411/16, for RR-1 to 3 in
WP Nos. 23417, 23418, 28370 & 28371/16
for R1 to R3 & R5 in W.P. No. 29060/16
for R1 & R3 to R5 in W.P. No. 29797/16
Mr. B. Kumar, SC, for Mr. Nedunchezian
for R-5 in WP No. 23411/16, and R-4 in
WP Nos. 23417, 23418, 28370 & 28371/16
in W.P. No. 29060/16 for R2
in W.P. No. 29797/16

RESERVED ON	09.09.2016
PRONOUNCED ON	21.09.2016

COMMON ORDER

HULUVADI G.RAMESH, J.

'Free and fair elections are the very foundation of democratic institutions and just as it is said that justice must not only be done, but must also seem to be done; similarly, elections should not only be fairly and properly held, but also seem to be so conducted as to inspire confidence in the mind of the electors that everything has been done aboveboard and has been done to ensure free elections.' This was observed by the Supreme Court in the case of Rampakavi Rayappa Belagali - Vs - B.D.Jatti & Others reported in 1970 (3) SCC 147.

2. Though the petitions have been filed by the respective political parties claiming the above reliefs, in toto or separately, in view of the fact that the relief sought for is almost identical in all the writ petitions, the matters are clubbed together and disposed of by this common order.

3. The above batch of writ petitions have been filed by the respective political parties in the State of Tamil Nadu praying this Court for the following reliefs :-

i) To declare the Tamil Nadu Municipal Laws (2nd Amendment) Act, 2016 and the Tamil Nadu Panchayats (2nd Amendment) Act, 2016 as ultra vires the Constitution ;

ii) To direct the respective respondents to conduct the Urban and Rural Local Bodies Election 2016 based on the delimitation of wards to be made based on 2011 census with corresponding reservation ;

iii) To direct the respective respondents to take steps for compulsory usage of Electronic Voting Machines ;

iv) To direct the respective respondents to take steps to appoint officers of the Central Government/Public Sector Undertakings as Election Officers ; and

v) To direct the respective respondents to take steps to appoint officers of the Central Government/Public Sector Undertakings as Election Observers ; and

vi) for other incidental reliefs as well.

4. The sum and substance of the averment pertaining to declaring the amendments as ultra vires the Constitution, as could be culled out from the respective petitions in W.P. Nos.23411 and 28370 of 2016, is as hereunder :-

The Tamil Nadu State Election Commission (for short 'TNEC') is entrusted with the conduct of election to the Urban Local and Rural Local bodies once every five years. While the election to the urban local bodies for the posts of Member of Town Panchayat Wards, Chairman of Town Panchayats, Councillor of Municipality Wards, Chairman of Municipality, Councillor of Corporation Wards and Mayor of Corporation are governed by the Tamil Nadu District Municipalities Act, 1920 along with the relevant Sections/Rules in the Municipal Corporation Acts, Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Corporation (Elections) Rules, 2006, the election for rural local bodies for the posts of Member of Village Panchayat Wards, President of Village Panchayat, Member of Panchayat Union Ward and Member of District Panchayat are governed by the Tamil Nadu Panchayats Act, 1994 and the Tamil Nadu Panchayats (Election) Rules, 1995.

5. In the State of Tamil Nadu, as per the last election held in 2011 and as per the data reflected in the website of the Government of Tamil Nadu, there are 12 Municipal corporations, about 125 Municipalities and 561 Town Panchayats, which stand classified as Urban Local Bodies, while there are 32 District Panchayats, 385 Panchayat Unions and 12,618 Village Panchayats, which stand classified as Rural Local Bodies.

6. With regard to the delimitation of wards of the respective local bodies and reservation for women, scheduled caste and scheduled tribe in the local bodies, the same stands dealt by the Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Corporations (Delimitation of Wards or Divisions and Reservations) Rules, 1996, (for short 'Delimitation Rules').

7. As per Rule 5 of the Delimitation Rules, published in the respective G.O. Ms. No.136 dated 11.6.1996 and amended vide G.O. Ms. No.85 dated 18.6.2001 of the Municipal and Water Supply (Election) Department, reservation shall be followed for two full terms, viz., 10 years and rotated thereafter at every 10 year interval on the basis of the population percentage of the respective group.

8. It is averred by the petitioner that during 2011, the Commissioner of Municipal Administration has stated that due to the upward revision of the councils in view of the inclusion of many Municipalities, Town Panchayats and Village Panchayats, based on the 2001 population census, delimitation, as has been done and reservations made in 2006 elections shall have to be

continued in 2011 elections as well. Accordingly, G.O. Ms. No.124, Municipal Administration and Water Supply (Election) Department dated 7.9.2011 was passed in consonance with the recommendation made above in the Delimitation Rules amending Rules 4 and 5.

9. It is further averred by the petitioner that inspite of the above fact that the local body elections were conducted in the year 2011 based on the above amendment, the policy note for the year 2012-2013 of the Rural Development and Panchayat Raj Department reveal that due to the re-organisation of the panchayat boundaries and taking into account the existing ward boundaries, elections for the year 2016 were proposed to be conducted on the basis of the census of the year 2011. The above policy note only reveals that even as early as in 2012-2013 itself, the Government was inclined to conduct the local body elections only based on the 2011 census, though the policy note of the Rural Development and Panchayat Raj Department for the year 2015-2016 reveal that the census for the year 2011 were uploaded in the Government website. This leads to the irrefutable conclusion that the Government was in possession of the entire date as early as in 2014 itself relating to the census taken in 2011 with respective delimitation of the wards in the local bodies.

10. It is further averred that curiously the Government introduced two bills on the floor of the State Legislature on 22.6.2016, despite serious objections by the opposition party in the Legislative Assembly and through voice vote, the Speaker stated the same to have been passed as Acts. The Acts were called the Tamil Nadu Municipal Laws (2nd Amendment) Act, 2016 and The Tamil Nadu Panchayats (2nd Amendment) Act, 2016, wherein Sections 48-AAAA, Section 50-AAA, Section 52-AAA, Section 43-AAA were inserted in the Chennai, Madurai and Coimbatore City Municipal Corporation Act and Tamil Nadu District Municipalities Act with regard to the territorial divisions of the city, the total number of divisions and the total number of councillors to be returned from such divisions, which would remain the same as existing on the date of commencement of the amendment Act. Further, by insertion of Section 28-AAA in the Tamil Nadu Panchayats Act, similar amendment with regard to the territorial area of wards, number of wards in every village panchayat, Panchayat Union and District Panchayat and the number of members to be returned from such divisions, which would remain the same as existing on the date of commencement of the amendment Act.

11. Insofar as the prayers relating to the use of Electronic Voting Machines and appointment of Central Government officers/officers of the Public Sector Undertakings as the Election Officers and Election Observers, as is raised in W.P. Nos.23417, 23418, 28371 and 29060 of 2016 are concerned, it is

the averment of the petitioners therein that for the purpose of conduct of proper free and fair elections to the local bodies, the petitioners had addressed a representation to the Government for amending the relevant Acts/Rules incorporating use of Electronic Voting Machines as a mode of casting the franchise and a representation has also been addressed to appoint Central Government officers/officers of the Public Sector Undertakings as the Election Officers and Election Observers. In spite of receipt of the representations, the Government has not considered the same and passed orders thereon, though the process of election is likely to start in a very short span of time. Therefore, the above petitions have been filed for a direction to the respective respondents to consider the respective representation and pass orders thereon at the earliest, before the announcement of the election.

12. Insofar as W.P. No.29797 of 2016, the petitioner therein, an individual, has averred that as per the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1955, seats pertaining to Village Panchayat, Union Councils and District Councils need to be allotted on rotation basis on expiry of every ten years on the basis of percentage of population in descending order. However, in spite of the expiry of the ten year term, rotation of seat not having been made to the general category, the petitioner made a representation to allot the said seat to general category in respect of the seat pertaining to the President of Melakkondaiyur Village Panchayat on the basis of Rule 7, the ten year term having been over. However, the respondents, under the guise of maintaining confidentiality, ignoring transparency and according to their whims and fancies, publish the list after the publication of election notification, which disables the public to question the same either before the authorities or before the Court of law. In the above scenario, the present petition has been filed for a direction on the respondents to maintain transparency in the matter of allotment of reservation seats for the offices of the Village Panchayat Presidents throughout the State for the forthcoming local body elections, scheduled to be held in October, 2016, by holding valid deliberations and adhering to the rule of law relating to such rotations.

13. Mr. Shanmugasundaram, learned senior counsel, along with Mr. N.L. Rajah, learned senior counsel and learned counsel for the other parties, leading the arguments for the petitioner in W.P. No.23411 of 2016, while contended that the amendment Acts are ultra vires the Constitution, further pleaded that it is particularly violative of Part IX and IX-A of the Constitution. It is submitted by the learned senior counsel that the Government has totally misread the object of Articles 243-C, 243-D and 243-T of the Constitution and the very amendment Act defeats the object of the Constitution.

14. It is contended by the learned senior counsel that Article 243-C of the Constitution mandates the composition of the Panchayat and further stipulates that the ratio between the population of the territorial area of a panchayat at any level and the number of seats in the panchayat to lie in tandem throughout the State and the same to be filled by election. It clearly stipulates that for all practical purposes the panchayat be divided into territorial constituencies in such a manner that the ratio between the population of each constituency with reference to the number of seats allotted shall be the same throughout the Panchayat area.

15. Learned senior counsel placed emphasis on Article 243-D of the Constitution, which stipulates the reservation of seats in the Panchayats between the various castes, which is to be allotted by rotation to different constituencies in a Panchayat. Reservation of seats in respect of women has also been provided in various capacities. Similarly reservation of seats in respect of Municipality for scheduled castes and scheduled tribes as also women in various capacities has been provided under Article 243-T of the Constitution.

16. It is the submission of the learned senior counsel that the reservation of seats being directly proportional to the population in the concerned area, it is the bounden duty of the Government to adopt the latest census, viz., 2011 census, which would depict the population in the concerned area for the purpose of determination of seats. The census pertaining to the year 2001 having been used for the past two elections spanning over the past 10 years, it is incumbent upon the Government to use the present census of the year 2011 as that would give the correct picture of the population in the concerned. Non-usage of the current census of the year 2011 would very much go against the constitutional mandate as provided under the above Articles and such an act would be ultra vires the Constitution and is liable to be struck down.

17. It is the further submission of the learned senior counsel that when the Government's own decision, which is evident through the Policy Notes made since the year 2012 onwards, reveal that at that crucial point of time, the intention of the Government was to use the 2011 census in the 2016 local bodies election. However, curiously, for reasons best known, the Government has gone beyond the policy note and has introduced the Bill and had passed the Amendment Acts, which are in violation of the constitutional provision.

18. It is further submitted by the learned senior counsel that the Object and Reasons assigned for the passage of the Amendment Acts are ambiguous, vague, untrue and unacceptable as

it does not portray the correct picture, as is evident from the policy note tabled with the Government. The Object and Reasons behind the amendment Acts runs contrary to the policy note of the Government. The Government is bound to honour the constitutional mandate and see to it that it is not thwarted for the benefit of political hypocrisy.

19. Learned senior counsel further submits that though the legislative competence of the State Legislature to enact laws with regard to the subjects in Entry 5 of List II of the 7th Schedule, the same should not be construed to be an unfettered one enabling the Government to act according to their wish. It is further submitted that the Entries in the Lists of 7th Schedule do not act as a source of legislative empowerment, but rather they are fields of legislation and competence to legislate under the said Schedule could be traced to the Constitution and is always subject to the limits of constitutional empowerment and it cannot cross the barriers created by the Constitution.

20. It is further submitted by the learned senior counsel that the power provided for the State Legislature by the Constitution to enact laws is not an unfettered one intending to defeat the object of the constitutional amendments. Part IX and IX-A were introduced with the object of making the local bodies to perform effectively as vibrant democratic units of local self-government, but the impugned amendments dislodges the very object and takes away the right of the people, whereby the people are made to accept the unchanged delimitation ward based election irrespective of the new census of the year 2011. The said constitutional guarantees were primarily intended to make the local bodies to perform effectively as vibrant democratic units of self-government. However, by the impugned amendment, the rights of the people are jeopardized, in that the people are compelled to adopt the unchanged delimitation ward based election. The Government is trying to achieve something in an indirect and circuitous manner against the very object of the statute, which is not the intention of the constitutional framework and this act of the Government in enacting the impugned amendments is totally arbitrary, unreasonable and ultra vires the Constitution and is very much detrimental to the democratic process and disturbs the democratic setup.

21. It is further submitted by the learned senior counsel that inspite of the merger of adjacent Corporations, which varies the territorial limits of the wards, the impugned amendments sought to keep in place the old reservational pattern without taking note of the extended territorial limits, which tends to defeat the reservation as enshrined in the Constitution. Delimitation based on 2011 census would alone be in consonance with the constitutional mandate and following of

2001 census for the purpose of 2016 local bodies election would be against the constitutional scheme and, therefore, the same is liable to be declared as null and void.

22. It is the further submission of the learned senior counsel that the statement of Objects and Reasons for introduction of the impugned amendment for the elections to the Corporations, Municipalities and Town Panchayats show the callous attitude of the Government in adhering to the constitutional mandate. It is the submission of the learned senior counsel that while the Government has accepted that the census of the year 2011 was made available in the year 2013, however, no steps have been taken since 2013 in relation to delimitation of wards and that the stand of the Government that it is not possible for completing the works within the short time available before the announcement of the elections as the work of delimitation is a laborious one only depicts the preconceived intention of the Government in using the 2001 census and not adverting to the 2011 census, for extraneous reasons best known to one and all. It is the submission of the learned senior counsel that the authorities ought to have commenced the delimitation work on receipt of the 2011 census and had it been done, the works would have been completed by now.

23. Similarly, in respect of the amendment to the Tamil Nadu Panchayats Act, it is the submission of the learned senior counsel that the Objects and Reasons shown for amendment of the same also reflect bad light on the part of the Government and its authorities. Therein, it is highlighted by the Government that due to the enhancement of reservation for women in the local bodies, the work of revising the reservation of seats and offices for women in the Panchayats having been taken up, which is a voluminous work and the elections need to be conducted before 24th October, 2016, the huge exercise at the grassroot level including delimitation and rotation in reservation of seats being a cumbersome process would not get over by the said time, warranting the Government to adopt the census of 2001 as also the delimitation based on the said census. Though the data having been available with the Government since 2013 when the census 2011 have been notified, the inaction on the part of the Government tending to defeat the mandatory requirement contemplated by the Constitution renders the amendments ultra vires the Constitution and liable for being declared as null and void.

24. It is submitted by the learned senior counsel that the ruling party having lost the Will of the people and being afraid of defeat at the hands of the people to the benefit of its contemporaries, has invented reasons to bring in the impugned amendments, with ulterior motives, which is against the constitutional mandate of free and fair elections and,

therefore, the said amendments being against the democratic framework and constitutional guarantees is liable to be struck down.

25. Insofar as the usage of electronic voting machines (for short 'EVM') for the present elections is concerned, it is submitted by the learned senior counsel that Section 61-A of the Representation of People Act, mandates the use of EVM, which has also the seal of approval of the Supreme Court in the decision reported in All India Anna Dravida Munnetra Kazhagam - Vs - Chief Election Commissioner & Anr. (A. Nos.1-2 in Petitions for Special Leave to Appeal (Civil) CC 2824-2825/2001 dated 23.04.2001 - which arose out of the order of this Court in W.P. No.3346/01 (2001 WLR 758) and, therefore, it is obligatory on the part of the Government to use EVM's in the elections to the local bodies to ensure a free, fair and corrupt free elections. Though representations have been given way back demanding use of EVM's in the elections, however, no concrete steps have been taken by the Government to put into service EVM's in the forthcoming elections, which only lights up the intention of the Government that it is not in favour of a free and fair elections.

26. Per contra, Mr. R.Muthukumaraswamy, learned Advocate General appearing for the respondents, barring the Tamil Nadu State Election Commission submitted that there is a bar created under Article 243 ZG of the Constitution relating to delimitation of constituencies or allotment of seats made or purporting to be made under Article 243 ZA of the Constitution, which cannot be called in question before any court of law. Similarly, Article 243 O creates a bar in relation to Court's interference in electoral matters. The above bar created through the above Articles in the Constitution in relation to election matters is absolute. Therefore, it is not right for the petitioners to contend that a writ petition before this Court questioning the election to the Corporations, Municipalities and Panchayats can be questioned.

27. Learned Advocate General further submitted that the delimitation of wards in the constituency need not be based on the population of the area alone. To substantiate his argument, learned Advocate General relied upon Article 243 R (1) of the Constitution and Section 43 of the Tamil Nadu District Municipalities Act, wherein the Government is clothed with power to divide the municipality into wards by issuing appropriate notification, which alteration, if any, shall take effect from the next ordinary elections. It is further submitted by the learned Advocate General that Rule 3 of the Delimitation Rules in relation to division of wards and Divisions in Town Panchayats and Municipalities speaks about the parameters which ought to be taken into consideration for delimitation process. Particular reference was placed on Rule 3 (3) of the

Delimitation Rules, which prescribes that every ward or division so divided under sub-rule (1) shall be, as far as practicable, compact, contiguous and of easily recognisable areas like colonies, localities, streets, natural boundaries, etc., and also consists of full street wherever possible. Stressing on Rule 3 (3) of the Delimitation Rules, it is submitted by the learned Advocate General that wards have been fixed in the respective Corporations taking into account factors like population, revenue, colonies, localities, streets, natural boundaries, etc. and that population alone is not the lone factor which needs to be considered for the purpose of carrying out the delimitation. Therefore, it is submitted that the argument of the petitioners that delimitation needs to be done in relation to the population of the particular area is fallacious and erroneous.

28. It is also submitted by the learned Advocate General that the reservation for Scheduled Castes and Scheduled Tribes as also women as provided under Article 243 T (1) and 243 T (4) in the municipal area based on the basis of the population of that area to be allotted by rotation to the different constituencies in the municipality and the above factor has been taken into consideration and the amendment Act made by the State Legislature is in conformity with the provisions mandated by the Constitution and is intra vires.

29. The stand of the petitioners that the impugned amendment Act, viz., The Tamil Nadu Municipal Laws (2nd Amendment) Act, 2016, is violative of Part IX-A of the Constitution, according to the learned Advocate General is totally misconceived as the same conform legally on all aspects in letter and spirit to the Constitution, more so, when the delimitation need not necessarily be only on the basis of population alone.

30. It is further submitted by the learned Advocate General that insofar as reservation of seats for the reserved categories in the 2016 elections is concerned, the same shall be on the basis of the 2011 census.

31. It is the further stand of the learned Advocate General that the State Legislature was within its domain to enact the impugned Act, which has tabulated the objects and reasons for its enactment and in no way suffers from any legal vice.

32. It is submitted by the learned Advocate General that on account of the expansion of certain Corporation limits in view of the merger of certain municipalities with the Corporations, keeping in mind the census of the year 2001, delimitation of the said areas have been carried out on the basis of population, area, revenue, localities, natural boundaries, etc., and subsequent to such delimitation, elections to the said local

bodies were held in the year 2011. Therefore, it is not right on the part of the petitioners to contend that delimitation has not been carried out insofar as the expanded areas are concerned.

33. It is the further submission of the learned Advocate General that reservations have also been made in respect of the reserved categories in the expanded Urban Local Bodies on the basis of the 2001 census in the year 2011. It is submitted by the learned Advocate General that insofar as reservation of seats in the on-coming elections are concerned, the same would be made on the basis of the 2011 census population figures and that the reservation to the special categories would be proportionately reserved on the basis of the population figures in the respective local bodies. Therefore, the apprehension of the petitioner that the present amendment would defeat the reservation enshrined in the Constitution, as the current wards would continue to be in existence for the forthcoming election is totally misconceived.

34. It is further pleaded by the learned Advocate General that reservation of seats in the wards would in no way be affected as it is provided proportionately along with other categories based on the strength of the population, while as per the Delimitation Rules, the delimitation of wards or divisions would be based not only on the basis of population alone, but also taking into account factors like revenue, colonies, localities, streets, natural boundaries, etc. Proportion reservation in respect of special categories is made based on the 2011 census population only. In this regard, it is highlighted by the learned Advocate General that in the local bodies election conducted in the year 2006, reservation of wards were made in the respective Municipalities and Corporations based on the 2001 census population figures. Likewise, for the elections in the year 2011, reservations were made during 2006 but for 8 municipalities and Corporations, which stood expanded and wards have been delimited. In those Municipalities and Corporations alone, reservation to the special categories have been made based on 2001 census population figures and election was conducted in the year 2011.

35. Learned Advocate General Submitted that the contention of the petitioner that inspite of the census having been received in the year 2013, no efforts have been taken by the respondents to commence the delimitation work and complete the same at the appropriate time, is not correct. In this behalf, it is submitted by the learned Advocate General that the Commissioner of Municipal Administration and Director of Town Panchayats being the State Election Officers for Municipalities and Town Panchayats and the Commissioner, Corporation of Chennai, being the Election Officer of the Chennai Corporation

to conduct the elections, had, informed the Government that though the 2011 census had been received in the year 2013, there were difficulties in delimitation of the wards with reference to 2011 census on the basis of population-wise delimitation works, which cannot be completed before the cut off date. Therefore, recommendation was placed to the Government to consider continuing the existing territorial areas for the forthcoming election. The Government, after careful analysis of the perusal, to honour the constitutional mandate in conducting the local bodies election without any set back, had, in the interests of the general public, decided to conduct the ordinary election with the existing territorial area of divisions or wards in respect of the urban local bodies, for which delimitation work has not yet been completed. Therefore, the contention of the petitioner that the amendment Acts have been passed only to subserve the cause of particular political party/ruling party, is totally unjustified.

36. It is also submitted by the learned Advocate General that the petitioner in W.P. No.23411/2016, who was at the helm of affairs, i.e., the ruling party during the local body elections conducted in 2006 had, even though on receipt of the 2001 census, received in 2003, had enacted similar amendments to retain the territorial area of the municipal councils for similar reasons, stated in the objects and reasons therein. Such being the case, when retention of the territorial area by the previous Government, due to receipt of the 2001 census during 2003, the yardstick adopted by the respondents herein in carrying out the present amendments for conduct of the elections, as mandated in the Constitution, could, by no stretch of imagination, be termed as illegal and ultra vires the Constitution.

37. It is further submitted by the Advocate General that due to expansion of certain areas due to merger in the year 2011, the exercise of delimitation of wards in those Urban Local Bodies have been carried out on the basis of the criteria prescribed under the Acts and the Rules applicable and, therefore, it cannot be said that no action has been taken by the Government to carry out delimitation activities. The elections to the local bodies are to be conducted before 24th October, 2016 and to adhere to the constitutional mandate in the conduct of elections, the Tamil Nadu Municipal Laws (2nd Amendment) Act, 2016 and the Tamil Nadu Panchayats (2nd Amendment) Act, 2016 were enacted and, therefore, no ulterior motive could be attributed to the said act of the Government. Learned Advocate General, accordingly, prayed for the dismissal of the petitions.

38. Mr. B.Kumar, learned senior counsel appearing for the Tamil Nadu State Election Commission submitted that 'Single Post

Single Choice EVMs' are used by the Election Commission of India for the elections of MLA/MP since 2007. It is submitted that election of MLA/MP requires the casting of one vote only, where usage of the 'Single Point Single Choice EVMs', where the voter can't exercise more than one choice. It is submitted by the learned senior counsel that insofar as Urban Local Body Elections, a voter is required to cast only a single vote and, therefore, Single Post Single Choice EVMs can be used. However, as multiple votes have to be cast in the rural local bodies election, the usage of 'Multi Point Single Choice Electronic Voting Machines' are required, wherein for the various posts, multiple ballot units are connected in tandem with the control unit for the purpose of casting the franchise.

39. It is submitted by the learned senior counsel for the Election Commission that throughout the State, there are 62,334 polling stations and number of posts in each ward being 4, four control units and 4 ballot units are required, taking the total requirement of EVMs to 4,98,672. In addition to the above, a 20% reserve, viz., 99,734 units are required to be kept as reserve. In all, a total of 5,98,406 machines are required for the purpose of the current local bodies election.

40. It is further submitted by the learned senior counsel for the Election Commission that the feasibility of procuring the machines is remote, as the time span to go for the elections is short and that the cost involved is also very huge, which would make it very difficult to procure the machines. Further, supply of the above machines by the product manufacturing companies is also not possible. It is further submitted that within the short time available before the crucial date of 24th October, 2016, requisitioning the above required quantity of machines even from the Election Commission of India is beyond comprehension. Further, it is submitted by the learned senior counsel that as an experimental measure and to assess the feasibility of usage of EVMs in local body elections, on sanctioning of funds by the Government of Tamil Nadu, EVMs are being procured for using the same on experimental basis in the rural local body elections.

41. It is further submitted by the learned senior counsel for the Election Commission that except for three States in the entire country, EVMs are not being used by the other States in the local bodies election. Further, it has come to notice that the usage of EVMs in the local bodies election in Kerala State was a failure, which was reported in the print/electronic media.

42. It is further submitted by the learned senior counsel for the Tamil Nadu State Election Commission that it is not feasible to borrow that many quantity of EVMs from other States or from the Election Commission of India, as the requirement is

very huge and in case of election disputes, the EVMs used in the said constituency need to be kept in storage till the disposal of the case by the Courts, which creates a constraint on the borrowal of EVMs by the other States. It is further submitted that in addition to the stock of EVMs with the Tamil Nadu State Election Commission, 'Single Choice Single Post EVMs' are being purchased for use in the 'Single Choice Multi Post' elections.

43. It is further submitted by the learned senior counsel that though provision has been made under the District Municipalities Act for the use of EVMs during the elections, no similar provision has been made under the Tamil Nadu Panchayats Act. In the absence of any provision under the Tamil Nadu Panchayats Act for the use of EVMs, it would be legally impermissible to use EVMs for the Panchayat elections, more so when it has been provided for exercise of franchise through ballot under the Panchayats Act. It is further submitted that the Election Commission has already placed orders for printing of ballot papers to be used in the local bodies election and, therefore, any adverse order would be detrimental to the exchequer and will be against the provisions of the Panchayats Act. Learned senior counsel for the State Election Commission placed reliance on the decision of the Supreme Court in A.C. Jose - Vs - Sivan Pillai & Ors. (AIR 1984 SC 921).

44. Heard the respective learned senior counsel appearing for the petitioners, the learned Advocate General appearing for the State Government and the learned senior counsel appearing for the Tamil Nadu State Election Commission and perused the materials available on record as also the various provisions of law to which this Court's attention was drawn and the decisions relied on by the learned senior counsel on either side.

45. Before we proceed to decide the issue on the validity of the amendment Acts as also the other reliefs prayed for, it would be apt to discuss on the preliminary contention of the respondents that elections to the Panchayats as provided for under Article 243K and the delimitation of constituencies or allotment of seats to such constituencies made or purporting to be made and the election to the Municipalities therefor, made under Article 243-ZA of the Constitution of India shall not be called in question in any court of law and that Article 243-O bars court's interference in electoral matters.

46. The bar as imposed under Article 243ZG in the matter of municipal election fell for consideration before the Supreme Court in Anugrah Narain Singh - Vs - State of U.P. (1996 (6) SCC 303). Having noticed the jurisdiction of the High Court under Article 226, the Supreme Court held that in terms of Article 243ZG of the Constitution, there is complete and absolute bar in considering any matter relating to municipal election on any

ground whatsoever after the publication of the notification for holding municipal election. No election to municipality could be questioned except by an election petition and if the election is imminent or well under way, the Court should not intervene to stop the election process. (Emphasis supplied)

47. From the aforesaid decision of the Supreme Court, it would be evident that where an election is to be called in question which may have the effect of interrupting, obstructing or protracting the election proceeding in any manner, invoking of judicial remedy has to be postponed till after the completion of the election. On the other hand, if any decision sought and rendered will not amount to calling in question an election and if it subserves the progress of the election and facilitates completion of the election, anything done towards completing or in furtherance of election proceeding is permissible as it cannot be described as questioning the election. Action taken or order issued in pursuance of completion of the election process by the concerned authority are open to judicial review such as on a case of mala fide or arbitrary exercise of power being made out or statutory body being shown to have acted in breach of law. The Supreme Court further observed that the Court must be very circumspect and act with caution while entertaining any dispute if not hit by the bar under Article 329 (b) of the Constitution.

48. In view of the above position of law, as enunciated by the Supreme Court, there being no bar for this Court to entertain matters relating to election, before the actual publication of the notification for the election, this Court is unable to accept the contention of the respondent that there is an absolute bar on this Court to entertain matters pertaining to election at any stage of the process. Accordingly, this contention, being devoid of merits, fails.

49. Insofar as the question relating to delimitation of divisions or wards is concerned based on the census 2011, which culminated in the amendment Acts, vires of which has been challenged, it is useful to advert to the relevant provisions of the Constitution on which reliance has been placed by the learned counsel for the petitioners to drive home the point that the constitutional mandate needs to be adhered to and the non-compliance of the constitutional mandate hits at the very root of the amendment Acts. The relevant provisions are Articles 243-C, 243-D and 243-T of the Constitution and for better clarity, the same are extracted hereinbelow :-

243C. Composition of Panchayats -

(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial

constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same

throughout the Panchayat area.

* * * * *

243D. Reservation of Seats -

(1) Seats shall be reserved for-

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that

Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at

each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

* * * * *

243T. Reservation of Seats -

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

50. The main thrust of argument of the learned senior counsel for the petitioners is that vide the above amendment Acts, the 2011 census having been given a go-by and the 2001 census having been directed to be followed for the current elections to the local bodies, it would be against the very

spirit of the Constitution, as the population has a bearing on the delimitation of constituencies based on which rotation needs to be followed in different constituencies. In the absence of delimitation of the constituencies based on the 2011 census, the mandate of the Constitution would stand violated and, therefore, the amendment Acts are ultra vires the Constitution.

51. Article 243-C provides for the division of the panchayat area into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the panchayat area. Further, while Article 243-D mandates that requisite reservation should be made for the scheduled castes, scheduled tribes and women, which, once again shall be based on the population index of the particular caste, Article 243-T mandates rotation of reserved seats for women between different constituencies.

52. The main grievance of the petitioners is that due to the Government not carrying out the delimitation of wards based on 2011 census, the delimitation based on the population ratio would not be proper and this is against the constitutional guarantees as provided to the citizens. Though the contention carries some weight, but this Court feels that the process of delimitation having not been carried out based on 2011 census and the delimitation as per 2001 census having been accepted to be followed vide the amendment Acts for the ensuing election, would in no way be termed as ultra vires of the Act affecting the constitutional mandate.

53. While the Constitution prescribes a period of ten years of validity for the previous census for the purpose of two five year terms to the local bodies election, however, a perusal of Article 243-E (3) in respect of Panchayat and, Article 243-U (3) in respect Municipalities mandates that an election shall be completed in order to constitute a Panchayat /Municipality before the expiry of its duration specified in clause (1) and before the expiration of a period of six months from the date of its dissolution, if dissolved. For better clarity, the relevant Articles are extracted hereinbelow :-

"243E. Duration of Panchayats, etc. -

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed—

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

* * * * *

243U. Duration of Municipalities, etc. —

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Municipality shall be completed—

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved."

54. A reading of the above Articles clearly illustrate that a duty is cast on the administration/State Election Commission to have the elections to the Panchayats and Municipalities to be conducted at the appropriate time as specified in the said Articles. Non-conduct of the election within the time frame specified in the above provisions, would clearly be a violation of the statutory guarantee enshrined in the Constitution and would be very much against the democratic values. In the light of the above provisions in the Constitution, the question to be answered is whether non-compliance of delimitation based on 2011 census would be a bar to the conduct of elections to the Panchayats and the Municipalities and in such circumstances, whether Articles 234-C, 243-D and 243-T would prevail over Articles 243-E and 243-U of the Constitution.

55. In the case of LIC of India - Vs - Asha Ramachandra Ambekar reported in AIR 1994 SC 2148 the Supreme Court observed -- "It should be remembered 'law is the embodiment of wisdom'. Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be."

56. In the case of Indira Nehru Gandhi - Vs - Raj Narain (AIR 1975 SC 2299 :: 1975 Supp. SCC 1), Justice Mathew explained :-

"The concept of democracy as realised by Constitution pre-supposes representation of the people in Parliament and State Legislatures by the method of election and before an election machinery could be brought into operation, there are three requisites, which required to be attended to, namely, (i) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, election, and it should be decided as to how those laws and rules are to be made; (ii) there should be an executive charged with the duty of securing the due conduct of elections; and (iii) there should be a judicial tribunal to deal with the disputes arising out of or in connection with election."

57. In Mohinder Singh Gill & Anr. - Vs - Chief Election Commissioner, New Delhi & Others (1978 (1) SCC 405 :: AIR 1978 SC 851), the philosophy of election in a democracy was highlighted in paragraph-23 of the judgment, as quoted hereunder :-

"23. Democracy is government by the people. It is continual participative operation, not a cataclysmic, periodic exercise. The little man,

in his multitude, marking his vote at the poll does a social audit of his Parliament plus political choice of his proxy. Although the full flower of participative Government rarely blossoms, the minimum credential of popular government is appeal to the people after every term for a renewal of confidence. So we have adult franchise and general elections as constitutional compulsions. The right of election is the very essence of the constitution' (Junius). It needs little argument to hold that the heart of the Parliamentary system is free and fair election periodically held, based on adult franchise, although social and economic democracy may demand much more."

(Emphasis supplied)

58. Similar view was taken by the Supreme Court in *Kihoto Hollohan - Vs - Zachillhu* (1992 Supp. (2) SCC 651), wherein the Court held:-

"179. Democracy is a part of the basic structure of our Constitution; and rule of law, and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provision for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority."

59. In *Gujarat Assembly Election* matter reported in 2002 (8) SCC 237, the Supreme Court noticed the debate of constituent assembly while enacting Article 324. Having noticed the statement of Dr.B.R.Ambekar before the constituent assembly, the Supreme Court observed that by enacting Article 324, the superintendence, direction, control and conduct of election was no more left in the hands of executive but was entrusted to an autonomous constitutional authority (i.e.) the Election Commission. The Supreme Court further held that democracy is a basic structure of the Constitution and periodical, free and fair election is the substratum of democracy. If there is no free and fair periodical election, it is end of democracy. (Emphasis supplied).

60. In the aforesaid *Gujarat Assembly Election* Matter (supra), the Supreme Court also held as follows :-

"Free and fair election is the sine qua non of democracy. The scheme of the Constitution makes it clear that two distinct Constitutional Authorities deal with election and calling of session. It has been pointed out to us that as a matter of practice the elections are completed

within a period of six months from the date of dissolution, on completing the prescribed tenure or on premature dissolution except when for inevitable reasons there is a delay. The Election Commissioner is a high Constitutional Authority charged with the duty of ensuring free and fair elections and the purity of electoral process. To effectuate the constitutional objective and purpose it is to draw upon all incidental and ancillary powers."

(Emphasis supplied)

61. In *Mohinder Singh Gill & Anr. - Vs - Chief Election Commissioner, New Delhi & Others* (1978 (1) SCC 405 :: AIR 1978 SC 851), the following observation was made by the Apex Court :-

"12. A free and fair election based on universal adult franchise is the basis, the regulatory procedures vis-a-vis the repositories of functions and the distribution of legislative, executive and judicative roles in the total scheme, directed towards the holding of free elections, are the specifics. The super authority is the Election Commission, the kingpin is the Returning Officer, the minions are the presiding officers in the polling stations and the electoral engineering is in conformity with the elaborate legislative provisions."

62. Therefore, it is well settled by the pronouncements discussed above, that it is the duty of the Election Commission to see that the elections are conducted as mandated by the relevant provisions of the Constitution before the expiry of the specified term. In the *Gujarat Assembly Election* case (supra), it has been authoritatively held that but for inevitable reasons, the elections should be held before the expiry of the period of six months from the date of dissolution or completing the tenure. Thus it is clear that election is a mandatory condition imposed by the Constitution to be held at the prescribed times, but for inevitable reasons.

63. Therefore, an elected Government is one of the basis structure of the Constitution and it cannot be short-circuited for any reason whatsoever. Therefore, it is the paramount duty of the State Election Commission to adhere to the mandate of Articles 243-E and 243-U of the Constitution in letter and spirit. In effect, the embodiment of wisdom of the Government machinery is to conduct the election as envisaged under the above two Articles, irrespective of the fact that delimitation has not been carried out based on the 2011 census. Delimitation of wards/divisions could by no stretch of imagination be termed

as a reason so inevitable so as to stall the whole election. May be, delimitation not carried out based on 2011 census causes a scar on the functioning of the elected Government, but that could not be said to be an inevitable reason to delay the election. Delimitation of division/wards is a procedure contemplated under the relevant Articles so that the population in the wards within the Panchayat would be almost equal so that the voting pattern and election of members is uniform. However, delimitation not having been done according to 2011 census would not be the sole ground to stall the election, in a democratic setup like India. Conduct of elections at the appropriate time is the heartbeat of the democracy, which cannot be stopped for procedural irregularities, unless it goes to the root of the election. Articles 243-C, 243-D and 243-T of the Constitution are only incident of the application of the concept of necessity of elections as enshrined in Articles 243-E and 243-U thereof.

64. Further, as pointed out by the learned Advocate General, amendment Acts, like the present one, are not new as even in the year 2006, for the conduct of the election to the local bodies, inspite of the 2001 census being available, Tamil Nadu Municipal Laws (Amendment) Act, 2006 was enacted retaining the territorial area of municipal councils, the total number of wards and the total number of councillors as was existing on that day without carrying out delimitation based on 2001 census. A perusal of the objects and reasons given for enactment of the said amendment Act is very similar to the present enactment. Therefore, it cannot be gainsaid that for the purpose of enriching a particular party, the present enactment has been enacted.

65. It is an uncontroverted fact that delimitation is a cumbersome and highly time consuming process, which would take very many man hours to accomplish and within a short duration it would be humanly impossible to carry out the same. The election to the local bodies require to be conducted before 24th Oct., 2016, as mandated by Article 243-E and 243-U. In such circumstances, it cannot be said that the amendment Acts, which have been passed, in any way, goes beyond the accomplishment of the mandate of the Constitution, but are only enacted to subserve the Constitutional scheme.

66. In the above backdrop of the facts, it cannot be said that the amendment Acts are in anyway violative and ultra vires the Constitution. Accordingly, the said prayer as made deserves to be rejected. However, it is needless to state that the constitutional mandate pertaining to delimitation of wards on the basis of population should also not be lost sight of by the Government in view of the amendment Acts. The State Government is directed to take earnest efforts to have the work of delimitation of wards carried out so as to fulfill the

obligations cast on the State by Articles 243-C, 243-D and 243-T of the Constitution immediately on the completion of the Local Bodies Elections, 2016.

67. The next limb of contention advanced on the side of the petitioners is the use of Electronic Voting Machines in the ensuing local bodies election. The salient points in support of this contention of the petitioners that the use of EVMs would help in curbing the bogus voting and it also would prevent invalid voting and would be easy for counting purposes. It is also contended that the space requirement for storage of these machines would be minimal and that it would be easy to store these machines in case of any election being called in question during the mandatory period. Further, to keep pace with the green initiative and for maintaining an eco-friendly atmosphere, usage of EVMs over paper votes would be more welcome. In this regard, reliance was placed on the note submitted on electoral reforms proposed by the State Election Commission of Karnataka. Therefore, it is prayed that the State Election Commission may be directed to use EVMs in the ensuing local bodies election.

68. It is an universally accepted phenomenon that green initiatives are the most welcome additions for keeping the atmosphere pollution free and to maintain eco-friendly surroundings. Trees are the lifeline of humans and initiatives are being taken aplenty for the aforestation of trees to keep the environment healthy. Deforestation of trees for the purpose of manufacture of paper is one of the hazards that threatens the environment. Governments all over the world have taken eco-friendly initiatives like maintaining greenery, planting of new trees and similar acts for the welfare of the human race. In this regard, it is imperative to quote hereunder the note proposed by the State Election Commission of Karnataka, which would be an eye opener for all the States to follow suit :-

"Use of Electronic Voting Machines -

Introduction of electronic voting machines would save time, manpower solves storage problems, prevents invalid votes and facilitates easy counting. It is an eco-friendly measure which saves paper and in turn helps to preserve forest resources."

69. Keeping the objective of maintaining an eco-friendly atmosphere, it is high time that paperless elections be evolved, which would be a boon in disguise to the human race and at the same time would avoid recurring expenditure in the printing of ballot papers, avoid wastage of ballot papers and in turn keep alive the trees for a healthy environment. The website of the Election Commission of India deals exhaustively about the use of EVMs, its merits and demerits and its benefits through a Question & Answer analysis. It comprehensively illustrates all

the foreseeable scenarios that usage of EVMs can encounter. One such query is the advantages of the use of EVM. The answer therein would be a justifiable piece of corroboration for the necessity to use the EVM and the same, for better clarity, is extracted hereunder :-

"Q.13. What are the advantages in using EVMs?

Ans. The most important advantage is that the printing of millions of ballot papers can be dispensed with, as only one ballot paper is required for fixing on the Balloting Unit at each polling station instead of one ballot paper for each individual elector. This results in huge savings by way of cost of paper, printing, transportation, storage and distribution. Secondly, counting is very quick and the result can be declared within 2 to 3 hours as compared to 30 to 40 hours, on an average, under the conventional system. Thirdly, there are no invalid votes under the system of voting under EVMS. The importance of this will be better appreciated, if it is remembered that in every General Election, the number of invalid votes is more than the winning margin between the winning candidate and the second candidate,

in a number of constituencies. To this extent, the choice of the electorate will be more correctly reflected when EVMs are used."

70. Thus, on an overall analysis of usage of EVMs vis-a-vis the ballot papers, it is amply clear that the usage of EVMs tend to improve the eco-system and helps to keep the environment in a healthy state and at the same time the usage reflects the actual mandate of the people coupled with the other benefits on the financial as well as other environmental aspects. Thus, a comparative analysis of EVMS vis-a-vis ballot papers definitely puts EVMS on the upper hand, endorsing the view that usage of EVMS would be more beneficial to the electorate. Further, it is also evident from the record that for the Parliament elections, EVMS are only used by the Election Commission of India.

71. In view of the above favourable aspects with regard to the use of EVMS and also to maintain the ecological balance with a pollution free atmosphere, this Court directs that the State Election Commission may, as suggested by it, on an experimental basis, wherever it is possible start using EVMS in the Urban Local Bodies Election for the present election and at the same time may also try using EVMS of the type "Multi Point Single Choice Electronic Voting Machines" in the Panchayat Elections to

the rural local bodies so that its feasibility and viability can be assessed in the present elections and based on its performance and usefulness, the system can be implemented in phases over the period of next five years so as to enable usage of the EVMs in its entirety from the next elections.

72. Though an argument has been advanced on behalf of the State Election Commission that though provision has been made for usage of EVMs in the Urban Local Bodies Election under the District Municipalities Act, however, no equivalent provision has been made under the Tamil Nadu Panchayats Act and without there being a provision, which permits usage of EVMs in the rural local bodies elections, legally it would be impermissible to use the same in the rural local bodies elections.

73. Though this contention has been advanced, it is to be pointed out that the persons, who are to be elected in these elections are the elected representatives of the people, who are well governed by the Representation of People Act. The Representation of People Act does not limit itself to the Parliamentary elections, but to all types of elections in which the votes are cast by citizens in electing their representatives. All such persons, who stand elected through the exercise of adult franchise, are well covered under the Representation of People Act, as they are elected representatives of the people. Section 61-A of the Representation of People Act, which is a piece of Central Legislation, provides for use of EVMs in the elections. That being the case, any State Act, which is not in conformity with the Central legislation, it is trite law that the Central Act prevails and, therefore, Section 61-A of the Representation of People Act would hold the field. Therefore, there would be no embargo on the State Election Commission to use EVMs in the rural local bodies election, for the present, on experimental basis wherever it is possible and, thereafter, to use EVMs from the next election onwards mandatorily, keeping in mind the beneficial aspects of usage of EVMs, as discussed above. Useful reference in this regard can be had to the judgment of the Apex Court in All India Anna Dravida Munnetra Kazhagam's case (supra).

74. Though the Representation of People Act covers a wide spectrum and brings within its ambit the elected representatives of the local bodies as well and, therefore, what is provided for in the Central Legislation could be very well be drawn into the State Act, viz., Tamil Nadu Panchayats Act, for the purpose of use of EVMs in the local bodies election, however, as a precautionary measure, this Court feels that to avoid any sort of confusion and to put a stop to any sort of litigation that may arise on the ground of no provision being there for use of EVMs under the Tamil Nadu Panchayats Act, the State Government, in its wisdom, is directed to take immediate steps to bring in

appropriate legislation incorporating a similar provision in the Tamil Nadu Panchayats Act for use of EVMs in the rural local bodies elections as is found under the District Municipalities Act at the earliest.

75. Insofar as the plea made for induction of Central Government employees as poll officers and observers, the apprehension raised by the petitioners is that if the State Government employees are inducted as poll officers and observers, they may tend to take sides with the ruling party, which would be very much against the spirit of elections as the balance would definitely tilt in favour of the ruling party. In such view of the matter, it is contended on behalf of the petitioners that the employees working in the Central Government may be inducted as polling officers and observers for the proper conduct of free and fair elections.

76. In a matter of administrative discretion, judicial review is permissible only if it is made out that some wrong has been committed, which warrants interference of this Court under Article 226 of the Constitution. However, insofar as the above issue is concerned, it is only an apprehension raised by the petitioners that due to pressure of the ruling party and for various other factors, there is a chance that the State Government employees, who are at the mercy of the ruling party, could very well take sides with the ruling party and the concept of free and fair elections in a democracy would be defeated. Mere apprehension could not take the place of actual proof. There is nothing on record to suggest that the State Government employees would sideline with the ruling party in the ensuing elections to the detriment of the citizens. In such a view of the matter, the direction as sought for by the petitioners cannot be granted. However, the apprehension raised by the petitioners also could not be brushed aside as such. Instances of affinity of some State Government employees with the ruling party has also been brought to the notice of this Court on some occasions, which cause a scar on the election process and the sanctity of the elections. But, instances of such nature cannot be a yardstick to term all the State Government employees as having allegiance with the ruling party. However, for the free and fair conduct of poll so as to enable all the citizens to exercise their franchise in the most transparent manner, this Court feels that the State Election Commission may try and identify the vulnerable areas/polling booths/localities throughout the State and in those places, try to induct Central Government employees as polling officers and observers so that the sanctity of the election is not questioned. Further, such an exercise would also avoid multiplicity of legal proceedings before the Court of law. It would be in the interest of the ruling as well as opposition parties to cooperate with the State Election Commission for the effective and efficient conduct of

the elections, which would also leave an indelible mark on the fair conduct of elections for all decades.

77. As regards the rotation to be made based on delimitation and the reservation for women and other sections of the society, as mandated by the Act, it is stated across the Bar by the learned Advocate General that rules of reservation and rotation has been followed in consonance with the relevant Acts. However, for the purpose of delimitation based on 2011 census, the State Government is directed to take immediate steps for carrying out the delimitation of wards immediately after the ensuing election, so that the entire process of delimitation can be finished, including reservation/rotation, if any, not done, at the earliest .

78. With the above observations and directions, while W.P. No.23411 of 2016 is dismissed, all the other writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

- 1 THE SECRETARY TO GOVERNOR
RAJ BHAVAN GUINDY CHENNAI-32
- 2 THE PRINCIPAL SECRETARY TO GOVERNMENT
GOVERNMENT OF TAMILNADU
DEPARTMENT OF MUNICIPAL ADMINISTRATION AND
WATER SUPPLY SECRETARIAT CHENNAI-9
- 3 COMMISSIONER OF MUNICIPAL
ADMINISTRATION EZHILAGAM CHEPAUK CHENNAI-5
- 4 THE SECRETARY TO GOVERNMENT
RURAL DEVELOPMENT AND PANCHAYAT RAJ
DEPARTMENT GOVERNMENT OF TAMILNADU
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5 THE STATE ELECTION COMMISSIONER
TAMILNADU STATE ELECTION COMMISSION
NO.208/2 JAWAHARLAL NEHRU
ROAD OPP. TO CMBT ARUMBAKKAM CHENNAI-106

6 THE SECRETARY TO GOVERNMENT
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7 THE DISTRICT COLLECTOR
DINDIGUL DISTRICT.

8 THE DIRECTOR OF RURAL DEVELOPMENT
PANAGAL BUILDING SAIDAPET
CHENNAI-600 015

9 THE DISTRICT COLLECTOR
THIRUVALLUVAR

10 THE PROJECT DIRECTOR
DISTRICT RURAL DEVELOPMENT AGENCY
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+1cc to the Government Pleader Sr.53799

+1cc to Mr.D.Murthy, Advocate sr.53935

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+1cc to Mr.C.Selvaraj, Advocate sr.53735

W.P. NOS.23411, 23417,
23418, 28370, 28371,
29060 & 29797 OF 2016

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srg 29/09/2016

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