

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8480 OF 2021

Mr. Siddheshwar Mogalappa Kamurti .. Petitioner
Vs.
The State of Maharashtra through
The Secretary, Urban Development
Department, Government of Maharashtra
Mantralaya, Mumbai – 400 042 & Ors. .. Respondents.

**WITH
WRIT PETITION NO. 7640 OF 2021**

Tanmay Kanitkar .. Petitioner
Vs.
State Election Commission & Ors. .. Respondents.

**WITH
WRIT PETITION NO. 7618 OF 2021**

Maruti Sahebrao Bhapkar
Age : 50 Yrs, Occ : Agriculturist,
R/at: Sanjivan Chal, Mohan Nagar,
Chinchwad, Pune – 19. .. Petitioner
Vs.
State Election Commission
First Floor, New Administrative Building,
Hutatma Rajguru Chowk, Madam Cama Road,
Mumbai & Ors. .. Respondents.

**WITH
WRIT PETITION NO. 7608 OF 2021**

Sheshrao Sharnath Kamble
Age-51, Occupation : Transport,
R/at 11, T, Priyadarshini Soc,
Near Phule Ganapati, Ganesh Mala,
Pune – 411 030. .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents.

**WITH
WRIT PETITION NO. 8893 OF 2021**

Mahesh Mirani,
Occ : Business, Age : 48,
Residing at Kalpeshwar Palace,
2nd Floor, Section 27, Ulhasnagar-4 .. Petitioner

Vs.
State Election Commission,
First Floor, New Administrative Building,
Hutatma Chowk, Madam Cama Road,
Mumbai & Ors. .. Respondents.

**WITH
WRIT PETITION NO. 245 OF 2022**

Chandrakant Mahadev Londhe
Age : 39 Yrs., Occu. Service,
R/o. : Centurian Society, "A" Wing,
Room No. 103, Shahu Nagar,
Pimpri Pune City, Pune - 411019. .. Petitioner

Vs.
The State of Maharashtra through
The Chief Principal Secretary,
Mantralaya, Mumbai & Anr. .. Respondents.

**WITH
PUBLIC INTEREST LITIGATION NO. 6 OF 2022**

Sandeep Pandurang Patil .. Petitioner

Vs.
The State of Maharashtra & Anr. .. Respondents.

Mr.Asim Sarode a/w Mr.Ajinkya Udane a/w Mr.Akshay Desai for the
Petitioners in Writ Petition No.7640 of 2021 and Writ Petition No.7618
of 2021.

Mr.Prathamesh Bhargude a/w Mr.Sumit Sonare for the Petitioner in
Writ Petition No.7608 of 2021.

Mr.A.A.Kumbhakoni – AG, Mr.P.P.Kakade - AGP, Mr.Akshay Shinde ‘B’ Panel, Mr.Y.D.Patil – AGP for the Respondent-State.

Mr.M.J.Bhatt for Respondent No.2.

Ms.Pooja Joshi for Respondent No.2 in Writ Petition No.8893 of 2021.

Mr.Sachindra B. Shetye a/w Sarika Shetye, Priyanka H.Chavan for Respondent – S.E.C.

**CORAM: A. A. SAYED &
ABHAY AHUJA, JJ.
DATE : 06th MAY, 2022**

JUDGMENT :- (PER COURT)

1. In these group of Petitions, the challenge essentially is to the system of election which permits election of multiple members to a ward of a Corporation (“Multi-member Ward System”) as against a system which permits election of one Councillor/Corporator for one Municipal Ward of a Corporation.

2. Before proceeding to the specific challenge, it would be useful to recount briefly the various amendments in the Maharashtra Municipal Corporations Act, 1949 (the “MMC Act”) in this regard.

3. The provisions of the MMC Act, 1949 (viz., the erstwhile Bombay Provincial Corporation Act, 1949) were initially amended alongwith the City of Nagpur Corporation Act, 1948 and the Maharashtra Municipal Council, Nagarpanchayat and Industrial

Township Act, 1965, by virtue of Ordinance No. XXVIII of 2001 of Maharashtra Act, later amended into Maharashtra Act No. XXVII of 2011 and by the said amendment, the system of Multi-member Ward 3 Councillors came to be introduced for the first time thereby replacing the system of election of single Councillor / Corporator for one Ward.

4. Thereafter, by way of Maharashtra Act No. XVI of 2004, an amendment was made to the Bombay Provincial Municipal Corporations Act, 1949, City of Nagpur Corporation Act, 1948 and Maharashtra Municipal Council and Nagarpanchayat Act, 1965 whereby, the system of one Councillor for one ward was restored.

5. By Ordinance No. XXIII of 2011, which was later converted into Maharashtra Act No. XXVII of 2011, the Multi-member Ward System was reintroduced in the Bombay Provincial Municipal Corporation Act, 1949 and in the aforementioned legislations.

6. On 19th May, 2016, an Ordinance was issued amending Section 5(3) of the MMC Act as well as the Maharashtra Municipal Councils, Nagpur Panchayats and Industrial Township Act, 1965, pursuant to which election of 4 Councillors as far as possible, but a minimum of 3

and a maximum of 5 Councillors for each ward of the Corporation was introduced, which came to be challenged by way of Writ Petitions in this Court in Writ Petitions No. 7259, 6496 and 9896 of 2016 (**Kiran Kadam V/s. State of Maharashtra**, (reported in **2019 (2) Mh.L.J.**). However, during the pendency of the said Petition, the said Ordinance came to be replaced by Act IX of 2017 which was also allowed to be challenged pursuant to an amendment to the said Petition.

7. On 20th August 2016, the State Election Commission, pursuant to Article 243-ZA of the Constitution, issued order providing for 3 to 5 Councillors for each Municipal Ward.

8. On 29th September, 2018, this Court decided the matter alongwith connected Writ Petitions holding that the Multi-member constituencies in one ward were not barred by the Constitution of India. **Kiran Kadam V/s. State of Maharashtra**, (supra).

9. By an amendment dated 31st December 2019, under the Maharashtra Act No. XXXVI of 2019, the provision of one Councillor for one Municipal Ward was re-introduced under Section 5 of the M.M.C. Act. By virtue of the said amendment, in respect of the

Municipal Corporations except the Mumbai Municipal Corporation, the system of multi-member ward was reverted back to Single-member Ward. On 25th August, 2021, the State Election Commission issued directions for the implementation of the aforementioned amendment to the various Commissioners of the Municipal Corporations in the State of Maharashtra.

10. It is stated that thereafter by a Cabinet decision in Meeting No.83 of 22nd September 2021, it was decided to again have a Multi-member Ward System.

11. On 30th September 2021, the Government issued Ordinance re-introducing the Multi member Ward System such that each of the wards to elect as far as possible three Councillors, but not less than two and not more than four, and each voter was entitled to cast as many votes as the number of Councillors for each Municipal Ward citing the reason of sharp increase in Covid-19 cases till June 2021, as a result of Covid-19 pandemic, which Ordinance has been replaced by Maharashtra Municipal Corporation Amendment Act No. 1 of 2022 on 17th January, 2022 during pendency of these Petitions which is also impugned by virtue of amendments to these Petitions.

12. The Maharashtra Ordinance with respect to the aforementioned provision is also quoted hereunder :

*“URBAN DEVELOPMENT DEPARTMENT
Mantralaya, Madam Cama Marg, Hutatma Rajguru Chowk,
Mumbai 400 032, dated the 30th September 2021.
MAHARASHTRA ORDINANCE No. IV OF 2021.*

*AN ORDINANCE
further to amend the Maharashtra Municipal Corporations
Act.*

*WHEREAS both Houses of the State Legislature are
not in session ;*

*AND WHEREAS the Governor of Maharashtra is
satisfied that circumstances exist which render it
necessary for him to take immediate action further to
amend the Maharashtra Municipal Corporations Act, for
the purposes hereinafter appearing ;*

*NOW, THEREFORE, in exercise of the powers
conferred by clause (1) of article 213 of the Constitution of
India, the Governor of Maharashtra is hereby pleased to
promulgate Ordinance, namely :-*

*1. (1) This Ordinance may be called the Maharashtra
Municipal Corporations (Amendment) Ordinance, 2021.*

(2) It shall come into force at once.

*2. In section 5 of the Maharashtra Municipal
Corporations Act, in sub-section (3), for the first proviso,
the following proviso shall be substituted, namely :-*

*“Provided that, after the commencement of the
Maharashtra Municipal Corporations (Amendment)
Ordinance, 2021, in respect of the general elections to the
Corporations, each of the wards shall elect as far as
possible three Councillors, but not less than two and not
more than four Councillors, and each voter shall,
notwithstanding anything contained in this Act, be entitled
to cast the same number of votes, as the number of
Councillors to be elected in his ward : ”.*

13. The statement accompanying the said Ordinance is also quoted as under:-

“STATEMENT

As per the existing provisions of the Maharashtra Municipal Corporation Act (LIX of 1949), each ward in the Municipal Corporations elects only one Councillor. While dealing with the health emergency within the areas of Municipal Corporations in the State, arose due to Covid-19 pandemic, it is felt necessary to have multi member ward system in Corporations. After taking the review of such position and with a view to ensure the smooth functioning of the Municipal Corporations, the State Government considers it expedient to suitably amend the provisions of the said Act.

(emphasis supplied)

2. It is proposed to provide that, each of the wards of the Municipal Corporations shall elect as far as possible three Councillors but not less than two Councillors and not more than four Councillors. For that purpose, it is proposed to amend section 5 of the said Act, suitably.
(emphasis supplied)

3. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exist which render it necessary for him to take immediate action further to amend the Maharashtra Municipal Corporations Act (LIX of 1949), for the purposes aforesaid, this Ordinance is promulgated.

Mumbai, BHAGAT SINGH KOSHYARI
Dated the 30th September 2021. Governor of Maharashtra”

14. On 5th October, 2021, the State Election Commission directed the implementation of the aforesaid Ordinance dated 30th September, 2021.

15. Being aggrieved by the said amendment, Petitioners had thereafter requested the Respondents to cancel the impugned Ordinance and to follow the earlier provision of one Councillor for one Municipal Ward.

16. Petitioners have in these Petitions, specifically impugned the Ordinance dated 30th September, 2021 and the Maharashtra Amendment Act No. I of 2022 dated 17th January, 2022 replacing the said Ordinance, which amends the first proviso to Section 5 (3) of the MMC Act, 1949 introducing as far as possible three Councillors but not less than two and not more than four seat panel ward system instead of one seat per ward system.

17. Section 5 of the M.M.C. Act, containing the amended proviso to clause (3) is also usefully quoted as under :-

5. (1) Every Corporation shall, by the name of the "The Municipal Corporation of the City of", be a body corporate and have perpetual succession and a common seal

and by such name may sue and be sued.

[(2) Each Corporation shall consist of,—

(a) such number of councillors, elected directly at ward elections,

as is specified in the table below :—

TABLE

(i)	<i>Above 3 lakhs and upto 6 lakhs.</i>	<i>The minimum number of elected councillors shall be 65. For every additional population of 15,000 above 3 lakhs, one additional councillor shall be provided, so however that the maximum number of elected councillors shall not exceed 85.</i>
(ii)	<i>Above 6 lakhs and upto 12 lakhs.</i>	<i>The minimum number of elected councillors shall be 85. For every additional population of 20,000 above 6 lakhs, one additional Councillor shall be provided, so however that the maximum number of elected Councillors shall not exceed 115.</i>
(iii)	<i>Above 12 lakhs and upto 24 lakhs.</i>	<i>The minimum number of elected councillors shall be 115. For every additional population of 40,000 above 12 lakhs, one additional Councillor shall be provided, so however that the maximum number of elected Councillors shall not exceed 151.</i>
(iv)	<i>Above 24 lakhs and upto 30 lakhs</i>	<i>The minimum number of elected Councilors shall be 151. For every additional population of 50,000 above 24 lakhs, one additional</i>

- (v) *Above 30 lakhs*
- Councillor shall be provided, so however that the maximum number of elected Councillors shall not exceed 161.*
- The minimum number of elected Councillors shall be 161. For every additional population of 1 lakh above 30 lakhs, one additional Councillor shall be provided, so however that the maximum number of elected Councillors shall not exceed 175.*

(b) such number of nominated councillors not exceeding five, having special knowledge or experience in Municipal Administration to be nominated by the Corporation in such manner as may be prescribed.

(3) The State Election Commissioner shall, from time to time, by notification in the Official Gazette, specify for each City the number and boundaries of the wards into which such City shall be divided for the purpose of the ward election of councillor so that as far as practicable, all wards shall be compact areas and the number of persons in each ward according to the latest census figures shall approximately be the same. Each of the wards shall elect only one Councillor; Provided that, after the commencement of the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2016, in respect of the general elections to the Corporation, each of the wards shall elect as far as possible four Councillors but not less than three and not more than five Councillors, and each voter shall, notwithstanding anything contained in this Act, be entitled to cast the same number of votes, as the number of Councillors to be elected in his ward :

Provided further that, no notification issued under sub-section (3), whether before or after the commencement of the Maharashtra Municipal Corporations, Municipal

Councils, Nagar Panchayats and Industrial Townships (Third Amendment) Act, 1995, shall have effect except for the general election held next after the date thereof and for subsequent elections

Provided also that before any notification is issued under sub-section (3), a draft thereof shall be published in the Official Gazette, and in such other manner as in the opinion of the 7 State Election Commissioner is best calculated to bring the information to the notice of all persons likely to be affected thereby, together, with a notice specifying the date on or before which any objections or suggestions will be received, and the date after which the draft will be taken into consideration.”

18. Petitioners submit that the impugned provision is discriminatory and violative of Article 14 of the Constitution, apart from being arbitrary and illegal as it applies only to Municipal Council elections to be held in 2022 but not for the Mumbai Municipal Corporation.

19. Petitioners submit that this Court ought to issue a Writ holding and declaring that the impugned provision is illegal and ultra-vires Constitution of India and Respondent be directed to act as per the earlier provision of one Councillor for one Municipal Ward.

20. Various grounds have been taken to challenge the impugned provision/amendment. However, the challenge is to the constitutionality of the Multi Member Ward System.

21. Opposing the Petitions, Shri. Kumbhakoni, learned Advocate General on behalf of the Respondent State would submit that the issue raised herein fully stands concluded by one decision of the Hon'ble Supreme Court in the case of **Parmar Samant Sinh Umedh Sinh v. State of Gujarat & Ors. along with connected writ petitions ((2021) SCC OnLine SC 138)** and decisions of this Court in **Kiran Kadam v. State of Maharashtra & Ors. (supra), Vinayak Bhiva Bhilare v. State of Maharashtra & Ors. ((2012) (3) Mh.LJ 285)**, and **Ambedkarite Party of India, Nagpur v. State of Maharashtra & Ors. ((2017)(2)Mh.LJ 575)** and as such nothing remains to be decided afresh. He submits that despite the same, Petitioners have still ventured to file these Petitions resulting in wastage of precious judicial time as well as government resources and therefore, the Petitions deserve to be dismissed with exemplary costs.

22. Learned Advocate General also submits that Petitioners have no locus standi nor do the Petitions disclose any cause of action which has arisen for Petitioners and resultantly the same are not maintainable and deserve to be dismissed, in limine.

23. Before proceeding further, it would be apposite to refer to the settled law thus far on the subject.

24. The Hon'ble Supreme Court in the case of **Parmar Samantsinh Umedsinh V/s. State of Gujarat and Others** (supra) had the occasion to consider the constitutionality of a multi-member representation in the Municipal Corporation / Municipality, in Appeal had been filed against the Division Bench judgment of the Gujarat High Court dated 21st of October 2015 dismissing the Writ Petition and upholding the multi-member ward system. In that case, it was argued on behalf of the Appellants with reference to Article 243R and 243S of the Constitution of India that the constitutional scheme does not permit multi-member representation from a ward. It was submitted that Article 243S sub-clause (3) and sub-clause (4) uses the expression "a member and the member" which indicates that from one ward, there can be only one member in the Municipality. It was also submitted that Section 29A of the Gujarat Provincial Municipal Corporations Act, 1949 was inconsistent with Article 243S of the Constitution. That Article 243R does not contemplate / mandate a multi-member ward.

25. In that case, the challenge was to the vires of Section 5 (3) (iii) (a) and Section 29A of the 1949 Act and other statutory provisions including rules framed thereunder and the notifications.

26. It was argued there that in the case of Lok Sabha, it is the rule of election that one Member of Parliament is to be from one unit of representation i.e. from one constituency. Similarly, in the case of Vidhan Sabha only one member is to be elected from one constituency. It was submitted that Article 243S of the Constitution mandates that only one member to be elected from one ward and it does not allow for more than one member to be elected from the same ward and the impugned provisions and notifications are in contravention of this cardinal Constitutional principle enshrined in Article 243S of the Constitution. It was, therefore, submitted that the election to a Municipal Corporation ought to be conducted in the same manner as State Legislative Assembly wherein different constituencies are represented by one Member and no more. That Article 243R cannot be interpreted to give wide, unguided and uncontrolled powers to the State Legislature ignoring other Constitutional provisions enshrined in the Constitution of India. The State Legislature is empowered to make laws with regard to representation in a Municipality and also

composition and territorial area of Wards Committees and the manner in which the seats are to be filled. In the exercise of its legislative powers, the State Legislature cannot make laws violative of the Constitutional principles and mandate. That, there has to be thematic consistency while interpreting the provisions of Part IXA of the Constitution. It was submitted that the thematic flow of the Constitution is of election of only one member from one ward constituency/unit of representation. Multi-member representation from a ward is against the principle of empowerment of the down-trodden and women. One member ward enables exclusive representation of the women/other backward classes/Scheduled Castes/Scheduled Tribes resulting therein empowerment which cannot be achieved by a multi-member Ward. A holistic schematic interpretation of the Constitution has to be advanced and the words occurring in the Constitution should be read in their ordinary, natural and grammatical meaning. The wordings of the impugned Sections mean adding words to the plain language and intent to Article 243S(4) of the Constitution of India.

27. The Hon'ble Supreme Court therein considered the following questions :

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

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

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

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

28. Answering the aforesaid questions, the Hon'ble Supreme Court in paragraph 59 of the said decision observed that after analyzing the provisions of Article 243R, 243S they have come to a definite conclusion that no limitation in Article 243S can be found which contains any prohibition of having more than one member for a Ward.

In paragraph 61 also, applying the principles of interpretation of the Constitutional provisions as contained in the decision in the case of **Chief Justice of Andhra Pradesh V/s. L.V.A. Dixitulu, ((1979) 2 SCC 34)** they have observed that when the State Legislature has been given preliminary power of legislation with regard to composition of the Municipalities, there has to be express or implied limitation, which may prohibit the State Legislature to make a law providing for multi-member Ward. In paragraph 63, after analyzing the relevant provisions of Part IXA of the Constitution, the Hon'ble Supreme Court came to the conclusion that there was no prohibition or limitation in Part IXA of the Constitution prohibiting the State Legislature from making a law providing for election of more than one member from one territorial constituency i.e. Ward.

29. The Hon'ble Supreme Court in paragraph 64 accordingly answered Questions no. 1 and 2 in the following manner:

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

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

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

Question no.3 with reference to the Gujarat provisions, the Hon'ble Supreme Court while referring to Article 243 of the Constitution in respect of reservation of seats, observed in paragraph 70 that "Having more than one representation from a Ward in no manner negates the empowerment of weaker sections rather it increases the empowerment of weaker sections".

30. Since Question no.4 is not relevant to the discussion in this matter, it would not be necessary to refer to the discussion in that regard except to say that the Hon'ble Supreme Court held that there was no illegality in issuing the notification dated 4th December, 2014 as the same was not in reference to the notification dated 27th November, 2014 which was on an entirely different subject.

31. The Hon'ble Supreme Court found that the provisions of Section 5(3)(iii)(a) and Section 29A of the 1949 Act and Rules 4 and 5 of the Rules, 1994 and Rule 2 (b) of Rules, 2007 were not ultra vires to Part IXA of the Constitution and that the Division Bench of the High Court did not commit any error in dismissing the Writ Petition filed by the Appellants.

32. Paragraphs 11, 12, 13, 21, 49, 59, 61 and 63 to 66 of the said decision are relevant and are quoted as under:

“11. Shri Kapil Sibal has led the arguments on behalf of the appellants in the first matter. Referring to provisions of Article 243R and 243S of the Constitution of India, Shri Sibal submits that the constitutional scheme does not permit multi member representation from a Ward in the Municipal Corporation/Municipality. Shri Sibal submits that Article 243S sub-clause (3) and sub-clause (4) uses expression “a member and the member”, which indicates that from one Ward there can only be one member in the Municipality. Similarly, Section 29A sub-clause 2 of the Act, 1949 is inconsistent with Article 243S of the Constitution. He submits that Article 243R does not contemplate/mandate a multi member Ward.

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

13. Shri Sibal submits that there has to be thematic consistency while interpreting the provisions of Part IXA of the Constitution. The thematic flow of the Constitution is of election of only one member from one Ward constituency/unit of representation. Multi member representation from a Ward is against the principle of empowerment of down-trodden and woman. One member Ward enables exclusive representation of the women/other backward classes/Scheduled Castes/Scheduled Tribes resulting therein empowerment which cannot be achieved by a multi member Ward. Shri Sibal further submits that a holistic schematic interpretation of the Constitution has to be advanced. Shri Sibal submits that words occurring in the Constitution should be read in their ordinary, natural and grammatical meaning. Wordings of Article 243S(4) would mean adding words to the plain language and intent to Article 243S(4) of the Constitution of India.

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

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

“243ZA Elections to the Municipalities—

XXXXXXXXXXXXXXXXXXXX

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

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

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

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

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

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

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

65. Question No. 3

The submission of Shri Sibal is that having more than one representative from a Ward negates the very concept of empowerment of weaker sections, i.e., women, Scheduled Castes and Scheduled Tribes. He submits that when there is only one member from a Ward and if the Ward is reserved for women, Scheduled Castes and Scheduled Tribes, it is empowerment of women, Scheduled Caste and Scheduled Tribes and if there are 4 members in a Ward, women, Scheduled Castes and Scheduled Tribes shall not be able to effectively espouse the cause of weaker sections. The Statement of Objects and Reasons of the Bill No. 159 of 1991 which was introduced in the Lok Sabha for inserting Part IX in the Constitution, in paragraph 2 stated:

“2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution particularly for-

(i) putting on a former footing the relationship between the State Government and the Urban Local Bodies with respect to-

(a) the functions and taxation powers; and

(b) arrangements for revenue sharing;

(ii) ensuring regular conduct of elections;

(iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representations for the weaker sections like Scheduled Castes, Scheduled Tribes and women.”

66. Article 243T of the Constitution of India included in Part IXA, provides for reservation of seats. The provision in the Constitution for providing reservation of seats is a provision for empowering the women, Scheduled Castes and Scheduled Tribes. The Gujarat Delimitation of Wards and Allocation of Reserved Seats in Municipal Borough Rules, 1994 has been

amended by Amendment Rules, 2015. Clauses 2 and 3 of which provide as follows:

“2. In the Delimitation of Wards and allocation of Reserved Seats in Municipal Borough Rules, 1994 (hereinafter referred to the “the said rules”), in rule 4, for the word “three”, the word “four” shall be substituted.

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

“5.(1) In each Ward two seats shall be reserved for women (including seats to be reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes) and the remaining seats shall be allocated taking into consideration the requirement of reservation as provided under Section 6 of the said Act.

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

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

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

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

33. The challenge in this Petition and in the case of **Kiran Kadam V/s. State of Maharashtra and others** (supra) was similar, as the election of multiple councillors leading to a multi-member ward system in place of a single councillor to represent a ward was under challenge.

The challenge there was the Amendment Act which came into force on 12th January, 2017 whereby, the impugned proviso to Section 5(3) was inserted permitting the election of four councillors as far as possible, but not less than three and not more than five councillors in the general election to the Corporation.

34. The said Writ Petition also took exception to the State Government being conferred with the power to introduce two different election systems for the Municipal area under all the Municipal Acts and in particular to the Bombay Provincial Municipal Corporations Act, 1949 on the ground that the same violated Article 14 of the Constitution.

35. After considering all the arguments and various judicial pronouncements including the decision of the Hon'ble Supreme Court in the case of **Parmar Samantsingh Umedsinh V/s. State of Gujarat and Others as well as other cases**, this Court was of the definite opinion that the issue raised in the said Petition was no more *res integra* and in paragraph 19, it was observed that the power to prescribe a multi-member constituency in a ward was conferred on the Legislature in exercise of the legislative power contained in Entry

5 – List II of the Constitution and specifically when there was no bar or an embargo created to provide for multi-member ward in a constituency. It was observed that the said provision in no manner defeated the basic feature of the Constitution.

36. Paragraphs 11 to 19, 21 to 26 and 28 to 30 of the decision of the Division Bench of this Court (Nagpur Bench) in the case of **Kiran Kadam V/s. State of Maharashtra and others** (supra) are relevant and are quoted as under:

“11. By the said Amendment Act, the provisions of the Maharashtra Municipal Corporations Act are sought to be amended. The challenge is posed to the amendment by which the election of multiple councillors has been introduced in the enactment, leading to a multi-member ward system in place of a single councillor to represent a ward as was in existence in the earlier provision. The Maharashtra Provincial Municipal Corporation's Act, 1949 provides for establishment of Municipal Corporation for all larger areas except that of Brihan Mumbai in the State of Maharashtra, so as to ensure better municipal governance. The Amendment Act, 2017 seeks to amend section 5 of the said Enactment and in particular, sub-section (3). Section 5 provides for Constitution of Corporation and also provides for its composition. Sub-section (3) of section 5 confers a power on the State Election Commissioner to specify for each city the number and boundaries of the ward into which cities shall be divided for the purpose of election of councillors so that so far as practicable, all wards shall be compact areas and the number of persons in each ward according to the latest census figure shall approximately be the same. It provides for election of one councilor for each ward. By the Amendment Act of 2017, a proviso has been inserted in sub-section (3) of section 5 to the following effect:

“Provided that, after the commencement of the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships (Amendment) Act, 2016 in respect of the general elections to the Corporation, each of the wards shall elect as far as possible four Councillors but not less than three and not more than five Councillors, and each voter shall, notwithstanding anything contained in this Act, be entitled to cast the same number of votes, as the number of Councillors to be elected in his ward”

A similar amendment has been effected in the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and a proviso has been inserted to sub-section (2) of section 10 which has the effect of providing for election of, as far as possible of two councillors, but not more than three councillors after the commencement of the Amendment Act, 2016 in respect of General Elections to the council. Similarly, every voter has been held to be entitled to cast the same number of votes as the number of councillors to be elected in this ward. The amendment reads thus:

5. In section 10 of the Municipal Councils Act, to sub-section (2), the following proviso shall be added, namely:

“Provided that, after the commencement of the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Amendment Act, 2016 in respect of the General elections to the Council, each of the wards shall elect as far as possible two Councillors but not more than three Councillors, and each voter shall, notwithstanding anything contained in sub-section (2) of section 14 be entitled to cast the same number of votes, as the number of Councillors to be elected in his ward”

Another amendment which has been introduced in the Act of 1965 by Amendment Act of 2016, is insertion of section 51A-1A which introduces a provision for direct election of President and reads thus:

51A-1A (1)

After the date of commencement of the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships, (Amendment) Act, 2016 in respect of the General elections to the Council, subject

to the provisions of section 511-A, every Council shall have a President who shall be elected by the persons whose names are included in the municipal voters list prepared under section 11”

12. The grievance of the petitioner revolves around the afore-said amendments, first one relating to the introduction of multi-member ward system introduced in the Maharashtra Municipal Corporations Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and also to the provision of direct election of President introduced in the Act of 1965. We would first deal with the amendment in relation to the multi-member ward system as introduced in the two Enactments by the impugned amending Act. The Maharashtra Municipal Corporations Act which extends to the areas to the Municipal Corporation constituted or deemed to be constituted under the Act defines the term “Corporation” in section 2(10) to mean the municipal corporation constituted or deemed to have been constituted for a larger urban area known as ‘city’. The term ‘Councilor’ is defined in section 2(11) to mean a person duly elected as a member of the Corporation and includes a nominated councilor. Section 5 of the said Act provides for Constitution of the Corporation which would be a body corporate having perpetual succession and a common seal and which can sue and be sued. Sub-section (2) of section 5 provides that each Corporation shall consist of such number of councillors elected directly at Ward elections as specified in the table enumerated in the said section. What is apparent from the said sub-section is that number of councillors are fixed by taking into consideration the population of a particular corporation and different slabs have been provided. For a population about 3 lakhs and upto 6 lakhs, minimum number of elected councillors is slated to be ‘65’ and for every additional population of 15,000 above 3 lakhs, one additional councilor is provided, with a cap on the maximum number of elected councilor not to exceed ‘85’. For a population above 6 lakhs and upto 12 lakhs in a particular corporation, the minimum number of elected councillors is fixed at ‘85’ and for additional population, a similar addition is permissible with a maximum ceiling of 115. Accordingly, the number of councillors which would compose the corporation has been set out in the said section and the said councillors are to be

elected directly at ward elections. As per the scheme of section 5, which can be discerned from sub-section (3), each city would be divided into wards for the purposes of the election of the councilor and this would be done by the State Election Commissioner by Notification in the Official Gazette who would specify for each city the number and boundaries of the ward and it is to be fixed in such a manner so that all wards, as far as practicable, shall be compact areas and the number of persons in each ward shall be approximately the same. The figures of the latest census would be the basis of calculating the population and from each ward, one councilor is to be elected. The precise submission of the learned counsel for the petitioner is that the whole mechanism which finds place in the said section prior to its amendment is completely demolished by the introduction of the amendment. It is the submission of Shri Ambedkar that a city is divided into wards and it permits election of one councilor from each ward and the number of wards in the city is already determined by sub-section (2), which has a direct nexus with the population of the said city and each ward would be represented by one councilor. His specific submission is that without touching the said theme of 'One ward, One councilor' a proviso has been inserted which results in wiping out the provision of sub-section (2) and sub-section (3) and partakes the form of a substantive provision by the Amendment Act 2016 and now, in respect of general elections of the Corporation, each of the ward is to elect as far as possible four councillors, but not less than three and not more than five. He would submit that this is in total contrast to Article 243R contained in Part IX-A of the Constitution. The said argument of the learned counsel along with his submission that the said amendment defeats the whole spirit of introduction of Part IX-A in the Constitution, needs to be tested.

13. By Constitution (Seventy-third and Seventy-Fourth Amendment) Act of 1992, Part IX-A was introduced in the Constitution as it stands in the present form of Panchayats and Municipalities. Perusal of the statement of objects and reasons of the 73rd Amendment, would reveal that they have been introduced as institutions of self governance at the grass root level. Panchayats came to be introduced as institution of self government within the territorial area of panchayat

whereas the municipalities came to be introduced as institution of self government in the metropolitan area having a population of 10 lakhs or more, comprised in one or more districts and consisting of two or more municipalities or panchayats specified to be metropolitan area. Perusal of Chapter IX-A introduced in the Constitution would reveal that Article 243-Q provides for Constitution of Municipalities. It provides for Constitution in every state of Nagar Panchayats for transitional area i.e. an area in transition from rural area to urban area; a municipal council for smaller urban area and a municipal corporation for larger urban area.

In terms of Article 243-T in every Municipality, seats are to be reserved for Scheduled Tribes and the number of seats so reserved is directed to 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 Scheduled Castes in the municipal area or 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. The said Article then contains a provision for reservation of seats for women and not less than one-third seat from those reserved for Scheduled Caste and Scheduled Tribe are directed to be reserved for women. The said Article also provides for reservation of the offices of the Chair Persons in the municipalities in favour of Scheduled Caste, Scheduled Tribe and women in such manner as the Legislature of a State may provide for, by a law. The said reservation of seats and the reservation of offices of the Chairman is provided to cease to have effect on expiration of the period specified in Article 334. 243-U then provides for duration of municipalities and 243-W permits the State Legislature to enact a law so as to endow such power authority and responsibility on the municipality as is necessary for them to function as institution of self governance which would specifically relate to planning for its economic development, ensuring social justice and all other matters which are enumerated in Schedule 12. Article 243-X and 243-Y contains power in relation to finances. Another important provision contained in the said part is Article 243-ZF which provides that any provision of any law, relating to municipalities in force in a State immediately prior to the com-

mencement of the Constitution (74th Amendment) 1992 which is inconsistent with Part IX-A shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until expiration of such commencement, whichever is earlier.

14. Perusal of Part-IXA of the Constitution would reveal that the municipalities have been created by the Constitution (74th Amendment) Act of 1992 as institutions of local self governance. The said chapter was introduced in the Constitution to give effect to one of the directive principles of State Policy enshrined in Article 40 which makes it imperative for the State to take steps to organize village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self governance. Perusal of section 243-W would reveal that by the Constitution itself, legislature of the State has been empowered to endow on the municipalities such power and authority as may be necessary to enable them to function as institution of self government, subject to the provisions of the Constitution. The legislature of a State may thus clothe the municipality with the necessary powers and authority to function as institutions of self government and which would include the powers of preparation of plans for economic development and social justice and also performance of the functions and implementations of the scheme which may be entrusted to them, including those enlisted under Schedule 12 of the Constitution which enlist several heads in relation to which the legislature may confer the powers on the municipalities. On perusal of the scheme as ingrained in Part-IXA of the Constitution, it is clear that it provides for constitution of municipalities in either of its form i.e. Nagar Panchayats, a municipal council or a municipal corporation and it provides for its composition. It also provides for its duration. As far as its powers and authorities are concerned, Part-IXA do not enlist them but empowers the legislature of the State to endow upon the municipality such powers and authorities as are necessary, by a law and also touching the subjects which are enumerated in 12th Schedule of the Constitution.

Thus, the argument of the learned counsel for the petitioner Shri Ambedkar to the effect that the powers have to be enu-

merated in Part IXA and a State legislature cannot legislate in relation of municipalities after the 74th Amendment, is wholly misconceived. It is the constitution which itself empowers the State Legislature to provide for the necessary details to make the municipalities functional and that is why in this chapter, it would be noted that the legislature of the State is empowered to make a law and to make a provision for representation in the municipalities under Article 243-R, as well as for composition and the territorial area of wards committee under Article 243-S. Further, by virtue of Article 243-W, the legislature of a State is empowered to endow the municipalities with such power and authority as may be necessary to enable them to function as institutions of self government. An authority is also conferred on the municipality to levy, collect and appropriate taxes, duties, tolls and fees by the State legislature under Article 243-X. Thus, the Constitution has authorized the legislature of a State to make a law so as to make the municipalities functional and also clothe them with powers. This power has to be exercised subject to the provisions of the Constitution and has to necessarily fall in line with Chapter IX-A and keep in mind that the municipalities are aimed to function as institution of local self governance. The legislature thus being empowered to make a law in relation to the municipalities, it cannot be said that it is denuded of its power in view of inclusion of the Municipalities in Part-IXA in the Constitution.

15. Perusal of Article 243-ZA which deals with “Election to the Municipalities” vests the power of superintendence and conduct of all elections to the Municipalities in the State Election Commission constituted in Article 243-K. However, by virtue of sub-clause (2) of Article 243-ZA, the legislature of a State is empowered to make a provision with respect to all matters relating in connection with the municipalities, by making a law. Thus, the intention of the Constitution is not to deprive the legislature of its role to be played in the election of the Municipalities but it continues to retain the power with the State Legislature to make a law with respect to all the matters relating to, or in connection with the Municipalities, although the Superintendence, direction and control of the preparation of electoral rolls for conduct of elections to Municipalities continue to vests in the State Election Commission.

In this backdrop, Article 243-R and Article 243-T will have to be viewed. Both the said Articles need a reproduction:

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

(2) The Legislature of a State may, by law, provide—

(a) for the representation in a Municipality of

(i) persons having special knowledge or experience in Municipal administration;

(ii) The members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the Members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243-S.

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

243-T 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 an 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.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class.

16. The manner of reservation in the municipality and the number of seats to be reserved is contemplated by Article 243-T of the Constitution and the mandate is imposed to reserve not less than $\frac{1}{3}$ rd of total number of seats for women belonging to Scheduled Caste or Scheduled Tribes. The said Article, however, in no way suggests what has been attempted to be suggested by the counsel for the petitioner. Article 243-R which provides for composition of municipalities provides that all the seats in the municipality shall be filled in by persons chosen by direct election from the territorial constituencies in the municipal area and for this purpose, each municipal area shall be divided into territorial constituencies to be known as Wards. This provision is subject to a provision which empowers the State legislature to provide for representation in a municipality and the manner of election of chairperson of the municipality. Article 243-T also does not contain anything to suggest that it is only one single member who is to be elected from an area which is marked as 'ward' and it is this person who is chosen by direct election from the territorial constituency in the municipal area would be representative of the said constituency.

The submission of the learned counsel to derive an analogy from Article 80 in relation to the composition of house of people cannot be made applicable in case of municipality and that is not even the intention of the constitution makers, for had it been so, it would have specifically made a provision to that ef-

fect. What is only a necessary concomitant which flows from Article 243-R is that all the seats in the municipality shall be filled by persons chosen by direct election from the territorial constituencies in the municipal area and for the said purposes, each municipal area is to be divided into territorial constituencies to be known as 'wards'. However, it does not provide that only one member should be elected from one territorial constituency known as 'ward'. Thus, there is no constitutional bar for providing for multiple members to be elected from one ward.

When there is no prohibition imposed in the Constitution, to the above effect, then, the question remains is whether the legislature of the State is empowered to provide for a multi-member ward.

17. By the impugned amendment, as contained in Act No. IX of 2017, the provision for single member from each ward have been shifted to multiple members from the same ward and this is what has been objected to by the petitioner. Perusal of the statement of objects and reasons introducing the said amendment would reveal that the said provision has been introduced in view of the fact that election of one councilor from one ward, facilitates manipulation because of very small base and number of electorate and that it was proposed to provide for multi member ward which would provide for a wider base and reduce the chances of manipulation. This system was introduced on the earlier occasion by an Amendment Act of 26 of 2011, which inter alia amended section 5 of the Bombay Provincial Municipal Corporations Act, 1949 and section 10 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and it introduced a provision for election of multiple councillors from each ward. The said amendment was subject matter of challenge in Writ Petition No. 10354 of 2011 before this Court and the Division Bench of this Court after consideration of the scheme of Article 243-R and also after due consideration of the judgment sought to be relied upon by Dr. Ambedkar in case of R.C. Poudyal v. Union of India, 1994 Supp (1) SCC 324 : AIR 1993 SC 1807 concluded that no question of separate electorate arise in the case merely because of creation of multi-member ward. By making reference to entry 5 of list II of the Constitution, which empowers the State legislature to legislate in respect of the Constitution

and powers of Municipal corporation and other local authorities for the purpose of local self government or village administration, this Court had turned down the challenge on the basis of the earlier judgment of this Court in Rajkumar s/o Marotrao Patait v. State of Maharashtra in Writ Petition No. 4855/2011 decided on 23-8-2011. The Division Bench in the judgment of Rajkumar (supra) was dealing with a challenge to Ordinance No. XIII of 2011 promulgated by Government of Maharashtra, Urban Development Department, which sought to amend and incorporate the provisions of multi-member constituencies in the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, City of Nagpur Corporation Act, 1948 and Bombay Provincial Municipal Corporations Act, 1949. The Division Bench by referring to Article 243-R of the Constitution negated the challenge by a specific observation that there is nothing in the Constitution to prohibit the multi-member constituency. The Hon'ble Division Bench observed thus:

“Perusal of Clause (1) of Article 243-R of the Constitution would reveal that what has been provided under the said Article is that all the seats in a Municipality shall be filled by persons chosen by direct election. These elections are required to be from the territorial constituencies in the Municipal area. It further provides that for this purpose, each Municipal area shall be divided into territorial constituencies to be known as wards. It can be seen what is provided under the Constitution is that a Municipal area has to be divided into territorial constituencies and all the seats in the Municipality are required to be filled by persons chosen by direct election. There is nothing in the Constitution which prohibits a multiple member constituency. In that view of the matter, we do not find any substance in the contentions of the petitioner in that regard.

Insofar as the contention regarding sub-section (2) of section 14 of the Act is concerned, sub-section (2) of section 10 of the Act, which is sought to be incorporated by way of amendment itself provides that notwithstanding anything contained in sub-section (2) of section 14, a person would be entitled to cast the same number of votes, as the number of councillors to be elected in his ward. The intent of the Legislature is, thus, clear that it intends to supersede the provisions of sub-section (2) of

section 14 by specifically incorporating the provision in that regard of sub-section (2) of section 10 of the Act.

By now, it is a settled principle of law that the statement of object and reasons of the particular enactment can be taken into consideration for interpreting the said enactment. The perusal of SOR would reveal that the Legislature has decided to incorporate 50% reservation for women and for the said purpose, it is felt necessary that the constituencies should be multi member constituencies. We, therefore, find that the amendment is in furtherance of the legislative intent of providing 50% reservation to the women”.

18. Lately, an Ordinance IX of 2016 which was promulgated on 19th May, 2016 and which has been replaced by the impugned Act IX of 2017 itself was assailed by the Ambedkarite Party of India through its authorized general secretary by invoking the writ jurisdiction of this Court at Nagpur Bench. By the said Ordinance, the amendments have been effected in the Maharashtra Municipal Corporations Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The amendment, inter alia, provided that as far as municipal corporation is concerned, each of the wards shall elect, as far as possible four councillors, but not less than three and not more than five councillors. It also further provided that each voter would be entitled to cast the same number of votes as the number of councillors to be elected in the ward. While dealing with the said challenge, the Hon'ble Division Bench (B.R. Gavai and V.M. Deshpande, JJ) referred to the constituent assembly debates and also made extensive reference to the judgment of the Hon'ble Apex Court in case of R.C. Poudyal v. Union of India (supra) and concluded thus:

8. No doubt that the arguments advanced by the learned counsel for the petitioner appears to be attractive at the first blush. Nobody would deny that the Indian Constitution recognizes Secularism to be one of the basic concepts of it. With the development of law by Their Lordships of Hon'ble Supreme Court and various High Court, it cannot be denied that Secularism will have to be construed to be a basic structure of the Constitution of India. However, the question that would be required to be considered is as to whether the impugned Ordinance attacks the concept of Secularism or not.

9. Another argument of the learned counsel regarding the concept of One Man One Vote and One Value' also finds place in the Indian constitution. Learned counsel is right in relying upon various speeches of Dr. B.R. Ambedkar as well as other eminent members of the Constituent Assembly wherein they have stated that the Indian constitution promises political democracies by adopting principle of One Man One Vote and One value. However, again question would be as to whether the Multi Member Ward system attacks the said principle or not.

10. Insofar as the first submission is concerned, we are unable to understand as to how the Multi Member Ward System would attack the concept of Secularism. The concept of Secularism could be said to have been attacked, if there was any communal reservation provided in the Constituencies. What would not be permissible by the concept of Secularism is reservation for a particular community professing a particular religion. Same would not be at all permissible under our Constitutional Scheme. However, none of the provisions of the impugned Ordinance would show that any attempt is made in that regard. Needless to state that all the eligible candidates professing any religion would be entitled to contest elections provided that they are otherwise eligible for contesting elections and insofar as the Constituencies which are reserved for various categories are concerned, they belong to that category. Equally the person belonging to any religion would be entitled to cast vote for any candidate though he may be belonging to different religion or community".

In light of the aforesaid authoritative judicial pronouncements, testing the validity of a provision, sought to be introduced either by way of an ordinance or an enactment, prescribing multi-member constituency in a ward and upholding a provision prescribing the same, we are of the definite opinion that the said issue as raised by the petitioner, is no more res integra and we have also cited the reasons in the above paragraphs to disagree with the arguments of the learned counsel for the petitioner Dr. Ambedkar.

19. On a conjoint reading of the Articles which we had referred to in the above paragraphs as contained in Part-IXA of the Constitution, the necessary consequence which follows is apparent i.e. the power is conferred on the legislature to make a

law in exercise of the legislative power contained in entry 5 list II of the Constitution and specifically when there is no bar or an embargo created to provide for multi-member ward in a constituency, we do not see how it defeats the basic feature of the constitution as has been attempted to be canvassed by Dr. Ambedkar. If the legislature was empowered to legislate within its legislative field, it cannot be said that the power has been exercised without being conferred on it. Once such power is to be traced to the State legislature, then, unless and until it is found to be ultra vires the Constitution or in utter violation of Chapter III of the Constitution, it cannot be called in question and the petitioner has not been able to demonstrate before us that there has been any violation of the fundamental rights. The argument of the learned counsel that there is no legislative competency, cannot be accepted since the power of the legislature is clearly traced to entry 5 list II of the Constitution which reads thus:

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

The constitutional provisions thus, do not prohibit multi-member wards and as already noted, the State Legislature is competent to make laws with respect to the election to the municipalities and therefore, when such a law is made, it cannot be termed as ultra vires the constitution. The State legislature neither lacks the competence nor the constitutional provision either Article 243-R or 243-S creates any impediment in exercise of the said power by the State legislature. Once the competence of the legislature is not in doubt in view of the legislative field entrusted to it, we do not find substance in the argument of learned counsel Shri Ambedkar that the amending Act providing for multimember wards suffers from any vires, qua the constitution...

21. The petitioner's counsel argued with some vehemence that the impugned amendment would negate the mandate of Article 243-T of the Constitution of India. We have already discussed the scope and ambit of Article 243-R, 243-T as well as 243-Q in the above paragraphs. In the instant case, the seats

in the Municipality have to be filled in by person chosen by direct election from the territorial constituencies in the Municipal area and for this purpose, each Municipal area shall be divided into territorial constituencies to be known as wards. The seats in the Municipalities denote the number of representatives of the territorial constituencies, known as wards, and for the purposes of reservation in terms of Article 243-T, seats shall be reserved for the Scheduled Castes and 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 by that Municipality as the population of the Scheduled Castes in the Municipal area or 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 the Municipality. Thereafter, by clauses (2) and (3), the reservation as contemplated by clause (1) is extended to women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes. By clause (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. Similar is the position with regard to offices of Chairpersons in the Municipalities and there is also reservation carved out in respect of Backward Class citizens by clause (6) of Article 243-T.

We are, therefore, unable to understand the argument of Dr. Prakash Ambedkar appearing for the petitioner that by the impugned amendments, the reservation for women has got clogged between other reservations in the same ward. There is no exclusivity then to such reservation of women. Hence, the mandate of Article 15(3) of the Constitution of India is violated, is his contention. We are unable to appreciate this argument for more than one reason. Article 15(3) enables the State to make a special provision for women and children. Despite what is set out in clause (1) of Article 15, the State is not prevented from making such special provision. If despite prohibition of discrimination, the State can make law as above and in terms of clauses (3), (4) and (5) of Article 15 or further

clauses, then, these independent enabling provisions in fact guarantee representation to women and Backward Class so also downtrodden sections of the society in the affairs of local bodies. There is no question of any sandwiching of the reservation of women between other reservations in the same ward. Quite to the contrary, in a multi member ward, it can so happen that a women can contest the election if there is a reservation carved out for women and equally a Backward Class women will also be able to contest the election if there is a reservation in favour of a Backward Class women. Likewise, even if seats are reserved for Scheduled Castes and Scheduled Tribes, still, a woman can be a candidate in a general seat. For illustration, if in multi member constituency, some seats are reserved, still, as against a general or open seat, a woman can be nominated. Equally, a candidate belonging to Scheduled Caste, Scheduled Tribe or Other Backward Class category can contest a general seat.

In the case of Digambarrao Bindu v. Devrao Kamble, (1958) Vol. 60 BLR 1065 a Division Bench of this Court held that the reservation of seats for the Scheduled Castes does not mean that if there is a two member constituency and one seat is reserved for the Scheduled Caste, only one member of the Scheduled Caste can be elected. Reservation means at least one member should be elected.

It is not Dr. Ambedkar's argument that earlier the territorial constituency/ward was reserved for the above sections of the society and that posed no problem because there were single member wards, but now having made them multi member and providing reservation of seats and not territorial constituencies, would result in a situation of all reservations being sandwiched. Even there, the answer provided by Digambarrao (supra) will come into play. Reservation means, in the event one seat is reserved for the Scheduled Caste necessarily does not result in only one member of the Scheduled Caste getting elected. It only means that at least one member should be elected. There is nothing in law to prevent both the seats being held by member of the Scheduled Caste if the electors voting for two such members in a two member constituency. The argument of Dr. Ambedkar is premised on the fact that the amendments replacing the system of election of single Councilor from a ward by the system of multi member wards hav-

ing been introduced, by itself and without anything more results in such sandwiching. That argument overlooks the prescription by the proviso and which says that after the commencement of the Maharashtra Municipal Corporations and the Maharashtra Municipal Councils and Nagar Panchayat and Industrial Township Amendment Act, 2016 in respect of the general elections to the Council, each of the wards shall elect as far as possible two Councilors, but not more than three Councilors and each voter, notwithstanding anything contained in sub-section (2) of section 14, would be entitled to cast same number of votes as the number of Councilors to be elected in his ward. This position has now been altered by the Amendment Act of 2017, which introduced a proviso to sub-section (3) of section 5, which says that each of the wards shall elect as far as possible four Councilors, but not less than three and not more than five. The words "as far as possible" have been completely ignored in making the above arguments. Secondly, there is nothing in law to prevent, even when there is a multi member ward, a general seat being held by members of the Scheduled Caste and equally women belonging to Scheduled Caste/Scheduled Tribe or woman as such because the electors or voters have that much choice. It only means that the seats reserved for the Scheduled Caste should be held by a Scheduled Caste candidate. That does not prevent a Scheduled Caste from contesting a general seat and likewise would be the position for a woman. These submissions are founded on a presumption. There are no pleadings of violation of the mandate of any law, much less the Constitution of India. There are no particulars provided either and of specific instances of discrimination. In all such matters, when a provision of the law or the law itself is challenged as discriminatory, it is incumbent upon the petitioner to specifically plead how the provision has resulted in discrimination or would result in discrimination in the event construed otherwise. We do not have any such pleadings nor we have specific instances or cases of sandwiching of reservation. We cannot presume that women would be discriminated or that the reservation guaranteed to the women belonging to Scheduled Castes, Scheduled Tribes or Backward Classes or citizens is nullified in a multi member ward. Such a broad and sweeping argument, as is canvassed, cannot be accepted. It would be always open for the aggrieved persons to

challenge the elections in the event the provisions of law result in discrimination or denial of the benefit of reservation altogether. That aspect will have to be looked into in the facts of such a peculiar case. We cannot strike down any legislation only on the premise as noted above.

22. The Hon'ble Apex Court had an occasion to deal with an issue revolving around an election to the House of People from a double member constituency and the Constitution Bench in case of V.V. Giri v. Suri Dora, AIR 1959 SC 1318 had held as back as in the year 1959 that once it was realized that the election was from the constituency as a whole, and not by a reference to two separate and distinct seats, there should be no difficulty in accepting the view taken by the Returning Officer when a Scheduled Caste candidate was declared to have been duly elected against a general seat. The peculiar facts which were involved in the petition revolved around an election to the parliamentary constituency of Parvati Puram in State of Andhra Pradesh which was a double member constituency; one seat reserved for Scheduled Tribe and other for general. In the general election to the House of People held in 1957, four candidates had been nominated from the said constituency, two candidates were adopted by the Congress party and two were the candidates of the socialist party. When the results of the election were disclosed, the respondent No. 2 was elected to fill the reserved seat since he secured highest number of votes and was a Scheduled Caste candidate. The dispute raised by the appellant was in respect of the second seat which was an open seat. Pursuant to the declaration of election of the respondent No. 2 to fill the reserved seat, the respondent No. 1 was declared elected to fill the general seat though he had offered himself as a candidate for reserved seat. Taking exception to this action, the appellant filed an Election Petition challenging the validity of respondent Nos. 1's election. The thrust of the challenge was that respondent No. 1 had offered himself as a candidate for reserved seat and therefore, he was not entitled to be elected to a general seat. His alternative submission was also that he was not a member of the Scheduled Tribe at the material time, so the declaration made by him was false. The respondent No. 1 disputed the validity of the contention by making a submission that reservation of

seats is intended as an additional special concession to the Scheduled Caste or Tribe, which do not affect the right of the member of the said caste or tribes in claim along with other citizens of the country, the right to be elected to the general seat. The respondent No. 1 did not concede that he contested the election solely for the reserved seat. The Election Tribunal upheld the appellant's contention and allowed his election petition with costs. On appeal to the high Court, the respondent No. 1 succeeded and the findings of the Tribunal and the declaration came to be reversed. That is how by way of Special Leave Petition, the matter came before the Hon'ble Apex Court.

The Hon'ble Apex Court framed a question to the following effect:

“What then is the true constitution and legal position with regard to the election to the House of People from a double member constituency where one seat is reserved for the members of the Scheduled Tribe or Caste”

In search of an answer to the said question, Their Lordships referred to the relevant articles of the constitution including Article 325 which provided for one general electoral roll for every territorial constituency for election to the house of parliament. It also makes a reference to Article 326 which provides for adult suffrage. It then makes a reference to Article 81(1) in relation to the composition of house of people and it also makes reference to the provisions of the Representation of Peoples Act. Their Lordships on consideration of the entire scheme records thus:

“Thus, it is clear that election to the House of the People even from a double-member constituency where one seat is reserved for the members of the scheduled tribes is one, and though the Constitution shows just anxiety to afford necessary protection to the members of the scheduled tribes, it deliberately refused to adopt the system of separate electorates. The constituency is one and election is held to the said constituency from one joint electoral roll prepared on the basis of qualifications which are of general and uniform application. In regard to double-member constituencies like Parvatipuram the Constitution has not even adopted the course of providing for a special constituency confined to the members of Scheduled tribes. All that is done to provide for the reservation of

seats for the members of the said tribes or castes in the manner already indicated. Even for the reserved seat all voters in the constituency are entitled to vote. The reservation of a seat in a doublemember constituency cannot therefore, affect the main basis position that the constituency is one and for returning representatives to the House of the People it is the same joint electorate that goes to the Poll”

23. While dealing with the appellant's argument based on section 8(2)(c) of the Delimitation Act of 1952, the Hon'ble Apex Court observed thus:

Whilst we are dealing with S. 54 we may incidentally refer to the appellant's argument based on S. 8(2)(c) of the Delimitation Act, 1952 (81 of 1952) which provides that in every two-member constituency one seat shall be reserved either for the scheduled castes or for the scheduled tribes, and the other seat shall not be so reserved. It is urged that in view of this provision the case contemplated by the illustration to S. 52(4) is not likely to occur any more and in that sense the illustration has become ‘otiose’. That may be true. But even so the significance of the illustration lies in the fact that it clarifies and explains concretely how the reservation of seats for the depressed castes and tribes will actually work out in elections in the relevant constituencies.

There is one more section of the Act to which reference must be made. It is S. 55. For the avoidance of doubt this section declares that a member of the scheduled castes or scheduled tribes shall not be disqualified to hold the seat not reserved for members of those castes or tribes if he is otherwise qualified to hold such seat under the Constitution and the Act. If the appellant's contention is upheld then the provisions of S.55 would be inapplicable to a member of the scheduled tribe solely because he has made the prescribed declaration in his nomination form in order to claim the benefit of the concession of the reserved seat in his constituency. We see no justification for adopting such an artificial and restricted construction of S.55. In our opinion S.55, like S.54(4), is consistent with the other relevant provisions of the Constitution and the Act. A member of the scheduled tribe is entitled to contest for the reserved seat and for that purpose he can and must make the pre-

scribed declaration; but it does not follow that because he claims the benefit of the reserved seat and conforms to the statutory requirement in that behalf, he is precluded from contesting the election, if necessary, for the general seat. Once it is realised that the election is from the constituency as a whole and not by reference to two separate and distinct Beats there would be no difficulty in accepting the view taken by the returning officer when he declared respondent I to have been duly elected for the general seat”

24. Perusal of Part XVI of the Constitution which provides for reservation of seats for Scheduled Caste and Scheduled Tribes and contains provision for reserving the seats in the House of People, and in the legislative assembly of the State, what is to be noted is that “seat” is to be reserved. When a candidate is duly elected from any constituency he fills a seat either in the House of People or legislative assembly and is looked upon as a elected representative of the said constituency. Thus, this ‘seat’ is filled in by the said candidate. The Hon'ble Apex Court has observed that the use of the word ‘seat’ or the expression ‘fill the seat’ is exactly similar by making reference to section 32 of the Delimitation Act, Their Lordships had observed that these sections do not mean that the nomination of a person as a candidate for election is for a seat, such nomination is for the constituency and after the election is over, the elected candidate is qualified to fill a seat in the house of people to which he is elected. It is in that sense the expression “candidate for election to fill a seat” is used. The Hon'ble Apex Court has clarified that the use of the said expression or the reference to ‘seat’ in some of the articles of the constitution or sections of the Act, does not mean that the elections to the house of people from a double member constituency is held not for the constituency as a whole, but by reference to the two seats. In this context, if we consider the argument of the learned counsel and refer to the term “seat” as used in Article 243-T of the Constitution, qua a municipality is concerned, a candidate elected against this seat would be considered to be elected from the territorial constituency and even if there is more than one candidate from the territorial constituency, the safeguard intended by Article 243-T is still achieved. The ordinary dictionary meaning of the term or word “seat” denotes that it fits in the legal

scheme. It means, inter alia, a member's constituency. Moreover, it is for the State Election Commission to determine the territorial boundaries and Shri Samant had tendered before us one such notification issued by the Election Commission of India on 15th June, 2016 in furtherance of Article 243-ZA in relation to the elections of 195 Municipal Councils/Nagar Panchayats. The election commission in exercise of powers conferred by section 10 of that relevant law has determined the constitution of wards and the reservation in such wards. We have no doubt in our mind that the State Government would undertake all the necessary steps for effectively implementing the amended provisions of the respective enactment, which provide for multi-member ward without offending the provisions of the constitution.

The other argument of Dr. Ambedkar should also be noted only to be rejected and that is that the amendments introduced by the impugned Amendment Act are not to be found in the Mumbai Municipal Corporations Act, 1888 and therefore, the impugned amendments are discriminatory in nature. In other words, his argument is that both laws made by the State legislature deal with Municipalities. Merely because for Mumbai Municipal Corporation, there is a separate law or legislation in the field does not mean that for elections to that Municipal Corporation, similar stipulations, as are made in the case of other Municipal Corporations or Councils, could not have been made. There is no justification for leaving out the Municipal Corporation of Greater Mumbai from the prescription of multi member ward. That system not having been introduced in Municipal Corporation of Greater Mumbai would make the impugned amendments unconstitutional and discriminatory is his argument.

This argument is flawed for the simple reason that the two Municipal Corporations are not comparable. The Municipal Corporation for a mega city like Mumbai will have its own peculiarities and introduction of such a system may present practical difficulties. It is common ground that there are about 272 wards electing as many Councilors in the Mumbai Municipal Corporation. It would not be impossible, but indeed difficult to implement a system of the multi member ward in such a Municipal Corporation. Secondly, merely because this system is not introduced in Mumbai Municipal Corpora-

tion would not render the impugned Amendment Act unconstitutional and discriminatory. By now, it is well settled that an amended provision cannot be struck down as discriminatory unless it is established and proved by parties like the petitioner that equals have been treated unequally or unequals have been treated equally. Article 14 of the Constitution of India permits reasonable classification and what it forbids is class legislation. So long as there is a reasonable basis for the classification and that classification has a nexus with the object sought to be achieved, then, a provision or a law cannot be struck down as violative of the mandate of Article 14 of the Constitution of India. That guarantees equality before law and equal protection of laws. Once we have held that other Municipal Corporations in the State cannot be equated with Mumbai Municipal Corporation, then, this argument must fail.

Finally, it is not the constitutional mandate that two legislations or laws on the same subject should be identical. There could be dissimilarities and for justifiable reasons. So long as these dissimilarities are not established and proved to be discriminatory, there is no basis for the assumption that some amendment being made in one law on the same subject, but not made in another law dealing with that subject would render the amended legislation unconstitutional. For a conclusion of that nature to be reached, several prerequisites have to be held as satisfied.

If any judgment is required to be referred to, we can usefully refer to number of judgments mentioned in the footnote of Chapter IV titled as “External Aids to Construction” in the classic work of Justice G.P. Singh “Principles of Statutory Interpretation”, 14th Edition, which, at page 342343 sum up the above legal principles with reference to several judgments. For illustration, the learned Judge refers to the famous judgment rendered in the case of Dickerson v. Fletcher, reported in (1873) LR 9 CP 1, Brett, J. says “where two statutes dealing with the same subject matter use different language, it is an acknowledged rule of construction that one may be looked at as a guide to the construction of the other. If one uses distinct language, imposing a penalty under certain circumstances and other does not, it is always an argument that the legislature did not intend to impose a penalty in the later, for where they did so intend they plainly said so”. Thus, there is definite in-

tent of a departure of deviation in the case of the Municipal Corporation of Greater Mumbai. There is no compulsion on the legislature to amend all the laws on Municipalities. If one is not amended, then, the legislature being aware of pari materia statutes, is presumed to be deliberately taking a decision of amending one and not the other. There is no compulsion to amend pari materia statutes and at any rate the same time, and of the nature canvassed. Hence, even this argument must fail.

We may also usefully refer to a judgment of the Hon'ble Supreme Court in the case of Prabhakaran Nair v. State of Tamil Nadu, (1987) 4 SCC 238 : AIR 1987 SC 2117. In para 14, while summing up the principles as enunciated above, the Hon'ble Court has held as under:

“14. The other submission as noted above was that in most of the Rent Acts, there was provision for re-induction of the tenants but there was no such provision in case of reconstruction in the Tamil Nadu rent Act. In State of Madhya Pradesh v. G.C. Mandawar, (1995) 1 SCR 599 : (AIR 1995 SC 493), a Constitution Bench of this Court observed that Art. 14 of the Constitution does not authorize the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of two enactments. The source of authority for the two statutes being different, Art. 14 can have no application it was observed.”

25. If the power of the State legislature to enact in respect of conduct of election to the Municipalities is not to be disputed, then, even the argument of the learned counsel that the Constitution provides for one vote to one person and therefore, the State legislature cannot provide more than one vote to one person in election of local bodies, is also liable to be turned down. The right to vote is a right which flows from a statute and is governed by a statute and it can be curtailed or it can be taken to a higher pedestal by the statutory arrangement. This right to vote not being a constitutional right, but a statutory right and when the statute provides that a person can possess

the right to tender more than one vote and elect more than one person in a ward, that does not in any way, violate any constitutional mandate. The argument of the learned counsel for the petitioner, therefore, deserves to be rejected.

26. The argument of Dr. Ambedkar is that by making a provision for multiple constituency ward, the democratic principle of 'One Man One Vote' is defeated. As far as Indian scenario is concerned, whenever a statute required selection of persons to be made by popular election to perform governmental functions, whether at Union or State or local level, each vote must have an equal value and when the members of such elected bodies are chosen from separate constituencies, each constituency must be established on a basis which will ensure, as far as practicable that equal number of constituents can vote for equal number of representatives. This Rule is deeply entrenched in our election jurisprudence and any deviation therefrom must be zealously guarded. The question involved in this petition is whether by prescribing multi-member wards in municipal elections which elect multiple councillors, would this principle be breached. The principle of One man one vote, would convey that in every election, no matter whatever is the statutory scheme, each voter must cast vote in favour of only one candidate. As long as eligible voter is allowed to cast his vote and value of such vote, is no more or less than the value of other voter, the principle enshrined stands sufficiently safeguarded. The principle has its roots in the value of the vote and recognized the right to vote without any discrimination of caste, sex, creed or religion. The principle "One man one vote" need not imply a rigid construction to restrict and convey that every citizen must vote once for a single candidate, but it must convey a broader conspectus i.e. that each vote will have equal weightage. As far as the Indian scenario is concerned, "One man one vote" principle is applicable in number of situations. For election to the members of State legislature or house of people, every adult citizen who is otherwise qualified to vote, cast a vote in favour of one single candidate who gets elected by securing the maximum number of votes as against the other candidate. As far as Rajya Sabha is concerned and also the council of States, a method of single transferable vote is adopted where one candidate makes multiple choices and de-

pending upon the quotient required for getting elected, the counting take place so as to ensure that the single largest party in the assembly does not secure all the seats by mere majority. Thus, the principle of One man one vote, cannot be superficially applied to mean a single vote for a single candidate since it is within the legislative competence of the State Legislature in light of Entry 5 of List II to make laws concerning local government such as constitution and powers of the municipal corporations and other local authorities for self government. Article 243-ZA, sub-clause (2) empowers the Legislature of a State to make law, making a provision for all matters relating to, or in connection with, elections to the Municipalities. By amending Act No. 9 of 2017, the Legislature has exercised its power and introduced the system of multi-member ward in a municipal council and the municipal corporation.

27. As far as the argument of the learned counsel in relation to violation of principle of ‘One man, one vote and one value is concerned’, it has also been dealt with by the Division Bench of this Court in W.P. No. 3474 of 2016, Ambedkarite Party of India v. State of Maharashtra, 2016 MhLJ Online 97 and the said argument was negated in para 12 and 13 in the following words:

12. Insofar as the second argument regarding the impugned Ordinance violating the principle of ‘One Man One Vote and One Value’ is concerned, in our considered view, the same is also without substance. If a particular ward is to elect five Councillors, then a person from the said ward will have to vote for different five persons contesting from the said ward. It is not as if, that the voter would be entitled to cast all his five votes in favour of one particular candidate. Had this been the position, then certainly the petitioner would have been justified in saying that the principle of ‘One Man One Vote and One Value, is adversely affected. However, the learned counsel fairly conceded that, that is not the position.

13. Insofar as the principle of ‘One Man One Vote and One Value’ is concerned, it would further be relevant to refer to the following observations of Their Lordships of the Apex Court in the case of R.C. Poudyal (supra)

“The principle of one man, one vote envisages that there should be parity in the value of votes of electors”

28. *In light of the aforesaid discussion, we do not agree with the submissions of the learned counsel for the petitioner that the principle of 'One Person One Vote', which is a fundamental premise of democratic system is so inflexible, that even the legislature is competent to enact and when its competency is not in question, still, it must be held to be so sacrosanct, though it do not violate any of the constitutional provision. As far as the political equations are concerned and on which Dr. Ambedkar has harped upon repeatedly during the course of his arguments, do not impress us to intervene at this stage as these considerations will have to be fought and sought in some different manner and surely not by invoking the writ jurisdiction of this Court by assailing the impugned amending Act.*

29. *As far as the grievance of the petitioner in regards the provision introduced in the Maharashtra Municipal Nagar Panchayat and Industrial Townships Act by inserting Section 51A-1A which introduces a provision for direct election of President is concerned, since we have already expressed an opinion that the State Legislature is competent to enact a law as regards the manner of election and since Article 243-R clause 2(b) permits the legislature to enact a law providing the manner of election of the Chairperson of the Municipality and the legislature has exercised such a power, we do not deem appropriate to interfere in the same unless and until it suffers from arbitrariness. The Division Bench of this Court in case of Ambedkarite Party of India vs. State of Maharashtra & ors. (supra) has dealt with the issue and concluded the same in the following words :*

"Insofar as the third challenge regarding direct election of the Chairperson of a Municipality, it will be relevant to note that under Article 243 R clause 2(b) of the Constitution of India, it is for the Legislature of a State to enact law providing for the manner of the elections of the Chairperson of the Municipality. It can thus be seen that the Constitution of India has itself it to the wisdom of Legislature to provide for the manner of election of Chairperson of the Municipality. Unless there is any provision under the Constitution which prohibits election of the President of Municipal Council by direct electorate, the statutory provision cannot be held to be unconstitutional.

Learned counsel has not been in a position to point out to us any provision in the Constitution which prohibits direct election of the President of Municipal Council”.

30. For the reasons aforesaid, we do not find merit in the submissions of the learned counsel for the petitioner and his challenge to the validity of the Maharashtra Act No. IX of 2017, thereby amending the provisions of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act of 1965 and the Maharashtra Municipal Corporation Act and the petition deserves a dismissal for the reasons recorded above and it is accordingly dismissed.”

37. In the case of **Vinayak Bhiva Bhilare v. State of Maharashtra & Ors.** (supra) also where there was a similar challenge to Act No. XXVI of 2011 where under Section 5 of the BPMC Act, 1949 and Section 10 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, the multi ward system whereby the provision was amended to elect as far as possible two councillors but not less than two and not more than three councillors, this Court after considering Article 243-R of the Constitution observed that it found nothing in the creation of multi member constituencies as violative of the said Article. It was observed that even though it was true that the Lok Sabha constituencies are single member constituencies, there was nothing in the law which required that only one member should be elected from a ward at municipal election. Indeed the State Legislature in its wisdom while making a law can provide for a

multitude of members to be elected from a particular ward. Various arguments advanced in the present petition were considered and rejected therein.

38. This Court in the case of **Ambedkarite Party of India** (supra) also had the occasion to consider the challenge to the multi member ward system pursuant to the Ordinance of 2016 whereby it was provided that each of the wards shall elect as far as possible two Councillors but not more than three Councillors. In this decision also after considering various arguments, some similar to the ones raised herein, this Court after observing that the question regarding Multi Member Ward system had fallen for consideration before a Division Bench of this Court at Aurangabad and at Principal Seat at Mumbai, rejected the challenge and upheld the amendment.

39. It is submitted by Shri Ramdas Sabban in Writ Petition No. 8480 of 2021 that introducing the provision of as far as possible three but not less than two but not more than four Councillors for each Municipal Ward citing the reason for the sharp increase in Covid-19 cases till June 2021, as a result of Covid-19 pandemic is arbitrary and ultra vires the Constitution of India as there is no reasonable nexus

with the object sought to be achieved Covid-19 pandemic having sharply declined. It is also submitted that there is no empirical data with respect to the claims made in the statement to the impugned Ordinance.

40. He would submit that multi-member ward system would lead to overcrowding leading to rise in COVID-19 cases. It will cause overcrowding at the Municipal Councillors Offices, which will spread Covid-19 infection and also there will not be proper redressal of public grievances and lack of coordination in municipal services.

41. It is submitted that the issue is with respect to the reasons on the basis of which the Ordinance bringing in the impugned provision came to be issued. It is submitted that COVID circumstances have been cited as the reason whereas, there is no reasonable nexus to the object cited to be achieved. The legislative objective is to prevent overcrowding and spread of Covid-19 pandemic. One Councillor system per Ward with about 10,000 voters is better as there is limited crowd. However, 4 Councillors per Ward system will assemble about 40,000 voters gathering at election meetings, which will spread the Covid-19 multiple times, which defeats the very legislative object of

prevention of Covid-19. Hence, the impugned Amendment Act of 2-4 Councillors per Ward is ultra - vires of the Constitution as it is irrational / arbitrary with the object sought to be achieved offending Article 14 and there is no reasonable nexus with the object sought to be achieved. The decision in the case of **Madras Bar Association V/s. Union of India & Another (Writ Petition (Civil) No.502 of 2021 decided on 14th July, 2021 : Supreme Court of India)** has been relied upon.

42. It is further submitted that the same body-Maharashtra State Legislature should not arbitrarily provide two different contradictory Ward systems for Municipal Corporations in Maharashtra State, namely (a) “One Ward & One Councillor and One Vote & One Ward Councillor” under the Bombay Municipal Corporation Act for Mumbai city and (b) “One Ward & 2-4 Votes & 2-4 Councillors for each Ward” for other Municipal Corporation cities in Maharashtra. This is Constitutionally discriminatory / arbitrary violating Article 14 of the Constitution of India. He relies upon the decision in the case of **Union of India V/s. Tarsem Singh (2019-9-SCC-304)**

43. As far as the objection on locus, cause of action is concerned, it has been submitted on behalf of Petitioner that he is a taxpayer as well as a registered voter from the locality and as such has locus. Even every voter and tax payer in local bodies - Municipal Corporation is entitled to get lawful proper municipal law and municipal administration, hence they are aggrieved all have locus / cause of action, including the Petitioner. Since the impugned amendment/provision would lead to deprivation of electoral rights in addition to the non-consideration of the objections raised by Petitioner and not considered favorably by not restoring the single member per ward system the same has given rise to a cause of action in favour of Petitioner.

44. Mr. Prakash Ambedkar, learned Counsel appearing for Petitioners in Writ Petition No.245 of 2022 would submit that by way of Writ Petition, Petitioner is seeking directions from this Court to set aside the impugned amendment and the communication dated 5th October, 2021 issued by the State Election Commission to all Mahanagar Palika Commissioners for conducting Multi-member election in respect of Single Member and seeks to restore the publication of election programme by the State of Maharashtra dated

12th March, 2021 and the communication dated 25th August, 2021 of Respondent No.2 whereby all Nagar Parishads / Nagar Panchayats and Industrial Townships were directed to conduct the elections as per the Single Member Ward System.

45. He submits that it is therefore surprising that the Maharashtra Government vide the impugned Ordinance cancelled and set aside their earlier Ordinance dated 12th March, 2021 and communication dated 25th August, 2021 of Respondent No.2 declaring elections in the form of Multi-member Ward instead of Single-member Ward.

46. Learned Counsel submits that the amendment bringing in Multi-member Ward System in the year 2011 was effected in 2011 was the subject matter of challenge in Writ Petition No.10354 of 2011 alongwith Writ Petition No.7567 of 2011 where the challenge to the Multi-member Ward System was turned down. He would submit that after the completion of the elections, Notification was issued thereby undoing the amendment and once again reintroduced the Single-member Ward System.

47. Learned Counsel takes us to Article 243R of Part IX of the Constitution, Article 81, Articles 243ZF, 251, 254 and submits that the Division Bench of this Court in Writ Petitions No.7259 of 2016 with Writ Petition No.6496 of 2016 and Writ Petition No.9896 of 2016 have considered various aspects as stated and dismissed the Petitions.

48. He drew the attention of the Court to Articles 243-ZF read with 243ZA(2) of the Constitution of India to submit that the said provisions have not been considered by the decision of the Supreme Court in the case of **Parmar Samant Sinh Umed Sinh v. State of Gujarat and Others** (supra). He referred to paragraph no.22 and 59 thereof to submit that the decision only considered Articles 243R and 243S of the Constitution of India.

49. He submits however that the grounds contained in Paragraph 4q to 4z have not yet been considered in any of the earlier judgments and hence, the bar of '*estoppel*' would not apply to the Petition.

50. We drew the attention of Mr. Ambedkar to paragraphs no. 25, 36 as well as paragraph no. 63 of the decision in the case of **Parmar**

Samant Sinh Umed Sinh v. State of Gujarat and Others (supra) which indicates that Article 243ZA as well as Part IXA of the Constitution of India have been considered by the Hon'ble Supreme Court to come to a conclusion that there is no prohibition or limitation in Part IXA of the Constitution prohibiting the State Legislature from making a law providing for election of more than one member from one ward.

51. Thereafter he referred to Constituent Assembly debates to submit that in case of multi-member constituency there has to be proportionate voting. He also referred to Section 62 of the Representative of Peoples Act to submit that the amendment in the Maharashtra Municipalities Act is repugnant to Section 62(3) and 62 (4) of the Representative of Peoples Act and accordingly in view of the Constitution, the Central Act would prevail.

52. It has been argued that the laws made the State Government shall not be repugnant to the laws made by the Parliament. It is submitted that Section 62 of the Representative of People's Act would be rendered repugnant to the Constitution of India if the present amendment was to be allowed.

53. He would submit that therefore a person is entitled to only one vote in one constituency and there cannot be multiple voting. He also referred to erstwhile provisions in the Representative of People Act, 1950 viz. Section 17 and 18 which referred to registration and voting only for one constituency.

54. With respect to power of the Maharashtra State Election Authority, it was submitted that the said body does not have right to prepare electoral rolls since the said power is only with the Election Commission of India. He would submit that the Supreme Court has not considered the above in **Parmar Samant Sinh Umed Sinh v. State of Gujarat and Others** (supra) case.

55. Mr. Bhargude in WP No. 7608/2021 first submitted that right to vote is not a statutory right but a constitutional right. In support of his contention he sought to refer to the decision of the Hon'ble Supreme Court in the case of **Rajbala and Others v. State of Haryana and Others ((2016)2 SCC 445)**. Learned Counsel has taken us through paragraph nos. 14,16,33,34,35,38 to 45.

56. He also relied upon the Single Judge decision of Andhra Pradesh High Court in the case of **Janasena Party and Ors. v. The State Election Commissioner, Andhra Pradesh State Election Commission (2021 SCC OnLine AP 1377)** and referred to paragraph nos. 23 to 35. He also referred to the decision in the case of **Mohinder Singh Gill v. Chief Election Commissioner ((1978) 1 SCC 405)** and read paragraph 15 thereof. He also referred to the Supreme Court decision in the case of **Shashikant Kale and Anr. V. Union of India and Anr.** to submit that for deciding constitutionality of the reference to the statement of objects and reasons would be necessary. He referred to paragraph nos. 1 and 13 to 18 thereof.

57. Referring to Article 243T of the Constitution, Learned Counsel would submit that by virtue of the impugned provision, the effective representation contemplated in Article 243-T loses its significance in a Multi Member ward apart from diluting the concept of leadership and would deprive SC/ST from being brought into the mainstream.

58. With respect to WP No. 7640 of 2021, Mr. Asim Sarode seeks to adopt the arguments of Mr. Prakash Ambedkar and Mr. Prathamesh Bhargude.

59. In Writ Petition No.7618 of 2021 Mr. Asim Sarode, learned Counsel appearing for the Petitioners seeks to submit that the Multi-member Ward System as contemplated by the impugned amendment strangulates the 74th amendment to the Constitution of India. He submits that considering the Scheme of the 74th amendment, the introduction of Area Sabhas and the subsequent amendments to the MMC Act, 1949 aim at increasing participatory democracy in the sense that the concept behind Area Sabha is to empower people from the bottom. Learned Counsel refers to Section 2(A)(2) of MMC Act that defines Area Sabhas and also to Section 2(7)(A) of the MMC Act to submit that as the said Section clearly mentions that the Chairperson of an Area Sabha means the Councillor of the electoral ward, it signifies that 'one person' elected as corporator will be Chairperson of the Area Sabha. He argues that the Multi-member Ward system creates a chaotic situation as it will not be then clear as to who from the three corporators proposed to be elected from one ward will be the Chairperson to conduct the Area Sabha. He submits that the provisions relating to Area Sabhas have been incorporated in the MMC Act since the year 2009 and cannot be ignored while considering the contradictions that will emerge pursuant to the Multi-member Ward system with respect to these provisions.

60. He submits that therefore, the Multi-member Ward system offends the basic structure of the Constitution and therefore, the impugned amendment is unconstitutional and ought to be quashed and set aside.

61. He also refers to Section 29 (c) with respect to meetings of Area Sabha but loathes that Rules have not yet been made in respect of Area Sabhas to make the same functional.

62. Learned Counsel would also submit that the impugned amendment is discriminatory in the sense that it applies only to corporators outside Mumbai but not to Mumbai.

63. According to learned Counsel, the frequent changes and flip flop from one member one ward to Multi-member Ward system are merely because of political motivations and therefore, the impugned amendment ought not to be sustained.

64. He submits that in this view of the matter, this Court aside from considering quashing and setting aside the impugned amendment as unconstitutional, he presses that this Court issue necessary

directions to the State Government to frame/formulate Rules and procedure for implementation of the provisions in the MMC Act relating to Area Sabhas to conduct Area Sabhas and to create necessary legal support under the MMC Act, 1949.

65. He relies upon the following two decisions in support of his contentions:

- (i) **Aeltemesh Rein v. Union of India and Ors. ((1988) 4 SCC 54)**
- (ii) **Chandrakant Muljibhai Parikh v. State of Gujarat (2001 SCC OnLine Guj 33)**

66. Mr. D.S. Mhaispurkar, learned Advocate in support of the PIL No. 6 of 2022 submits that the PIL is impugning the vires of the amendment providing for the multi-member ward system as being in violation of the fundamental rights guaranteed under Article 14 of the Constitution of India on the ground of arbitrariness and being contrary to the specific and clear stand of the State Government that multiple member ward has detrimental effect in the implementation development schemes. He would submit that it also violates free and fair elections as contemplated under the Constitution of India and on the ground of absence of legislative competence.

67. He recounts that in the year 1993, through amendments to the Constitution of India, part IX and IXA were introduced containing Article 243 to 243 ZG. Part IX pertains to Panchayat and Part IXA pertains to Municipalities. Different Articles in these parts detailed the provisions for the constitution and composition of bodies of self-governance such as Panchayats and Municipalities. Pursuant to the Constitutional amendment, the MMC Act was amended by Act. No. 41 of 1994 with effect from 31st May, 1994 whereby the powers of the State Government as contemplated in Section 5(3) of the MMC Act to decide the number and boundaries of the wards and its number as well as number of Councillors from each ward were conferred upon the State Election Commissioner.

68. The State government vide Bill No. LXXI of 2001, introduced the multimember Ward system. Vide MMC Act No. XXVI of 2011, dated 10th August, 2011, Maharashtra Act No. IX of 2017 came to be passed and thereafter by MMC Act No, 1 of 2022 again introduced the multimember Ward system providing that there have to be a minimum of three councillors but not less than two and not more than four each ward of the municipal Corporation. To accommodate more than one Councillor each ward, the members of the wards and

boundaries of the ward into which a city would be divided would require change as there cannot be a change in the numbers of councillors/corporators to be elected from each of the Corporation, which is based upon population mentioned in section 5(2) of the MMC act.

69. Learned advocate would also submit that while introducing/reintroducing the single member ward system, in the year 2015 and in the year 2019, it has been admitted by state government that election of 2 or more councillors from each ward had resulted in more than one person being responsible for the effective administration of the ward which had in turn affected the implementation of the development schemes in the wards due to which it was considered expedient to restore the one councillor one Ward system. It is also submitted that one councillor per Ward system was for smooth functioning and specific representation in a ward as well as ensuring more accountability in the development of the Corporation.

70. He submits that the state government has the power to amend the MMC Act or to take and implement policy decision regarding any matter concerning the MMC Act. However, in view of the amendment vide Maharashtra Act No. XXXXI of 1994, State Government has divested itself and conferred its power under Section 5(3) upon the State election Commissioner. He would submit that therefore any amendment made by the state government to section 5 (3) of the MMC act is beyond the legislative competence thereby making amendment ultra vires and therefore liable to be quashed and set aside.

71. He next submits that by virtue of constantly amending the section by providing multiple member ward system and then again making one Ward one councillor system suggests that the said amendments are made solely for the purpose of gaining political advantage and has nothing to do with investing more powers to the grassroot level democratic setup. He would submit that the said amendment is indecisive, confused and detrimental to the interests of the citizens having no relevance with the object sought to be achieved by the constitutional provisions of local self-governance.

72. He would then submit that the said amendment to the proviso again and again renders the original Section 5 (5) of the Maharashtra act nugatory. He submits that pursuant to Act No. X of 2015 whereby one councillor one Ward system was reintroduced, no subsequent amendment could have been made by inserting and modifying the proviso to section 5 of the MMC act as a sought to be done vide Maharashtra act No. IX of 2017 as well as Maharashtra ordinance No. IV of 2021, now replaced by Maharashtra act No. I of 2022, as a proviso is usually added to cater to or exclude a special or specific case from the general application of the enactment and provide for it separately. Since in the present case there is no such special circumstance specified, the amendment to the proviso is unwarranted. Learned counsel relies upon the decision of the Supreme Court in the case of **Delhi Development Authority vs. Virender Lal Bahri and Ors.** ((2020) 15 SCC 328) and in particular paragraphs 12, 13 and 14 which are quoted as under:

“12. If, on the other hand, the proviso is read as a proviso to Section 24(2), many anomalies arise. Firstly, as has been correctly held in DMRC [DMRC v. Tarun Pal Singh, (2018) 14 SCC 161 : (2018) 4 SCC (Civ) 488], for sub-section (2) of Section 24 to apply, (i) the award under Section 11 of the 1894 Act should have been made five years or more prior to the commencement of the Act; and (ii) physical possession of the land has not been taken or compensation has not been paid. Take a case where the award has been made six years before 1-1-2014, and physical possession of the land has not been taken. The acquisition is deemed to have lapsed in such cir-

cumstances. If the proviso is to apply to Section 24(2), then notwithstanding that physical possession has not been taken, yet, there will be no lapse, as has been held in DMRC [DMRC v. Tarun Pal Singh, (2018) 14 SCC 161 : (2018) 4 SCC (Civ) 488]. This would fly in the face of several judgments of this Court where it has been held that a proviso cannot be used to nullify or set at naught the substantive provision contained in the main enactment. Thus, in Dwarka Prasad v. Dwarka Das Saraf [Dwarka Prasad v. Dwarka Das Saraf, (1976) 1 SCC 128], this Court held : (SCC p. 137, para 18)

“18. We may mention in fairness to counsel that the following, among other decisions, were cited at the Bar bearing on the uses of provisos in statutes : CIT v. Indo-Mercantile Bank Ltd. [CIT v. Indo-Mercantile Bank Ltd., AIR 1959 SC 713 : 1959 Supp (2) SCR 256 : (1959) 36 ITR 1] , SCR at p. 266; Ram Narain Sons Ltd. v. CST [Ram Narain Sons Ltd. v. CST, AIR 1955 SC 765 : (1955) 2 SCR 483 : (1955) 6 STC 627] , SCR at p. 493; Thompson v. Dibdin [Thompson v. Dibdin, 1912 AC 533 : 81 LJKB 918 : 28 TLR 490 (HL)] , AC at p. 541; R. v. Dibdin [R. v. Dibdin, 1910 P. 57 (CA)] , P at pp. 119, 125 and Tahsildar Singh v. State of U.P. [Tahsildar Singh v. State of U.P. AIR 1959 SC 1012 : 1959 Supp (2) SCR 875 : 1959 Cri LJ 1231] , SCR at p. 893. The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. ‘Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context’ (Thompson v. Dibdin [Thompson v. Dibdin, 1912 AC 533 : 81 LJKB 918 : 28 TLR 490 (HL)] , AC p. 544). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

‘The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving

clause, and proviso, taken and construed together is to prevail.’ (Maxwell on Interpretation of Statutes, 10th Edn., p. 162)”

13. In *S. Sundaram Pillai v. V.R. Pattabiraman* [*S. Sundaram Pillai v. V.R. Pattabiraman*, (1985) 1 SCC 591], this Court held : (SCC p. 606, para 27)

“27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well-established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.”

14. Similarly, in *J.K. Industries Ltd. v. Chief Inspector of Factories & Boilers* [*J.K. Industries Ltd. v. Chief Inspector of Factories & Boilers*, (1996) 6 SCC 665 : 1997 SCC (L&S) 1], this Court found : (SCC p. 688, paras 33-34)

“33. A proviso to a provision in a statute has several functions and while interpreting a provision of the statute, the court is required to carefully scrutinise and find out the real object of the proviso appended to that provision. It is not a proper rule of interpretation of a proviso that the enacting part or the main part of the section be construed first without reference to the proviso and if the same is found to be ambiguous only then recourse may be had to examine the proviso as has been canvassed before us. On the other hand, an accepted rule of interpretation is that a section and the proviso thereto must be construed as a whole, each portion throwing light, if need be, on the rest. A proviso is normally used to remove special cases from the general enactment and provide for them specially.

34. A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for the proviso would be a part of the main provision. A proviso must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso should not be read as if providing something by way of addition to the main provision which is foreign to the main provision itself.”

73. Learned Counsel also submits that impugned amendment is not only against the grassroot democracy for local self-government but also is in violation of the constitutional provisions. He submits that the said impugned amendment would defeat the concept of free and fair elections as contemplated in the Constitution of India and as elucidated in two Constitution bench judgements of the Hon'ble Supreme Court in the case of **Indira Gandhi v. Raj Narayan and Ors.** (1975 (supp.)SCC 1) and in the case of **Maneka Gandhi v. Union of India**, (1978 AIR 597), where it has been held that where an arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14.

74. With respect to the arguments on the locus standi of petitioner to challenge the impugned amendment, he would submit that petitioner has earlier filed PIL in respect of other matters in the Bombay High Court which have been allowed by this court and as such petitioner is a bona fide public interest litigation. Further on the basis of the decision in the case of **Mrinal Shankar Shekhar v. Election Commission of India** ((2020) (4) Mh.L.J. 402) he would submit that there is no absolute bar from filing PIL for challenging the

constitutional validity of any act. He therefore submits that PIL ought to be entertained and the impugned amendment be quashed and set aside.

75. In Writ Petition No. 8893 of 2021, Ld. Counsel, Ms. Pooja Joshi seeks to adopt the arguments of Mr. Prakash Ambedkar and Mr. Prathamesh Bhargude and submit that the impugned amendment violates the one member one ward mandate and ought to be quashed and set aside.

76. Learned Advocate General has submitted that the impugned amendment has been effected as a matter of legislative policy which cannot be questioned before this Court. He submits that only because there could be better legislative policy, that cannot be a ground to interfere. He would submit that it is well settled that the wisdom of the legislature in undertaking any legislative exercise as the one undertaken is beyond the scope of judicial scrutiny.

77. Learned Advocate General has also submitted that the challenge to the constitutional validity of an Ordinance stands on the same footing as that to the challenge of an Act / Statute and relies upon the decision in the case of **State of Uttar Pradesh V/s. Kartar Singh**

(supra) Therefore, the same presumption of constitutionality would be presupposed and the burden is upon the person who questions it to demonstrate that there has been a clear transgression of the constitutional principles.

78. Learned Advocate General submits that when a party seeks to impeach the validity of the rule on the ground that it offends Article 14 of the Constitution of India, the burden is on him to plead and prove that the infirmity and that this principle is so well established that it needs no elaboration. If there is a desire to challenge the validity of the rule on the ground of either unreasonableness or discriminatory nature, the party challenging has to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case as there is a presumption that every factor which is relevant or material has been taken into account in and formulating the said rule. He would submit that there has to be a pleading and proof of unreasonableness or arbitrariness and in the absence of such a pleading, the Court cannot accept the statement of a party as to the unreasonableness or unconstitutionality of a rule. He refers to a Constitution Bench decision of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh V/s. Kartar Singh (AIR 1964 SC 1135)**.

79. Learned Advocate General submits that it ought to be appreciated that this Court has already had an occasion to consider a similar amendment made in the year 2017 with respect to the MMC Act in the case of **Kiran Kadam V/s. State of Maharashtra (supra)** where all the grounds raised in the present Petitions were also raised in the said Petition and after hearing the parties, this Court had passed a detailed judgment and rejected the challenge.

80. He would submit that therefore the present Petitions miserably fail to make out any of the grounds permissible in law for challenging the validity of the impugned amendment/provision and the Petitions ought to be dismissed.

81. With respect to the argument on there being discrimination as the impugned provision applies outside Mumbai to other Municipal Councils/Corporations but not within Mumbai to the Mumbai Municipal Corporation, Learned Advocate General submits that the tests of discrimination apply when two equals are to be treated unequally but this concept would not apply to two unequals being treated unequally. He refers to the decision in the case of **Kiran Kadam V/s. State of Maharashtra & Ors. (supra)** in support of his contentions.

82. Dealing with the argument that the statement accompanying the amendment which referred to health emergency arising due to COVID-19 pandemic being the reason necessitating the Multi Member Ward system was arbitrary as in fact there was a sharp decline in the COVID-19 pandemic thereby the amendment being ultra vires as there is no reasonable nexus with the object sought to be achieved, the Learned Advocate General submitted that the Statement of Objects and Reasons can be looked at for interpretation of a provision but not for deciding the constitutional validity of a provision. He submits that there cannot be a reference to the Statement of Objects and Reasons unless the provision is ambiguous. Learned Advocate General relies upon the decision in the case of **Union of India & Ors. v. Exide Industries Ltd. & Ors.** ((2020) (5) SCC 274).

83. The Learned Advocate General also referred to the decision in the case of **S.S. Bola and Others v. B. D. Sardana and Others** ((1997) 8 SCC 522) to submit that without examining the substantive provisions of an enactment and merely going by the Statement of Objects and Reasons would be possibly held to be an intrusion into the judicial sphere by the legislature. Learned Advocate General also referred to the decision in the case of **Asvini Kumar Ghose v. Arabinda Bose** (AIR

1952 SC 369) to submit that the Statement of Objects and Reasons do not form part of the Bill and are not voted upon by the members and should therefore be ruled out as an aid to the construction of a statute.

84. He also relied upon the decision in the case of **Kanai Lal Sur v. Paramnidhi Sadhukhan (AIR 1957 SC 907)** where it was observed that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the legislature intended pretty clearly the opposite of what is said, it is not for judges to invent something which they do not meet with in the words of the text, thus when the plain meaning of the words used in a statute indicates a particular state of affairs the Courts are not required to get themselves busy with the supposed intention or with the policy underlying the statute or to refer to the objects and reasons which accompanied the Bill while introducing the same on the floor of the legislature. It is only when the plain meaning of the words used in the statute creates an ambiguity then it may be permissible to have the extrinsic aid of looking to the Statement of Objects and Reasons for ascertaining the true intention of the legislature. It would be necessary to examine the Act itself and the changes

brought about by the Act as a consequence thereof in relation to the decisions rather than to look into the Statement of Objects and Reasons.

85. With respect to the argument that even though the issue of constitutionality of provisions similar to the impugned provision may have stood concluded, however there are new grounds and therefore Petition deserves to be entertained, Learned Advocate General relied upon the decision in the case of **Delhi Cloth and General Mills Limited v. Shambhunath Mukherji**((1977) 4 SCC 415) to submit that once a provision has been held to be intra vires and the objection under Article 14 of the Constitution has been repelled it will not be permissible to raise the question again by submitting that a new ground could be raised to sustain the objection.

86. Learned Advocate General would also submit that the right to vote is a statutory right and not a fundamental right and therefore the Petition is not maintainable. He refers to paragraphs 3 and 25 of the decision in the case of **People's Union for Civil Liberties & Anr. V. Union of India & Anr.** ((2013) 10 SCC 1).

87. With respect to the arguments in Writ Petitions No.7618 and 7640 of 2021 in connection with the Area Sabhas, Learned Advocate General relies upon paragraph 11 of the State's Affidavit dated 6th January, 2022.

88. Learned Advocate General would submit that vide Maharashtra Act No.XXI of 2019, published in the Gazette of 3rd July, 2009, the State Legislature inserted Clauses 2A-1, 2A-2, 7A, 59D in Section 2 and Section 29C, 29D and 29E which relate to Area Sabhas in the Bombay Provincial Corporation's Act, 1949.

89. He submits that, however, Section 1 (2) of the said Amendment Act provides that the said amendments would come into force on such date as the State Government may by Notification in the Official Gazette provide. He submits that no such notification has yet been published in the Official Gazette for the coming into force of the said amendments till date and therefore, these Writ Petitions based on the sole ground that the Multi-member Ward System would lead to a problem in electing the Chairperson for the Area Sabhas would not survive. He would submit that since the State amendment has not yet

come into force, the only ground raised in the Petition is misplaced and Petition deserves to be rejected.

90. With respect to the other ground of the impugned amendment being in breach of the basic structure of the Constitution, he would submit that in view of the above discussion, the same would not survive and moreover, the same issue regarding the basic structure of the Constitution has already been considered by this Court with respect to a similar amendment made in the year 2017 in the case of **Kiran Kadam V/s. State of Maharashtra** (supra) and the issue stands covered therefore. He submits that therefore these Petitions also deserve to be dismissed.

91. Mr. Sachin Shetye, learned counsel for the Maharashtra State Election Commission relies upon the Affidavits filed on behalf of Respondent No. 3. He submits that the state election commission is a constitutional authority established under article 243(K) at 243(ZA) of the Constitution of India to conduct free, fair and transparent elections to the panchayats and municipalities in the state of Maharashtra. Learned counsel submits that the election comprises of three major stages namely delimitation, voter list and conduct of

election. These are further subdivided into several sub stages and approximately a six-month period is required for completion of all these stages and sub stages. Learned counsel submits that promulgating an ordinance or notifying a law is completely within the domain of the Respondent No. 1 state and the State Election Commission i.e. Respondent No. 3 is concerned only with the implementation/execution of such ordinance/ law/amendment. He refers to Section 5 (3) of the MMC act to submit that the powers of delimitation are vested with the State Election Commission pursuant to which the State Election Commissioner can specify for each city the number and the boundaries of the wards into which such city shall be divided for the purpose of the ward election of Councillor. Learned counsel submits that soon after the issuance of the Ordinance No. X of 2021, the state election commission vide its letter dated 3rd November, 2021 directed 18 corporations whose terms are ending this year to prepare rough drafts of delimitation of their corporations which have been submitted by the said corporations and the same are being examined by the state election commission in accordance with the criteria/rules. It is submitted that the state election commission will be soon declaring the program of delimitation, reservation and rotation so as to fulfil the mandate of the Constitution to conduct the

elections. He also referred to Section 5(2) of the Maharashtra Municipal Corporation Act to submit that the number of Councillor are fixed on the basis of the population which does not change as it is required to be fixed by the Act itself. However, the State Election Commission has the authority to change the boundaries of the Wards and as per the present amendment, it will also decide the number of Councillor not being less than 2 and not being more than 4 in a particular ward. He submitted that under no circumstances the number of Wards will be more than the number of Councillors. In this view of the matter, he submits that there is nothing illegal about the multi member ward system. It is submitted that therefore petition deserves to be dismissed as entertaining the petition will only further delay and jeopardize the process of election.

92. We have extensively heard the arguments of learned Counsel Mr.Asim Sarode for the Petitioners in Writ Petition No.7640 of 2021 and Writ Petition No.7618 of 2021, Mr.Prathamesh Bhargude for the Petitioner in Writ Petition No.7608 of 2021, Mr.A.A.Kumbhakoni, learned Advocate General for the Respondent-State, Mr.M.J.Bhatt for Respondent No.2 in Writ Petition No.8893 of 2021 and Mr.Sachindra B. Shetye for Respondent – State Election Commission.

93. The challenge herein as noted earlier is to the Multi Member Ward System re-introduced pursuant to the Ordinance dated 30th September, 2021 replaced by the Maharashtra Amendment Act No. I of 2022 dated 17th January, 2022 introducing as far as possible three Councillors but not less than two and not more than four Councillors in a ward. As noted above, the decision of the Supreme Court in the case of **Parmar Samant Sinh Umedh Sinh v. State of Gujarat & Ors.** along with connected writ petitions (supra) and decisions of this Court in **Kiran Kadam v. State of Maharashtra & Ors.** (supra), **Vinayak Bhiva Bhilare v. State of Maharashtra & Ors.** (supra) and **Ambedkarite Party of India, Nagpur v. State of Maharashtra & Ors.** (supra) have unequivocally held that the Multi Member Ward system is intra-vires the Constitution. Therefore, the issue raised in these Petitions is no longer res integra and the Multi-member Ward System is not only constitutional but the legislature of the State is also empowered to provide for Multi-member Ward system of election.

94. Various grounds including some new ones have been raised to re-agitate the challenge to the Multi Member Ward system. However as held in the case of **Delhi Cloth and General Mills Limited v.**

Shambhunath Mukherji(supra), that once a provision has been held to be intra-vires, the objection under Article 14 of the Constitution has to be repelled and it will not be permissible to raise the question again by submitting that a new ground could be raised to sustain the objection.

95. Paragraph 11 of the said decision is apt and is quoted as under:

“It is submitted by Mr Dial that in that decision this Court was only required to consider the objection raised on the score of Article 14 on a ground which is different from the one he would like to take before us. We are, however, unable to accept this submission. If this Court held Section 10 as intra vires and repelled the objection under Article 14 of the Constitution it would not be permissible to raise the question again by submitting that a new ground could be raised to sustain the objection. It is certainly easy to discover fresh grounds of attack to sustain the same objection, but that cannot be permitted once the law has been laid down by this Court holding that Section 10 of the Act does not violate Article 14 of the Constitution. The ratio decidendi of Niemla Textile Finishing Mills will apply while dealing with the objection under Article 14 of the Constitution in respect of the present reference under Section 10(1)(c) of the Act. The submission of the learned counsel is, therefore, devoid of substance.”

96. We observe that the similar grounds/arguments which have been advanced before us were advanced in the challenge before the Division Bench of this Court in the case of **Kiran Kadam v. State of Maharashtra & Ors.** (supra) as well.

97. As noted above, the issue of Multi Member ward system is covered by the decisions of the Supreme Court in the case of **Parmar Samant Sinh Umedh Sinh v. State of Gujarat & Ors.** along with connected writ petitions (supra) and decisions of this Court in **Vinayak Bhiva Bhilare v. State of Maharashtra & Ors.** (supra) and **Ambedkarite Party of India, Nagpur v. State of Maharashtra & Ors.** (supra) and **Kiran Kadam v. State of Maharashtra & Ors.** (supra).

98. The Division Bench of this Court in the case of **Kiran Kadam V/s. State of Maharashtra and others** (supra) had the occasion to consider the challenge to the proviso to Section 5(3) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 where pursuant to an Ordinance, later replaced by an Act, election of four councillors, as far as possible, but not less than three and not more than five councillors in the general election to the Corporation was introduced in the proviso thereby enabling each voter to cast the same number of votes as the number of councillors to be elected in the ward.

99. It would therefore not be necessary for us to labour in dealing with the various arguments put forward by the learned Counsel / Senior Counsel as the issue stands concluded.

100. Coming to the issue regarding the argument that the statement accompanying the amendment which referred to health emergency arising due to COVID-19 pandemic being the reason necessitating the Multi Member Ward system is arbitrary and unreasonable as in fact there was a sharp decline in the COVID-19 pandemic thereby making the amendment ultra vires as there is no reasonable nexus with the object sought to be achieved, it would be useful to first refer decision in the case of **Asvini Kumar Ghose v. Arabinda Bose (AIR 1952 SC 369)**. Patanjali Sastri, J, as His Lordship then was, speaking for the majority of the Court, emphatically ruled out the Statement of Objects and Reasons appended to a Bill as an aid to the construction of a statute observing that:

“As regards the propriety of the reference to the Statement of Objects and Reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led

to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the legislature, for they do not form part of the Bill and are not voted upon by the members. We, therefore, consider that the Statement of Objects and Reasons appended to the Bill should be ruled out as an aid to the construction of a statute.”

101. Also paragraph 181 of the decision in the case of **S.S. Bola and Others v. B. D. Sardana and Others ((1997) 8 SCC 522)** is apt and is quoted as under:

“181. The general rule of interpretation is that the language employed is primarily the determining factor to find out the intention of the legislature. Gajendragadkar, J. as he then was in the case of Kanai Lal Sur v. Paramnidhi Sadhukhan [AIR 1957 SC 907 : 1958 SCR 360] observed that “the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself”. In the case of Robert Wigram Crawford v. Richard Spooner [(1846-50) 4 MIA 179] (MIA at p. 1987) Lord Brougham had stated thus: “... If the legislature did intend that which it has not expressed clearly; much more, if the legislature intended something very different; if the legislature intended pretty nearly the opposite of what is said, it is not for judges to invent something which they do not meet with in the words of the text....” Thus when the plain meaning of the words used in a statute indicates a particular state of affairs the courts are not required to get themselves busy with the “supposed intention” or with “the policy underlying the statute” or to refer to the objects and reasons which accompanied the Bill while introducing the same on the floor of the legislature. It is only when the plain meaning of the words used in the statute creates an ambiguity then it may be permissible to have the extrinsic aid of looking to the Statement of Objects and Reasons for ascertaining the true intention of the legislature. In the aforesaid state of affairs to find out whether the impugned Act is a

usurpation of judicial power by the legislature it would not be permissible to look to the Statement of Objects and Reasons which accompanied the Bill while introducing the same on the floor of the legislature nor the affidavit filed by an officer of the Government would control the true and correct meaning of the words of the statute. It would, therefore, be necessary to examine the Act itself and the changes brought about by the Act and the consequences thereof in relation to the decisions of this Court in Sehgal [1992 Supp (1) SCC 304 : 1993 SCC (L&S) 675 : (1993) 24 ATC 559] and Chopra [1992 Supp (1) SCC 391 : 1992 SCC (L&S) 975 : (1992) 19 ATC 493] interpreting the Rules of seniority which were in force and which stood repealed by the Act itself.”

102. We agree with the Learned Advocate General that there cannot be a reference to the Statement of Objects and Reasons unless the provision is ambiguous. The following paragraphs from the decision in the case of **Union of India & Ors. v. Exide Industries Ltd. & Ors.** ((2020) (5) SCC 274) are usefully quoted as under:

“30. Whereas, when there is no ambiguity about the legislative competence and of the import of the enactment, no rule, authority or convention to support the view that publication of Objects and Reasons is quintessence for the sustenance of a duly enacted provision has been brought to our notice. In fact, Objects and Reasons feature in the list of external aids to interpretation and can be looked into for the limited purpose in the process of interpretation. Regard may be had to State of W.B. v. Union of India [State of W.B. v. Union of India, AIR 1963 SC 1241] , wherein the Court expounded the legal position thus : (AIR p. 1247, para 13)

“13. ... It is however well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine

the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Governments' rights as owners of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute."

31. The Court was more categorical in restating the position in Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd. [Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd., (1983) 1 SCC 147] , where it noted : (SCC p. 172, para 25)

"25. ... No one may speak for Parliament and Parliament is never before the court. After Parliament has said what it intends to say, only the court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids."

32. The express Objects and Reasons, therefore, serves a limited purpose of assisting the Court in examining the validity of a provision, especially when the Court is sitting over the interpretation of an ambiguous provision.

33. Indubitably, when the Court examines the validity of a provision, its primary concern is the literal text of the provision. It is so because the legislature speaks through the text and as long as it is not speaking in an equivocal manner, there is limited space for the Court to venture beyond the text. This constitutes the first test of interpretation, often termed as the literal interpretation.

If the text of the provision is unambiguous, the legislative intent gets coalesced and is epitomised therefrom.

34. In other words, when the textual element of the provision reeks of ambiguity and is susceptible to multiple meanings, the Court enters into a proactive examination to find out the real meaning of the provision. This proactive examination by the Court offers multiple avenues and methods to achieve the ultimate purpose of interpretation. Adverting to the express Objects and Reasons may be useful for limited purpose to understand the surrounding circumstances at the time of enactment. The Court is not bound by such external elements, as discussed above. Therefore, the presence or absence of Objects and Reasons has no impact upon the constitutional validity of a provision as long as the literal features of the provision enable the Court to comprehend its true meaning with sufficient clarity.

35. The Division Bench [Exide Industries Ltd. v. Union of India, 2007 SCC OnLine Cal 932 : (2007) 212 CTR 206] of the High Court, in the present case, plainly glossed over the fundamental presumption of constitutionality in favour of clause (f) and based its judgment upon the absence of Objects and Reasons as striking at the root of its validity. In our view, this approach is flawed for at least three reasons. First, it steers clear from the necessary attempt to discover any constitutional infirmities in the enacted provision. Second, it makes no attempt to dissect the text of the provision so as to display the need to go beyond the text. Third, it goes into the background of the enactment and ventures into a sphere which is out of bounds for the Court as long as the need for interpretation borne out of any ambiguity arises.

36. The process of testing validity is not to sneak into the prudence or proprieties of the legislature in enacting the impugned provision. Nor, is it to examine the culpable conduct of the legislature as an appellate authority over the legislature. The only examination of the Court is restricted to the finding of a constitutional infirmity in the provision, as is placed before the Court. Thus, the

non-disclosure of Objects and Reasons per se would not impinge upon the constitutionality of a provision unless the provision is ambiguous and the possible interpretation violate Part III of the Constitution. In the absence of any finding of any constitutional infirmity in a provision, the Court is not empowered to invalidate a provision.

37. To hold a provision as violative of the Constitution on account of failure of the legislature to state the Objects and Reasons would amount to an indirect scrutiny of the motives of the legislature behind the enactment. Such a course of action, in our view, is unwarranted. The raison d'être behind this self-imposed restriction is because of the fundamental reason that different organs of the State do not scrutinise each other's wisdom in the exercise of their duties. In other words, the time-tested principle of checks and balances does not empower the Court to question the motives or wisdom of the legislature, except in circumstances when the same is demonstrated from the enacted law.

38. The following instructive passage from United States v. Butler [United States v. Butler, 1936 SCC OnLine US SC 12 : 80 L Ed 477 : 297 US 1 (1936)] offers guidance on the above proposition, wherein Stone, J. observed thus : (SCC OnLine US SC para 71)

"1. The power of courts to declare a statute unconstitutional is subject to two guiding principles of decision which ought never to be absent from judicial consciousness. One is that courts are concerned only with the power to enact statutes, not with their wisdom. The other is that while unconstitutional exercise of power by the executive ... is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint. For the removal of unwise laws from the statute books appeal lies not to the courts but to the ballot and to the processes of democratic Government."(emphasis supplied)

39. In the Indian constitutional jurisprudence, the above principle has been reckoned by this Court in its early

years in 1954 in *K.C. Gajapati Narayan Deo v. State of Orissa* [*K.C. Gajapati Narayan Deo v. State of Orissa*, 1954 SCR 1 : AIR 1953 SC 375] , wherein the Court observed thus : (AIR p. 379, para 9)

“9. ... 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. Whether a statute is constitutional or not is thus always a question of power... [Vide Cooley's Constitutional Limitations, Vol. 1 p. 379] .

If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislature entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers.”

40. We have noted that the High Court has characterised clause (f) as “arbitrary” and “unconscionable” while imputing it with unconstitutionality. It is pertinent to note that the High Court reaches this conclusion without undertaking an actual examination of clause (f). Instead, the declaration is preceded by an enquiry into the circumstances leading up to the enactment. As discussed above, the constitutional power of judicial review contemplates a review of the provision, as it stands, and not a review of the circumstances in which the enactment was made. Be it noted that merely holding an enacted provision as unconscionable or arbitrary is not sufficient to hold it as unconstitutional unless such infirmities are sufficiently shown to exist in the form, substance or functioning of the impugned provision. No such infirmity has been exhibited and adverted to in the impugned judgment (**Exide Industries Ltd. v. Union of India**, 2007 SCC OnLine Cal 932: (2007) 212 CTR 206).”

103. Considering the above discussion, we are of the view that the Statement accompanying the Ordinance which has cited health emergency arising due to COVID-19 pandemic for bringing in the impugned provision/amendment viz. the Multi Member Ward System is only for the limited purpose of understanding the background and antecedent to the state of affairs leading upto the Ordinance/legislation but cannot be used as an aid to indicate/justify the intention of the objects or objectives to bring in the Multi Member Ward System as that is a matter of legislative policy to be exercised by the collective wisdom of the legislature. Besides, the Statement is to be used only when there is an ambiguity in the plain meaning of the words used in a statute. In our view it is quite clear from the amendment that after the commencement of the Maharashtra Municipal Corporations (Amendment) Act, 2021, in respect of the general elections to the Corporations, each of the wards are to elect as far as possible three Councillors but not less than two and not more than four and that each voter would be entitled to cast as many votes as the number of Councillors. The Respondent, State Election Commission, responsible for the implementation/execution, statedly has under the powers vested in it pursuant to Section 5(3) of the M.M.C. Act, prepared the drafts of the delimitations of the eighteen Corporations.

104. Therefore in our view, when the plain meaning of the words have been put into effect, this Court need not get into the supposed intention or the policy underlying the statute or refer to the statement for introducing the said provision more so when the constitutional validity of almost identical provisions have been upheld more than once as discussed earlier. At the cost of repetition it must be said that it is only when the plain meaning of the words used in a statute create ambiguity that it would be permissible to have the extrinsic aid of looking to the Statement of Objects and Reasons for ascertaining the true intention of the Legislature. Therefore, the argument that the impugned provision has no reasonable nexus with the object to be achieved must be rejected.

105. There can be no two views with respect to the principles laid down in the case of **Madras Bar Association V/s. Union of India** (supra). But we do not see any reason in the facts of this case to interfere with the legislative power exercised by the State Legislature in re-introducing the Multi Member Ward sytem as the same has been held to be constitutionally valid in several decisions and just because an already constitutionally valid system is reintroduced in a new

avatar, a challenge to the same on new grounds cannot in our view be permitted.

106. With respect to the argument on the purported repugnancy between the Representative of Peoples Act and the impugned proviso, the following quote from paragraph 12 of the decision in the case of **Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd.** ((2007) 9 SCC 109) of the Hon'ble Supreme Court, is apt in the facts of this case as well:

“.....The question of repugnancy can arise only with reference to a legislation made by Parliament falling under the Concurrent List or an existing law with reference to one of the matters enumerated in the Concurrent List. If a law made by the State Legislature covered by an entry in the State List incidentally touches any of the entries in the Concurrent List, Article 254 is not attracted. But where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State Legislature touching upon a matter covered by the Concurrent List, will not be void if it can coexist and operate without repugnancy with the provisions of the existing law. What is stated above with reference to an existing law, is also the position with reference to a law made by Parliament. Repugnancy is said to arise when: (i) there is clear and direct inconsistency between the Central and the State Act; (ii) such inconsistency is irreconcilable, or brings the State Act

in direct collision with the Central Act or brings about a situation where obeying one would lead to disobeying the other.”

107. Also paragraphs 23 and 24 of the decision in the case of **M. Karunanidhi v. Union of India & Ors. ((1979) 3 SCC 431)** are relevant and are quoted as under:

“23. It was, however, strongly contended by Mr Venugopal that the provisions contained in the State Act, run counter to those of the Central Acts in respect of the following matters:

1. The procedure for investigation of the offences by a Central agency as contemplated by the Corruption Act is dispensed with and is instead invested in a Commissioner appointed under the State Act.

2. The provision under the Prevention of Corruption Act regarding the grant of sanction under Section 197 of the Code to the accused is given a complete go by and instead a Commissioner is appointed to hold a regular inquiry for himself and then to submit his report. Thus, an accused who has been tried under the State Act is deprived of protection afforded to every Government servant regarding grant of a sanction by the appointing authority. It is thus suggested that the protection, if any, given by the State Act is purely illusory.

In order, however, to understand the argument of the learned counsel for the appellant, it may be necessary to consider the question of repugnancy in a little broader perspective.”

24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

- 2. That such an inconsistency is absolutely irreconcilable.*
- 3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.”*

108. This is not a case where it is impossible to conform to the impugned provision without infringing Section 62 of the Representative of Peoples Act. Therefore in our view, the concept of repugnancy would not arise. We, therefore, are in agreement with the Learned Advocate General.

109. With respect to the arguments made in Writ Petitions No. 7618 and 7640 of 2021 that the impugned provision would strangle the 74th amendment to the Constitution, pursuant to which the concept of Area Sabhas was introduced in the M.M.C. Act, 1949, with the aim of increasing participatory democracy to empower people from the bottom, it is to be stated that no doubt the provisions seek to achieve grassroot level empowerment of people in an act of democratic balancing by decentralization of power to fulfill the much desired aspirations of the people of our country, however, in view of the fact and position that the provisions relating to Area Sabhas in the MMC Act have yet to be notified in the Official Gazette to bring them into force, the griev-

ance raised in this behalf that the Multi Member Ward System would lead to a problem in electing Chairperson for the Area Sabhas need not be gone into.

110. Since the impugned proviso has now become part of the MMC Act pursuant to the Amendment Act, we proceed on that basis and naturally there would be a presumption of constitutionality and the burden to demonstrate transgression is on the person who challenges the same. In view of what we have observed above, no case has been made out by Petitioners demonstrating any transgression of the Constitution. The case of **State of Uttar Pradesh v. Kartar Singh** (supra) fairly elucidates this principle. Paragraphs 12 and 13 are usefully quoted as under:

“12. The standards themselves, it would be noticed, have been prescribed by the Central Government on the advice of a Committee which included in its composition persons considered experts in the field of food technology and food analysis. In the circumstances, if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any apriori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Art.14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Art.14 the burden is on him to plead and prove the infirmity is too well

established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case, for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the assistance of a committee containing experts such as the one constituted under s.3 of the Act, that presumption is strong, if not overwhelming. We might in this connection add that the respondent cannot assert any fundamental right under Art.19(1) to carry on business in adulterated foodstuffs.

13. Where the necessary facts have been pleaded and established, the Court would have materials before it on which it could base findings, as regards the reasonableness or otherwise or of the discriminatory nature of the rules. In the absence of a pleading and proof of unreasonableness or arbitrariness the Court cannot accept the statement of a party as to the unreasonableness or unconstitutionality of a rule and refuse to enforce the rule as it stands merely because in its view the standards are too high and for this reason the rule is unreasonable. In the case before us there was neither pleading nor proof of any facts directed to that end. The only basis on which the contention regarding unreasonableness or discrimination was raised was an apriori argument addressed to the Court, that the division into the- zones was not rational, in that hilly and plain areas of the country were not differentiated for the prescription of the minimum Reichert values. That a distinction should exist between hilly regions and plains, was again based on apriori reasoning resting on the different minimum Reichert values prescribed for Himachal Pradesh and Uttar Pradesh and on no other. It was, however, not as if the entire State of Himachal Pradesh is of uniform elevation or even as if no part of that State is plain country but yet if the same minimum was prescribed for the entire area of Himachal Pradesh, that would clearly show that the elevation of a place is not the only factor to be taken into account.”

111. As can be seen, all the other arguments put forth by learned Counsel have been dealt with by the Division Bench of this Court in the decision of **Kiran Kadam V/s. State of Maharashtra** (supra). It would therefore not be necessary for us to labour in dealing with the various arguments put forward by the learned Counsel / Senior Counsel.

112. In view of the above discussion, the judicial pronouncements discussed above, the principle, challenge to the amendment to proviso to Section 5(3) of the Municipal Corporation Act pursuant to the Ordinance dated 30th September, 2021 replaced by the Maharashtra Amendment Act No. I of 2002 dated 17th January, 2022 introducing as far as possible three Councilors but not less than two and more than four in a Ward of a Corporation must fail. We hold the same to be intra vires the constitution. The State legislature has duly exercised its power under the Constitution being competent to do so.

113. We therefore do not find any merit in the Petitions. The Petitions are accordingly dismissed.

(ABHAY AHUJA, J.)

(A.A. SAYED, J.)