

Anugrah Narain Singh and Another

Vs

State of U.P. and Others

Civil Appeals No. 11830 of 1996 with No. 11932 of 1996

(B. P.Jeevan, S. C. Sen JJ)

10.09.1996

JUDGMENT

SEN, J. –

1. Leave granted.

2. This is an appeal against an order passed by the Division Bench of the Allahabad High Court on 13-11-1995 whereby municipal elections in the State of Uttar Pradesh, which were scheduled to take place from 17-11-1995 to 20-11-1995, were cancelled and/or postponed. Anugrah Narain Singh, who is a former member of the Legislative Assembly of the State of Uttar Pradesh, and Mrs Rashid Khan, a candidate for the post of Mayor, Allahabad, are the appellants herein.

3. No municipal election had taken place in the State of Uttar Pradesh for the last ten years. Appellant 1 moved a writ petition in the Allahabad High Court praying for a direction upon the State Government to hold elections of the Municipal Corporations by 31-5-1994. The petition succeeded. The Allahabad High Court directed the State of Uttar Pradesh to hold the elections of the Municipal Corporations by 31-7-1995. On the prayer of the Government, the time was extended till 31-11-1995 with specific direction to conclude the election by that time. On 11-10-1995 a notification was issued for holding elections for all town areas and Municipal Corporations in the State of Uttar Pradesh. 16-10-1995 to 20-10-1995 were the dates within which filing of nominations had to be completed and 24-10-1995 was fixed as the last date of withdrawal. Voting was to take place in different stages in different areas of the State beginning on 17-11-1995 and concluding on 20-11-1995.

4. The notification dated 11-10-1995 was amended by a further notification dated 13-10-1995 by which only the date of withdrawal of the nomination was extended.

5. Ten persons by a writ petition (Civil Miscellaneous Writ Petition No. 29614 of 1995) filed in the Allahabad High Court, challenged the notifications for holding the municipal elections in the State. Fifteen similar petitions were also filed before the Lucknow Bench. The prayers in all these writ petitions mainly were that in view of the defects in the electoral rolls and delimitation of constituencies (wards) and also on the ground of arbitrary reservation of constituencies for women, Scheduled Castes, Scheduled Tribes and Backward Classes, the process of election should be postponed. These petitions were filed as soon as the notification for holding elections dated 11-10-1995/13-10-1995 was issued. The Lucknow Bench of the Allahabad High Court dismissed the

petitions on the ground that in view of the bar imposed by Article 243-ZG of the Constitution, the writ jurisdiction of the Court could not be invoked to stall the election process.

6. This judgment of the Lucknow Bench of the High Court (S. H. A. Raza and A. S. Gill, JJ.) in Writ Petition No. 2997 of 1995 and the other connected cases was placed before the Allahabad High Court in course of hearing of this case, but U. P. Singh and I. M. Qudussi, JJ. passed the impugned order stopping the election process regardless of the judgment and order passed by the Lucknow Bench of the High Court. This was improper. If the Division Bench sitting at Allahabad was of the view that the Lucknow Bench had erred in dismissing the writ petition challenging the holding of the municipal elections, the matter should have been referred to a larger bench. A peculiar situation has come about. According to the Lucknow Bench of the High Court, the writ petitions challenging the municipal elections were not maintainable and elections should take place as scheduled whereas another Division Bench of the Allahabad High Court has taken a contrary view and has directed that the elections should not be held according to the schedule.

7. Another important feature of this case, which was ignored by the High Court, was that the process of reservations for various wards and delimitation of constituencies had been completed before June 1995. There was ample opportunity under the Act to raise objections before finalisation of the delimitation process. Section 32 of the Uttar Pradesh Municipal Corporation Adhiniyam, 1959 (hereinafter referred to as "the U.P. Act") has empowered the State Government to divide the municipal areas into wards on the basis of the population and determine the number of wards into which the municipal area should be divided. The State Government may also determine the number of seats to be reserved for the Scheduled Castes, Scheduled Tribes, Backward Classes and women. The State Government is required to issue an order for this purpose which has to be published in the Official Gazette for objections for a period of not less than seven days. After considering the objections that may be filed, the draft order may be amended, altered or modified. Whatever the State Government does, after considering the objections, will be the final order. That process has been gone through. If it is the case of the writ petitioners that they filed objections to the draft orders and their objections were overruled arbitrarily, they should have challenged it forthwith. In fact the notifications of reservation of various wards and delimitation of constituencies had been completed before June 1995. After all these things became final, the writ petitioners waited till 26-10-1995 to file this writ petition when the last date for withdrawal of nomination papers was over. This writ petition should have been dismissed on the ground of laches only. At a time when the election process was in full swing, huge expenditures had been incurred by the candidates, the political parties and also the Government for this purpose, some of the candidates had already been declared elected unopposed, the Court decided to intervene and stop the elections.

8. On 15-11-1995, an application seeking permission to file the special leave petition was moved to this Court by the appellants who were not parties to the writ petitions in the court below. On 16-11-1995 the permission was given and the following order was passed :

"At the outset, we may record that the learned ASG appearing for the State of Uttar Pradesh has stated that the Government of Uttar Pradesh has cancelled the elections only because of and pursuant to the impugned judgment and not for any other reason. The learned ASG has further stated that the Government of Uttar Pradesh will abide by any orders that this Court may make in this matter.

After hearing the counsel for the parties and after considering the facts and circumstances of the case, we are, prima facie, of the opinion that there are no

sufficient grounds for cancelling the elections. Accordingly, the following directions are made :

1. The elections scheduled on 20-11-1995 and 26-11-1995, for the offices of Mayor shall go on as scheduled.
2. The elections scheduled to be held on 20-11-1995 for the wards in the 9 Municipal Corporations shall go on as scheduled.
3. The elections for wards scheduled on 22-11-1995 for Nagar Palikas (446 in number) shall also go on as scheduled.
4. The elections for the wards to the 2 Municipal Corporations scheduled on 26-11-1995 shall also go on as scheduled.
5. So far as the polling, which was to be held on 17-11-1995, i.e. tomorrow for the 224 Nagar Palikas, is concerned, it is not practicable or possible to hold the elections tomorrow, i.e. 17-11-1995. In consultation with the learned counsel for the State Election Commission, we direct that these elections shall stand postponed to and be held on 24-11-1995.
6. It is equally clear that the results of these elections shall be subject to the orders that may be passed in this matter.
7. It is made clear that when we have said in the above directions that elections shall be conducted as scheduled, it means that the elections shall be held and concluded as notified and results declared.

The judgment of the High Court impugned herein is stayed subject to the above directions."

9. On 17-11-1995, on a prayer made on behalf of the State of U.P., a further order was passed to the following effect :

"The learned counsel for the State of U.P. states that insofar as polling which was to take place today and which is now postponed to 24-11-1995 is concerned, the date of counting should be correspondingly postponed. This is implicit in the order we have passed yesterday. In any event with a view to obviate any room for controversy we direct that it shall be open to the State Election Commission to notify fresh date of counting insofar as the aforesaid postponed polling is concerned."

10. We have been informed that election has taken place and counting has also been completed.

11. The question that came up for decision before the Allahabad High Court has been stated in the judgment in the following words :

"... the common question raised in all these petitions is as to whether in terms of Article 243-ZG of the Constitution there is complete and absolute bar in considering any matter relating to municipal election on any ground whatsoever after the publication of the notification for holding municipal election."

12. The answer must be emphatically in the affirmative. The bar imposed by Article 243-ZG is twofold. Validity of laws relating to delimitation and allotment of seats made under Article 243-ZA cannot be questioned in any court. No election to a municipality can be questioned except by an election petition. Moreover, it is well settled by now that if the election is imminent or well under way, the court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the court and stall the elections. There were ten petitioners in the main writ petition and several others in connected writ petitions, who had questioned the fairness of the action of the authorities concerned in publication of the notifications dated 11-10-1995 and 13-10-1995 pursuant to which the elections to the Municipal Corporations throughout the State of U.P. were to be held. The State Government and also the Election Commission took the stand before the High Court that after the publication of the notification for holding municipal elections, the High Court under Article 226 of the Constitution could not interfere with the election process. On the other hand, the writ petitioners' contention was that the election was being held in a farcical manner and the confidence of the people had been shaken in the electoral process and the constitutional guarantee regarding constitution and composition of the municipalities had been thrown to the winds. In this situation, Article 243-ZG could not be treated as an absolute bar to doing justice under Article 226 of the Constitution.

13. The case of the writ petitioners was that they were residents of different Nagar Nigams. Their names had been duly entered as voters in the electoral rolls of their wards. They were very keen to contest the elections for various posts including the post of Chairperson of the Nagar Nigam. However, they became ineligible on account of allocation and reservation of wards and the municipal areas from which they wanted to contest. The case of the writ petitioners was that the erstwhile Nagar Mahapalikas were established under the Uttar Pradesh Municipal Corporations Adhiniyam, 1959. The Constitution (74th Amendment) Act, 1992 came into force on 1-6-1993. By this Amendment Act and Part IX-A, Articles 243-P to 243-ZG were inserted in the Constitution. Consequent upon the 74th Amendment of the Constitution, various amendments were made in the Uttar Pradesh Municipal Corporations Adhiniyam to bring the Act in line with the constitutional amendments. Article 243-Q envisaged the constitution of Nagar Panchayats, Municipal Councils and Municipal Corporations, etc. depending upon the density of the population, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as may be deemed fit. The validity of the process of the delimitation of the constituencies that took place after the amendment of the U.P. Act and also the reservations made in furtherance thereof and allocation of reserved seats in the 11 municipal areas in the State of U.P., namely, Allahabad, Agra, Aligarh, Bareilly, Gorakhpur, Ghaziabad, Kanpur, Lucknow, Moradabad, Meerut and Varanasi, was challenged by the writ petitioners. Basically, the challenge appears to be about reservation of seats in favour of Scheduled Castes and Scheduled Tribes and Backward Classes in the municipal areas. It was argued before the High Court and also before this Court that important safeguards of the Constitution were overlooked when the dates of holding of the elections were announced.

14. There are several reasons why these arguments of the writ petitioners should not have been upheld. The High Court overlooked the fact that no municipal election had been held in the State for nearly ten years and the dates of the elections were fixed under the direction given by the High Court in another case. Importance of holding elections at regular intervals for panchayats, municipal bodies or legislatures cannot be over emphasised. If holding of elections is allowed to be stalled on the complaint of a few individuals, then grave injustice will be done to crores of other voters who have a right to elect their representatives to the local bodies. As a result of the order of the High

Court, elections that were going to be held to the local bodies after a long lapse of nearly ten years were postponed indefinitely. It was pointed out by this Court in the case of Lakshmi Charan Sen v. A. K. M. Hassan Uzzaman [(1985) 4 SCC 689], that : (SCC p. 703, para 21)

"... the fact that certain claims and objections are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations".

15. The Court also quoted from its order dated 30-3-1982 that : (SCC pp. 219-20, para 1)

"... no High Court in the exercise of its powers under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution. ... The High Courts must observe a self-imposed limitation on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution".

16. In this case, the High Court has ignored the fact that the electoral process was well under way and was scheduled to be completed in less than ten days' time. The High Court also failed to observe the self-imposed limitation as enjoined by this Court in the case of Lakshmi Charan Sen [(1985) 4 SCC 689].

17. In Lakshmi Charan Sen case, [(1985) 4 SCC 689], this Court was dealing with Part XV of the Constitution which deals with preparation of electoral rolls for, and the conduct of, all elections to Parliament, and to the Legislatures of different States and all elections to the offices of the President and the Vice-President. We are in this case, concerned with the elections to municipal bodies. But the principles laid down in Lakshmi Charan Sen case [(1985) 4 SCC 689] will apply in full force to municipal elections because various articles dealing with holding of municipal elections in Part IX-A of the Constitution are similarly worded. In fact, highest importance has been attached to holding of panchayat as well as municipal elections by the Constitution. Parts IX and IX-A of the Constitution were introduced by the Constitution. (73rd Amendment) Act, 1992 and (74th Amendment) Act, 1992. By these two Parts, it was intended to take democracy to the grass-root level. Part IX deals with constitution of panchayats, composition of panchayats and holding of regular elections to the panchayats. Article 243-O contains a bar to interference by Court in electoral matters. This bar is similar to the bar contained in Article 329 of the Constitution in Part XV, the implication of which was explained by this Court in the case of Lakshmi Charan Sen [(1985) 4 SCC 689].

18. Part IX-A of the Constitution deals with the Municipalities and lays down that in every State there shall be constituted (a) a Nagar Panchayat; (b) a Municipal Council; and (c) a Municipal Corporation, in accordance with the provisions of Part IX-A of the Constitution. 'Municipality' has

been defined to mean "an institution of self-government constituted under Article 243-Q" and "Municipal area" means "the territorial area of a Municipality as is notified by the Governor". Composition of Municipalities has been dealt with in Article 243-R, which provides that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards. Article 243-S deals with the constitution and composition of Wards Committees and provides that the Legislature of a State may pass suitable legislation in respect of matters enumerated therein.

19. Article 243-T deals with reservation of seats and provides as under :

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

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

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

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

(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."

20. Article 243-ZA provides that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243-K. The Legislature of a State has been empowered to make laws providing for all matters relating to, or in connection with, elections to the Municipalities. Under Article 243-K, the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats have been vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. Article 243-ZF imposes a time-limit of one year within which provisions of State laws relating to

Municipalities, which were inconsistent with the provisions of Part-IX had to be amended and brought in line with the amended provisions. Article 243-ZG is the subject-matter of debate in this case and lays down :

"243-ZG. Bar to interference by courts in electoral matters. - Notwithstanding anything in this Constitution, -

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-ZA 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."

21. Because of the mandate contained in Article 243-ZF of the Constitution, U.P. Act 12 of 1994 was passed to bring the Uttar Pradesh Municipal Corporations Adhiniyam, 1959 in line with the newly-added provisions of the Constitution in respect of Panchayats and Municipalities. Section 4 of the U.P. Act provides that a Municipal Corporation constituted under Article 243-Q(1)(c) of the Constitution shall be a body corporate. It has been provided by Section 6 that the Corporation shall consist of a Nagar Pramukh and Sabhasads whose number shall be such as the State Government may, by notification in the Official Gazette, fix but which shall not be less than sixty and not more than one hundred and ten, in addition to certain nominated members of the State Government. Section 6-A deals with constitution and composition of wards committees. The provisions relevant for the purpose of this case are as under :

"6-A. Constitution and Composition of Wards Committees. - (1) Each Wards Committee, constituted under clause (1) of Article 243-S of the Constitution within the territorial area of a Corporation having a population of three lakhs or more, shall consist of ten wards.

(2) The territorial area of a Wards Committee shall consist of the territorial areas of the wards comprised in such committee.

(3) Each Wards Committee shall consist of -

(a) all the Sabhasads representing the wards within the territorial area of the Wards Committee;

(b) such other members, not exceeding five, as may be nominated by the State Government from amongst persons registered as electors within the territorial area of the concerned Wards Committee who have special knowledge or experience in municipal administration."

22. Section 7 deals with reservation of seats and is as under :

"7. Reservation of seats. - (1) In every Corporation, seats shall be reserved for the Scheduled Castes, the Scheduled Tribes and the Backward Classes and the number of seats so reserved shall as nearly as may be, bear the same proportion to the total number of seats to be filled by direct election in the Corporation, as the population of

the Scheduled Castes in the municipal area or of the Scheduled Tribes in the municipal area or of the Backward Classes in the municipal area bears to the total population of such area and such seats may be allotted by rotation to different wards in a Corporation in such order as may be prescribed by rules :

Provided that the reservation for the Backward Classes shall not exceed twenty-seven per cent of the total number of seats in a Corporation :

Provided further that if the figures of population of the Backward Classes are not available, their population may be determined by carrying out a survey in the manner prescribed by rules.

#(2) \* \* \* \*##

(3) Not less than one-third of the seats reserved under sub-sections (1) and (2) shall be reserved for the women belonging to the Scheduled Castes, the Scheduled Tribes or the Backward Classes, as the case may be.

(4) Not less than one-third of the total number of seats to be filled by direct election in a Corporation, including the number of seats reserved under sub-section (3), shall be reserved for women and such seats may be allotted by rotation to different wards in the Corporation in such order as may be prescribed by rules.

(5) The offices of the Nagar Pramukhs and the Up-Nagar Pramukhs of the Corporations in the State shall be reserved for the Scheduled Castes, the Scheduled Tribes and the Backward Classes and women in such manner as may be prescribed by rules :

Provided that if the office of the Nagar Pramukh of a Corporation is reserved, the office of Up-Nagar Pramukh of that Corporation shall not be reserved.

(6) The reservation of the seats and the offices under this section for the Scheduled Castes and the Scheduled Tribes shall cease to have effect on the expiry of the period specified in Article 334 of the Constitution.

Explanation. - It is clarified that nothing in this section shall prevent the persons belonging to the Scheduled Castes, the Scheduled Tribes, the Backward Classes and the women from contesting elections to unreserved seats and offices."

23. The U.P. Act also specifically provides for delimitation of wards :

"31. Provision of wards. - (1) For the purpose of the election of Sabhasads, each municipal area shall be divided into territorial constituencies to be known as wards in the manner provided in Section 32 and there shall be a separate electoral roll for each ward.

(2) Each ward shall be represented by each Sabhasad in the Corporation.

32. Delimitation Order. - (1) The State Government shall by order-

- (a) divide a municipal area into wards in such manner that the population in each ward shall, so far as practicable, be the same throughout the municipal area;
  - (b) determine the number of wards into which a municipal area shall be divided;
  - (c) determine the extent of each ward;
  - (d) determine the number of seats to be reserved for the Scheduled Castes, the Scheduled Tribes, Backward Classes and women.
- (2) The draft of the Order under sub-section (1) shall be published in the Official Gazette for objections for a period of not less than seven days.
- (3) The State Government shall consider any objection filed under sub-section (2) and the draft Order shall, if necessary, be amended, altered or modified accordingly and thereupon it shall become final.

33. Alteration or amendment of Delimitation Order and its effect. - (1) The State Government may, by a subsequent Order, alter or amend any final Order under sub-section (3) of Section 32.

(1-A) For the alteration or amendment of any order under sub-section (1), the provisions of sub-sections (2) and (3) of Section 32 shall mutatis mutandis apply.

(2) Upon alteration or amendment of any final Order under this Section the State Government shall apportion the existing Sabhasads to the altered or amended wards so as to provide so far as is reasonably practicable for their continuing to represent as large a number as possible of their former constituents.

#(3) \* \* \* \*##

24. The validity of Sections 6-A, 31, 32 and 33 of the U.P. Act dealing with delimitation of wards cannot be questioned in a court of law because of the express bar imposed by Article 243-ZG of the Constitution. Section 7 contains rules for allotment of seats to the Scheduled Castes, the Scheduled Tribes and the Backward Class people. The validity of that section cannot also be challenged. That apart, in the instant case, when the delimitation of the wards was made, such delimitation was not challenged on the ground of colourable exercise of power or on any other ground of arbitrariness. Any such challenge should have been made as soon as the final order was published in the Gazette after objections to the draft order were considered and not after the notification for holding of the elections was issued. As was pointed out in Lakshmi Charan Sen case [(1985) 4 SCC 689], that the fact that certain claims and objections had not been disposed of before the final order was passed, cannot arrest the process of election.

25. In this connection, it may be necessary to mention that there is one feature to be found in the Delimitation Commission Act, 1962 which is absent in the U.P. Act. Section 10 of the Act of 1962 provided that the Commission shall cause each of its order made under Sections 8 and 9 to be published in the Gazette of India and in the Official Gazettes of the States concerned. Upon publication in the Gazette of India every such order shall have the force of law and shall not be called in question in any Court. Because of these specific provisions of the Delimitation Commission Act, 1962, in the case of Meghraj Kothari v. Delimitation Commission, [AIR 1967 SC 669 : 1967 MPLJ 553], this Court held that notification of orders passed under Sections 8 and 9 of

that Act had the force of law and therefore, could not be assailed in any court of law because of the bar imposed by Article 329. The U.P. Act of 1959 however, merely provides that the draft order of delimitation of municipal areas shall be published in the Official Gazette for objections for a period of not less than seven days. The draft order may be altered or modified after hearing the objections filed, if any. Thereupon, it shall become final. It does not lay down that such an order upon reaching finality will have the force of law and shall not be questioned in any court of law. For this reason, it may not be possible to say that such an order made under Section 32 of the U.P. Act has the force of law and is beyond challenge by virtue of Article 243-ZG. But any such challenge should be made soon after the final order is published. The Election Court constituted under Section 61 of the U.P. Act will not be competent to entertain such an objection. In other words, this ground cannot be said to be comprised in sub-clause (iv) of clause (d) of Section 71 of the U.P. Act. In the very nature of things, the Election Court cannot entertain or give any relief on this score. The validity of a final order published under Section 33 of the U.P. Act is beyond the ken of Election Court constituted under Section 61 of the said Act.

26. Similarly, the electoral rolls have to be prepared and published under Section 39 of the U.P. Act. If there is any mistake, objections can be filed within the specified period and corrected on the basis of the objections filed, if any. A remedy by way of appeal has been provided to a person aggrieved by the inclusion, deletion or correction of the name in the electoral roll. There is no provision in the U.P. Act giving force of law to the electoral roll after its finalisation. However, Section 49 of the U.P. Act contains a bar on the jurisdiction of a civil court to entertain or adjudicate upon a question whether a person is or is not entitled to be registered in an electoral roll for a ward or to question the legality of any action taken by or under the authority of the State Election Commission in respect of preparation and publication of electoral roll or to question the legality of any action taken or of any decision taken by the Returning Officer or by any other person appointed under this Act in connection with an election.

27. So far as the preparation of electoral rolls are concerned, elaborate measures have been provided by Sections 39 and 40 to ensure proper preparation of the electoral rolls. Electoral rolls have to be prepared subject to superintendence, direction and control of the State Election Commission. There is a provision for making application for correction of an electoral roll by an aggrieved person. There is also a provision for appeal against any order in regard to inclusion, deletion or correction of name in the electoral roll.

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 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. Having regard to the provisions for filing objections and also the right of appeal against inclusion, deletion and correction of names and also to the constitutional authority of the Election Commission to give directions in all matters pertaining to elections, the Court should not have intervened at all on the basis of allegations as to preparation of electoral rolls.

29. Dealing with the provisions of the Constitution relating to panchayats contained in Articles 243-A to 243-O (which are similar to Articles 243-Q to 243-ZG relating to Municipalities), this Court in

the case of State of U.P. v. Pradhan Sangh Kshettra Samiti, [1995 Supp (2) SCC 305 : AIR 1995 SC 1512], held : (AIR p. 1528 : SCC p. 331, paras 44 and 45)

"It is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the court to dictate the manner in which the same would be done. 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.

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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 the validity of the delimitation of the constituencies and also the allotment of seats to them."

30. It was also held by the Court that any challenge to the validity of the delimitation of constituencies or the allotment of seats to such constituencies and the election to any panchayat should not be entertained by Court except on the ground that before the delimitation, no objection was invited and no hearing was given. It was, therefore, observed as under : (SCC p. 332, para 45)

"Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31-8-1994."

31. On behalf of the respondents, it has been contended that the Court is not entirely without jurisdiction to intervene when it finds that provisions of the Constitution are being flouted in holding the election. In such a situation, the Court has jurisdiction and, indeed, a duty to intervene and set right the election process. Our attention was invited to the definition of 'population' as given by Article 243-P(g), according to which 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published. Constitutional mandate is that there shall be Wards Committees consisting of one or more wards, within the territorial area of a Municipality "having a population of three lakhs or more". Therefore, the last published census figures must be the basis for delimitation of wards. Section 32 of the U.P. Act provides that the State Government shall by order divide municipal areas into wards in such manner that the population in each ward shall, so far as practicable, be the same throughout the municipal area. It must also determine the number of wards into which the municipal areas are to be divided, determine the extent of each ward and also determine the number of seats to be reserved for the Scheduled Castes, the Scheduled Tribes and the Backward Classes or women. There will have to be an electoral roll for each ward which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of the State Election Commission (Section 35). Section 40 provides for revision of electoral roll which can be done only if the State Election Commission is of the view that it is necessary. In this case, it is further contended, the State Government has deviated from the published figures of the last census for the purpose of delimitation of the constituencies and the preparation of electoral rolls. It made a survey of the population on its own and the electoral

rolls were drawn up for various wards and delimitation of the constituencies (wards) and the allotment of the seats to such constituencies were done not on the basis of the census figures of 1991 but on the basis of population survey made by the State which is not permissible under the specific provisions of the Constitution. In such a situation, it was appropriate for the petitioner to invoke the writ jurisdiction and compel the State authorities to act in accordance with the mandate of the Constitution. In doing this, the Court was not declaring any law to be invalid but was compelling the State to act in accordance with the law and the Constitution.

32. The case of the State Government in the court below as well as here is that the election has to be conducted on the basis of the last census which was held in the year 1991. The next census is due to be held in 2001. But in the meantime, election to the municipal bodies will have to be held. The basis for holding such elections is the last available census figures. But where no census figures are available, then a survey has to be made by the Government to find out the correct figures. For example, Article 243-T specifically reserves the right of the State Legislature for making provision for reservation of seats in favour of Backward Classes of citizens. This reservation has been made by the State Legislature of U.P. for ensuring that the backward class people are adequately represented in the local bodies. Section 7 of the U.P. Act specifically provides for reservation of seats for Backward Classes and empowers the State Government that if the figures of Backward Classes were not available, their population may be determined by carrying out a survey in the manner prescribed by the rules.

33. In our view, the argument advanced on behalf of the State must be upheld. It is true that Article 243-P(g) has defined 'population' to mean "population as ascertained by the last preceding census of which the relevant figures have been published". The delimitation of constituencies and also preparation of electoral rolls will have to be done on the basis of the figures available from the last census which was taken in 1991. Reservation of seats for Scheduled Castes and Scheduled Tribes is mandatory under Article 243-T of the Constitution. This must also be done on the basis of the available figures from the census. Clause (6) of Article 243-T of the Constitution has made it permissible for the State Government to reserve seats for other Backward Classes. The census of 1991 has not enumerated the number of persons belonging to Backward Classes. Therefore, in order to reserve seats for citizens belonging to Backward Classes, their number will have to be found out. Clause (6) of Article 243-T has impliedly empowered the State Government to ascertain the Backward Classes and the number of people belonging to such classes. Otherwise, the provisions of clause (6) of Article 243-T will become otiose and meaningless. Merely because, such an enumeration of people belonging to Backward Classes was made, does not mean that the figures enumerated by the last census were discarded. The latest available census figures had to be the basis for delimitation of the constituencies, preparation of electoral rolls and also for reservation of seats for Scheduled Castes, Scheduled Tribes and women. But census figures are not available for persons belonging to Backward Classes. The next census will be in the year 2001. There is no way to reserve seats for Backward Classes in the meantime except by making a survey of the number of persons belonging to such classes for the purpose of giving them assured representation in the municipal bodies. To do this exercise is not to do away with the last available census figures but to find out what was not to be found by the last census. Had such counting been done in the census, then it would not have been open to the State Government to embark upon a survey of its own. The State Government here had only two choices. It could say that there will be no reservation for people belonging to Backward Classes because, the census figures of such people are not available or it could make a survey and count the number of people belonging to the Backward Classes and reserve seats for them in the municipal bodies. The State Government has taken the latter course. This is in consonance with the provisions of clause (6) of Article 243-T. Therefore, the survey made

by the State Government for finding out the number of persons belonging to Backward Classes was not in any way contrary to or it conflict with any of the provisions of the Constitution.

34. Moreover, the U.P. Act of 1959 was amended to make it consistent with the provisions of Part IX-A of the Constitution. 'Population' was defined in Section 2(53-A) to mean "population as ascertained at the last preceding census of which the relevant figures have been published". This is identical to the definition given in Article 243-P(g). Section 32 which deals with delimitation, inter alia, provides that the State Government shall by order determine the number of seats to be reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and for women. Section 7 lays down that in every Corporation, seats shall be reserved for Scheduled Castes, Scheduled Tribes and Backward Classes. There is a second proviso to Section 7 which lays down that if the figures of Backward Classes are not available, their population may be determined by carrying out a survey in the manner prescribed by the rules. These provisions come within the ambit of the phrase "any law relating to the delimitation of the constituencies or allotment of seats to such constituencies". The validity of this law cannot be challenged because of the protection given by Article 243-ZG of the Constitution. Therefore, the question whether the survey made by the State Government to ascertain the figures of persons belonging to Backward Classes was lawful or not cannot be raised in any Court.

35. Lastly, the Court on no account should have directed postponement of the elections by the impugned judgment and order dated 13-11-1995. On 11-10-1995, the notification for holding the municipal elections was issued. 16-10-1995 to 20-10-1995 was the period during which the nomination papers could be filed. 24-10-1995 was the last date for withdrawal of nomination papers. Voting was to take place between 17-11-1995 to 20-11-1995. The writ petition was filed as late as 26-10-1995 on the allegation that there were defects in the electoral rolls, delimitation of constituencies and reservation of seats. A similar writ petition moved before the Lucknow Bench of the Allahabad High Court (WP No. 2997 of 1995) had been dismissed by the Court on 18-10-1995. Barely one week before the voting was scheduled to commence, the Court decided to intervene in the matter regardless of the repeated warnings given by this Court in a number of earlier decisions. The Court decided to intervene in the matter and stop the election process while it was nearing completion. In Lakshmi Charan case, [(1985) 4 SCC 689], it was held that the Court should not intervene even when the elections were imminent. Here, the election was well under way.

36. For the reasons given hereinabove, we are of the view that the impugned judgment was erroneous and improper. We allow this appeal. The judgment under appeal is set aside. As the elections have already been held under the interim order passed by this Court, no further direction in this regard is necessary. There will be no order as to costs.

Civil Appeal No. 11932 of 1996 [Arising out of SLP (C) No. 26290 of 1995]

37. Leave granted.

38. In view of our judgment in Civil Appeal No. 11830 of 1996 [arising out of SLP (C) No. 25864 of 1995], the above appeal is dismissed.