(2005) 08 KL CK 0056

High Court Of Kerala

Case No: Writ Petition (C) No''s. 14429, 14553, 14861, 14921, 14993 and etc. of 2005 and 20569 of 2004

K.P. Raveendran and Another — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision: Aug. 5, 2005

Acts Referred:

- Constitution of India, 1950 - Article 14 , 16, 237, 243B, 243C
- General Clauses Act, 1897 - Section 21
- Kerala Municipalities Act, 1994 - Section 2, 256, 4, 4(2), 4(6)

Citation: AIR 2005 Ker 319 : (2006) 1 KLT 427

Hon'ble Judges: Thottathil B. Radhakrishnan, J

Bench: Single Bench

Advocate: P.K. Vijayamohanan, M.P. Prabhanandan, T.S. Harikumar, John K. George, M.K. Damodaran, A. Kumari Mini, M. Sasindran, Jojan J. Vathikulam, K. Ramakumar, T. Ram Prasad Unni, P. Rajkumar, T.P. Kelu Nambiar, P.G. Rajagopalan, M. Gopi Krishnan Nambiar, T. Reshmi Damodaran, C.V. Manuvilsan, G. Sudheer and A. Mihamemed Basheer, for the Appellant; M. Ratna Singh, General, John Joseph Vettikad, Sr. Govt. Pleader, Anil Thomas, Spl. Govt. Pleader, N. Nandakumar Menon (SC TVM Corpn.), G. Sudheer, R.M. Mohammed Kunhi, Murali Purushotham, S. Shanavas Khan, A.A. Abdul Hassan, M.P. Ashok Kumar, V. Rajagopal, R.T. Pradeep, V. Vijulal V. Giri and M. Muhammed Shafi, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Thottathil B. Radhakrishnan, J.

Can a rural area, after its transit to be an urban area, thereby becoming a "Smaller urban area" or a "larger urban area" in terms of Article 243Q of the Constitution of India, be re-transited to be a rural area? If so, can it be done under an exercise for

the purpose of the provisions of Part IXA of the Constitution? Is the impugned "de-linking" of certain urban areas from the municipalities, for being treated as rural areas, unconstitutional? If such action is permissible in terms of the Constitution, could it be subjected to control by judicial review? If so, is the impugned action vitiated by illegality, irrationality or procedural impropriety, the three well recognized grounds? Broadly, these are the issues that arise for decision in these writ petitions. Section 4(2)(b) of the Kerala Municipality Act, 1994, hereinafter, the "Municipality Act", for short, is also challenged in WP(C) No. 16997 of 2005, as unconstitutional.

Relevant common facts:

2. As per SRO No. 468/94 and SRO No. 469/94, respectively, the Governor notified the "villages" and the "intermediate levels", for the purpose of Part IX of the Constitution, in exercise of the powers, in that regard, conferred by Clauses (g) and (c) of Article 243. Each of the Villager so specified was to have the territorial area of the Panchayat that then existed, as shown against each of the Villages so notified. As per SRO No. 470/94, the Governor, in exercise of the powers, in that regard, conferred by Clause (d) of Article 243P and Clause (2) of Article 2439, notified the "smaller urban areas" and the "larger urban areas", so enlisted in Schedules I and II therein and further notifying that each area so specified shall be a municipal area for the purpose of Part IXA of the Constitution. SRO No. 468/94, SRO No. 469/94 and SRO No. 470/94 were published as per GO (P) No. 86/94/LAD dated 20-4-1994.

3. By SRO No. 974/99 published as per GO(P) No. 224/99/LSGD dated 30-11-1999, the Governor notified the areas of Andoor, Kodiyeri, Perumpazhuthur and Ezhuvathuruthy Grama Panchayats to be "smaller urban areas" and the areas of Ullor, Nemom, Attipra, Kadakampally and Thiruvallam Grama Panchayats to be "larger urban areas" for the purpose of Part IXA, with effect from 1-10-2000. The areas, Andoor, Kodiyeri, Ezhuvathuruthy and Perumpazhuthur were included in the Thaliparambu, Thalassery, Ponnani and Neyyattinkara Municipalities respectively and the areas, Ulloor, Nemom, Attipra, Kadakampally and Thiruvallam were included in the Thiruvananthapuram Municipal Corporation. Consequential notifications, SRO No. 975/99, published as per GO(P) No. 225/99/LSGD dated 30-11-1999 and SRO No. 976/99, published as per GO (P) No. 226/99/LSGD dated 30-11-1999, were issued under the Municipality Act. As per SRO No. 1056/99, published as per GO (P) No. 253/99/LSGD elated 21-12-1999, the Governor notified, with effect from 1-10-2000, certain areas as "smaller urban areas", thereby adding respectively, the areas of Arthatt Grama Panchayat and Ward No. 2, 3, 9, 11 and parts of Wards No. 1 and 10 of Chovannur Grama Panchayat to the Kunnamkulam Municipality; Wards No. 11 and 12 of Meppadi Grama Panchayat between Manikuni and Puthoorvayalthodu to the Kalpetta Municipality and the areas of Naderi Desam in Arikulam Grama Panchayat, comprising of 3 wards, to the Quilandy Municipality. Consequential notifications, SRO No. 1057/99, published as per GO (P) No.

254/99/LSGD dated 21-12-1999 and SRO No. 1058/99, published as per GO (P) No. 255/99/LSGD dated 21-12-1999, were issued under the Municipality Act.

4. With effect from 1-10-2005, the "larger urban areas" of Nemoni, Thiruvallam and Attipara of the Thiruvananthapuram City Corporation and the "smaller urban areas", Andoor, Kodiyeri, Ezhuvathuruthy, Perumpazhuthur, Arthat and Naderi Desom in Thaliparamba, Thalassery, Ponnani, Neyyattinkara, Kunnamkulam and Quilandy Municipalities respectively, were notified by the Governor, as "village Panchayats" for the purpose of Part IXA of the Constitution. This is the impugned action. This has been done in exercise of powers conferred by Clause (d) of Article 243P and Clause (2) of Article 243Q of the Constitution, read with Clause (b) of Sub-section (2) of Section 4 of the Municipality Act, as per SRO No. 459/2005, published as per GO (P) No. 139/05/LSGD dated 9-5-2005. By SRO No. 460/2005, published as per GO (P) No. 140/05/LSGD, SRO No. 461/2005, published as per GO (P) No. 141/05/LSGD and SRO No. 462/2005, published as per GO(P) No. 142/05/LSGD, all dated 9-5-2005, the Government issued consequential notifications u/s (4) of the Municipality Act, after considering the objections and suggestions of the respective Municipal Corporations, excluding the areas among the aforesaid, which were parts of their territories.
Evolution of the concept of local self government institutions under the Constitution and the Statutes relevant aspects:

5. Among the Directive Principles of State Policy, Article 40 provides that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government.

6. In the national context, it can be noticed that the Balwant Rai Mehta Committee came to the conclusion that in the absence of democratic decentralization, no meaningful and sustained development could be expected. It was following the Mehta Committee report that certain States took legislative and administrative initiatives to set up Panchayat Raj Institutions.

7. The Kerala Panchayats Act, 1960, the Kerala Municipalities Act, 1960, the Kerala Municipal Corporations Act, 1961 and certain other local statutes were made to give effect to this constitutional goal, thereby amending and consolidating laws modifying the relevant pre-constitutional laws.

8. With the passage of time, it was observed that the Panchayat Raj Institutions had not been able to acquire the status and dignity of viable and responsive people''s bodies, due to a number of reasons. Accordingly, drawing inspiration from Article 40 of the Constitution and in the light of the experience of over 40 years of post-constitutional India, in view of the short comings which had been observed, it was found that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayat Raj Institutions to impart certainty,

continuity and strength to them. It was accordingly that the Constitution (73rd Amendment) Act, 1992 was passed by the Parliament and came into force on 24-4-1993.

9. In many States, local bodies had become weak and ineffective on account of various reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions and as a result, Urban Local Bodies were not able to perform effectively as vibrant democratic units of self-government. Having regard to the said inadequacies, it was considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution, particularly for, among other things, putting on a firm footing, the relationship between the State Government and the Urban Local Bodies with respect to different matters. Accordingly, Part IXA was introduced in the Constitution as per the Constitution (74th Amendment) Act, 1992 which came into force with effect from 1-6-1993.

10. Thus, while Part IX deals exclusively with the Panchayats, Part IXA deals exclusively with the Municipalities.

Panchayats

11. Clauses (g) and (c) of Article 243 define, respectively, a "village" and "intermediate level" to be so as specified by the Governor, for the purpose of Part IXA of the Constitution. Article 243B provides that Panchayats shall be constituted at the village, intermediate and district levels in accordance with the provisions of Part IX. The making of law by the State under Article 243C is only regarding the composition and not as regards the constitution of the Panchayats which is a constitutional process by the Governor issuing a public notification in exercise of authority under Article 243(g) and Article 243B then comes into operation by virtue of which the Panchayat as defined in Article 243(d) comes into being. These provisions are referred to, to notice the genesis of a Panchayat and to differentiate the Panchayat conceived of Part IX from the Panchayat that was provided for by the statutory provisions before the introduction of Part IX into the Constitution. The Panchayats have thus become constitutional institutions and their birth and existence are dependent on the mechanism provided for, in the Constitution itself. All that was left to the States were to make laws regarding the composition of the Panchayats and other matters as are provided for from and inclusive of Article 243C onwards in Part IX.

Municipalities

12. Insofar as Municipalities in Part IXA are concerned, having regard to the population of the area as defined in Article 243P(g), the density of 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, the Governor may specify by public notification "a

transitional area", "a smaller urban area" or "a larger urban area". On such notification being issued under Article 243Q(2), a Municipality", meaning an institution of self-government as defined in Article 243P(e) comes into being. By the mechanism provided under Article 243Q(1), a Nagar Panchayat gets constituted for a transitional area, a Municipal Council gets constituted for a smaller urban area and a Municipal corporation gets constituted for a larger urban area. The constitution of such Municipalities is the mandate of the Constitution and does not depend on any law made by the Legislature. As is in the case of Panchayats, the making of law by the State gets confined to subjects commencing only from the composition of Municipalities, as provided from and inclusive of Article 243R.

13. Article 243Q(1)(a) provides for the constitution of a Nagar Panchayat for a transitional area, that is, an area in transition from a rural area to an urban area. Article 243Q envisages two types of urban areas, namely, smaller urban area and larger urban area. There is no transitional area contemplated where the transition is from a smaller urban area to a larger urban area. The constitutional context emanating out of Article 243Q conceives and envisages only the transition of a rural area to an urban area, be it as a smaller urban area or as a larger urban area. It does not contemplate or provides to the contrary, for the transition of an urban area into a rural area. This is what emanates out of a plain reading of Article 243Q(1) of the Constitution. There is no provision in either among Parts IX or IXA, for the transition of an urban area to a rural area.

14. While Article 243(g) gives no constitutional yardstick for the Governor to ascertain and specify a village, Article 243Q(2) provides yardsticks to identify transitional area, smaller urban area and larger urban area. It has been held by the Apex Court in State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., that in specifying villages for the purpose of Part IX, the Governor is not bound by any particular Yardsticks. Article 243Q(2) provides the yardsticks for the three types of areas mentioned in Article 243Q(2) and the municipal area as defined in Article 243P(d) is the territorial area of a Municipality as is notified by the Governor. These provisions would show that there cannot be a transition of the constitutionally created smaller urban area, larger urban area and a transitional area, to be a village, to fall into Part IX of the Constitution and such an exercise cannot be done under Part IXA of the Constitution. This is because the Municipality, in relation to a transitional area or a smaller urban area, or a larger urban area, on its coming into existence, becomes a constitutional institution and cannot be abolished by an act of the Legislature without specific authorisation in that regard in the Constitution. All that could be clone, if a situation demands, is to exclude any particular urban area from a Municipality to be made part of another Municipality or merger of municipalities or creation of a new municipality, either by the area being excluded or by merging such excluded areas.

However, there cannot be a transition of an urban area as a rural area. I may at once notice that unlike the Municipalities Act, 1960, which had provided for the abolition of Municipalities, there is no such provision in the Municipality Act, 1994. Such provisions would be contrary to the constitutional provisions in Part IXA and hence, obviously, not made in the 1994 Act. However, Section 4(6) provides for handling the situation, owing to such abolition. The said provision is superfluous.

15. The aforesaid view that I take is also fortified by the nature of Section 4 of the Municipality Act, 1994 which provides for conversion of village Panchayat into a Town Panchayat or a Municipal Council, for conversion of a Town Panchayat into a Municipal Council and for conversion of a Municipal Council into a Municipal Corporation. This shows that it had never been in the contemplation of even the State Legislature while making the Municipality Act, 1994 that a Municipality could be converted to a village Panchayat. This was because it was wholly impermissible in the constitutional context in which Part IX and Part IXA have been separately provided, to govern two types of local self-government institutions.

16. The aforesaid situation is sought to be met by Advocate Sri V. Giri on behalf of the respondents contending that by virtue of Article 367(1) of the Constitution, the General Clauses Act, 1897 would apply and that, therefore, the power of the Governor to notify under Article 243Q(2) includes a power to de-notify, amend or alter the said notification, by virtue of Section 21 of the General Clauses Act. Reference was made to the decision of the Apex Court in Kamla Prasad Khetan Vs. The Union of India (UOI), and the decision of the Full Bench of the Gujarat High Court in Ranchhod Zina Vs. Patankar and Another, . Insofar as the decision of the Gujarat High Court is concerned, Section 10 of the Bombay Village Panchayats Act that fell for construction, did not provide for any transition from a rural area to an urban area or vice-versa, as in this case. Reference was also made to the decision of the Division Bench of this Court in M.K. Krishnan Nair v. State of Kerala 1974 Ker LT 313 : (1974 Lab IC 1170), to state that Section 21 of the General Clauses Act would apply by virtue of Article 367 of the Constitution even if the power under Article 237, which fell for consideration in the said case, is one of conditional legislation.

17. In my considered view, as rightly urged by senior Advocate Sri T. P. K. Nambiar, this is a context to the contrary, which excludes the application of Section 21 of the General Clauses Act and therefore, even in terms of Article 367, the said rule of interpretation does not apply to the situation in hand. This is so because unless the power to re-transit an area which has become smaller urban area or larger urban area, to be a rural area is not expressly provided for in the Constitution, it will result in conceding a power to re-transit an area from the operation of part IXA to part IX of the Constitution. Had it ever been the intention of the Parliament to provide for such a re-transit, a crucial process, there is no reason why such specific provision does not find a place in the Constitution itself. The very absence of such a provision leads only to the conclusion that such re-transit is impermissible. Therefore, the

application of the provisions of the Section 21 will be repugnant to the context and situation governed by Article 243Q(2). In such situations, recourse to the General Clauses Act is not available (See T.M. Kanniyan Vs. Income Tax Officer, Pondicherry and Another, .

18. In the aforesaid context, the exclusive power of the State to make laws referable to the legislative head in Entry V of the List II of the Seventh Schedule is circumscribed by the provisions of Parts IX or IXA, as the case may be. While laws are made in relation to the panchayats, they stand circumscribed by Part IX and the law making in relation to Municipalities will stand controlled part IXA.

19. Therefore, a rural area after its transition to be an urban area, thereby becoming a "smaller urban area" or a "larger urban area" in terms of Article 243Q of the Constitution of India, cannot be converted to be a rural area. Further, no such exercise can be done under the provisions of Part, IXA of the Constitution of India or otherwise. Hence, the impugned "de-linking" of certain urban areas from the municipalities, for being treated as rural areas is unconstitutional and void.

Provisions of the Municipality Act

20. Chapter II of the 1994 Act does not provide for abolition of a municipality. Sub-section (2) of Section 4 reads as follows :

"4. (2) The Government may, by notification,--

(a) exclude any municipal area from the operation of this act; or

(b) exclude from a municipal area comprised therein and defined in the notification: or

(c) divide any municipal area into two or more municipal areas; or

(d) unite two or more municipal areas; or

(e) unite the territorial area of a Panchayat geographically lying adjacent to a Municipal area, with the Municipality; or

(f) convert a Village Panchayat into a Town Panchayat or a Municipal Council; or

(g) convert a Town Panchayat into a Municipal Council; or

(h) convert a Municipal Council into a Municipal Corporation:

Provided that, before issuing such a notification the requirements under Article 243Q and Sub-section (1) shall be fulfilled and the suggestions and opinions of the Village Panchayat or Town Panchayat or Municipal council or Municipal Corporation concerned, shall be considered.

Provided further that any notification issued under this sub-section shall not be brought into force except in such a way as to coincide with the expiry of the term of

the existing Municipal Council or Village Panchayat in that territorial area."

The afore-quoted is from the Official English version of the Statute as published by the Government of Kerala. There was some controversy regarding the provision, Section 2(b) as quoted above. Hence, the Malayalam version of the same is extracted hereunder :

(Vernacular matter omitted).

The following is a proper English version of the same:

(b) to exclude from the area of a municipality, any specified area comprised therein and defined in such notification, or

21. As already noticed, the power to exclude any area from the municipal area cannot extend to re-transit the municipal area so excluded, to be a rural area. So much so, Section 4(2)(b) can be read to permit: only the exclusion from a. municipal area, of any area to continue to remain either as a smaller urban area or as a larger urban area and not to re-transit it to be a rural area. This is all the more so because, under an exercise under the Municipality Act, a rural area cannot be constituted. The rural areas come into being under Part IX of the Constitution by virtue of the exercise of notifying the villages. Such notification of villages insofar as a village area is concerned, does not survive after its transit as an urban area.

22. This takes me to the argument advanced by Adv. Sri V. Giri to the effect that by the process of exclusion of an area from a municipal area, it cannot be treated to remain in a vacuum but has to be construed as falling into being a rural area for the purpose of Part IX and thereafter, all that needs to be done is the issuance of a notification under the Panchayat Raj Act to make it a panchayat area. As already noticed, a rural area under Part IX of the Constitution ceases to be so, the moment it is notified for transition as an urban area under the provisions of Article 243Q of the Constitution. Therefore, the mere issuance of any notification u/s 4(2)(b) cannot result in the municipal area becoming a panchayat area. Section 4(2)(b), otherwise, would be unconstitutional and hence, would be liable to be read down to that extent.

23. Having regard to the arguments advanced, certain aspects need to be considered, though in the view that has been taken above, it may not be necessary to deal with the other questions raised.

24. One of the relevant factors under Article 243Q (2) is the population of the area. "Population" is defined in Article 243P(g) to mean the population as ascertained at the last preceding census of which the relevant figures have been published. This is relevant not only for the purpose of Article 243Q of the Constitution but also as to whether the bench-mark as regards population in relation to the municipal corporation area has been attained. It is the admitted situation that though the population as ascertained as per the 2001 census has been published, the same was

not relied on, but the previous data were acted upon.

25. Since the impugned notifications include the exercise u/s 4 of the Act, it was further pointed out by Senior Advocate Sri. M. K. Damodaran that the first proviso to Section 4(2) of the Act enjoins that before issuing a notification u/s 4(2), the requirements under Article 243Q ought: to be fulfilled. He, therefore, contended, in my view, rightly, that the requirements of Article 243Q have not been complied with before issuing the notifications u/s 4. So much so, the challenge to the notifications, insofar as they are issued u/s 4(2) of the Act stands.

26. The right to be heard before the impugned action was also urged. Sri Damodaran referred to the decision in Baldev Singh and Others Vs. State of Himachal Pradesh and Others, in support of the proposition that where an exercise of power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply and that the public has a right to be heard. The Apex Court in Baldev Singh''s case, which related to interpretation of the Himachal Pradesh Municipality Act, 1968, referred to the decision of the Apex Court in State of Orissa Vs. Sridhar Kumar Mallik and Others, and noticed that while the Orissa Act provided in clear terms a right of hearing, the Himachal Pradesh Act did not make any such provision and went on to hold as follows :--

"... the settled position in law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. We accept the submission on behalf of the appellants that before the notified area was constituted in terms of Section 256 of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have been taken after considering the views of the residents. Denial of such opportunity is not in consonance with the scheme of the Rule of Law governing our society. We must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way."

27. Reference was made to the decision in The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, , to point out the following : (Paras 30 and 32)

"It is a fundamental principle of fair hearing incorporated in the doctrine of natural justice and as a rule of universal obligation that all administrative acts or decisions affecting rights of individuals must comply with the principles of natural justice and the person or persons sought to be affected adversely must be afforded not only an opportunity of hearing but a fair opportunity of hearing. The State must act fairly just the same as anyone else legitimately expected to do and where the State action fails to satisfy the test it is liable to be struck down by the Courts in exercise of their

judicial review jurisdiction.

The caution of associating rules of natural justice with the flavour of flexibilities would not permit the Courts applying different standards of procedural justice in different cases depending on the whims or personal philosophy of the decision-maker.

The basic principles remain the same; they are to be moulded in their application to suit the peculiar situations of a given case, for the variety and complexity of situations defies narration. That is flexibility. Some of the relevant factors which enter the judicial process of thinking for determining the extent of moulding the nature and scope of fair hearing and may reach to the extent of right to hearing being excluded are : (i) the nature of the subject matter, and (ii) exceptional situations. Such exceptionality may be spelled out by (i) the need to take urgent action for safeguarding public health or safety or public interest, (ii) the absence of legitimate expectation, (iii) by refusal of remedies in discretion, (iv) doctrine of pleasure such as the power to dismiss an employee at pleasure, and (v) express legislation. There is also a situation which Prof. Wade and Forsyth term as "dubious doctrine" that right to a fair hearing may stand excluded where the Court forms an opinion that a hearing would make no difference. Utter caution is needed before bringing the last exception into play."

However, it was held in the said case that the requirements of principles of natural justice were satisfied.

28. Since it was urged that the exercise undertaken as per the impugned notifications is conditional legislation, reference was made to the decision of the Apex Court in Indira Sawhney Vs. Union of India and Others, which laid down to the following effect : (Para 36)

"It is now fairly well settled that legislative declarations of facts are not beyond judicial scrutiny in the constitutional context of Articles 14 and 16. In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, the question arose -- in the context of legislative declarations made for purposes of Article 31-C whether the Court was precluded from lifting the veil, examining the facts and holding such legislative declarations as invalid. The said issue was dealt with in various judgments in that case, e.g. judgments of Ray, J. (as he then was), Palekar, Khanna, Mathew, Dwivedi, JJ., and Beg, J. and Chandrachud, J. (as they then were) (see summary at pp. 304-L to O in SCC). The learned Judges held that the Courts could lift the veil and examine the position in spite of a legislative declaration. Ray, J. (as he then was) observed : (SCC Headnote)

"The Court can tear the veil to decide the real nature of the statute if the facts and circumstances warrant such a course."

* * * * * * * * *

A conclusive declaration would not be permissible so as to defeat a fundamental right."

Palekar, J. said that if the legislation was merely a pretence and the object was discrimination, the validity of the statute could be examined by the Court notwithstanding the declaration made by the legislature and the learned Judge referred to Charles Russell v. R. (1882)7 AC 829 and to Attorney General v. Queen Insurance Co. (1978)3 AC 1090. Khanna, J. held that the declaration could not preclude judicial scrutiny. Mathew, J. held that declarations were amenable to judicial scrutiny. If the law was passed only "ostensibly" but was in truth and substance, one for accomplishing an unauthorised object, the Court, it was held, would be entitled to tear the veil. Beg, J, (as he then was) held that the declaration by the legislature would not preclude a judicial examination. Dwivedi, J. said that the Courts retain the power in spite of Article 31-C to determine the correctness of the declaration. Chandrachud, J. (as he then was) held that the declaration could not be utilised as a cloak to evade the law and the declaration would not preclude the jurisdiction of the Courts to examine the facts."

29. Learned Advocate General, relying on the decision of the Apex Court in R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), , urged that even assuming that this Court comes to the conclusion that a part of the exercise is void, the same need not necessarily result in quashing the impugned notifications in their entirety. He rightly urged that in such circumstances, the doctrine of severability would come into play. However, as already found, no exercise u/s 4 of the Municipality Act could sustain, if the action purportedly taken under Article 243Q of the Constitution was impermissible. Having found that Article 243Q does not authorise the re-transit of an urban area to be a rural area, the question of sustaining the said action and striking off the remaining, on account of infraction of the statutory provisions of the Municipality Act, does not arise. The same has to go as a whole.

Constitutionality of Section 4(2)(b)

30. In W. P. (C) No. 16997/2005 by an amendment to the writ petition, the constitutional validity of Section 4(2)(b) is sought to be challenged. Though the pleading as to constitutionality is confined to uncontrolled delegation of legislative power, the arguments predominantly revolved around the extension of the said provision to find an authority to re-transit a municipal area to a rural area. It having already been found that the said provision has to be read as not permitting any such authority, the said provision in the statute stands, however, that it has to be read as interpreted above.

Standing

31. Now, the objection of the State to the writ petitions, on ground of standing. It is urged by the learned Advocate General that the petitioners have no right to institute writ petitions challenging the impugned notifications. None has a case that the writ

petitioners do not belong to the municipal areas that are being severed by reason of the impugned notifications. A reference to the decision of the Apex Court in Baldev Singh and Others Vs. State of Himachal Pradesh and Others, is sufficient to overrule the objections in this regard, raised by the State. I do so.

32. The learned Advocate General had referred to various judgments of this Court, namely, O. P. 5590/1992, W. A. 519/1993 and O. P. 9595/1989, to urge the proposition that similar exercise of linking areas to and de-linking them from municipalities has been upheld by this Court. In my view, those decisions related to situations available before the amendment of the Constitution as per the 73rd and 74th Amendments to the Constitution.

33. As already noticed, the impugned notifications result in undoing what has been done in the year 1999. The materials on record would show that the areas which are sought to be carved out to re-transit as rural areas were notified as smaller urban areas or larger urban areas in 1999, after being subjected to earlier exercises of being "linked" and "de-linked". At any rate, it has to be presumed so. It is apposite, in this context, to notice a remark of the Apex Court in State of Haryana Vs. State of Punjab and Another, .

"What really bothers us most is the functioning of the political parties, who assume power to do whatever that suits them and whatever would catch the vote bank. They forget for a moment that the Constitution conceives of a Government to be manned by the representatives of the people, who get themselves elected in an election. The decisions taken at the governmental level should not be so easily nullified by a change of Government and by some other political party assuming power, particularly when such a decision affects some other States and the interest of the nation as a whole. It cannot be disputed that so far as the policy is concerned, a political party assuming power is entitled to engraft the political philosophy behind the party, since that must be held to be the will of the people. But in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same."

I quoted the above only to notice that the repeated exercises of successive Governments could not be viewed to be in the interest of the public at large and against the very object of the 73rd and 74th Amendments to the Constitution, intended to give the Local Self Government Institutions, the status of constitutional authorities, insulating them from governmental intervention except to the extent referable to the Constitution.

34. In the result, these writ petitions are allowed declaring SRO No. 459/2005, SRO No. 460/2005, SRO No. 461/2005 and SRO No. 462/2005 as unconstitutional. The

said notifications are quashed. No costs.