In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Arjun Ray Mukherjee

MAT No.1917 of 2026
+
CAN 1 of 2026

Dipu Das

Vs.

The State of West Bengal and Others

For the appellant	:	Mr. Bikash Ranjan Bhattacharya, Sr. Adv., Mr. Samim Ahammed, Ms. Ambiya Khatun, Mr. Asif Ikbal Baidya, Ms. Huma Shakil
For the State	:	Mr. D.N. Roy, Ld. Govt. Pleader, Ms. Aparna Banerjee, Ld. Addl. Govt. Pleader, Mr. Anindya Basu, Sr. Adv., Mr. Bikash Kumar Sriwastav, Mr. Vinayak Chaubey
For the KMC	:	Mr. S.N. Mitra, Ld. Advocate General, Mr. Debanjan Mukherjee
For the State Election Commission, W.B.	:	Ms. Sonal Sinha, Mr. Sandipan Das
For the respondent no.8	:	Mr. Zohaib Rauf, Mr. Ajitesh Pandey, Mr. Andalan Sarkar
For the respondent no.9	:	Mr. Biswaroop Bhattacharyya, Mr. Arka Kr. Nag, Mr. Neil Basu, Ms. Shrobana Sengupta, Mr. Kaushik Bandyapadhyay

For the Respondent nos.10 & 11:		Mr. Kallol Basu, Mr. Tapas Maity
Heard on	:	04.11.2026
Reserved on	:	04.11.2026
Judgment on	:	06.11.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal arises out of a writ petition filed by the appellant against a Notification dated September 11, 2026, whereby Schedule II of the Kolkata Municipal Corporation Act, 1980 (for short, "the KMC Act") was substituted to give effect to an exercise of delimitation of the different wards/constituencies of the Kolkata Municipal Corporation (hereinafter referred to as "the KMC"). By the impugned order, the learned Single Judge directed affidavits to be exchanged but refused to grant any interim protection to the writ petitioner/appellant. Being aggrieved by such refusal, the instant appeal has been preferred.

2. Learned senior counsel appearing for the appellant argues that in the garb of delimitation, the respondents have resorted to gerrymandering in order to secure partisan advantage to the ruling political party in the State of West Bengal on the premise of previous electoral results, without considering relevant circumstances such as geographical contiguity, compactness and administrative convenience, involving huge expenses from the public exchequer. The basis of such exercise, it is alleged, is the electoral rolls rather than the actual population,

thereby excluding a large number of residents from the zone of consideration.

3. Learned senior counsel argues that the power to amend the Schedules to the KMC Act, including Schedule II which, read with Section 5(2) of the said Act, delineates the different wards of the KMC (each of which constitutes a constituency for the purpose of the KMC elections), flows from Section 601 of the KMC Act. As per Section 601, the State Government may, of its own, or shall, on the recommendation of the KMC, add to, amend, or alter any Schedule except Schedule I. By relying on several documents annexed to the writ petition, which are also a part of the stay application filed in the present appeal, it is contended that in the present case, the exercise was undertaken by the State Government not *suo motu* but at the behest of the Administrator appointed by the State upon dissolving the Corporation.

4. However, it is submitted that an Administrator is appointed upon dissolution of the Corporation under Section 118(1)(b) of the KMC Act only to discharge temporarily the administrative functions of the different office-bearers of the Corporation till the next election is held. Such powers of the Administrator do not include the authority to make a recommendation under Section 601 of the said Act, which is a quasi-legislative function to be discharged by the "Corporation" as a whole, acting as a Corporation, and not individually by its office-bearers.

5. To bolster such argument, learned senior counsel for the appellant refers to Section 5 of the KMC Act, which provides that the Corporation

shall consist of all its elected Councillors and the nominated members of the State Government.

6. The appellant contends that vide Order dated June 8, 2026, the then Corporation was prematurely dissolved, appointing the Municipal Commissioner of the KMC as the Administrator under Section 118(1)(b) of the KMC Act. Section 14(1)(a) mentions the Municipal Commissioner as an officer of the Corporation who, as per Section 15(1) of the said Act, is paid salary and allowances out of the Municipal Fund as determined from time to time by the State Government. A mere officer of the Corporation, it is argued, cannot act as the "Corporation" itself for the purpose of making a recommendation under Section 601.

7. Moreover, since the State Government itself appoints the Administrator, it would be absurd that such appointee would herself/himself make a recommendation in the capacity of "Corporation" which then would be binding on the State Government under Section 601 of the KMC Act, which would translate into the State making a mandatory recommendation to itself for the purpose of altering Schedule II of the Act. Also, under the first proviso to Section 118(1)(b) of the KMC Act, it is the State Government which allocates the powers and duties to be exercised/performed by the Administrator, which would accentuate such absurdity.

8. Learned senior counsel for the appellant further submits that the draft Schedule II was made available for public inspection from August 5 to August 13, 2026. However, a notification was issued within only 2 days

thereafter, on August 7, 2026 regarding the KMC Amendment Bill to give effect to such draft.

9. On August 21, 2026, the Special Secretary sent an e mail to the State Election Commissioner regarding the proposed delimitation, followed by the Administrator's letter dated August 22, 2026 to the Additional Chief Secretary intimating the number of old and new wards. On the self-same date, that is August 22, 2026, the draft Schedule II was made available for public inspection from the said date to September 3, 2026.

10. However, even prior thereto, on August 20, 2026, the KMC (Amendment) Act, 2026 was notified in the Official Gazette, thereby implementing the increase in number of Councillors as per the draft amendment to Schedule II.

11. Ultimately on September 11, 2026, the amendment to Schedule II of the KMC Act was notified.

12. The appellant contends that the entire chronology of the aforementioned events clearly exhibits malice in law, where the Executive acted hand-in-glove with the State Legislature, colluding with the Administrator appointed by the State, to achieve the objective of gerrymandering.

13. Learned senior counsel for the appellant cites *State of Madhya Pradesh & Ors. -vs- Devilal*, reported at *(1986) 1 SCC 657*, where the Hon'ble Supreme Court held that if the State Government were to issue a notification under the concerned Act for redistribution of the constituencies in a block after the process of election has started, it

would necessarily change the whole pattern of voting in the election, which would plainly be a typical case of gerrymandering, meaning to arrange election districts so as to give an unfair advantage to the party in power by means of a redistribution act or to manipulate constituencies generally.

14. Learned senior counsel next relies on *Dravida Munnetra Kazhagam (DMK) -vs- Secretary, Governor's Secretariat & Ors.*, reported at *(2020) 6 SCC 548*, for the proposition that the express constitutional embargos of Articles 243-O and 243-ZG do not apply if the proceedings are only to further the expeditious completion of pre-requisites of a fair election.

15. Again, the appellant places reliance on *Kishorchandra Chhanganlal Rathod -vs- Union of India & Ors.*, reported at *(2024) 13 SCC 237*, in support of the proposition that nothing precludes constitutional courts from checking the validity of orders passed by the Delimitation Commission on the touchstone of the Constitution if an order is found to be manifestly arbitrary and irreconcilable to constitutional values.

16. Lastly, the appellant relies on *Debabrata Bera & Ors. -vs- The State of West Bengal & Ors.*, reported at *2024 SCC OnLine Cal 4861*, to strengthen the argument that the Board of Administrators of the Corporation can discharge only the executive functions, as opposed to the legislative functions, of the Corporation.

17. Learned counsel appearing for respondent nos. 10 and 11 cites *State of Goa & Anr. -vs- Fouziya Imtiaz Shaikh & Anr.*, reported at *(2021) 8 SCC 401*, to contend that the jurisdiction of the High Courts under

Articles 226 and 227 and that of the Supreme Court under Article 136 of the Constitution is not affected as the non obstante clause in Article 243-ZG operates only during the process of election.

18. Learned counsel for respondent no. 9 adds that the mode and manner of the exercise of delimitation undertaken by the State Government tantamounts to fraud on power.

19. Learned counsel appearing for respondent nos. 10 and 11, respondent no. 9 and respondent no. 8 otherwise adopt the arguments of the appellant in unison.

20. Learned Advocate General, appearing for the KMC, raises a preliminary objection as to maintainability of the writ petition from which the present appeal arises, on the ground of bar under Article 243-ZG of the Constitution of India. By citing *State of U.P. & Ors. -vs- Pradhan Sangh Kshettra Samiti & Ors.*, reported at *1995 Supp(2) SCC 305*, it is contended that it is for the Government to decide, and not for the Court to dictate, the manner in which the panchayat areas and the constituencies in each panchayat area will be delimited. The Hon'ble Supreme Court held in the said report that the approach of the High Court was objectionable insofar as it went into the question of the validity of the delimitation of constituencies and also the allotment of seats to them despite the bar under Article 243-O(a).

21. In *Devilal's Case*, it is pointed out, the Hon'ble Supreme Court was considering a situation where the exercise of delimitation was

undertaken after the electoral process had begun, as opposed to the instant case.

22. The other judgments cited by the appellant are sought to be distinguished by learned Advocate General on facts.

23. Next relying on the language of Section 118(1)(b) of the KMC Act, learned Advocate General argues for the KMC that there is no restriction in the said provision as to who can be appointed as an Administrator. Thus, it is submitted, the appellant's arguments based on the Administrator being necessarily an Officer of the Corporation are not tenable in the eye of law.

24. Moreover, it is submitted, the objections raised before this Court were not urged before the writ court, nor did the appellant raise any objection before the appropriate authorities despite several opportunities being given the public in general at every stage of the delimitation process.

25. Learned Advocate General further contends that under Section 601 of the KMC Act, the State Government itself has ample power to add, alter, or modify the Schedules of the KMC Act other than Schedule I, irrespective of whether any recommendation is made by the Corporation or not. Thus, the appellant's contentions in that regard are irrelevant.

26. Learned Government Pleader, representing the State, adopts the last-aforementioned argument of the KMC and adds that the delimitation has already been enacted as law by the State Legislature by way of the

KMC (Amendment) Act, 2026. In the absence of any challenge thereto in the writ petition, the arguments advanced on the amendment to Schedule II of the KMC Act acquire a mere academic character.

27. Having heard learned counsel for the contesting parties, the Court comes to the following conclusions:

28. The limited conspectus of the present appeal is whether the learned Single Judge erred in law in refusing to grant any interim protection to the writ petitioner/appellant. Since the main writ petition is still pending, we desist from deciding conclusively the merits of the same and make it clear that the scope of examination in the present appeal is limited to the *prima facie* case made out in the writ petition and whether the writ petitioner/appellant was entitled to any interim order.

29. The first salient feature of the present *lis* is that the impugned notification substituting/amending Schedule II has been issued by virtue of the powers vested in the State Government under Section 601 of the KMC Act. The said Section has two facets.

30. First, the State Government may, by notification, add to, amend, or alter any Schedule (except Schedule I) of the KMC Act of its own, in which case the power is discretionary and there is no mandate on it to do so.

31. Secondly, the State Government shall so add, amend or alter on the recommendation of the Corporation (KMC), in which case, once a recommendation is so made, it is mandatory for the State Government to implement the same.

32. This distinction between the two scenarios is borne out by the contrast in language embodied in the Section itself, which uses the expression "may" for a *suo motu* addition/amendment/alteration by the State whereas employs the term "shall" in case such amendment/addition/alteration is made on the recommendation of the Corporation.

33. From the chronology of events, as evidenced by the materials on record, there cannot be any manner of doubt that the impugned amendment was made by the State Government not *suo motu*, but on the recommendation of the Administrator appointed upon dissolution of the Corporation.

34. By Order No.1188/MA-15011(22)/22/2026-LS-MA SEC dated June 8, 2026, issued by the Additional Chief Secretary to the Government of West Bengal on behalf of the Government of West Bengal, Department of Municipal Affairs, the Corporation was dissolved with immediate effect under Section 117(1) of the KMC Act.

35. Vide Order No.1189/MA-15011(22)/22/2026-LS-MA SEC of June 8, 2026, immediately thereafter, the erstwhile office-bearers of the Corporation were directed to vacate office and the then Municipal Commissioner of the Corporation was designated by the State Government as the Administrator under Section 118(1)(b) of the KMC Act to exercise all the powers and duties which may be exercised or performed by the members or the Mayor-in-Council or any Committee or the Mayor or the Chairman of the Corporation.

36. On August 5, 2026, a Notice was issued by the Joint Secretary to the State Government, publishing the initial draft of the amended Schedule II of the KMC Act, purportedly making it available for public inspection with effect from August 5 to August 13, 2026. Conspicuously, in the said notice itself, it was categorically mentioned that the said draft describing the boundaries of the projected wards of the KMC was being published *as per recommendation received from the Kolkata Municipal Corporation.*

37. The next link in the chain of events came on August 22, 2026, when the Administrator of the KMC sent to the Additional Chief Secretary, Urban Development and Municipal Affairs Department, Government of West Bengal a list of the old wards of the KMC, together with the new ward numbers, electoral part nos. and assembly constituency nos. pertaining to the KMC.

38. On the self-same date, the Additional Chief Secretary passed an order publishing the draft amendment to Schedule II of the KMC Act for "information of persons likely to be affected thereby", granting public inspection from that date till September 3, 2026.

39. Thereafter, by the impugned Gazette Notification dated September 11, 2026, the amendment to Schedule II was finally notified.

40. Thus, it is crystal-clear that the said amendment to Schedule II was made under the powers conferred by the second limb of Section 601 of the KMC Act, on the purported recommendation of the Corporation.

41. The next question which inevitably crops up is whether the Administrator, appointed by the State Government upon dissolution of the Corporation, could act as the "Corporation" and issue such recommendation.

42. The entire scheme of the KMC Act militates against such proposition and indicates the answer to be in the negative.

43. Section 5 of the KMC Act, in no uncertain terms, defines the Corporation to consist of all its elected Councillors and the State Government-nominated members. Conspicuously, the language used in Section 118(1)(b) is not that the Administrator appointed by the State Government upon dissolution of the Corporation shall act as the "Corporation", but that such person shall exercise or perform the powers and duties of the members or the named office-bearers of the Corporation. None of the members or office-bearers of the Corporation can claim to represent the Corporation by themselves. By necessary implication, the Administrator can also discharge only the executive functions of the individual members of the Corporation as delegated by the State Government and not exercise the legislative functions of the Corporation as such.

44. The limited ambit of powers of the Administrator is further highlighted by Section 117(5) of the KMC Act, which mandates that an election to constitute "the Corporation" shall be completed before the expiry of six months from the date of its dissolution.

45. The consequences of dissolution are enumerated in Section 118, the different sub-sections of which complement each other. Whereas Clause (a) of sub-section (1) provides that on dissolution, all the members of the Corporation, the Mayor-in-Council, Committees, Mayor and Chairman shall vacate their offices, Clause (b) stipulates that the State Government shall appoint one or several persons to discharge the powers and duties of the aforementioned functionaries in the interregnum. Such appointment, as evident from a conjoint reading of Sections 117(5) and 118(1), is a stop-gap interim arrangement to ensure continuity of discharge of the essential functions and duties of the Corporation functionaries till a new Corporation is elected within the mandatory period of six months from such dissolution.

46. Although Section 118(1)(b) does not restrict the appointment of Administrator to the Officers of the Corporation, fact remains that the ambit of functioning of the Administrator/Administrators is limited to regular administrative functions and the Administrator cannot substitute a validly elected Corporation for the purpose of making a recommendation under Section 601 of the KMC Act. The Administrator cannot arrogate to herself/himself the legislative / quasi-legislative function of the Corporation itself to recommend any addition/alteration/amendment of the Schedules of the KMC Act.

47. Moreover, fact remains that in the present case the Municipal Commissioner is an Officer of the KMC as per Section 14(1)(a) of the KMC Act and is paid salary and allowances from the Municipal funds

as determined by the State Government. Such Officer cannot be elevated to act as a duly elected Corporation in the capacity of a "Corporation" as contemplated in Section 5 of the Act.

48. Another absurdity which would arise if the Administrator exercises recommendatory power under Section 601 is that whereas the State Government, acting on its own, has the discretion of amending or not amending the Schedules of the KMC Act (except Schedule I, of course) under Section 601, no such discretion is available to it once the Corporation recommends such amendment or alteration. Taking such logical thread further, it is the State Government which allocates the specific powers and duties of the Administrator under the first proviso to Section 118(1)(b) of the KMC Act. Thus, theoretically the State Government itself could then empower the Administrator of its own choice to make a tailor-made recommendation to it under Section 601 of the KMC Act, in which case the mandatory element of such recommendation would be rendered farcical and meaningless. It would then be the State Government which would virtually recommend an amendment to the Schedules to itself and then choose to be bound by it, denuding the mandatory nature of the recommendation of any credibility and autonomy whatsoever.

49. Such puppetry cannot be compatible with the scheme of the KMC Act. The key feature of Section 601 of the KMC Act is the institutional autonomy vested in the Corporation in making a binding recommendation to the State Government, which confers authority on

the Corporation, an autonomous institution, to decide the delimitation of its own wards, in other words, its electoral constituencies.

50. In the present case, in view of the Corporation having been dissolved and the Administrator appointed long back on June 8, 2026, there could not have been a valid recommendation from the 'Corporation' within the contemplation of Section 601 on August 5, 2026, when such recommendation was cited as the basis of the draft amendment to Schedule II of the KMC Act. Rather, it was a recommendation by the Administrator appointed by the State itself, who did not have the authority in law to arrogate to herself the powers of the Corporation, acting as the 'Corporation'.

51. Hence, the very premise and genesis of the draft notification was bad in law, being violative of Section 601 of the KMC Act. In view of such genetic defect, the subsequent final publication and consequential alteration to Schedule II is vitiated by law.

52. The next issue which arises is, whether Article 243-ZG creates an embargo to the exercise of writ jurisdiction in the instant case. The answer has to be in the negative because of the following reasons:

53. First, the bar under Clause (1) of Article 243-ZG is confined to any law relating to the delimitation of constituencies or allotment of seats to such constituencies "made or purporting to be made under Article 243-ZA".

54. However, in the instant case, the alteration to Schedule II was not made by any law made by the State Legislature but by the State

Government, which is the Executive, under Section 601 of the KMC Act, which is a statute subservient to the Constitution. That apart, Article 243-ZA does not specifically cover delimitation prior to the electoral process but relates to superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, elections and laws made in connection therewith.

55. Thus, the bar under Article 243-ZG is not attracted at all in the present case.

56. In *State of U.P. -vs- Pradhan Sangh (supra)*[1], cited by the KMC, the Hon'ble Supreme Court observed that so long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the courts cannot interfere with the same. Thus, even as per the said judgment, where there was a breach of the relevant provisions, the courts could interfere. The bar being considered there was constitutional, being stipulated in Article 243-O(a), and operated in respect of delimitation of constituencies and allotment of seats to them under Article 243-K. However, in the instant case, the amendment to Schedule II was made under a statutory provision, that is, Section 601 of the KMC Act, which is definitely subject to judicial review under Articles 226 and 227 of the Constitution.

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[1] ***State of U.P. & Ors. -vs- Pradhan Sangh Kshettra Samiti & Ors.*, reported at *1995 Supp(2) SCC 305***

57. In fact, in *State of Goa (supra)*[2], even in case of the constitutional bar under Article 243-ZG, the Hon'ble Supreme Court observed that such bar operates only during the process of election. In the case at hand, the exercise of delimitation was admittedly not undertaken during any electoral process or in connection with an election, although it might have an effect on future elections of the KMC.

58. The Hon'ble Supreme Court, in *Kishorchandra Chhanganlal Rathod (supra)*[3], after taking into consideration the law holding the field and several earlier judgments, disapproved the view that the order of delimitation of constituencies, issued in exercise of statutory powers under the Delimitation Act, is entirely insusceptible to the powers of judicial review exercisable under Article 226 of the Constitution.

59. In the instant case, the delimitation exercise was undertaken under Section 601 of the KMC Act, which is a statutory provision subservient to the Constitution of India and not a Constitutional power. Thus, an illegal or arbitrary exercise under Section 601 is all the more amenable to the power of judicial review exercised by the High Court under Articles 226 and 227, which flows from the Constitution, the *Grund norm* of the Indian legal framework, and has been held by the Hon'ble Supreme Court to be a part of the basic structure of the Constitution.

60. In the present case, the manner in which the Corporation was dissolved mid-term and an Administrator was appointed and the hasty

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[2] ***State of Goa & Anr. -vs- Fouziya Imtiaz Shaikh & Anr.*, reported at *(2021) 8 SCC 401***

[3] ***Kishorchandra Chhanganlal Rathod -vs- Union of India & Ors., reported at (2024) 13 SCC 237***

chronology of events thereafter lends some substance to the appellant's arguments that there might have been a method in the madness.

61. Admittedly, on August 5, 2026, when the draft Schedule II was made available for public inspection, it was done on the recommendation of the "Corporation", despite the Corporation being non-existent, since the earlier Corporation already stood dissolved mid-term and the next election mandated under Section 117(5) of the KMC Act had not yet taken place. Strangely, although public inspection was allowed by the said notice till August 13, 2026, only two days after, that is, on August 7, 2026, the KMC (Amendment) Bill was tabled and made into an enactment on August 20, 2026.

62. On the very next day, that is, August 21, 2026, the Special Secretary wrote to the State Election Commissioner. The Administrator, on the succeeding date, wrote to the Additional Chief Secretary who, on the very same day, published the draft Schedule II for public inspection.

63. This apparent complicity between the KMC, which has been conferred a degree of autonomy by dint of its recommendatory power under Section 601 of the KMC Act, with the State, cannot thus be ruled out altogether, creating an apprehension of arbitrariness and violation of the spirit of the law, although it would be premature at this stage to decide whether there was malice in law or any attempt at gerrymandering.

64. Yet, in view of the above considerations, the writ petition is *prima facie* maintainable.

65. The question of *locus standi* of the petitioner/appellant is not dented merely because she did not file any objection to the impugned notification when public objections were invited. A foundational flaw hitting at the genesis of an action of the State Government in discharge of its public functions can very well be assailed by any member of the electorate by seeking invocation of the power of judicial review of constitutional courts.

66. The concept of *locus standi* has undergone much expansion in recent years and has evolved out of its original restricted conspectus. The erroneous and unlawful actions of the State and/or failure of the State to discharge its duties and functions having public ramifications can always be assailed by a citizen, in the present case an elector and an ex-Councillor of the very Corporation, the wards of which have been sought to be subjected to delimitation.

67. The State argues that the statutory amendment brought about to the KMC Act has not been assailed. However, such amendment is much more limited than the alteration to Schedule II which has been assailed in the present writ petition, and absence of challenge to the Amendment Act *per se* does not preclude a challenge to the delimitation exercise.

68. In any event, the writ petition is still pending and it is always open to the writ petitioner/appellant to challenge the Amending Act as well by amending the prayers and pleadings of the writ petition. Such statutory amendment, if construed to give effect to the delimitation process

arising out of the alteration in Schedule II, would automatically also be vitiated if such alteration itself is set aside.

69. In such view of the matter, in the least, it has to be held that the writ petitioner/appellant has made out a sufficiently strong *prima facie* case in the writ petition to be favoured with interim protection in order to save the writ petition from being rendered infructuous.

70. However, the learned Single Judge presumably overlooked the legal and factual implications as discussed above in refusing to grant ad interim protection to the writ petitioner/appellant.

71. Accordingly, MAT No.1917 of 2026 is allowed on contest, thereby modifying the impugned Order dated October 29, 2026 passed in WPA No.31433 of 2026 by restraining the respondent no. 6, that is, the West Bengal State Election Commission, from issuing any notification calling an election to the Kolkata Municipal Corporation on the basis of the amended Schedule II of the KMC Act as notified in the Official Gazette vide Notification No.1728/UDMA-15011(22)/57/2026-LS-MA SEC dated September 11, 2026 till disposal of WPA No.31433 of 2026. The rest of the said impugned order is not interfered with.

72. It is made clear that the aforesaid observations are tentative in nature insofar as the final disposal of the writ petition is concerned.

73. Consequentially, CAN 1 of 2026, filed in the present appeal, stands disposed of as well.

74. No order as to costs.

75. Urgent Photostat certified copies of this judgment, if applied for, be furnished to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Arjun Ray Mukherjee, J.)