

O R D E R

The challenge in these writ petitions is to the inclusion of persons nominated to the respective Town Panchayats under Section 352(1)(b) of the Karnataka Municipalities Act, 1964 (for short 'Act, 1964') in the electoral roll to the election to the Karnataka Legislative Council in 12 Chikkamagaluru Local Authorities Constituencies and since the issues involved in these petitions are similar, they are taken up together and disposed of by this common order.

In WP No.1824/2022:

2. The petitioners are the elected members of (a) Mudigere Town Panchat (b) Narasimharajapura Town Panchayat (c) Sringeri Town Panchayat and (d) Koppa Town Panchayat respectively and are eligible voters to No.12 Chikkamagaluru Local Authorities Constituency. The respondents No.4 to 15 are nominated to the respective Town Panchayats by the Government in exercise of its power under Section 352(b) of the Act, 1964. The petitioners No.1 and 2 contested the election to No.12 Chikkamgalur Local Authorities Constituency and were declared as unsuccessful candidates having lost the election and respondent No.3 was declared as the returned candidate and the

grievance of the petitioners is that had the respondents, who were nominated to the respective Town Panchayats, were not included in the voters list, the result of the election would have been materially affected.

In WP No.1876/2022:

3. The respondents No.4 to 15 are nominated to the respective Town Panchayats by the Government in exercise of power under Section 352(1)(b) of the Act, 1964. The petitioners No.1 and 2 are the elected members of respective Gram Panchayats and their names have been entered in the electoral roll to the Chikkmagalur Local Authorities Constituencies and have cast their votes in the election to the Chikkamagaluru Local Authorities Constituencies and the grievance of the petitioners is that had the respondents, who were nominated to the respective Town Panchayats, were not included in the voters list, the result of the election would have been materially affected.

In WP No.1850/2022:

4. The petitioners contested the election to the Karnataka Legislative Council from 12 - Chikkamagaluru Local Authorities Constituency from the Indian National Congress party. The respondents No.4 to 15 are nominated to the

respective Town Panchayats by the Government in exercise of power under Section 352(1)(b) of the Act, 1964. The grievance of the petitioner is that had the respondents, who were nominated to the respective Town Panchayats, were not included in the electoral roll, the result of the election would have been materially affected.

5. Sri Nanjundareddy, learned Senior Counsel appearing for the learned petitioners' counsel in WP No.1876/2022 would make the following submissions:

(a) The present petition challenging the illegality in preparation of voters list is maintainable since the same cannot be questioned in an election petition under Section 100 of the Representation of People Act, 1950 (for short 'RP Act, 1950) and also there is no alternative remedy of appeal provided under the provisions of the RP Act, 1950, since Section 27(2)(e) of the said Act makes the provisions of Sections 15, 16, 18, 22 and 23 applicable in relation to Local Authorities Constituencies and Section 24 which provides for filing an appeal is conspicuously absent. In support, he places reliance on the following decisions:

- 1) Kunwar Nripendra Bahadur Singh -vs- Jai Ram Verma reported in 1977 (4) SCC 153 at paras 25-27;
- 2) L.Shivanna -vs- State of Karnataka reported in ILTR 1988 KAR 2121 at paras-24-26;

3) J Robert -vs- Ram Jethmalani reported in ILR 1990 KAR 1907 at para-14.

b) A person nominated under Section 352(1)(b) of the Act, 1964 has no right to vote in the meetings of the Town Panchayats as specified under proviso to Section 352(1) of the Act, 1964 and also under Article 243-R of the Constitution of India, hence a person nominated has no right to vote in the Local Authorities Constituency since he does not fall under the definition of 'councilor' as defined under Section 2(6) of the Act, 1964 and also under the definition 'every member' as specified in Section 27(2)(b) of the RP Act, 1950. In support, he places reliance on the decision of the Hon'ble Supreme Court in the case of Kuldeep Nair -vs- Union of India reported in (2006) 7 SCC 1, L Shivanna -vs- State of Karnataka reported in ILR 1988 KAR 2122 and the decision of the and the definition of 'Member' in Black's Law Dictionary.

c) The right to vote is not a fundamental right, but is a statutory right, which cannot be inferred by implication and must be expressly provided. In support, a reliance is placed on the decision of the Hon'ble Supreme Court in the case of Civil Liberties and another -vs- Union of India (2003) 4 SCC 399.

d) To interpret 'every member' also include nominated members would defeat the very object of Article 243-R of the Constitution of India. Hence, the Court must look into the provisions of the Constitution as a whole and favour the interpretation that did not render

another provision redundant. In support, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Chief Justice of Andhra Pradesh & Ors. --vs- L.V.A Dixitulu & Ors. reported in 1979(2) SCC 34.

6. Prof. Ravivarma Kumar, learned Senior counsel appearing for the learned petitioners' counsel in WP No.1824/2022 would make the following submissions:

a) The term 'councilor' defined in Section 2(6) of the Act, 1964 means legally elected members and the person nominated to the Town Panchayat do not fall within the definition of 'councilor' so as to be eligible to be included in the electoral roll to the Local Authorities Constituency. In support, he places reliance on the decision of the Division Bench of this Court in the case of Smt.Savithri --vs- The State of Karnataka (ILR 2003 KAR 4653).

b) The inclusion of a person nominated to the Town Panchayat in the electoral roll goes against the object of the Constitution (74<sup>th</sup> Amendment) Act, 1992, whereby Article 243-R was inserted for effective performance of the Town Panchayat as vibrant democratic units of self government and the role of the person nominated was purely advisory.

c) The term 'every member' as specified in Section 27(2)(b) of the RP Act, 1950 means only the elected member and to mean that it includes a person

nominated to the Town Panchayat would be contradictory to the language contained in Article 243-R and proviso to Section 352 of Act, 1964 which specifically prohibits the person nominated to the Town Panchayat from voting in the meetings of the Town Panchayat.

7. Sri K Kantharaj, learned Senior counsel appearing for the learned petitioner's counsel in WP 1850/2022 would make the following submissions:

a) The intent and object of Article 171(3) of the Constitution of India and Section 27 of the RP Act, 1950 is to mean 'every member' as elected member and therefore nominated member cannot claim equality and right to vote in Local Authorities Constituency. In support, reliance is placed on the decision of the Division Bench of this Court in the case of L Shivanna -vs- State of Karnataka reported in ILR 1988 KAR 2121.

b) Section 352 of the Act, 1964 specifies that the Town Panchayat shall be duly constituted on election of councilors and the role of persons nominated to the Town Panchayat by the Government is advisory and are not bestowed with the right to vote in Local Authorities Constituency or in the election to the post of President and Vice-President of the respective Town Panchayats. In support, reliance is placed on the decision of the Division Bench of this Court in WP No.4457/2022 (DD 18.4.2022).

8. Sri Vivek Reddy, learned Senior Counsel appearing for the learned counsel for the private respondents submits as follows:

a) Section 27(2) of the RP Act, 1950 specifies that every member of each such Local Authorities, within a Local Authorities Constituency shall be entitled to be registered in the electoral roll for that constituency and every member is not restricted only to the elected member, but also includes members nominated by the Government under Section 352(1)(b) of the Act, 1964. Thus, the use of the term 'every member' in Section 27(2) of the RP Act, 1950 cannot be restricted to the elected member which would otherwise contravene the Rule of 'plain meaning' or 'literal construction' which must ordinarily prevail. Article 243-R of the Constitution of India was inserted by 74<sup>th</sup> Amendment Act, 1992 and there was no amendment to Article 171 of the Constitution of India and Section 27(2) of the RP Act, 1950 so as to restrict the electorate consisting of only elected members of the Town Panchayat. Hence, the omission to amend Article 171 of the Constitution of India and 27(2) of the RP Act, 1950 restricting the electorate consisting of only elected members was deliberate. In support, he places reliance on the decisions of the Hon'ble Supreme Court in the case of G Narayanaswami -vs- G Pannerselvam and others reported in (1972) 3 SCC 717 and Ramdayal Ayodhyaprasad Gupta -vs- K R Patil = (1959) 61 BOMLR 1210.

b) Election is not a meeting of the Town Panchayat. Hence, proviso to Article 243-R(2) of the Constitution of India and proviso to Section 352 of the Act, 1964 are not applicable. In support, he places reliance on the decision of the Allahabad High Court in the case of Khaliqz-zaman -vs- State of U.P and others reported in 2004 SCC OnLine All 1455.

9. The learned counsel appearing for the Election Commission of India would make the following submissions:

a) The present petition is not maintainable since Section 27(2)(d) of the RP Act, 1950 provides for a remedy to strike off from the electoral roll the names of the persons who are ineligible to vote.

b) The parliament has excluded the nominated members from voting in the meetings of the Town Panchayats but not excluded from the electorate of Local Authorities Constituency and Article 243-R of the Constitution of India does not deal with the election to the legislative council. Hence, the bar created by the proviso to Article 243-R(2)(a) of the Constitution of India relates to the meetings of the Municipality and should not be interpreted to include an election. In support, reliance on the decision of the G Narayanaswami -vs- G Pannerselvam and others reported in (1972) 3 SCC 717 and the decision of the Allahabad High Court in the case of Khaliqz-zaman -vs- State of U.P and others reported in 2004 SCC OnLine All 1455.



c) To interpret the word 'every member' should only mean an elected member will amount to reading a word which the parliament has intentionally omitted and such reading is not permissible under law. The elected members alone constitute the Town Panchayat is incorrect since there is no distinction between elected councilor and a nominated councilor as specified under Sections 15, 18 and proviso to Sections 20, 40, 45 of the Act, 1964. In support, reliance is placed on the decision of the Division Bench of this Court in the case of L Shivanna (supra) at para-10.

d) The plain and ordinary meaning of the term "electorate" is confined to the body of persons who elect. It does not contain, within its ambit, the extended notion of a body of persons electing representations "from amongst themselves". Thus, the use of the term "electorate" in Article 171(3) of the Constitution, could not, by itself, impose a limit upon the field of choice of members of the electorate by requiring that the person to be chosen must also be a member of the electorate. The qualifications of the electors constituting the "electorate" and of those who can represent each "electorate", contemplated by the constitution and then supplemented by Parliament, are separately set out for each house.

10. After examining the submission of the learned counsel for the parties, the points that arise for consideration are as follows:

- i) Whether the writ petitions challenging the inclusion of the names of the private respondents, who are nominated by the Government in the electoral roll of the Local Authorities Constituency, are maintainable?
- ii) Whether a person nominated as representative of the Government under Section 352(1)(b) of the Act, 1964 is eligible to be included in the electoral roll of the Local Authorities Constituency?

Reg. point No.(i):

11. Part-III of the RP Act, 1950 deals with the electoral rolls for assembly constituencies. Section 15 deals with the electoral roll for every constituency and Section 16 deals with disqualification for registration in an electoral roll. Section 17 specifies that no person be registered in more than one constituency and Section 18 specifies that no person be registered more than once in any constituency. Sections 19 and 20 deal with conditions of registration and specify the meaning ordinarily resident. Section 21 deals with preparation and revision of electoral rolls. Sections 22 and 23 deal with correction of entries in electoral roll and inclusion of names in electoral roll. Section 24 provides for an appeal against any order passed by the Electoral Roll Registration Officer under Section 22 or Section 23 to the District Magistrate.

12. Part-IV of RP Act, 1950 deals with electoral roll for councilor constituency. Section 27 deals with preparation of electoral rolls for council constituencies. Section 27(d) enables the electoral roll Registration Officer to strike off from the electoral roll the names of persons, who have ceased to be, and include therein the names of persons, who have become members of that Local Authorities. Section 27(e) specifies that the provision of Sections 15, 16, 18, 22 and 23 shall apply in relation to Local Authorities Constituencies as they apply to assembly constituencies.

13. A conjoint reading of the aforesaid provisions clearly indicates that Section 24 which provides for an appeal against inclusion of names in the electoral roll of the assembly constituencies is conspicuously absent in Section 27(e) of RP Act, 1950 in relation to the inclusion of names in the electoral roll of the Local Authorities Constituencies. Hence, the provisions contained in the RP Act, 1950 does not provide for a remedy of appeal to challenge the inclusion of names in the electoral roll of the Local Authorities Constituency.

14. It is also equally well settled that any illegality in the preparation of voters list cannot be challenged in an election

petition as held by the Hon'ble Supreme Court in the case of Kunwar Nripendra Bahadur Singh (supra).

15. The contention of the respondents is that the petitioners having not chosen to file objections to the inclusion of the names of the nominated members in the electoral roll and not having challenged the same at the earliest point of time, the present petitions are not maintainable is not acceptable for the following:

(a) Firstly, there is no provision in Section 27 of the RP Act, 1950 to file objections stating that the persons nominated are not entitled to be included in the electoral roll, since Section 27(2)(b) of the RP Act, 1950 specifies that only the names of persons who have ceased to be members of the Local Authority can be struck off and include the names of the persons who have become members of the Local Authority.

(b) Secondly, the calendar of events was issued on 9.11.2021 and draft voters list and final voters list were published on 11.11.2021 and 23.11.2021 respectively and the election process having commenced on 9.11.2021, there was a clear bar to challenge the voters list, since the "interference in the process of election once the calendar of events is notified would fall foul of law" as held by the Hon'ble Supreme Court in the case of N.P.Ponnuswami -vs- The Returning Officer .

16. Hence, the present writ petitions challenging the inclusion of the names of the persons in the electoral roll of the Local Authorities Constituency are held to be maintainable.

Reg. point No.(ii):

17. Before answering the point for consideration, it is necessary to reproduce the relevant provisions of law and also the ratio enunciated by the courts of law interpreting the said provisions .

18. Section 2(6) of the Karnataka Municipalities Act, 1964:

"2(6) "Councillor" means any person who is legally a member of a municipal council 1 [or Town Panchayat]1 ;"

19. Section 2(6) of the Act, 1964 specifies that the term 'councilor' means any person, who is legally a member of the Town Panchayat. The Division Bench of this Court in the case of Smt.Chandubi and others -vs- The Deputy Commissioner and others in WP No.12320/1997 (DD 10.12.1997) has held that, by the use of word 'legally' in the definition it has to be read as 'legally elected member' and not otherwise. The Division Bench of this Court in the case of Smt.Pramila M and others -vs- State of Karnataka reported in ILR 2015 KAR 5872, has held that the

word 'councilor' to be limited only to the directly elected councilor is clearly unacceptable and to accept this argument it overlooks definition of word 'councilor' given in Section 2(7) of the Karnataka Municipal Corporation Act, 1976. However, this decision was rendered interpreting Section 2(7) read with Section 7 of the Municipal Corporation Act, 1976.

20. Section 2(7) of KMC Act, 1976 specifies that the term 'councilor' means a councilor referred to in Section 7 of the Act, 1964 and Section 7 deals with the constitution of the Corporation. However, Section 2(6) of the Act, 1964 specifies that the term 'councilor' means any person who is legally a member of the Town Panchayat. The decision rendered by the Division Bench in the case of Pramila M (supra) was with reference to Section 2(7) of the Act, 1976 and not with reference to Section 2(6) of the Act, 1964 and the Division Bench of this Court in the case of Smt.Savithri (supra) has held that the term 'councilor' would mean 'legally elected member'.

21. Article 243-R of the Constitution of India

"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.”

22. Section 352 of the Act, 1964 deals with election to the Town Panchayat which reads thus:

(1) A Town Panchayat shall consist of,-

(a) not less than eleven and not more than twenty Councillors as may be determined by the Government, by notification.

- (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
- (c) the members of House of the people and the members of the State Legislative Assembly, representing a part or whole of the transitional area whose constituencies lie within the transitional area; and
- (d) the members of the Council of States and the members of the State Legislative Council registered as electors within the transitional area:

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

(9) Notwithstanding anything contained in this section where two-third of the total number of councillors of any Town Panchayat have been elected, the Town Panchayat shall be deemed to have been duly constituted under this Act."

23. Section 352 of the Act, 1964 is in consonance with Article 243-R(2)(a) of the Constitution of India. A bare reading of these provisions indicate that all the seats in Town Panchayat shall be filled by a person chosen by the direct election from the territorial constituency in the municipal area and the Government by nomination may provide for representation in a



Town Panchayat of a person having special knowledge and experience in municipal administration and the proviso specifies that nomination of representative of the Government shall not have the right to vote in the meetings of the Municipality and the manner of election of the Chairperson of Municipality.

24. Section 352(9) specifies that the Town Panchayat shall be deemed to have been constituted under the Act on election of  $2/3^{\text{rd}}$  of the total number of councilors of any Town Panchayat.

25. Article 171(3)(a) of the Constitution of India reads thus:

“171. Composition of the Legislative Councils.—(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed 4 [one third] of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(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;

26. A reading of Article 171(3)(a) of the Constitution of India specifies that 1/3<sup>rd</sup> members of the legislative council of the State shall be elected by electorate consisting of members of Municipality and such other Local Authorities in the State.

27. Section 27(1) of the RP Act, 1950 read thus:

27. Preparation of electoral roll for Council constituencies.

(1) In this section, "local authorities' constituency", "graduates' constituency" and "teachers' constituency" mean a constituency for the purpose of elections to a Legislative Council under sub-clause (a), sub-clause (b) and sub-clause (c), respectively, of clause (3) of article 171.

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

(a) the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule;

(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. The Division Bench of this Court in the case of L Shivanna (supra) while dealing with a question as to whether the associate member, who has no right of vote and not entitled to

hold the office of Adhyaksha or Upadhyaksha, but constitute the composition of Zilla Parishat are the members of the Zilla Parishat for the purpose of Article 171(3)(a) and Section 27 of the RP Act, 1950 interpreting Section 139 of the Karnataka Zilla Parishat, Taluk Panchayat Samithis, Mandal Panchayat and Nyaya Panchayat Act, 1983 at paras-11 and 12 has held as follows :

"11. Section 139 of the Act provides for the composition of Zilla Parishad. It reads:

"139. Composition of Zilla Parishad:

(1) Every Zilla Parishad shall consist of elected members as is determined under Section 140.

(2)(a) The Chairman or President of the District Central Co-operative Bank shall be an associate member of the Zilla Parishad.

(b) An associate member shall be entitled to take part in the proceedings of a Zilla Parishad but shall not have the right of vote. He shall not be entitled to hold the office of Adhyaksha or Upadhyaksha.

(3)(a) Subject to the provisions of clause (b), the members of the State legislative Assembly and the State Legislative Council and member of the Parliament representing a part of whole of the District whose constituencies lie within the jurisdiction of the Zilla Parishad and the members of the State Legislative Council not elected from territorial constituencies and ordinarily resident in the district shall

be entitled to take part in the proceedings of and to vote at the meetings of the Zilla Parishad.

(b) The members of the State legislative Assembly and the Legislative Council referred to in clause (a) shall have the rights and be subject to the liabilities of the members of the Zilla Parishad except the right to hold the office of the Adhyaksha or Upadhyaksha.

(4) Notwithstanding anything contained in this Section or Sections 140, 141, 142 and 143, but subject to any general or special orders of the Government where two thirds of the total number of Members of any Zilla Parishad required to be elected the Zilla Parishad shall be deemed to have been duly constituted under this Act."

12. Thus the provision makes a clear distinction between members, who are required to be elected, and others on whom certain rights and privileges of members are conferred in view of their holding the specified offices. In other words, in the composition of the Zilla Parishad, in addition to the elected members who constitute the Zilla Parishad, and who alone are entitled to be elected as Adhyaksha or Upadhyaksha, there are a few others who are specified in sub-sections 923) and 93) on whom the rights available to the members under the Act are conferred to the extent indicated in the provisions. These provisions do not make the holder of the offices specified therein, members of Zilla Parishad and they cannot also be regarded as nominated members. A comparison of the provision of Section 5 of the Act which provides for the constitution of the Mandal Panchayats under the Act would make this point clear.

Such a deemed provision or legal fiction created in an enactment cannot be extended beyond the

purposes of that Act, or even for the purposes of that Act beyond the purpose for which it is created, is the settled rule of interpretation as laid down by the Supreme Court in *Braithwaite & Co. v. E.S.I. Corporation*<sup>2</sup>, which reads:

".....It appears to us that the High Court committed an error in applying this legal fiction, which was meant for Sections 40 and 41 of the Act only, and extending it to the definition of wages, when dealing with the question of payment in the nature of Inam under the Scheme started by the appellant. The fiction in the Explanation was a very limited one and it only laid down that wages were to be deemed to include payment to an employee in respect of any period of authorised leave, lock-out or legal strike. It did not lay down that other payments made to an employee under other circumstances were also to be deemed to be wages. A legal fiction is adopted in law for a limited and definite purpose only and there is no justification for extending it beyond the purpose for which the legislature adopted it."

In our opinion the effect of sub-sections (2) and (3) of Section 139, is that the persons named therein are deemed to be the members of the Zilla Parishad, for the purposes of the Act and to the extent indicated therein and that fiction cannot be extended beyond the purpose for which it is created. Therefore they cannot be regarded as members of Zilla Parishad i.e., of a local authority, within the meaning of that expression in Article 171(3)(a) and Section 27 of the 1950 Act."

29. The Hon'ble Supreme Court in the case Ramesh Mehta (supra) at para-11 with reference to Article 243-R has held that the Constitution, therefore makes a distinction between

elected member and nominated member who play essentially an advisory role.

30. The Bombay High Court in the case of Ramdayal (supra) interpreting sub-clause (b) of Sub-Section 2 of Section 27 of the Act, 1950 has held that the intention of the legislature was to confer on all the members of the local authorities the right to get their names entered in the electoral roll of the local authorities constituency and the Court in interpreting a statute would refrain from adding anything to the statute unless the context clearly so indicates. However, this decision was rendered with reference to interpretation of Local Authorities and it was only held that the word 'every member' is referable to every Local Authorities specified in the IV Schedule which includes Municipal Corporation though not specifically provided and the argument that right to vote is conferred only upon the members of the Municipality and not upon members of Municipal Corporation was rejected and this judgment was rendered prior to insertion of Article 243-R. Hence, this decision is not applicable in the facts of the present case as rightly contended by Sri Nanjundareddy, learned Senior Counsel.

31. The Hon'ble Supreme Court in the case of G Narayanaswami (supra) at paras-4, 16 and 18 has held as follows:

"4. Courts should interpret in a broad and generous spirit the document which contains the fundamental law of the land or the basic principles of its Government. However, the rule of "plain meaning" or "literal" interpretation, which is "the primary rule" could not be altogether abandoned today in interpreting any document. The object of interpretation and of "construction" (which may be broader than "interpretation") is to discover the intention of the law-makers in every case. This object can, obviously, be best achieved by first looking at the language used in the relevant provisions. Other methods of extracting the meaning can be resorted to only if the language used is contradictory, ambiguous, or leads really to absurd results. This is an elementary and basic rule of interpretation as well as of construction process which, from the point of view of principles applied, coalesce and converge towards the common purpose of both which is to get at the real sense and meaning, so far as it may be reasonably possible to do this, of what is found laid down.

16. It could not possibly be said that the question to be dealt with was not "known" to the Legislatures and it could not even be said that qualifications of the electors as well as of those to be elected were not matters to which the attention of the law-makers, both in the Constituent Assembly and in Parliament, was not specially directed at all or that the omission must be by mere oversight. The correct presumption, in such a case, would be that the omission was deliberate. The provisions demonstrate amply how legislative attention was paid to the qualifications of the electors as well as of the elected in every case.

18. Writing some words into or adding them to the relevant statutory provisions to the effect that the candidates from graduates' constituencies of Legislative Councils must also possess the qualification of having graduated contravenes the rule of "Plain meaning" or "Literal" construction which must ordinarily prevail. A logical corollary of that rule is that a statute may not be extended to meet a case of which provision has clearly and undoubtedly not been made. An application of the rule necessarily involves that addition to or modification of words used in statutory provisions is not generally permissible. Courts may depart from this rule only to avoid patent absurdity."

32. The Hon'ble Supreme Court in the case of Chief Justice of Andhra Pradesh and others -vs- L.V.A. Dixitulu & ors. reported in 1979(2) SCC 34 has held that where two alternative construction of possible, the Court must choose the one which will be in accord with the other part of the statute and ensure its moot, harmonious working and eschew other which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions, or undermines or tent to defeat or destroy the basic scheme and purpose of the enactment.

33. The Hon'ble Supreme Court in the case of Ponnuswami (supra) has held that the right to vote is not a civil right but is the creature of statute or special law and must be subject to limitation imposed by it and the same was reiterated by the Hon'ble Supreme Court in the case of People's Union for



Civil Liberties (supra). Hence, it is not inferred by implication and must be expressly provided. The elected members and nominated members cannot be said to be belonging to the same class since the fundamental difference is that elected councilors are elected to the Town Panchayat by a popular vote whereas nominated members are appointed by the Government and to mean every member includes nominated members would defeat the very purposes of election which is the essence of democracy.

34. In the backdrop of provisions contained in Article 243-R, Section 2(6) and Section 352 of the Act, 1964 and also in the backdrop of the aforesaid decision, the issue whether the term 'every member' as specified under Section 27(2)(b) of the Act, 1950 includes persons nominated by the Government under Section 352 of the Act, 1964 has to be examined.

35. It is a settled law that the provisions should not be interpreted otherwise which would contravene the Rule of plain 'meaning of literal construction'. It is also settled law that the other methods of extracting the meaning can be resorted to only if the language used is contradictory, ambiguous or leads really to absurd results. This Court while interpreting the word 'every member' must look into the provisions of the Constitution as a

whole and favour the interpretation that does not render another provision redundant, otiose or superfluous.

36. Article 243-R of the Constitution of India and Section 352 of the Act, 1964 specifically prohibits the representative of the Government from voting in the meetings of the Municipality and the manner of election of the Chairperson of the Municipality. In the case of Chandubi (supra) and in the case of Savithri (supra), the Division Bench has held that the 'councilor' in Section 2(6) of the Act, 1964 means 'legally elected member'.

37. Merely because the parliament has not amended Section 27(2)(b) by restricting only the elected members to be registered in the electoral roll after Article 243-R was inserted, it cannot be implied that the term 'every member' as specified in Section 27(2)(b) of the RP Act, 1950 includes nominated member to the Town Panchayat which would otherwise lead to absurd results since the person nominated by the Government are neither the councilors as defined under Section 2(6) of the Act, 1964 nor they have the right to vote in the meetings of the Town Panchayat including the election to the Chairperson of the Town Panchayat. The very object of 74<sup>th</sup> Amendment inserting

Article 243-R of the Constitution of India and object of the Act 1964 prohibiting the representatives of the Government to vote will be rendered redundant, if the persons nominated by the Government are permitted to vote in the election to the Local Authorities constituency. The intention of the law makers was very clear that the role of the persons nominated by the Government, having knowledge and experience in municipal administration or other related matters, is limited to the extent of advising the council for achieving the objects of the Act and that fiction cannot be extended beyond purpose for which the persons are nominated by the Government though they constitute the Town Panchayat along with the elected members.

38. The Division Bench of this Court in WP No.4457/2022 (18.4.2022) while dealing with the question whether a nominated person under Section 11 of the Act, 1964 to the Town Municipal Council under Section 11 has got the right to vote in a meeting for election to the post of President and Vice-President has held that the Division Bench decision of Allahabad High Court in *Khaliqaz Zaman (Supra)* is not applicable since Section 54(1) of the U.P Municipal Act provided that the Vice-President shall be elected from among the elected as well as nominated members.

39. Hence, the term 'every member of the Local Authority' means 'only the elected members who are the councilors of the Town Panchayat and the said term cannot be extended to persons nominated by the Government to the Town Panchayat, who are not the councilors of the Town Panchayat and interpretation otherwise would lead to absurd results and goes against the spirit of Article 243-R Constitution of India and Section 352 of the Act, 1964.

40. The issue involved is whether the term 'every member' includes persons nominated to the council by the Government. Hence, the contentions with reference to other provisions of the Constitution of India and also the Act, 1964 raised by the learned counsel appearing for the Election Commission of India do not require any consideration.

41. For the aforesaid discussion, it is held that the term 'every member' if read with reference to Article 243-R of the Constitution of India, Section 2(6) and Section 352 of the Act, 1964 and also the decisions of the Division Bench of this Court in the aforesaid cases (supra) wherein it is held that only the elected members are the councilors and does not include persons, who have been nominated by the Government, are not

entitled to be enrolled in the voters list to the election of a member of the legislative councilor from the Local Authority constituency.

Accordingly, I pass the following:

ORDER

- i) Writ petitions are allowed.
- ii) The inclusion of the names of respondents No.4 to 6, 7 to 9, 10 to 12, 13 to 15 in the electoral roll of Koppa, Mudigere, Sringeri, Narasimharaj Pura Town Panchayats vide Annexures-K, L, M and N respectively by the Deputy Commissioner, Chikmagaluru District and the electoral registration officer, Chickmangaluru Local Authorities Constituency, Chickamagaluru District in 12 – Chikamagaluru Local Authorities Constituency 2021 is declared ab initio void and unconstitutional and consequently the impugned electoral roll at Annexures-K, L, M and N are hereby quashed in WP No.1850/2022 and the respondent No.3 is directed to delete their names in the electoral roll.
- iii) The inclusion of the names of respondents No.4 to 6, 7 to 9, 10 to 12, 13 to 15 in the electoral roll of

Koppa, Mudigere, Narasimharajapura, Sringeri Taluk vide Annexure-F, G, H and J respectively by the Deputy Commissioner, Chikmagaluru District and the Electoral Registration Officer, Chickmagaluru Local Authorities Constituency, Chickmagaluru District in 12 - Chikmagaluru Local Authorities Constituency 2021 is declared ab initio void and unconstitutional and consequently the impugned electoral roll at Annexures-F, G, H and J are hereby quashed in WP No.1876/2022 and the respondent No.3 is directed to delete their names in the electoral roll.

- iv) The inclusion of nominated members in the final voters list of Town Panchayats of Mudigere, Narasimhara Pura, Sringeri and Koppa at Annexures - A, B, C and D respectively are declared as ab initio void and unconstitutional in WP No.1824/2022 and the respondent No.2 is directed to delete their names in the electoral roll.

Sd/-  
JUDGE