THE HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.14010, 15247, 15321, 16794, 19027, 20313, 20905, 21169, 22239, 22599, 22615, 23339, 24102, 24233, 24669, 24701, 24702, 24770, 25086, 25126, 25194, 25217, 25226, 25365, 25464, 25526, 25558, 25758, 25760, 25797, 25800, 25842, 25919, 25981, 25995, 26003, 26006, 26178, 26184, 26285, 26291, 26295, 26373, 26465, 26551, 26559, 26581, 26627, 26679, 26772, 26776, 26782, 26834, 26867, 27010, 27022, 27073, 27536, 27541, 27571, 27709, 27866, 27965, 27975 28075, 28548, 28681, 28685, 28932, 28944, 29012, 29050, 29301, 29736, 29795, 30257, 30929, 32712, 32789, 32794, 32811, 32851, 32956, 33267, 33293, 33323, 33367, 33956 34030, 34341, 34508, 34516, 34832, 34873, 34918, 34960, 34962, 34988, 34989, 35004, 35043, 35531, 35552, 35553, 35730, 35759, 36009, 36090, 36094, 36233, 36648, 36995, 37115, 37369, 38740, 39798, 42519, 46608, 46779, 47134, 47288, 47916 and 48159 of 2018 and W.P. Nos.251, 959, 1013, 1293 of 2019

COMMON ORDER : *(per the Hon'ble Sri Justice A. Rajasheker Reddy)*

In all these connected writ petitions, the issue which has been raised is identical, hence these petitions are being heard and decided together.

02. In one set of petitions, lead case being WP No.14010 of 2018 and batch, the petitioners assail the State amendment contained in Act No.4 of 2018, for short, "Act 4 of 2018" brought in to Section 3 of the Telangana Municipal Corporation Act, 1994, for short, "Act 1994" by way of Section 3A. In another set of petitions, lead case being WP No.26465 of 2018 and batch, the petitioners assail the State amendment contained in Act No.4 of 2018 brought in to Sections 2 and 3 of the Telangana Municipalities Act, 1965, for short, "Act 1965" by way of Clause 42-aa in Section 2 and sub-Section 1(B) in Section 3, respectively of the Act 1965. It is worthwhile to extract the impugned amendments called in question in these petitions.

03. Section 3A of the Act 1994, reads thus:-

> *"3A. Notwithstanding anything contained in sub Sections (2) and (3), the areas mentioned in Column No.3 of Schedule-I of this Act shall stand included and form part of the area governed by the Municipal Corporations shown in*

the corresponding entry of Column No.4 of the said schedule;

(a) where an elected body of the Gram Panchayat constituted for such area prior to the commencement of the Telangana Panchayat Raj Act 2018, is in existence, on the date of expiry of the term of such elected body;

(b) where no elected body of the Gram Panchayat constituted for such area prior to the commencement of the Telangana Panchayat Raj Act, 2018 is in existence, on the date of such commencement."

04. Schedule-I appended to Section 3A of the Act 1994 provides the details as to the name of the district, areas to be included, name of the Municipal Corporation into which the areas are included, ward no. of the Municipal Corporation into which such areas are merged.

05. Clause 42-aa of Section 2 of the Act 1965, reads thus:-

"(42-aa) Notwithstanding anything contained in clause (42-a), the areas mentioned in Column No.3 of Schedule-X of this Act shall be deemed to have been constituted as the smaller urban areas as specified in the corresponding entry of Column no.4 of the said schedule:

(a) where an elected body of the Gram Panchayat constituted for such area prior to the commencement of the

Telangana Panchayat Raj Act 2018, is in existence, on the date of expiry of the term of such elected body;

(b) where no elected body of the Gram Panchayat constituted for such area prior to the commencement of the Telangana Panchayat Raj Act, 2018 is in existence, on the date of such commencement."

06. Sub-Section (1-B) of Section 3 of the Act 1965, reads thus:-

"(1-B) Notwithstanding anything contained in sub-Section 1-A, the areas mentioned in Column No.3 of Schedule-XI of this Act shall stand included and form part of the area governed by the municipality shown in the corresponding entry of column no.4 of the said schedule:

(a) where an elected body of the Gram Panchayat constituted for such area prior to the commencement of the Telangana Panchayat Raj Act 2018, is in existence, on the date of expiry of the term of such elected body;

(b) where no elected body of the Gram Panchayat constituted for such area prior to the commencement of the Telangana Panchayat Raj Act, 2018 is in existence, on the date of such commencement."

07. The case of the petitioners in WP No.14010 of 2018 who are villagers and Sarpanches of different Gram Panchayats of Karimnagar district is that the impugned Act 4 of 2018 has made a complete departure from the texture of the parent Act 1994 and

by introduction of Section 3A of the Act 1994, the villages which are named in Schedule-I are merged with Karimnagar Municipal Corporation without there being a notification by the Governor under Section 3 (2) of the Act 1994 muchless they are de-notified under Section 3 (f) of the Panchayat Raj Act, 1994. The villages are beyond 3 kms distance from the limits of Karimnagar Municipal Corporation which cannot be merged. The scheme of the Act 1994 is to make a publication of a larger urban area and has to pass through the test with reference to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance and such other factors as may be prescribed. That most of the villages are mostly agricultural dominated villages and there are no non-agricultural activities. That they are still

continuing as part and parcel of the respective Grampanchayats. By operation of the impugned amendment, they are just thrusting into the territorial area of Karimnagar Municipal Corporation. As per the Act 1994 there is nothing like enlargement of territorial area of a Municipal Corporation. That the impugned Act 4 of 2018 has done away with the doing of exercise of analyzing the scientific data to be collected as stipulated in the parent Act 1994, and therefore it is unconstitutional. An amendment to an existing statute must lay down the legislative policy and avoid specific enumeration of the named villages. Unless and until the villagers/areas have got the profile of a larger urban area, the question of inclusion of that area into the existing Corporation, does not arise. Since, no guidelines or parameters are laid down in the impugned amendment, it is liable to be struck

down on both grounds of lack of legislative competence and violation of Article 14 of the Constitution.

08. Likewise, the case of the petitioners in WP No.26465 of 2018 is that by virtue of the impugned amendment Gandimasaanipeta village is merged in Yellareddy Municipality without conducting any detailed study and without hearing the Gram Panchayat members who have filed their objections opposing the inclusion of the village into Municipality. That the villagers who are mainly dependent on agriculture and got benefits under the schemes of the State and the Union Governments will lose the benefits if the merger takes place. That employment guarantee scheme is a welfare scheme which guarantees employment to agricultural labourers in the village and such a scheme is not available in the Municipality. That by virtue of the impugned amendment, the substantive provisions i.e. Section 2 (42a) and Section

3(1-A) have become redundant as while Section 2 (42a) requires certain criteria to be followed for notifying a transitional area or smaller urban area, Section 3 (1-A) deals with the principles and procedure for inclusion/exclusion into the Municipality, local or part thereof in the vicinity of such Municipality. That under the guise of impugned amendment, the Government has virtually replaced the substantive provisions. That the respondents have given a go-by to the Telangana Municipalities (Inclusion or Exclusion of Areas into/from the limits of Municipalities/Nagara Panchayats) Rules, 2006, for short, "the Rules" which regulates inclusion or exclusion of areas into/from Municipalities/Nagara Panchayats, as the case may be. That the Rules provide for sufficient safeguards and lay down a detailed procedure for taking into consideration the views of the Gram Panchayat and also recommendation of the concerned authorities like

Municipal Commissioner, District Collector, Commissioner of Municipal Administration and such a procedure is by-passed when the Rules are very much in force and since the impugned amending Act 4 of 2018 does not lay down any new Rules, the Rules continue to hold the field. That the decision making process is vitiated not only for non-application of mind but also because of mala-fide exercise of power inasmuch as detailed study was not conducted and there being no criteria for inclusion of Gandimasaanipeta village into Yellareddy Municipality, the inclusion of the said village is violative of Article 14 of the Constitution and the impugned amendment is liable to be struck down.

09. Counter affidavit is filed in WP No.14010 of 2018 by the 2nd respondent wherein it is stated that the instant Gram Panchayats were merged into the limits of the existing Karimnagar Municipal Corporation,

which was already declared as *larger urban area* in the year 2005 itself, after collecting data as required under Section 2 (d) of the Act 1994. It is stated that there is no rule specifying that before merger of a Gram Panchayats into existing Municipal Corporation, such Gram Panchayats shall be declared as *larger urban area* and then merge them into the limits of the Municipal Corporation. That the Government vide GO Ms.No.300, MA & UD (Election-II) Department, dated 07-04-2005 have issued notification specifying the areas covered under erstwhile Karimnagar Municipality as *larger urban area* under Section 2 (d) of the Act 1994, the Karimnagar Municipal Corporation is deemed to have been constituted under Section 3 (1) of the Act 1994 as Municipal Corporation. Counter affidavit is filed on similar lines in WP No.26465 of 2018, which is a lead case in another batch of cases wherein it is stated that by constituting

smaller urban areas i.e. Municipalities or up-gradation of Gram Panchayat/s into Municipalities pursuant to the impugned legislation, there is no violation of the right to self governing, on the other hand better civic amenities and services are made available to the citizens and there are numerous self employment schemes and poverty alleviation programmes under the Municipal laws.

10. Heard Sri Vedula Venkataramana, Sri S. Satyam Reddy, learned senior counsels, Sri T. Venkat Raju Goud, Sri K. Pavan Kumar, Sri B. Vijayasen Reddy, learned counsel for Sri V. Venkata Mayur, Sri K. Buchi Babu, Sri Poodathu Amarender and Sri K. Upender Reddy, learned counsel appearing for the petitioners and the learned Addl. Advocate General for the respondent-State.

11. The combined argument of the learned senior counsel and other learned counsel for the petitioners

in these cases is that the amending Act 4 of 2018 cannot run counter to the basic structure of the parent Acts 1994 & Act 1965 and the amendment brought in is violative of 73rd & 74th Amendment to Constitution of India, especially Article 243Q (2) of the Constitution and lacks legislative competence. That no procedure, as envisaged in Act 1994 or Act 1965 or Rules made thereunder is followed much less the publication of the villages sought to be merged with the Municipal Corporation with specific ward numbers. That no notice was given either to the elected representatives of the respective village or the villagers since act of inclusion/exclusion of the villages into the Municipal Corporation, Municipality or creation/up-gradation into Municipality, as the case may be, affected the rights of the elected representatives of the villages as well as rights of the villagers who are members of the Gram Panchayats.

That the villages merged into Municipal Corporations and Municipalities are mostly agriculturally dominated and there are no non-agricultural activities in these villages and they are still continuing as Gram Panchayats. That the members of the villages are deprived of rural employment and the benefits of various schemes provided to the villagers who are members of the Gram Panchayats under the State and Union governments and they will lose these benefits if the merger takes place which is arbitrary and violative of Article 14 of the Constitution of India. Though the Telangana Municipalities (Inclusion or Exclusion of Areas into/from the limits of Municipalities/Nagara Panchayats) Rules, 2006, for short "the Rules" are framed in that behalf for inclusion or exclusion of the villages issued vide GO Ms.No.63, Municipal Administration & Urban Development (Elections-II) Department, dated 18-02-2006, scientific data was not

collected, except calling for proposals from the District Collectors. Decisions in ***PROF. BK CHANDRASHEKAR vs. STATE OF KARNATAKA[1], RAVEENDRAN vs. STATE OF KERALA[2], STATE OF TAMIL NADU vs. K. SHYAM SUNDER[3] & CHAMPA LAL vs. STATE OF RAJASTHAN[4]*** are relied on.

12. Learned Addl. Advocate General appearing for the State, on the other hand, contended that consequent upon passing of the Bill in the Legislature on 29–03–2018, it received the assent of the Governor on 30-03-2018 for merger of certain Gram Panchayats into Municipal Corporation and Municipalities and, therefore, there is no conflict of provisions of Section 2 (d) of the Act 1994 or the Rules, as the case may be, and that of Article 243-Q(2) of the Constitution, and in this case there is over compliance with the provisions

[1] AIR 1999 KARNATAKA 461
[2] 2006 (1) KLT 427
[3] (2011) 8 SCC 737
[4] 2018 SCC OnLine SC 536

of the Constitution. As far it relates to collecting data, it is stated that the Government vide Memo No.860/Plg.II/2018, dated 19–01-2018 have informed all the District Collectors in the State that the Government desired all major Gram Panchayats with population of more than 15,000 and Gram Panchayats adjoining the existing urban local bodies (within 1 to 5 kms) shall be considered for either constitution of new urban local body or merging with the existing urban local body respectively and accordingly, all the District Collectors were asked to submit proposals of potential Gram Panchayats having urban characteristics and suitable for either constitution as new urban local body or merging them with the nearest urban local body. It is stated that proposals were submitted by the District Collectors and accordingly the Commissioner and Director of Municipal Administration vide letter Roc.No.21755/2018-H2,

dated 22-03-2018, in turn submitted the same to Government along with draft amendments to the Act 1994 to include the Gram Panchayats in question into the limits of Karimnagar Municipal Corporation. The contention of the petitioners that unless and until the villages have got the profile of the *larger urban area* or transitional area, as the case may be, they cannot be merged with the Municipal Corporation or Municipality is refuted, as nowhere in the Act 1994 such a procedure is contemplated. It is also stated that issuance of public notification by the Governor is only dispensed with by way of a *non-abstante* clause in Clause 42(aa) to Section 2 of the Act 1965, however the constitutional mandate of having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance etc.,

were scrupulously followed while the impugned legislation was brought in. In support of his contention learned Addl. Advocate General relied on the decision in ***STATE OF UP vs. PRADHAN SANGH KSHETTRA SAMITI,***[5] ***STATE OF PUNJAB vs. TEHAL SINGH***[6] ***& SUNDARAJAS KANYALAL BATIJA vs. COLLECTOR, THANE MAHARASHTRA.***[7]

13. Having heard the learned senior counsels as also the learned counsels for the petitioners, learned Addl. Advocate General and on a perusal of the material brought on record, the following points emerge for consideration.

i) *Whether the impugned amending Act 4 of 2018 violates Articles 14, 73rd and 74th Amendment to the Constitution of India & 243Q(2) of the Constitution;*

ii) *Whether the respondent-State has legislative competence to bring in the impugned amending Act 4 of 2018;*

iii) *Whether the impugned amending Act 4 of 2018 is against the texture of the parent Acts i.e. the*

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[5] 1995 Suppliment (2) SCC 305
[6] 2002 (2) SCC 7
[7] 1989 (3) SCC 396

Municipal Corporation Act and the Municipalities Act; and

iv) *Whether notice is mandatory under the Rules to the elected representatives of the villages and the villagers.*

POINT (i) ::

{Whether the impugned amending Act 4 of 2018 violates Articles 14, 73rd and 74th Amendment to the Constitution of India & 243Q(2) of the Constitution}

14. Article 243P of the Constitution deals with definitions and unless the context otherwise requires,

(a) xxxxxx
(b) xxxxxx
(c) xxxxxx (omitted)
(d) Municipal area means the territorial area of a Municipality as is notified by the Governor;
(e) Municipality means an institution of self government constituted under Article 243Q;
(f) Panchayat means a Panchayat constituted under Article 243B;

15. Article 243Q contemplates constitution of three different categories of bodies *viz.,* (i) a Nagar Panchayat, for a transitional area, (ii) a Municipal Council, for a smaller urban areas; and (iii) a Municipal Corporation, for a larger urban area.

16. Article 243Q(2) of the Constitution reads thus:-

"(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non

agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part"

17. In Article 234Q(2), the expression *"a transitional area", "a smaller urban area" or "a larger urban area"* would mean such areas as may be specified by the Governor by a public notification. This Article further requires that due regard be had to various factors as mentioned therein before specifying the areas, as the case may be, having regard to population of the area, the density of the population therein, the revenue generated in the area for local administration, percentage of employment in non-agricultural activities, the economic importance or such other factors as deemed fit and necessary.

18. Article 243Q is an enabling provision enabling the Governor to specify by way of public notification, a transitional area, a smaller urban area and a larger urban area, as the case may be, having regard to the

criteria mentioned therein. Analogous provisions are provided in the Act 1994 and the Act 1965. Section 2 (d) of the Act 1994 defines the expression *"larger urban area"* which means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as may be prescribed, specify by notification.

19. Section 2 (42-a) of Act 1965, *"transitional area" or "smaller urban area"* is defined thus:-

> *"transitional area" or "a smaller urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Act, subject to such rules as may be made in this behalf."*

20. When once a notification is issued under Section 3 (1) of the Act 1994 by the Governor specifying an area as a *"larger urban area"* under Section 2 (d) of the Act 1994, a Municipal Corporation shall be deemed to have been constituted for such larger urban area. Under Section 3 (2) of the Act 1994, the Governor may, from time to time, after consultation with the Municipal Corporation, by notification in the gazette, alter the limits of a *larger urban area* specified in the notification so as to include therein or to exclude therefrom, the areas specified in the notification.

21. It is to be seen that the areas which have the potential of being declared as *larger urban areas* are already constituted under Section 2 (d) of the Act 1994 and a notification by way of G.O.Ms. No 300, dated 07-04-2015, was issued under Section 2 (d) of the Act and a Corporation is deemed to have been constituted

under Section 3 (1) of the Act which is not disputed nor challenged by the petitioners.

22. It is to be seen that what is contemplated under Article 243Q (2) is only for constitution of a transitional area, a smaller urban area or a larger urban area and it does not deal with alteration of those areas *i.e.* inclusion/exclusion of the villages therefrom or thereto, as the case may be, and at the same time and does not prohibit the inclusion/exclusion. But the parent Acts 1994 and 1965 provide for the same, which is not challenged. As per the counter affidavit filed in the matter, the exercise carried out by the State i.e. calling for proposals from the District Collectors of the respective Districts and appointment of Special Officer in a way complies the criteria as appearing in Article 243Q (2) as also in Section 3 (2) & (3) of the Act 1994 and Section 3 (1-A), Section 2 (42-a) of the Act, 1965 for

that matter the procedure contemplated under Rules made thereunder in that regard and after considering the proposals, the legislature chose to pass the impugned legislation. In other words, the State, before passing the impugned legislation has undertaken the exercise what is prescribed under the provisions noted above, instead by the Governor, but by itself. Therefore, the criteria laid under Article 234Q(2) for formation of larger urban area or small urban area, as the case may be, is followed. Power of the legislature to make legislation or to bring an amendment to a statute is always on a higher pedestal than the power conferred on the Governor or State Government under the legislation, more so in the instant case, the impugned legislation has received the assent of the Governor.

23. The Supreme Court in ***PRADHAN SANGH KSHETTRA SAMITI's*** case (5 supra) relied on by

learned Addl. Advocate General dealing with a similar fact situation case at para 40 of the judgment held:-

> *"We also find no merit in the contention that the first part of section 2(f) which defines village to mean any local area recorded as a village in the revenue records of the district in which it is situated, goes counter to the provisions of article 243 (g) in that it forecloses the authority of the Governor to specify the village for the purposes of establishing a gram panchayat as envisaged by part IX of the Constitution. The argument ignores that whereas the Constitution permits the Governor to specify village by a notification, it does not prevent the State from enacting a law for the purpose. As pointed out earlier, the notification issued by the Governor is in fact a notification issued by the state government. An enactment of the legislature is certainly a higher form of legal instrument that a notification. What is further, the act has received the assent of the Governor on 22-04-1994. Hence, there is not only no conflict between the provisions of Section 2 (f) of the Act and those of Article 243 (g) but there is an over compliance with the provisions of the Constitution". (emphasis supplied)*

24. In ***RAVEENDRAN's*** case (2 supra) one of us, *Thottathil B. Radhakrishnan* (J) as Judge of the Kerala High Court had an occasion to analyze Part IXA of the Constitution, which exclusively concerns itself with Municipalities. While considering the question whether

an area notified as urban area by the Governor, can again be re-notified as rural area, and as Panchayat by the Government, it was observed that such an exercise cannot be done under Part IXA of the Constitution for the reason when once the Municipality in relation to a transitional area or a smaller urban area, or a larger urban area, on its coming into existence, becomes a constitutional institution and cannot be abolished by an act of the Legislature without specific authorization in that regard in the Constitution. The situation appearing in the present cases is otherwise as in the instant case there is no restructuring of larger urban area into rural area. In this case the argument is that the procedure envisaged for merging of rural areas into larger urban areas, smaller urban areas, and constitution of smaller urban area is not followed and by way of impugned legislation given a go-bye, but it is not their case that either merging of areas or

constitution or upgrading is not permissible. In ***PROF. BK CHANDRASHEKAR's*** case (1 supra), the Division Bench of Karnataka High Court considered the scope of Article 243E. Sub-Article (1) thereof provides that 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. Sub-Article (2) thereof provides that 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). In the above case, the challenge was to the State legislation in bringing amendments to existing Karnataka Panchayat Raj Act which in effect violated the mandate contained in Article 243 (E) (1), and also postponed elections by the impugned notification

therein nullifying the constitutional mandate under Sub-Article (2) of Article 243E of the Constitution, in those circumstances, it was held to be impermissible and violative of Article 243E of the Constitution. The facts in the present case are distinguishable. Here it is a case of merger of Gram Panchayats and up-gradation thereof into Municipalities by the impugned legislation which, in our view, do not violate any provision of Constitution much less Article 243(Q), as such, or the Constitutional Amendments 73rd and 74th and the decision in ***PROF. BK CHANDRASHEKAR's*** case (1 supra) has no application to the facts of this case.

25. The argument of learned counsel for the petitioners that the impugned legislation is arbitrary and violative of Article 14 of the Constitution is concerned, no factual foundation of facts is laid with

regard to the same in the writ affidavit. It is to be seen that the impugned legislation is only relates to merging of gram panchayats into smaller urban area or into larger urban area or upgradation of smaller urban area (Municipality) into larger urban area (Municipal Corporation), as the case may, and this was preceded by calling for reports from the concerned Collectors and after satisfying itself as to the necessity or otherwise amendment was brought in, and in view of the same, this Court finds no arbitrariness on the part of the State legislature in enacting the impugned legislation, which sub-serves larger public purpose. The criterion laid down under Article 234Q(2) of the Constitution and the provisions of the Parent Acts 1994 and 1965 is fulfilled before enacting the legislation as such it does not violate the mandate of Article 14 of the Constitution. The argument that the impugned legislation is politically motivated lacks force

as the constitutionality of an enactment is not always a question of power of the legislature to enact that statue. Motive of the legislature while enacting a statue is inconsequential. There is presumption in favour of constitutionality of a statue. Article 14 strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. Whenever therefore, there is arbitrariness in State action, whether it be of the legislature or of the executive, Article 14 immediately springs into action and strikes down such State action. Law cannot be declared ultra vires on the ground of hardship but can be done so on the ground of total unreasonableness. The legislation can be questioned as arbitrary and ultra vires under Article 14, however, to declare an Act ultra vires under Article 14, the Court must be satisfied in respect of substantive unreasonableness in the statue itself. *(see* ***State of Tamil Nadu vs. K.Shyam***

Sunder, (2011) 8 SCC 737, Ajay Hasia vs. Khalid Mujib Sehravardi (1981) 1 SCC 722, Bidhannagar (Salt Lake) Welfare Assn. vs. Central Valuation Board (2007) 6 SCC 668).

26. A law which violates the fundamental right of a person is void. In such cases of violation, the Court has to examine as to what factors the Court should weigh while determining the constitutionality of a statute. First and the foremost, as already noticed, is the competence of the legislature to make the law. The wisdom or motive of the legislature in making is not a relative consideration. The Court should examine the provisions of the statute in light of the provisions of the Constitution (Part-III), regardless of how it is actually administered or is capable of being administered. In this regard, the Court may consider the following factors, as noticed in D.D. Basu, *Shorter Constitution of India* (14th Edn., 2009):

(a) The possibility of abuse of a statute does not impart to it any element of invalidity.

(b) Conversely, a statute which violates the Constitution cannot be pronounced valid merely because it is being administered in a manner which might not conflict with the constitutional requirements.

27. The Courts would accept an interpretation which would be in favour of the constitutionality, than an approach which would render the law unconstitutional. Declaring the law unconstitutional is one of the last resorts taken by the Courts. The Courts would preferably put into service the principle of "reading down" or "reading into" the provision to make it effective, workable and ensure the attainment of the object of the Act. These are the principles which clearly emerge from the consistent view taken by this Court in its various pronouncements.

28. ***CHMPA LAL vs. STATE OF RAJESTHAN***[8], was a case where in exercise of the statutory powers

[8] 2018 SCC OnLine SC 536

conferred on the State Government, two notifications were issued to upgrade a gram panchayat to be a Nagar panchayat and under those circumstances the Supreme Court held that the notifications purport to classify the Municipalities only on the basis of population, and other parameters to which regard is required to be had under Article 243Q(2) were not taken into account, the same were held to be unsustainable. The facts in the case on hand are discernable and no such situations arise in this case.

29. As far as 73rd and 74th Constitutional Amendments are concerned, 73rd Constitutional Amendment PART IX, mandates the State Government to endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self government. 74th Constitutional amendment by way of PART IXA

has given constitutional status to the Municipalities and brought them under the justifiable part of the Constitution. States were put under constitutional obligation to adopt municipalities as per system enshrined in the Constitution. Nowhere in the said provisions is there any clause prohibiting inclusion or exclusion of the areas, or for that matter merger of Gram Panchayats into a smaller urban area or a larger urban area or up-gradation of a smaller urban area into a larger urban area, as the case may be.

30. In ***STATE OF BIHAR vs. BIHAR DISTILLERY LIMITED***[9], Supreme Court after referring to the ratio laid down in the rulings on the subject, laid down certain principles on how to judge the constitutionality of an enactment, at para 17 held thus:-

"17. Now coming to the reasoning in the impugned judgment, we must say with all respect that we have not been able to appreciate it. The approach of the Court, while examining the

[9] (1997) 2 SCC 453

challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application.…."

31. Supreme Court in ***DHARAM DUTT vs. UNION OF INDIA,***[10] considered the decision in *K.C. Gajapati Narayan Deo* v. *State of Orissa* [AIR 1953 SC 375], observed at para16 thus;

"16. Though the petition alleges the impugned Act (with the history of preceding ordinances) to be the outcome of political malice, no particulars thereof have been given by the writ petitioner. However, that aspect need not be deliberated upon any further in view of two Constitution Bench decisions of this Court. It has been held in K.C. Gajapati Narayan Deo v. State of Orissa [AIR 1953 SC 375 : 1954 SCR 1] and in Board of Trustees, Ayurvedic and Unani

[10] (2004) 1 SCC 712

Tibia College v. State of Delhi (now Delhi Admn.) [AIR 1962 SC 458 : 1962 Supp (1) SCR 156] that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of the competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. We will, therefore, concentrate on the legislative competence of Parliament to enact the impugned legislation. If Parliament has the requisite competence to enact the impugned Act, the enquiry into the motive which persuaded Parliament into passing the Act would be of no use at all."

32. On the above analysis, the impugned amending Act 4 of 2018 cannot be held to be violative of Articles 14 and 73rd and 74th Amendments especially, 243Q (2) of the Constitution of India.

POINT No.(ii) ::

{Whether the respondent-State has legislative competence to bring in the impugned amending Act 4 of 2018}

33. To refer to the issue of legislative competence of the legislature in bringing the impugned Act 4 of 2018, except making oral submissions and raising plea on this issue, no factual foundation is laid in the pleadings. Nonetheless, the issue is considered adverting to the arguments of the learned counsels for the parties. Part XI, Chapter I, Article 245 of the Constitution deals with distribution of legislative powers wherein the legislature of a State is empowered to make laws for the whole or any part of the State subject to the provisions of the Constitution. Under clause (3) of Article 246 of the Constitution, subject to clauses (1) and (2) therein, empowers the legislature of the State to make laws for the whole of any part of the State with respect to any of the matters enumerated in List-II in the VII Schedule. Entry 5 of List-II of Schedule VII of the Constitution of India is as follows:-

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

34. In this case, parent Acts 1994, 1965 and the impugned legislation by way of Act 4 of 2018 is made in respect of State of Telangana and the power is traceable to Entry 5 of List-II of Schedule VII of the Constitution of India and is in accordance with the provisions of the Constitution as held in ***Point (i)***. It is not the case of the learned counsel for the petitioners that the subject matter of legislation does not fall under Entry 5 of List-II of Schedule VII of the Constitution of India.

35. In ***ELEL HOTELS & INVESTMENTS LTD. vs. UNION OF INDIA***[11] at para 14 held thus:-

"14.....The cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or restricted sense and that each general word

[11] (1989) 3 SCC 698

should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction, according to the ordinary meaning of the words in entry, must be put upon them. Reference to legislative practice may be admissible in reconciling two conflicting provisions in rival legislative lists. In construing the words in a constitutional document conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude".

36. In view of the above, we are of the opinion that the impugned legislation by way of Act 4 of 2018 is within the legislative competence of the State and, therefore, the impugned amendment brought in cannot be invalidated on the ground lack of legislative competence.

POINT No. (iii) ::

{Whether the impugned amending Act 4 of 2018 is against the texture of the parent Acts i.e. the Municipal Corporation Act and the Municipalities Act}

37. Coming to the question as to whether the impugned amending Act 4 of 2018 is in conflict with the parent Acts 1994 and 1965, in this case some of the rural areas in Gram Panchayat, on being

identified by the functionaries of the State, taking into various factors as envisaged in Article 243Q(2) of the Constitution of India and relevant provisions of both the Acts 1994 and 1965 in that regard as mentioned supra, are merged with Municipal Corporation, and some with Municipalities and some upgraded as Municipalities. Hence, there is no conflict between the amending Act 4 of 2018 and the parent Acts. Mitigating factors pleaded opposing the merger or creation of larger urban or smaller urban area on the ground they deprived the benefits under employment guarantee scheme extended by the State and the Union Government cannot override the power of State legislature from enacting or amending an enactment. Such actions on the part of the State to merge the rural areas or upgrade some of them into Municipalities, is a policy decision of the State. Even otherwise, the rules framed under Act or the 1965

Act, is a subordinate legislation and the amending Act 4 of 2018 in Section 3-A of Act 1994 and Clause 42-aa of Section 2 and sub-Section 1B of Section 3 of the 1965 Act, starts with a *non-obstante* clause, giving overriding effect over the other provisions of the Act, 1994, as such, the impugned amending Act 4 of 2018 cannot be invalidated on the ground of not following the procedure provided under parent Acts or the rules framed thereunder. The amending Act is preceded by collection of data and also identifying the villages which have potential to be merged into Municipal Corporation or Municipality or creation of a Municipality, as the case may be, cannot be said to be in conflict with the provisions of parent Act. It is settled proposition of law as laid down by the Supreme Court in a plethora of decisions that the constitutional validity of an enactment made by the State legislature or by the Parliament can only be challenged on the

ground *i.e.* it is violative of any provisions of the Constitution or on the ground of excessive delegation and not on any other ground as such impugned legislation amending the parent Act cannot be challenged on the ground that it is offending or destructive of parent Acts when it is within the province of the State legislature as held in Point (ii) while dealing with the issue of legislative competence of State legislature.

POINT (iv) ::

{Whether notice is mandatory under the Rules to the elected representatives of the villages and the villagers}

38. The effect of amending Act 4 of 2018 resulted in merger of certain villages into Municipal Corporation or Municipalities and up-gradation as Municipality and the State legislature in its wisdom though it fit not to provide for inclusion of principles of natural justice before the inclusion of the areas and up-gradation as

the case may be, in the impugned legislation. The impugned legislation is general in nature not intended against any particular individual and no specific right of the individual is affected or demonstrably infringed as such, the impugned legislation cannot be struck down on the ground of violation of principles of natural justice. The Supreme Court while dealing with a similar fact situations observed that when the provisions of a particular Act do not provide for observance any opportunity of hearing to the residents before any area falling under a particular Gram Sabha is excluded and included in another Gram Sabha, the residents of that area which has been excluded or included in a different Gram Sabha cannot make a complaint regarding denial of opportunity of hearing before taking action for such a purpose, (*see* ***State of Punjab vs. Tehal Singh***[12]). In ***STATE OF PUNJAB***

[12] (2002) SCC 7

vs. TEHAL SINGH,[13] the Supreme Court at para 9 & 10 held thus:-

"9. Once it is found that the power exercisable under Sections 3 and 4 of the Act respectively is legislative in character, the question that arises is whether the State Government, while exercising that power, the rule of natural justice is required to be observed. It is almost settled law that an act legislative in character — primary or subordinate, is not subjected to rule of natural justice. In case of legislative act of legislature, no question of application of rule of natural justice arises. However, in case of subordinate legislation, the legislature may provide for observance of principles of natural justice or provide for hearing to the residents of the area before making any declaration in regard to the territorial area of a Gram Sabha and also before establishing a Gram Sabha for that area. We have come across many enactments where an opportunity of hearing has been provided for before any area is excluded from one Gram Sabha and included in different Gram Sabhas or a local authority. However, it depends upon the legislative wisdom and the provisions of an enactment. Where the legislature has provided for giving an opportunity of hearing before excluding an area from a Gram Sabha and including it in another local authority or body, an opportunity of hearing is sine qua non and failure to give such an opportunity of hearing to the residents would render the declaration invalid. But where the legislature in its wisdom has not chosen to provide for any opportunity of hearing or observance of principles of natural justice before issue of a declaration either under Section 3 or Section 4 of the Act, the residents of the area cannot insist for giving an opportunity of hearing before the area where they are residing is included in another Gram Sabha or local authority. In Rameshchandra Kachardas Porwal v. State of Maharashtra [(1981) 2 SCC 722] this Court held as thus: (SCC p. 741, para 17)

"In one of the Bihar cases it was further submitted that when a market yard was disestablished at one place and established at another place, it was the duty of the authority concerned to invite and hear objections. Failure to do so was a violation of the principles of natural justice and the notification disestablishing the market yard at one place and establishing it elsewhere was therefore, bad. It was said that even as there was express provision for inviting and hearing objections before a 'market area' was declared under the Act, so should objections be invited and heard before a 'market yard' was established at any particular place. The principles of natural justice demanded it. We are unable to agree. We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice.

10. *In the present case, the provisions of the Act do not provide for any opportunity of hearing to the residents before any area falling under a particular Gram Sabha is excluded and included in another Gram Sabha. In the absence of such a provision, the residents of that area which has been excluded and included in a different Gram Sabha cannot make a complaint regarding denial of opportunity of hearing before issue of declarations under Sections 3 and 4 of the Act respectively. However, the position would be different where a house of a particular resident of an area is sought to be excluded from the existing Gram Sabha and included in another Gram Sabha. There the action of the Government being directed against an individual, the Government is required to observe principles of natural justice. For the aforesaid reasons, we are of the view that no opportunity of*

hearing was required to be given before making declarations either under Section 3 or Section 4 of the Act by the Government."

39. In ***SUNDARJAS KANYALAL BHATIJA vs. COLLECTOR, THANE***[14] the Supreme Court while dealing with the question of principles of natural justice in legislative action and its applicability at paras 27 and 28 observed thus:-

27. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the court could say no more. In the present case the Government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs".

28. *Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the*

[14] (1989) 3 SCC 396

exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties who are not entitled to be heard under law."

40. As far as the contention regarding de-notification of the Gram Panchayat as envisaged under Section 3 (f) of the Panchayat Raj Act, 1994, before merging with Municipality or Municipal Corporation is concerned, power is conferred on *Government i.e.* State Government. Section 3 (2) (f) of the Panchayat Raj Act, 1994, specifically empowers the government to withdraw any notification issued under Section 3 of the Act. In the case on hand, it is merger of certain Gram Panchayats into smaller urban area or larger urban area and also constitution of a smaller urban area by merging the Gram Panchayats by an Act of legislature itself by way of legislation, which is on higher pedestal as held in ***PRADHAN SANGH KSHETTRA SAMITI's*** case (5 supra) and it is always presumed that legislature is aware of earlier legislation.

41. For the foregoing reasons, we are of the view that the petitioners failed to the make out a case to invalidate the impugned Amending Act 4 of 2018. In the result, the writ petitions fail and they are accordingly dismissed.

Miscellaneous petitions pending if any in this petitions shall also stand dismissed.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Dated: 08-03-2019
NRG/PLN