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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SURYA KANT; CJI., JOYMALYA BAGCHI; J., VIPUL M. PANCHOLI; J.

JULY 16, 2026

CIVIL APPEAL NO. 9032-9034 OF 2026 (Arising out of Special Leave Petition (Civil) Nos. 4086-4088 of 2025)

PRANESH M.K. *versus* A.V. GAYATHRI SHANTHEGOWDA & ORS. ETC. ETC.

Constitution of India, 1950 — Article 171(3)(a) vs. Article 243-R — Representation of the People Act, 1950 — Section 27(2)(b) — Karnataka Municipalities Act, 1964 — Section 352(1)(b) — Electoral Rights of Nominated Members in Legislative Council Elections — Purpose of Local Authority Representation - Held: Nominated members of Town Panchayats/Municipalities do not possess the right to vote in elections to the State Legislative Council from a Local Authorities' Constituency - The constitutional distinction between elected representatives and nominated members under Article 243-R is clear and intentional - Nominated members are inducted for their expertise and hold a purely advisory role; they are expressly barred by the Proviso to Article 243-R from voting in the municipal bodies' own meetings - Allowing them to vote in Legislative Council elections would yield the anomalous and unreasonable consequence of granting them greater voting power in a constitutional legislative body than they possess within their own municipality - The expressions "members of municipalities" under Article 171(3)(a) and "every member" under Section 27(2)(b) of the 1950 Act must be contextually and harmoniously interpreted to apply only to those members who are elected representatives and possess active voting rights within their local authority - Inclusion of nominated members in such electoral rolls is unconstitutional and void *ab initio*. [Paras 30 – 38]

Representation of the People Act, 1951 — Section 100(1)(d)(iii) — Finality of Electoral Rolls vs. Constitutional Invalidity — Material Effect Test — Secrecy of Ballot - Held: The principle of finality of electoral rolls is meant to ensure electoral stability, but it cannot override the Constitution or validate the participation of constitutionally ineligible persons whose inclusion is void *ab initio* - Where the margin of victory is narrow (6 votes) and the number of unconstitutional votes cast by nominated members is double the margin (12 votes), the requirement of the election being "materially affected" under Section 100(1)(d)(iii) stands fully established - the principle of secrecy of the ballot is not absolute and cannot be invoked to perpetuate a constitutional illegality - The segregation of invalid votes using ballot papers, counterfoils, and marked copies of the electoral roll by the Returning Officer is legally permissible to preserve the purity of the electoral process. [Paras 40-46]

Constitution of India, 1950 — Article 226 — Maintainability of Writ Petition — Alternative Remedy under Election Law - Held: The rule requiring the exhaustion of alternative remedies is a rule of convenience and discretion, not a rule of law, and does not oust writ jurisdiction where the controversy involves a pure question of law - When the challenge is raised prior to the election and goes to the root of the composition/legality of the electoral college (inclusion of nominated members) rather than routine irregularities in the electoral roll or the conduct of the election process, a writ petition under Article 226 is fully maintainable - This is particularly true when the statutory remedy under Section 27 of the 1950 Act is illusory or ineffective. [Relied on *Ramesh Mehta v. Sanwal Chand Singhvi*, (2004) 5 SCC 409; *Shelly Oberoi v.*

Office of Lieutenant Governor of Delhi, (2023) 5 SCC 41; Ram & Shyam Co. v. State of Haryana, (1985) 3 SCC 267; Kuldip Nayar v. Union of India, (2006) 7 SCC 1; Paras 23, 24, 25, 26, 40-49]

WITH CIVIL APPEAL No. 9035 OF 2026 (Arising out of Special Leave Petition (Civil) No. 17748 of 2023) CIVIL APPEAL No. 9036 OF 2026 (Arising out of Special Leave Petition (Civil) No. 17017 of 2023) CIVIL APPEAL No. 9037 OF 2026 (Arising out of Special Leave Petition (Civil) No. 21599 of 2023)

For Appellant(s): Mr. Randhir Kumar Ojha, AOR Mr. Shekhar Naphade, Sr. Adv. Mr. S Niranjan Reddy, Sr. Adv. Mr. Anand Sanjay M Nuli, Sr. Adv. Ms. Akhila Wali, Adv. Mr. Dharam Singh, Adv. Mr. Suraj Kaushik, Adv. Mr. Abhishek Kanyalur, Adv. Ms. Divya Sinha, Adv. Mr. Ashritsai Torgal, Adv. Ms. Tanya Chhillar, Adv. Ms. Akhila Palem, Adv. Ms. Salonee Paranjape, Adv. Mr. Abhishek Singh, Adv. M/S. Nuli & Nuli, AOR Mr. Agam Sharma, AOR Ms. Archi Aggarwal, Adv.

For Respondent(s) : A.N. Venugopala Gowda, Sr. Adv. Nishant A.V., Adv. Ms. Garima Jain, AOR Mohit Singh, Adv. Dr. Abhishek Manu Singhvi, Sr. Adv. Mr. Nishanth Av, Adv. Mr. Mayank Kshirsagar, AOR Mrs. Anumita Verma, Adv. Ms. Pavani Verma, Adv. Ms. Megha Bhati, Adv. Mr. Akhilesh Yadav, Adv. Mr. Sharanagouda Patil, Adv. Mrs. Supreeta Patil, Adv. Mr. Nishant Venugopal, Adv. Mr. Kotresh A M, Adv. M/s S-legal Associates, AOR Mr. K. V. Muthu Kumar, AOR Ms. S Selvakumari, Adv. Ms. Gagandeep Chauhan, Adv. Ms. Shreemoyee Bhattacharjee, Adv. Mr. A.N. Venugopala Gowda, Sr. Adv. Dr. Abhishek Manu Singhvi, Sr. Adv. Mr. Balaji Srinivasan, AOR Mr. Nishanth Av, Adv. Mr. Nishant Av, Adv. Mr. Vishwaditya Sharma, Adv. Mr. Parikshit Pitale, Adv. Ms. Aakriti Priya, Adv. Ms. Kaniksha Singh, Adv. Ms. Subornodeep Bhattacharjee, Adv. Ms. Suganya Sivasamy, Adv. Ms. Patil Rekha Chandra Gouda, AOR V. Giri, Sr. Adv. Mr. Prateek Kumar, AOR Devansh Rai, Adv. Harshed Sundar, Adv. Rahul Narang, Adv. Nihar Dharmadhikari, Adv. Aishwarya Raj Mishra, Adv. Mr. K. Shiva, AOR Mr. Saurabh Ankit, Adv. Ms. Amity Gupta, Adv. Mr. Agam Sharma, AOR Ms. Archi Aggarwal, Adv. Mr. Gurmeet Singh Makker, AOR K. M. Nataraj, ASG Sharath Nambiar, Adv. Vinayak Sharma, Adv. Indira Bhakar, Adv. Vatsal Joshi, Adv. Chitransh Sharma, Adv. Anuj Srinivas Udupa, Adv. Satvika Thakur, Adv. Nikita Capoor, Adv. Yogya Rajpurohit, Adv. Ritika Ranjan, Adv. Dr. N. Visakamurthy, AOR

J U D G M E N T

VIPUL M. PANCHOLI, J.

1. Leave granted.
2. These appeals arise out of the following judgments and order:
 - A. The common order dated 29.01.2025 passed by the High Court of Karnataka at Bengaluru in Election Petition Nos. 1, 2 and 3 of 2022, whereby the election of the returned candidate has been set aside and consequential directions have been issued.
 - B. The common judgment and order dated 20.04.2023 passed by the High Court of Karnataka at Bengaluru in Writ Appeal Nos. 1247, 1256 and 1250 of 2022, whereby the Division Bench affirmed the findings of the Single Judge and upheld the interpretation of the statutory provisions governing the electoral process, including the eligibility and voting rights of nominated members, which has a direct bearing on the validity of the election in question.
3. The present batch of matters also includes connected Special Leave Petitions arising out of allied proceedings involving similar questions of law and fact. Since the issues involved are substantially overlapping, all the matters were heard together and are being disposed of by this common judgment.
4. The present case arises out of the election to the Karnataka Legislative Council from the 12-Chikkamagaluru Local Authorities Constituency (2021). The constituency comprises members of various local bodies including Zilla Panchayat, Taluk Panchayat, Municipal Councils and Town Panchayats. In four Town Panchayats, namely, Koppa, Mudigere, Sringeri and Narasimharajapura, three members each were nominated by the State Government under Section 352(1)(b) of the Karnataka Municipalities Act, 1964

(hereinafter referred to as “the KMA”), resulting in a total of 12 nominated councillors, whose names were included in the electoral rolls.

5. Elections were notified on 16.11.2021, polling took place on 10.12.2021 and counting was conducted on 14.12.2021. Out of 2410 votes polled, 2371 votes were valid. The appellant secured 1188 votes (including votes of nominated members), while Respondent No.1 secured 1182 votes and the appellant was declared elected by a narrow margin of 6 votes in accordance with the statutory rules governing the conduct of elections.

6. Following the declaration of results, the inclusion and voting rights of the nominated members became the subject matter of challenge. Writ petitions were filed before the High Court questioning the inclusion of nominated councillors in the electoral rolls. By judgment dated 03.11.2022, the High Court held such inclusion to be invalid and unconstitutional, directing deletion of their names. The said view was affirmed by the Division Bench on 20.04.2023, holding that nominated members do not have the right to vote in Legislative Council elections.

7. Parallely, election petitions were instituted challenging the appellant's election on the ground that votes cast by the nominated members were invalid and had materially affected the election result. The appellant contested the said proceedings, inter alia, contending that the electoral rolls had attained finality, that nominated members were validly included in terms of statutory provisions and executive clarification and that it was not possible to identify or segregate votes cast by such members without violating the secrecy of the ballot.

8. By the impugned order dated 29.01.2025, the High Court directed securing and opening of ballot boxes, segregation of ballot papers pertaining to the 12 nominated members and recounting of votes after excluding such votes, to be completed within a stipulated time.

9. Aggrieved by the said order and the interpretation adopted by the High Court regarding the eligibility and voting rights of nominated members, the appellant has approached this Court.

10. On 17.02.2025, this Court permitted recounting of votes, however, it directed that the results shall not be declared and instead be placed before this Court in a sealed cover and the same was complied with on 15.04.2025. On 22.07.2025, an application for impleadment was allowed and the Union of India was impleaded as a party respondent. On 05.08.2025, this Court opened the sealed covers containing (i) recount based on original votes and (ii) revised results excluding votes of nominated members. After perusal, the documents were resealed and directed to be kept in safe custody.

SUBMISSIONS ON BEHALF OF THE APPELLANT - PRANESH MK - ELECTED MEMBER (@ SLP (C) No. 4086-4088 of 2025, SLP (C) Nos. 17748 and 21599 of 2023)

11. Learned senior counsels appearing for the appellant challenged the impugned order mainly on the following grounds:

A. It is submitted that the core issue that whether nominated members of Town Panchayats are entitled to be included in electoral rolls and vote in Legislative Council elections, is res integra and presently pending consideration before this Court in connected Special Leave Petitions. The High Court erred in relying upon its earlier judgments despite the issue not having attained finality.

B. It is stated that the High Court has mechanically relied upon the judgments dated 03.11.2022 and 20.04.2023 (Single Judge and Division Bench), without independent adjudication, even though those very judgments are under challenge before this Court.

C. It is contended that the names of the 12 nominated members were duly included in the electoral rolls and were never challenged prior to the election. Once finalized, the electoral roll cannot be questioned in an election petition except on limited grounds of disqualification under Section 16 of the Representation of the People Act, 1950 (hereinafter referred to as “the 1950 Act”). Reliance is placed on Hari Prasad Mulshanker Trivedi v. V.B. Raju & Ors., (1974) 3 SCC 415 and Kunwar Nripendra Bahadur v. Union of India, (1977) 4 SCC 153.

D. Even assuming that nominated members were ineligible, it is argued that votes cast by persons included in the electoral roll cannot be treated as void and an election cannot be set aside merely on the ground that ineligible voters participated. Reliance is placed on decisions, including, Shyamdeo Pd. Singh v. Nawal Kishore Yadav, (2000) 8 SCC 46, P. Shardamma & Anr. v. Marithibbegowda, 2009 SCC OnLine Kar 218, Gayatri Devi v. Suman Devi & Ors., 2022 SCC OnLine Raj 885 and Rooplal Mehta v. Dhan Singh & Ors., 1967 SCC OnLine P&H 128.

E. It is urged that recount of votes can be ordered only in exceptional circumstances based on specific pleadings and proof. The High Court erred in directing recount solely on the basis of alleged illegality in electoral roll and narrow margin of votes, without any concrete material. Reliance is placed on P.H. Pujar v. Kanthi Rajashekar Kidiyappa, (2002) 3 SCC 742, Mahant Ram Prakash Dass v. Ramesh Chandra, (1999) 9 SCC 420 and R. Narayanan v. S. Semmalai, (1980) 2 SCC 537.

F. It is contended that the High Court wrongly interpreted Section 27(2)(b) of the 1950 Act, Sections 352(1)(b) and 2(6) of the KMA and Article 243-R of the Constitution of India, 1950 (hereinafter referred to as “the Constitution”). It is submitted that the restriction on nominated members applies only to voting in municipal meetings, such restriction cannot be extended to Legislative Council elections and the expression “every member” includes nominated members.

G. Reliance is placed on the Election Commission’s Circular dated 21.10.1997, which clarifies that nominated members are entitled to be included in electoral rolls and to vote in Local Authorities Constituency elections. The High Court failed to consider this binding clarification.

H. It is submitted that segregation of votes of nominated members is impracticable and would violate the secrecy of the ballot, which is a fundamental principle of electoral law. Reliance is placed on Jeet Mohinder Singh v. Harinder Singh Jassi, (1999) 9 SCC 386.

I. The impugned order is also challenged on the ground that it does not comply with statutory requirements under the Conduct of Election Rules, 1961, particularly regarding the authority competent to open ballot boxes.

J. It is contended that writ proceedings and election petitions involve distinct causes of action, writ court findings are not binding in election disputes and in any event, the earlier judgments have not attained finality.

12. On these grounds, it is urged that the impugned order dated 29.01.2025 directing recount of votes after excluding votes of nominated members is legally unsustainable and liable to be set aside.

SUBMISSIONS ON BEHALF OF THE APPELLANT NO.1 - HP MANJUNATH - NOMINATED MEMBER (@ SLP (C) Nos. 17748 and 17017 of 2023)

13. Learned senior counsels appearing for the Appellant No.1 - nominated member challenged the impugned judgment on the following principal grounds:

A. It is contended that the High Court failed to appreciate the fundamental distinction between voting in meetings of a Town Panchayat and voting in Legislative Council elections. The statutory restriction on nominated members applies only to participation in municipal decision-making and cannot be extended to elections to the Legislative Council.

B. It is submitted that Article 243-R and Section 352(1)(b) of the KMA, only restrict nominated members from voting in municipal meetings. There is no express prohibition on their participation in elections to the Legislative Council. Accordingly, Section 27(2)(b) of the 1950 Act, which uses the expression “every member”, must be interpreted to include nominated members.

C. It is argued that the object of Article 171(3)(a) of the Constitution and Section 27 of the 1950 Act is to provide representation of local authorities in the Legislative Council. Excluding nominated members would defeat this purpose and leave a segment of local governance unrepresented. Reliance is placed on L. Shivanna v. State of Karnataka, 1988 SCC OnLine Kar 228.

D. It is contended that once nominated under statutory provisions, such persons become members of the local authority for all relevant purposes, unless expressly excluded. Drawing analogy from the provision of Section 5 of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (hereinafter referred to as “the Act of 1983”), it is submitted that nominated members cannot be treated as a separate or inferior class for electoral purposes.

E. It is stated that the High Court has erroneously read the word “elected” into provisions such as Section 27(2)(b) of the 1950 Act and Section 2(6) of the KMA, despite the statute using the broader expression “every member”.

F. It is further submitted that while the right to vote is statutory in nature, it must be exercised strictly in accordance with the governing law. In the absence of an express statutory prohibition, nominated members cannot be excluded from electoral participation.

G. It is urged that treating nominated members differently in the context of Legislative Council elections, while recognizing them as members for other purposes, leads to arbitrariness and violates the constitutional scheme of representative governance.

H. It is further submitted that excluding nominated members from voting in indirect elections to the Legislative Council would result in denial of representation to segments of local authorities, thereby defeating the purpose of a bicameral legislative structure.

14. On these grounds, it is submitted that the High Court erred in law in excluding nominated members from the electoral process and in misinterpreting the constitutional and statutory framework. The impugned judgment and order dated 20.04.2023 is therefore liable to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS (@ SLP (C) No. 4086-4088 of 2025)

15. Learned senior counsels appearing for the respondents supported the impugned judgments and orders on the following grounds:

A. It is submitted that nominated members of Town Panchayats have no voting rights under the constitutional scheme, cannot be treated as “members” for electoral purposes and their inclusion in the electoral roll is void ab initio. Reliance is placed on Article 243-R of the Constitution, which expressly bars nominated members from voting, reflecting a clear distinction between elected and nominated representatives.

B. It is contended that the writ petitions were maintainable because no statutory appellate remedy exists under Section 27 of the 1950 Act, any purported remedy is illusory and violative of *nemo judex in causa sua* and electoral rolls cannot be challenged in election petitions, necessitating recourse to Article 226 of the Constitution. Reliance is placed on *N.P. Ponnuswami v. Returning Officer & Ors.*, (1952) 1 SCC 94, *Dhampur Sugar Mills Ltd. v. State of U.P.*, (2007) 8 SCC 338 and *Ram & Shyam Co. v. State of Haryana*, (1985) 3 SCC 267.

C. It is argued that Article 329(b) bars interference only with the election process, whereas challenge to electoral roll is anterior to the election, hence, writ jurisdiction is not barred.

D. It is submitted that the expression “every member” must be read harmoniously with Article 243-R of the Constitution and therefore includes only elected members, not nominated members. A literal interpretation including nominated members would lead to constitutional inconsistency.

E. It is contended that Section 352 of the KMA denies voting rights to nominated members, Section 2(6) of the KMA distinguishes elected councillors and the 74th Constitutional Amendment intends governance through elected representatives, while nominated members play only advisory roles.

F. It is further submitted that the right to vote is purely statutory, not fundamental, must be expressly conferred and cannot be inferred in favour of nominated members. Reliance is placed on *Ramesh Mehta v. Sanwal Chand Singhvi*, (2004) 5 SCC 409, *Jyoti Basu v. Debi Ghosal*, (1982) 1 SCC 691 and *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1.

G. It is argued that inclusion of nominated members being void ab initio, the election based on such inclusion is vitiated and the doctrine of material effect is clearly satisfied (12 invalid votes vs. 6 votes margin).

H. It is further submitted that the direction for recount is a consequential relief flowing from invalidation of votes, is narrowly tailored and ensures correction without disturbing the entire election.

I. It is contended that inclusion in electoral roll does not confer a vested right if inclusion itself is void, reliance on Article 171 of the Constitution is misplaced, Section 62 of the Representation of the People Act, 1951 (hereinafter referred to as “the 1951 Act”) applies only to valid electors and plea of delay or acquiescence is unsustainable.

J. It is pointed out that recount has already been conducted pursuant to Court orders, the result demonstrates that exclusion of invalid votes alters the outcome and continuation of the returned candidate would perpetuate illegality.

16. On these grounds, it is submitted that the High Court judgments are legally sound and constitutionally valid, no interference under Article 136 of the Constitution is warranted and the Special Leave Petitions deserve to be dismissed with affirmation of recount and exclusion of votes of nominated members.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.11 - UNION OF INDIA (@ SLP (C) No. 4086-4088 of 2025)

17. Mr. K.M. Nataraj, learned Additional Solicitor General, appearing for the Union of India, confined submissions to the two core legal issues arising in the present matter:

A. It is submitted that Article 171(3)(a) of the Constitution provides that members of the Legislative Council are elected by an electorate consisting of “members of municipalities and other local authorities”, without distinguishing between elected and nominated members. A comparative reading of constitutional provisions demonstrates that where the Constitution intends to restrict voting to “elected members”, it does so expressly (e.g., Articles 80, 54) and in contrast, Article 171 uses the broader term “members”, thereby indicating an inclusive intent. Under Article 243-R, while nominated members are barred from voting in meetings of the municipality, there is no express prohibition on their participation in Legislative Council elections. Under the KMA, Section 2(6) defines “councillor” broadly to include any person who is legally a member, without distinguishing between elected and nominated members and thus, nominated members, being lawfully inducted, fall within the category of “members” of the local authority. Similarly, Section 27(2)(b) of the 1950 Act provides that “every member” of a local authority is entitled to be registered as an elector, without excluding nominated members. It is therefore contended that the Constitution and statutory framework do not exclude nominated members and the courts cannot read in a restriction where none exists.

B. It is further submitted that the statutory scheme of the 1950 Act provides a mechanism for pre-election objections to the electoral roll. Once the final electoral roll is published, the election must proceed on that basis and inclusion of ineligible voters, even if assumed, does not vitiate the election. Reliance is placed on *Shyamdeo Pd. Singh (supra)*, holding that inclusion of ineligible persons in electoral roll cannot be a ground to set aside an election and *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman*, (1985) 4 SCC 689, affirming that elections must proceed on the basis of the electoral roll in force, notwithstanding pending objections or errors. It is emphasized that a voter included in the electoral roll by a competent authority is entitled to vote unless disqualified under law and subsequent challenge to eligibility cannot retrospectively invalidate the electoral process.

18. On the above analysis, the Union of India submits that the nominated members, being “members” of local authorities, are eligible to be included in electoral rolls and to vote in Legislative Council elections and even otherwise, inclusion of allegedly ineligible voters in the electoral roll does not render the election void once the roll has attained finality.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS. 1 TO 4 (@ SLP (C) No. 21599 of 2023)

19. Learned senior counsels appearing for the respondent Nos. 1 to 4 supported the impugned judgments of the High Court and opposed the Special Leave Petitions on the following grounds:

A. It is submitted that the writ petitions challenging the electoral roll were fully maintainable because no effective statutory remedy exists under the 1950 Act to challenge inclusion of ineligible voters in Local Authorities’ Constituencies. The challenge pertains to a foundational illegality in the electoral roll, which lies outside the bar on judicial interference in electoral matters and an election petition is not an adequate remedy, as it cannot adjudicate upon the validity of the electoral roll itself. Reliance is placed on *N.P.*

Ponnuswami (supra) and Maharashtra Chess Association v. Union of India, (2020) 13 SCC 285.

B. It is contended that the expression “every member” under Section 27(2)(b) of the 1950 Act must be interpreted harmoniously with the Constitution. Under Article 243-R of the Constitution, nominated members are expressly denied voting rights and form a distinct class from elected representatives. Under the KMA, nominated members are not “councillors” in the electoral sense. Accordingly, only elected members with democratic mandate can constitute the electoral college.

C. It is submitted that the election result was materially affected as the margin of victory was 6 votes and the ineligible voters were 12 nominated members. The test of “material effect” is clearly satisfied, rendering the election invalid. Reliance is placed on Ramesh Mehta (supra) and Shyamdeo Pd. Singh (supra).

D. It is argued that allowing nominated members (who lack electoral mandate and are appointed by the executive) to vote undermines representative democracy, introduces executive influence and violates the constitutional scheme of democratic decentralisation under Part IX-A of the Constitution. The right to vote is purely statutory and must be exercised strictly in accordance with law. Reliance is placed on Rajbala v. State of Haryana, (2016) 2 SCC 445.

E. It is submitted that both the Single Judge and Division Bench have given concurrent findings on facts and law. Such findings are based on proper statutory interpretation, consistent with constitutional provisions and free from perversity. This Court, under Article 136 of the Constitution, ordinarily does not interfere with concurrent findings unless manifestly erroneous. Reliance is placed on Kunwar Nripendra Bahadur Singh (supra).

F. It is contended that the plea of alternative remedy is illusory and ineffective, the bar under election law is inapplicable, as the challenge is to the electoral roll, not merely the election result, the interpretation of “every member” to include nominated members is contrary to constitutional scheme and parallel proceedings (writ and election petitions) are legally permissible as they address distinct issues.

20. On these grounds, it is submitted that the impugned judgments of the High Court are legally sound and constitutionally consistent, inclusion of nominated members in the electoral roll is invalid, the consequential recount excluding such votes is justified and thus, the Special Leave Petitions deserve to be dismissed.

ANALYSIS, DISCUSSION AND FINDINGS

21. Having heard learned counsel appearing on behalf of the parties and perusing the material on record, the principal issue in the present batch of appeals is whether nominated members of Town Panchayats have the right to vote in the election to the Karnataka Legislative Council from a Local Authorities’ Constituency and the consequential effect of their participation on the validity of the election in question.

22. Before dealing with the substantive issue, it is necessary to address the preliminary objection raised by the appellants that the writ petitions filed before the High Court were not maintainable in view of the remedies available under the Representation of the People Acts.

23. We find no merit in the submission. The challenge raised before the High court was not directed against the conduct of the election or against any stage of the electoral process, however, the challenge was to the legality of inclusion of nominated members in the electoral roll prepared for the Local Authorities’ Constituency. The challenge was

raised before the election and went to the root of the composition of the electoral college and not merely to the validity of the election result. Thus, the issue raised was a pure question concerning interpretation of constitutional and statutory provisions.

24. Section 27 of the 1950 Act, which governs the preparation of electoral rolls for Legislative Council constituencies, does not provide an effective statutory mechanism for adjudicating the legality of inclusion of nominated members in the electoral roll of a Local Authorities' Constituency. While considering this issue in the impugned common judgment dated 20.04.2023 in Writ Appeal Nos. 1247, 1256 and 1250 of 2022, the High Court noticed that the remedy contemplated under the statutory framework was illusory in the peculiar facts of the case. The controversy involved a pure question of constitutional and statutory interpretation, namely, whether nominated members possessed the right to vote in elections to the Legislative Council and did not require determination of any disputed question of fact. The High Court observed as under:

“14. Admittedly, in the present case, the District Magistrate is the Electoral Registration Officer, who as prepared the electoral roll and he himself being an appellate Authority, the appeal would not lie before the person who was prepared the electoral roll. Further, the issue involved in the present case is, whether the nominated member has right to cast his vote. The controversy involved in this writ appeal is purely a legal one and does not involve disputed question of facts, but only a question of law. If the controversy is purely a legal one, it should be decided by the High Court under Article 226 of the Constitution of India, instead of dismissing the writ petition on the ground of an alternative remedy being available.”

25. The principles laid down by this Court in *N.P. Ponnuswami v. Returning Officer (supra)* does not lay down an absolute bar against judicial review in every matter having some nexus with elections. Similarly, as observed in *Dhampur Sugar Mills Ltd. v. State of U.P. (supra)* and *Ram & Shyam Co. v. State of Haryana (supra)*, existence of an alternative remedy does not preclude exercise of writ jurisdiction, where the remedy is ineffective or where the controversy involves a pure question of law. The relevant paragraph of *Ram & Shyam Co. v. State of Haryana (supra)* reads as under:

“9. Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in *Assistant Collector of Central Excise v. Jainson Hosiery Industries [(1979) 4 SCC 22 : 1979 SCC (Cri) 896]* rejected the writ petition observing that “the petitioner who invokes the extraordinary jurisdiction of the court under Article 226 of the Constitution must have exhausted the normal statutory remedies available to him”. We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in *State of U.P. v. Mohammad Nooh [AIR 1958 SC 86 : 1958 SCR 595 : 1958 SCJ 242]* it is observed “that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy”. It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The cliché of appeal from Caesar to Caesar's wife can only be bettered by appeal

from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court."

26. We are therefore in agreement with the Single Judge and affirmed by the Division Bench that the writ petitions were maintainable.

27. This brings us to the principal issue arising out of the present batch of appeals. The appellants have placed considerable reliance upon the language used in Article 171(3)(a) of the Constitution and Article 27(2)(b) of the 1950 Act. The legal provisions are reproduced as under:

"171. Composition of the Legislative Councils. –

... ..

(3) Of the total number of members of the Legislative Council of a State

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;"

"27. Preparation of electoral roll for Council constituencies. –

... ..

(2) For the purpose of elections to the Legislative Council of a State in any local authorities' constituency—

... ..

(b) every member of each such local authority within a local authorities' constituency shall be entitled to be registered in the electoral roll for that constituency;"

28. It was argued that Article 171(3)(a) of the Constitution uses the expression "members of municipalities, district boards and other local authorities" and not "elected members". Similarly, Section 27(2)(b) of the 1950 Act used the expression "every member of each such local authority". It was urged that where the Constitution intended to confine an electoral college to elected representatives, it has expressly done so in provisions such as Articles 54 and 80 of the Constitution. According to the appellants, once a person becomes a member of a municipality by virtue of a valid nomination under the KMA, such person necessarily becomes entitled to form part of the electoral college for the purposes of election to the Legislative Council.

29. We are of the view that the submission is attractive on a plain reading of the provisions, however on closer examination, overlooks the constitutional transformation brought about by the Constitution (Seventy-Fourth Amendment) Act, 1992. The constitutional provisions cannot be construed in isolation or by adopting a purely textual approach divorced from the constitutional structure and every provision must be interpreted harmoniously so as to give effect to the Constitution as a coherent whole. Part IX-A of the Constitution introduced a constitutional framework for democratic local self-government. Article 243-R of the Constitution fundamentally altered the constitutional structure governing urban local bodies. The constitutional objective was to strengthen democratic local self-government and ensure governance through elected representatives at the grassroots level. Article 243-R of the Constitution is reproduced as under:

“243R. Composition of Municipalities. –

(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

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

(a) for the representation in a Municipality of-

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

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

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

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

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

(b) the manner of election of the Chairperson of a Municipality.”

30. A careful perusal of Article 243-R demonstrates that the Constitution itself makes a conscious distinction between elected representatives and nominated members. Clause (1) declares that all seats in a municipality shall be filled by persons chosen by direct election and Clause (2) permits representation of certain categories of persons, including persons possessing special knowledge or experience in municipal administration. However, the Proviso expressly provides that such nominated members shall not have the right to vote in meetings of the municipality.

31. Therefore, the constitutional distinction between elected and nominated members is clear and intentional, as the elected members derive their authority from the democratic mandate of the electorate and represent the will of the people. On the other hand, the nominated members are inducted into the municipal body because of their expertise, experience or specialised knowledge. Thus, their role is advisory and consultative rather than representative.

32. The same constitutional philosophy finds statutory recognition in Section 352 of the Karnataka Municipalities Act, which provides as under:

“352. Election to Town Panchayat.—

(1) A Town Panchayat shall consist of,-

... ..

(b) not more than three persons nominated by the Government from amongst the residents of the transitional area and who are,-

(i) persons having special knowledge and experience in municipal administration or matters relating to health, town planning or education; or

(ii) social workers

... ..

Provided that the persons referred to in clause (b) shall not have the right to vote in the meetings of the Town Panchayat.”

33. This constitutional distinction has been recognised in several decisions of this Court. In *Ramesh Mehta v. Sanwal Chand Singhvi* (supra), while interpreting the post Seventy-

Fourth Amendment framework, this Court emphasised that constitutional interpretation in matters concerning municipal governance must be informed by the objective of strengthening democracy at the grassroots level. The Court observed:

“22. A right to contest election although arises under a statute but having regard to the Constitution (Seventyfourth) Amendment Act, the interpretation thereof must be made keeping in view the constitutional scheme. Democracy at the grass-root level was sought to be introduced by reason of the said amendment in the Constitution. Once the concept of a grass-root democracy is accepted, a pragmatic and purposive meaning to the provisions of the Act must be assigned.

... ..

25. It is accepted that the Rules have not been altered despite the fact that amendments have been carried out in the Municipalities Act in the year 1994. All members who were not elected members under the unamended provisions were treated as elected members. Their rights were at par with them. The very fact that the Constitution made a difference between an elected member and a nominated member in the matter of election and removal of a Chairman is suggestive of the fact that now a new interpretation is called for. Nominated members are persons with special knowledge in the subject. They are nominated so that they may render their advice properly to the members of the Board which would enable it to run the municipal affairs efficiently. They remain as members of the Board irrespective of the fact as to who the person occupying the post is or his political affinity. He is not concerned with election. He does not take part in it. A fortiori he has also not been assigned any role to play as regards removal of the Chairman or Vice-Chairman.”

34. More recently, in *Shelly Oberoi v. Office of Lieutenant Governor of Delhi*, (2023) 5 SCC 414, this Court clearly recognized the distinction between elected representatives and nominated members and affirmed that nominated members do not enjoy voting rights in matters involving democratic decisionmaking. The relevant paragraphs read as under:

“11. We are unable to accept the submission which has been urged on behalf of the Municipal Corporation and the Lt. Governor and by the counsel supporting them. The source of the statutory provision is contained in Article 243-R of the Constitution itself. Part IX-A of the Constitution was introduced by the Constitution (Seventyfourth Amendment) Act, 1992. Article 243-R provides for the composition of Municipalities. As already noted, the Constitution provides for direct election to all the seats in Municipality, save as specified in clause (2) which enunciates the exceptions. Clause (2) contains provisions, inter alia, for the representation in a Municipality of persons having special knowledge or experience in Municipal administration as well as other persons such as members of the House of the People and the Legislative Assembly and members of the Council of States and the Legislative Council of the States representing the specific constituency and the Chairpersons of the Committees constituted under clause (5) of Article 243-S. The Constitution has imposed a restriction in terms of which nominated members who are brought in on account of their special knowledge or experience in Municipal administration do not have the right to vote. The same restriction finds statutory recognition in Section 3(3)(b)(i) of the Act. The above provisions indicate that persons who are nominated under the sub-clause shall not have the right to vote in the meetings of the Corporation. The Constitution and the Act place value on their experience but the right to vote is not granted to them at meetings of the Corporation. The meetings of the Corporation would include all meetings, including the first meeting which is held after the holding of the general election. Section 73 of the Act provides for the first meeting to be convened by the Administrator as early as possible after the publication of the results, while Section 35 provides for the election of the Mayor and Deputy Mayor at the first meeting of the Corporation. The prohibition on nominated members exercising the right to vote in terms of Section 3(3)(b)(i) shall, therefore, also apply to the first meeting of the Corporation at which the Mayor and, thereafter, the Deputy Mayor are to be elected.

... ..

13. The interpretation which we have placed on the provisions of the statute is in accord with the judgment of a three-Judge Bench of this Court in *Ramesh Mehta v. Sanwal Chand Singhvi* [*Ramesh Mehta v. Sanwal Chand Singhvi*, (2004) 5 SCC 409].”

35. Taking into consideration the above discussion, the crucial question is whether people who are not allowed by the Constitution to vote in municipal matters can still vote in elections for members of the Legislative Council. In our considered view, the answer must necessarily be in the negative.

36. If Article 171(3)(a) of the Constitution was to be interpreted literally so as to include nominated members, an unreasonable consequence would follow, that is, a nominated member who is not allowed by the Constitution to vote in the municipality’s own decision-making process would still be allowed to vote in the election of a member of the Legislative Council. This interpretation would give nominated members more voting power in the election of a constitutional legislative body than they have within the municipality itself, which Article 243-R of the Constitution never intended. The Constitution should not be interpreted in a way that creates such contradictions. The Courts need to contextually interpret the provisions in order to further the constitutional objective, that is, democratic representation. The purpose of Article 171(3)(a) is not just to give representation to local authorities as institutions, but to ensure representation of democratically elected local selfgoverning bodies in the Legislative Council. Since nominated members are not democratically elected and cannot vote in municipal affairs, allowing them to participate in Legislative Council elections would dilute the democratic nature of the electoral process and go against the constitutional objective of strengthening local self-government.

37. Accordingly, the expression “members of municipalities ... and other local authorities” occurring in Article 171(3)(a) must be understood in the context of the constitutional framework governing local self-government. Likewise, the expression “every member” occurring in Section 27(2)(b) of the 1950 Act cannot be construed in a purely literal sense divorced from constitutional context. A purposive and harmonious interpretation is that both expressions apply to those members who are elected representatives and voting rights within the concerned local authority.

38. We are therefore in agreement with the view taken by the High Court that nominated members appointed under Section 352(1)(b) of the KMA were not entitled to be included in the electoral roll prepared for the Local Authorities’ Constituency and their inclusion was contrary to the constitutional scheme and could not be sustained in law.

39. Thereafter, the appellants relied upon the doctrine of finality of electoral rolls and the decisions of this Court in *Hari Prasad Mulshanker Trivedi v. V.B. Raju* (supra), *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman* (supra) and *Shyamdeo Pd. Singh v. Nawal Kishore Yadav* (supra). There can be no dispute with the principle emerging from those decisions that elections must ordinarily proceed on the basis of the electoral roll in force and that election disputes cannot routinely be converted into proceedings for reopening electoral rolls.

40. However, the above referred cases cited by the appellants do not apply to this case because they dealt with ordinary mistakes or irregularities in preparing electoral rolls. In the present case, the issue is different, here, the inclusion of certain voters in the electoral roll was later found to be unconstitutional void ab initio, thus, this means the issue affects the basic composition of the electoral college itself. Therefore, the Court cannot overlook this constitutional violation simply by saying that the electoral roll had become final. It is true that finality of electoral rolls is important to ensure certainty and stability in elections, however, it cannot override the Constitution. The principle of finality is meant to prevent

endless challenges to electoral rolls, but it cannot be used to validate the participation of persons who were found constitutionally ineligible in collateral proceedings to constitute the electorate itself.

41. Moreover, the challenge to the inclusion of nominated members was not raised for the first time after declaration of results. Their inclusion had already been questioned before the High Court and had been declared unconstitutional in the impugned common judgment and order dated 20.04.2023 passed in Writ Appeal Nos. 1247, 1256 and 1250 of 2022. The election petitions merely sought consequential relief flowing from that declaration, in the impugned common order dated 29.01.2025 passed in Election Petition Nos. 1, 2 and 3 of 2022. Once the Court decided that nominated members were not constitutionally allowed to be included in the electoral college, it automatically follows that any votes cast by them are invalid. Therefore, the illegality does not arise from any procedural defect in voting, however, it arises from the absence of legal authority to participate in the election itself.

42. The Single Judge and the Division Bench had already declared the inclusion of the 12 nominated members to be unconstitutional in the judgment dated 03.01.2022 and the impugned judgment dated 20.04.2023, respectively. Admittedly, no stay of the said judgment was granted. The High Court, while deciding the election petitions in the impugned order dated 29.01.2025, was therefore justified in proceeding on the basis of the declarations already rendered in relation to the very same electoral roll and constituency.

43. Section 100(1)(d)(iii) of the 1951 Act provides that an election may be declared void if the result has been materially affected by the improper reception of any vote or by the reception of any vote which is void. Section 100(1)(d)(iii) is reproduced as under:

“100. Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

... ..

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

... ..

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or”

44. As per the factual matrix of the present case, the returned candidate secured victory by a margin of 6 votes. The number of votes cast by the nominated members was 12. Thus, the number of invalid votes was double the margin of victory. In such circumstances, the requirement of material effect stands established.

45. We also do not find merit in the contention that segregation of the votes cast by the nominated members would violate the secrecy of the ballot. The principle of ballot secrecy is undoubtedly a vital feature of the electoral process and is to ensure the freedom and independence of the voter, however, such secrecy is not an absolute principle and cannot be invoked to sustain a constitutional illegality. As observed by this Court in *Kuldip Nayar v. Union of India* (supra), while secrecy of the ballot is an important aspect of elections, the higher constitutional objective remains the preservation of free and fair elections and the purity of the electoral process. In the present case, the Returning Officer has categorically stated that the votes cast by the nominated members can be identified and segregated through comparison of ballot papers, counterfoils and marked copies of the

electoral rolls. The relevant paragraph of the impugned order dated 29.01.2025 reads as under:

“56. One Sri.K.N.Ramesh, State Project Director, Samagra Shikshana, Karnataka was the Returning Officer to the No. 12 Chikkamagaiuru Local Authorities Constituency2021. He was examined as RW2 in E.P.No.3/2022. In his evidence, he has stated that it is not possible to identify the voting made by the voters based on the ballot papers alone. He has further stated that it is possible to segregate votes of nominated members by comparing the ballot papers, counterfoils and marked copy of the electoral rolls. Further, he added that, it may violate the provisions of the secrecy of voting. However, it is his evidence that it is possible to segregate the votes of nominated members.”

46. Therefore, the direction issued by the High Court is not an openended exercise into individual voting preferences, however, a necessary exercise confined to excluding votes which were found to be void in law.

47. The reasoning adopted by the High Court is fully consistent with the constitutional objective of preserving democratic governance through elected representatives. No perversity, manifest illegality or jurisdictional error has been demonstrated warranting interference under Article 136 of the Constitution.

CONCLUSION

48. In view of the aforesaid discussion, we are of the view that the nominated members appointed under Section 352(1)(b) of the KMA were not entitled to be included in the electoral roll prepared for the Local Authorities’ Constituency and their inclusion was contrary to the constitutional scheme and cannot be sustained in law.

49. For the aforesaid reasons, we find no error in the view taken by the High Court of Karnataka in the impugned common order dated 29.01.2025 in Election Petition Nos. 1, 2 and 3 of 2022 and in the impugned common judgment and order dated 20.04.2023 in Writ Appeal Nos. 1247, 1256 and 1250 of 2022. Accordingly, the present appeals stand dismissed.

50. The Registry is directed to transmit the sealed cover containing the recount report and the revised result to the Registrar General, High Court of Karnataka, forthwith. The respondent-authorities thereafter shall take appropriate steps as per the directions issued by the High Court in the order dated 29.01.2025 passed in Election Petition No. 1 of 2022 and the allied matters, within a period of 30 days from the date of this judgment, and thereafter, submit the report before the High Court as directed in the order dated 29.01.2025.

51. Pending applications, if any, shall stand disposed of.