

Castes for the office of Sarpanch in the district for women belonging to Scheduled Castes. Therefore, the contention of the counsel for the petitioner that a member of the Scheduled Castes can only contest the election for the office of Sarpanch against the reserved seat for 'women' belonging to scheduled Castes and not the seat reserved for Scheduled Castes, cannot be accepted. Thus, in our opinion, respondent No. 5, though was elected to the office of Panch against the reserved category of Scheduled Castes Women, was fully eligible to contest the election for the post of Sarpanch, which was reserved for Scheduled Castes category, being a 'woman' belonging to Scheduled Caste.

(9) In view of the aforesaid, we do not find any merit in this petition and the same is hereby dismissed.

R.N.R.

Before Permod Kohli & Rakesh Kumar Garg, JJ.

BALDEV RAJ,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP No. 10349 of 2008

11th July, 2008

Constitution of India, 1950—Arts. 226 & 243ZG(b)—Punjab Municipal Act, 1911—Ss. 3, 8, 12, 13 & 13-A—Determination of the number of Elected Members and Reservation of Offices of Presidents of Municipalities Rules, 1994—Rls. 3, 4, Schedules I and II—Delimitation of Wards of Municipalities Rules, 1972—Rls. 3 to 10—Petitioners seeking determination of delimitation, exclusion of names from voter list, non-preparation of proper and correct electoral rolls, non-reservation, wrong reservation of seats—Election schedule already notified and process of nomination commenced—Intervention of High Court in exercise of writ jurisdiction under Article 226 is improper—Any action of Court or any individual which may, by any means, hamper or obstruct democratic process

is anti thesis to spirit of constitutional provisions—Petitioner failing to place material on record to indicate that any right of them is infringed in any manner—Petitions liable to be dismissed.

Held, that the election schedule has been notified and the process of nomination commenced on 12th June, 2008. These writ petitions were heard when the nomination process had already started. All issues relating to delimitation, wrong delimitation, exclusion of names from the voter list, non-preparation of the proper and correct electoral rolls, non-reservation, wrong reservation of seats for various prescribed reserved categories relate to the conduct of election process for which is already on. Intervention of this court, in exercise of writ jurisdiction under Article 226 of the Constitution, at this stage, which may even remotely suggest the stalling of elections, is improper. The object and purport of introduction of Chapter IX-A in the Constitution of India by the 74th Constitutional Amendment 1992 was/is to facilitate the conduct of elections which is the fundamental requirement of democracy. Any action of the Court or any individual which may, by any means, hamper or obstruct the democratic process is anti thesis to the spirit of these constitutional provisions.

(Para 32)

Further held, that State Election Commission is the sole repository of the elections. In the present case, State Election Commission the only body entrusted with the conduct of the election and all its directions are binding upon the State Government and it is the constitutional obligation of the State Government as also the Election Commission to ensure timely, free and fair election. It is in this spirit that the elections are required to be conducted.

(Para 36)

Further held, that petitioners in all these petitions seem to be political workers who may be associated with one or the other political parties. No material has been placed on record to indicate that any right of the petitioners is infringed in any manner. The only right of a citizen in the matter of election is to exercise franchise according to his/her free will and choice. This right of the petitioners remains intact irrespective of the fact whether there are lesser number of representatives

or more. In some of the petitions, the grievance of the petitioners is that they are interested to contest election in a particular ward which has either been reserved or de-reserved. These are the individual rights which cannot have precedence over the larger public interest of holding elections to democratic institutions which alone can strengthen the democracy.

(Para 37)

Rajive Atma Ram, Sr. Advocate with

G.S. Mann, Advocate

Satpal Jain, Sr. Advocate with

Dheeraj Jain, Advocate

R.K. Chopra, Sr. Advocate with

Nirbhay Garg, Advocate

Arun Obroi, Advocate

Munish Jolly, Advocate for the petitioner(s)

Anmol Rattan Singh, Addl. A.G., Punjab, Parven Kumar Goyal,
Sr. DAG Punjab,

Rupinder Khosla, Advocate for respondent No. 3 in CWP No.
10349 of 2008

Salil Sagar, Sr. Advocate with T.N. Sarup, Advocate for
respondents No. 4 to 6 in CWP No. 10349 of 2008

Arun Sood, Advocate for respondent No. 5 in CWP No. 10349
of 2008

Rupinder Khosla, Advocate for respondent No. 4 in CWP No.
7970 of 2008

PERMOD KOHLI, J.

(1) This judgment will dispose of CWP Nos. 10349, 10647, 10632, 9866 and 7970 of 2008 as the questions of law and facts involved in all these petitions are similar and identical.

(2) Challenge in all these writ petitions is directed against (1) de-limitation of Municipal Wards ; (2) fixing the number of elected members in the Municipal Council/Corporation; (3) reservation for various reserved categories ; and (4) allocation of wards to reserved categories. These writ petitions were accordingly heard and are being disposed of by this common judgment.

(3) Part IX-A was introduced in the Constitution of India,— *vide* 74th Constitutional Amendment in the year 1992 with effect from 1st June, 1993. The Chapter deals with the creation of Municipalities as also the reservation and elections thereto. Article 243Q deals with the constitution of Municipality for smaller and larger urban areas. Article 243T deals with the reservation of seats. Article 243U deals with the duration of Municipalities. Article 243ZA deals with the election to the Municipalities. Article 243 ZF saves the existing laws relating to Municipalities for a limited period or till the same were amended in consonance with the constitutional provisions. Article 243 ZG creates bar to interference by courts in electoral matters. For the purpose of brevity, relevant extracts are reproduced here under :—

“Art. 243Q. (1) There shall be constituted in every State—

- (a) A nagar panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area ;
- (b) a Municipal Council for a smaller urban area ; and
- (c) a Municipal Corporation for a larger urban area,

In accordance with the provisions of this Part :

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

- (2) In this article. “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

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Art. 243T : (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

- (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
- (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.
- (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

- (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 of citizens.

Art. 243U. (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer :

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

- (2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).
- (3) An election to constitute a Municipality shall be completed,—
 - (a) before the expiry of its duration specified in Clause (1);
 - (b) before the expiration of a period of six months from the date of the dissolution :

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

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

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Art. 243 ZA. (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all election to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.

- (2) Subject to the provisions of this 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.

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243ZF. Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier :

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

Art. 243ZG. Notwithstanding anything in this Constitution,—

- (a) the validity of any law relating to the delimitation or constituencies or the allotment of seats to such

constituencies, made or purporting to be made under Article 243ZA shall not be called in question in any court;

- (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

(4) From the reading of Article 243Q, it appears that the constitution of Municipalities is mandatory constitutional requirement. There are three kinds of bodies-(a) Nagar Panchayat relating to the transitional area from rural to urban; (b) Municipal council for a smaller urban area and (c) Municipal Corporation for a larger urban area. Sub-Clause (2) of this Article prescribes the parameters for creation of Nagar Panchayat, Municipal Council and Municipal Corporation and it has its genesis to the population of the area, the density of population, revenue generated and host of other factors specified therein. At the time of introduction of the aforesaid constitutional amendment, the State of Punjab had the existing statute, namely, Punjab Municipal Act, 1911. However, some of the provisions of this Act seem to have amended to meet the constitutional requirement of Article 243ZF which requires the existing laws to be amended or repealed in furtherance to the constitutional requirements contained in Chapter IX-A. The existing laws to the extent of inconsistency with the constitutional provisions were allowed to remain in force till they are repealed/amended, but not exceeding one year. This clearly means that all existing laws were to be suitably re-enacted so as to comply with the constitutional mandate contained in Chapter IX-A. In compliance to the requirement of Article 243ZF, the State Legislature appears to have amended the Punjab Municipal Act, 1911. Amended provisions of Municipal Act relevant for purpose of present writ petitions are Sections 3, 8, 12, 13 and 13-A of the Punjab Municipal Act, 1911 same are reproduced here under :—

“3. **Definitions**—In this Act, unless there is something repugnant in the subject or context,—

(1) to (11) xxx

xxx

xxx

(11a) “population” means the population as ascertained at the last preceding Census, of which the relevant figures have been published;

(12) to (21) xxx xxx xxx

8. Reservation of Seats.—(1) In every Municipality, out of the total number of elected members determined under sub-section (3) of Section 12, the State Government shall, by notification reserve—

(a) such number of seats for the Scheduled Castes as may be determined by the State Government, subject to the condition that 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 bears to the total population of that area, and such seats may be allotted by rotation to different constituencies to be known as wards in the Municipality.

(b) one seat for the Backward Classes, and, such a seat may be allotted by rotation to different constituencies to be known as wards in the Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (a) of sub-section (1) shall be reserved for women belonging to the Scheduled Castes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes) 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 to be known as words in the Municipality.

EXPLANATION. In this section the expression,—

- (a) “Scheduled Castes” shall have the meaning assigned to them in clause (24) of Article 366 of the Constitution of India ; and
- (b) “Backward Classes” means the Backward Classes as the State Government may, from time to time, declare by issuing a notification to the Official Gazette.”

12. Composition of Municipalities.—(1) A Municipal “Council or a Nagar Panchayat constituted under Section 4 shall consist of a body of members, specified in section (3), having authority over such area,—

- (2) The Nagar Panchayat or the Municipal Council constituted under sub-section (1) shall be a body corporate having perpetual succession and a common seat with powers, subject to the provisions of this Act, to hold, acquire and dispose of property and may be that name *sue or be sued*.
- (3) The Nagar Panchayat or the Municipal Council constituted under sub-section (1) shall consist of the following members, namely :—
 - (i) such number of elected members as may be determined from time to time by the State Government in accordance with the prescribed principles ; and
 - (ii) all members of the Legislative Assembly of the State representing constituencies comprising wholly or partly the Municipal Area.

13. Duration of Municipalities—(1) Every Municipality save as otherwise provided in this Act, shall continue for five years from the date appointed for its first meeting and no longer.

Explanation.—In this section “first meeting” means the meeting of the newly constituted Municipality held for

the election of its President and Vice-President under Section 20 of this Act.

- (2) All Municipalities existing immediately before the commencement of the Constitution (Seventy-fourth) Amendment, 1992, shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the State Legislature.
- (3) An election to constitute a Municipality shall be completed,—
 - (a) before the expiry of its duration specified in sub-section (1);
 - (b) before the expiration of period of six months from the date of its dissolution:

Provided that when the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under clause (b) for constituting the municipality for such period.
- (4) The first election to a Municipality constituted under this Act after the commencement of the Punjab Municipal (Amendment) Act, 1994 shall be held within a period of six months of its being notified as such.
- (5) Elections to the Municipalities where no elected body exists immediately before the commencement of Punjab Municipal (Amendment) Act, 1994 shall be held within a period of six months from the date of such commencement.

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

13-A. Power of State Government to direct holding of general election:

- (1) Subject to the provisions of this Act and the rules made there under, the State Government, may by notification, direct that a general election of the members of the municipalities or an election to fill a casual vacancy shall be held by such date as may be specified in the notification and different dates may be specified for elections for different Municipalities or group or groups of Municipalities.
- (2) As soon as a notification is issued under sub-section (1), the Election Commissioner shall take necessary steps for holding such general election.”

(5) Similarly, the State Government also framed Rules known as “Determination of the number of Elected Members and Reservation of Offices of Presidents of Municipalities Rules, 1994 (hereinafter referred to as “the Rules”). Relevant rules are Rules 3, 4, Schedules I and II. These provisions are quoted hereunder :—

- “3. Determination of number of elected members.—The Nagar Panchayat or the Municipal Council constituted under sub-section (2) of Section 4 of the Act shall consist of such number of elected members as may be determined from time to time by the State Government by an order in writing on the basis of the population and the criteria specified in Schedule-I.
4. Reservation of seats.—(1) In every Municipality, out of the total number of elected members determined under rule 3, the State Government shall by notification, reserve such number of seats for the Scheduled Castes as may be determined by it, subject to the conditions laid down in clause (a) of sub-section (1) of section 8 of the Act.

- (2) One seat shall be reserved for the Backward classes as laid down in clause (b) sub section (1) of Section 8 of the Act.
- (3) Not less than one third of the total number of seats reserved under sub rule (1), shall be reserved for women belonging to the Scheduled Castes.
- (4) Not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes) 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 to be known as wards in the Municipality.
- (5) The seats reserved for women under sub rules (2) and (3) shall be allotted by rotation to different constituencies to be known as wards in the Municipality as per roster specified in Schedule-II.

SCHEDULE I

Criteria for determining the number of elected members in Municipal Councils and Nagar Panchayats on the basis of population as ascertained at the last preceding census of which the relevant figures have been published.

Population	Number of elected Members
Not exceeding 5,000	9
Exceeding 5,000	but not exceeding 10,000 11
Exceeding 10,000	but not exceeding 20,000 13
Exceeding 20,000	but not exceeding 30,000 15
Exceeding 30,000	but not exceeding 40,000 17
Exceeding 40,000	but not exceeding 50,000 19
Exceeding 50,000	but not exceeding 60,000 21

Exceeding 60,000	but not exceeding 70,000	23
Exceeding 70,000	but not exceeding 80,000	25
Exceeding 80,000	but not exceeding 90,000	27
Exceeding 90,000	but not exceeding 1,00,000	29
Exceeding 1,00,000	but not exceeding 1,25,000	31
Exceeding 1,25,000	but not exceeding 1,50,000	33
Exceeding 1,50,000	but not exceeding 1,75,000	35
Exceeding 1,75,000	but not exceeding 2,00,000	37
Exceeding 2,00,000	but not exceeding 2,50,000	39
Exceeding 2,50,000	but not exceeding 3,00,000	41
Exceeding 3,00,000	but not exceeding 3,50,000	43
Exceeding 3,50,000	but not exceeding 4,00,000	45
Exceeding 4,00,000	but not exceeding 5,00,000	47
Exceeding 5,00,000		40

SCHEDULE II

[See rule 4(4)]

Number of seats determined for the Municipality	Seats reserved for women	Seats numbers for women (including number of seats reserved for women, If any, belonging to the Scheduled Castes)	Remarks	
Maximum	Maximum	Minimum	Maximum	
1	2	3	4	
9	49	3 to 17	1, 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34, 37, 40, 43, 46 and 49	First election

3 to 16	2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41, 44, and 47	Second election
3 to 16	3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, 39, 42, 45, 48	Third election

(6) Rule 3 of the “Rules” empowers the State Government to determine the number of elected members from time to time on the basis of population and criteria specified in Schedule I. Schedule I lays the basis for determination of such number of members which has direct relations with the population as ascertained at the preceding census of which the figures of population have been published. Apart from the above Rules, the State Government also framed Delimitation of Wards of Municipalities Rules, 1972 (hereinafter referred to as “the Delimitation Rules”). Rule 3 deals with the constitution of the Delimitation Board whereas Rule 4 specifies the functions of the board and Rule 5 deals with the procedure and powers of the Board. Rule 6 further indicates the principles for Delimitation of Wards of Municipality, Rules 7 to 10 relate to the implementation of the Scheme formulated by the Board for delimitation. It is deemed appropriate to notice these rules :—

“3. Constitution of Board.—(1) For the purposes of carrying out the provisions of these rules, the Government shall constitute a Delimitation Board for each Municipality consisting of the following members, namely:—

- (i) The Deputy Commissioner of the District in which the Municipal Council/Nagar Panchayat is situated or any other Officer nominated by him in this behalf;
- (ii) Sub Divisional Officer ;
- (iii) The Deputy Director, Local Government of the region concerned ;

- (iv) The President or Administrator of the Municipal Council or Nagar Panchayat concerned ; and
 - (v) Executing Officer of the Municipal Council or Nagar Panchayat concerned.
- (2) The Board shall associate with itself for the purpose of assisting it in its day to day duties, not more than five members of the [Municipality] having due regard to the representation of various political parties and groups in the composition of the [Municipality]. This provision shall not, however, apply in the case of Municipality which has been [dissolved].

4. Functions of the Board.—It shall be the duty of the Board—

- (i) to divide the Municipality into such number of wards as may be necessary having regard to the number of elected members determined by the State Government, for the [Municipality], and the number of seats reserved for members of the Scheduled Castes, Backward Classes and women.]

5. Procedure and powers of the Board.—(1) None of the associate members shall have a right to vote or to sign any decision of the Board.

- (2) the meetings of the board shall be convened by the Director, after giving notice of at least ten days of the date, time and place of the meeting to all of its members.
- (3) the quorum necessary for the transaction of business at a meeting of the Board shall be three.
- (4) All questions which come before any meeting of the Board shall be decided by a majority of the votes of the members present and voting. The Chairman of the meeting, in case of an equality of votes, shall have a second or casting vote.
- (5) The Board shall have power to act notwithstanding the temporary absence of a member, or an associate

member, or of the existence of a vacancy in the Board, and no act or proceeding of the Board shall be invalid or called in question on the ground merely of temporary absence of a member or associate member, or of the existence of such a vacancy.

- (6) The Sub Divisional Officer shall be the Chairman of the Board. In his absence, the members present shall elect one member who shall preside over the meeting of the Board as its Chairman.

6. Principles for delimitation of wards of Municipality.—

The following principles shall be observed by the Board in the delimitation of wards of a Municipality, namely :—

- (a) All wards shall as far as practicable, be geographically compact areas, and in delimiting them due regard shall be had to physical features, existing boundaries of administrative units, if any, facilities of communication and public convenience ;
- (b) Each Municipality shall be divided into wards in such manner that the population of each ward, as far as practicable, is the same throughout the Municipality, with a variation upto ten per cent, above or below the average population figures ;
- (c) Wards in which seats are reserved for the Scheduled Castes, shall be located, as far as practicable, in those areas where the proportion of their population to the total population of the Municipality is the largest and such seats shall be allocated by rotation to different wards in the Municipality.
- (d) Seats members reserved for women (including number of seats reserved for women, if any, belonging to Scheduled Castes) by Government shall be kept reserved for women and such seats shall be allotted by rotation to different wards in the Municipality ; and

- (e) One seat reserved for Backward Classes by Government, shall be kept reserved for the Backward Classes which shall be located where their population in the Municipality is the largest and such seat shall be allotted by rotation to different wards in the Municipality.
- (f) In every municipality, the Delimitation Board, while drafting the scheme for Delimitation of Wards, shall allot number to all wards having due regard to the principle of constitution.

Explanation.—In this rule, the expression “population” means the population as ascertained locally through the staff deputed by the Director, by going from door to door in the Municipality.

7. **Scheme for delimitation of wards to be sent to State Government.**—The Board shall, as soon as may be after it has prepared the scheme for the delimitation of wards of the Municipality, send the same to the State Government for consideration.
8. **Publication of Scheme for delimitation of wards.**—The State Government shall :—
 - (a) publish in the official gazette the scheme for the delimitation of wards received by it under rule 7 for eliciting objections or suggestions from the affected persons of the Municipality ;
 - (b) specify a date on or after which the Scheme alongwith objections and suggestions, if any, will be considered by it ;
 - (c) consider all objections and suggestions which may have been received by it before the date so specified ; and
 - (d) thereafter, by order determine the delimitation of wards of the Municipality.

- 9. Publication of final order of State Government.**—The State Government shall cause its order made in the form of final notification under these rules to be published in the Official Gazette, and upon such publication every such order shall have the force of law.

[Provided that before the start of the election process, the State Government may, for good and sufficient reasons, to be recorded in writing, review the order made in the form of final notification after inviting objections or suggestions in writing from the public through the public notice in two newspapers having circulations the locality in respect of all or any of the wards. After considering such objections or suggestions the State Government may supersede the previous order made in the form of final notification directly or after obtaining the opinion of the Board.]

- 10. Correction of printing mistakes in order made by State Government.**—The State Government may, from time to time, by notification in the Official Gazette, correct any printing mistake in any of the orders made by it, or any error occurring therein due to an inadvertent slip or omission.”

The claim of the petitioners is required to be considered in the light of the aforementioned provisions. The facts of each case are briefly noticed as under :—

CWP No. 10349 of 2008 (Baldev Raj versus State of Punjab and others)

(7) This petition relates to the municipal Committee, Pathankot. In exercise of the power under Sections 8 and 12 (3) (1) of the Punjab Municipal Act, 1911 read with Rules 3 and 4 of the Determination of the number of elected members and reservation of Offices of presidents of Municipalities Rules, 1994, the State Government issued Notification No. 5/51/2005/MEO/DA/385, dated 4th February, 2008 (Annexure P-2) to determine the number of elected members for the Municipal Committee, Pathankot as also the number of seats reserved for Scheduled

Castes, women belonging to Scheduled Castes, seats reserved for women and Backward Classes. The total number of elected members was determined at 35 as the population of the urban area consisting of Municipal limits was shown as 1,57,925. Similarly, six seats were reserved for Scheduled Castes, 2 seats for women belonging to Scheduled Castes, 12 seats for women including women belonging to Scheduled Castes and one seat for Backward Classes. Similarly, another Notification No. 5/51/2005/MEO/DA/429, dated 4th February, 2008 (Annexure P-3) was issued allocating the wards for various reserved categories. After the issuance of these notifications, the State Government constituted Delimitation Board in terms of Rule 3 (1) of the delimitation Rules, 1972 consisting of as many as 10 members, including respondents No. 4 and 5 who are the sitting ministers of the State Government and respondent No. 6 who is alleged to be a political worker belonging to ruling political party.

(8) The State Government issued notification dated 23rd May, 2008 where under number of wards for various Municipalities was notified for the purpose of election and also allocated the wards to various reserved categories. As far as Pathankot is concerned, the total wards notified for the purpose of elections are shown as 33 and some wards have been allocated for different reserved categories mentioned here-in-above. Aforesaid notification was followed by Notification dated 27th May, 2008 which has been issued in modification to the Notification dated 23rd May, 2008. The total number of elected members as specified in the aforesaid Notification remained same; some changes have been made regarding allocation of wards to various reserved categories.

(9) The principal grievance of the petitioners is that after determining the total number of elected members as 35 on the basis of the population in accordance with the parameters laid down under Sections 3, 12 (1) (3) of the Punjab Municipal Act read with Rule 3 and Schedule I of the "Determination of the number of Elected members and Reservation of Offices of Presidents of Municipalities Rules, 1994, the State Government has illegally and wrongly notified the number of elected members as 33 for the purposes of election.

(10) The other grievance of the petitioner is that the reservation of seats for various categories and their respective allocation has not been made in accordance with the aforesaid Rules. Similar grievance has been raised regarding non-observance of Delimitation of Wards of Municipalities Rules, 1972. Regarding the question of delimitation, it is stated that after constitution of the Delimitation Board,—*vide* Notification dated 11th March, 2008 (Annexure P-5), the State Government has failed to notify the scheme for inviting objections in terms of Rules 8 and 9. It is further alleged that the Delimitation Board in its meeting held on 22nd April, 2008 took decisions for delimitation of the Municipal Wards for Pathankot and made recommendations to the State Government. However, the State Government thereafter has not complied with the provisions of Rules 8 to 10. Some allegations have been made against respondents No. 4 to 6 alleging that respondents No. 4 and 5 being the Ministers in the State Government have prevented the publication of the Scheme of Delimitation as recommended by the Board to the State Government under Rule 7 of the Delimitation of Wards of Municipalities Rules, 1972 to safeguard their political interest and accordingly the elections are being conducted in violation of the rules with lesser number of the elected members. Accordingly direction is sought for holding elections for 35 Municipal Wards as notified on 4th February, 2008.

(11) The State Government has filed its counter whereas respondents No. 4 to 6 have also filed their separate short counter affidavits. The petition is opposed taking refuge under Article 243ZG of the Constitution of India. It is stated that aforesaid constitutional provision debars the courts from examining the validity of any law relating to delimitation of constituencies or the allotment of seats to such constituency purported to be made under this Article. It is further pleaded that the tenure of Municipal Council, Pathankot expired on 23rd March, 2008. The State Election Commission, Punjab,—*vide* its letter dated 21st May, 2008 impressed upon the State Government to comply with the directions of the High Court of Punjab and Haryana wherein an undertaking was given by the learned Advocate General, Punjab to hold elections to urban local bodies latest by last week of June, 2008. The State was accordingly asked to conduct elections in accordance

with the undertaking given to the High Court. It is further stated that in view of the expiry of the tenure of the Municipalities of Punjab, the elections are being held on the basis of the existing wards of Municipalities for which Notification dated 23rd May, 2008 partially modified,—*vide* Notification dated 27th May, 2008 have been issued. It is, however, admitted that the State Government had determined the total number of elected members as 35 *vide* Notification dated 4th February, 2008, but due to non-completion of the delimitation for the increased number of wards and in view of the early completion of the election process as decided by the State Election Commission, elections are being conducted on the basis of the existing wards and existing electoral rolls. During the course of argument in these petitions, Mr. Goyal, learned Additional Advocate General for the State of Punjab also informed the court that the Notification dated 4th February, 2008 fixing the number of elected members has been revoked. Respondents No. 4 to 6 in their separate disclaimers denied the allegations of *mala fide* against them.

CWP NO. 10647 OF 2008

(Chander Shakher *versus* The State of Punjab and others)

(12) The petitioners in this writ petition also seek to challenge the same notification i.e. dated 23rd May, 2008 and 27th May, 2008 relating to number of elected members/wards and reservation of wards for various categories and allocation of wards to such reserved categories. This petition relates to the Municipality Committee, Rajpura. It is alleged that as per the last Census of 2001, the population of Rajpura is 82962 and in view of Sections 2, 8 and 12 of the Punjab Municipal Act read with Rule 3, Schedule I of the Rules for Determination of Elected Members, the total number of elected members was determined as 25 and accordingly reservation was also made for various reserved categories, including allocation *vide* Notification dated 7th August, 2002. However, subsequently *vide* the two impugned notifications, allocation has been wrongly made for reserved categories. The further grievance of the petitioner is that keeping in view the population which is more than 82000 on the basis of last Census of 2001, the number of elected members should be 27 and not 25 as notified for elections.

Similarly, it is stated that keeping in view the constitutional provisions and the Election Commission Act, 1994, 1/3 seats are to be allocated to women which should be minimum eight. However *vide* the impugned Notification only 7 seats have been reserved for women and even allocation made is contrary to the rules. No written statement has been filed in this petition.

CWP NO. 10632 OF 2008

(Joginder Pal *versus* The State of Punjab and others)

(13) This petition relates to Municipal Council, Gurdaspur. In this petition, it is alleged that the population of Gurdaspur as per last census of 2001 is 67469, thus, it was required to have 23 elected members of the Municipal Council. The State Government determined the number of elected members *vide* Notification dated 4th February, 2008 (Annexure P-2) and also reserved and allocated certain wards for different reserved categories. However *vide* the impugned Notification dated 23rd May, 2008, instead of 23 only 21 seats have been notified for election and even the allocation of wards has been redone. No written statement has been filed in this petition.

CWP NO. 9866 OF 2008

(Ajay Kumar Garg *versus* The State of Punjab and another)

(14) This petition relates to Municipal Council, Mandi Gobindgarh. It is alleged that the election to the Municipal Council, Mandi Gobindgarh was held in the year 2003 on the basis of 1991 census. The population of the Mandi Gobindgarh has increased and as per the last published census of the year 2001, the population of Mandi Gobindgarh was 55450. On the basis of this revised population, the State Government issued Notification dated 4th February, 2008 fixing the number of elected members as 21 for Municipal Council of Mandi Gobindgarh. It is also mentioned that earlier the petitioner had filed CWP No. 1930 of 2007 seeking redetermination of the number of elected member on the basis of population and in view of the Notification dated 4th February, 2008, the number of elected members having been redetermined, the writ petition was disposed of as infructuous. The

petitioners have also stated that after redetermination of the number of elected members as 21 in terms of the Notification dated 4th February, 2008, the State Government constituted Delimitation Board for Delimitation of the Municipal Wards, the Board held its meeting on 2nd May, 2008, 13th May, 2008 and 21st May, 2008 and made certain recommendations. However, without notifying the Scheme of delimitation for 21 wards, the State Government issued impugned notifications dated 23rd May, 2008 followed by 27th May, 2008 to notify the elections for only 19 wards. In this petition, no dispute has been raised regarding the reservation or allocation of wards for reserved categories. In the reply filed by the Joint Secretary to Government of Punjab, Department of Local Government, determination of 21 members/wards on the basis of population *vide* Notification dated 4th February, 2008 is not disputed. It is, however, dated that the Municipal boundaries of Mandi Gobindgarh have not been altered. The State Government was keen to hold elections for 21 wards after completion of delimitation of Municipal Wards. However, due to the direction of the State Election Commission and in view of the expiry of tenure of the earlier elected Municipal Bodies. It has been decided to hold elections for the existing wards.

CWP NO. 7970 OF 2008

(Kewal Krishan Jindal and Others *versus* The State of Punjab and others)

(15) This petition relates to Municipal Council, Malerkotla. According to the averments, the last election for the Municipal Council, Malerkotla was held in the year 2003 for 27 Municipal Wards. It is alleged that the population under Municipal limits, Malerkotla as per last census of 2001 has been notified as 107009 and on the basis of the population figures, the State Government notified the number of elected members as 31 *vide* Notification dated 27th August, 2007 with two seats reserved for Scheduled Castes, including one for Scheduled Castes Women and 11 seats for women including Scheduled Castes. It is further alleged that the State Government also constituted a Delimitation Board. However, the Delimitation Board, after holding its meeting, finally forwarded the draft Scheme of Delimitation to the State Government which was published in Extraordinary Gazette of State of Punjab under Government Notification dated 9th/10th January, 2008 and

objections were invited from affected persons. Since there was huge difference in population of various wards as well as the voters, the Scheme has been objected to. The challenge to the Scheme is made as under :—

(16) There is vast difference between population of different wards. While giving the Ward-wise population figures, it is argued that in some wards, the population is 3000 whereas in other wards, the population is over 5000. The voters' disparity in the voter list published has also been pointed out. Relying upon Rule 6 (b) of the Delimitation of Wards Rules, 1994, it is stated that the variation for each ward should not exceed 10% whereas the variation in the population is beyond 10%. It is also pointed out that allocation of wards is also improper and in violation of Rule 6(c) and (d). Referring to the site plan (Annexure P-19) with the Scheme, it is stated that Ward No. 2 is adjoining Ward Nos. 29 and 28 whereas Ward No. 1 is adjoining Ward No. 31. Similar discrepancies have been shown regarding the numbering of wards.

(17) In sum and substance, the contention is that there has been violation of the rules and the elections have been notified without observing and adhering to the rules framed by the State Government for holding the elections. A short affidavit has been filed by the State through its Joint Secretary to Government of Punjab, Department of Local Government besides challenging the maintainability of the writ petition, it is stated that though the Scheme has been published, but no final decision has been taken and keeping in view the urgency of holding elections on account of expiry of tenure of the Municipal Council, elections are being held on the basis of the existing electoral rolls and existing number of wards.

(18) After noticing the facts of each petition, the challenge to the Notifications dated 23rd May, 2008 and 27th May, 2008 can conveniently be summarized as under :—

- (1) Number of elected members in each Municipality have not been fixed according to the last published census inasmuch as even when the number of elected members/wards for each Municipality has been determined, the election is sought to be held for lesser number of members/wards ;

- (2) Delimitation of wards has not been carried out as per the determined numbers on the basis of the population and the elections are being held without proper delimitation ;
- (3) Reserved categories have not been given required number of wards as per ratio prescribed (quota) for various reserved categories particularly for women who have 1/3 reservation under law ;
- (4) Allocation of wards for reserved categories has not been properly made in accordance with the rules, including the rotation of wards for such categories;
- (5) There is discrepancy in population between different wards in contravention to the provisions of Rule 6(b) of the Delimitation Rules.

(19) Rule 3 imposes an obligation upon the State Government to determine the number of elected members from time to time by order in writing on the basis of the population and the criteria specified in Schedule I. Population has been defined under Sub section (11)(a) of Section 3 of the Punjab Municipal Act, 1911 which means population as ascertained at the last preceding census to which the relevant figures have been published. It is admitted case of the parties that the last Census was carried out in the year 2001 and the ascertained figures of the population have been duly published for each Municipality. It is contended on behalf of the petitioners that the number of elected members was required to be determined on the basis of the last census. In most of the cases referred to above, the State Government did determined and notify by an order the number of elected members for Municipal Areas involved in these petitions by Notification dated 4th February, 2008. Section 8 of the Municipal Act provides for reservation of seats for Scheduled Castes which has to be proportionate to the population of the Scheduled Castes in a Municipality area and these seats are required to be allotted by rotation to different constituencies/wards. Similarly, one seat for backward classes is to be reserved in each Municipality. In addition to this, under Article 243T of the Constitution of India read with Section 8 of Punjab Municipal Act, 1911, there is reservation for women which is not less than 1/3 including the women belonging to Scheduled Castes and their

reservation is again 1/3 out of the quota for women. Such seats have to be allotted by rotation to different constituencies/wards. Rule 4 contains the similar provision as under Section 8, Schedule I to the Rules for Determination of Elected Members provides for fixation of elected members, on the basis of the population as has been determined by the State as indicated in this Schedule. It is common case of the parties that Notification dated 4th February, 2008 has been issued taking into consideration the Schedule I referred to hereinabove, though withdrawn during hearing. Schedule II of the aforesaid Rules further provides for rotation of wards for the reserved categories including the women. The rotation has been mentioned for first, second and third elections. The present election is a third election. In most of the cases, the disputes has been raised regarding rotation of wards for reserved categories. We are not dealing with each case separately for the reasons demonstrated here-in-after. Except in the case of Municipality of Malerkotla, the delimitation of wards has not been carried out in accordance with the number of elected members as determined by the State Government,—*vide* Notification dated 4th February, 2008 and elections have been notified,—*vide* Notification dated 23rd May, 2008 with lesser number of vacancies in the following manner :—

Sr. No.	CWP No.	Name of Municipality	Number of elected members <i>vide</i> Notification dated 4-2-2008	Number of Wards/Members notified for elections <i>vide</i> impugned Notification dated 23-5-2008
1	10349/2008	Pathankot	35	33
2	10647/2008	Rajpura	—	25
3	10632/2008	Gurdaspur	23	21
4	9866/2008	Mandi Gobindgarh	21	19
5	7970/2008	Malerkotla	31 (Notification dated 27-8-2007)	31

(20) Similarly, the wards reserved for reserved categories have been changed/reallocated. In case of Pathankot, some allegations have been made against the two Ministers of the State and another member of the Delimitation Board who are respondents no. 4 to 6 in CWP No. 10349 of 2008. We have perused the allegations contained in paragraph 17 of the writ petition. There is no specific allegation. In any case, there is a Statutory Board and Ministers constitute only 2 out of 10 members. There are official members comprising the Deputy Commissioner, Sub Divisional Officer, Deputy Director, Local Bodies, Executive Officer of the Municipal Council and also representatives of the various political parties. The allegations have been denied by respondents no. 4 to 6 in their personal affidavits filed in response to the petition. It is settled law that no allegation of mala fide can be taken cognizance of unless it is specific. In absence of there being any specific allegations, we do not deem it proper to deal with such vague allegations as we find that the allegations are not sufficient to be noticed. This is particularly in view of denial by the concerned respondents.

(21) It is not in dispute that the State Government did determine the number of elected members for each Municipality by an order dated 4th February 2008 (now revoked). It is also not in dispute that the elections have been notified for a lesser number of wards/members. In some cases, the rotation of vacancies has been redetermined and wards re-allocated for various reserved categories. We have also found discrepancy in such re-allocation and in some cases, admittedly, contrary to the rules of reservation/rotation prescribed for the purpose.

(22) Although the writ petitions were filed prior to the issuance of schedule for elections. However, when the cases were taken up for final hearing during Summer Vacations of High Court on 12th June, 2008, election schedule had been notified and the actual election process commenced by filing nomination papers on 12th June, 2008 itself.

(23) Article 243U prescribes the duration of Municipality which is five years from the date appointed for its first meeting and no longer. The clear wording of this Article suggest that the life of the Municipality

cannot be extended beyond five years. Similar provisions have been adopted under the Municipal Act. Section 13 also prescribes period of five years and no longer. Sub Clause (3) of Article 243U further mandates that the election to constitute a Municipality shall be completed before the expiry of its duration and in case where it is dissolved earlier, before the expiry of period of six months from the date of dissolution. Similar provision has been incorporated under Section 13-A of the Municipal Act quoted here-in-above. A conjoint reading of the constitutional provisions and the statutory provisions contained in the Municipal Act, sufficiently, impose an obligation upon the State Government as also the State Election Commission constituted under Section 3 of the Punjab State Election Commission Act, 1994 to hold election before the expiry of period of existing Municipality and within six months in case of dissolution. It is on record that the tenure of all the Municipalities, subject matter of these writ petitions has expired and the elections could not be held before the expiry of their respective terms for the reasons best known to the State Government and the State Election Commission. There is apparent violation of the constitutional mandate contained under Article 243U and read with Sections 13 and 13A of the Punjab Municipal Act. The State Government in its detailed disclaimer filed in CWP No. 10349 of 2008 has attempted to explain reasons for non-completion of delimitation of wards for the purpose of complying with the number of elected members as notified vide Notification dated 4th February, 2008. It has referred to communication dated 21st May, 2008 (Annexure R-1) from the State Election Commission asking the State Government to hold the election latest by last week of June, 2008 in view of the undertaking given by the learned Advocate General of State of Punjab before the Punjab and Haryana High Court to hold general elections to Urban Local Bodies before the end of June, 2008. It is accordingly stated that since the process of delimitation could not be completed for various reasons, the elections have been notified on the basis of the existing wards of the Municipalities with existing number of elected members and the existing electoral rolls.

(24) Regarding the re-allocation, the State Government has tried to justify the re-allocation of wards for reserved categories. We do not want to go into details of the same, lest it may prejudice any

of the parties in any subsequent legal remedy, if any, available under law. State Government has not only challenged the maintainability of the writ petitions, but also the jurisdiction of this Court at this stage. Article 243ZG prohibits the court from examining the validity of any law relating to the delimitation of constituencies or allotment of seats to such constituencies made or purporting to be made under Article 243ZA. Clause (b) of the aforesaid Article further provides that no election to any Municipality can be called in question, except by an election petition before the competent authority constituted under law. The contention of the learned counsel for the State is two fold—(1) that the Notification dated 23rd May, 2008 followed by Notification dated 27th May, 2008 having been issued in exercise of the statutory authority are deemed to be law in terms of Article 243ZG (a) and its validity cannot be questioned in the present writ petitions. (2) That the remedy of the petitioners is to file election petitions challenging the election of the successful candidate(s) before the Tribunal constituted under the Punjab State Election Commission Act.

(25) The further contention of the learned counsel for the State is that this Court, in exercise of jurisdiction under Article 226 of the Constitution of India i.e. power of judicial review cannot look into and stall the election process merely on account of non-delimitation, wrong delimitations, alleged wrong allocation of reserved wards or on account of any of the allegations contained in these writ petitions.

(26) The extent and scope of the embargo imposed on the jurisdiction of the Court under Article 243ZA has been considered in a number of judgments. In the case of **Anugrah Narain Singh and another versus State of U.P. and others (1)**, while considering the import of this Section, Hon'ble Supreme Court has observed as under :—

“28. Therefore, so far as preparation of the electoral roll is concerned, there are sufficient safeguards in the Act against any abuse or misuse of power. In view of these provisions and particularly, in view of sub-section (6) of Section 39 which provides for appeals in regard to inclusion, deletion or correction of names, there is hardly any scope for a court

(1) (1996) 6 S.C.C. 303

to intervene and correct the electoral rolls under Article 226 of the Constitution. In fact, if this is allowed to be done, every election will be indefinitely delayed and it will not be possible to comply with the mandate of the Constitution that every Municipality shall have a life span of five years, or less, if dissolved earlier, and thereafter fresh elections will have to be held within the time specified in Clause (3) of Article 243-U.....”

(27) Relying upon the ratio of the aforesaid judgment, a Division Bench of this Court in the case of **Pran Nath Bhatia versus State of Punjab, (P & H) (D.B.)**, while dealing with Section 8 of the Delimitation of Wards of Municipal Corporation, Order, 1995 and the similar embargo contained in Article 243-O of the Constitution of India, relating to Panchayats made following observations :—

“18. We find force in this submission. Section 8 of the Act of 1976 dealing with delimitation of wards and clause (8) of the Order of 1959 does not lay down that an order made under clause (8) of the Order of 1995 upon reaching finality will have the force of law and shall not be questioned in any court of law. Keeping in view the observations of their Lordship in paras 24 and 25 in Anugrah Narain Singh’s case (*supra*), which have been reproduced above, it is held that the order issued under Clause (8) of the Order of 1995 is not beyond challenge by virtue of Article 243-ZG but such a challenge can be made before the process of elections is put into motion and soon after the final order is passed.”

(28) This view has again been adopted by a Full Bench of this Court in the case of **Prithvi Raj versus State Election Commission, Punjab and others (2)**, wherein it has been observed as under :—

“22 The words used in sub-clause (b) of Article 243 (ZG), and Section 74 of the Election Commission Act, do not, by specific intent or necessary inference, place any embargo on or in any manner curtail a High Court’s jurisdiction under Article 226 of the Constitution. Neither Article 243ZG of

the Constitution nor Section 74 of the Election Commission Act makes any reference to the High Court. However, where the cause placed before a High Court calls into question an “election”, the High Court would in the exercise of judicial restraint, desist from exercising jurisdiction. This principle of judicial/jurisdictional restraint, was propounded, by the Apex Court in Ponnuswami’s case (*supra*) and then followed and further explained in Mohinder Singh Gill’s case (*supra*), while interpreting the provisions of Article 329 (b) of the Constitution. The salutary object that underlines these judgments is the paramount need in a democracy, to ensure an expeditious conclusion of elections. It was, therefore, held that a High Court, would not entertain a writ petition calling into question an “election”. Another conclusion that flows from these judicial pronouncements, is that challenge to an election, though not barred, judicial review thereof would be postponed to the post election stage.....”

(29) In CWP No. 7970 of 2008, challenge is made to Notification dated 4th March 2008 (Annexure P-12) issued under Section 240(1) (b) of Punjab Municipal Act, 1911 and Rule 9 of Delimitation of Wards of Municipalities Rules, 1972 relating to delimitation of wards and allocation of seats for reserved categories as also the Notification dated 9th/10th January, 2008 (Annexure P-5) issued under sub sections of Section 240 of the Punjab Municipal Act, 1911 and Rule 8 of the Delimitation of Wards of Municipalities Rules, 1972. In other writ petitions, the challenge is to Notification dated 23rd May, 2008 fixing the number of members/wards and allocation of wards for reserved category and rotation thereof. Applying the ratio of above judgments, we are of the considered view that validity of all these orders and notifications cannot be examined at this stage when the election process is already on. Ratio of another judgment of the Hon’ble Apex Court in the case of **State of U.P. versus Pradhan Sangh Kshetra Samiti (3)**, is applicable wherein following observations were made :—

“What is more objectionable in the approach of the High Court is that although clause (a) of Article 243-O of the Constitution

enacts a bar on the interference by the Courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of validity of the delimitation of the constituencies and also the allotment of seats to them.”

(30) Another question that arises for consideration/determination is whether the petitioners have a remedy available to them under law i.e. by way of filing election petition so as to prompt this Court not to exercise the discretionary jurisdiction under Article 226 of the Constitution of India, particularly, in view of Article 243ZG (b) which, *inter-alia*, provides that no election to any Municipality shall be called in question, except by election petition, Mr. Satpal learned Sr. Advocate appearing for the petitioners submits that delimitation and reservation cannot be determined and adjudicated upon in election Petition. However, to the contrary, reliance is placed upon Section 89 of the Punjab State Election Commission Act, 1994, which reads as under :—

“89. (1) Subject to the provisions of sub-section (2), if the Election Tribunal is of the opinion,—

(a) to (c) XXX XXX XXX

(d) that the result of the election, in so far as it concerns returned candidate, has been materially affected,—

(i) to (iii) XXX XXX XXX

(iv) by any non-compliance with the provisions of the Constitution of India or of this Act or of any rules or orders made under this Act ;

the Election Tribunal shall declare the election of the returned candidate to be void.”

(31) The argument advanced by the petitioners is that the election is sought to be conducted in contravention of the reservation as provided under Article 243T read with Sections 8 and 12 of the Punjab Municipal

Act, 1911. We are of the opinion that the petitioners have better and more efficacious remedy available under Section 89(1) (d) (iv) of the aforesaid Act and they can be conveniently relegated to the appropriate remedy after the election is held/concluded.

(32) The most important question is the interference by this Court at the intermediate state in exercise of power of judicial review under Article 226 of the Constitution of India. Admittedly, the election schedule has been notified and the process of nomination commenced on 12th June, 2008. These writ petitions were heard when the nomination process had already started. All issues relating to delimitation, wrong delimitation, exclusion of names from the voter list, non-preparation of the proper and correct electoral rolls, non-reservation, wrong reservation of seats for various prescribed reserved categories relate to the conduct of election process for which is already on. Intervention of this court, in exercise of writ jurisdiction under Article 226 of the Constitution, at this stage, which may even remotely suggest the stalling of elections, is improper. The object and purport of introduction of Chapter IX-A in the Constitution of India by the 74th Constitutional Amendment 1992 was/is to facilitate the conduct of elections which is the fundamental requirement of democracy. Any action of the Court or any individual which may, by any means, hamper or obstruct the democratic process is anti thesis to the spirit of these constitutional provisions. It may be useful to refer to the observations of the Apex Court in a Constitution Bench judgment in the case of **Kishansing Tomar versus Municipal Corporation of the City of Ahmedabad and others** (4), which are as follows :—

“12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Constitution (Seventy-fourth) Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been

superseded or suspended without adequate justification at the whims and fancies of the state authorities. These views were expressed by then Minister of State for Urban Development while introducing the Constitution Amendment Bill before Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections. In the Statement of Objects and Reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated:

“In many States, local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-government.

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 firmer 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 representation for the weaker sections like the Scheduled Castes, Scheduled Tribes and women.

Accordingly, it has been proposed to add a new part relating to the urban local bodies in the Constitution to provide for.....”

(33) The Hon'ble Supreme Court has deprecated the practice of interference at the intermediate stage in the election process, particularly, on the basis of the issues sought to be raised in these petitions. In the case of **Anugrah Narain Singh** (*supra*), the Hon'ble Supreme Court has observed as under :—

“28. Therefore, so far as preparation of the electoral roll is concerned there are sufficient safeguards in the Act against any abuse or misuse of power. In view of these provisions and particularly, in the view of sub-section (6) of Section 39 which provides for appeals in regard to inclusion, deletion or correction of names, there is hardly any scope for a court to intervene and correct the electoral rolls under Article 226 of the Constitution. In fact if this is allowed to be done, every election will be indefinitely delayed and it will not be possible to comply with the mandate of the Constitution that every Municipality shall have a life span of five years, or less, if dissolved earlier, and thereafter fresh elections will have to be held within the time specified in clause (3) of Article 243-U.....”

(34) A Full Bench of this Court in the case of **Prithvi Raj** (*supra*) has observed as under :—

“33. An appraisal of the provisions of Article 226 of the Constitution, and the judgments of the Hon'ble Supreme Court, as noticed herein above, in our considered opinion, clearly postulate that once the electoral process commences, with the issuance of a notification, under the Municipal Act, any grievance, touching upon an “election” would be justifiable, only by way of an election petition. Interference by Courts in election matters, after the commencement of the election process, would not be permissible, except to the limited extent noticed herein above.”

(35) It is the categorical stand of the State that the State has been constrained to hold elections, in view of the direction of the Punjab State Election Commission and undertaking given to the Punjab and Haryana High Court. This fact is not disputed. The power of the Punjab State Election Commission is akin to that of the Election Commission of India, while dealing with the elections to the Panchayats and

Municipalities. In the case of **Kishansing Tomar** (*supra*), the Hon'ble Supreme Court observed as under :—

“22.....In fact, in the domain of elections to the panchayats and the municipal bodies under Part IX and IX-A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.”

(36) State Election Commission is the sole repository of the elections. In the present case, State Election Commission is the only body entrusted with the conduct of the election and all its directions are binding upon the State Government and it is the constitutional obligation of the State Government as also the Election Commission to ensure timely, free and fair election. It is in this spirit that the elections are required to be conducted.

(37) Petitioners in all these petitions seem to be political workers who may be associated with one or the other political parties. No material has been placed on record to indicate that any right of the petitioners is infringed in any manner. The only right of a citizen in the matter of election is to exercise franchise according to his/her free will and choice. This right of the petitioners remains intact irrespective of the fact whether there are lesser number of representatives or more. In some of the petitions, the grievance of the petitioners is that they are interested to contest election in a particular ward which has either been reserved or de-reserved. These are the individual rights which cannot have precedence over the larger public interest of holding elections to democratic institutions which alone can strengthen the democracy. Since we have observed that there have been aberrations in applying the constitutional provisions in the right spirit in some of the Municipalities, the reservation and allocation of reserved wards have not been properly done. We hope and believe that the State Government shall redress to such complaints and adopt all resuscitative measures at least for future elections to these democratic bodies.

(38) In the totality of the circumstances and the legal position, we are of the considered opinion that no interference is warranted. These petitions are accordingly dismissed.

(39) A copy of this order be placed on record of each concerned file.

R.N.R.