M.D. Nadeem Pasha Vs State of Karnataka, Department of Urban Development and The Tumkur City Municipal Corporation

Writ Petition No. 7066 of 2011

Court: Karnataka High Court

Date of Decision: April 6, 2011

Acts Referred:
Constitution of India, 1950 â€" Article 154, 162, 166, 243 (2), 243P (g)#Karnataka Municipal Corporations Act, 1976 â€" Section 2 (26), 3, 503

Hon'ble Judges: B.V. Nagarathna, J

Bench: Single Bench

Advocate: Jayakumar S. Patil, for Jayakumar S. Patil Associates, for the Appellant; K.M. Nataraj, Addl. A.G. for H.T. Narendra Prasad, H.C.G.P. for R-1, M. Nikhilesh Rao, for Indus Law for R-2 and Vivek Reddy, for Interveners, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B.V. Nagarathna, J.
In this writ petition, Petitioner has challenged the Notification dated 25.8.2010 in No. UDD 19 MLR 2009 issued by

the 1st Respondent, which is produced as Annexure-F. By the said notification Tumkur City Municipality'' has been constituted as Tumkur

Municipal Corporation''. In substance, the establishment of the Tumkur Municipal Corporation is challenged in this writ petition.

2. According to the Petitioner, he is an elected councilor of Tumkur City Municipality, which was declared as municipality u/s 9 of the Karnataka

Municipalities Act by Government Notification dated 25.8.1995. Subsequently elections were held to the municipality regularly and also on

28.9.2007 and the Petitioner was declared as elected from Ward No. 10 of the City Municipality and the first meeting of the Municipal

Corporation held on 22.2.2008. It appears that there was a proposal to constitute Tumkur City Municipality'' into Tumkur Municipal Corporation''

and in that regard a report with regard to the strength of population, percentage of employment in non-agricultural sector, income and expenditure

of the City and other such details were called for and it was tentatively proposed that if certain new areas were included to the existing area of the

Tumkur City Municipality, the Corporation could be formed by upgrading the Tumkur City Municipal Council to ""Tumkur City Corporation"". The

members of the city Municipal Council were also consulted in that regard and assented to the formation of the Municipal Corporation. Respondent

No. 1 subsequently issued preliminary notification u/s 3 read with Section 503 of the Karnataka Municipal Corporation Act, 1976 (hereinafter,

referred to as the "Act"), by on 25.1.2010, and objections were called for with regard to the establishment of the Tumkur City Corporation. It is

stated that after consideration of the objections a declaration has been made on 25.8.2010 by a notification. The said notifications are produced as

Annexures-E and F respectively. By a subsequent notification dated 29.11.2010, it is declared that Tumkur City Municipality" would be named as

Tumkur City Corporation"". The said notification is produced as Annexure-G. The establishment of the Tumkur Municipal Corporation under the

provisions of Section 3 read with Section 503 of the Act has been impugned in this writ petition by contending that the procedure as envisaged

under the Act has not been followed and that the notifications itself are defective in nature. Hence, the notification dated 25.8.2010 has been

impugned in this writ petition.

3. Respondent No. 1 has filed statement of objections contending that the writ petition is not maintainable and that no relief can be granted to the

Petitioner as the Petitioner has no locus-stand to challenge the notification dated 25.8.2010 issued u/s 3 read with Section 503 of the Act. It is

stated that the State Government had taken consent of the City Municipal Council and a resolution has passed in favour of establishment of

Municipal Corporation and the Petitioner is also party to the said proceedings and therefore he cannot now challenge the constitution of the

Municipal Corporation. It is also contended that the notification impugned in this writ petition has been issued in accordance with law and no

contention with regard to the validity can be made in as much as procedure has been followed under the Act as well as Constitution and hence the

contentions which have been raised by the Petitioner with regard to the illegality in the issuance of the notification is wholly incorrect. It is also

stated that after the constitution of "Tumkur City Municipality" into "Tumkur Municipal Corporation", the Petitioner has participated in the various

meetings of the corporation and drawn remuneration as a Corporator. Therefore, Petitioner is stopped from challenging the notification issued by

the Government constituting Tumkur City Municipal Corporation. It is also stated that in view of the growth of city, the State Government has

taken a decision to constitute large urban area for establishment of Corporation, after satisfying all the criteria in the Act, after consulting the local

authorities and on going through the objections received pursuant to the notification dated 25.1.2010 and that the Petitioner had not filed any

objection, therefore he cannot subsequently seek to nullify constitution of the Municipal Corporation by filing this Writ petition. That the relevant

criteria are satisfied and hence the decision of the state government to constitute a municipal corporation has culminated in issuance of the

notification dated 25.8.2010, which is in accordance with law and which does not call for any interference in this writ petition. Therefore,

Respondent No. 1 has sought for dismissal of the writ petition.

4. I have heard the learned sr. counsel Sri Jayakumar S. Patil for the Petitioner and learned Additional Advocate General Sri. K.M. Nataraj for

Respondent No. 1 and learned Counsel Sri. M. Nikhilesh Rao for Respondent No. 2 as well as the learned Counsel Sri. Vivek Reddy for

interveners.

5. It is submitted on behalf of the Petitioner that the State Government by Notification dated 25/8/1995 constituted the Smaller Urban Area for

Tumkur and accordingly, the Tumkur City Municipal Council was constituted. There afterwards, elections have been held regularly and

subsequently, by impugned Notification dated 25/8/2010, the Smaller Urban Area has been constituted as the Tumkur Municipal Corporation

without specifying the larger urban area. Drawing my attention to Article 243(2) of the Constitution of India read with Article 243-P(g), it is

submitted that Municipalities have been elevated to the status Constitutional bodies in view of the 74th amendment made to the Constitution and

insertion of chapter IX A, that under Article 243-Q(2) the Governor of the State is empowered to constitute a Smaller Urban Area into a Larger

Urban Area having regard to certain criteria specified in the said Article and the same has to be by way of a public notification. The said Article has

to be read along with Section 3 as well as Sub-section (26) of Section 2 of the Act, which are in pari materia with Clause (g) of 243-P of the

Constitution of India, which defines ""Population"" and that the said criteria have not been fulfilled in the instant case. He has stated that initially, a

recommendation was made by the Deputy Commissioner to include about 22 villages to the territorial limits of Tumkur City Municipality, so that

based on the census figures, which are available, the population of the said areas could be reconked in view of the proviso to Section 3 of the Act,

as before constitution of a Larger Urban Area, the population has to be at atleast 3 lakhs. The recommendation of the Deputy Commissioner was

that with the inclusion of the surrounding villages, the said figure would have been achieved and under the circumstances, such a recommendation

was made keeping in mind the 2001 census figures. However, the State Government did not accept the said recommendation, having regard to the

Sub-section (1) of Section 503 wherein, existing municipal area only can be converted to a Municipal Corporation. He further submitted that the

projected figures which have been taken into consideration are in total disregard of 2001 census figures and are only in the realm of conjectures

under the circumstances, the proviso which is stated in a double negative has not been complied with in the instant case. Elaborating his submission,

he has stated that the State Government could have taken into consideration only the published figures of the 2001 census, which is the last census

which has been held since the said figures are in the public domain and therefore, the projected population of Tumkur Municipal Area based on

conjectures could not have been taken into consideration; that such an exercise is in the realm of assumptions and presumptions and that there is no

certainty in the said figures. He therefore, submitted that in the instant case, proviso to Sub-section (1) of Section 3 of the Act, has not been

complied with and therefore the impugned notification may be quashed.

6. Drawing my attention to the contents of the notification dated 25/8/2010, learned senior counsel pointed out that the words ""Larger Urban

Area"" are not stated in the said notification; that the declaration that has to be made by the Governor has to be to specify Larger Urban Area and

in the absence of there being any such specification made, there is no declaration and under the circumstances, the notification is not in terms of the

Article 243-Q read with Section 3 of the Act. He therefore, stated that there is no declaration of ""Larger Urban Area"" in the instant case and

hence, there is no constitution of the Tumkur Municipal Corporation in accordance with law. He has also contended that the notification had to be

issued in the name of the Governor as has been done in the case of the constitution of the Bellary Municipal Corporation and also while constituting

the Bruhat Bangalore Mahanagara Palike whereas, in the instant case, the notification is issued in the name of the Under Secretary of the

Department of Urban Development Department and therefore, for that reason also, the said notification is illegal.

7. While elaborating these submissions, learned senior counsel has stated that the nature of power exercised by the Governor u/s 3 of the Act is

legislative in character and therefore, the declaration had to be made in accordance with law and in terms of the criteria prescribed under the

Constitution as well as Section 3 read with Section 503 of the Act and it is only an existing area of the Municipality which could be converted into

a Municipal Corporation and therefore, since the surrounding villages of Tumkur Municipal Council could not be added in the instant case, the

State Government has resorted to adopt projected figure of population of Tumkur City, so as to make bring it within the criteria mentioned in the

proviso to Sub-Section 1 of Section 3 of the Act, which is not in accordance with law. He therefore, submitted that the very constitution of the

Tumkur Municipal Council being illegal, the said notification has to be declared to be so.

8. Per contra, learned Addl. Advocate General, appearing for Respondent No. 1-State, has taken a preliminary objection to the very filing of the

writ petition by the Petitioner in as much as it is contended that the Petitioner is a party to the resolution according sanction to the conversion of the

Tumkur Municipality into a Corporation; that subsequently, he has participated in the meetings of the Corporation and he has received

remuneration for attending the said meetings and therefore, the Petitioner having participated in the said meeting and also being a party to the

resolution and according sanction for the conversion of the Municipality into a Corporation, cannot thereafter file this writ petition and challenge the

very constitution of the Municipal Corporation.

9. Answering each of the contentions raised by the learned senior counsel for the Petitioner, learned Addl. Advocate General submitted that when

the power has been exercised u/s 3 of the Act read with Section 503 of the Act while issuing the notification, the mere absence of the words

Larger Urban Area"" cannot make the said notification invalid. The very fact that under the said sections, the Governor has exercised powers and a

declaration has been made would imply that the area in Tumkur Municipality has been converted into a Larger Urban Area and therefore, the

contention of the Petitioner that the absence of the words ""Larger Urban Area"" in the notification would make the notification invalid is incorrect.

He has also drawn my attention to Sub-Section 1-A of Section 3 to contend that any area specified as a Larger Urban Area under Sub-section (1)

of Section 3 would be deemed to be a City under Corporation and therefore, when the said power has been exercised u/s 3, it makes the

notification valid.

10. As far as the contention regarding the applicability of the definition of ""Population"" in Sub-Section 26-A of Section 2 of the Act to Section 3 is

concerned, he submitted that Clause-a of the proviso to Sub-section (1) of Section 3 mandates that the population of the Larger Urban Area

should not be lesser than 3 lakhs. However, the requirement that the said population should be in terms of the population as ascertained at the last

census of which, the relevant figures have been published is not a mandatory requirement. He submitted that the definition clause defining the word

Population"" would not be applicable to Section 3 of the Act in as much as, it is not mandatory that the figures as are ascertained in the last census

have to be taken into consideration for ascertaining as to whether the population of the Larger Urban Area is atleast 3 lakhs. He submitted that in

the instant case, the figures of the population of the Tumkur City Municipal area have been projected on the basis of the figures available as per the

last census and the said projection is based on a scientific basis and therefore, the said figures have been taken into consideration for ascertaining

Larger Urban Area and the same cannot be found fault with.

11. In support of his submission, he has relied upon a decision of the Apex Court reported in case of State of U.P. Vs. Manbodhan Lal

Srivastava,] to contend that the applicability of the definition of population to Section 3 of the Act is not mandatory.

12. He has also drawn my attention to the provisions of Section 3 of the Act prior to 1994 amendment, to contend that u/s 3 as it stood prior to

the said amendment, the section itself stated that population of 2 lakhs as per the last census was a mandatory requirement, but the said

requirement has been deleted under the proviso to Section 3 and it has been placed by way of definition by insertion of Sub-section (26-A) to

Section 2 of the Act, which itself implies that the applicability of the definition of population is not mandatory insofar as Section 3 is concerned.

12(a). He has also stated that in Article 243-P(g), the definition of ""Population"" is stated and the said definition is also not applicable to the word

Population"" in Article 243-Q(2) of the Constitution. He therefore, stated that in order to ascertain as to whether the Larger Urban Area of

Tumkur has atleast 3 lakhs of population reliance on previous census figures is not at all necessary.

13. He further submitted that the definition of the word ""Population"" has to be read in the context of the preamble of Section 2 of the Act, which

states that the definition as stated will apply unless the context otherwise requires and in the instant case, in the context of Section 3, the said

definition of ""Population"" need not be taken into consideration.

14. As far as the contention regarding the issuance of the notification declaring the Larger Urban Area being issued in the name of the Governor by

the Under Secretary to the Government Urban Department is concerned, he has stated that the said act is an executive act of the Government and

it is in exercise of the executive power of the Governor in terms of the Article 154 of the Constitution and therefore, there is an embargo under

Clause 2 of Section 166 to question the issuance of the said notification and under the circumstances, the contention that the issuance of notification

is not in the name of the Governor but by the Secretary of the Department cannot be questioned in this case.

15. He has also relied upon certain decisions in this regard, which shall be adverted to.

16. Learned Additional Advocate General further submitted that the Petitioner in this case is not an aggrieved party but a beneficiary and therefore,

he cannot maintain this writ petition and that the decision of the Corporation is in public interest and therefore, there is little scope of interference to

Article 226 of the Constitution and that the Tumkur City Municipal Corporation has already been working and crores of rupees has been invested

for various projects on the premise that it is a Corporation and therefore, this Court cannot interfere in this writ petition with regard to the challenge

made to the constitution of the Municipal Corporation. Under the circumstances, he submitted that the writ petition has to be dismissed and in the

event any of the contentions of the Petitioner are accepted in that case also, the writ petition has to be dismissed on the ground that there has been

a delay in filing the writ petition.

17. Counsel for Respondent No. 2 corporation while adopting the submission of Respondent No. 1 - State, represented by learned Addl.

Advocate General, stated that there has been delay in filing this writ petition in as much as the notification was issued in August 2010, but it is only

in January 2011 that the writ petition has been filed; that the Petitioner has been participating in the meetings of the Municipal Corporation and

therefore, he is stopped from challenging the notification constituting the Municipal Corporation by his conduct. He has also submitted that the writ

petition has to be dismissed on the ground of delay as well as on the ground that there is no merit.

18. Counsel for the interveners has also submitted that the writ petition has to be dismissed on the ground of delay and latches and that there are

various projects which are midway and that the same cannot be reversed by holding that the notification impugned in this writ petition is illegal. He

has also stated that the Petitioner having attended various meetings of the Municipal Corporation is not empowered to challenge the constitution of

the Tumkur City Corporation.

19. In reply, learned senior counsel appearing for the Petitioner has reiterated that the Municipal bodies are no longer just statutory bodies as in

view of the amendment made to the Constitution, these bodies are in the nature of Constitutional bodies; that the very constitution of these bodies

have to be in accordance with the Constitution as well as the relevant statute. That there is no discretion with the State Government or in any

officer of the State Government with regard to the manner in which the Municipal Bodies have to be constituted. There are objective criteria

prescribed u/s 243 of the Act, as well as the statute. Therefore, the definition clause under Article 243-E(g) of the Constitution as well as Sub-

section (26-A) of Section 2 of the Act is applicable to Article 243(2) as well as Section 3 of the Act.

20. Having regard to the fact that the criteria which are mentioned u/s 3 of the Act are by way of proviso, would imply that it is only when the said

criteria are fulfilled and by way of an exception that the existing City Municipal Area can be constituted into a Large Urban Area as a Municipal

Corporation. It is not that as and when the population of a particular Municipal Area surpasses 3 lakhs, mandatorily or automatically, it would have

to be converted into a Municipal Corporation but the same has to be done as a legislative act, having regard to the various criteria mentioned both

under the Constitution as well as u/s 3 of the Act. Unless the same are strictly followed, there can be no constitution of the Municipal Corporation

in accordance with law and this implies that there can be no discretion vested with the State Government and when a declaration is not made in the

manner known to law or in accordance with the mandate of the Constitution and the statute, then such a declaration is bad. He has also stated that

Article 162 and 166 of the Constitution are not applicable in the present case since it is not exercise of executive power, but exercise of legislative

power while specifying a Smaller Urban Area into a Larger Urban Area and thereafter, constituting a Municipal Corporation.

20(a). He also stated that the participation of the Petitioner in the meetings of the Municipal Corporation or according sanction for the constitution

of the Municipal Corporation would not imply that the same can be constituted de hors in the legal requirements. The investments which have been

made with regard to the various projects for Tumkur Municipal Corporation cannot be considered to be wasteful expenditure in as much as the

same would have been in any case expended for various projects. He also stated that the date of the notification is 25/8/2010 and the writ petition

is filed in February 2011 and that in the matter of adjudicating upon the exercise of constitutional or statutory, such a passage of time cannot be

considered to be a case of delay so as to result in dismissal of the writ petition.

21. In conclusion, he submitted that so long as the constitution of the Tumkur Municipal Corporation is in accordance with law, the Petitioner

would not have any grievance in as much as he is also interested that the said Corporation must be constituted but in the instant case, it is not in

accordance with law. Under the circumstances, he prayed that the writ petition may be allowed.

22. Having regard to the rival contentions raised by the counsel on both sides and on perusal of the material on record, it is noticed that by

notification issued by the State Government on 25/8/1995 under the Karnataka Municipalities Act, 1964, Tumkur City was declared as a

Municipality, which is at Annexure ""A"" to the writ petition. The said Municipality comprised of Tumkur City and 22 villages surrounding the said

City. Thereafter, elections were held regularly and subsequently was held on 28/9/2007 and the members of the Municipality had a right to

continue for a period of five years with effect from he date of the first meeting. The provisions of Section 503 of the Act become applicable, in the

event Tumkur City Corporation is held to be legally constituted as a Corporation and elections are held and the first meeting of the Corporation is

held. It is also noted that in terms of proviso to Sub-section (1) of Section 3 of the Act, the Tumkur City Municipality has accorded its sanction for

the constitution of the Corporation by a resolution dated 2/11/2009, which is produced at Annexure ""D-1"".

23. The State Government took a decision to upgrade Tumkur City Municipality into a Corporation and on the basis of the said decision, sought

for details with regard to the strength of population, percentage of movement in non-agricultural sector, income generated and other such details

and the details were furnished as per Annexure ""G"" wherein, the actual population of Tumkur Municipal as per 2001 census has been given as

2,28,592 and the probable increase has been shown up to 3,12,000; that in respect of 5 6 villages surrounding the Municipality, the population as

per 2001 census was 62,501 and the probable increase would be 73,408; that the total population of the Municipal Area of Tumkur City and 53

surrounding villages would be 3,84,501 and on that basis, on 2/11/2009 based on the census figures of 2001, recommendation was made for

surrounding 56 villages, to be included whereby the population of the existing Municipality and the surrounding villages would cross 3 lakhs and

therefore, would meet the requirements of Section 3 of the Act. However, when the notification dated 25/1/2010 (Annexure ""E"") was issued, it is

noticed that the area comprising in Tumkur City only has been taken into consideration and the said Smaller Urban Area itself has been proposed

to declared as the Larger Urban Area. Therefore, the inclusion of 56 surrounding villages as recommended by the Deputy Commissioner of

Tumkur District has not been accepted. Possibly, the said recommendation has not been accepted having regard to Sub-section (1) of Section 503

of the Act wherein, it is stated that only a Municipal Area for which a City Municipal Council is constituted under the Karnataka Municipalities

Act, 1964, can be specified by a notification to be Larger Urban Area u/s 3 of the Act. Therefore, the area which is under the jurisdiction of

Tumkur Municipality has been specified to be the Larger Urban Area under the notification dated 25/1/2010. The said notification also called for

objections and suggestions to the proposals for constitution of the Tumkur Municipal Corporation. Thereafter, on 25/8/2010, the notification has

been issued in the name of the Governor of the State by the Under Secretary to the Government Urban Development Department and the said

notification reads as follows:

URBAN DEVELOPMENT SECRETARIAT

NOTIFICATION

NO.UDD 19 MLR 2009, Bangalore, Dated: 25th August, 2010

Whereas the draft of the notification specifying area of TUMKUR City Municipal Council to further specify the said City Municipal Council are be

called TUMKUR City Corporation was published in exercise of the power conferred by Section 3 read with Section 503 of Karnataka Municipal

Corporation Act 1976 (Karnataka Act 14 of 1977) in notification No. UDD 19 MLR 2009, dated 25.01.2010 in Part-IV-A of the Karnataka

Extraordinary Gazetted dated 25.01.2010 inviting objections to the said proposals from all persons likely to be affected thereby on or before 30

days from the date of publication of the said notification.

And whereas the Gazette was made available to the public on 25th January, 2010.

And whereas, objections and suggestions were received and the same have been duly examined.

Now therefore, in exercise of the powers conferred by Section 3 read with Section 503 of the Karnataka Municipal Corporation Act 1976

(Karnataka Act 14 of 1977). Governor of Karnataka hereby specified the TUMKUR City Municipal Council specified in Schedule ""A"" the limits

of which are specified in Schedule ""B"" and to further specify it to be called TUMKUR CITY Corporation having regard to:

i) The population of the area specified in Schedule-A is being not less than lakhs;

ii) The density of population in such area being not less than three thousand inhabitants to one square kilometer of area;

iii) The revenue generated for local administration from such area from tax and non-tax sources in the year of the last preceding census being not

less than rupees R.6.00 Crores per annum: or a sum calculated at the rate of Rs. 200 per capita per annum, whichever is higher;

iv) The percentage of employment in non-agricultural activities being not less than fifty percent of the total employment.

By order and in the name of the Governor of Karnataka

C.R. RAVINDRA

Under Secretary to Government Urban Development Department.

24. Since the said notification is impugned in this writ petition on various grounds, it is necessary to answer the validity of the said notification in the

light of the constitutional and statutory provisions as well as rival contentions of the counsel on both sides. In this regard, it would be necessary to

extract Article 243-Q of the Constitution, which reads as follows:

243.Q. Constitution of Municipalities

(1) There shall be constituted in every State-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transaction from a rural to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this part.

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the

size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other

factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, ""a transitional area"", ""a smaller urban area"" or ""a larger urban area"" means such area as the Governor may, having regard to the

population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-

agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

25. Article 243-P of the Constitution is a definition clause, which defines a Municipal Area to mean the territorial area of a Municipality as is

notified by the Governor. ""Municipality"" means an institution of self-government constituted under Article 243-Q. ""Population"" means the

population as ascertained at the last preceding census of which the relevant figures have been published. The aforesaid definitions are Clause (d),

(e) and (g) of Article 243-P of the Constitution. Infact, the said definition clause begins by stating that the said definition is for Part-IXA of the

Constitution and would apply unless the context otherwise requires.

26. Section 3 of the Karnataka Municipal Corporation Act, 1976, prior to the amendment i.e., prior to 1/6/1994 read as follows: Section 3

subsequent to the said amendment read as follows:

3. [Specifying larger urban area and establishment] of Corporation, etc. -(1) The Governor may, having regard to-

(a) the population of any area;

(b) the density of population of such area;

(c) the revenue generated for the local administration of such area;

(d) the percentage of employment in non-agricultural activities in such area;

(e) the economic importance of such area; and

(f) such other factors as may be prescribed.

specify by notification such area to be larger urban area:

Provided that no such area shall be so specified as a larger urban area unless: -

(a) such area contains a population of not less than three lakhs;

(b) the density of population in such area is not less than three thousand inhabitants to one square kilometer of area;

(c) the revenue generated from such area for the local administration in the year of the last preceding census is not less than rupees six crores per

annum or an amount calculated at the rate of rupees two hundred per capita per annum, whichever is higher;

(d) the percentage of employment in non-agricultural activities is not less than fifty per cent of the total employment:

Provided further that no such notification shall be issued except after consulting the local authority, if any, concerned.

(1-A) Any area specified as larger urban area under Sub-section (1) shall be deemed to be a city and a Corporation shall be established for the

said city.

(1-B) The name of the city shall, where the local area having two or more local authorities form the city, be as determined by the Governor]

(2) The Corporation shall be a body corporate by the name ""the Corporation of the city of..."" and shall have perpetual succession and common

seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract and may, by the said name, sue and

be sued: [Provided that the ""Corporation of City of Bangalore"" shall be called the ""Bruhat Bangalore Mahanagara Palike""].

27. In this context, it would be useful to refer to relevant portion of Section 503 of the Karnataka Municipal Corporation Act, which reads as

follows:

503. Declaration of [city municipal area as a larger urban area] under this Act.-(1) Subject to the provisions of Section 3, the Governor may

declare by notification that any municipal area for which a city municipal council is constituted under the Karnataka Municipalities Act, 1964

(Karnataka Act 22 of 1964) shall with effect from the date to be specified in such notification to be a larger urban area specified u/s 3 of this Act].

(2) The provisions of this Karnataka Municipalities Act, 1964 applicable to such [city municipal area] shall not apply to any local area declared as

a [larger urban area] under Sub-section (1) with effect from the date specified in the declaration:

Provided that any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form made or issued or imposed

under the said Act in respect of such [city municipal area] which were in force as applicable immediately before the date specified under Sub-

section (1) shall continue in force and be deemed to have been made, issued or imposed under the provisions of this Act unless and until it is

superseded by any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form made or issued or imposed

under this Act.

(3) With effect from the date of declaration of any area as a [larger urban area] under Sub-section (1), the following consequences shall ensure,

namely.-

(a) the body functioning as a city Municipal Council under the Karnataka Municipalities Act, 1964 immediately before the date of the said

declaration in respect of the said area shall become a body competent to exercise the powers and perform the duties conferred by the provisions

of the Act on a Corporation in respect of the said area until a Corporation is duly constituted for the area within the jurisdiction of such body under

the provisions of this Act;

(b) the Councillors of the city Municipal Council holding office as such immediately before the said date shall become Councillors of the

Corporation;

(c) the president of the said city Municipal Council shall become the Mayor of the Corporation and discharge duties and perform functions of the

Mayor under this Act and the vice-president of the said city Municipal Council shall become the Deputy Mayor of the said Corporation under this

Act;

(cc) where, under the provisions of Section 315 or Section 316 of the Karnataka Municipalities Act, 1964 either an administrator or an officer has

been appointed, to exercise the powers and perform the duties of the municipal council, then, such administrator or officer shall be deemed to be

an administrator appointed u/s 99[xxxxx]. [xxxxx]. The Advisory council, if any, appointed to advise and assist the Administrator appointed u/s

315 of the Karnataka Municipalities Act, 1964 shall be deemed to be an Advisory Committee appointed under Sub-section (6) of Section 99.]

(d) the unexpended balance of the municipal fund an the property (including arrears of rates, taxes and fees), belonging to the said city municipal

council and all rights and powers which prior to the said declaration vested in the city municipal council shall, subject to all charges and liabilities

affecting the same, vest in the Corporation as the Corporation fund;.

(e) any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form, made or issued under any other law in

respect of such municipality shall continue in force and be deemed to have been made, issued or continue in force and be deemed to have been

made, issued or imposed under the provisions of this Act, unless and until it is superseded by any appointment, notification, notice, tax, order,

scheme, licence, permission, rule, bye-law or form, made or issued or imposed under this Act;.

(f) all budget estimates, assessment lists, valuation or measurements made or authenticated under the Karnataka Municipalities Act, 1964

immediately before the said date shall be deemed to have been made or authenticated under this Act;

(g) all debts and obligations incurred and all contracts made by or on behalf of the city municipal council immediately before the said date and

subsisting on the said date shall be deemed to have been incurred and made by the Corporation in exercise of the powers conferred on it by or

under the Act;

(h) all proceedings pending prior to the said declaration before the city municipal council shall be continued by the Corporation;

(i) all appeals pending before any authority shall so far as may be practicable, be disposed of as if the said area had been included in the

Corporation when they were filed;

(j) all prosecutions instituted by or on behalf of the city municipal council and all suits or other legal proceedings instituted by or against the city

municipal council or any officer of the city municipal council pending at the said date shall be continued by or against the Corporation as if such

area had been included in the Corporation when such prosecutions, suits or proceedings were instituted;

.(k) all officers and servants in the employ of the city municipal council immediately before the said date shall become officers and servants of the

Corporation under this Act and shall, and until other provision is made in accordance with the provisions of this Act, receive salaries and

allowances and be subject to the conditions of service to which they were entitled immediately before such date:

Provided that it shall be competent to the Corporation, subject to the previous sanction of the Government, to discontinue the services of any

officer or servant who, in its opinion, is not necessary or suitable for the requirements of the service under the Corporation after giving servant such

notice as is required to be given by the terms of his employment and every officer or servant whose services are dispensed with shall be entitled to

such leave, pension provident fund and gratuity as he would have been entitled to take or receive on being invalidated out of service, as if the city

municipal council in the employ of which he was, had not ceased to exist.

[(4) A Corporation shall be duty constituted for the larger urban area under this Act within a period of six months from the date of declaration

referred to in Sub-section (1) and from the date of first meeting of the Corporation as so constituted the body exercising the powers and

performing the duties of the Corporation shall stand dissolved..

(5) The properties, rights and liabilities of the city municipal council of a municipal area declared as larger urban area under Sub-section (1) shall

vest in the Corporation of the said larger urban area with effect from the date of such declaration.]

28. By virtue of the 74th amendment to the Constitution w.e.f. 1/6/1993 Chapter IX-A has been inserted wherein the Constitution of the

Municipalities has been enunciated in Article 243-Q of the Constitution. In Sub-clause (1) of Article 243-Q, it is stated that various types of

Municipal bodies have been stated as Nagar Panchayat, a transitional area or an area in transition from a rural area to an urban area, Municipal

Council for Smaller Urban Area and a Municipal Corporation for a Larger Urban Area.

29. Proviso to Sub-clause (1) of Article 243-Q states that a Municipality under this clause may not be constituted in such urban area or part

thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an

industrial establishment in that area and such other factors as he may deem fit, by public notification, specified to be an industrial township.

30. Sub-clause (2) of Article 243-Q, which is relevant for the purpose of this case, states that the Governor having regard to the population of the

area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural

activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part. Therefore,

the Governor of the State is empowered to specify by a notification having regard to the criteria enumerated, a Larger Urban Area which would be

a Municipal Corporation. One of the criteria mentioned in Sub-clause (2) is with regard to the population of the area and interalia, the other criteria

is the density of population. The term ""population"" has been defined in Clause (g) of Article 243-P to mean the ""population"" as ascertained at the

last census, of which the relevant figures have been published.

31. In terms of the Constitutional Amendment Act, the Act has also been amended and Section 3 has been so amended to bring it on par with the

Article 243-Q.

32. Sub-section (1)(a) to (f) of Section 3 of the Act states that the Governor having regard to the factors stated therein is empowered to specify by

notification such area to be a Larger Urban Area. However, before such power can be exercised by the Governor, the following criteria which are

mentioned in Clauses (a) to (d) of the proviso have to be complied with, namely,

(a) such area contains a population of not less than three lakhs.

(b) the density of population in such area is not less than three thousand inhabitants to one square kilometer of are.

(c) the revenue generated from such area for the local administration in the year of the last preceding census is not less than rupees six crores per

annum or an amount calculated at the rate of rupees two hundred per capita per annum, whichever is higher;

(d) the percentage of employment in non-agricultural activities is not less than fifty percent of the total employment:

32(a). The second proviso further states that any such notification to be issued under Sub-section (1) of Section 3 of the Act, can be only after

consulting the local authority i.e., the Municipality concerned. Sub-section (1-A) and (1-B) states that any area specified as larger urban area shall

be deemed to be a city and a Corporation shall be established for the said city. The name of the city shall, where the local area having two or more

local authorities from the city, be as determined by the Governor.

32(b). Sub-section (2) states that the Corporation shall be a body corporate by the name the Corporation of the city and shall have perpetual

succession and common seal with power, subject to the provisions of this Act, to acquire hold and dispose of property and to contract and may,

by the said name, sue and be sued:

33. Before answering the contentions raised by the Petitioner, it would be necessary to answer the preliminary objections which have been raised

by the Respondents with regard to the maintainability of the writ petition in as much as the locus stand of the Petitioner to challenge the impugned

notification has been questioned. In this regard, it would be necessary to note that the Petitioner, who was a sitting member of the Tumkur City

Municipality has no doubt assented to the conversion of the Municipality to a Municipal Corporation and thereafter, he has attended various

meetings of the Corporation as a corporater. It is on that basis that the Respondents contended that the Petitioner has no right to challenge the

constitution of the Municipal Corporation and therefore, he has no locus stand to file this writ petition.

34. At this stage, it would be of relevance to note that any act of the State Government or any notification issued for that matter is deemed to be

legal and in accordance with law unless a competent Court of law strikes it down or quashes it. Moreover, the mere fact that the Petitioner has

taken part in the various meetings of the Corporation cannot imply that he has acquiesced in the formation of the Municipal Corporation and has

therefore stopped from challenging the impugned notification. The Petitioner cannot contend that the Tumkur City Municipal Council cannot be

formed at all in as much as it is a policy decision of the State Government and he has also been a party to the resolution acceding to the formation

of the Corporation. However, that would not imply that the Petitioner cannot question the manner in which the corporation has been constituted. In

other words, though the Petitioner cannot express any grievance with regard to the constitution of the Corporation as such, can nevertheless

challenge the manner in which it has been done, in as much as if the Petitioner is able to establish that the Corporation is not established in

accordance with law, then in that case, Petitioner cannot be held to be debarred from doing so. Hence there being no locus stand of the Petitioner

to file this writ petition or the fact that he is stopped from doing so, cannot be accepted. Therefore, the contention with regard to the Petitioner

lacking locus stand to file this Petitioner or that he is stopped from filing the same is rejected.

35. The other contention which has been raised by the Respondents is with regard to delay in filing of the writ petition and therefore, it has been

contended that the writ petition has to be dismissed in limine and without going into the merits of the contentions raised. In my considered view, the

question of delay also would not come in the way of considering the case of the Petitioner on merits in as much as any question touching upon the

constitution of a body which is elevated to the status of a constitutional body has to be considered in accordance with the Constitution as well as

the statute and the filing of the writ petition after a few months after the issuance of the impugned notification cannot be dismissed on the ground of

delay or latches. If the Petitioner is successful in making out the case whereby, the very constitution of the Corporation is unconstitutional and ultra

vires the Act, then this Court is not only empowered but is also under a duty to consider such constitutional question under Article 226 of the

Constitution despite the writ petition therefore being filed five mts, thereafter. Therefore, on the question of delay, the writ petition cannot be

dismissed.

35(a) In this context, reliance can be placed on decision of the Apex Court in the case of Motor General Traders and Anr. v. State of Andhra

Pradesh and Ors. [AIR 1984 SC 121], wherein, in the context of delayed challenge to a legislation, the Apex Court held that ""mere lapse of time

does not lend constitutionality to a provision which is otherwise bad. Time does not run in favour of legislation. If it is ultra vires, it cannot gain legal

strength from long failure on the part of lawyers to perceive and set up its invalidity"". In the said case, the constitutional validity of the Andhra

Pradesh Buildings [Lease, Rent and Eviction] Control Act, 1960, was challenged after 23 years. The same applies by way of analogy to the

present case also.

36. Having cleared the preliminary objections, it is necessary to consider at this stage, the nature of the functions exercised by the Governor in the

issuance of the notifications since any answer to the said question would determine the answers to be given to the contentions raised by the

Petitioner in this writ petition.

37. On a reading of the Article 243-Q of the Constitution read with Section 3 as well as Section 503 of the Act, it is noticed that on the basis of

certain criteria enumerated in Article 243-Q as well as Section 3 of the Act, the Governor of the State is empowered to make a declaration that

any Smaller Urban Area is to be constituted as a Larger Urban Area, the said declaration is infact not purely an executive or administrative act but

essentially, a legislative act of the Governor. Therefore, having regard to the nature of functions which the Governor performs while making such a

declaration is the consequence of it being legislative in character will also have to follow. In other words, though in the instant case, the impugned

notification is issued u/s 3 of the Act, as a statutory instrument nevertheless the said declaration is not purely an executive or administrative act of

the Governor but it is of a legislative character and therefore, all the characters of a legislative act would have to apply to such a declaration.

Therefore, the notification has to be made in accordance with the criteria which are required for a legislative act.

38. In this context, it would be of relevance to cite the differences between an administrative function and a legislative function. According to

learned authors on Administrative law, in so far as a legislative function is concerned, there are two ingredients, namely, generality and

prospectivity, which distinguishes a legislative action as opposed to an administrative action, which would apply only to a particular case.

39. In this context, it would be of relevance to refer to two decisions of the Apex Court. In AIR 1981 1127 (SC) it has been held that making of

the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration

certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith, is certainly an act legislative

in character and not a judicial or quasi-judicial function and therefore, does not oblige the observance of the rules of natural justice, because the

rules of natural justice do not run in the sphere of legislation, primary or delegated.

39(a) In the case of State of Punjab Vs. Tehal Singh and Others,), after referring to various decision, the Apex Court held thus:

The principles of law that emerge from the aforesaid decisions are - (1) where provisions of a statute provide for the legislative activity, i.e., making

of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the Government that certain place or area

shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into an act in forthwith which provide for

certain consequences; (2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of

an individual and it relates to public in genera or concerns with a general direction of a general character and not directed against an individual or to

a particular situation and (3) lay down future course of actions, the same is generally held to be legislative in character.

40. At this stage, it would be relevant to note that though Article 243-Q of the Constitution does not give any specific details of the criteria

mentioned in Sub-clause (2), in proviso to Sub-section (1) to Section 3 of the Act, the details are mentioned in as much as the criteria are specified

either having regard to the figures or having regard to the basis on which the said figures have to be arrived at. Therefore, the Governor exercising

his power u/s 3 of the Act while constituting a Larger Urban Area has to first determine as to whether the criteria mentioned in Sub-clause (2) of

Article 243-Q of the Constitution as well as the proviso to Sub-section (1) of Section 3 of the Act have been completed. In that context, it is an

administrative decision which the Governor has to take. Once the same is taken, then a declaration is made as per Sub-section (1) of Section 3 of

the Act and the said declaration is legislative in character. Therefore, nature of the power exercised by the Governor u/s 3 of the Act is composite

in nature in as much as it is an administrative power which is legislative in character.

41. The contention of the Addl. Advocate General that Article 166 read with 154 of the Constitution would apply in the instant case is of no

relevance, in view of the action initiated u/s 3 of the Act, is held to be of a legislative nature.

42. Having held thus, the contentions raised in this writ petition will have to be answered. One of the contentions raised by the learned senior

counsel appearing for the Petitioner is that in the instant case when the declaration is made in Annexure ""F"", there is no specification of Larger

Urban Area in as much as Schedule "A" and Schedule "B" which are appended to the said notification comprise of Tumkur City and 22 villages

surrounding Tumkur City which originally was part of Tumkur City Municipality and the very same areas have to be constituted as a City

Corporation, provided there is a definite intention to specify and declare that the said areas would constitute a Larger Urban Area. In the absence

of such a declaration, it is contended that the notification issued is not in terms of Section 3 of the Act.

43. The answer given by the Addl. Advocate General in this regard is that when power has been exercised u/s 3 read with Section 503 of the Act,

it would imply that the purpose of issuing the said notification is to specify and declare the Larger Urban Area and therefore, even in the absence of

such words being found in the said notification, the validity of it cannot be impugned.

44. The rival contentions would have to be answered in the context of the fact that the declaration made in the impugned notification is legislative in

nature and therefore, the declaration must be apparent and clear. But on a reading of the said notification, the fact that the areas comprised under

Tumkur Municipal Council has been constituted as a Larger Urban Area does not become apparent at all. It only states that the areas which have

been specified in schedule ""A"" and ""B"" constituted as Tumkur City Municipal Council would now be part of Tumkur Municipal Corporation. The

intention of issuing such a notification is not to constitute the Corporation which in any case is a statutory consequence but the intention must be to

declare that the area is constituted as a ""Larger Urban Area"". The said declaration of a Larger urban area is a condition precedent for the

establishment of a Municipal Corporation. In the absence of the words ""Larger Urban Area"", in the notification, it cannot be held that there is a

declaration in terms of Sub-section (1) of Section 3 of the Act.

45. In this context, reference could be made to the notification dated 28/9/2004 issued in the name of the Governor wherein, areas which were

specified in the said notification were held to constitute a Larger Urban Area and the said area was constituted as the City Corporation of Bellary.

GOVERNMENT OF KARNATAKA

No. UDD 128

Karnataka Government Secretariat,

Multistoried Building,

Bangalore, Dated: 28.09.2004

NOTIFICATION

Where the draft of the Notification No. UDD 128 ACS 99 dated 12.11.2002 specifying the smaller urban area of City Municipal area of Bellary

specified in Schedule-A and Schedule-B as a larger urban area to be called City Corporation of Bellary was published in exercise of powers

conferred by Section 503 and read with Section 3 of the Karnataka Municipal Corporation Act, 1976 (Karnataka Act No. 14 of 1977) in part-

IV of the Karnataka Gazette extraordinary dated 12.11.2002, inviting objections from the persons likely to be affected by the said proposal within

30 days from the date of its publication.

And whereas, the Gazette was made available to the public on 12.11.2002.

And whereas, certain objections were received and the same have been duly examined and found that they were not maintainable.

And therefore now in exercise of powers conferred in me by Section 503 having regards to the criteria specified in Section 3 of the Karnataka

Municipal Corporation Act, 1976 (Karnataka Act No. 14 of 1977) I, T.N. Chaturvedi, Governor of Karnataka, hereby specify with immediate

effect that the smaller urban area of City with the limits and boundaries specified in Schedule-A and Schedule-B as a larger urban area to be called

the City Corporation of Bellary.

Sd/-

(T.N. CHATHURVEDI)

Governor of Karnataka

SCHEDULE-B

Areas included in the Bellary City Corporation Limits

(1) Bellary City

East: (1) Sangamkal village

(2) Bellary Village Sy. Nos.

(3) Haddinagundu village

(4) Bislahalli village

(5) Gonohal village

South: (6) Andral village

(7) Pathra Budihal village

(8) Part of Pathra Budihal village

(9) Part of Bellary village, Halakanda village

(10) Entire Mundrigi village

West: (11) Halladahalli Village

(12) Bellary village

(13) Allipuram village

North: (14) Bellary village

Avammana Bhavi village

(15) Part of Bellary village

(Bathri Veerammahalli village)

(16) Part of Kollegal village

SCHEDULE-B

North: * * * * * *

East: * * * * * * *

South: * * * * * *

West: * * * * * *

After the above extension, the area limits of Bellary City Municipal Corporation will be 20,249.60 acres (81.95 sq. kms.)

By order and in the name of the

Governor of Karnataka

Sd/-

under Secretary to Government,

Urban Development Department.

45(a). A reading of the said notification dated 28/9/2004 makes it apparent that the intention was to constitute the areas specified in the schedule

appended to the said notification as a Larger Urban Area. Therefore, in the absence of the said words, it cannot be held that a declaration has

been made under Sub-section (1) of Section 3 of the Act. The contention of the Petitioner in this regard is thus valid and accepted.

46. The next contention which has been raised is with regard to the impugned notification dated 25/8/2010 not being issued by the Governor in his

own name but it has been issued in the name of the Governor of the State by the Under Secretary to the Government.

47. On perusal of the record, it is noticed that the said notification has been issued in the name of the Governor but the actual issuance being under

the signature and seal of the Under Secretary of the Department of Urban Development. In my considered view, the actual issuance of the

notification in the name of the Governor by the Under Secretary would not make it invalid. Infact, the issuance of the notification is a ministerial

act/function but the declaration to be made is a legislative function. When once a prior determination has been made and on the basis of the said

determination, action is taken by issuance of a notification in the name of the Governor by any other authority would not imply that the said

notification is invalid. In the instant case, the said notification is issued in the name of the Governor after obtaining the orders to do so, as is

apparent from the records. Therefore, the contention of the Petitioner that the issuance of the notification by the Under Secretary to the

Government, Department of Urban Development is invalid is rejected.

48. That leaves one other contention to be considered namely, the fact that the criteria stated in the proviso to Sub-section (1) of Section 3 of the

Act have not been complied with in the instant case in as much as population of the Tumkur Municipality was less than 3 lakhs, as per the

ascertained figures in the preceding census which have been published namely ""2001 Census"" and also the fact that the density of population is also

not considered in terms of the ""2001 Census"" and hence, the notification constituting the Municipal Corporation is invalid is the contention of the

counsel for the Petitioner.

49. In this context, it was submitted that the word ""population"" in Clauses ""a"" and ""b"" of the proviso have to be interpreted in terms of the definition

of ""population"" under Sub-section (26-A) of Section 2 of the Act and that from the records, it is borne out that the population of Tumkur

Municipality as per ""2001 Census"" i.e., the last Census was less than 3 lakhs and therefore, the declaration made in the instant case is illegal. In

reply to the said contention, learned Addl. Advocate General submitted that the criterion of population being not less than 3 lakhs is a mandatory

requirement but the fact that the said population has to be ascertained in terms of the last census, relevant figures of which have been published is

not a mandatory requirement. In other words, the contention was that the definition of population as given under Sub-section (26-A) of Section 2

of the Act is not applicable to Section 3 of the Act.

50. Before answering this contention, it would be of relevance to note that the word ""population"" interalia in Section 7 of the Act dealing with

constitution of the Corporation and more particularly with regard to reservation for SC and ST.

51. Section 3 mentions the word ""population"" in Clause (a) and (b) of Sub-section (1) as also in Clauses (a) and (b) of the proviso to Sub-section

(1) of Section 3 of the Act. Therefore, both in the main section as well as in the proviso, the word population is mentioned. The criteria enumerated

in Sub-section (1) of Section 3 of the Act are the very same ones, which are mentioned in Sub-clause (2) of Article 243-Q. The proviso to Sub-

section (1) of Section 3 however prescribes the particular figures which have to be mandatorily complied with before issuing a notification for a

Larger Urban Area.

52. Therefore, both in the main section as well as in the proviso, the word ""population"" is mentioned. The criteria mentioned in Sub-section (1) of

Section 3 of the Act are the very same criteria which are mentioned in Sub-clause (2) of Article 243-Q. The proviso to Sub-section (1) to Section

3 of the Act however prescribes the specific figures which have to be mandatorily complied with before issuing the notification for a Larger Urban

Area. In this context, it is also of relevance to note that Section 3 prior to 1994 amendment also referred to ""population"" not being less than 2

Acres at the last preceding Census as being the determinative factor and has been one of the preconditions for declaring any local area as

constituting a Corporation. The same has however been deleted by the 1994 amendment and instead, the word ""Population"" has been defined in

the definition clause by insertion of Clause 26-A to Section 2 of the Act.

53. It is contended on behalf of the State that the fact that what was stated in the main section has been now incorporated in the definition clause

makes a difference in as much as deletion of the criterion of population as determined in the last preceding census in the main section and by

placing it in the definition clause would imply that the said definition is not applicable as it is not mandatory and that the population figures that have

to be taken into consideration under the proviso need not be in terms of the ascertained figures of the preceding census.

54. The decision of the Apex Court, referred to supra has been cited in support of the submission that one has to differentiate between a

mandatory requirement and a directory requirement and that in the instant case the said definition of population is not mandatorily applicable to the

present case. In this context, it would be of relevance to note that the definition of ""population"" both under the Constitution as well as under the Act

is an exclusive or exhaustive definition which means only population as ascertained in the last preceding census of which, relevant figures have been

published and therefore, the figures which have to be the basis for ascertaining as to whether the Municipality has crossed 3 lakhs population has to

be ascertained only in terms of the census figures. No doubt, the definition clause states that the definition of ""population"" would be applicable

unless the conditions would otherwise require"" and there are instances where the definition clause may be made applicable to certain sections of

an enactment but the same may not be applicable to certain other sections. The applicability of the definition would therefore depend upon the

context of the section of an enactment. If the applicability of the definition clause to a section would lead to an absurdity, then in such a case the

definition clause would not be applicable. However this is only by way of an exception rather than as a norm. However, in the instant case, what is

noticed is that the word ""population"" is not only found in the Sub-section (1) of Section 3 but is also found in the proviso to Sub-section (1).

Having regard to the fact that the word ""population"" is not only found in Sub-clause (1) of Section 3 as well as in the proviso it cannot be

construed that the definition would not be applicable to the proviso to Sub-section (1) of Section 3. Infact, on a conspectus reading of Sub-section

(1) of Section 3 and the proviso, it mandates that the population of a Municipal area should not be less than 3 lakhs and the said figure has to be

determined only in terms of the ascertained population in the preceding census, the relevant figures of which are published. Therefore, the basis to

determine the population is not only based on the figures ascertained in the preceding census but also the fact that the said figures are published.

Infact, a reference to Clause (c) of the proviso would also make it clear that the revenue generated from such area for the local administration in

the year of the last preceding census is taken as a basis in as much as it should not be less than 6 Crores per annum or an amount calculated at the

rate of Rs. 200 per capita per annum whichever higher. Therefore, by considering the revenue generated by the municipal area for the local

administration also the figures of the last preceding census have to be taken into consideration. The fact that there is a categorical reference to the

last preceding census in Clause (c) of the proviso would also make it clear that the statute refers to the census figures as the basis for ascertaining

the various criteria mentioned in the proviso. Under the circumstances, the applicability of the definition of ""population"" to Section 3 being directive

and not mandatory cannot be accepted. That apart, no material has been placed to demonstrate as to how the applicability of the definition clause

to Section 3 of the Act would make the section absurd or lead to any anomalous result. The applicability of the definition clause cannot be on the

whims and fancies of any authority, which is determining the criteria u/s 3 of the Act. The fact that ""population"" is a defined in a particular manner

and based on a reference to a particular period would only mean that population has to ascertained with certainty. Therefore, it cannot be on the

basis of the figures which are projected or which are determined by way of assumptions and conjectures by persons entrusted with the

responsibility of making available the facts leading to the criteria which are enumerated in Section 3.

55. On a perusal of the records, which have been made available by the Govt. Pleader, it is seen that the population of the city of Tumkur as per

2001 census is stated to be 2,48,929 and 30% is the projected population i.e., 74,679 to make the total population of 3,23,608 and the said

projected population is of the year 2009. From this, it becomes clear that 30% of the projected population is made only so as to comply with the

proviso to Section 3 of the Act. However, the State Government is also conscious of the fact that the delimitation of constituencies would have to

be maintained in respect of the census figures of 2001.

56. In fact, in reply to a communication addressed by the Secretary, Revenue Department and State Census Nodal Officer, Government of

Karnataka, through the Ministry of Home Affairs, Government of India, in the context of Census of India-2011 [Rural/Urban Classification], by

letter dated 28/6/2010 the Ministry of Home Affairs has stated that the Municipal limits have to remain under a Larger Urban Area and no changes

can be effected till the 2011 census are entered.

57. In the instant case, learned Govt. Pleader has also filed a memo enclosing the letter of projection of population, which has been taken into

consideration for the purpose of complying with the requirements of Section 3 of the Act. No doubt, Govt. Pleader has produced the statistics

issued by the Director of Economic and Statistics, based on a mathematical formula. The said projection is also based on the census figures of

2001. However, the said projected figures are not published as census figures and which are not in the public domain. The projected figures do not

comply with the requirement of the definition of population in Section 2 of the Act. The said figures has been considered for the purpose of

determining as to whether the Smaller Urban Area could be converted into a Larger Urban Area. The said exercise has been done by the State

Government in order to comply with the requirement of 3 lakhs population as envisaged in proviso to Sub-section (1) of Section 3 but in my view

the same is not in accordance with what is prescribed in Sub-section (26-A) of Section 2 of the Act. Since no case is made out that the

applicability of the definition to Section 3 of the Act would lead to any absurd or anomalous result, the said definition would be mandatorily

applicable. It is reiterated that the non-applicability of a definition to a section in an enactment is only when the applicability would result in an

anomalous situation. Since no such anomalous situation has been demonstrated, in the instant case, the only conclusion is that the definition of

population"" is mandatorily applicable to Section 3 of the Act. Therefore, despite an exercise being made by the State Govt. to have projected

figures of the population based on the last preceeding census, it is in total disregard of what is prescribed under Sub-section (26-A) of Section 2 of

the Act. Therefore, the projected figures of the Tumkur City Municipal Council for the purpose of determining the Larger Urban Area without

taking into consideration the definition of the ""population"" in the Constitution as well as in the Act, is not in accordance with law. Under the

circumstances, it is held that as per the ascertained figures of 2001 Census, which has been published, the population of the Smaller Urban Area of

Tumkur City Municipal Council was less than 3 lakhs and hence, based on that figure, the requirement of the proviso to Sub-section (1) of Section

3 in the instant case has not been complied with. Therefore, the declaration made on 25/8/2010 thereby constituting the Tumkur City Corporation

is not in accordance with law. Under the circumstances, the notification impugned in this writ petition is declared to be illegal and non-est.

58. Having held so, the question that has to be considered is as to whether the consequence of declaring a notification as illegal has to be taken to

its logical conclusion in as much as it was contended by the Respondents that despite any declaration being made that the notification is illegal or

not in accordance with law, nevertheless since August 2010, the Tumkur City Corporation has been functioning and therefore, the said state of

affairs need not be interfered with.

59. In this context, counsel for the intervener also suggested that any order passed by this Court need not be given effect to until the census figures

of 2011 are published. Counsel for Respondent No. 3 also contended that since many officers and officials have been appointed and also various

public works are in progress, this Court need not intervene in the matter despite striking down the said notification. Though the concern of the

counsel for the Respondents is noted, in the context of the investment of funds, which have taken place and various projects under way since

August 2008 nevertheless when it comes to a question touching upon the Constitution of India or the constitutionality of an act, this Court cannot

hold itself back and simply declare that the notification is non-est in law and not give effect to the said decision. Infact, this Court will be failing in its

duty if after declaring the impugned notification to be illegal and non-est, would also in the same breath hold that the Tumkur City Corporation

which has been constituted by virtue of the said impugned notification could nevertheless continue to function until 2011 Census figures are

declared. One redeeming feature of this case is that despite the declaration of the notification impugned as being null and void, the fact that the

work of 2011 Census would be concluded within a few months the exact figures would be available and therefore, in that view of the matter,

liberty is reserved to the Respondents to reconsider the issue of declaring Tumkur City Municipal area into a Larger Urban Area in accordance

with the Constitution and the Act, when once 2011 Census figures are published.

60. Addl. Adv. General also brought to my notice the fact that in W.P. No. 8936/2011 and W.P. Nos. 9006-9031/2011 this Court while

considering the validity of notification in appointing an administrator to the Tumkur City Corporation while striking down the said notification also

directed that elections to the corporation be held within a period of three months from the date of the said notification. The said direction would of

course have survived if the constitution of the Corporation was in accordance with law. Merely because such a direction has been issued by this

Court, it cannot be held that in order to give effect to the said direction the present Corporation would have to be continued. The direction issued

in the said case was on the premise that the constitution of the Corporation was legal and in accordance with law. The fact is that an order is

passed by this Court directing the State Government to conduct the elections to the Tumkur City Corporation would not have any bearing in so far

as the validity of the constitution of the Corporation is concerned. Now that this Court has held that the constitution of the Corporation is itself not

in accordance with law, the directions issued in W.P. No. 8936/2011 and W.P. Nos. 9006-9031/2011 would automatically have no effect for the

present.

61. In the result, the notification dated 25/1/2010, which is produced at Annexure ""E"" as well as notification dated 25/8/2010, which is produced

at Annexure ""F"" are declared as null and void and non-est in the eye of law. However, liberty is reserved to the Respondents to initiate any action

in so far as Constitution of Tumkur City Corporation is concerned, in accordance with the Constitution of India as well as the Act.

62. In the result, this writ petition is allowed.