

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 20TH DAY OF MARCH 2023 / 29TH PHALGUNA, 1944

WP(C) NO. 40183 OF 2022

PETITIONER:

A.P.NAZEER
S/O KASMI T.K, AGED 51 YEARS, AYNEPURA,
NEAR DRDO OFFICE, KAVARATTI,
LAKSHADWEEP-682 555.

BY ADVS.P.DEEPAK
NAZRIN BANU

RESPONDENTS:

- 1 UNION TERRITORY OF LAKSHADWEEP
REPRESENTED BY ITS ADMINISTRATOR,
OFFICE OF THE LAKSHADWEEP ADMINISTRATOR,
KAVARATTI-682 555.
- 2 THE ADMINISTRATOR
UNION TERRITORY OF LAKSHADWEEP,
OFFICE OF THE LAKSHADWEEP ADMINISTRATOR,
KAVARATTI-682 555
- 3 ELECTION COMMISSION,
LAKSHADWEEP, F-BLOCK,M.S APARTMENTS,
KASTURBA GANDHI MARG, NEW DELHI -110 001.
E-MAIL- SECFOURTS@GMAIL.COM.

BY ADV MANU S., DSG OF INDIA

SRI.V. SAJITH KUMAR, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
20.03.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

"CR"

JUDGMENT

The petitioner is a resident of Kavaratti Island in the Union Territory of Lakshadweep. He states that he is presently the elected Chairperson of Village (Dweep) Panchayat, Kavaratti, representing Ward No.8.

2. The challenge:

This writ petition is filed challenging Ext.P3 notification issued by the Administrator, Union Territory of Lakshadweep, declaring the local areas comprising of villages or a group of villages specified in the said notification to be Panchayat areas for the purpose of the Lakshadweep Panchayat Regulations, 2022 (hereinafter referred to as 'LPR, 2022' for the sake of brevity). The petitioner has also sought for issuance of directions to the 3rd respondent to keep in abeyance all proceedings for conducting elections to the Gram Panchayat constituted as per Ext.P3 notification till such time as the population for the territorial areas of the Gram Panchayat constituted in terms of the said notification are

ascertained in accordance with Section 2(t) of LPR, 2022. The petitioner asserts that Exhibits P3 and P4 notifications and also Exhibit P6 draft notification are 'premature' and ultra vires the provisions of Part IX of the Constitution of India and Sections 8 and 12 of LPR, 2022.

3. The contentions of the petitioner:

a) Following the insertion of Part IX of the Constitution of India vide the Constitution (73rd Amendment) Act, 1993, the President of India has promulgated the Lakshadweep Panchayat Regulations, 1994 (hereinafter referred to "LPR, 1994" for the sake of brevity), for the establishment of "Village (Dweep) Panchayat" and District Panchayat in the Union Territory of Lakshadweep. As per the First Schedule of LPR, 1994, a "Village (Dweep) Panchayat" was constituted for each of the ten islands specified in the First Schedule of the Regulations. The First Schedule reads as under:

FIRST SCHEDULE

[See sections 2(i)]

NAMES OF ISLANDS FOR WHICH A VILLAGE (DWEEP) PANCHAYAT TO BE

CONSTITUTED

- | | |
|--------------|------------|
| 1. Amini | 2. Androth |
| 3. Kavaratti | 4. Minicoy |
| 5. Agatti | 6. Kadmat |
| 7. Kalpani | 8. Chetiat |
| 9. Kiltan | 10. Bitra |

b) The petitioner asserts that by virtue of Section 8(1) of LPR, 1994, a "Village (Dweep) Panchayat" for each of the ten islands was coextensive with the territorial area of the respective islands.

c) Chapter III of LPR, 1994 deals with Panchayats and their constitutions. As per the said provision, the Administrator was required to constitute a "Village (Dweep) Panchayat" on each of the islands specified in the First Schedule and a District Panchayat for the Union Territory. The Panchayat was to consist of such number of seats to be filled by persons chosen by direct election from territorial constituencies in the Panchayat area as may be notified. The Proviso to section 8(2) provided for the

distribution of the number of seats, viz a viz, the population of the "Village (Dweep) Panchayat." The more populous islands like Androth, Kavaratti, and Minicoy were allotted more seats as against the less populous islands taking into account the population as per the 2011 census.

d) The petitioner states that in the exercise of the powers conferred by Article 240 of the Constitution of India, the President of India promulgated LPR, 2022, which came into effect on 26.09.2022. Radical changes were brought about by the LPR, 2022, and the island-wise constitution of Village (Dweep) Panchayat, as stipulated vide Section 8(1) of the LPR, 1994, was done away with, and powers were conferred on the Administrator to declare any local area to be a Panchayat area. As per LPR, 2022, the Panchayat area was defined as the territorial area of a Gram Panchayat declared by the Administrator under Sub Section (1) of Section 3. The Administrator was conferred under Section 3 of LPR, 2022 to conduct an enquiry and thereafter issue a notification declaring a local area comprising a Village or a group of Villages or any part or parts thereof or a combination of any two or more of them to be a Panchayat area for the purposes of LPR, 2022. The Administrator was also conferred

with the power to constitute a Gram Sabha by name for each Panchayat area. On the strength of the powers so conferred, the Administrator issued Ext.P3 notification on 16.11.2022, declaring the local areas specified in the said notification to be 'Panchayat areas' for the purpose of LPR, 2022. In Ext.P3 notification, as many as 18 separate Panchayat areas have been brought into existence in the place of the erstwhile 10 Village (Dweep) Panchayats.

e) As per Ext.P3 notification, only two Panchayat areas, namely, Kalpeni and Kiltan, were co-extensive with the territorial area of the said islands. The six islands of Agatti, Amini, Androth, Kadamath, Kavaratti, and Minicoy, which among themselves constituted six separate "Village (Dweep) Panchayat" under LPR, 1994, have been divided and reconstituted as 15 separate Panchayat areas. Agatti, Androth, Kavaratti, and Minicoy have been divided into 3 separate Panchayat areas each, and the islands of Chetlat and Bitra have been joined together so as to constitute one Panchayat area.

f) After declaring the Panchayat areas as per Ext.P3 notification, the Administrator has notified the names of the 18 Gram Sabhas as

required under sub-section (2) of Section 3 by the very same order.

g) Thereafter, Ext.P4 notification has been issued declaring the number of seats to be allotted under Sub Section (2) of Section 12 to each of the 18 Gram Panchayats and also the number of seats to be reserved for Women and Scheduled Tribes under Section 12(6) to (8) of LPR, 2022.

h) Under Section 12(3) of LPR, 2022, the ratio between the "Population of the Territorial Areas of a Gram Panchayat" and the number of seats in that Panchayat to be filled by elections shall so far be as practicable be the same throughout the Union Territory. Duty is also cast upon the Administrator under Sub Section (4) of Section 12 to notify the territorial boundary of each Ward on the basis of the recommendations of the Election Commission.

i) The petitioner states that on the strength of the powers conferred under Section 130 of the LPR, 2022, the Administrator has framed the Lakshadweep Panchayats (Election Procedure) Rules, 2022 ("LEP Rules," 2022 for brevity). As per the LEP Rules, 2022, the Election

Commission, subject to the provisions of Sections 12 and 57 of the LPR, 2022, is to distribute the seats assigned to each Gram Panchayat and District Panchayat to Single Member Territorial Wards and delimit them on the basis of the latest census figures. In the exercise of the power conferred under Section 12(5) of LPR, 2022 and Rule 3(2) of the LEP Rules 2022, the Election Commission has issued Ext.P6 draft notification publishing the proposals for the delimitation of Wards of all the 18 Gram Panchayats constituted as per Ext.P3 notification and has invited objections.

j) It is contended that a Gram Panchayat can be constituted under the provisions of Section 12 of LPR, 2022, and the number of seats for such Gram Panchayats determined by the Administrator only with reference to the "Population of the Territorial area of a Gram Panchayat" as ascertained at the last preceding census of which relevant figures have been published and not otherwise. It is further contended that under Rule 3 of the LEP Rules, 2022, the delimitation of Wards has to be on the basis of the latest census figures available for the "Population of the Territorial area of a Gram Panchayat." It is stated that the population of the Union

Territory of Lakshadweep, as ascertained at the last preceding census of which relevant figures have been published, only furnishes an island-wise division of the population of the Union Territory and to substantiate the same, reliance is placed by the petitioner on Ext.P7 data obtained from the Census India 2011. It is stated that while issuing Ext.P4 notification, the respondents, instead of using the population data of the Panchayat area of the newly constituted Gram Panchayats, as ascertained at the last preceding census, proceeded to rely on the Island wise census, which was undertaken at the time of the Census India, 2011. According to the petitioner, Exts. P3, P4, and P6 are premature, and ultra vires the provisions of Part IX of the Constitution of India and Sections 8 and 12 of LPR, 2022.

k) The petitioner asserts that by carrying out an exercise as aforesaid, the respondents have not granted reservation for women as provided under sub-section 8 of Section 12 of LPR, 2022. It is stated that as per the said provision, the number of seats set apart for women shall not be less than one-half of the total number of seats to be filled by direct elections in every Gram Panchayat. It is contended that the number of

seats reserved for women has been determined on the basis of the constituencies/ wards/ seats excluding that of the Sarpanch. It is on the above assertions that the instant writ petition is filed seeking the following reliefs:

- (i) Issue a writ in the nature of certiorari or such other writ, or the order or direction calling for the records leading to Ext.P4 and P6 and quash the same.
- (ii) Issue a writ in the nature of mandamus or such other writ, order or direction commanding the 3rd respondent to keep in abeyance all proceedings for conducting elections to the Gram Panchayats constituted vides Exhibit P3 notification till such time as the populations of the territorial area of the Gram Panchayats constituted vides the said notification are ascertained in terms of Section 2(t) of the Lakshadweep Panchayat Regulation, 2022.
- iii) Issue a writ in the nature of mandamus or such other writ, order, or direction restraining the 3rd respondent from proceeding with Exhibit P6 notification till such time as the populations of the territorial area of the Gram Panchayats constituted vides Exhibit P3 notification are ascertained in terms of Section 2(t) of the Lakshadweep Panchayat Regulation, 2022.
- iv) Declare that Exhibit P3 notification is unenforceable in the absence of a prior notification of the 2nd respondent Administrator under Clause (zj) of the Lakshadweep Panchayat Regulation, 2002 read with Article 243(g) of the Constitution of India notifying the villages comprising

the Panchayat areas declared in the said notification."

4. The contentions of respondents 1 and 2:

A counter affidavit has been filed by respondents 1 and 2. It is contended therein that there being no assertion in the writ petition that either the legal rights or constitutional rights of the petitioner have been violated, he has no locus standi to maintain the writ petition. The Administration has given due consideration to the Census data along with other relevant particulars in the division of Panchayats and to carry out the delimitation exercise in pursuance thereof. It is stated that the division of wards, as per LPR, 1994, was carried out based on the Census data available with respect to each island. No Census data is being maintained with respect to each Ward at Lakshadweep. In view of the population on the island, there is no requirement to keep Ward-based data. The Census data, as reflected in Ext.P7, gives details of households on each island, and therefore, there is no practical difficulty in the proportional distribution of Wards with the help of the Electoral list. The Electoral list is regularly revised by the Election Commission in a scientific manner. The Administration has given due consideration to the available data, electoral

roll, geographical compatibility, physical features, existing boundaries of administrative units, facilities of communication, and public convenience in terms of the Rules and Regulations in the declaration of the Panchayat area and wards. Adequate provision has been made for reservations for women in the seats of Gram Panchayats as per sub-section 7 of Section 12 of LPR, 2022, and in seats of the Sarpanch in terms of sub-section 10(ii) of Section 12 of LPR, 2022. As 9 out of 18 Sarpanches are reserved for women, the provision for reservation is complied with in its letter and spirit. Ext.R1(a) Corrigendum has also been issued to ensure that reservation for women is provided in terms of the LPR, 2022. As per Article 243L of the Constitution of India, the Union Territory is entitled to exceptions and modifications from other provisions of the Constitution while implementing the constitutional provisions regarding Panchayats. In view of the fact that the LPR, 2022, stands notified by the President of India, any exception or modification to the other provisions is within the scope of Article 243L of the Constitution. The contentions raised by the petitioner in the writ petition cannot be sustained as there is sufficient scope for rationalization in the constitutional provisions, and Article 243C

only prescribes that as far as practicable, the ratio between population and seats in panchayats be the same throughout the State. The population of each Panchayat is available as per the 2011 Census since the census was carried out with respect to each panchayat/island. It is not at all practicable to have Census data with respect to a newly created Gram Panchayat or District Panchayat before its creation as the population data is codified with respect to the existing Panchayat. The Administration has taken effective steps to keep the ratio between the population of the territorial area of Gram Panchayat and the number of seats, as far as practicable, the same throughout the Union Territory. The Administrator has rightly exercised his powers, and by the said exercise, the residents would get better representation in the newly created Panchayats. As Rule 3 of LEP Rules, 2022, is subject to Section 12 of LPR, 2022, there cannot be any insistence on census figures.

5. The contentions of the 3rd respondent:

In the counter affidavit filed by the 3rd respondent, it is stated that in view of the fact that the tenure of the Panchayat Committee has expired, it is essential in the public interest that elections are conducted at the

earliest. The petitioner has not raised any genuine grievance, and his intention is only to disrupt the election process. In view of the limited population of the islands in the Union Territory of Lakshadweep, there is no requirement to keep Ward-wise data. The Census data, as reflected in Ext.P7, gives details of households in each island, and therefore, there is no practical difficulty from the proportionate distribution of population in the Wards with the help of Electoral lists maintained by the Election Commission of India. The object/purpose is to ensure the delimitation of Wards in such a manner to ensure that the population within the limits of the Panchayat is distributed in equal proportion to the extent possible in the available wards. It is not essential that the Census data regarding the population of each ward/constituency be available, and the same alone can be relied on. Such ward data is not maintained in the Union Territory as the Census data was not conducted Ward-wise, and the administration gave consideration to the available data, electoral roll, geographical compatibility, physical features, existing boundaries of administrative units, facilities of communication, and public convenience. There are other criteria than population for carrying out delimitation. Under Article 243L of

the Constitution of India, the Union Territory is entitled to make exceptions and modifications to other provisions of the Constitution while implementing the constitutional provisions regarding Panchayats. Article 243C only prescribes that, as far as practicable, the ratio between population and seats in panchayats be the same throughout the State. However, the said provision cannot be interpreted to prevent the delimitation exercise as such and thereby thwart the election process. If the contention of the petitioner is accepted, it may lead to a situation where the formation of new local bodies or delimitation of wards will become possible only after a fresh census and after availing the population data for the proposed wards. This would lead to an anomalous situation and may defeat the very purpose of the existence of Local Self Government Institutions and may also lead to a situation wherein elections cannot be conducted at regular intervals.

6. After the filing of the counter affidavit, the petitioner has filed an application for amendment seeking to amend the pleadings, grounds, and reliefs. The petitioner has sought for incorporating a prayer to declare that Ext.P3 notification is unenforceable in the absence of prior

notification of the Administrator under clause (zj) of LPR, 2022, r/w Article 243(g) of the Constitution of India notifies the villages comprising the Panchayat areas declared in the said notification. This Court, by order dated 01.02.2023, allowed the application. The respondents have filed additional counter affidavits reiterating their stand.

7. Contentions raised in the additional counter affidavit filed by respondents 1 and 2:

It is stated therein that in view of the population of the island, there is no requirement to keep ward-wise data and the omission thereof will not create any difficulty for delimitation purpose. The census data as reflected in Ext.P7 gives details of households in each island and thereby there is no practical difficulty for the proportional distribution of wards with the help of the Electoral list. There is no legal requirement to the effect that census data should be available with respect to each ward/constituency. As 9 out of 18 Sarpanches are reserved for women, there is no merit in the contention that the reservation given to women would be affected. Under Article 243L, the Union Territory is entitled to exceptions and in view of the fact that the petitioner has not raised any

challenge to the LPR,2022, none of the contentions raised can be sustained. It is stated that it is not practicable to have census data with respect to a newly created Gram Panchayat or a District Panchayat before its creation as the population data is codified with respect to existing Panchayats alone. The administration has taken effective steps to keep the ratio between the population of the territorial area of Gram Panchayat and the number of seats to be the same as far as practicable throughout the Union Territory. There is no requirement for census data either in Section 3 or in Section 12 and even if it is taken that reference to census figures has been mentioned in Section 3, the said provision would be subject to Section 12 of the Regulation.

8. Contentions raised in the additional counter affidavit filed on behalf of the 3rd respondent:

The provisions of Section 3(1) of the LPR, 2022, empower the Administrator of the Union Territory to declare a village or even parts of different villages or a group of villages as a Panchayat. In that view of the matter, the territorial integrity of a village is not a relevant or mandatory aspect to be considered while determining a Panchayat area in the Union

Territory of Lakshadweep by virtue of Section 3(1) of LPR, 2022. In total contrast with the situation prevailing while LPR, 1994 was in force, as per LPR 2022, total flexibility in the matter of determining a Panchayat area is given to the Administrator in the matter of determining Panchayat area and even parts of various villages can be included in a Panchayat area. Even if there are minor omissions in the proceedings so far taken by the Administration or the Election Commission, the same is liable to be ignored by adopting *de minimis non curat lex*. The Union Territory Election Commission and the Administration have proceeded with the matter taking into account the population of various islands as per the last census, it was found that there is serious disparity in the distribution of seats in various islands and the ratio between the population and the number of seats was against the spirit of proportional representation which is sacrosanct. The above disparity was sought to be remedied by the formation of new Panchayat areas and Gram Sabhas as well as by delimitation ensuring proportionate representation throughout the Union Territory. The above exercise was carried out entirely based on the population data available as per the last census. In order to clarify the

entire issue, separate tables showing the island-wise population-seats ratio have been provided as per the previous delimitation and the present delimitation. It is stated that the comparison of the tables would show that the present exercise carried out by the Administration is well justified and it has ensured compliance with Article 243C as well as Section 12(3) of the new Regulation. It is stated that the action taken is a remedial action taken in the public interest by imbibing the foundational principle of constitutional representation. Updated data from the electoral roll has also been relied on as an additional authentic source and the distribution of voters equally to the extent possible has been ensured in the delimitation.

9. Submissions advanced by the learned counsel appearing for the petitioner:

Sri. P. Deepak, the learned counsel, would painstakingly take this Court through the constitutional provisions, the LPR, 1994, and the changes brought about in LPR, 2022. Reiterating the contentions in the writ petition, the learned counsel submitted that the action taken by the Administration in dividing the ten existing Village (Dweep) Panchayats constituted for the ten islands specified in the First Schedule of LPR, 1994

into 18 new Gram Panchayats for the purpose of LPR, 2022, without notifying the village/villages under Section 2(zj) of LPR, 2022, is an exercise, which cannot be sustained under law. Much reliance is placed on the judgment rendered by a learned Single Judge of this Court in **Saifudeen v. State of Kerala**¹, and it is argued that a declaration by the Administrator under Article 243(g) of the Constitution of India is mandatory for the formation of a village for the purpose of Part IX of the Constitution and without such notification, no village comes into existence. The learned counsel would refer to Chapter III of LPR, 2022 and specifically to Section 12, and it is argued that the Regulation outlines the process for the election of a Gram Panchayat and its Chairperson, known as the Sarpanch. The Gram Panchayat is elected by the Gram Sabha, and the number of seats in the Panchayat is determined by the Administrator by issuing a notification. However, the ratio between the population of the territorial area of a Gram Panchayat and the number of seats to be filled by elections should be the same throughout the Union Territory. The provisions also mandate that the seats that are reserved for Scheduled Tribes in every Gram Panchayat and the number of seats

¹ [2015 (4) KLT 50]

reserved shall bear the same proportion to the total number of seats to be filled by direct elections as the population of the Scheduled Tribes in that Gram Panchayat area bears to the total population of that area. Additionally, not less than one-half of the total number of seats reserved for Scheduled Tribes shall be reserved for women belonging to the Scheduled Tribes. The number of seats to be reserved for Scheduled Tribes and Women shall be determined by the Administrator. Referring to Section 2(v), which defines population, it is submitted that population has been defined to mean the population as ascertained at the last preceding census of which relevant figures have been published. It is submitted that there being no population data with regard to village or group of villages, it is next to impossible to determine the population of the Gram Panchayat and thereby allot wards. To counter the contentions of the respondents that the petitioner has no locus standi to approach this Court and raise a challenge, the learned counsel has relied on the law laid down by the Apex Court in **Fertilizer Corporation, Kamgar Union v. Union of India**² and that of a Division Bench of this Court in **A. Krishnan v.**

²

[[1981] 1 SCC 658]

Kerala State Co-operative Marketing Federation Limited³.

According to the learned counsel, when a public injury has been committed by the State or a public authority by an act or omission which is contrary to the constitution or a law, any member of the public can maintain an action for redressing that public injury, provided he acts bona fide and not for personal or private gain, or out of political motivation or other oblique considerations. According to the learned counsel, the petitioner is a person who is entitled to vote at the election and he is also the elected Vice President of the Village (Dweep) Panchayat, Kavaratti, and under no circumstances can the petitioner be regarded as a meddlesome interloper or a busybody.

10. Submission of the learned DSGI:

Sri. S. Manu, the learned DSGI, submitted that under LPR, 1994, each revenue village was a separate Panchayat. However, as per LPR, 2022, a drastic change has been brought about. It is contended that the respondents noticed that there had occurred serious disparity in the allocation of seats, and it was in the said circumstances that LPR 2022 has

³

[2022 (5) KLT 331]

been brought in place. It is submitted that under Article 243L, the Union Territory is entitled to make exceptions and modifications from other provisions of the Constitution while implementing the constitutional provisions regarding Panchayats. It is pointed out that LPR, 2022, was notified by the President of India, and any exception or modification to the above provisions is within the scope of Article 243L of the Constitution. It is submitted that the Administration is bound to consider geographical compatibility, physical features, existing boundaries of existing units, facilities of communication, and public convenience. It is submitted that population alone is not the criteria for delimitation. Reliance is placed on **Pratap Singh V. Shri Krishna Gupta and Ors.**⁴ and it is argued that the Hon'ble Supreme Court has deprecated the tendency towards technicalities and it was observed that breach of rules can be overlooked provided, there is substantial compliance and no prejudice is caused. Reliance is also placed on **Lakshmi Charan Sen and Ors. v. A K M Hassan Uzaman and Ors**⁵ and it is argued that orders will have the effect of postponing elections shall not be passed.

⁴ [AIR 1956 SC 140]

⁵ [(1985) 4 SCC 689]

The elections should be permitted to conclude as early as possible and all controversial matters and all disputes arising out of elections are to be postponed. Reliance is placed by the learned DSGI on **Anugrah Narain Singh and Another v. State of UP and Ors.**⁶ and it is argued that when required data for compliance with the constitutional mandates are not available from census data during delimitation, authorities can place reliance on other authentic data. It is submitted that the contention of the petitioner that delimitation can be resorted only if census data is available on a village-level basis is preposterous and is liable to be rejected. It is urged that the number of voters as per the voters' list is essentially proportionate to the population in the area of the respective wards. Therefore, the insistence of the petitioner on relying on ward-wise population data as per census which is not available is only a hypertechnical argument, which is liable to be ignored. Placing reliance on the voters list to carry out the election is a legitimate exercise as the same would be proportionate to the population.

⁶ [(1996) 6 SCC 303]

11. Submissions of the retainer counsel for the Administration:

Sri. V. Sajith Kumar has reiterated the contentions advanced by the learned DSGI. In addition, it is submitted that the petitioner cannot be said to be a person aggrieved to maintain this writ petition as his legal rights or his constitutional rights have not been infringed. He is not prevented from contesting the election. Reliance is placed on **Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed**⁷ to substantiate his contention. It is submitted that Article 243C only prescribes that as far as practicable, the ratio between the population and seats is made the same throughout the state. It is submitted that the constitutional provision provides sufficient space for the authority to carry out the delimitation.

12. I have heard Sri. P. Deepak, the learned counsel appearing for the petitioner, Sri. S. Manu, the DSGI, who appeared for respondents 2 and 3, and Sri. V. Sajith Kumar, the learned counsel appearing for respondents 1 and 2.

⁷ [(1976)1 SCC 671]

13. **Issues:**

- a) Whether the petitioner has the locus standi to maintain this writ petition?
- b) Whether, in the absence of prior notification by the Administrator under clause (zj) of the LPR, 2022 r/w. Article 243(g) of the Constitution of India notifying the villages comprising the Panchayat areas declared in the said notification, Ext.P3 notification issued under Section 3(1) declaring the local area comprising of the village or a group of villages or any part or parts thereof or a combination of any two or more of them to be a Panchayat area can be said to be enforceable?
- c) Whether Ext.P4 notification issued by the Administrator allocating seats under Section 12 of LPR, 2022 to the Gram Panchayats constituted for each such Panchayat areas under Ext.P3 notification issued under Section 3(1) legally sustainable in the absence of any data with respect to the population of the territorial area of the Gram Panchayats as ascertained at

the last preceding census of which relevant figures have been published?

- d) If (b) and (c) are decided in favor of the petitioner, whether Exhibit P6 notification publishing the proposal for the delimitation of wards of the 18 Gram Panchayths is legal?
- e) Whether, in the absence of a notification issued by the President under the proviso to Article 243L of the Constitution, any exceptions and modifications can be made?

14. **Analysis:**

Insofar as the locus standi of the petitioner to maintain this writ petition is concerned, the petitioner has asserted in the writ petition that he is a resident of Kavaratti Island in the Union Territory of Lakshadweep and the elected Vice President of the Village (Dweep) Panchayat, Kavaratti representing Ward. He asserts that he has the locus standi to impugn the trifurcation of Kavaratti Village (Dweep) Panchayat otherwise than in accordance with Part IX of the Constitution of India and the LPR, 2022. Electoral right has been defined to mean under the LEP, 2022 the right of a person to stand or not to stand or to withdraw or not to withdraw from

being a candidate or to vote or to refrain from voting at an election to a Panchayat. I find from LEP 2022 that Rule 113 confers locus standi to any individual to call in question any election whether he has voted at such election or not. In **Krishnan v. Kerala State Cooperative Marketing Federation Ltd.**⁸, a Division Bench of this Court, after analyzing the law laid down by the Apex Court in **Bar Council of Maharashtra v. M.V.Dabholkar and Ors.**⁹, **Jasbhai Motibhai Desai** (supra) and **Ghulam Qadir v. Special Tribunal and Ors.**¹⁰ had held that the legal principle that can be gleaned from the principles laid down by the Apex Court as well as this Court is that save for a meddlesome interloper or a busybody, a person whose interests/rights are in some sense infringed through the action of another can be seen as an aggrieved person for the purpose of initiating legal action. It was observed as follows in paragraphs 7 and 8 of the judgment.

7. On a consideration of the rival submissions, we find force in the contention of the learned Senior Counsel for the appellant that this was not a case where the appellant could have been non - suited on the ground of absence of locus standi. The decisions relied upon by the learned counsel on either side clearly lay down the tests for

⁸ [2022 (5) KLT 331]

⁹ [(1975) 2 SCC 702]

¹⁰ [(2002) 1 SCC 33]

determining the circumstances under which a person will fail to qualify as an 'aggrieved person' for the purposes of litigation. In *Bar Council of Maharashtra v. M. V. Dabholkar and Others*, 1975 (2) SCC 702, a seven Judge Bench of the Supreme Court considered the question as to who would qualify as a "person aggrieved" in the context of the provisions of S.38 of the Advocates Act, 1961. The question for consideration was whether the Bar Council of Maharashtra would fall within the ambit of the phrase "aggrieved person" for the purposes of maintaining an appeal against an order passed by the Disciplinary Committee of the Bar Council of India. In a concurring judgment rendered by Justice V. R. Krishna Iyer in the said case, it was observed as follows:

"47. The hackneyed phrase, 'person aggrieved', is not merely of frequent occurrence in Statutes and in the writ jurisdiction but has come up for judicial consideration in Anglo American and Indian Courts in a variety of situations and legislative settings. Notwithstanding the slippery semantics of such legalese, the Indian legislative draftsmen have continued to use them, out of linguistic allegiance to the British art and Indian judges have frequently sought interpretative light from English authorities of ancient vintage. These 'borrowed' drafting and interpretative exercises are sometimes inept when time and country change and the context and text of the Statute vary. I stress this aspect since much of the time of the Courts in India is consumed by massive, and sometimes mechanical, reliance on exotic constructions and default in evolving legislative simplicity and avoiding interpretative complexity. At a time when our Courts are on trial for delayed disposals and mystifying processes, this desideratum becomes all the more urgent. Otherwise, why should decoding a single expression - 'person aggrieved' - take two days of learned length?"

In a later decision - *Jasbhai Motibhai Desai (supra)*, a Bench of four Judges surveyed the English, American and Indian judgments on the issue of "aggrieved person", and set out the tests to be adopted for the purposes of determining whether a person had the locus standi to apply for a writ of

certiorari. The relevant paragraphs of the said judgment read as follows:

“36. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

37. The distinction between the first and second categories of applicants, though real, is not always well - demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer - circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outerzone may not be “persons aggrieved”.

38. To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and

ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed ? Has he suffered a legal wrong or injury, in the sense that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of ? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something" ? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public ? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority ? Is the Statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community ? or is it a Statute dealing with private rights of particular individuals ?"

The position has been reiterated more recently in Ghulam Qadir (supra), where, at paragraph 36, it was observed as follows:

"36. There is no dispute regarding the legal proposition that the rights under Art.226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach

the Court has undergone a sea - change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper - technical grounds. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non - suited on the ground of his not having the locus standi."

8. The legal principle that can be gleaned from the above decisions is that save for a meddlesome interloper or a busybody, a person whose interests / rights are in some sense infringed through an action of an other, can be seen as an aggrieved person for the purposes of initiating legal action. This is more so when the alleged offending action is at the instance of the State that is expected to act fairly in matters of administration. On the facts of the case before us, we cannot, but, see the appellant, who was a member of the Primary Society that was affiliated to the MARKETFED, as an aggrieved person, aggrieved by the appointment of an unqualified person as Managing Director of the Apex Society. A cultivator of agricultural produce, who depends on the administration of the Apex Society, for the purposes of marketing his produce through a marketing hierarchy established with the Apex Society at the helm, can hardly be seen as a person having no interest whatsoever in the administration of the Apex Society. We therefore cannot accept the finding of the learned Single Judge that the appellant / writ petitioner did not have the locus standi to challenge the appointment of the 4th respondent as Managing Director of MARKETFED.

15. Having considered the principles laid above, I am of the considered opinion that the petitioner cannot be termed as a busybody or a meddlesome interloper, and he definitely falls into the category of a person aggrieved to maintain this writ petition.

16. As issues (b), (c), and (d) are interconnected, I shall address those issues together.

17. It is pursuant to the insertion of Part IX of the Constitution of India vide the Constitution (73rd Amendment) Act, 1993, that the President of India, in the exercise of the power conferred under Article 240 of the Constitution, had promulgated the LPR, 1994.

18. Article 243, as far as it is relevant to this matter, reads thus:

243. Definitions.—In this Part, unless the context otherwise requires,—

(a) "district" means a district in a State;

(b) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;

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(d) "Panchayat" means an institution (by whatever name called) of

self-government constituted under Article 243-B, for the rural areas;

- (e) "Panchayat area" means the territorial area of a Panchayat;
- (f) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published;
- (g) "village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

19. It would be relevant to note at this juncture that "population" has been defined under Article 243 as "the population as ascertained at the last preceding census of which relevant figures have been published." The same meaning has been ascribed to the term 'population' in Article 55, which provides for the manner in which the President is to be elected; in Article 81, which provides for the composition of the house of the people; and in Article 170, which provides for the composition of legislative Assemblies.

20. The significance of the usage of the term "population" would be evident in a careful reading of Article 243C of the Constitution, which deals with the composition of Panchayats. The said provision reads thus:

243-C. Composition of Panchayats.—(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area. (emphasis supplied)

21. Article 243C of the Indian Constitution, which provides for the composition of a Panchayat, states that all seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area. For the above purpose, each Panchayat area is required to be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area. It also states that the ratio between the population of the

territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State. Much probe is not required to understand the importance of ascertainment of seats in a Panchayat on the basis of the population count of that Panchayat as the ratio between the population and the number of seats in a Panchayat has to be the same throughout the State and in each constituency within a Panchayat area. In other words, the number of seats allocated to a Panchayat should be proportional to its population size. This ensures that the representation in the Panchayat is fair and democratic, and each person's vote has equal weight, regardless of where they live in the Panchayat area. The intention is to ensure that accurate population data is available to determine the number of seats allocated to each Panchayat and constituency, ensuring that the representation in the Panchayat reflects the demographic composition of the area. In other words, without an idea as to the population of the villages comprising the Panchayat area, it would not be possible to carry out an exercise in terms of Article 243C.

22. The next provision which may be of relevance to the issues

raised herein is Article 243D which speaks about the reservation of seats.

Article 243D reads thus:

243-D. Reservation of seats.—(1) Seats shall be reserved for—

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the

Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of office of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

23. Article 243D of the Indian Constitution mandates that the reservation of seats for Scheduled Castes and Scheduled Tribes in Panchayats and the number of reserved seats should be proportional to their population in the respective Panchayat area. Similarly, not less than one-third of the total number of seats reserved for Scheduled Castes and Scheduled Tribes should be reserved for women belonging to those communities. It further says that not less than one-third of the total seats in Panchayats should be reserved for women, including those reserved for Scheduled Castes and Scheduled Tribes. The provision further stipulates that the offices of the Chairpersons in Panchayats at various levels shall also be reserved for Scheduled Castes and Scheduled Tribes and women, as provided by the State legislature. The number of reserved seats and offices for Scheduled Castes and Scheduled Tribes and women should be proportionate to their population in the respective state, and one-third of the total offices reserved for Chairpersons should be reserved for women. Overall, the significance of population in this constitutional provision lies in ensuring equitable representation and participation of marginalized communities in local governance. By reserving seats and offices in

Panchayats for Scheduled Castes, Scheduled Tribes, and women, the Constitution aims to address historical injustices and ensure that their voices are heard in the decision-making process at the grassroots level. The provision of proportionality to their population also ensures that these communities have a fair share of representation in panchayats and that their rights and interests are protected. As held in the case of Article 243C, without an idea of the total population of the Panchayat area and the population of Scheduled Tribes in that Panchayat area, an exercise in terms of Article 243D cannot be carried out.

24. It was in accordance with the above Constitutional Provisions that LPR, 1994, was promulgated by the President in the year 1994. I deem it appropriate to extract clauses (i), (m), (n) & (o) of Section 2 of LPR, 1994.

- (i) "Island" means one of the islands mentioned in the First Schedule;
- (m) "Panchayat" means a Village (Dweep) Panchayat or District Panchayat, as the case may be, established under the provisions of this Regulation;
- (n) "Panchayat area" means the territorial area of a panchayat;
- (o) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.'

25. As per the schedule which has been extracted in paragraph 2(a) of this Judgment, and in terms of Section 8(1), a Village (Dweep) Panchayat was constituted for each of the ten islands specified in the First Schedule and reading Section 2(n) and (m) together, it can be seen that the territorial area of a Panchayat of the Village (Dweep) Panchayats so constituted was co-extensive with the territorial area of the respective islands. As per Section (2), the allocation of seats in a Panchayat was made by taking into account the population of the respective islands. For instance, the most populous island of Kavaratti had 12 seats, while the least populous island of Bitra was allotted 3 seats.

26. In the given context, the analysis of the provisions of LPR 2022 is necessary, particularly those related to Section 2(l) defining general election, Section 2(o) defining "Gram Panchyath," Section 2(t) defining "Panchayat area," Section 2(v) defining the population, Section 2(zj) defining "village," and Section 2(zk) defining "Ward." The relevant provisions are extracted below for easy reference.

S.2(l) "general election" means the election held under this Regulation for

the constitution or the reconstitution of a Panchayat after the expiry of its terms or otherwise;

S.2(o) "Gram Panchayat" means a Gram Panchayat constituted under this regulation;

2(t) "Panchayat area"; means the territorial area of a Gram Panchayat declared by the administrator under sub sub-section (1) of section 3

2(v) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

2(zj) "village" means a village notified by the Administrator, to be a village for the purpose of this Regulation and includes a group of villages;

2(zk) "Ward" means a body consisting of persons registered in the electoral rolls relating to ward of a district.

27. A sea change has been brought about while defining "Panchayat area" in the LPR, 2022. Under LPR, 1994, "Panchayat area" was defined to mean the territorial area of a panchayat which, if read along with Section 8(1) was co-extensive with the territorial area of the respective island which is included in the First Schedule. However, as per LPR, 2022, "Panchayat area" was defined to mean the 'territorial area of a Gram Panchayat' declared by the Administrator under sub-section (1) of Section 3.

28. Section 3 outlines the process for declaring a local area as a Panchayat area and constituting a Gram Sabha for each Panchayat area. The Administrator is required to make an inquiry and declare a local area, comprising of a village or a group of villages or any part or parts thereof or a combination of any two or more of them to be a Panchayat area for the purpose of LPR, 2022 and has also to specify the headquarters. The Administrator is thereafter required to issue a notification constituting a Gram Sabha by a name for each Panchayat area.

29. Section 3, insofar as it is relevant, reads thus:

3. (1) The Administrator shall, after making such inquiry as may be necessary, by notification, declare a local area, comprising of a village or a group of villages or any part or parts thereof or a combination of any two or more of them to be a Panchayat area, for the purposes of this Regulation and shall also specify its headquarters.

(2) The Administrator shall, by notification, constitute a Gram Sabha by a name for each Panchayat area.

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30. It is in the exercise of the powers conferred on the Administrator that Exhibit P3 notification was issued declaring the local areas specified in the said notification to be 'Panchayat area" for the

purpose of LPR, 2022. A perusal of Exhibit P3 notification would reveal that six islands coming under the schedule, namely Agatti, Amini, Androth, Kadmath, Kavaratti, and Minicoy, has been divided into 15 separate Panchayat areas. More specifically, Agatti, Androth, Kavaratti, and Minicoy have been divided into three separate Panchayat areas each, and the island of Chetlat and Bitra has been unified to comprise one Panchayat area. Immediately thereafter, as required to be done under Section 3(2), the Administrator notified the names of the 18 Gram Sabhas.

31. In this context, the contention of the petitioner is that Exhibit P3 notification in the manner issued is unenforceable for the reason that the population of the territorial area of the Gram Panchayats constituted vides the said notification has not been ascertained in terms of Section 2(t) of the LPR, 2022.

32. To get more clarity on the issue, the first page of Exhibit P3 notification as per which the Administrator declared the local area comprising of a Village or a Group of Villages or any part or parts thereof or a combination of any two or more of them to be a Panchayat area for the purpose of the said LPR, 2022 is extracted below for easy reference.



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पंचायत विभाग / DEPARTMENT OF PANCHAYATS
कवरत्ति / KAVARATTI - 682555

No. 9/4/2022-DOP(PE)(1)

Date : 16.11.2022

NOTIFICATION

The Administrator, U.T. of Lakshadweep, in exercise of powers conferred upon him under **sub-section (1) of section 3** of the Lakshadweep Panchayat Regulation, 2022 and in supersession of any previous notifications or orders issued, is pleased to declare the local area comprising of Village or a group of Villages or any part or parts thereof or a combination of any two or more of them to be a Panchayat area for the purpose of the said Regulation.

Sr No	Island	Panchayat area	Headquarters
1	Agatti	North end to Western Jetty to Shaikina Palli	Agatti
2	Agatti	Western Jetty to Shaikina Palli to South End (Air Port)	Agatti
3	Amini	Puthiyolipalli to East Branch Coop Society	Amini
4	Amini	Fisheries Office to Southern End	Amini
5	Androth	West end to Nangammada House and chediyar	Andrott
6	Androth	Nangammada House and chediyar to Kattupura House to Ayurvedic Hospital	Andrott
7	Androth	Kattupura House to Ayurvedic Hospital to East End	Andrott
8	Chetlat & Bitra	North end of Chetlat Island to Entire Bitra Island	Chetlat

33. There cannot be any dispute that Exhibit P3 is issued in the exercise of the powers conferred under Section 3(1) of LPR, 2022. Agatti Island has been divided into two Panchayat areas by giving location-based markings. The respondents have no case that before notifying "North End to Western Jetty to Shakina Palli" as a Panchayat area, they have ascertained the population of the Villages or the group of villages comprising the Panchayat area. In the counter affidavit, the respondents have taken the stand that they are only in possession of Island wise Population Data obtained as per Census 2011, and they are not in possession of population data in respect of the villages or the group of Villages which are joined together to form a Panchayat area.

34. The non-availability of population data for the village or group of villages that comprise the Panchayat area will make the provisions of Section 12 of the LPR 2022 unworkable.

35. Section 12, which deals with the constitution of Panchayats, reads as under:

CHAPTER III

The Gram Panchayat and Elections

12. (1) As soon as may be, after its constitution, every Gram Sabha shall elect by direct election an Executive Committee called the Gram Panchayat and a Chairperson of that Committee to be known as the Sarpanch.

(2) A Gram Panchayat shall, consist of such number of seats including the Sarpanch to be filled from such number of wards, as the Administrator may, by notification, determine.

(3) The ratio between the population of the territorial area of a Gram Panchayat and the number of seats in that Panchayat to be filled by election shall, so far as practicable, be the same throughout the Union territory.

(4) The territorial boundary for each ward shall be notified by the Administrator on the recommendations of the Election Commission.

(5) Each Gram Panchayat area shall be divided by the Election Commission into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Gram Panchayat area.

(6) The seats shall be reserved for the Scheduled Tribes in every Gram Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the Gram Panchayat as the

population of the Scheduled Tribes in that Gram Panchayat area bears to the total population of that area and such seats shall be allotted by the Election Commission by rotation to different constituencies in a Gram Panchayat, in such manner as may be prescribed:

Provided that no such reservation shall be necessary if the total population of the Scheduled Tribes in a Gram Panchayat is less than half the proportionate population required to fill one seat.

(7) Not less than one-half of the total number of the seats reserved under subsection (6), shall be reserved for women belonging to the Scheduled Tribes.

(8) Not less than one-half (including the number of seats reserved for women belonging to the Scheduled Tribes) of the total number of seats to be filled by direct election in every Gram Panchayat shall be reserved for women and such seats may be allotted by the Election Commission by rotation to different constituencies in a Gram Panchayat, in such manner as may be prescribed.

(9) The number of seats to be reserved under sub-section (7) and (8) shall be determined by the Administrator, by an order published in the Official Gazette.

(10) The Administrator shall reserve—

(i) the number of offices of Sarpanch in the Gram Panchayats for the Scheduled Tribes which shall bear, as nearly as may be, the same proportion to the total number of such offices in the Gram Panchayats as the population of the Scheduled Tribes in the area of

Union territory to which this Regulation extends bears to the total population of such area;

(ii) not less than one-half of the total number of offices of Sarpanch in the Gram Panchayats for women: Provided that offices reserved under this sub-section shall be allotted by the Election Commission by rotation to different Gram Panchayats in such manner as may be prescribed.

36. In essence, what Section 12 says is that as soon as the Gram Sabha is constituted, it must elect the Gram Panchayat and its Chairperson (the Sarpanch) by direct election. The number of seats in the Gram Panchayat, including the Sarpanch, will be determined by the Administrator, and the seats will be filled from the number of Wards determined by the Administrator. The ratio between the population of the territorial area of the Gram Panchayat and the number of seats to be filled by election should be the same throughout the Union territory. The territorial boundary for each ward will be notified by the Administrator on the recommendations of the Election Commission. The Election Commission will divide the Gram Panchayat area into territorial constituencies, with each constituency having a population-to-seat ratio

that is as equal as possible throughout the Gram Panchayat area. Seats will be reserved for Scheduled Tribes, with the number of reserved seats bearing the same proportion to the total number of seats in the Gram Panchayat as the Scheduled Tribe population in that area bears to the total population, and the seats will be allotted by rotation to different constituencies in the Gram Panchayat. Not less than one-half of the seats reserved under sub-section (6) will be reserved for women belonging to Scheduled Tribes. Not less than one-half of the total number of seats to be filled by direct election in every Gram Panchayat, including the seats reserved for women belonging to Scheduled Tribes, will be reserved for women, and such seats may be allotted by rotation to different constituencies in the Gram Panchayat. The number of reserved seats for Scheduled Tribes and women will be determined by the Administrator and published in the Official Gazette. The number of offices of Sarpanch in the Gram Panchayats will be reserved for Scheduled Tribes and women in proportions determined by the Administrator, and these offices will be allotted by the Election Commission by rotation to different Gram Panchayats.

37. Immediately thereafter, in the exercise of the powers conferred on the Administrator under Section 130 of the LPR, 2022, the Administrator has framed the LEP Rules, 2022. Rule 3 deals with the Declaration of Panchayat area and the Constitution of Gram Sabha. Rule 3 is of some relevance and the same reads as under:

Rule 3 (1): Subject to the provisions of Section 12 and 57 of the Regulation, the Election Commission shall distribute the seats assigned to each Gram Panchayat, and District panchayat to single member territorial wards and delimit them on the basis of the latest census figures having regard to the following provisions, namely:

(a) All wards shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience;

(b) Wards in which seats are reserved for the scheduled Tribes, women belonging to these castes or Tribes and women shall, as far as practicable, be distributed in different parts of the Gram Panchayats and District panchayat and they shall be rotated by the Commission by draw of lots, so that it is ensured that seats are so reserved in all the wards of a gram panchayat and the District panchayat, as the case may be before such reservation is made in respect of a ward for the second time.'

38. Rule 3 (1) of the LEP, 2022 outlines the process by which the Election Commission shall distribute the seats assigned to each Gram Panchayat and District Panchayat to single-member territorial wards and delimit them based on the latest census figures. The rule also highlights the following provisions that the Election Commission must consider while delimiting the wards. It says that

a) Wards should be geographically compact areas, and physical features, existing administrative boundaries, facilities of communication, and public convenience should be taken into account and

b) Seats reserved for scheduled tribes, women belonging to these castes or tribes, and women should be distributed in different parts of the Gram Panchayats and District Panchayat, and they should be rotated by the Commission by drawing of lots. This is to ensure that seats are reserved in all the wards of a Gram Panchayat and the District Panchayat before such reservation is made in respect of a ward for the second time.

39. It is in the exercise of the powers conferred on the Administrator under various sub-sections of Section 12 that Exhibit P4

notification was issued declaring the number of seats to be allotted under sub-section (2) of Section 12 to each of the 18 Gram Panchayats and also the number of seats to be reserved for women and scheduled tribes. It can be seen from Ext.P4 notification that it has been issued not on the basis of the population of the Panchayat area of the newly constituted Gram Panchayats as per Ext.P3 notification as ascertained at the last preceding census of which relevant figures have been published. As a matter of fact, only the census data of the entire island, which was undertaken at the time of Census India, 2011, is available even now. As rightly submitted by Sri. P. Deepak, this was a non-issue while LPR, 1994 was operative as under Section 8(1) of LPR, 1994, a Village (Dweep) Panchayat was constituted for each of the 10 islands specified in the First Schedule. Furthermore, the Panchayat area was defined to mean the territorial area for Panchayat of the Village (Dweep) Panchayat so constituted, and it was co-extensive with the territorial area of the respective islands. I find that Ext.P4 notification allocating seats to the newly constituted Gram Panchayats have been issued on the basis of the island-wise census undertaken at the time of Census India 2011. The

respondents have, in fact, admitted in their counter that there is no population data available with respect to the population of the territorial area of the said Gram Panchayats.

40. Having understood the Constitutional Provisions and the provisions of the Regulations, we may now turn to the issues highlighted by the petitioner to substantiate that the exercise carried out by the respondents is in clear violation of the Constitutional Provisions and the regulations. Much clarity can be obtained by referring to the chart produced along with the additional counter. It is stated in the Additional counter that the Union Territory Election Commission and the Administration have proceeded in the matter taking into account the population of various islands as per the last census. They have explained that on an analysis of the distribution of seats/delimitation of wards under the previous regulation, it was found that there is ostensible non-compliance with the requirements under Article 243C of the Constitution and also Section 12(3) of the LPR, 2022. The table showing the island-wise population - seat ratio as per the delimitation carried out in terms of LPR, 1994 is extracted below:

Sl. No.	Island Panchayat	Population	No. of Wards	Proportionate representation
1	Minicoy	10444	11	949
2	Kalpeni	4418	8	552
3	Androth	11191	12	932
4	Agatti	7560	10	756
5	Kavarathi	11210	12	934
6	Amini	7656	10	765
7	Kadmat	5389	8	674
8	Kiltan	3945	8	493
9	Chetlat	2345	6	391
10	Bitra	271	3	90

41. The respondents have also produced the chart showing the population-seat ratio as per the delimitation carried out in terms of LPR, 2022. The said chart is extracted below:

Sl. No.	Island Panchayat	Population as per 2011 Census	No. of Wards	Proportionate representation
1	Minicoy	10444	8+8+8 [24]	435
2	Kalpeni	4418	10	441
3	Androth	11191	8+8+8 [24]	466

4	Agatti	7560	8+8 (16)	472
5	Kavarathi	11210	8+8+8 [24]	467
6	Amini	7656	8+8 (16)	478
7	Kadmat	5389	6+6 (12)	449
8	Kiltan	3945	8	493
9	Chetlat + Bitra	2345 + 271 (2616)	6	436

42. No doubt a perusal of the chart produced would at first blush makes it appear that their endeavor by the Administration and the Election commission is well justified as it has ensured the compliance of Article 243C as well as Section 12(3) of the new Regulation. The respondents have also produced Ext.P6 proposed delimitation of Gram panchayat, constituencies/wards showing the voter population in each of the Gram Panchayats by splitting it as wards.

43. However, on a closer scrutiny, it would be revealed that the exercise clearly violates the constitutional provisions and also LPR, 2022. There is absolutely no doubt that if the respondents were acting in terms of LPR, 2022, the Administrator had to initially act in terms of Rule 3(1).

He is expected to carry out an enquiry and thereafter issue a notification declaring a local area, comprising of a village or a group of villages or any part or parts thereof or a combination of any two or more of them. This local area is deemed to be a Panchayat area for the purpose of LPR, 2022. Thereafter, the headquarters of the Panchayat area has to be specified by the Administrator. It should be followed up by a notification constituting a Gram Sabha by a name for each Panchayat area. The Gram Sabha shall consist of persons registered in the electoral roll relating to a Gram, either a village or a group of villages. To highlight the issue we can take the case of Agatti. Agatti has been divided into two Panchayat areas, which are as under as borne out from Ext.P3.

Sl. No.	Island	Panchayat area	Headquarters
1.	Agatti	North end to Western Jetty to Shaikinia Palli	Agatti
2.	Agatti	Western Jetty to Shaikinia Palli to South end (Airport)	Agatti

44. After carrying out the above exercise, the Administrator in exercise of powers under sub-section 2 of Section 3 of the LPR, 2022,

notified the names of Gram Sabha (Panchayat areas) as under

Sl. No.	Island	Panchayat area	Headquarters
1.	Agatti	North end to Western Jetty to Shaikinia Palli	Lal Bahadu Shastri Gram Panchayat
2.	Agatti	Western Jetty to Shaikinia Palli to South end (Airport)	Bhagat Singh Gram Panchayat

45. Admittedly, the respondents have no data with regard to the inhabitant population of each of the Panchayat areas. All that they have is the population of the entire island of Agtti as obtained from the Census, 2011.

46. Thereafter, Ext.P4 notification has been issued by the Administrator in exercise of powers conferred upon him under subsection (2), (6), (7), (8) and (9) of Section 12 of LPR, 2022 declaring the number of constituencies/wards and to allocate such number of wards of each Gram Panchayats to be reserved for Scheduled Tribes, women belonging to Scheduled Tribes and for general women in the Panchayat area. The way in which ward was divided and the reserved seats were fixed for each Panchayat area is based on the voter population as available from the

voters' list. No other data is available with the respondents.

Sl. No.	Name of Gram Panchayat	No. of Constituencies/wards	Reserved for women	ST			General Open	General	
				ST Open	ST Women	Total ST		General women	Total General
1.	Lal Bahadur Shastri Gram Panchayat	08	04	04	04	08	0	0	0
2	Bhagat Singh Gram Panchayat	08	04	04	04	08	0	0	0

47. After carrying out the above exercise, Ext.P6 notification has been issued by the Election Commission, the Election Commission has published its proposal for the delimitation of wards of all Gram Panchayats and the District Panchayats as detailed in Appendix I and II and objections have been called for. From Appendix I, it could be seen that the proposed delimitation of the wards has been on the basis of the voters' list maintained by the Election Commission and not on the basis of the inhabitant population.

48. From the submissions by the learned DSGI, who has appeared for the Election Commission, I find that the Election Commission has relied

on the census figures of Census 2011 to decide the number of wards. They have even stated that the number of voters as per the voters list is essentially proportionate to the population in the area of the respective wards. According to the respondents, population data of the Panchayat area identified as per Ext.P3 is not available. They have stated that to ensure equalised distribution of population as well as voters in the wards, the data as per the voters list has been relied upon. I am afraid the course adopted is contrary to the mandate of Articles 243C and 243D of the Constitution and also against LPR, 2022. This is because the allocation of wards to each Gram Panchayat under sub-section (2) of Section 12 is subject to the provisions of sub-section (3) of Section 12 and Article 243C of the Constitution of India. Without an exact idea of the population of the territorial area of the Gram Panchayat, it would not be possible for the respondents to put in operation either Section 12(2) or Section 12(3) in tune with Article 243C. To carry out the above exercise, the Administrator will have to notify the village/villages under Section 2(j) of the LPR, 2022 and those villages can only comprise the newly declared Panchayat area. A reading of the chart produced along with the additional counter clearly

would reveal that the proportionate representation has been made on the basis of the voters list and not on the inhabitant population of the village or villages comprising the Panchayat area.

49. The question of whether 'one man one vote' rule operates with reference to the inhabitant population or voter population had come up for consideration before a Division Bench of the Gujarat High court in **Rameshchandra Ramanbhai Patel v. Collector of Kheda**¹¹. The observations in paragraph Nos. 23 to 28 are instructive:

23. Apart from the one man-one vote rule receiving recognition at the hands of Courts, so far as our country is concerned, the principle has been enshrined even in the Constitution in the matter of election to the Parliament and State Legislatures. Article 81(1) having provided for the composition of the House of the People by not more than five hundred and twenty-five members chosen by direct election from territorial constituencies in the States and not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide, proceeds to lay down in Article 81(2) that each State shall be allotted a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States and that each State shall be divided into territorial constituencies in such manner that the ratio between the population of each

¹¹ [(1979) 1 GLR 191]

constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State. Similar provision is to be found in Article 170 in relation to composition of the Legislative Assemblies and the principle governing the division of each State into territorial constituencies. The Constitution, of course, recognizes the deviation from the aforesaid principle in Articles 330 to 333 and provides for reservation of seats for Scheduled Castes and Scheduled Tribes and representation to the Anglo-Indian community in the Union and State Legislatures. But apart from this, the basic scheme of the Constitution with regard to election to the union and State Legislatures is to accept the concept of one man-one vote, la our own State, two legislations, which are in primateria, also make similar provision, one by express enactment and the other by necessary implication. Sub-sections (1) to (4) of Section 20 of the Gujarat Panchayats Act, 1961, which provide for electoral divisions for the purposes of elections of members to a gram, nagar, taluka and district panchayats, as the case may be, in terms provide that the divisions shall be made in such manner that as far as practicable, the population of all wards or, as the case may be, all territorial constituencies is the same and one member is elected from each ward or constituency, as the case may be. So far as the Bombay Provincial Municipal Corporations Act, 1949 is concerned, the Division Bench of this Court, in its decision in Special Civil Application No. 46 of 1971 (supra) read the same principle into Section 452-A(1) by process of interpretation.

24. It would thus appear that the principle, which must be taken to have been established beyond doubt or debate, so far as this country is concerned, is that whenever the statute requires selection of

persons to be made by popular election to perform governmental functions, whether at the Union or State or local level, each vote must have an equal value and that when members of such elected bodies are chosen from separate constituencies, each constituency must be established on a basis which will ensure, as far as practicable, that equal number of constituents can vote for proportionately equal number of representatives. The rule is so deeply entrenched in our election jurisprudence that any deviation therefrom would require strict justification on rational or permissible grounds and any wrongful dilution thereof must be jealously guarded against.

25. Against this background, let us consider whether the one man-one vote rule operates with reference to the inhabitant population or voter population. In other words, the question for consideration is whether the underlying concept of this rule is related to the number of voters or to the number of constituents. If the contention of the petitioners is accepted, the representation of each ward in the municipal government would be, as nearly as possible, equal on the basis of registered voters and not on the basis of population. We are of the opinion, however, for the reasons which follow, that on this contention the petitioners must fail.

26. The municipal government and for that matter any other local Government performs important public functions within the area under its jurisdiction. The municipality performs important governmental functions which have sufficient impact throughout the municipal borough and on the inhabitant population of such borough. The decisive factor for the constitution of such municipal government must, therefore, be the will of the people, more so when the process of election is the mode laid down for its composition. It is true that

not each and every soul inhabiting the borough is entitled to vote and that having regard to the qualifications and disqualifications prescribed in the Act, some out of those souls alone would be eligible to be entered into the voters' list and qualified for voting. When such qualified voters vote, however, their votes speak for and on behalf of the population of the ward in which they reside and their votes are the expression of the will of such population. The inhabitant population and not the voter population must, therefore, be the determinative factor. That apart, the number of voters in a ward would depend upon numerous variable factors. It may be a matter of accident, circumstances or design that one ward may have a larger number of voters in proportion to the population than the other. Take, for example, the case of a ward the inhabitant population of which consists largely of persons who, on account of the nature of duties which they are required to perform, are compelled to live away from their families. A large number of persons residing in such ward would be qualified voters and the proportion of qualified voters to the population would, therefore, be on a much higher side by sheer accident. Similarly, in wards where the population consists of relatively backward class people, economically or otherwise, the population may be large, having regard to lack of family planning or such other factors. The proportion which the number of qualified voters bears to the population of such ward may compare unfavourably with a ward in which more fortunate segments of population reside. This is the sheer result of circumstances. But apart from the imbalance resulting from such accidents or circumstances, still greater objection in the linking of one man-one vote rule to the voting population would arise from the political device known as the "gerrymander." A voters' list could always be so manipulated by those with means and in power as

to secure unfair advantage by disproportionate representation at the election. This would not happen if the inhabitant population ascertained from authentic data is made the foundation of the one man-one vote rule. It appears to us, therefore, that the petitioners' contention in this behalf must fail.

27. In this view which -we are taking we are supported not only by judicial decisions but also by statutory provisions. The American decisions to which we have referred earlier have largely proceeded upon the principle that the concept of one man-one vote is linked with the number of people living in different legislative districts. In American Jurisprudence, 2nd Edition, Vol.25 in the Chapter relating to "Election" it has been observed at pages 705 and 706 as under:

Population is the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies.... State constitutions commonly require that representative districts shall be equal, as nearly as possible, in population. And the equal protection clause of the Fourteenth Amendment requires that the seats in both houses of a bicameral state legislature be apportioned on a population basis. This means that a state must make an honest and good-faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.

While dealing with election to county and municipal governmental bodies, the authors of the American Jurisprudence observe at page 717 asunder:

The equal protection clause of the Fourteenth Amendment forbids substantial disparities in population among voting districts

or units for the election of municipal bodies, and requires substantial equality in population among voting districts or units in political sub-divisions, such as cities, counties, or parishes.

At page 712 in the same Treatise, it has been pointed out that there is some conflict in the judicial decisions in the United States as to whether inhabitant population constitutes the foundation for the one man-one vote rule to the exclusion of citizen or voter population. At page 713, it has been observed:

Although it has been urged that the concept of "one person-one vote" implicitly means that the validity of an apportionment scheme is related to voters and not constituents, apportionment schemes founded on voter population, or on the number of voters voting at the last gubernatorial election, have been rejected as unconstitutional, at least where prior apportionment statutes have been based on constituent or citizen population. However, it has been held that legislative apportionment on a registered voter basis is not invidious per se.

It would thus appear that by and large it appears to be well-settled, so far as the United States is concerned, that the one man-one vote rule is linked with population rather than with voters.

28. So far as the judicial opinion in our country is concerned, the two decisions to which we have made reference earlier also refer to the principle that representation must be proportional to the strength of the electorate in an elective process. Of course, Bhagwati, C.J.'s decision in Special Civil Application No. 465 of 1971 (Vaikunthbhai v. State) sometimes speaks of representation

of each area being proportionate to the population of such area and sometimes of the representation being proportionate to the strength of voters in such area. But reading the passage from the learned Judge's decision extracted above as a whole, it appears to us that the terms "population" and "voters" are used interchangeably and that the real emphasis is on population rather than on voters.

50. In order to give effect to the provisions of Articles 243C and 243D of the Constitution, the respondents are required to have an exact idea as to the population of the territorial area of the Gram Panchayat. Only on the basis of the inhabitant population can the respondents carry out the exercise of forming a Panchayat area by joining a village or a group of villages as mandated under Section 3. The Administrator would be in a position to constitute a Gram Sabha for each Panchayat area only thereafter. It is after the constitution of the Gram Sabha, under Section 3(2), the Administrator is required to initiate steps to constitute an executive committee by direct election which is called the Gram Panchayat. It is by direct election that the Sarpanch who is the Chairperson of the Committee is elected. It is for the Administrator to issue a notification fixing the number of seats including the Sarpanch to

be filled from such number of wards. Ward has been defined under Section 2(zk) to mean a body consisting of persons registered in the electoral rolls relating to the ward of a District. While fixing the wards and ascertaining the number of seats in that Panchayat to be filled by election, the respondents are required to ensure that the ratio between the population of a territorial area of a Gram Panchayat and the number of seats in that Panchayat to be filled by Election shall as far as practicable be the same throughout the Union Territory. Each Gram panchayat is also to be divided by the Election Commission into territorial constituencies by ensuring that the ratio between the population of each constituency and the number of seats allotted to it shall as far as practicable be the same throughout the Panchayat area. There cannot be any doubt that such an exercise cannot be carried out if the respondents are not aware of the population of the villages or the group of villages comprising of the Panchayat area.

51. Sri. Sajith, the learned standing counsel appearing for the Administration had submitted that the Regulations only insist that ratio be maintained under sections 12(3) and 12(5) only if the same is practicable.

I am afraid that the said submission cannot be accepted. It only means that the arithmetical precision need not be insisted with. It does not mean that the entire provision can be bypassed. Insofar as voter population is concerned, as held by the Division Bench of the Gujarat High Court in **Rameshchandra Ramanbhai Patel** (supra), the inhabitant population and not the voter population must, therefore, be the determinative factor. The proportion which the number of qualified voters bears to the population of such ward may compare unfavourably with a ward in which more fortunate segments of population reside. A voters' list could always be so manipulated by those with means and in power as to secure unfair advantage by disproportionate representation at the election. This would not happen if the inhabitant population ascertained from authentic data is made the foundation of the one man-one vote rule.

52. The constitutional provisions give much emphasis to the ascertainment of seats in a Panchayat on the basis of the population count of that Panchayat as the ratio between the population and the number of seats in a Panchayat has to be the same throughout the State and in each constituency within a Panchayat area. The number of seats

allocated to a Panchayat should be proportional to its population size. This ensures that the representation in the Panchayat is fair and democratic, and each person's vote has equal weight, regardless of where they live in the Panchayat area. The intention is to ensure that accurate population data is available to determine the number of seats allocated to each Panchayat and constituency, ensuring that the representation in the Panchayat reflects the demographic composition of the area. The constitution of the Gram Panchayat is intrinsically subject to the conduct of the direct election by the Gram Sabha constituted under Section 3 of LPR, 2022. The allocation of wards/ seats in respect of each Panchayat area can only be in the manner provided in Article 243 C, read with Section 12(2) and (3) of the LPR, 2022, that is on the basis of the population of the territorial area of the Gram panchayat. Without accurate population data of the Village/group of villages comprising the Panchayat area, I fail to comprehend the manner in which the ratio between the population of the territorial area of a Gram Panchayat and the number of seats in that Panchayat to be filled by election is made, as far as practicable, the same throughout the Union territory. The Election

Commission will also have to divide each Panchayat area into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Gram Panchayat area. This exercise cannot be carried out without proper population data at the micro level. Reservation of seats for Scheduled Castes and Scheduled Tribes and also that of women cannot be carried out without accurate population data at the Village or Group of Villages level.

53. Almost an identical issue had come up for consideration before this Court in **Saifudheen** (supra). In that case, writ petitions were filed challenging the Government Orders by which the State constituted new Panchayats in different Districts in the State, carving out certain portions of the existing Panchayats. The process of formation of new Panchayats was affected through different modes, viz., dividing certain existing Panchayats or including portions of two or more existing Panchayats. In some cases, portions of the Wards of existing Panchayats were added to the newly formed Panchayats. The contention before this Court was that the formation of all these Panchayats was made by taking portions of the

existing villages without notifying those portions as a new village under Article 243(g) of the Constitution of India. A learned Single Judge of this Court, after considering the constitutional provisions, held that a declaration by the Governor in the exercise of powers under Article 243(g) of the Constitution is mandatory for the formation of a Village for the purpose of Part IX of the Constitution. Without such a declaration, no Village will come into existence. Therefore, without prior notification, conferring the status of a village over the area in respect of which a Panchayat has to be formed, no Village Panchayat can be constituted. It was also held that if a Village has come into existence on the basis of a notification issued by the Governor, then nothing prevents the Government to form a Panchayat for that Village. However, as the legislature, in its wisdom, has prescribed a particular method to constitute a Panchayat as well as for varying the area of existing Panchayats, the same method has to be adhered to in letter and spirit.

54. In the case on hand, as can be seen from 2(zj) of LPR, 2022, Village means a village notified by the Administrator to be a village for the purpose of the regulation and includes a group of villages. The

Administrator is required to conduct an enquiry and thereafter issue a notification declaring a local area comprising a village or a group of villages or any part or parts thereof or a combination of any two or more of them to be a Panchayat area. It is only thereafter the Administrator, by notification, constitutes a Gram Sabha by a name for each Panchayat area. I am of the considered opinion that due to the total absence of data with regard to the population as ascertained at the last preceding census of which relevant figures have been published. Exts.P3 notification declaring the local area comprising villages, P4 notification as per which the number of constituencies/wards were declared, and Ext.P6 notification calling for objections to the proposed delimitation of Gram Panchayat constituencies/ wards is premature. Going by Ext.P6, delimitation has been carried out based on the voters in the ward and not on the basis of the population at the micro level.

55. I am not impressed with the contention advanced by the learned DSGI that undue emphasis cannot be given to technicalities and that this Court should permit the election to go on. The learned DSGI has also relied on **Anugrah Narain** (Supra) to contend that when data for

complying with the constitutional mandate is not available, authorities can place reliance on other authentic data. I am afraid the submissions fervently advanced by the learned DSGI, if accepted, would be in blatant violation of the constitutional provision as well as LPR, 2022. In **Anugrah Narain** (supra) the Census figures were not available with the state for persons belonging to the Backward classes. The State Government had two choices. Either to say that there will be no reservation for people belonging to the Backward Classes because the Census figures are not available or they could have made a survey and counted the number of people belonging to the Backward Classes and reserve seats for them in the municipal bodies. The State Government took the latter course and carried out a survey to ascertain the number of persons belonging to backward classes. In the case on hand, there is absolutely no data with regard to inhabitants living in the villages or the group of Villages constituting the Panchayat area as notified under Exhibit P3. An exercise carried out on the basis of the voters' list and not on the basis of the inhabitant population would offer the constitutional provisions and also the LPR, 2022 and LEP, 2022. I am also not impressed with the contention

advanced by the learned counsel appearing for the respondents that Article 243L of the Constitution, would enable the Union Territory to exceptions and modifications from other provisions of the Constitution. Proviso to Article 243L only says that the President may by public notification direct that the provisions of Part IX of the Constitution shall apply to any Union Territory or part thereof subject to such exception and modifications as he may specify in the notification. The respondents have not placed before me any notification issued by the President exempting any provision or part thereof. The respondents are bound to ensure that the provisions of Part IX r/w. the relevant provisions of LPR, 2022, and LEP, 2022 are complied with in its letter and spirit.

56. **Conclusion:**

In that view of the matter, I am of the considered opinion that the exercise carried out by the respondents is a premature one. This writ petition is accordingly ordered as under

- a) Ext.P3 notification is ultra vires Section 3(1) of the LPR, 2022 r/w Article 243(g) of the Constitution of India, as the issuance of Ext.P3

is not preceded by a notification issued by the Administrator notifying the villages under clause (zj) of the LPR, 2022 r/w. Article 243(g) of the Constitution. I hold that Ext.P3, P4, and P6 notifications are ultra vires the provisions of Part IX of the Constitution of India and Sections 3 and 12 of LPR, 2022 as it is published in the absence of any data with respect to the population of the territorial area of the Gram Panchayats, so constituted.

- b) Having found Ext.P3 to be ultra vires, Exts.P4 and P6 draft notifications issued pursuant to the same also cannot be sustained.
- c) The respondents are directed to initiate expeditious steps to ascertain the population of the territorial area of the Gram Panchayats in terms of Section 2(t) of LPR, 2022, before proceeding with Exhibit P6 notification and conducting the election to the Gram Panchayats constituted as per the said notification.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

APPENDIX OF WP (C) 40183/2022

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE LAKSHADWEEP PANCHAYAT REGULATIONS, 1994 (RELEVANT PROVISIONS ONLY) DT.23.4.1994.
- Exhibit P2 A TRUE COPY OF THE LAKSHADWEEP PANCHAYAT REGULATIONS, 2022 (RELEVANT PROVISIONS ONLY) DT.19.9.2022.
- Exhibit P3 A TRUE COPY OF THE NOTIFICATION DATED 16.11.2022 (NO. 9/4/2002-DOP (PE) (1)) ISSUED BY THE 2ND RESPONDENT DECLARING THE LOCAL AREAS SPECIFIED IN THE SAID NOTIFICATION TO BE 'Panchayat areas' FOR THE PURPOSES OF LPR, 2022.
- Exhibit P4 A TRUE COPY OF THE NOTIFICATION DATED 16.11.2022 ISSUED BY THE 2ND RESPONDENT DECLARING THE NUMBER OF SEATS TO BE ALLOTTED UNDER SUB-SECTION (2) OF SECTION 12 TO EACH OF THE 18 GRAM PANCHAYATS AND ALSO THE NUMBER OF SEATS TO BE RESERVED FOR WOMEN AND SCHEDULED TRIBES UNDER SUB-SECTIONS (6) TO (8) OF SECTION 12.
- Exhibit P5 A TRUE COPY OF THE LAKSHADWEEP PANCHAYATS (ELECTION PROCEDURE) RULES, 2022 (RELEVANT PROVISIONS ONLY).
- Exhibit P6 A TRUE COPY OF THE NOTIFICATION DATED 30.11.2022 ISSUED BY THE 3RD RESPONDENT UNDER RULE 3 OF THE LAKSHADWEEP PANCHAYATS (ELECTION PROCEDURE) RULES, 2022 (RELEVANT PROVISIONS ONLY).

Exhibit P7 A TRUE COPY OF THE DATA OBTAINED FROM CENSUS INDIA, 2011 IN RESPECT OF THE UNION TERRITORY OF LAKSHADWEEP AND THE DISTRICT OF KASARGOD IN THE STATE OF KERALA.

Exhibit P8 A TRUE COPY OF THE NOTIFICATION DATED 29.12.2016 [F .NO: 9/6/2016-DOP (PE) (1) /1]

RESPONDENT EXHIBITS

Exhibit R1(a) A TRUE COPY OF THE NOTIFICATION NO.9/4/2022-DOP(PE) DATED 30.12.2022 ISSUED ON BEHALF OF THE 1ST RESPONDENT

Exhibit R1(b) A TRUE COPY OF THE NOTIFICATION F.NO.18/26/68-GEN.II(4) DATED 19.07.1968 ISSUED BY THE 1ST RESPONDENT

Exhibit R3(a) TRUE COPY OF THE NOTIFICATION DATED 19.07.1968 ISSUED BY THE ADMINISTRATION OF UNION TERRITORY OF LAKSHADWEEP