



1. State of Maharashtra, ]  
Through the Principal Secretary, ]  
Law and Judiciary Department, ]  
Mantralaya, Mumbai – 400 032. ]
2. Maharashtra State Election Commission, ]  
Through its State Election Commission, ]  
Having office at 1<sup>st</sup> Floor, New Administrative ]  
Building, Mumbai – 400 032. ]
3. Election Commission of India, ]  
Through its Chief Election Commissioner, ]  
Having office at Nirvachan Sadan, ]  
Ashok Road, New Delhi – 110 001. ]
4. Municipal Corporation of Greater Mumbai, ]  
Through the Municipal Commissioner, ]  
MCGM, having office at 5, Mahapalika Marg, ]  
Dhobi Talao, Chhatrapati Shivaji Terminus ]  
Area, Fort, Mumbai – 400 001. ]

Mr. Aspi Chinoy, Sr. Advocate, with Mr. Devdatt Palodkar and Ms. Swati Chandan, i/by Mr. Sunny Jain, for the Petitioner in WP(L)/35264/2022.

Dr. Nilesh Pawaskar, with Ms. Sonali Kunekar, Mr. Umesh Kunekar and Ms. Bhavika Shinde, for the Petitioner in WP(L)/32700/2022.

Dr. Birendra Saraf, Advocate General, with Mr. Chirag Shah, Special Counsel, Ms. Jyoti Chavan, AGP and Mr. Vaibhav Charalwar for Respondent Nos.1 and 2 in WP(L)/35264/2022.

Dr. Birendra Saraf, Advocate General, with Mr. Chirag Shah, Special Counsel, Mr. Abhay Patki, Addl. G.P. and Mr. Vaibhav Charalwar for Respondent Nos.1 and 2 in WP(L)/32700/2022.

Mr. Sachindra Shetye, with Ms. Sarika Shetye, Mr. Akshay Pansare and Mr. Vikrant Dere, for the Respondent–State Election Commission.

Mr. S.K. Mishra, Sr. Advocate, with Mr. Sagar Patil and Ms. Pooja Yadav, i/by Mr. Sunil K. Sonawane, for the Respondent–MCGM.

Mr. Pradeep Rajagopal, with Ms. Drishti Shah, i/by Ms. Rekha Rajagopal, for Respondent No.3 – Election Commission of India.

**CORAM : SUNIL B. SHUKRE AND M.W. CHANDWANI, J.J.**

**RESERVED ON : 18<sup>th</sup> JANUARY, 2023.**

**PRONOUNCED ON : 17<sup>th</sup> APRIL, 2023.**

**[ In Chamber - Through Video Conference ]**

**JUDGMENT (Per SUNIL B. SHUKRE, J.) :**

1. Rule. Rule made returnable forthwith. Heard finally, by consent of the learned counsel for the parties.
2. In both these petitions, Ordinance No.VII of 2022 dated 4-8-2022, which was later on made into an Act, i.e. Maharashtra Act No.XLIII of 2022, has been challenged on the ground that the same is *ultra vires* the Constitution of India.
3. The main ground of challenge to the constitutionality of the impugned Ordinance and the impugned Act is that they are manifestly arbitrary and have been promulgated and enacted only to negate the decision of this Court by which Ordinance No.XIII of 2021, amending Section 5 of the Mumbai Municipal Corporation Act, 1888 ('MMC Act', for short) so as to increase the number of directly elected Corporators in Mumbai Municipal Corporation ('MMC', for short) from 227 to 236 was upheld by the judgment of this Court delivered on 17-1-2022 in Writ Petition No.3824 of 2021, which judgment attained finality when the Special Leave to Appeal filed before the Supreme Court questioning the said judgment was dismissed on 18-2-2022.

4. For effectively deciding the controversy involved in both these petitions, it is necessary for us to make a brief reference to the relevant events that preceded promulgation of the impugned Ordinance, which was later on made into the impugned Act, which we state in the following paragraphs.

5. The State Government by the Maharashtra Ordinance No.XIII of 2021 dated 27-11-2021, which was later on made into the Maharashtra Act No.II of 2022, amended Section 5(1)(a) of MMC Act so as to provide for increase in the number of directly elected Councillors in MMC from 227 to 236 on the ground that the census figures from 2001 to 2011 showed that there was an increase in the population of MMC by 3.87%. A Writ Petition, being Writ Petition No.3824 of 2021, challenging the Maharashtra Ordinance No.XIII of 2021 and the Maharashtra Act No.II of 2022, was dismissed by this Court by its judgment dated 17-1-2022. In the said judgment, this Court held that the impugned Ordinance and the impugned Act were not arbitrary, as they were passed on the census figures of 2011. This judgment was upheld by the Supreme Court when it dismissed the Special Leave to Appeal questioning its correctness, by its order dated 18-2-2022.

6. In the meantime, the Government of Maharashtra issued the Maharashtra Ordinance No.III of 2021 to provide for 27% of reservation to backward classes of citizens in the elections of local bodies in the State of Maharashtra. This Ordinance came to be challenged in Writ Petition No.11744 of 2021 before this Court and as no interim relief was granted, the Special Leave to Appeal came to be filed before the Supreme Court. A Writ Petition, being Writ Petition (C) No.1316 of 2021, was also

filed challenging the Maharashtra Ordinance No.III of 2021. By the order passed on 6-12-2021, the Supreme Court held that without a report of the dedicated Commission, which had been constituted under the Notification dated 29-6-2021, there could not be any reservation for the Other Backward Class category. It directed the State Election Commission ('SEC', for short) that it should desist from proceeding with the election programme, which it had already notified, in respect of the seats reserved for the Other Backward Class category and to that extent, the election programme was stayed by the Supreme Court. The Supreme Court, however, directed the SEC to proceed further with the rest of the election programme pertaining to other seats (other than seats for Other Backward Class category), including general seats. An application was filed by the State of Maharashtra before the Supreme Court praying that the entire election process be stayed and that the Commission appointed by it for reservation of seats for Other Backward Class category be directed to complete its work within three months and after completion thereof, the election programme be continued as per the opinion given by the Commission. The Supreme Court rejected the application, and it directed that the SEC should treat the impugned Notification for reservation of seats for Other Backward Class category as *non est* in law and it further directed the SEC to re-notify those seats for general category so that the election to those seats could be taken forward along with the election of other 75% seats. The Supreme Court further directed the SEC to issue a fresh Notification treating 27% of the seats reserved for Other Backward Class category as general category seats and to initiate the election process for those seats

along with the remaining 73% seats. These directions were given by the Supreme Court in its order dated 15-12-2021.

7. Meanwhile, there was an interim report submitted by the dedicated Commission for backward classes, which was challenged before the Supreme Court. The Supreme Court held that such interim report could not be acted upon and directed that the Commission would continue its exercise of conducting necessary study and collating contemporaneous empirical data in relation to each local body and submit its report after proper consideration. The Supreme Court further directed, which was on 3-3-2022, that the SEC must comply with the directions given by it on 15-12-2021 and 19-1-2022 holding that there should not be any further delay in completion of the election process of the local bodies.

8. The State Government enacted the Maharashtra Act No.XXI of 2022, which came into force with effect from 11-3-2022, whereby Section 19 of the MMC Act, Section 5 of the the Maharashtra Municipal Corporation's Act and Section 10 of the Maharashtra Municipal Councils, Nagarpanchayats and Industrial Townships Act, 1965 were amended and power was conferred upon the State Government to divide the areas into wards, by removing it from the SEC. It also laid down that notwithstanding anything contained in the said Acts, where the process to divide the areas into wards and to specify the boundaries thereof had been started or completed by the SEC, the same shall be deemed to be annulled and the process of

delimitation/dividing the areas into wards and to specify the boundaries thereof would be done afresh in accordance with the Amendment Act.

9. The Maharashtra Act No.XXI of 2022 came to be challenged before the Supreme Court in Writ Petition (C) No.250 of 2022 (*SLP (C) No.19756/2021*) and several other connected petitions and applications. The Supreme Court, however, did not grant any stay to the Act. The Supreme Court then held that the process of delimitation could be continued by the State Government subject to the outcome of the petitions, making it clear that it would be relevant only for future elections, after such exercise was completed. It further held that while the process of delimitation by the State Government could continue, the elections of the local bodies, which had become due after the expiry of their five-year term, must not be delayed. The Supreme Court directed the SEC to notify the election programmes within a period of two weeks and to continue with the process from the stage as of 10-3-2022 on the basis of delimitation done prior to coming into force of the Amendment Act, with effect from 11-3-2022. It further observed that the delimitation as it existed prior to 11-3-2022, in respect of the concerned local bodies, be taken as notional delimitation for conduct of overdue elections and for conduct of elections on that basis in respect of the local bodies. The Supreme Court further directed that until the delimitation was done by the State Government in terms of the Act No.XXI of 2022, the SEC would give effect to its order also in respect of the elections of the local bodies, which would become due by efflux of time. All these directions were given in the order passed by the Supreme Court on 4-5-2022.

10. Following the said order dated 4-5-2022, the SEC proceeded to finalize the delimitation for MMC. Till that time, the SEC had only issued a draft Notification dated 1-2-2022 for delimitation of wards by considering the number of wards as 236. The SEC went ahead with this draft Notification of delimitation dated 1-2-2022 and published the final Notification dated 13-5-2022 regarding delimitation of in all 236 wards in the official gazette. Subsequently, the draft voters' list was published on 23-6-2022 and the final voters' list was also published on 27-7-2022.

11. On 8-7-2022, a compliance report was submitted by the SEC before the Supreme Court. As per the report, the completed process of ward formation providing for reservation and preparation of electoral rolls and declaration of actual polling programme was only in respect of 367 local bodies, which did not include any of the Municipal Corporations. In respect of the other local bodies, the report indicated that the electoral process was at different stages of completion. This was considered by the Supreme Court in its order dated 20-7-2022. At that time, the Supreme Court also noticed that the dedicated Commission for providing of reservations for Other Backward Class category had submitted its report on 7-7-2022. The Supreme Court then directed that in respect of 367 local bodies, as per the report of the SEC, the election programme declared would be followed and taken to its logical end. As regards the remaining local bodies, the Supreme Court directed the SEC and the State Authorities to ensure that the election programme in respect of each of the local bodies would be immediately commenced in accordance with the recommendations



made by the dedicated Commission and taken forward on the basis of the directions given by the Supreme Court on 4-5-2022, which included a direction to hold elections on the basis of delimitation done prior to 11-3-2022.

12. On 4-8-2022, the State Government issued another Ordinance, being Ordinance No.VII of 2022, whereby the number of directly elected Corporators in MMC was reduced from 236 to 227. It also provided that where the process of dividing areas of the Municipal Corporations into wards and specification of boundaries thereof had been started or completed by the SEC or the State Government before the date of the Ordinance, the same would be deemed to be annulled and such process would be done afresh in accordance with the provisions of the MMC Act, 1949, as amended by Ordinance No.VII of 2022. This Ordinance was made into an Act, being Act No.XLIII of 2022.

13. It is this Ordinance No.VII of 2022, which is made into the Act No.XLIII of 2022 which is under challenge as being *ultra vires* the Constitution of India in both these petitions.

14. Shri Aspi Chinoy, the learned Senior Advocate, who has made a lead argument on behalf of the petitioner in Writ Petition (L) No.35264 of 2022, contends that the impugned Ordinance and the impugned Act are manifestly arbitrary, because the basis of the impugned Ordinance is factually not correct and, therefore, the impugned Ordinance and the impugned Act are bad in law. He submits that if one peruses the

Statement of Objects and Reasons of the impugned Ordinance, which applies to the impugned Act, one would find that it wrongly states the Maharashtra Act No.II of 2022 and the Maharashtra Act No.XII of 2022, whereby the number of Councillors in MMC and minimum and maximum number of elected Councillors in other Corporations has been increased on the basis of the figures of census of 2011 and hypothetical calculation of population in 2021-22, respectively. According to him, a Co-ordinate Bench of this Court, by its order dated 17-1-2022 rendered in Writ Petition No.3824 of 2021 challenging the Maharashtra Act No.II of 2022, has already held that 2011 census figures of population of Mumbai were indeed the basis to amend Section 5(1)(a) of the Maharashtra Municipal Corporations Act for increasing the number of Councillors in MMC from 227 to 236 and, therefore, it could not have been stated in the Statement of Objects and Reasons that the number of Councillors in MMC was increased from 227 to 236 on the basis of figures of census of 2011 and also hypothetical calculation of population in 2021-22. The learned Senior Advocate, submits that it is here that the caprice and irrationality in the impugned Ordinance and the impugned Act, without there being any determining principle can be seen and, therefore, the impugned Ordinance and the impugned Act are manifestly arbitrary.

15. The learned Senior Advocate further submits that if the argument of Shri Birendra Saraf, the learned Advocate General, that the words 'hypothetical calculation of population in 2021-22' relate to the other Municipal Corporations and not to MMC is to be accepted, no useful meaning can be assigned to the second part of

Paragraph 2 of the Statement of Objects and Reasons, which states that it is expedient to specify the number of Councillors of Corporation on the basis of figures of population as per census 2021 after it is completed. But, he maintains, it is not so and the words ‘hypothetical calculation of population in 2021-22’ used in the first part of Paragraph 2 have to be considered as having been used also in relation to MMC and if it is done, then perhaps the second part of Paragraph 2 would make sense. He submits that when so understood, one would find that the contents of both the parts of Paragraph 2 are factually incorrect on the basis of what is found in the judgment of this Court dated 17-1-2022. Shri Chinoy, the learned Senior Advocate, further submits that the earlier revision of number of seats of Councillors from 227 to 236 being only on the basis of public census figures of 2011, there was no question of revisiting that number, just because a further increase might show up itself in the census of 2021.

16. Shri Chinoy, the learned Senior Advocate, further submits that the order of the Supreme Court dated 4-5-2022 rendered in S.L.P. (C) No.19756 of 2021, together with connected matters, heavily relied upon by the State Government as one of the justifications for issuance of the impugned Ordinance and the impugned Act, has been misread by the State Government. He submits that this order of the Supreme Court comes in two parts, viz. (a) the cases of the local bodies where the SEC had completed the delimitation exercise before 11-3-2022, and (b) the cases of the local bodies where the delimitation exercise had not been completed by the SEC as of 11-3-2022. He submits that for Part (a) cases, the Supreme Court directed that the

delimitation completed by it before 11-3-2022 would be notionally taken to be the delimitation for conduct of election process and taking it forward. He further submits that for Part (b) cases, the Supreme Court made it clear that the actual delimitation to be done by the State Government in terms of the Amended Act would be given effect to in respect of upcoming elections of the local bodies, which would become due by efflux of time. According to him, these directions of the Supreme Court have not been properly understood by the State Government and that is the reason why the factual basis of the impugned Ordinance and the impugned Act is wrong.

17. The learned Senior Advocate further submits that after the order dated 4-5-2022 of the Supreme Court, the SEC finalized the delimitation of wards on the basis of 236 seats in Mumbai by publishing a Notification dated 13-5-2022 and submitted its compliance report to the Supreme Court, which was considered by the Supreme Court in its order dated 20-7-2022. He submits that at that time, the State Government did not raise any objection before the Supreme Court and now, we find that the State Government has issued the impugned Ordinance and the impugned Act thereby setting at naught the earlier decision of the High Court confirmed by the Supreme Court and that too in a manifestly arbitrary manner.

18. Shri Saraf, the learned Advocate General for the State of Maharashtra, submits that even though Article 243-P(g) of the Constitution of India defines the term 'population' as the population as ascertained at the last preceding census of which the relevant figures have been published, there is no mention of the word 'population' in

Article 243-R, which provides for composition of Municipalities. He points out that the word 'population' finds its mention in Article 243-T providing for reservation of seats. According to him, the absence of the word 'population' in Article 243-R and presence of that word in Article 243-T is indicative of the fact that for fixation of wards and reservations, though population is relevant but, there is no obligation that the number of seats must always be increased whenever there is increase in population.

19. The learned Advocate General further submits that Article 243-ZG of the Constitution of India creates a bar to interference by Courts in electoral matters by laying down that notwithstanding anything in the Constitution, the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243-ZA shall not be called in question in any Court. Similar bar is created to questioning an election to any Municipality except by an election petition presented to the Competent Authority. He submits that in view of these constitutional provisions, these petitions are not maintainable and are liable to be dismissed summarily.

20. The learned Advocate General further submits that if according to the petitioners, the increase of number of seats of Councillors from 227 to 236 was not arbitrary, it does not follow that reversal of number of seats from 236 to 227 by another legislation is arbitrary. He submits that the Statement of Objects and Reasons of the impugned Ordinance has been misread by the petitioners and the words

‘hypothetical calculation of population in 2021-22’ are actually referable only to the Maharashtra Municipal Councils Act and not to the MMC Act. He further submits that the impugned Ordinance and the impugned Act have been issued to give effect to the directions of the Supreme Court dated 4-5-2022 and 20-7-2022 in the case of *Rahul Ramesh Wagh Vs. State of Maharashtra* (S.L.P. (C) No.19756 of 2021) to the effect that the Election Commission would notify the election programme on the basis of delimitation done prior to coming into force of the said Amendment Acts with effect from 11-3-2022 and, therefore, it cannot be said that the impugned Ordinance and the impugned Act are unconstitutional.

21. Shri Shetye, the learned counsel for the respondent No.3- the State Election Commission, submits that whatever has been done in the present case by the SEC is only as per the constitutional mandate and nothing more.

22. Shri S.K. Mishra, the learned Senior Advocate appearing for MMC-the respondent No.4, submits that the delimitation has to be done on the basis of 227 numbers of seats, which was actually the position existing on 10-3-2021. He further submits that the orders dated 4-5-2022 and 20-7-2022 of the Supreme Court are very clear and they direct the SEC to conduct the elections of the local bodies whose term has expired by that time on the basis of the delimitation already done by it prior to 11-3-2022, the date on which the impugned Ordinance and the impugned Act came into force. He submits that if such were the directions of the Supreme Court, the SEC could not have proceeded to finalize the delimitation of wards on the basis of 236

seats. He further submits that as said action of the SEC was going against the spirit of the Supreme Court order, and as it was also found in the case of the local bodies covered by Acts other than MMC Act, that while fixing the number of seats, some hypothetical calculation of population in 2021-22 had been done, the State Government had to step-in to correct the situation and so it rightly issued the impugned Ordinance and the impugned Act.

23. Dr. Nilesh Pawaskar, the learned counsel for the petitioner in Writ Petition (L) No.32700 of 2022, submits that as holding of elections without any further delay was the mandate of the SEC, the delimitation done by the SEC is right, as ultimately it has been done for removing the mischief of non-holding of elections by applying the Heydon's rule. He also submits that holding of elections without any further delay was absolutely necessary.

Dr. Pawaskar has relied upon the following cases :

(1) *Prithvi Raj*

Versus

*State Election Commission, Punjab and others*

**[2007(2) I.L.R. Punjab and Haryana 206]**

(2) *Indian Performing Rights Society Limited*

Versus

*Sanjay Dalia and another*

**[(2015) 10 SCC 161]**

The principles of law laid down in above cases are :-

- (i) The interpretation of the provisions of law has to be such which prevents mischief and in this regard, the principle known as Heydon's rule is relevant.
- (ii) While a petition calling into question an election would not be entertained under Article 226 of the Constitution, the High Court's jurisdiction to issue appropriate writ, order or direction to further the cause of an election is not affected in any manner.

24. Shri Chinoy, the learned Senior Advocate, has relied upon the following cases :

(1) *People's Union for Civil Liberties (PUCL) and another*

Versus

*Union of India and another*

[(2003) 4 SCC 399]

(2) *State of Tamil Nadu and others*

Versus

*K. Shyam Sunder and others*

[(2011) 8 SCC 737]

(3) *Andhra Pradesh Dairy Corporation Federation*

Versus

*B. Narasimha Reddy and others*

[(2011) 9 SCC 286]



(4) *Shayara Bano*

Versus

*Union of India and others*

[(2017) 9 SCC 1]

The principles of law laid down in these cases are :-

(i) whenever there is caprice and irrationality seen in something done by the Legislature, there is manifest arbitrariness, (ii) unless it is found that the act done by the Authority earlier in existence is either contrary to the statutory provisions or unreasonable or against public interest, the State should not change its stand merely because the other political party has come into power and that the political agenda of an individual or a party must not be subversive of the rule of law, (iii) to decipher the object and purport of the Act, the Court can look into the Statement of the Objects and Reasons thereof, and (iv) the Legislature has no power to review a court decision and set it at naught unless it is for removal of defect which is the cause for the court decision.

The learned Advocate General has relied upon the following decisions :

(1) *M/s. Kasturi Lal Lakshmi reddy and others*

Versus

*State of Jammu and Kashmir and another*

[(1980) 4 SCC 1]

- (2) *K. Nagaraj and others*  
Versus  
*State of Andhra Pradesh and another*  
[(1985) 1 SCC 523]
- (3) *Anugrah Narain Singh and another*  
Versus  
*State of U.P. and others*  
[(1996) 6 SCC 303]
- (4) *M.P. Oil Extraction and another*  
Versus  
*State of M.P. and others*  
[(1997) 7 SCC 592]
- (5) *Gurudevdatto Vksst Maryadit and others*  
Versus  
*State of Maharashtra and others*  
[(2001) 4 SCC 534]
- (6) *Kuldip Nayar and others*  
Versus  
*Union of India and others*  
[(2006) 7 SCC 1]

(7) *V. Lavanya and others*

Versus

*State of Tamil Nadu and others*

[(2017) 1 SCC 322]

(8) *State of Goa and another*

Versus

*Fouziya Imtiaz Shaikh and another*

[(2021) 8 SCC 401]

The principles of law stated in the above-referred cases are :-

(i) Courts cannot interfere with the policy decision of the State, especially when the policy decision is taken in public interest or so long as it does not offend any provision of the Constitution of India, (ii) the Legislature, as a body, cannot be accused of having passed a law for extraneous purpose and even when it is assumed to be so, that motive cannot render the passing of law as mala fide as the concept of 'transferred malice' is unknown in the field of legislation, (iii) because of the express bar imposed by Article 243-ZG of the Constitution of India, the validity of the electoral roll cannot be challenged, (iv) there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest, and (v) the Statement of Objects and Reasons is not a

compendium for all possible reasons and, therefore, they can be supplemented if not contradicted in the counter-affidavit.

25. It is now time for us to examine the constitutionality or otherwise of the impugned Ordinance and the impugned Act in the light of the principles of law laid down in the afore-stated cases upon due consideration of the arguments putforth by both the sides.

26. Before we examine the validity of the impugned Ordinance and the impugned Act, we must say that these petitions are indeed maintainable as they do not call in question an election as such, but question the constitutionality of legislations relating to elections. We, therefore, do not agree with the learned Advocate General that these petitions are not maintainable. Now, let us examine the *raison de etre* of the impugned Ordinance and the impugned Act, which is to be found in the Statement of Objects and Reasons.

27. The Statement of Objects and Reasons is appended to the impugned Ordinance. The Maharashtra Act No.XLIII of 2022, which is also impugned in these petitions, only replaces the impugned Ordinance. Therefore, for the sake of convenience of discussion, we would refer to only the impugned Ordinance, which contains the Statement of Objects and Reasons, consideration of which is vital for deciding the challenge raised to the impugned Ordinance and the impugned Act.

28. The Statement of Objects and Reasons shows that it gives two reasons and spells out two objects for its promulgation by the Governor of Maharashtra. The first reason is that it was noticed that the number of Councillors in MMC and minimum and maximum number of elected Councillors of other local bodies were increased considering the growth in the population and speed of urbanization on the basis of the figures of census of 2011 and hypothetical calculation of population in 2021-22 respectively. The second reason is that as the Supreme Court in the case of *Rahul Ramesh Wagh Vs. State of Maharashtra* (S.L.P. (C) No.19756 of 2021), by its orders dated 4-5-2022 and 20-7-2022 had directed the Election Commission to notify the election programme on the basis of delimitation done prior to coming into force of the said Amendment Acts with effect from 11-3-2022, it was considered expedient to amend Section 5 of the said Acts suitably, to reinstate the number of Councillors prior to the said Amendment Acts, i.e. the Maharashtra Act No.II of 2022 and the Maharashtra Act No.XII of 2022. As regards the objects, we find that the first object was to specify the number of Councillors for Corporation on the basis of the figures of population as per census 2021 after its completion and the second object was to give effect to the directions issued by the Supreme Court in its orders dated 4-5-2022 and 20-7-2022.

29. Insofar as both the objects are concerned, we do not find that their basis is wrong or factually incorrect, rather their basis is to be found in the directions issued by the Supreme Court in its orders dated 4-5-2022 and 20-7-2022. In the Special Leave to Appeal, the Supreme Court was examining the challenge made to the

Maharashtra Act No.XXI of 2022 amending the Mumbai Municipal Corporation Act, Maharashtra Municipal Councils Act, and Maharashtra Municipal Councils, Nagarpanchayats and Industrial Townships Act, whereby the power of delimitation of wards was given to the State Government by removing it from the SEC and in passing the order dated 4-5-2022, the Supreme Court observed that while the main question required deeper examination, the petitions must proceed for further hearing. The Supreme Court accordingly called upon the learned counsel for SEC to explain as to why the elections in large number of local bodies across the State of Maharashtra though overdue had not been taken forward despite the peremptory directions given by it vide successive orders, including the order dated 3-3-2022. The Supreme Court after considering the response of the Election Commission that though it had taken steps in right earnest until the Amendment Act came into force, it could not proceed any further until the delimitation was done by the State Government under the Amendment Act and observed that the process of delimitation being a continuous exercise, may be continued by the State of Maharashtra subject to the outcome of the petitions, but that would be relevant only for future elections, after such exercise was completed. It further observed that but for that matter, the elections of the local bodies which had become due on expiry of five-year term and required to be conducted after expiry of such term in terms of Articles 243-E and 243-U of the Constitution of India read with the relevant Sections of the Maharashtra Municipal Corporations Act, other relevant Acts and other related provisions, the conduct of elections of such local bodies could not brook any delay. Accordingly, the Supreme Court directed that the election programme of such local bodies of which elections

had become due on expiry of five-year term, must proceed and that the SEC would be obliged to notify the election programme within two weeks in respect of such local bodies, on the basis of the delimitation done prior to coming into force of the Amendment Act with effect from 11-3-2022. It also clarified that the delimitation as it existed prior to 11-3-2022 in respect of the concerned local bodies be taken as notional delimitation for the conduct of over due elections and the elections be conducted on that basis in respect of each of such local bodies. These directions were further reiterated by the Supreme Court in its order dated 20-7-2022 when it directed the Election Commission and all the State authorities to ensure that the election process in respect of these local bodies immediately commenced in accordance with the recommendations made by the dedicated Commission and was taken forward as per the directions given by the Supreme Court vide its order dated 4-5-2022, on the basis of delimitation done prior to coming into force of the Amendment Act with effect from 11-3-2022.

30. Both the objects, as stated in the Statement of Objects and Reasons, now can be seen to be in accord with the aforesaid directions of the Supreme Court. The Supreme Court had held that the process of delimitation being a continuous exercise, may be continued by the State of Maharashtra, subject to the outcome of the petitions, but that would be relevant only for future elections after such exercise was completed. These observations would explain one of the Objects stated in Paragraph 2 of the Statement of Objects and Reasons of the impugned Ordinance that it was considered expedient to specify the number of Councillors on the basis of the figures and the

population as per census 2021 after it was completed. The second object sought to be achieved by the impugned Ordinance, which is of giving effect to the directions issued by the Supreme Court in its orders dated 4-5-2022 and 20-7-2022, is also in deference to the directions of the Supreme Court. Thus, we see no factual error in the objects stated in the Statement of Objects and Reasons of the impugned Ordinance.

31. As regards the reasons stated in the Statement of Objects and Reasons, we find some substance, if not complete, in the argument of Shri Chinoy, the learned Senior Advocate. Although the learned Advocate General has reasoned that the words ‘hypothetical calculation of population in 2021-22’ have not been used in relation to the Maharashtra Act No.XII of 2022, amending the relevant provisions of the MMC Act, it does not appear to be so, because after these words and before the word ‘respectively’, there is a comma inserted. The insertion of a comma is referable not to the words on the basis of ‘figures of census 2011’ and ‘hypothetical calculation of population in 2021-22’ but to the words indicating the effect of the Maharashtra Act No.II of 2022 and the Maharashtra Act No.XII of 2022 respectively. The effect was to increase the number of Councillors in MMC and to increase the minimum and maximum number of elected Councillors of other local bodies respectively. If this comma had not been used, perhaps the interpretation sought to be given to the first reason appearing in Part 1 of Paragraph 2 of the Statement of Objects and Reasons by the learned Advocate General would have been acceptable. But the insertion of such comma has changed the meaning of Part I of Paragraph 2 of the Statement of Objects and Reasons and it looks most probably to be a mistake or a drafting error committed



in the impugned Ordinance. But the question is whether such mistake, which is presently indicating that apart from the figures of census of 2011, even the hypothetical calculation of population in 2021-22 was the basis for increase in the number of Councillors in MMC, would by itself make the impugned Ordinance and the impugned Act arbitrary and irrational or not? Our answer to the question is in the negative, for the reason that there is also another statement made in Part 2 of Paragraph 3, which provides the second reason for promulgation of the impugned Ordinance. This reason shows that it was necessary for the SEC and the State Authorities to give effect to the directions given by the Supreme Court in its orders dated 4-5-2022 and 20-7-2022 to conduct elections of local bodies, which were due till 11-3-2022 on the basis of delimitation done prior to 11-3-2022. Of course, Shri Chinoy, the learned Senior Advocate, has sought to read this direction as a direction to conduct elections of the local bodies, which were due on 3-3-2022. But, the directions so issued by the Supreme Court are very clear and they apply to all those local bodies whose elections had become due because of expiry of five-year term and which were required to be conducted before expiry of such term and that was the reason why the Supreme Court directed that their elections be conducted on the basis of delimitation done prior to 11-3-2022. The argument of the learned Senior Advocate is, therefore, rejected. This second reason, we must say, is factually correct and it also provides a basis for issuance of the impugned Ordinance. Therefore, just because there is some drafting error in stating one reason from out of the two reasons, the whole Ordinance could not be viewed as arbitrary, irrational and manifestly unreasonable.

32. The position that emerges from the discussion thus far made is that there is at least one reason which is factually correct and two objects, which are consistent with the directions issued by the Supreme Court. These objects sufficiently indicate the expediency for promulgation of the Ordinance by the Governor of Maharashtra, which was replaced by the Maharashtra Act No.XLIII of 2022. It must be stated here that at the time of passing of the next order dated 20-7-2022, what was considered by the Supreme Court was the report of the SEC to the effect that it had completed the entire election process, including declaration of election programme in respect of 367 local bodies, which did not include a single Municipal Corporation and also the submission of the report dated 7-7-2022 by the dedicated Commission for reservation for Other Backward Class category and accordingly, it directed the Election Commission and all the State Authorities to ensure that the election process in respect of each of these local bodies, the term of which had expired, be commenced immediately in accordance with the recommendations made by the dedicated Commission, and be taken forward on the basis of the directions given by the Supreme Court vide order dated 4-5-2022, including the direction that the elections be conducted on the basis of delimitation done prior to 11-3-2022. It is also seen from the order dated 20-7-2022 that it does not refer to final delimitation done by the SEC on 13-5-2022 by considering number of Councillors as 236. In any case, the order dated 4-5-2022 is very clear and it holds that the elections of the local bodies, which were due as of 11-3-2022, we may state here that term of MMC expired on 7-3-2022, must be held by the SEC on the basis of delimitation done prior to 11-3-2022. It also clarified that the delimitation, as it existed prior to 11-3-2022 in respect of

such local bodies, be taken as notional delimitation for the conduct of overdue elections. Therefore, the Election Commission could not have proceeded to finalize the delimitation after 4-5-2022 and it ought to have taken the delimitation made in the year 2017, which was the delimitation existing prior to 11-3-2022, as the basis for taking forward the election of MMC to its logical end. That apart, the Supreme Court had also directed that subject to outcome of the petitions, the process of delimitation could be continued by the State of Maharashtra and not by the SEC and had also clarified that such delimitation by the State of Maharashtra, if any, would be relevant for future elections, after such exercise was completed. These directions, it appears, were lost sight of by the SEC. That was the reason why the Government of Maharashtra found it expedient to promulgate the impugned Ordinance so that full effect to the directions of the Supreme Court could be given. The impugned Ordinance was thereafter replaced by the impugned Maharashtra Act No.XLIII of 2022. Both these impugned legislations, as the discussion so far made shows, are in accordance with the directions of the Supreme Court and, therefore, cannot be found to be manifestly arbitrary, irrational and unconstitutional, nor could they be found to be actuated by any political consideration or motive, although that may not be relevant for examining the validity of the impugned legislations.

33. We would like to make it clear here that as we have found the impugned legislations to be valid on the touch-stone of directions of the Supreme Court, we do not think it necessary to consider the arguments of both sides raising some additional points.

34. In the result, we find no substance in both these petitions. The petitions stand dismissed. Rule stands discharged. No order as to costs.

(M.W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)