

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD
(SPECIAL ORIGINAL JURISDICTION)
TUESDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FOUR**

**PRESENT
THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE
AND
THE HON'BLE MS JUSTICE G. ROHINI
WRIT PETITION NO. 65 & 1669 OF 2004**

W.P.NO. 65 OF 2004

BETWEEN:

A.P. Scheduled Castes Welfare Association,
Hyderabad, rep. By its Secretary General Mr. G. Shankar,

..... Petitioner

AND

- 1 The Union of India, rep. by its Secretary, Home(Elections), New Delhi.
- 2 The Election Commission, rep. by its Principal Secretary, Nirvachan Sadan, New Delhi.
- 3 The Delimitation Commission, New Delhi, rep. by its Secretary, Nirvachan Sadan, New Delhi.
- 4 The Govt. of A.P., rep. by the Principal Secretary, GAD(Election), Hyderabad.

.....Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly a writ in the nature of writ of Mandamus directing the respondents to reserve 47 seats in the A.P. State Assembly and 7 seats in the Lok Sabha for S.Cs respectively in the elections for the 12 the Legislative Assembly and 14th Lok Sabha to be held in year 2004 in accordance with and as mandated by Art. 330 and 334 of the Constitution of India

For the Petitioner: Mr. J. Satya Prasad, Advocate.

For the Respondent 1 : Mr. T. Surya Karan Reddy, S.C. for Central Government.

For the Respondent 2 : Mr. C.P. Sarathy S.C. for Election Commission.

For the Respondent 3 : Mrs C. Jayasri Sarathy, Advocate.;

For the Respondent 4 : The G.P. for GAD.

WRIT PETITION NO. 1669 of 2004

BETWEEN:

- 1 Kum Pynam Suhalatha
- 2 Bhukya Lakhanlal.

AND

1. The Delimitation Commission, rep. by its Chairman (Hon'ble Mr. Justice Kuldipsingh Judge Supreme Court of India(retd)
Nirvachan Sadan, Ashoka Road, New Delhi 110011.
2. The Election Commission of India, rep. by its Chief Election commissioner,
Nirvachan Sadan, Ashoka Road, New Delhi 110011.
3. The Union of India, rep. by its Cabinet Secretary, Cabinet Secretariat, South Block,
New Delhi 110011.
4. Bharatiya Janata Party rep. by its President Sri. M. Venkaiah Naidu, No. 11 Ashoka
Road, BJP Head Quarters, New Delhi – 110011.
The Learned Counsel has deleted RR 4 & 5 as per Court Order 04.02.2004 in W.P.
1669 of 2004.
5. The Indian National Congress, rep. by its President Smt. Sonia Gandhi, 25, Akbar
Road, New Delhi 110011.
The Learned Counsel has deleted RR 4 & 5 as per Court Order 04.02.2004 in W.P.
1669 of 2004.
6. The Chief Electoral Officer, Andhra Pradesh, Govt. of A.P., Secretariat Buildings,
Hyderabad-500022.
7. State of Andhra Pradesh, rep. by its Chief Secretary Secretariat Buildings, Saifabad,
Hyderabad.
8. The National Commission for Schedule Castes & Schedule Tribes, rep. by its
Chairman Hon'ble Mr. Justice K. Rama Swamy former Judge, Supreme Court of
India, Shastri Bhavan New Delhi – 110011.

.....Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Mandamus or any other appropriate writ, to declare the Constitution (84th) Amendment Act 2001 as void, ultra vires, unconstitutional, lacking in constitutional Legislative competence to impair the basic features of the Constitution by amending the Constitution and violative of the Fundamental rights of the Schedule Castes and Schedule Tribes citizens of India to live with dignity and enjoy their Constitutional rights and benefits, without due process and for the consequential direction for the enforcement of the Delimitation Act 2002 to enure the benefit of the enhancement of seats to the House of the People and State Legislative Assemblies in India upon such delimitation based on the 1991 Census figures to SCs & STs and readjustment of the short fall in allocation of seats to the AP State Legislative Assembly reserved for SCs & STs.

For the Petitioner: Mr. K.Ashok Reddy, Advocate.

For the Respondent 1 : None appeared..

For the Respondent 2 : Mr. C.P. Sarathy, Advocate.

For the Respondent 3 & 8: Mr T. Suryakaran Reddy, S.C. for Central Govt.

For the Respondent 6 & 7 : The G.P. for GAD.

The Court at the admission stage delivered the following Judgement:

CONTD.

THE HON'BLE THE CHIEF JUSTICE SHRI DEVINEDER GUPTA
AND
THE HON'BLE MS. JUSTICE G. ROHINI

WRIT PETITION Nos. 65 and 1669 of 2004

JUDGMENT: (Per the HON'BLE THE CHIEF JUSTICE SHRI DEVINEDER GUPTA)

These two Writ Petitions involving common questions of law were heard together at the stage of admission and are being disposed by this common Order.

In W.P. No. 65 of 2004 filed as PIL, the petitioner- A.P. Scheduled Castes Welfare Association represented by its General Secretary Sri G. Shankar is seeking a mandamus against the respondents to hold the ensuing elections to the 12th A.P. Legislative Assembly and the 14th Lok Sabha to be held in the month of March/April, 2004 strictly in accordance with the provisions of Part XV of the Constitution of India, particularly in accordance with Articles 330 and 332 thereof.

In the other Writ Petition (W.P. No. 1669 of 2004), also filed as PIL the two petitioners – Petitioner No. 1 belonging to Scheduled Caste Mala community and Petitioner No. 2 belonging to Scheduled Tribe Lambada community – are seeking a mandamus to declare the Constitution (Eighty-Fourth Amendment) Act, 2001 as void, ultra vires, unconstitutional, violative of the fundamental rights guaranteed to the persons belonging to Scheduled Castes and Scheduled Tribes and consequently for a further direction for enforcement of the Delimitation Act, 2002 (Act No. 33 of 2002) by readjustment of the short fall in the seats to the A.P. State Legislative Assembly and Lok Sabha reserved for SCs and STs based upon 1991 census figures.

In the first petition notices had been issued to the respondents to show cause as to why the petition be not admitted. In response there to, counter-affidavit has been filed on behalf of respondents 2 and 3, namely, Election Commission of India and Delimitation, Commission, opposing admission of the Writ Petition.

We have heard the learned counsel for the petitioners as well as the learned Standing Counsel for the Central Government and the Election Commission of India at the preliminary stage itself.

In the first petition, it is alleged that at present 39 seats(Member of Legislative Assembly) out of 294 seats in the A.P. State Legislative Assembly and six seats (Member of

Parliament) out of 42 seats allotted to the State of Andhra Pradesh in the House of the People are reserved in favour of Scheduled Castes and Scheduled Tribes. Elections were held to 11th Legislative Assembly and to the 13th Lok Sabha reserving aforementioned seats in favour of the Scheduled Castes and the Scheduled Tribes in the Legislative Assembly and in the House of the People. After dissolution of the 11th Legislative Assembly and 13th Lok Sabha preparations are now being made to hold elections to the 12th A.P. Legislative assembly and 14th Lok Sabha shortly. Electoral rolls have also been prepared and final list is going to be prepared. Shortly after scrutinising the electoral rolls after rectification, final list will be published and 45 days thereafter election notification will be issued for holding elections. It is submitted that once election notification is issued, matters relating to election cannot be questioned in any Court of Law except by way of election petition only in the case of a particular candidate elected. Anything to be rectified or corrected relating to reservation of seats or nomination of seats has to be made before election notification is issued.

It is further alleged that the composition of each State Legislative Assembly has to be in accordance with Clauses (1) and (2) of Article 170 of the Constitution. The expression 'population' in the Explanation to Clause (2) of Article 170 has been defined to mean as *population as ascertained at the last preceding census of which relevant figures have been published*. The last preceding census now relate to the year 2001 in which the census had been completed. The petitioner has alleged that according to the proviso to the explanation to Clause (2), a different meaning is given to the word 'population', which if construed is referable to 1991 Census. Reference to 1991 Census in the explanation is provided as per the Constitution (Eighty-Fourth Amendment) Act, 2001 As per the said Amendment Act, for the purpose of Clause (2) of Article 170, until the relevant figures for the first census taken after 2026 have been published, the reference in the explanation to the last preceding census of which the relevant figures have been published, shall be construed as reference to 1991 Census. Article 326 provided that election to the State Legislative Assembly shall be on the basis of adult suffrage. In the recent revision of electoral rolls, several citizens who have completed 18 years of age have been registered as voters and will be entitled to exercise their franchise in the ensuing elections. Article 330 and 332 of the Constitution in Part XVI of the constitution provides for reservations of seats in favour of Scheduled Castes and Scheduled Tribes in the House of People and State Legislative Assemblies. For the Purpose of Articles 330 and 332 also, the expression "population" has been defined in Explanation to Clause (3) of Article 330 to mean the population as ascertained at the last preceding census of which the

relevant figures have been published. The last preceding census now relate to the year 2001 in which census had been completed, but the proviso to Clause (3) of Article 330 however, gives a different meaning to the word “population” which has to be construed as reference to 1991 census. In accordance with these provisions, in the elections held in the year 1999 to the 11th Legislative Assembly and 13th Lok Sabha, 39 seats out of total seats of 294 in the Legislative Assembly and six seats out of 42 seats in the Lok Sabha allotted to the State of Andhra Pradesh were reserved for candidates belonging to Scheduled Castes.

In this background, it is further alleged that according to 1991 Census, population of Scheduled Castes in Andhra Pradesh is 16% of the total population of the State. In case the population as ascertained in 1991 census is taken into consideration, reservation in favour of the scheduled castes and scheduled tribes in the ensuing elections has to be 47 seats (instead of 39) in the Legislative Assembly and 7 seats (instead of six) in Lok Sabha. Since Parts XV and XVI of the Constitution mandate that the population as ascertained in 1991 Census has to be taken into consideration in allocation of seats to the reserved categories, therefore, it is imperative on the part of respondents to provide reservation of 47 seats and 7 seats in favour of the Scheduled Castes and Scheduled Tribes in the Legislative Assembly and Lok Sabha respectively instead of 39 seats and six seats reserved in the preceding elections. The Petitioners apprehends that the manner in which the electoral rolls have been prepared, it does not appear that effort is being made by the respondents to provide reservation of seats as per the increase in the population of Scheduled Castes and Scheduled Tribes as ascertained in 1991 Census. An effort is being made by respondents to deny the reserved categories their due share and representation in the Assembly and Lok Sabha. The petitioner’s case is that if this is allowed to be done, it will deprive the voters belonging to scheduled castes and scheduled tribes of the benefit of proper representation on their behalf, which is the mandate of the Constitution.

The petitioner further submitted that under the Delimitation Act, 2002 (Act No. 33 of 2002), which received the assent of the President of India on 3.6.2002, the Central Government has constituted Delimitation Commission. Referring to the provisions of the said Act, it is submitted that the purpose of constitution of Delimitation Commission is to readjust the allocation of seats in the House of People and the State Legislative Assemblies and to determine the seats to be reserved in favour of Scheduled Castes and Scheduled Tribes on the basis of 1991 Census. But, abruptly the work of the Delimitation Commission was stopped. It is alleged that that if the Census figures of 1991 are taken into consideration, more seats are

likely to be reserved for scheduled castes and the scheduled tribes as a result of which general seats will have to be readjusted and allocated to scheduled castes and scheduled tribes. Therefore, the petitioner has alleged mala fides that some of the aspirants seeking to contest from the general constituencies are likely to have brought pressure on the Government not to go for reallocation of the seats in accordance with 1991 Census. Now that 2001 census figures have already been prepared and published and since the Delimitation Commission has stopped its work, the petitioner apprehends that there is every possibility that respondents will not readjust the seats and will conduct elections without undertaking readjustment based on 1991 Census.

On the basis of the above averments, the aforementioned directions are sought for by the petitioner.

In reply filed on behalf of respondents 2 and 3 it is stated that 84th Constitution Amendment Act, inter alia provided that all Parliamentary and Assembly Constituencies throughout India (including the State of Andhra Pradesh) shall be delimited afresh on the basis of the 1991 Census. The number of seats to be reserved for the Scheduled Castes and the Scheduled Tribes in the House of the People and the State Legislative Assemblies was to be determined on the basis of 1991 Census. The task of delimitation of constituencies and determination of the number of seats to be reserved for the Scheduled Castes and the Scheduled Tribes was entrusted to the Delimitation Commission specially constituted under the Delimitation Act, 2002. The Delimitation Commission constituted under that Act, in July, 2002 had commenced its job of delimiting the constituencies in various States (including State of Andhra Pradesh) on the basis of 1991 Census and determining the number of seats to be reserved for the SCs and STs.

In March, 2003 the Government, thought it fit and desirable to go for another constitutional amendment whereby the delimitation work is now to be done on the basis of the latest Census of 2001 and not on the basis of the 1991 Census. Accordingly, the Constitution (Eighty Seventh Amendment) Act, 2003 was brought about by the parliament which provides that delimitation of all parliamentary and assembly constituencies will be on the basis of census figures of 2001. Final figures of the 2001 Census have been published by the Census Commissioner of India only on 31.12.2003 excepting the States of Uttar Pradesh, Manipur and Nagaland. The Delimitation Commission will have to commence further work of delimitation in all States, including the State of Andhra Pradesh on the basis of 2001 Census figures. Respondents 2 and 3 further state that duration of the House of People and State Legislative Assemblies is governed by the provision of Articles 83(2) & 172(1) and

85(2)(b) & 174(2)(b) of the Constitution respectively. Election to constitute a New House on the expiry/dissolution of the earlier House is a constitutional requirement, which cannot be withheld for the sake of completing the delimitation exercise. The readjustment of constituencies as per the second proviso to Article 82 and to Clause(3) of Article 170 shall take effect only from the date as specified by the President and until such readjustment takes effect, election to the House of the People and Legislative Assemblies are to be held on the basis of the existing territorial constituencies. In this view of the matter, respondents 2 and 3 submitted that the prayer for applying delimitation or reservation of seats in favour of scheduled castes and scheduled tribes on the basis of 1991 Census is totally misconceived.

In the second petition, the petitioners have alleged that the allocation of seats both to Lok Sabha and State Legislatures by the Schedule to Representation of People Act, 1950 is based on the then existing population and hence delimitation of constituencies for upwardly revising the same was envisaged by the founding fathers of the Constitution. The population based formula for determining seats to Lok Sabha and to State Legislative Assemblies, which are the constituent segments of the respective Lok Sabha seats was one seat per million for the first 5 million and 1 seat for every 5 million thereafter. During emergency when fundamental rights in Part III including Article 14 remained suspended, the then Government amended the Constitution by the Constitution 42nd Amendment Act 1976 and thereby postponed delimitation of Constituencies by 25 years till 2000 Census was completed. By the said Amendment Act, Articles 81, 82, 170, 332 and 334 were also amended thereby denying to the Scheduled Castes and Scheduled Tribes members their constitutional rights and benefits to representation to the House of the People and the State Assemblies. Petitioners submitted that reservation of seats in favour of scheduled castes in the House of the People and State Legislative Assemblies ought to have been enhanced from time to time based on the population formula by enforcing the delimitation of constituencies both to the House of the People and State Legislative Assemblies. The Constitution 42nd Amendment Act thus in itself is a fraud on the Constitution and ill-treatment is meted out to the Scheduled Castes and Scheduled Tribes. The petitioners further alleged that scheduled castes and scheduled tribes have a right to representation to more seats in the assembly and for enhancement of seats by delimitation of constituencies based upon latest census figures which was consistently denied upto 2000. Though there have been some increase in seats, but recently Constitution Eighty-Fourth Amendment Act has been passed amending Articles 81, 82, 170, 330 and 332 thereby postponing the necessity of delimitation of constituencies beyond 2026. By the said

Constitution (Eighty-Fourth Amendment) Act, 2001 merely figure 2026 has been substituted for the figure 2001. The Petitioners have alleged that the Amendment Act, 2001 not only amend or repeal the fundamental right in Part III of the Constitution expressly, but has destroyed the constitutional rights of the Scheduled Castes and the Scheduled Tribes altogether and their fundamental right for the enforcement of their constitutional rights without due process and without any regard or respect for the basic structure and basic features of the Constitution. By reason of the Amendment Act, 2001, a new situation unknown to democratic Constitutions is grafted onto our Constitution resulting in postponing the constitutional rights guaranteed to Scheduled Castes and Scheduled Tribes contained under Articles 81, 82, 170, 331 and 332 from time to time and ad-indefinitum. Thus, it is alleged that the Constitution Eighty-Fourth Amendment Act smears the Constitution with its blend of duplicity “doubleu entendre” – double speak – dishonesty and thus alters the basic features of equality.

We have given our due consideration to the submission made at the bar but are of the view that mandamus as has been sought for cannot be granted. We will assign briefly our reason for the same since we are disposing of the writ petitions at the admission stage only.

Part XVI of the Constitution deals with special provisions relating to certain classes. Article 330 provides for reservation of seats for SCs and STs in the House of People and Article 332 provides for reservation of seats for SCs and STs in Legislative Assemblies. The effect of reservation of seats for SCs or STs is to guarantee a minimum number of seats to the members of SCs and STs. Such number has to be in the same proportion to the total number of seats as the population of the SCs or STs in the state has a bearing to total population of the State. Explanation to Article 330 defines ‘population’ to mean population as ascertained at the last preceding census of which the relevant figures have been published. There is a proviso added to Article 330 by Constitution (42nd Amendment) Act, 1976 making it clear that the reference in the explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 Census. Constitution (Eighty-Fourth Amendment) Act, 2001 which received the assent by the President on 21st February, 2002 substituted for the figures ‘2000’, the figures ‘2026’ in Articles 55 and 81 of the Constitution. Similarly, the Act provides that for the figures ‘2000’ and ‘1971’ the figures ‘2026’ and ‘1991’ shall respectively be substituted in Articles 82, 170, 330 and 332. The Constitutions (Eighty Seventh Amendment) Act, 2003 which received the assent of the

President on 22.6.2003 has further amended Article 330 wherein it provided that in the proviso to the Explanation, for the figures “1991” the figures “2001” shall be substituted.

Composition of the House of the People is provided in Article 81 whereas composition of State Legislative Assembly is provided in Article 170. Articles 81 and 170 before the Constitution (Eighty-Fourth Amendment) Act read as follows:

- Art.81:** (1) Subject to the provisions of article 331, the House of the People shall consist of-
- (a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States, and
 - (b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.
- (2) For the purposes of sub-clause (a) of clause (1) –
- (a) there shall be allotted to each State 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
 - (b) each State 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 is, so far as practicable, the same throughout the State.

Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.

(3) In this article, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

Art.170: (1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

(2) For the purposes of Clause (1), each State 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 State.

Explanation: In this clause, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 Census.

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine.

Provided that such readjustment shall not affect representation in the legislative Assembly until the dissolution of the then existing Assembly.

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment.

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the total number of seats in the Legislative Assembly of each State and the division of such State into territorial constituencies under this clause.

Article 82 of the Constitution deals with readjustment of allocation of seats in the House of the People to the States and division of each State into territorial constituencies upon completion of each census. Article 82 as it originally stood substituted by virtue of Constitution (Seventh Amendment) Act, 1956 and prior to the Constitution (Eighty-Fourth Amendment) Act, 2001 read as under:

Art.82: Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House:

Provided further that such readjustment shall take effect from such date as the president may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article.

Prior to the Constitution (Eighty-Fourth Amendment) Act, 2001 amendments were made to Articles 81,82 and 170 by virtue of the Constitution (42nd Amendment) Act, 1976.

By the said Amendment Act, a proviso was added to Clause (3) of Article 81 and second and third provisos were inserted to Article 82. Explanation to the second proviso to Article 170 was substituted and second proviso to Clause (3) of Article 170 was added. These amendments were carried out to ensure that the allocation of seats to Lok Sabha and State Legislative Assemblies need not await the delimitation of constituencies after each census. It was provided that readjustment of boundaries and reallocation of seats after each census shall take effect only from such date as the President may by order fix. Thus by virtue of 42nd Constitution Amendment Act, 1976 the reference to the 1971 census was further extended and frozen till the year 2001.

As noticed above, by Constitution (Eighty-Fourth Amendment) Act, 2001, amendments were carried out to Articles 55, 81, 82, 170, 330 and 332 by substituting the figures “2026” for the figures “2000” and the figure “1991” for the figures “1971”. At this stage, it is apt to notice the Statement of objects and reasons of Constitution (Eighty-Fourth Amendment) Act, which are to the following effect:

Provisos to articles 82 and 170(3) of the Constitution provide that no fresh readjustment of constituencies can be undertaken until the figures of the first census taken after the year 2000 are published. These provisos were inserted by the Constitution (forty-Second Amendment) Act, 1976 as a measure to boost family planning norms. Since the first census to be taken after the year 2000 has already begun, the constitutional embargo on undertaking fresh delimitation will lapse as soon as the figures of this census are published.

2. There have been consistent demands, both for and against undertaking the exercise of fresh delimitation. Keeping in view the progress of family planning programmes in different parts of the country, the government, as part of the National Population Policy strategy, recently decided to extend the current freeze on undertaking fresh delimitation upto the year 2026 as a motivational measure to enable the State Government to pursue the agenda for population stabilisation.

3. Government has also decided to undertake readjustment and rationalization of territorial constituencies in the States, without altering the number of seats allotted to each State in the House of the People and legislative Assemblies of the States, including the Scheduled Castes and Scheduled Tribes constituencies, on the basis of the population ascertained at the census for the year 1991, so as to remove the imbalance caused due to uneven growth of population/electorate in different constituencies.

4. It is also proposed to re-fix the number of seats reserved for the Scheduled Castes and the Scheduled Tribes in the House of the People and the Legislative Assemblies of the States on the basis of the population ascertained at the census for the year 1991.

By the Constitution (Eighty-Seventh Amendment) Act, 2003 further amendments have been carried out to Articles 81, 82, 170 and 330 whereby in the respective articles for the figures “1991” the figures “2001” were substituted.

It can thus be seen that for the first time the Constitution (42nd Amendment) Act, 1976 brought about the change providing that the election to the Lok Sabha and the State Legislative Assemblies need not await delimitation of constituencies after each census. Position which prevailed under 1971 Census was thus frozen till the year 2001. The said 42nd Amendment Act also specifically inserted provisos to Article 82 and 170 that readjustment of territorial constituencies and reallocation of seats whenever carried out, after each census, shall take effect only from such date as the President may by order fix. As such no effect can be given to readjustment of territorial constituencies and reallocation of seats, if any, carried out pursuant to any census until the President has fixed a date specifically stating that such readjustment of territorial constituencies and reallocation of seats shall take effect from that particular date. There is no challenge made in both the writ petitions as to the constitutional validity of the said provisions inserted by the 42nd Constitution Amendment Act. It may be noticed herein that the task of readjustment of territorial constituencies and reallocation of seats has not so far been completed by the Delimitation Commission either according to 1991 Census or 2001 Census.

Delimitation Act, 2002 came into force with effect from January, 2002. Delimitation Commission was constituted under the said Act with the task assigned to it to readjust the division of each state into territorial constituencies for the purpose of allocation of seats to the House of the People and the State Legislative Assemblies on the basis of Census figures as ascertained at the Census held in 1991. As noticed above, the delimitation of constituencies by the Commission can take effect only from the date to be notified by the President. It may be noted that after the Delimitation Act, 2002 came into force and the Commission started its functioning, Parliament enacted Constitution (Eighty-Seventh Amendment) Act, 2003 which came into force with effect from 22.6.2003. By the said Act, the figures “1991” occurring in Articles 81, 82, 170 and 330 were substituted by the figures “2001”. As a result of these amendments, the Delimitation Commission had to stop its functioning, as explained in the affidavit filed on behalf of respondents 2 and 3 that in March 2003 it was decided to go for another constitutional amendment whereby the delimitation

work is now to be done on the basis of the latest census of 2001 and not on the basis of the 1991 Census.

It was a laudable object to bring about amendment to the Constitution since census figures of 1991 would not have been relevant for the readjustment of constituencies in the year 2003 or 2004 because of fresh census having taken place in the year 2001 of which census figures are now available. There is no challenge to the Constitution (Eighty-Seventh Amendment) Act, 2003. It is but natural that the readjustment of seats will have to be done now on the basis of census figures of 2001 for which Delimitation Commission will have to undertake its task afresh. The first step in the direction for the Delimitation Commission would be to complete its work and submit its report. Only thereafter readjustment of seats and reallocation of territorial constituencies will have to be given effect to and that only from the dates as are notified by the President. The Census Commissioner of India has published census figures of 2001 only on 31st December, 2003 except in respect of few states. The Delimitation Commission obviously could not have commenced its work prior to 31st December, 2003.

The prayer made in these two petitions is that till there is readjustment of the constituencies direction be issued not to hold the elections so that there is proper representation to Scheduled Castes and Scheduled Tribes. Merely because delimitation and readjustment of constituencies has not yet taken place and cannot take place so soon, the elections to the House of the People and State Legislative Assembly cannot be ordered to be postponed till readjustment takes place. The Commission is likely to take its own time to complete the allotted task. The main objective of the 42nd Amendment Act as noticed above was that election to Lok Sabha and State Legislative assemblies need not await delimitation of constituencies after each census and that the elections to the House of the People and the Legislative Assemblies be held on the basis of the existing territorial constituencies. It specifically provided that reallocation of seats shall take effect only from such date as the President may by order fix. Now, in view of the Constitution (Eighty-Seventh Amendment) Act, 2003, the Delimitation Commission has to finalise the delimitation and readjustment of territorial constituencies on the basis of the census figures of 2001, which according to the respondents 2 and 3 will definitely take considerable time. Withholding of elections would only amount to depriving the people of elect Government of their choice particularly at a stage when the State Legislative Assembly as also the Lok Sabha stands dissolved.

The basis structure of our Constitution in this regard is to have an elected democratic form of Government. Clause (2) of Article 83 provides that the House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House. Clause 2(b) of Article 85 provides for dissolution of the House of the People by the President prior to the said date. Therefore, the House of the People may stand dissolved either on expiry of five years under Article 83(2), or by an order of dissolution made by the President at any time earlier, under Article 85(2)(b). Similarly, Clause (1) of Article 172 of the Constitution provides that every legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly. Clause 2(b) of Article 174 of the Constitution provides for dissolution of the Assembly by the Governor. The State Legislative Assembly, therefore, may stand dissolved either on expiry of five years under Article 172 (1) or by an order of dissolution made by the Governor at any time earlier, under Article 174(2)(b).

Therefore, conduct of elections to the House of the People and the State Legislative Assemblies as and when they are due is a constitutional requirement as envisaged under the Constitutional framework. Such a constitutional requirement cannot be withheld or postponed on the ground that the Delimitation Commission has not undertaken the task of delimitation and readjustment of territorial constituencies, particularly in view of 42nd Constitution Amendment, which provides that *election to the Lok Sabha and State Legislative Assemblies need not await delimitation of constituencies after each census*. We, therefore, do not find that any ground has been made out to issue mandate as prayed for. If any directions as prayed for are issued, it would also amount to issuing a mandate to the President of India to fix a date by which readjustment or reallocation of territorial constituencies shall take effect which cannot be done by us in exercise of our jurisdiction under Article 226 of the Constitution of India.

We also do not find any substance in the submission of the learned counsel for the petitioners in the other petition (W.P.Ino. 1669 of 2004) that the Constitution Eighty-Fourth Amendment Act in a way alters the basic structure of the Constitution. The basis structure of the Constitution has remained the same, which has already provided for reservations of seats for SCs and STs, which presently is in relation to certain census figures for a particular year.

A mere change in the definition of the expression 'population' with respect to census figures for a particular year, in our considered opinion, will not have the effect of altering the basic structure of the Constitution. It only defined certain words. We cannot also loose sight of the fact that to have an elected democratic form of Government is also one of the basic structures of our Constitution. Elected democratic form of Government is necessary to carry out the constitutional and other executive functions by the Government as envisaged under the constitutional scheme in order to fulfil the goals cherished under the Constitution and to have smooth working of the Constitution. Election to constitute a new House of the People or the Legislative Assembly of a State on the expiry of its term or dissolution of the earlier House thus being a constitutional requirement cannot be withheld or postponed. The President or the Governor, as the case may be, must have the Council of Ministers to advise him in the discharge of his constitutional functions, which are necessary for the working of the constitution, lest the very spirit of the Constitution and the concept of democracy underlined under the Constitution would be in jeopardy. The prayer of the petitioner, therefore, if allowed create a constitutional vacuum and lead to constitutional fiasco. As such, we do not find any force in the said submission also.

For the reasons aforesaid, we find no merit in the Writ Petitions, which are dismissed at he admission stage.

Sd/- .S. Bharathi.
Asst. Registrar.

//True copy//

Section Officer

Note: This order is amended regarding the appearance in a w.P.No. 65/2004, as per the order of the Asst. Registrar, and the letter filed by the Counsel for the Respondent, and this amended order is substituted for the order dispatched earlier on 12.2.2004.

Sd/- .S. Bharathi.
Asst. Registrar.

//True copy//

One fair copy to the Hon'ble the Chief Justice, Sri Deveinder Gupta.
(for his Lordships Kind perusal)

One fair copy to the Hon'ble Ms. Justice G.Rohini
(for his Lordships Kind perusal)

To

- 1 The Secretary, Union of India, Home(Elections)New Delhi.
- 2 The Principal Secretary, Election Commission, Nirvachan Sadan, New Delhi.
- 3 The Secretary, Delimitation Commission, New Delhi, Nirvachan Sadan, New Delhi.

- 4 The Principal Secretary, Govt. of A.P., GAD(Election), Hyderabad.
 - 5 The Chief Election Commissioner, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110001.
 - 6 The Cabinet Secretary, the Union of India, Cabinet Secretariat, South Block, New Delhi 110011.
 - 7 8 L.R. Copies.
 - 8 The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
 - 9 The Secretary, A.P. Advocates' Association Library, High Court of A.P., Hyderabad.
 - 10 The Chief Electoral Officer, Andhra Pradesh, Govt. of A.P., Secretariat Buildings, Hyderabad-500022.
 - 11 The Chief Secretary, Govt. A.P., Secretariat Buildings Saifabad, Hyderabad.
 - 12 Two CCS to the G.P for GAD, High Court of A.P., Hyderabad(OUT)
 - 13 Two CCS to Mr. K. Ashok Reddy, Advocate (OPUC).
 - 14 Two C.D Copies
- Ty MKH C.By

HIGH COURT

DATED: 17.02.2004-06-30

AMENDED COMMON JUDGMENT

W.P.NO. 65 & 1669 OF 2004-06-30

DISMISSING THE W.PS AT
THE ADMISSION STAGE
WITHOUT COSTS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

Bench at A'bad.

WRIT PETITION NO. 941

OF 19, 2004

(UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA)

Gajendra S/o Sambhaji Bagal, age: 31 yrs, Occ: Advocate,
R/o Nandgaon, Tq. Karjat, Dist. A'nagar

PETITIONER/S,

Versus

1. The Union of India & ors. Respondent.

To,

R.No.1) The Union of India, versus through: Secretary of Law Justice &
Company affairs, North Block new Delhi., through : Shri Vilas
Sonwane, Stdg. Counsel, UOI, High Court at Aurangabad.

R.No.2) The Chief Election Commissioner, Election of India, Nirvachan Sadan,
New Delhi.

Respondent/s

R.No.3) The State of Mah. Through: its Chief Returning Officer, G.A.D. Deptt.
Mantralaya, Mumbai, through: Govt. Pleader high Court, Bench at
Aurangabad.

R.No.4) The Election Commissioner State Election Commission of
Maharashtra, New Administrative bldg. Opp. Mantralaya, - PT

To

WHEREAS, the petitioner had filed the above Petition under Articles 226 and 227 of the Constitution of India (a copy of which was served on you under this office No. – as per prayer clause (B), the respondent to dereserve the constituency No. 227 Karjat Civ. Vidhan Sabha Mr Tadar Sengh,d Karjat/J&mkhed Dist. A'nagar that for that purpose issue necessary orders.

this Honourable High Court may be pleased to issue

and also praying for other reliefs as stated in the said petition;

AND WHEREAS, rule and interim stay/injunction was granted by this Court on

AND WHEREAS, the said petition came up for final hearing before this court

(CORAM: A P Deshpande & V G Munshi, JJ.) on 12-2-2004;

AND UPON hearing Mr. P. K. Temkar, adv. for the petitioner and Shri Vilas
Sonwane, Stdg. Counsel for R.No.1, Shri S T Shelk,
Adv. for R. No. 4, Shri E P Sawant, GP for R. No.3.

This Court has passed the following order:-

(COPY OF ORDER IS ENCLOSED HEREWITH)

It is accordingly ordered that this order be punctually observed and carried into execution by all concerned.

WITNESS C K THAKKEE, Chief Justice at Bombay, aforesaid.

This 12th day of Feb. two thousand four

- Madam Cama road, Mumbai-32.

R. 5) The Delimitation Commission, through : its
Chair Person/Member New Delhi -110001.

By the Court,
Sd/-
Assistant Registrar

Dated this _____ day of _____ For Additional Registrar
199.

NOTE: This writ should be returned to this Office after taking necessary note in your office Register and after making an endorsement on the Writ to that effect.

The record and proceedings in the matter are Returned herewith. The accompanying receipt for the same may please be returned to this office duly signed.

No. D.D. --- of 199 . ---

Copy forwarded with compliments for information to the -----

in continuation of High Court Stay Writ No. --- , dated -----

High Court, Appellate Side, }
Bombay, dated 199 . }

for Additional Registrar

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

DISTRICT

Appeal
Application
Writ Petition

No. 941/2004

Office Notes, Office Memoranda of Coram Appearances, Courts' orders of directions and Registrar's Orders	Court's or Judge's orders
<p>Shri R.K. Tamkar Adv. for the petitioner. Shri Vilas Sonawane, Standing Council for R/No. 1. Shri S. T. Sheker Adv. for R-(4) Shri. E.P. Siwani, Gp. Nor. R. No. 3, <u>Coram: A.P. Deshpande. And.</u> <u>V. G. Munshiji</u></p> <p><u>Note:</u> Original order 12-2-04 & matter send to comp. Sec on. 16/2/04</p>	<ol style="list-style-type: none">1) The only grievance made in the present petition is that the petitioner's representation made to the Election Commissioner, State of Maharashtra, is pending. The same is dt. 13-8-2002, wherein a prayer is made for de-reservation of a seat.2) The learned counsel appearing for the Election Commission submits that, if such an application is pending, the same will be considered and decided in accordance with law.3) We hope and trust that the application would be disposed of within a period of eight weeks from today.4) In this view of the matter, no further orders are necessary, petition disposed of.

Date 12/2/02

Sd/-

For Dy. Reg.

True Copy

Assistant Registrar
High Court Appellate Sp
Bombay at Aurangabad

Date of application for copy	Date fixed for notifying the requisite number of stamps and follows	Date of delivery of the requisite stamp and follows	Date on which the copy was ready for delivery.	Date of making ever the copy to the Applicant.
24/02/04	24/02/04	24/02/04	25/02/04	25/02/04

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from
Civil Rule

(P.I.L)

No.....53.....

B

Appellant
Petitioner

Sri K Rebei Singh & others

Versus

Union of India and others

Respondent
Opposite Party

Applicant Mr. M. L. Verma

For

Petitioner Mr. N. Kumarjit

Respondent Mr. M. Gunedhar Singh

For Mr. Biswajit Singh Advocate

C. G. S. C.

Mr. K. Kumar, Adv. for Rsp. No. 1 & 4.

Mr. K.N. Choudhary, Adv. for Rsp. No. 2 & 3

Mr. H. N. K. Singh, Adv for Rsp. No. 5

Noting by Officer of Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

IN THE MATTER OF :-

A case between;

1. Shri Kangabam Rabei Singh, aged about 40 years, by profession an Advocate, S/o K.Kullachand Singh, Thiyam Leishangkhong Laishram Leikai, P.O. & P.S. Wangoi, District, Imphal West, Manipur, the Secretary The Lawyers' Guild, having its Office At the Gauhati High Court, Imphal Bench premises, P.O & P.S Imphal. Manipur.
2. Shri Chongtham Ngongo Singh, aged About 38 years, by profession and Advocate, S/o Ch. Nadiachand Singh, Singjanei Chongtham Leikai, P.O & P.S. Singjamei, Imphal West District, Manipur, the Joint Secretary, the Lawyers' Guild, having its Office at The Gauhati High Court, Imphal Bench Premises, P.O & P.S. Imphal, District Imphal West, Manipur.

.....Petitioners

-Versus-

1. The Union of India represented by the Secretary, Ministry of Home Affairs, Government of India, North Block, Central Secretariat, New Delhi-110001.
2. The Registrar General and Census Commissioner, Ministry of Home Affairs, Government of India, North Block, Central Secretariat, New Delhi-110001.
3. The Director of Census operations And Chief Principal Census Officer, Manipur, Ministry of Home Affairs, Government of India, Yumnam

Leikai, Imphal, Manipur.

- 4 The Delimitation Commission of India through the Secretary
Delimitation Commission, Nirvachan Sadan, 6th Floor, New Delhi – 100001.

- 5 The State of Manipur represented by the Chief Secretary, Government of Manipur, Old Secretariat, Imphal, Manipur – 795001.

.....Respondents.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1.	2.	3.	4.

PIL NO. 53 OF 2003
BEFORE
HON'BLE THE CHIEF JUSTICE MR. P.P.NAOLEKAR
THE HON'BLE MR. JUSTICE AMITAVA ROY

24.02.2004

Heard Mr. M.L.Verma, learned counsel for the petitioner. Mr. K.Kumar appears for the Respondent No. 1 & 4; Mr. K.N.Choudhury, appears for the Respondent 2 & 3; and Mr. H.N.K.Singh, learned Advocate General, Manipur appears for the Respondent No.5.

The writ petition is admitted.

Considering the consent of the learned counsel appearing for respective parties the matter is finally heard.

The public interest litigation is filed by the petitioner apprehending that in the State of Manipur the Delimitation Commission of India will issue the orders of delimitation under the Delimitation Act of 2002

and shall issue order adjusting the Parliamentary and Assembly seats without there being final Census Report. The petitioner's contention is also that the representation made by the petitioner to the Registrar General & Census Commissioner of India, Ministry of Home Affairs, Government of India and the respondents made by the State of Manipur has not been taken into consideration and the Registrar General is going to publish a final census report of the State of Manipur.

The Registrar General & Census Commissioner of India has entered appearance and filed affidavit in opposition. Paragraph 9 of the affidavit reads:

“9. That with regard to the statements made in paragraph 14 of the writ petition (PIL), the answering respondents state that the Government of Manipur approached the Registrar General and Census Commissioner of India to look into the alleged abnormal growth in some of the sub-divisions of Manipur, but, after a long delay, i.e. in June, 2003 . Looking into the gravity of the situation the office of the Respondent No. 2 requested the Govt. of Manipur to make available certain information at the district level so as to appreciate and objectively assess the contention of the State Government. However, surprisingly the said the Respondent No. 2 by the Government of Manipur only in September – November, 2003 and that too after repeated reminders were sent by the office of the Respondent No. 2 on 24.07.2003, 22.08.2003, 04.09.2003, 19.09.2003, 30.09.2003, 01.10.2003 and on 06.12.2003. Action pursuant to receipt of information requested for by the office of the Respondent No. 2 had been taken to the extent that the same is under evaluation and the final decisions with regard thereto remain to be taken.”

From the aforesaid paragraph it is clear to us that the Registrar General & Census Commissioner of India has not yet considered the representation made by the State of Manipur. From the affidavit submitted by the Respondent No. 2 we feel that the Registrar General & Census Commissioner of India has also not considered the representation made by the petitioner on 09.10.2003. Before publication of the report of the final census it is incumbent on the part of the Registrar General & Census Commissioner of India to take into consideration of the objection which has been presented before it. Accordingly, we direct that the Registrar General &

Census Commissioner of India shall consider the representation made by the State of Manipur as well as petitioner's representation dated 09.10.2003 before final publication of the Census Report in accordance with the Census Act of 1948 and the rules framed thereunder.

As regards, issuance of the final order, the Delimitation Commission of India shall not issue the order under the Delimitation Act, 2002 delimitation the constituencies and re-adjusting seats of Parliament and Assembly constituencies till the final census report is published. We make it clear that the objection raised by the petitioner to the provisions of Section 10(2) of the Delimitation Act of 2002 has not been decided by us.

It is also made clear that after publication of the proposal of delimitation of constituencies and re-adjustment of the seats of Parliament and Assembly constituency, it shall be open for the petitioner to raise such objection as the deem fit and the Delimitation commission of India shall proceed with the process of delimitation in accordance with the provisions of the Act of 2002.

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM NAGALAND MEGHALAYA, MANIPUR
TRIPURA MIZORAM & ARUNACHAL PRADESH)

P.I.L. No. 18/2003.

Pu. Lalmuanawma,
S/o F. Lalthona,
Vice President of Mizo Zirlai,
Pawl. (Mzo) P.O. Aizawl,
Dist: Aizawl, Mizoram.

.....Writ petitioner.

-Versus-

1. The Union of India,
Represented by the Secretary to the
Govt. of India, Ministry of Law &
Justice (Legislative Department),
P.O. New Delhi-110001.
2. The Secretary to the Govt of
India, Ministry of Law & Justice
(Legislative Department) P.O.
New Delhi-110001.
3. The State of Mizoram, Represented
by the Chief Secretary to the
Government of Mizoram, P.O. Aizawl.
4. Delimitation Commission, Headed by
its Chairperson, 6th Floor
Nirvachan Sadan, Ashoka Road,
New Delhi-110001.
5. Chairperson, Delimitation Commission,
6th Floor, Nirvachan Sadan,
Ashoka Road, New Delhi-110001.

6. The Secretary,
Delimitation Commission
6th Floor, Nirvachan Sadan,
Ashoka Road, New Delhi-110001.

.....Respondents.

PRESENT.
THE HON'BLE MR JUSTICE D. BISWAS
THE HON'BLE MR JUSTICE IA ANSARI

FOR THE PETITIONER : Mr. K.P. Pathak,
Mr. S.K. Sharma,
Mr. P.N. Goswami,
Mr. K.S. Pathak, Advocates.

FOR THE RESPONDENTS: C.G.S.C.
Mr. A. Sharma,
Govt. Advocate, Mizoram
Mr. A. Dasgupta,

23.4.2003

ORDER

Heard Mr. KP Pathak, learned senior counsel for the petitioner and Mr. A. Sharma, learned CGSC also heard Mr. Dasgupta, the Learned State counsel.

Issue notice of motion.

Returnable within four weeks.

The learned CGSC accepts notice on behalf of respondent Nos 1, 2, 4, 5 and 6. Mr. A. Dasgupta, learned State counsel accepts notice on behalf of respondent No.3.

Also issue notice on the interim prayer.

Returnable within four weeks.

Also issue notice on the interim prayer.

Returnable within four weeks.

In the interim, it is directed that the Delimitation Commission constituted by the Government of India vide notification dated 12th July, 2002 (Annexure-2) may proceed with delimitation of constituencies, but shall not pass any final orders until further orders from this Court.

Liberty is, however, granted to the respondents to move this Court for alteration/cancellation/modification of this order, if so advised.

Sd/- IA ANSARI
JUDGE

Sd/- D. BISWAS
JUDGE

IN THE HIGH COURT OF JUDICATURE AT JABAALPUR

W.P. NO. 1185 OF 2004

Petitioner

Ajay Pratap Singh aged about 36 years S/o Late Shri Dadhibal Singh R/o “Ajay Kuti”
South Karaunidia Sidhi M.P.

V/S

RESPONDENTS

1. The Election Commission of India Through it's Secretary, Nirwachan Sadan, Ashoka Road, New Delhi
2. The Union of India Through Cabinet Secretary,, RASTRAPATI BHAVAN NEW DELHI.
3. The Delimitation Commission Through it's Secretary Ex-officio Secretary, Election Commission of India Nirwachan Sadan, Ashoka Road, New Delhi.

**WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
FOR THE ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS AND
OTHER SUITABLE WRITS AND DIRECTIONS**

1. PARTICULARS OF THE PETITIONER:
As per the cause title.
2. PARTICULARS OF THE RESPONDENTS:
As per the cause title.

HIGH COURT OF MADHYA PRADESH: JABALPUR

Wri Petition No. 1185 of 2004

Ajay Pratap Singh

Vs.

Election Commission of India and others.

For petitioner: Shri R.B. Singh, Advocate.

For respondents: Shri K.K. Trivedi, Advocate

ORDER
(27.4.2004)

The petitioner has filed this petition seeking following directions:

“ 7.1. That the respondent no. 1 kindly may be directed firmly to determine the reservation status on the basis of the facts & conditions after the partition of Sidhi seat before holding forthcoming elections.

7.2. That the respondents may be directed to declare the Sidhi Lok Sabha Seat as general seat and the other seats which are having higher ratio of S.T. population than Sidhi may be reserved.”

2. Before filing this petition, petitioner filed another petition before this Court which was registered as Writ Petition No. 300/2004. It was finally disposed of on 25.2.2004 by issuing following directions:

“i) Petitioners if chooses may file a duly constituted representation to the respondents within a period of three days agitating their grievances in respect of delimitation of Sidhi District.

ii) If such an application is filed by the petitioners within the aforesaid period, respondents 1 and 3 shall consider it and decide in accordance with law expeditiously as far as possible within a period of one week from the date of receipt of the representation.

iii) Result of the decision of the respondents shall be communicated to the petitioners forthwith by registered A.D. post.”

3. Thereafter petitioner preferred a representation to the Election Commission which was decided by respondent no.2 vide Annexure P/2 dated 3rd March, 2004 informing the petitioner as under:

(i) Section 17(2) (c) of Madhya Pradesh Reorganisation Act pertains to determination of number of seats to be reserved for SC and ST only in the Legislative Assemblies of the State of Madhya Pradesh and Chhattisgarh respectively having regard to the relevant provision of the Constitution and not the seats in the Lok Sabha.

(ii) Under the Constitution (84th Amendment) Act, 2001, Constitution (87th Amendment) Act, 2003 and the Delimitation Act, 2002, as amended by the Delimitation (Amendment) Act, 2003, the readjustment in the allocation of seats, including the seats to be reserved for the SCs and STs in the House of the People for the States is to be done on the basis of population figures in 2001 census. This work is to be done by the Delimitation Commission. The Delimitation Commission is currently engaged in this process.

It may also be noted that under the second proviso to Article 82 of the Constitution until the readjustment of constituencies as contemplated under that Article takes effect (from the date specified by the President), any election to the House of the People is to be held on the basis of the existing delimitation of the constituencies.”

4. The petitioner’s representation was also considered by the Delimitation Committee of India, Delhi vide Annexure P/3 and the petitioner was informed as under:

“Under Section 4(5) of the Representation of the People Act, 1950 the extent of Parliamentary Constituencies in the State of Madhya Pradesh (before the reorganisation in 2000) was determined by the orders of the Delimitation Commission set up under the Act, 1972. The orders of the Delimitation Commission of 1972 were consolidated by the Election Commission under Section 8(1) of the said Act into one single order known as the ‘Delimitation of Parliamentary and Assembly Constituencies Order, 1976’. Schedule XII to the said 1976 Order pertains to the State of Madhya Pradesh. On the reorganisation of the State of Madhya Pradesh by the Madhya Pradesh Reorganisation Act, 2000, Schedule XII to the 1976 Order has been amended by Parliament affecting the extent of 10-Sidhi (ST) Parliamentary Constituency in Madhya Pradesh. Prior to the said amendment, the Sidhi Parliamentary Constituency was comprised of 73-Churahat, 74-Sidhi, 75-Gopadbanas, 76-Dhauhani (ST), 77-Deosar (ST), 78-Singrauli (SC), 87-Manendragarh (ST) and 88-Baikuthpur Under Section 10 of the Madhya Pradesh reorganisation Act, 2000 read with the Second Schedule thereto, the extent of 10 Sidhi (ST) Parliamentary Constituency has been amended by Parliament, whereby the two assembly segments of 87 Manendragarh (ST) and 88-Baikuthpur have been taken out from the said Parliamentary Constituency and included in the new State of Chhattisgarh. Accordingly, the extent of 10 Sidhi (ST) Parliamentary Constituency has been amended by the Parliament so as to exclude therefrom the said 87 manendragarh (ST) and 88 Baikuthpur Assembly Constituencies”.

2. Therefore the said 10-Sidhi (ST) Parliamentary Constituency is now comprised of only remaining six assembly segments, viz. 73-Churahat, 74-Sidhi, 75-Gopadbanas, 76-Dhauni(ST), 77-Deosar (ST) and 78-Singrauli (SC). A copy of order No. 282/MP/2001-DEL(1) dated 11.1.2002, issued by the Election Commission of India in this behalf pursuant to the provisions of the Madhya Pradesh Reorganization Act 2000, renumbering all the Assembly and Parliamentary Constituencies in Madhya Pradesh, is enclosed herewith for your ready reference.

3. The present Delimitation Act 2002 has been enacted by Parliament and published in the Gazette of India Extraordinary dated 4th June 2002. This Commission has started functioning under the Chairmanship of Mr. Justice Kuldip Singh, former Judge of the Supreme Court, with effect from 16th July, 2002 with Headquarters at Nirvachan Sadan, Ashoka Road, New Delhi-110001.

4. Under the provisions of Articles 82 and 170 of the Constitution as amended by the Constitution (84th Amendment) Act 2001 and the Delimitation Act 2002, the delimitation exercise was required to be undertaken on the basis of 1991 census data. While, the Commission had completed substantial part of the delimitation work on the basis of the 1991 census figures the Parliament once again amended the Constitution of India and passed the Constitution (87th amendment) Act, 2003 and as a consequence passed the Delimitation (Amendment) Act, 2003 providing that the delimitation of parliamentary and assembly constituencies is to be done on the basis of 2001 census figures. The census figures of 2001 relating to the State of Madhya Pradesh have been published by the Registrar General and Census Commissioner of India only on 31.12.2003. As a consequence the Delimitation Commission has restarted the process of delimitation of all the States including Madhya Pradesh.

5. The procedure provided under the Delimitation Act, 2002 as amended by the Delimitation (Amendment) Act, 2003 assures full opportunity to the elected representatives of the respective States (Parliamentarians as well as State Legislatures) and also to the electors. Five MLAs and five MPs (Lok Sabha) are nominated by the respective Speakers as associate members to the Delimitation Commission from each State. The delimitation work is carried on with the help of associate members. They are kept informed about the various drafts prepared by the Commission at various stages of the delimitation work. Thereafter the draft proposals are published in the Government Gazettes/the newspapers and public hearings are held with a view to give opportunity to the electors in the State. You and your associates will have full opportunity to the electors in the State. You and your associate will have full opportunity at that stage to raise your objections and give suggestions with a view to assist the Delimitation Commission.

6. We may mention that in the process of delimitation there is every likelihood of the shapes of the parliamentary constituencies being considerably changed which may necessitate a fresh-look at the question of reservation/dereservation of the constituencies.

7. With the dissolution of Lok Sabha the five associate members from each State have ceased to be members by operation of Law. New Associate members will be nominated by the Lok Sabha speaker after the elections to the 14th Lok Sabha are completed. We may mention that it may take one year or more for the delimitation process to be completed.

8. The new delimitation will take effect from the date to be specified by the President of India under the second proviso to Article 82 of the Constitution and until such time as the new delimitation takes effect, any election to the House of the People will be held on the basis of the existing constituencies.

9. Therefore, in view of the above position, it is not possible for the Commission to accede to your request. Accordingly, the said Sidhi Parliamentary Constituency shall continue to be reserved for the STs for the ensuing General Election to the Lok Sabha.”

5. Aggrieved by Annexures P/2 and P/3, petitioner again approached to this Court by filing present petition. The contentions of the petitioner are that under M.P. Reorganisation Act, Section 17 of the Act provides delimitation of the constituencies. Section 17 (1)(c) is in respect of Parliamentary Constituencies which reads as under:

“17. Delimitation of constituencies – (1) For the purpose of giving effect to the provisions of Section 12, the Election Commission shall determine in the matter hereinafter provided - -

(c) the adjustments in the boundaries and description of the extent of the parliamentary constituencies in each State referred to in clause (a) that may be necessary or expedient.”

Under sub-section (2) of Section 17, clause (c) provides as under:

(c) constituencies in which seats are reserved for the Scheduled Castes and the Scheduled Tribes shall, as far as practicable, be located in areas where the proportion of their population to the total population is the largest.

Sub Section (7) of Section 17 provides as under:

(7) The delimitation of constituencies in the State of Madhya Pradesh and Chhattisgarh shall be determined on the basis of the published figures of the census taken in the year 1971.”

6. The contention of the petitioner is that in M.P. 5 seats are to be reserved for S.T. categories after reorganisation of the State. Sidhi Parliamentary Constituency was divided and part of it fell in that State of Chhattisgarh. Now the position is that in District Sidhi, there is 32.53% population of S.T. while in Khargone and Chhindwara districts, the population of S.T. is 35.79% and 35.17% respectively. In these circumstances, the Sidhi Lok Sabha constituency ought to have been declared unreserved on the basis of 1971 census and either Khargone or Chhindwara ought to have been reserved for S.T. candidates. In the circumstances, on one hand, when other districts are having population of S.T. much higher in comparison to present Sidhi district, are unreserved and the population of S.T. is not getting due representation from the aforesaid districts, while the Sidhi district which is at presently have a very less population of S.T. has been reserved and has deprived the people of Sidhi of the benefit as the aforesaid seat ought to have been declared as general seat. Under Section 17(2) (c) of the Act, it was the duty of the Election Commission to determine this fact and an order of delimitation ought to have been passed by the Election commission. This order ought to have been passed on the basis of 1971 census as provided under Section 17 of the Act. Previously similar petition was filed at the time when the election commission notified election for Legislative Assembly but the petition was dismissed by the Division Bench on the ground that the petitioner approached the Court belatedly, the election process was started but the question was kept open by the Division Bench. Drawing attention to the Division Bench judgement of this Court, the learned counsel for petitioner submitted that this fact was brought to the notice of Election Commission to comply with the provisions of Section 17 of the Act. Then inaction on the part of respondents deserves an appropriate

command of this Court and the Election Commission be directed to pass an order in respect of delimitation of the constituency as per the provision of Section, 17 of the Act.

7. The learned counsel appearing for respondents supported the orders of Election Commission and Delimitation Commission of India Annexures P/2 and P/3 and has referred sub-clause (a) of sub-section (1) of Section 17 of the Act which clearly indicates that number of seats have been reserved for the S.C. and S.T. in the Legislative Assemblies of the States of M.P. and Chhattisgarh respectively. Action shall be taken by the Election commission of India keeping in view the relevant provision of the Constitution of India. Sub-clause (c) of sub-section (1) of Section 17 of the Act deals with the Parliamentary Constituencies, but it provides only the adjustments in the boundaries and description of the extent of the parliamentary constituencies in each State referred to in clause (a) that may be necessary or expedient to be done by the Election Commission of India. Except it other provisions of Section 17 are for the implementation of provision of sub-section (1) of Section 17 of the Act. In the entire section, it is not provided that the parliamentary constituencies will also be delimited by the Delimitation Commission of India. Apart from this, the Election Commission of India has already issued an order on 11.1.2002 and the Parliamentary Constituencies of M.P. are numbered accordingly showing their areas and boundaries. By 84th Amendment in the Constitution of India in Article 82 in the third proviso the figure '2000' has been substituted by figure '2026' and by further amendment it is provided that readjustment of the Parliamentary seats would be on the basis of 1991 census and the division of the each State into territorial constituency may be adjusted on the basis of 1991 census. By Eighty Seventh amendment on 22nd June, 2003 in Article 82 now '1991' has been substituted by figure '2001'. A Delimitation Commission has been constituted as per provisions of the 2002 Act. Section 4 of the aforesaid Act specifically provides that the readjustment shall be on the basis of the census figures as ascertained at the census held in the year 1991 by the commission. The Delimitation Commission started proves for this purpose and substantial part of the delimitation work on the basis of 1991 census figures were completed, but by the 87th Amendment of Constitution which came into force in 22nd June 2003, the entire exercise had to be redone as the census figures of 2001 were made the basis for readjustment of constituencies. The census figures for 2001 for the State of M.P. are published only on 31st December, 2003 and the work of delimitation has been restarted for all the States including Madhya Pradesh. Such an exercise is in process, a decision has been taken to dissolve the Parliament by the Cabinet and the election of Parliament are declared. The procedure provided under the Delimitation Act, 2002 provides full opportunity to the elected representatives of the respective States and also to the electors in respect of delimitation of Parliamentary constituencies and Legislative assemblies. Five M.L.As and five M.P.s (Lok Sabha) are nominated by the respective Speakers as associate members to the Delimitation Commission from each State. The delimitation work is carried on with the help of associate members. The draft proposals after approval of the members in the Gazettes concerned shall be published and all the affected persons may appear before the commission to raise their objections and the Delimitation Commission shall decide the objection and consider the suggestion in this regard but because of the dissolution of the Lok Sabha, the five associate members of each State have ceased to be members by operation of law. New associate members will be nominated by the Lok Sabha Speaker after the formation of 14th Lok Sabha. The Constitution in such exigency provides a provision which has to be adopted. Article 82 of the Constitution of India provides that in absence of fresh readjustment, the election of House of People will be held on the basis of the existing stutus. In these circumstances, till fresh delimitation of the Parliamentary Constituency, the elections are to be held as provided under Article 82 of the Constitution of India. In these

circumstances, the respondents have rightly decided that Sidhi constituency shall remain reserved for S.T. under Article 82 of the Constitution of India and after completion of the work of delimitation by the Delimitation Commission of India, the proper order shall be passed.

The counsel for respondents has also placed his reliance to the Apex Court's judgment in Meghraj Kothari Vs. Delimitation Commission and others: AIR 1967 SC 669 and Division Bench judgment of Andhra Pradesh High Court at Hyderabad in Writ Petition No. 65 and 1669 of 2004. To controvert aforesaid, the learned counsel appearing for petitioner submits that under section 17 of the Act it is the duty of the Election Commission to delimitation of constituencies in the States of M.P. and Chhattisgarh on the basis of the published figures of the census in the year 1971 and is bound to give effect to the aforesaid provisions. The aforesaid aspect has not been dealt with in the aforesaid judgment and the respondents are bound to give effect to the aforesaid statutory provision before the election. To consider the contentions of the parties, it is necessary to look into certain provisions. By 87th Amendment 2003, Articles 81 and 82 of the Constitution of India have been amended. Articles 81 and 82 after the 84th amendment read as under:"

81. Composition of the House of the People.-(1) Subject to the provisions of article 331 the House of the People shall consist of- -

(a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of Clause (1).-

(a) There shall be allotment to each State 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

(b) each State 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 is, so far as practicable, the same throughout the States:

Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed:

(i) For the purposes of sub-clause (a) of clause (2) and the proviso to that clause, as a reference to the 1971 census; and

(ii) for the purposes of sub-clause (2) as a reference to the 1991 census.

82. Readjustment after each census. – Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine;

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House.

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust-

(i) the allocation of seats in the House of the People to the States as readjusted on the basis of the 1971 census; and

(ii) the division of each State into territorial constituencies as may be readjusted on the basis of the 1991 census.

Under this article”.

Eighty Seventh Amendment (22nd June, 2003)

amends the aforesaid Articles as under:

1. this Act may be called the Constitution (Eighty-seventh Amendment) Act, 2003.
2. In article 81 of the Constitution, in clause (3), in the proviso, in clause (ii), for the figures “1991”, the figures “2001” shall be substituted.
3. In article 82 of the Constitution, in the third proviso, in clause (ii), for the figures “1991”, the figures “2001” shall be substituted.”
8. The Parliament has enacted Delimitation Act 2002 to provide for the readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State, the division of each State and each Union Territory having a Legislative Assembly into territorial constituencies for election to the House of the People and Legislative Assemblies of the States and Union territories.
9. Section 4 of the aforesaid Act reads as under:

“4. (1) The readjustment made, on the basis of the census figures as ascertained at the census held in the year 1971 by the Delimitation Commission constituted under section 3 of the Delimitation Act, 1972, of the allocation of seats in the House of the People to the several

States and the total number of seats in the Legislative Assembly of each State shall be deemed to be the readjustment made by the Commission for the purposes of this Act.

(2) Subject to the provision of sub-section (1) and any other law for the time being in force, the Commission shall readjust the division of each State into territorial constituencies for the purpose of elections to the House of the People and to the State Legislative Assembly on the basis of the census figures as ascertained at the census held in the year 1991:

Provided that where on such readjustment only one seat is allocated in the House of the People to a State, the whole of that State shall form one territorial constituency for the purpose of elections to the House of the People from the State.”

10. The Delimitation Act Amendment Act, 2003 has further amended sub-section (2) of Section 4 of the Act. Now the basis of delimitation for the constituencies shall be on the basis of census figure of 2001. As the aforesaid work is under process by the Delimitation Commission and because of the constitutional amendment in Articles 81 and 82, the delimitation work is to be done by the aforesaid commission on the basis of the figures of census 2001. In the circumstances, provision of Article 82 shall apply till the delimitation work is completed by the commission. The mandate of the Constitution is that such readjustment shall take effect from such date as President may by order specifies. Till then election of the House shall be held on the basis of territorial constituencies existing before readjustment. The Apex Court in Meghraj Kothari (supra) considering the similar circumstances held:

“9. The preamble to the Delimitation Commission Act, 1962, shows that it is an Act to provide for the readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the legislative Assembly of each State, the division of each State into territorial constituencies for elections to the House of the People and Legislative Assemblies of the States and for matters connected therewith. Article 82 only foreshadows that readjustment may be necessary upon completion of each census, but Article 327 gives power to Parliament to make elaborate provision for such readjustment including delimitation of constituencies and all other matters connected therewith as also elections to either House of Parliament. Section 3 of the Delimitation Commission Act (hereinafter referred to as the Act) enjoins upon the Central Government to constitute a Commission to be called the Delimitation Commission as soon as may be after the commencement of the Act. Section 4 of the Act provides that it is the duty of the Commission to readjust on the basis of the latest census figures the allocation of seats in the House of the People to the several States.. .. and the division of each State into territorial constituencies for the purpose of elections to the House of the People. Section 8 of the Act makes it obligatory on the Commission to determine by order, on the basis of the latest census figures, and having regard to the provisions of Arts. 81,170,330 and 332, the number of seats in the House of the People to be allocated to each State and the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State as also the total number of seats to be assigned to the Legislative Assembly of each State and the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State. The delimitation of the constituencies is provided for in 5.9, sub.S. (1) of the Act which reads:-

“The Commission shall, in the manner herein provided, then distribute the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State to single member territorial constituencies and delimit them on the

basis of the latest census figures, having regard to the provisions of the Constitution and to the following provisions, namely:

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

(b) every assembly constituency shall be so delimited as to fall wholly within one parliamentary constituency ;

(c) constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large; and

(d) constituencies in which seats are reserved for the Scheduled Tribes shall, as far as practicable be located in areas where the proportion of their population to total is the largest.” Under sub.s. (2) of the section the Commission shall publish its proposals for the delimitation of the constituencies together with the dissenting proposals, if any, of an associate member, specify a date on or after which the proposals will be further considered and consider all objections and suggestions which may have been received by it before the day so specified. Thereafter its duty is by one or more orders to determine the delimitation of Parliamentary constituencies and the delimitation of assembly constituencies of each State. Publicity is to be given to the orders of the Commission under S.10(1) of the Act. Sub-section (1) prescribed that each of its orders made under S.8 or S.9 is to be published in the Gazette of India and the official gazettes of the States concerned. Sub-section (3) provides that as soon as may be after such publication every such order shall be laid before the House of the People and the Legislative Assemblies of the States concerned.

16. In this case we are not faced with that difficulty because the Constitution itself provides under Art. 329 (a) that any law relating to the delimitation of constituencies etc. made or purporting to be made under Art. 327 shall not be called in question in any court. Therefore, an order under S.8 or 9 and published under S.10(1) would not be saved merely because of the use of the expression” shall not be called in question in any court.” But if by the publication of the order in the Gazette of India it is to be treated as law made under Art. 327, Art. 329 would prevent any investigation by any court of law.

“19. In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under Ss 8 and 9 were published in the Gazette of India and in the official gazettes of the States concerned, these matters could no longer be reagitated in a Court of Law. There seems to be very good reason behind such a provision. If the orders made under Ss.8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Section 10(2) of the Act clearly demonstrates the intention of the Legislature that the order under S 8 and 9 published under Section 10(1) were to be treated as law which was not to be questioned in any Court.”

30. In this case it must be held that the orders under Ss 8 and 9 published under S.10(1) of the Delimitation Commission Act were to make a complete set of rules which would govern the readjustment of number of seats and the delimitation of constituencies.

31. In this case the powers given by the Delimitation Commission Act and the work of the Commission would be wholly nugatory unless the Commission as a result of its deliberations and public sittings were in a position to readjust the number of seats in the House of the People or the total number of seats to be assigned to the Legislative Assembly with reservation for the Scheduled Castes and Scheduled Tribes and the delimitation of constituencies. It was the will of Parliament that the Commission could by order publish its proposals which were to be given effect to in the subsequent election and as such its order as published in the notification of the Gazette of India or the Gazette of the State was to be treated as law on the subject.”

11. As the matter has already been taken up by the Delimitation Commission and now the delimitation has to be made by the Commission as per 87th of Constitutional Amendment on the basis of census of 2001, in the circumstances, at this state, no directions are necessary to the Election Commission from this Court. The Division Bench of Andhra Pradesh High Court in A.P. Scheduled Castes Welfare Association, Hyderabad vs. The Union of India & others (supra) considering the similar circumstances held:

“It can thus be seen that for the first time the Constitution (42nd Amendment) Act, 1976 brought about the change providing that the election to Lok Sabha and the State Legislative Assemblies need await delimitation of the constituencies after each census. Position which prevailed under 1971 Census was thus frozen till the year 2001. The said 42nd Amendment Act also specifically inserted provisos to Articles 82 and 170 that readjustment of territorial constituencies and reallocation of seats whenever carried out, after each census, shall take effect only from such date as the President may by order fix. As such no effect can be given to readjustment of territorial constituencies and reallocation of seats, if any, carried out pursuant to any census until the President has fixed a date specifically stating that such readjustment of territorial constituencies and reallocation of seats shall take effect from that particular date. There is no challenge made in both the writ petitions as to the constitutional validity of the said provisions inserted by the 42nd Constitution Amendment Act. It may be noticed herein that the task of readjustment of territorial constituencies and reallocation of seats has not so far been completed by the Delimitation Commission either according to 1991 Census or 2001 Census.

Delimitation Act, 2002 came into force with effect from January, 2002. Delimitation Commission was constituted under the said Act with the task assigned to it to readjust the division of each state into territorial constituencies for the purpose of allocation of seats to the House of the People and the State Legislative Assemblies on the basis of Census figures as ascertained at the Census held in 1991. As noticed above, the delimitation of constituencies by the Commission can take effect only from the date to be notified by the President. It may be noted that after the Delimitation Act, 2002 came into force and the Commission started its functioning, Parliament enacted Constitution (Eighty Seventh Amendment) Act, 2003 which came into force with effect from 22.6.2003. By the said Act, the figures “1991” occurring in the Articles 81,82,170 and 330 were substituted by the figures “2001”. As a result of these amendments, the Delimitation Commission had to stop its functioning, as explained in the affidavit filed on behalf of respondents 2 and 3 that in March 2003 it was decided to go for another constitutional amendment whereby the delimitation work is now to be done on the basis of the latest census of 2001 and not on the basis of the 1991 Census.

It was a laudable object to bring about amendment to the Constitution since census figures of 1991 would not have been relevant for the readjustment of constituencies in the year 2003 or 2004 because of fresh census having taken place in the year 2001 of which census figures are not available. There is no challenge to the Constitution (Eighty-Seventh Amendment) Act, 2003. It is but natural that the readjustment of seats will have to be done now on the basis of census figures of 2001 for which Delimitation Commission will have to undertake its task afresh. The first step in the direction for the Delimitation Commission would be to complete its work and submit its report. Only thereafter readjustment of seats and reallocation of territorial constituencies will have to be given effect to and that only from the dates as are notified by the President. The Census Commissioner of India has published census figures of 2001 only on 31st December, 2003 except in respect of few states. The Delimitation Commission obviously could not have commenced its work prior to 31st December, 2003.

The prayer made in these two petitions is that till there is readjustment of the constituencies direction be issued not to hold the elections so that there is proper representation to Scheduled Castes and Scheduled Tribes. Merely because delimitation and readjustment of constituencies has not yet taken place and cannot take place so soon, the elections to the House of the People and State Legislative Assembly cannot be ordered to be postponed till readjustment takes place. The Commission is likely to take its own time to complete the allotted task. The main objective of the 42 Amendment Act as noticed above was that elections to the Lok Sabha and State Legislative assemblies need not await delimitation of constituencies after each census and that the election to the House of the People and the Legislative Assemblies be held on the basis of the existing territorial constituencies. It specifically provided that reallocation of seats shall take effect only from such date as the President may by order fix. Now, in view of the Constitution (Eighty Seventh Amendment) Act, 2003, the Delimitation Commission has to finalise the delimitation and readjustment of territorial constituencies on the basis of the census figures of 2001, which according to the respondents 2 and 3 will definitely take considerable time. Withholding of election would only amount to depriving the people to elect Government of their choice particularly at a stage when the State Legislative Assembly as also the Lok Sabha stands dissolved. The basic structure of our Constitution in this regard is to have an elected democratic form of Government. Clause (2) of Article 83 provides that the House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House. Clause 2(b) of Article 85 provides for dissolution of the House of the People by the President prior to the said date. Therefore, the House of the People may stand dissolved either on expiry of five years under Article 83(2), or by an order of dissolution made by the President at any time earlier, under Article 85(2) (b). Similarly, clause (1) of Article 172 of the Constitution provides that every legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly. Clause 2(b) of Article 174 of the Constitution provides for dissolution of the Assembly by the Governor. The State Legislative Assembly, therefore, may stand dissolved either on expiry of five years under Article 172(1) or by an order of dissolution made by the Governor at any time earlier, under Article 174 (2) (b).

Therefore, conduct of elections to the House of the People and the State Legislative Assemblies as and when they are due is a constitutional requirement as envisaged under the Constitutional framework. Such a constitutional requirement cannot be withheld or

postponed on the ground that the Delimitation Commission has not undertaken the task of delimitation and readjustment of territorial constituencies, particularly in view of 42nd Constitution amendment, which provides that elections to the Lok Sabha and State Legislative Assemblies need not await delimitation constituencies after each census. We, therefore, do not find that any ground has been made out to issue mandate as prayed for. If any directions as prayed for are issued, it would also amount to issuing a mandate to the President of India to fix a date by which readjustment or reallocation of territorial constituencies shall take effect which cannot be done by us in exercise of our jurisdiction under Article 226 of the Constitution of India.”

12. The Apex Court and the Andhra Pradesh High Court considering similar circumstances held that once the work of delimitation is started by the Commission, the Court should not interfere in the matter and the elections are to be conducted on the basis of territorial constituencies existing before such readjustment.

13. Now the question remains whether any direction may be issued to the Election Commission or to the Delimitation Commission to give effect to the provisions of Section 17 of the Act. As Constitution mandate under Article 82 of the Constitution is delimitation of the constituencies on the basis of census of 2001 and under Article 82 of the Constitution of India till the decision takes effect, the elections are to be held on the basis of territorial constituencies existing before readjustment. The harmonious construction of Section 17 of the Act, Articles 81 and 82 of the Constitution of India and Delimitation Act 2002 is that the Delimitation Commission has to process the matter on the basis of census 2001 and the delimitation of the constituencies shall be determined on the basis of the published figures of census 2001, only thereafter the delimitation of the constituencies shall be made. Before it, it will not be proper to direct the Election Commission to delimit the constituencies on the basis of figures of census of the year 1971. The Election Commission and the Delimitation Commission of India have rightly decided that the Delimitation of the constituencies be made

as per figures of census of 2001 and the present elections are to be held on the basis of the territorial constituencies existing as on date. In view of it, this petition is without merit and accordingly it is dismissed with no order as to costs.

(K.K. Lahoti)
Judge

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH JAIPUR

D.B. Civil special (writ) Appeal No. 265 /2007

In

S.B. Civil Writ petition No. 1378 / 2006.

Basant Chaudhary son of Shri N.R. chaudhary , aged about 35 years , by cast chaudhary , resident of village dabla khurd, tehsil phagi, District Jaipur (Rajasthan), At present plot No. c-67, sivar Area, Bapu Nagar, Jaipur.

Appellant / petitioner

Versus

1. Delimitation Commission Nirvachan Sadan, Ashoka Road, New Delhi through its secretary.
2. Chairman, Delimitation Commission, Nirvachan sadan , Ashoka Road, New Delhi.
3. Election Commission of India , Nirvachan Sadan, Ashoka Road New Delhi through its secretary.

Respondents / Non- petitioners

D.B. civil special Appeal (Writ) under Section 18 of The Rajasthan High Court Ordinance read Article 225 of the constitution of India against the order dated 10.01.2007 passed by Hon' ble Mr. Justice Ashok Parihar, in S.B. Civil Writ petition No. 1378 /2006 Basant Chaudhary Vs. Delimitation Commission and others by which writ petition has been dismissed having no merits

India. This is what the Supreme Court said in paragraphs 16, 19 and 23 of the report:

(16) In this case we are not faced with that difficulty because the Constitution itself provides under Art. 329 (a) that any Law relating to the Delimitation of Constituencies etc. made or purporting to be made under Art. 327 shall not be called in question in any Court. Therefore, an order under Ss. 8 or 9 and published under S. 10 (1) would not be saved merely because of the use of the expression "shall not be called in question in any Court" But if by the publication of the order in the Gazette of India it is to be treated as Law made under Art. 327, Art. 239 would prevent any investigation by any Court of Law. 19. In our view, therefore, the objection to the Delimitation of constituencies could only be entertained by the Commission before the date specified. Once the order made by the Commission under Ss. 8 and 9 were published in the Gazettes of India and in the official Gazettes of the States

concerned, these matters could no longer be reagitated in a Court of Law. There seems to be vary good reason behind such a provision. If the orders made under Ss. 8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Section 10 (2) of the Act clearly demonstrates the intention of the Legislature that the orders under Ss. 8 and 9 published under S. 10 (1) were to be treated as Law which was not to be questioned in any court.

(23) Similarly it may be said here that once the Delimitation Commission has made orders under Ss. 8 and 9 and they have been published under S. 10 (1) the orders are to have the same effect as if they were Law made by Parliament itself.

4. In view of the Legal position crystallized by the Supreme Court in the case of Meghraj, and there being no such challenge that the said Law is unconstitutional, the writ petition filed by the appellant could not have been entertained and rightly not entertained.

5. The appeal is, accordingly, dismissed in Limine.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH JAIPUR

S.B. Civil Writ petition No. 1378 / 2006.

Basant Chaudhary son of Shri N.R. chaudhary, age about 35 years, by cast chaudhary, resident of Village Dablu Khurd , Tehsil phagi, District Jaipur (Rajasthan), At present plot No. C-67, sivar Area, Bapu Nagar, Jaipur. (Rajasthan)

.....PETITIONER

VERSUS

1. Delimitation Commission Nirvachan Sadan, Ashoka Road, New Delhi through its secretary.
2. Chairman, Delimitation Commission, Nirvachan Sadan, Ashoka Road, New Delhi.
3. Election Commission of India, Nirvachan Sadan, Ashoka Road New Delhi through its secretary.

...Non- petitioners

S.B. CIVIL WRIT PETITION UNDER
ARTICLE 226 OF THE CONSTITUTION OF
INDIA.

AND

IN THE MATTER OF SECTION 9 AND 11
OF THE DELIMITATION ACT, 2002 AS
AMENDED DELIMITATION AMENDED
ACT, 2003.

IN THE MATTER OF DELIMITATION
PROCEEDINGS IN RAJASTHAN.

AND

IN THE MATTER OF NON – DISPOSAL OF
OBJECTION DATED 22.08.2005 RAISED

BY THE PETITIONER BEFORE THE NON
– PETITIONER NO.1 IN RESPECT OF
THE DELIMITATION OF
CONSTITUENCIES DUDI (86) AND
CHAKSU (99)

AND

AGAINST THE DELIMITATION OF THE
CONSTITUENCIES DUDU (45) AND
CHAKSU (58) AS NOTIFIED VIDE
NOTIFICATION DATED 25.01.2006 SO
FAR AS RELATES TO THE DIVISION OF
THE VILLAGE PANCHAYAT LADANA
INTO TWO CONSTITUENCIES.

BEFORE THE HON'BLE CHIEF JUSTICE
SHRI S.N. JHA AND HIS OTHERS
COMPANION JUSTICES OF THE
HON'BLE HIGH COURT OF JUDICATURE
FOR

S.B. Civil Writ petition No. 1378 / 2006 Basant Chaudhary Vs.
Delimitation Commission and others.

Dated 10/01/2007

HON'BLE Mr. JUSTICE ASHOK PARIHAR

Mr. P.S. Sirohi, for Petitioner.

BY THE COURT:

Petitioner is aggrieved by Delimitation of Assembly
Constituencies, Dudu by the Delimitation Commission vide notification
issued on 25.01.2006. The above notification has been issued under
Section 10 of the Delimitation Act, of 2002. There is a complete
procedure provided under the above Act, 2002. Considerations for
delimitation have also been provided in the Act itself. The notification
under Section 10 further cannot be called in question in any court also.
The objective consideration and discretion used by the Commission in
regard to delimitation of various Assembly constituencies cannot be

questioned in a writ petition before this court since this court under writ jurisdiction cannot sit in appeal over the discretion used by the Commission.

Having considered entire facts and circumstances, no case for interference is made out in the present matter. The writ petition is dismissed accordingly as having no merits.

Sd.
(Ashok Parihar)