IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

ITANAGAR BENCH.

Writ Petition (C) No. 131 (AP) 2013

1. **Shri Gyamar Hipik,**
S/o Shri Gyamar Tuglo,
R/o Army Colony, Upper Nyapin,
PO & PS- Nyapin,
District-Kurung Kumey,
Arunachal Pradesh, PIN-791118

2. **Shri Tadar Chachung,**
S/o Shri Tadar Epo,
R/o Teacher Colony, Lower Nyapin,
PO & PS-Nyapin,
District-Kurung Kumey,
Arunachal Pradesh, PIN-791118

.....Petitioners.

By Advocate:
Mr. PD Nair

-Versus-

1. **The State of Arunachal Pradesh,** represented by the Chief Secretary to the Government of Arunachal Pradesh. Itanagar-791 111;

2. **The State Election Commission,** Arunachal Pradesh represented by its Secretary, Itanagar-791 111;

3. **The State Election Commissioner,** State Election Commission, Arunachal Pradesh, Itanagar-791 111;

4. **The Secretary to the Government of Arunachal Pradesh,** Town Planning and ULB Department, Civil Secretariat, Itanagar-791 111;

5. **The Secretary to the Government of Arunachal Pradesh,** Panchayat Raj Department, Itanagar- 791 111;

6. **The Deputy Commissioner cum District Election Officer,** Koloriang, PO & PS- Koloriang, District-Kurung Kumey, Arunchal Pradesh- 791118;

7. **The Additional Deputy Commissioner,** Nyapin, PO & PS- Nyapin, District-Kurung Kumey, Arunachal Pradesh-791118

8. Smti. Tarak Yarang @ Tadar Yarang (Unopposed ZPM candidate of 6-Nyapin ZPM Constituency) W/o Tarak Tajuk, resident of Paji Village, Arunachal Pradesh

.....**Respondents.**

By Advocates:
Ms. G. Deka, Addl. Sr. Govt. Advocate.
Mr. A. Apang, S/C State Election Commission
Mr. D. Mazumdar, for resp. no.8.

BEFORE

THE HON'BLE MR JUSTICE P.K. SAIKIA

Date of hearing : 03-05-2013 & 07-05-2013 08-05-2013

Date of Judgment & Order : 10-05-2013

JUDGMENT & ORDER (CAV)

1. I have heard Mr. P.D Nair, learned counsel for and on behalf of the petitioners and Ms. G. Deka, learned Addl. Sr. Govt. Advocate for the State respondents. Also Mr. A. Apang, learned Standing Counsel appearing on behalf of the State Election Commission and Mr. D. Majumdar, learned counsel appears for respondent no.8.

2. In this proceeding, the petitioners have prayed for, amongst other things, following relief(s)-

"In the premises aforesaid it is most respectfully prayed that your Lordships may be pleased to admit this petition, call for the records and issue a Rule calling upon the respondents to show cause as to why-

(a) a Writ in the nature of Certiorari and/or any other appropriate writ, order or direction should not be issued to set aside and quash the impugned notification dated 10/11/04/2013 bearing No. DTP/MP-08/2010-2011 (Annexure-8) and WT/Fax Msg. Dated 13-04-2013 bearing No. AP/SEC-52/2002/1196 (Annexure-9) and any action related or consequent thereto; and/or

(b) a writ in the nature of Mandamus or any other appropriate writ, order or direction shall not be issued directing the respondent authorities to forbear from giving any further effect to the impugned notification dated 10/11/04/2013 bearing No. DTP/MP-08/2010-2011 (Annexure-8) and WT/Fax Msg. Dated 13-04-2013 bearing No. AP/SEC-52/2002/1196 (Annexure-9) and any action related or consequent thereto; and/or

(c) a Writ in the nature of Mandamus or any other appropriate Writ, order or direction shall not be issued directing the respondents to hold Panchayat Raj Election under Arunachal Pradesh Panchayat Raj Act, 1997 in the said Nyapin ADC Head Quarter under Kurung Kumey District pursuant to notification of Election dated 16-04-2013 bearing No. AP/SEC-317/2012; and/or

And on cause(s) being shown, if any, perusal of the records and upon hearing the parties, may be pleased to make the Rule absolute and/or may be pleased to pass such further or other order(s) as Your Lordships may deem fit and proper in the facts and circumstances of the case".

3. The facts, as stated in the writ petition and which are necessary for disposal of the present proceeding are that the petitioners, herein, are the permanent residents of the area comprised in Nyapin Zilla Parishad

Constituency in the District of Kurung Kumey and their names are included in the Electoral Rolls of their respective areas as given below:-

Petitioner No.	***Gram Segment***	***Anchal Constiutency***	***Zilla Constituency***
1.	***283-Army Colony***	***76-Upper Nyapin***	***6-Nyapin***
2.	***285-Teacher Colony***	***77-Lower Nyapin***	***6-Nyapin***

4. In compliance of requirement of the Arunachal Pradesh Panchayat Raj Act, 1997 (in short, the Act of 1997) and the various subsequent notifications, passed there-under, elections to different Panchayat Raj Institutions/ bodies under the Act of 1997 were held in various parts of the State of Arunachal Pradesh including Nyapin ADC Head Quarter of Kurung Kumey District in 2008 for a term of 5 years, which was to have expired in the month of June 2013.

5. The Kurung Kumey Zilla Parishad of Kurung Kumey district comprised of Nyapin Anchal Block and 12 other blocks. On the other hand, Nyapin Anchal Block comprised of 76-Upper Nyapin and 77-Lower Nyapin Anchal Constituencies. 76- Upper Nyapin Constituency comprised of 5 Gram Panchayat Constituencies including 283 Army Colony. Similarly, 77-Lower Nyapin Constituency comprised of 4 Gram Panchayat Constituencies including 285- Teacher Colony.

6. It has been pointed out that as per Article 243 (f) as well as Article 243 (P) (g) of the constitution of India population means the population as ascertained at last preceding census of which relevant figures have been published. As per 2001 Census, which is stated to be last preceding census, the total population of Nyapin Head Quarter was only 2306, as certified by Memo No. Stat (ZR)/CEN/59/92, issued by the District Statistical Officer, Lower Subansiri District.

7. It has also been stated that total population of entire Kurung Kumey District, as per 2001 census, were 42,518 but without any urban population. Even as per the Provisional Population Census, conducted in 2011, the rural

population and urban population of the said district were 89,717 and 2305 respectively.

8. Vide notification dated 10th April, 2013, the Nyapin, ADC HQ of Kurung Kumey District was declared as urban area with immediate effect. As per the guide lines, issued by the Registrar General and Census Commissioner, Govt. of India, Ministry of Home affairs (herein after referred to as the Registrar General , Govt. of India), an area can be declared as an urban area, only when conditions, incorporated therein, exist in respect of such area and that too, simultaneously.

9. Vide notification dated 15/03/2008, in 2008, the Secretary, Urban Development, Govt. Of Arunachal Pradesh, Itanagar had notified Boleng SDO Head Quarter of East Siang District and Nyapin SDO Head Quarter of Kurung Kumey District in Arunachal Pradesh as urban area with immediate effect. However, the said notification was withdrawn after a gap of about 40 days from the date of issuance of such notification thereby leaving the said areas including Nyapin SDO Head Quarter as a rural area.

10. It has been stated that Nyapin ADC Head Quarter is an extremely backward area, situated in far flung area in the state of the Arunachal Pradesh. It is backward so much so that there was not a single road having black topping, much less having other infrastructures and other paraphernalia in the terms of road, hospital, electricity, water supply, educational institutions, telecommunication etc. which are invariably found in any urban area.

11. In that connection, it has been pointed out that as recently as 03/02/2013, the Chief Minister of Arunachal Pradesh has conceded to the fact that Nyapin in Kurung Kumey district is a completely under developed area, which does not even have black topping roads. Such news item was published in the Times of India, a copy of the same was attached, as annexure-5 to the writ petition.

12. Since 76-Upper Nyapin Anchal Constituency and 77-Lower Nyapin Anchal Constituency of 6-Nyapin Zilla Parishad Constituency are all pre-

dominantly backward rural area, electoral rolls were revised and same was done for conducting election to the Panchayat bodies/institutions having jurisdiction over such places. In fact, electoral rolls for the aforesaid constituencies have been revised for the year of 2012-2013 with 01/01/2013 as a qualifying date and the detailed electoral revised rolls for all those 9 Grams Panchyat Constituencies and 2 Anchal Constituencies have already been prepared.

13. However, while everything was set in place for conducting election to the Panchayat Raj institution/ bodies, the State respondent had issued the notification dated 10/04/2013, at annexure-8, notifying Nyapin, ADC Head Quarter of Kurung Kumey District as Urban area with immediate effect and on the basis of such notification, a WT Fax Msg dated 13/04/2013 was also issued declaring that no election to Panchayat Raj institutions in respect of Nyapin ADC Head Quarter of Kurung Kumey District would be held since the same was declared as Urban area.

14. It has been contended that the notification dated 10/04/2013 declaring Nyapin ADC Head Quarter of Kurung Kumey District as urban area is illegal since it has been issued in gross violation of Guidelines, issued by the Registrar General, Govt. of India, in matter of declaring a place as a urban area. Said notification is said to illegal also for the reason that it was issued without consultation of Anchal Samities affected by such notification as required under Section 55(1) (b) of the Act, 1997.

15. Notifications, above, were also questioned on the ground that those notifications, particularly the notification dated 10/04/2013 was brought into existence with enormous haste. It has been contended that such haste decision, in the fact and circumstances of the present case, is again a fluent testimony to the fact that the decision to convert the rural area under Nypapin ADC HQ to urban area is motivated by mala fide intention. These also smack of gross arbitrariness on the part of State respondent in issuing the notifications aforesaid.

17. The petitioners have again contended that the notification dated 10.04.13 was issued not in interest of people in general but it was issued to

Cater to grew might ones who have interest in declaring the area in question as urban one although such exercise of power is shown to have been made in the interest of the common people.

17. The further case of the petitioners was that since the notification dated 10.04.2013 has been issued in gross violation of aforesaid guidelines issued by Govt. of India and also in violation of Section 55(1) (b) of the Act, 1997 the WT, fax message dated 13.04.13 is also unsustainable in law as same was issued on the basis of notification dated 10.04.13.

18. The petitioners, therefore, contend that the notification dated 10.04.13 and WT message 13.04.13 were illegal since they were issued in arbitrary exercise of power and since they were issued in colourable and mala fide exercise power. The petitioners therefore urge this court to set aide the notification as well as WT message with consequential reliefs which I have reproduced herein before. In support of his submissions, he relied on the followings decision.

1. **Election Commission of India Vs. Ashok Kumar reported in (2000) 8 SCC 216**
2. **Saij Gram Panchayat Vs. State of Gujarat reported in (1999) 2 SCC 366**
3. **Balder Singh Vs. State of H.P reported in (1987) 2 SCC 510**
4. **Jikeswar Thakuria Vs. State of Assam reported in (2004) 3 GLR 146**
5. **Inderpreet Singh Kahlon Vs. State of Punjab reported in (2006) 11 SCC 356**
6. **Zenit Metaplast Pvt. Ltd. Vs- State of Maharashtra reported in (2009) 10 SCC 388**
7. **State of Tamil Nadu Vs. K. Shyan Sundar reported in (2011) 8 SCC 737**
8. **Ganganarayan Barua Vs. State of Assam reported in AIR 1958 Assam**

19. The State respondent (respondent No.4) as well as the State election Commission (respondent No.2 & 3) have contested the proceeding having filed separate counter affidavit. In its counter affidavit, the State respondent has stated that Nyapin ADC Head Quarter has been declared as urban area on the following guidelines issued by the Govt. of India.

20. In that connection, it has been pointed out that due to peculiar geographical situation, thin population, difficult terrain and the strategic location of the State of Arunachal Pradesh, the State Government already had requested the Registrar General, Govt. of India to make some relaxations/modifications to the guidelines which deal with the matter relating to declaration of an area as urban area. The State of Arunachal Pradesh, it is stated, has therefore formulated revised guidelines as well.

21. The revised guide lines, so formulated, were forwarded to the Registrar General, Govt. of India for his consideration and necessary action. According to such revised guidelines, in the State of Arunachal Pradesh, an area can be declared as urban area (a) if it has a minimum population of 3,000, (b) If 50% of male population are engaged in pursuits other than agriculture and (c) if the density of the population in such area is 200 per sq. Km. A copy of the letter sent to the Registrar General and Census Commissioner of India was attached as Annexure-2 to the affidavit-in-opposition.

22. Situation being such, one should not place too much reliance on the aforesaid guidelines, issued by the Govt. of India but in matter of declaring a particular place as urban area in the state of Arunachal Pradesh, one should take into account only the revised guidelines, formulated by State of Arunachal Pradesh. When the figures, available, are considered in the light of revised guidelines, one cannot find fault with the notification in question.

23. It has been stated that the Member of Legislative Assembly, Nyapin and the Member of 6-Nyapin Zilla Parishad Constituency submitted a representation imploring the revocation of order dated 29/04/2008 which cancelled the urban area status granted to Nyapin SDO Head Quarter and to re-notify Nyapin ADC Head Quarter of Kurung Kumey District as urban area. Hon'ble Chief Minister, State of Arunachal Pradesh was pleased to approve such proposal when the same was brought to his notice.

24. The matter was thereafter processed in accordance with law and opinions of various departments was obtained who responded favourably to

the proposal of the aforesaid people representative and eventually, keeping all the relevant considerations including the demand of the public in mind, the notification dated 10/04/2013 was issued declaring Nyapin ADC Head Quarter as Urban Area with immediate effect.

25. It is also the contention of the State respondent that the decision to convert rural area to urban area is a policy matter and nobody questions such decision unless one can show that such decision has been taken an arbitrary way and with mala fide intention or in colourable exercise of power. But the petitioners could not show any of the vices aforesaid in issuance of notifications impugned in this proceeding.

26. The learned counsel for the State respondent has again argued that the present proceeding is hit by prohibition contained in Article 243(O) (a) (b) of the Constitution of India. According to learned counsel for the State respondent, since the dispute in present proceeding is an election dispute and since in the present proceeding petitioners question the delimitation of the constituencies, this proceeding clearly comes under the mischief of Article aforesaid. On that count alone, according to learned counsel for the State respondents, the present proceeding is liable to be dismissed.

27. With regard to allegation that with the issuance of impugned notification, the people of Nyapin ADC Head Quarter including the petitioners have found themselves deprived of their rights to elect representative of their choice to form Panchayati Raj Institution, the respondent No.4 has stated as follows:-

> *"12. That with regard to the statement made in paragraph-10 of the writ petition, the deponent states that panchayat election will be held in rural area except Nyapin headquarters. Further, the Govt. has decided that Municipal election will be held in all notified area in phased manner as follows:-*
>
> *a) Phase-I Itanagar Pasighat*
>
> *b) Phase II- fifteen no. of district headquater town.*
>
> *c) Phase III- all notified urban areas (including Nyapin)*

28. With regard to allegation that in many areas which are already declared as urban areas, such as Banderdawa, Doimukh, the concerned authorities are

going to hold Panchayati Raj election, the State respondent has responded as follows:-

> ***"12. that with regard to the statements made in paragraph-II of the writ petition, the deponent states that Election to the Gram Panchayat, Anchal Samiti are being held outside the Municipal boundary area of Banderdewa,. But municipality election will be held inside the municipal boundary area of Itanagar and Banderdewa.***
>
> ***Further, it is to be stated that Doimukh has not been notified as urban are. As such panchayat election is being held at Doimukh."***

29. As stated above, the respondent No. 2 and 3 too filed a common counter affidavit. In their counter affidavit, they have stated that the State Election Commission, Arunachal Pradesh took measures to conduct election to all Panchayti Raj Intuitions/bodies in the rural areas in the state of Arunachal Pradesh save and except 7 and 7A Tirbin Anchal Samities under West Siang Zilla Parished. As requested, it also takes steps to conduct election to two Municipal bodies in the same State.

30. According to respondent No. 2 and 3, in view of WT/FAX message dated 13-04-2013 , the area of Nyapin ADC Head Quarter could not be formed the part of General Panchayati Raj Elections, 2013. In issuing notifications, dated 16th April, 2013 at Annexure-14 & Annexure-15 to the writ petition--- says the Commission -- it has been discharging its constitutionally imposed duty. Relevant part of their counter affidavit is, however, reproduced below:-

> *"9. --------in view of the Notification dated 11-04-2013 of the government of Arunachal Pradesh declaring area of Nyapin ADC Hqs. As Urban area, all urban areas including the area of Nyapin ADC Hqs. Could not have formed the part of General Panchayati Raj Elections, 2013 as the Arunachal Pradesh Panchayati Raj (Conduct of Election) Rules, 2002 under which Election Commission is empowered to hold elections were no more applicable. Thus, the Commission was restricted from holding General Elections in the said constituencies of the Nyapin ADC Hqs. And accordingly all concerned were informed by WT/FAX message dated 13-04-2013 to stop election process in those constituencies.*

11.----------it is to state that the State Election Commission has notified the Geneal Elections of the member of all Gram Panchayats/Anchal Samities/Zilla Parishad Constituencies in all the districts of Arunachal Pradesh, except 7 and 7A Tirbin Anchal Samities under West Siang Zilla Pasrishad vide Notification No. AP/SEC-317/2012 dated 16th April, 2013. The Notification did not make any mention of the constituencies of ADC Hqs because on the date of the said notification ADC Hqs was an urban area. ------- There is no official record available in the Commission regarding the contention of the petitioner that Doimuk is an urban area..

17. ---------- it is to state that the said constituencies of Nyapin were declared urban areas before the Notifications for election and therefore the Commission could not have conducted election. The Commission had already informed all District Election Officers as far back as in 2007".

31. The petitioners in their affidavit-in-reply disputed the facts, stated in the counter affidavit, more particularly, the facts regarding the availability of infrastructural facilities in Nyapin ADC Head Quarter claiming that most of the information pertaining to availability infrastructure in aforesaid Nyapin ADC HQ. are based not on facts but on lies instead. In order to support such claim, the petitioners have submitted that figures, furnished in the counter affidavit, in respect of number of schools, number of PCOs/landline and number of shops with licence/without licence, are all bogus and false.

32. Similarly, the reports in respect of status of road, water supply, power supplies as well as infrastructure in hospital are also far from the truth. The documents in Annexure-2 series to the affidavit-in-reply have been issued to confirm the above claim of the petitioners. It may be stated here that State respondent too filed additional affidavit wherein it has reiterated most of the claims, made in the affidavit-in-opposition.

33. It has also been stated therein that Nyapin ADC HQ was declared urban area on public demand and in the interest of public. In fortification of above claim, the documents in Annexure-7 series has been attached with the

additional affidavit. I propose to discuss the assertions made in the affidavit-in-reply as well as additional affidavit at appropriate place and appropriate time. Learned counsel for the State respondent has also relies on the following decisions:-

1. ***2011 (2) SCC 575***
2. ***2007 (2) SCC 464***
3. ***2010 (7) SCC 417***
4. ***AIR 2006 SC 124***
5. ***2000 (8) SCC 216***
6. ***2000 (8) SCC 216***
7. ***2009 (5) SCC 404 : AIR 2009 SC 3278***
8. ***2000 (8) SCC 216***
9. ***AIR 1980 SC 882***

34. Here it needs to be stated that the applicant in the misc. Case No.43 (AP) 2013 has prayed for impleading her as one of the respondents in the writ proceeding since she claims that she is a necessary party and matters in dispute in the proceeding under consideration need to be heard and disposed of in her presence. Considering all the parties, her prayer was allowed and she was impleaded as respondent no.8 in this proceeding.

35. Mr. D. Majumdar, leaned counsel for the respondent no.8 too advanced argument assailing the present proceeding. Since he advanced argument on the line of arguments, advanced by learned counsel for the State respondent, I find necessary to consider such argument to appropriate time and place. However, in support of his case, he has relied on the following decisions rendered in:-

(1) AIR 1978 SC 581
(2) (2000) 8 SCC 216
(3) (1884) Supp SCC 104.
(4) (1985) 4 SCC 689
(5) (1995) Supp 2 SCC 305
(6) (2010) 7 SCC 417
(7) AIR 2006 GUJ 53
(8) (1982)2 SCC 218
(9) (2011) 2 SCC 575.

36. I have considered the arguments, advance by the learned counsel for the parties having regard to the pleaded case of the parties as well as the documents attached therewith.

37. I have already found that the petitioners have strenuously contended that the issuance of notification dated 10.04.2013 declaring Nyapin ADC Head Quarter as urban area as well as the notification declaring that here would be no election in respect of Nyapin ADC HQ. communicated vide WT message dated 13.04.2013 are all illegal on grounds more than one.

38. For convenience of discussion, I propose to discuss those allegations one after another and the allegation that the notification dated 10.04.2013 declaring Nypain ADC Head Quarter as urban area was not rendered in accordance with guiltiness, issued by the Registrar General, Govt. of India is first taken up for consideration.

39. There is no dispute over the fact that as per guiltiness issued by the Registrar General and Census Commissioner of India Ministry of Home Affairs, Govt. of India in order to declare a place as urban are, such a place must have fulfilled certain conditions. Those conditions are:-

(i) The area sough to be declared as urban area must have a minimum population of 5,000.

(ii) At least 75% of male working population must have engaged in no-agricultural pursuits.

(iii) The density of the population in such area must be at least 400 per sq. Km (1000 per sq. km) and

(iv) Those three conditions need to be fulfilled simultaneously.

40. It needs to be stated here that the aforesaid guidelines of Govt. of India places enormous stress on the population of a particular area in matte of conferring the status of urban areas on such a place. But then, a question has arisen as to how such population figure of particular place is to be ascertained. The answer to this query can be found in **Article 243(f) & Article 243(g) of the Constitution of India.**

41. For ready reference, the provisions of Article 243(f) & Article 243(g) of the Constitution of India are reproduced below:-

> **243 (f) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published;**
>
> **243 (P)(g)' population' means the population as ascertained at the last preceding census of which the relevant figures have been published**

42. Since Registrar General, Govt. of India is the only authority authorised to conduct census and since said authority conducts census of various matters including population at the regular interval, it can safely be held that the population, as stated in guidelines, aforesaid, is to be understood, as population as ascertained by Registrar General, Govt. of India in the census held last, figure of which had also been published.

43. Coming back to our case, I have found that there is nothing on record to show that any census was conducted by the aforesaid authority after 2001. Therefore, one may safely conclude that the population of a place for the purpose of the conferring the status of urban area over a particular place in the terms of guidelines aforesaid means the population as ascertained in the census of 2001 which are also published as required.

44. According to 2001 census, the population of Nyapin ADC Head Quarter was 2306. It is also found that as per 2001 census, the total population of entire Kurung Kumey District (of which of Nyapin ADC Head Quarter is a part) was 42,518 but without any urban population. (Emphasis supplied by me). As per information at pages-18 of Annuxure-5 series to the counter affidavit, the total area of Nyapin is 450 sq. Km.

45. These are all prolific testimonies to the fact that Nyapin ADC Head Quarter could not fulfil any of the conditions, incorporated in the Govt. of India guidelines, much less such a place satisfying all the conditions laid down in the guidelines aforesaid simultaneously. Thus, there cannot be any escape from the conclusion that the Nyapin ADC Head Quarter was declared as urban area although such a place miserably fails to qualify for such a status.

46. Here, it is worth noting that the State respondent (respondent No.4) took the stand that due to vast geographical area, thin population and strategic location of the State of Arunachal Pradesh, the State Government took a resolution requesting the Registrar General and Census Commissioner of India to make some relaxations to the guidelines, issued by him vis-à-vis granting the status of urban area on a particular place.

47. As per such resolution, adopted by Govt. of Arunachal Pradesh, in case of State of Arunachal Pradesh, the guidelines relating to declaring a place as urban area are to be modified in the following manner:-

Sl. No.	Guidelines of Govt. of India	Guideline approved by Govt. of Arunachal Pradesh
1.	Human settlement must have either an urban local body (like Municipality, Nagar Panchayats, town committee, Notified area etc.)	1. All the District headquarter & ADC Hq. may be declared/notified as urban areas//urban town. 2. The town must be an administrative centre such as ADCs, SDOs, EACs, Cos head quarter. The settlement must be places of importance in respect of administration, tourism, educational, commercial & industrial.
2.	A minimum population of 5000	A minimum population of 3000
3.	At least 75% of male working population engaged in non agricultural pursuit	50% male working populating must be engage in non agricultural pursuits.
4.	A density of 400 persons sq. Km	A density of 200 person per sq. Km

48. Ms. G. Deka, learned Adldl. Sr. Govt. Advocate, therefore, submits that the guidelines, issued by the Registrar General and Census Commissioner of India should not be read as the final word as far as conferring status of urban area on a particular place is concerned. Quite contrary to it, in so far State of Arunachal is concerned such matters are to be considered only under the recommendations, so made by the Govt. of Arunachal Pradesh.

49. However, such a contention, as pointed out by the learned counsel for the petitioners, is found to be without any substance. On the perusal of the letter at Annexure-2 to the counter affidavit, filed by the State respondent, it is found that State Govt. makes a request to the authority concerned urging it to reconsider the matter relating to conferring status of urban area on a particular place in the State of Arunachal Pradesh.

50. But there is nothing on record to show that such a request had ever been accepted by the Registrar General and Census Commissioner, Ministry of Home Affairs, Govt. of India. Such being the position, the claim of the State respondent that the matter relating to according the status of urban area on a particular place, needs to be considered under the recommendations, made by State of Arunachal Pradesh, is found to be totally untenable in law.

51. It may be noted here that even one assumes for the sake of argument for a moment that the relaxation, sought for by the State of Arunachal Pradesh, in matter of declaring a place as urban area has been accepted by the Registrar General and Census Commissioner of India, still then, the figures relating to total population, the number of male persons, engaged in the professions other than agricultural pursuits and the density of population in the place under consideration no way match the criteria fixed by the guidelines, so proposed by the State of Arunachal Pradesh.

52. Here, it is pertinent to mention that in its counter affidavit, the State respondent gives some figures to show that the infrastructural facilities in the terms of road, Electricity, Tele communication, water supply , health , education etc. in the Nyapin ADC Head Quarter are adequate and sufficient and as such, it may be declared as a urban area. Such a statement was made perhaps to contradict the claim of the petitioners, they made in paragraph-7 of the writ petition, to show that infrastructure facilities at Nyapin ADC Head Quarter is almost zero.

53. But the petitioners have fiercely disputed the figures, stated in the Annexure-5 to the counter affidavit of the respondent No.4, contending that almost all the figures stated in the Annexure-5 are terribly false and bogus. Equally importantly, sources from which such documents are collected are also

found to be extremely doubtful---argues learned counsel for the petitioners. In their additional affidavit, the State respondent, however, claims that the figures, rendered through the counter affidavit, are true and genuine. I have considered the arguments advanced by the learned counsel for the parties having regard to material on records as well as averments made in their pleadings.

54. On such an exercise, I have found that the claims advanced by the State respondent in regard to availability of infrastructure in Nyapin ADC HQ hardly inspire any confidence because of the fact that claims made in the additional affidavit are not backed by any reliable document, since there is nothing to show that those documents were issued by authorised officer(s) in a manner required under the law. The documents, furnished by state respondent, are therefore, found to be highly suspicious. Such suspicion gets strengthen more and more also for the reasons that claims, made by the State respondent, stand totally nullified in the teeth of figures, furnished by the petitioners in their documents, which are not only issued by the officers authorised to do the same but such documents were issued in strictly in accordance with the requirement of procedures and other rules which hold the filed in questions.

55. In view of above, I am constrained to hold that Nyapin ADC Head Quarter hardly have any infrastructure, let alone its having required infrastructure for treating it as an urban area. I may note here that one needs no special knowledge to comprehend that without there being some kind of infrastructure and other paraphernalia in place, a place cannot be declared as urban area. Despite above being the position, the Nyapin ADC HQ was declared as urban area. It is also testimony of notification in question being issued in arbitrary manner.

56. I may note here that while submitting the affidavit-in-reply, a copy of the representation, submitted by the people of the locality concerned to the authority concerned, was also attached therewith, vide Annexure-1 to the affidavit-in-reply. The representation, above, was so attached to show that the general people living in that locality concerned vehemently and strongly objected the notification declaring Nyapin ADC Head Quarter as urban area. Such objection was made basically because of the reason that there was absolutely no infrastructure in Nyapin ADC Head Quarter.

57. Though in their additional affidavit, the State respondent claims that Nyapin ADC HQ was declared urban area on public demand and in public interest and although they try to establish such claim through some documents attached as Annexure-7 series to the additional affidavit yet such documents are found to be unreliable. Those documents are unreliable since on the perusal of the documents at Annexure-7 series, it is found that (a) the documents at pages -14,15,16 &17 were all issued same day,(b) the documents at pages -14,15,16 &17 were all issued on 19. 04. 2013, (c) the contents of all the documents at 15,16 & 17 are amazingly similar, although they are found to have been issued by different organisations, existence of which are also profoundly doubtful. These speak loud and clear that those documents were brought into existence just to oppose the claim of the petitioners in the proceeding in hand. The manner in which such documents were brought into existence fortifies more and more the above conclusion of mine.

58. However final seal of approval to my conclusion above come from the quarter of the respondents themselves. In its counter affidavit, the State respondent took the specific stand that the Nyapin ADC HQ was declared as urban area on the request of the local M.L.A. as well as Member of the Zilla Parishad. Various notings in the relevant file lend support to such a claim. However, in its additional affidavit, the State respondent drastically changes its stand to say that the aforesaid Head Quarter was declared urban area on the public demand and in the public interest. This is utterly false.

59. The fact that there is absolutely nothing in the communications and correspondences in the official file aforementioned to show that the Nyapin ADC HQ was declared as urban area on public demand or to show that such declaration was made in public interest doubly affirm that documents, marked as 7 series or for that matter ,the plea that the Nyapin ADC HQ was declared as urban area on the public demand and in the public interest have been invented to counter the claim of the petitioners made in this proceeding.

60. What, therefore, further follows from the aforesaid discourses, and that too, far too clearly is that the Nyapin ADC HQ was declared as urban area without taking into account the opinions/objections/grievances of the people living in such area which make them angry and which cause them to harbour a

felling that authority concerned has let them down. The public representation at Annexure -1 to the affidavit- in -reply is the personification of such resentment, anger and disappointment to say the least.

61. It is pertinent to mention here that Ms Gita Deka, learned Addl. Sr. Govt. Advocate submits that even if this court held for one reason or other that the public of the locality was not consulted, still then, the notification in question cannot be declared illegal and arbitrary as prayed for by the petitioners and in that connection , my attention has been drawn to the decision of the Apex Court of the country in the case of **The Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur,** reported in **AIR 1980 SC 882.**

62. In **the Tulsipur Sugar Co. Ltd.** (supra), it has been held that under the relevant law (Section 3 of the Act) that the State Government should give previous publicity to its proposal to declare any area as a town area and should make such declaration after taking into consideration any representation or objection filed in that behalf by the members of the public. Nor Section 3 of the Act by necessary implication imposes a duty on the State Government to follow the principles of natural justice i.e. to give publicity to its proposal to declare any area as a town area and to decide the question whether any declaration under Section 3 of the Act should be made or not after taking into consideration the representations or objections submitted by the members of the public in that regard. Therefore failure to comply with such procedure would not invalidate any declaration made under Section 3.

63. However, learned counsel for the petitioners counters such argument saying that the decision relied on by the learned State counsel has no application to the case since the facts and circumstances in the both the cases are fundamentally different. In that regard, he also referred me to the decision, rendered by Hon'ble Supreme Court of India in the case of **Baldev Singh & Ors -Vs- State of Himachal Pradesh,** reported in **(1987) 2 SCC 510,** the learned counsel for the petitioners disputed the proposition suggested by learned counsel for the State respondent.

64. In the case of **Baldev Singh** (supra), it has been held that People residing within the Gram Panchayats have a right to decide what should be the

nature of their society in which they live- agrarian, semi-urban or urban and therefore, the people have a right to have a hearing before making their place an urban area. The relevant part of the aforesaid judgement is reproduced below:-

> "4. *'Appellants' counsel has raised a more serious issue, namely, denial of an opportunity of being heard before the notified area has been constituted. Since Section 256 of the Act requires certain aspects to be satisfied before a notified area can be constituted, factual determination had to be made as to whether those statutory conditions were satisfied. Ours is a democratic polity. At every level, from the villages up to the national level, democratic institutions have been introduced. The villages are under Gram Panchayats, urban areas under municipalities and corporation, districts are under parishads: for the State there is a legislature and for the entire country, we have the parliament. People residing within the Gram panchayats have their electoral rights to exercise and in exercise of such rights, they have elected their representatives. Citizens of India have a right to decide what should be the nature of their society in which they live- agrarian, semi-urban or urban. Admittedly, the way of life varies, depending upon where one lives. Inclusion of an area covered by a Gram Panchayat with a notified area would certainly involve civil consequences. In such circumstances it is necessary that people who will be affected by the change should be given an opportunity of being heard, otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidence of tax and the like".*

65. Similar view has been rendered in the case **Saji Gram Panchayat Vs. State of Gujarat** reported in **(1999) 2 SCC 366** as well.

> **"21. It was also contended by the appellants that under Section 9(2) of the Gujarat Panchayats Act, 1961, the Gram Panchayats have to be consulted before issuing a notification under Section 9(2). The respondents have, however, pointed out that in the present case, there has been extensive consultation with the panchayats before the notifications of 7-9-1993 were issued. The appellant-Panchayats as well as the Taluka and District Panchayats were consulted through the District Development Officer. He had also asked for resolutions from the appellant-Panchayats, the Taluka Panchayats and the District Panchayats for being forwarded to the Development Commissioner.**

All these have been taken into account before issuing the notifications in question. The respondents have also pointed out that the Government has taken care to issue a resolution dated 30-8-1993 by which 1/3rd of the revenue recovered as consolidated tax by the notified area committee would be given for the benefit of the Gram Panchayats concerned, thus avoiding any financial prejudice to them."

66. On a perusal of the decisions, above, I am constrained to hold that decision referred to by the learned counsel for the State respondent has no application to the case under consideration since the facts and circumstances in the case, referred to by the counsel for the State respondent and facts and circumstances in the case in hand are substantially and significantly different.

67. The decision, rendered in the case **Baldev Singh** (supra) unmistakably demonstrates that the people who are likely to be affected by making a place 'urban' are to be heard and their opinions/grievances are to be taken into consideration before declaring any place as 'urban area'. However, in our instant case, it appears that no such hearing was ever made which makes decision to convert the Nyapin ADC HQ to an urban area even more and more untenable in law.

68. Notification dated 10/04/2013 was alleged to be illegal also on the ground that it was brought into existence in total disregard to the direction rendered in Section 55(1), more particularly Section 55(1) (b) of the Arunachal Pradesh Panchayati Raj Act of 1997 and as such, same is liable to be set aside. In order to know how far such allegation is true, I find it necessary to have a look into the aforesaid provision of law. For ready reference, said provision is reproduced below:-

> (1) The Government may, after consultation with an Anchal Samiti or Samitis concerned, at any time, by notification
>
> (a) include any villager or part of a village within the limits of an Anchal Block;
>
> (b) exclude any village or part of a village from the limits of an Anchal Block
>
> Or
>
> (c) amalgamate two or more Anchal Blocks into a single Block."

Since the alteration etc. of the area of the Anchal Samiti(s) can be done by notification only, I also find it necessary to know how notification is defined in the Act aforesaid. The

term "Notification" is again defined in section 2(xiv) of the Act which reads as follow:-

> **'Notification' means a notification published in the Arunachal Pradesh Gazette".**

69. On a conjoint reading of aforesaid provisions of law, it would appear clear that area of Anchal Samity or Samities can be altered only after making consultation with the Anchal Samity or Samities affected by such alteration. More importantly, the decision to alter the area of Samity or Samities needs to be notified in Arunachal Pradesh Gazette.

70. Coming back to our case, I have found that by notification dated 10.04.2013, the areas of 76 upper Nyapin Anchal Samity as well as 77 lower Nyapin Anchal Samity were altered. Since the area of aforesaid constituencies was alter, the consultation with the aforesaid Samities before issuance of notification in question was in fact a sine qua non. But there is nothing on record to show that such consultation was ever made before the issuance of notification under challenge.

71. We have already found that the notification altering the area of Samities needs to be published in official Gazette. Once again, nothing could be produced before this court to show that notification dated 10.04.2013 was ever published in Arunachal Gazette as required under the law. These are, in my considered opinion, fluent testimonies of provision of section 55(1) of the Act of 1997 being honoured only in violation than in observance.

72. It deserves a mention here that it has been submitted that the local MLA and the member of Zila Parsihad were consulted before the issuance of notification dated 10.04.13. Since those public representatives from the locality concerned were consulted, it cannot be said that aforesaid notice was issued without consultation-----contends learned State counsel.

73. Unfortunately, such an argument is found to be without much substance. A perusal of section 55(1) of the Act of 1997 reveals that consultation means the consultation with the Anchal Samities, affected by alteration of the area, and no other authority, whatsoever. Being so, argument, advanced on this count from

the side of State respondent is found untenable in law. Since such notification was not made in the terms of Section 55(1)(b) of the Act of 1997, I am constrained to hold that such notification becomes unsustainable in law.

74. Learned counsel for the petitioners has submitted that many a time, taking decision in haste may be the testimony of such decision being accentuated by mala fide consideration. In that connection, my attention has been drawn to the decision rendered by Hon'ble Supreme Court of India in the case of **Inderpreet Singh Kahlon & Ors-Vs-State of Punjab & Ors.**, reported in **(2006) 11 SCC 356.** In the aforesaid case, Hon'ble Supreme Court held as follows:-

> *71. "Furthermore, a decision in undue haste was taken. So far as the nominated officers are concerned, whereas a note containing 90 pages was sent to the Chief Secretary of Punjab on 22.05.2002, the services of all the officers were terminated on the next day. Apart from the materials which have been relied on in the report, no further evidence was probably brought in between 23.05.2002 and 24.08.2002 when the services of the executive officers were terminated.*
>
> *72. It is, thus, furthermore, beyond anybody's comprehension as to why action had to be taken in undue haste.*
>
> *73. We do not intend to suggest that in any emergency it was not permissible but we have not been shown that any such emergent situation existed. It was in any event necessary for the State to show as to how the records moved so as to satisfy the conscience of the Court that there had been proper and due application of mind on the part of the authorities concerned. An action taken in undue haste may be held to the mala fide. (See Bahadursinh Lakhubhai Gohilv. Jagdishbhai M. Kamalia)".*

75. In our instant case, it has been shown that the proposal for declaring the Nyapin ADC HQ as urban area was mooted only on 05.03.2013. We have also found that such a proposal was acted upon with remarkable swiftness. When such alacrity is considered in the light of the well established facts that in processing the aforesaid proposal, the respondent authorities had thrown to wind all the Rules, procedures and laws which hold the filed in question, one cannot but hold that the decision to declare aforesaid area was taken to oblige some ones in power who had their own narrow and selfish agenda.

76. In its counter affidavit, the respondent No.4 claims that notification dated 10.04.2013 was made to advance the cause of common people since such declaration would accelerate the pace of development of the area covered by Nyapin ADC HQ But this contention was opposed tooth and nail by the petitioners contending that notification was issued not for the benefit of the public but of few mighty and favoured ones although same was shown to have been issued for the betterment of general public.

77. Such an exercise of power is nothing but colourable exercise of power which Courts have always frowned upon. In that connection, my attention has been drawn to the decision of this Court reported in **(2004) 3 GLT 146** in the case of **Jibeswar Thakuria Vs. State of Assam & Ors.**

78. In the case of **Jibeswar Thakuria** (supra) this Court held as follows:-

> *21. "With the above revelation from the records relating to the grounds of transfer of the petitioners vis-à-vis the private respondents in all the cases, it is now to be decided as to whether the impugned order in all the three writ petitions are sustainable or not. It is an accepted principle that in public service transfer is an incident of service. The appointing authority has a wide discretion in the matter. The Govt. is the best Judge to decide how to distribute and utilize the services of the employees. However, the power must be exercised honestly, bonafide and reasonably. It must be exercise in the public interest. If the exercise of power is based on extraneous consideration or for achievement of alien purpose or/and motive, it would amount to mala fide and colourable exercise of power. The transfer may be termed to be founded on malafide and colourable exercise of power when it is not for the professed purpose like amount course, public or administrative interest or in the exigency of service, but for other purpose like accommodating another person at the behest of the political bosses having no nexus with the department concerned".*

Similar view has been rendered in the case of **State of Tamil Nadu Vs. K. Shyam Sundar**, reported in **(2011) 8 SCC 737**

79. On reading the Annexure-6 to the counter affidavit in the light of averments made in counter affidavit together with averments made in affidavit-in-reply as well as Annexure-1 to such affidavit-in-reply, I have found that as disclosed by representation, dated 01.05.2013 at Annexure-1 to the affidavit-in-reply, the notification declaring Nyapin ADC HQ as urban area was greeted with enormous anger, irritation, fury and rage from the people affected by such notification.

80. People got angry and irritated because of the fact that such declaration was made despite Nyapin ADC HQ being an extremely backward area and in spite of there being no infrastructure whatsoever, in Nyapin ADC HQ even in their rudimentary stage. I have also found that the people living in Nyapin ADC HQ got angry because they had never been consulted before declaring their place an urban one.

81. These speak loud and clear that the decision to declare Nyapin ADC HQ as urban area was moved and motivated, not by genuine concern for the well being of the people living in Nyapin ADC HQ but by some selfish, pettish and narrow consideration of someone in the power. This is nothing but colourable exercise of power and therefore, one cannot but hold the notification in question was issued in a very mala fide way.

82. The timings of notifications aforementioned are very important. It is found that notification declaring Nyapin ADC Head Quarter was issued on 10.04.13. On the other hand, the notification in WT message directing not to hold election in aforesaid area in view of notification dated 10.04.13 was issued on 13.04.13. The above timings assume enormous significance in view of the fact that notification declaring electioneering process was issued only on 16.04.13.

83. The issuance of notification dated 10.04.13 only few days before the issuance of notification dated 16.04.13 strongly suggests that the notification declaring aforesaid Headquarters as urban area was done keeping impending election in view and it was done at the behest of someone mighty people having huge clout on the administration. The fact that the entire process relating to

declaration of said Headquarters as urban one was done with unbelievable alacrity and hush-hush manner makes such a conclusion inevitable.

84. The notification dated 10.04.13 was also challenged on the ground that it suffers from the vice of being biased. In that connection, it has been stated that despite some of the areas being declared as urban one, the Election Commission is going to conduct election under the Act of 1997 in such places as well and in that connection, cases of Banderdewa/Doimukh were shown as examples.

85. In the affidavit-in-reply, it is also stated that Sagalee is another place where election are being held under the Act of 1997. It has been pointed out that as per the notification dated 24th Jan.2006, at Annexure-10 of the writ petition, the Sagalee/Bandawara/Doimukh along with 17 other places was declared as urban areas. However, referring to Annexure-11 to the writ petition (page-70 & 71), it has been stated that despite those area being urban area, the elections under the Act of 1997 are being conducted in those places as well.

86. But quite strangely, by notification in W.T message dated 13.04.2013 it is ordered that the election under the Act of 1997 would not be conducted in Nyapin ADC HQ which was declared as urban area only as recently as on 10.04.2013 and where everything was in place for conducting the election we are now talking about. These are all clear examples of petitioners being treated very unfairly, very unjustly and very unreasonably.

87. In that connection, the attention of this Court has been drawn to the decision of Hon'ble Supreme Court of India in the case of **Zenit Mataplast Private Limited -vs- State of Maharashtra & Ors.,** reported in **(2009) 10 SCC 388.** In the case aforesaid, Hon'ble Supreme Court held as follows:-

> *27."Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favoritism and nepotism. The decision should be made by the application of known principles and rules and in general such decision should be predictable and the citizen should know where he is, but if decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law (vide S.G.*

Jaisinghani v. Union of India, AIR p. 1434, para 14 and Haji T.M. Hassan Rawther v. Financial Corpn.)".

88. On the perusal of the pleadings of the parties in the light of documents, attached therewith, I have found that vide Notification dated 24.06.2006, Banderdewa, Doimukh and Sagalee along with 17 other areas were declared urban area with immediate effect. But an attempt has been made from the side of respondents that all the areas under t Banderdewa and Doimukh have not yet been declared as urban area and as such, it is well within the competence of the State respondent to require the State Election Commission to conduct election under the Act of 1997 in the areas under Banderdewa and Doimukh which still remain as rural area.

89. However, such an argument is found indefensible for reasons more than one. The notification dated 24.06.2006 did not define the territorial jurisdiction of the areas which were so declared as urban area. In view of above, one would be justified in holding that the territories which were earlier recognized as the part of aforesaid places continue to remain the part of such places even after they were declared as urban areas. In the face of above, I fell inclined to hold that Doimukh and Banderdewa are all urban area.

90. It is worth noting that referring to notification dated 12.03.2012, at Annexure-8 series (at page-21), learned counsel for State respondent has submitted that since Doimukh does not find its place in the notification which shows which are the areas covered by Itanagar municipality, it can safely be held that Doimukh is not a urban area but a rural area instead. Nothing is farthest from truth as above claim is.

91. The notification dated 12.03.2012 shows the urban areas inside Itanagar capital complex which became the part of the Itanagar Municipality. If some areas there-under is left out from being made the part of Itanagar municipality, it does not mean such areas automatically cease to become an urban area. Unless by any subsequent notification, published in accordance with procedure, Doimukh is made rural area, it will continue to become an urban area despite it being not included in the territory of Itanagar municipality.

92. Coming to the allegation that election was held under the Act of 1997 in Sagalee area despite same being declared as urban area, I have found that the State respondent did not controvert such an allegation made in the affidavit—in-reply. We have already found Sagalee is an urban area and as such, election should not have been conducted under the Act of 1997 as has been done in case of Nyapin ADC HQ. But evidently, the State respondent ordered holding of Panchayati Raj election in the area covered by Sagalee, so also the areas under Doimukh and Banderdewa.

93. In the face of above revelations, I am constrained to hold that the respondents did not treat the petitioners or for that matter, the people living in Nyapin ADC HQ. fairly, justly and equally in matter of holding elections under the Act of 1997 in the State of Arunachal Pradesh. Treating the petitioners unfairly and unequally becomes one more evidence of respondent No. 4 being biased towards the petitioners and the people living in Nyapin ADC HQ.

94. I may note here that the present proceeding has been assailed by the State respondent as well as respondent impleaded as respondent No.8 on some other grounds as well. They are:-

(i) **the petitioners have no genuine reason to prefer the present proceeding,**

(ii) **the proceeding is bad for non-joinder of necessary party,**

(iii) **the proceeding is not maintainable in view of prohibitions incorporated in Article 243(O) of the Constitution of India,**

(iv) **There are some disputed questions of fact and as such, this court cannot adjudicate those disputed questions of fact in the exercise of the writ jurisdiction and**

(v) **The decision to convert an area to a rural area to urban area and vice-versa are the matters relating to policy of the State and Court cannot interfere with such policy matter unless it is shown that the decision making process is visited with arbitrariness and malafide.**

95. In respect of first allegation, above, the learned counsel for the respondents have submitted that the petitioners did not utter any word in their petition under Article 226 of the Constitution of India that they had ever contemplated to contest the election, conducted under the Act of 1997. Rather, they have stated that for not holding election in Nyapin ADC HQ., the petitioners and the people living in such area are deprived of their constitutional right to be governed by local bodies elected by them. In that connection, my attention has been drawn to the averments, made in paragraph-13 of the writ petition.

96. Since the petitioners did not make any statement that they intended to contest the election held under the Act, aforesaid, it needs to be held that the petitioners have no genuine interest in preferring the present application. This proposition was hotly disputed by the counsel for the petitioners who submits that one of the most inviolable rights, guaranteed under the Constitution, are the right to vote and right to be governed by local bodies constituted by members elected by them. Violation of such a right is indefensible, unpardonable and unforgivable.

97. A bare perusal of the preamble, Article 40 and Article 243 of the Constitution of India in the light of various pronouncements made by Constitutional courts of the country makes such position more than clear. Being so, it does not lies in the mouth of the respondents to say that since there is no averments in the writ petition stating that petitioners intended to contest the election aforesaid, the present proceeding is liable to be dismissed—contends learned counsel for the petitioners.

98. I have very carefully considered the arguments, so advanced by the learned counsel for the parties having regard to pleaded case of the parties as well as arrangement of the things made in the fundamental law of the country keeping an eye to the various pronouncements made by the constitutional courts of the country. On such an exercise, I have found that petitioners have an unbreakable, inviolable and uninfringeable right to elect their representative of their choice to be the member of the local bodies to govern them.

99. But such a right has been taken away by the notification in question. More importantly, such right was taken away most arbitrarily. Being so, they have every right to question the notification(s) aforesaid to see if same was

issued in accordance with requirement of law. In that view of the matter, it cannot be said that only for not stating in their petition that they intended to contest the election under the Act of 1997, it needs to be held that the petitioners have no genuine interest in preferring the present proceeding.

100. In so far second allegation is concerned, I have found that the counsel for the State respondent as well as respondent No.8 vehemently contended that this proceeding is bad since all the persons going to be affected by present proceeding are not made parties herein. It has been stated that a large number of people are there in the fray and they are in the thick of electioneering process. If the prayers in the present proceeding are granted, all those persons would be adversely affected, and that too, without they being heard on the matter.

101. In that connection, learned counsel for the State respondent as well as learned counsel for the respondent No 8 have referred me the decision of Hon'ble Supreme Court of India in the case of **Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited** reported in (2010) 7 SCC 417.

For ready reference the relevant part of such judgment is reproduced below:-

> "15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance".

102. This contention was objected to by learned counsel for the petitioners stating that the impugned notifications were issued on 10th & 13th April, 2013. They had to file the present proceeding immediately to prevent their right being washed away for which they were forced to file the present proceeding on 19th

April, 2013 even when the schedule, fixed by State Election Commission was in progress.

103. At that point of time, they did not know as to who are the persons who were filling nominations and who were the persons whose nominations are going to be accepted by the Commission. The things were in a hazy stage at that point of time which became clear only after the schedule, fixed by the Commission for filling of nominations, scrutiny and withdrawal of the same was over. Such revelations clearly demonstrate that this proceeding cannot be dismissed for non-joinder of necessary parties.

104. It has also been stated that in this proceeding, a limited prayer is made for directing the State respondent to conduct election in Nyapin ADC HQ on quashing the notifications aforesaid. Thus, none of the aforesaid parties who are in the fray are going to be affected in the event of limited prayer made in this proceeding are accepted by this court.

105. I have considered the submissions, advanced by the learned counsel for the parties. On such exercise, I have found that in the event of prayers of petitioners being accepted, the State respondent may be required to conduct election in respect of 76 Upper Nyapin Anchal Samity and 77 Lower Nyapin Anchal Samity as well as 9 Gram Panchayats there-under alongside election to the 6 - Nyapin Zila Parsihad constituency. In that event, the only person likely to be directly affected by such direction would be the candidates who have already contested from 6-Nyapin Zila Parsihad constituency from the membership Zilla Parisad and none else.

106. I have been told that there is only one person who has put up her nomination papers seeking election as the member of 6-Nyapin Zila Parsihad constituency. I am also given to understand that said candidate is already before this Court as respondent No.8. In above view of the matter, I am to hold that none of the candidates in the fray are going to effected if limited prayer in this proceeding is accepted and as such none of those persons in the fray are necessary parties in this proceeding and as such, this proceeding is not bad as claim by respondent for not joining the persons aforementioned.

107. Here, it may be mentioned that learned Addl. Sr. Govt. Advocate has submitted that the Govt. of India as well as MLA and Zila Parsihad member are also necessary party. In that connection, it has been stated that Govt. of India is necessary party since they are to explain as to what happen to the revised guidelines submitted to it by State of Aurnachal Pradesh. The MLA and former member of Zila Parishad are necessary party in this proceeding since serious allegation are made against them.

108. We have already found that the necessary party is one against whom relief is sought for or the person(s) without whose presence a proceeding cannot be adjudicated effectively and completely. Since in this proceeding no relief has been sought for against the Govt. of India and since matter in dispute can be adjudicated effectively without the presence of aforesaid public representative, in my considered opinion none of the aforesaid authority/persons are necessary party in this proceeding.

109. As far as third allegation is concerned, it may be stated that the learned counsel for the respondent No. 8 has submitted that this proceeding is bad since it comes within the mischief of Article 243(O) (b) of the Constitution of India. On the other hand, learned counsel for State respondents has submitted that the present proceeding is also maintainable since it was hit by Article 243(O) (a) of the Constitution of India.

110. In supporting his contention, learned counsel for respondent No.8 has submitted that once the election process starts, no court can entertain any election dispute. It has been submitted that since the matter in dispute is essentially an election dispute and since the electioneering process has already been initiated with the issuance of notification dated 16.04.13, this Court cannot adjudicate upon the dispute in the present proceeding. In that connection, he has relied on the decisions of Hon'ble Supreme Court of India in the case of **Mohinder Singh Gill vs. Chief Election Commissioner reported in** AIR 1978 SC 851, relevant part of which is reproduced below :-

> **"26.** The heart of the matter is contained in the conclusions summarised by the Court thus:
> "(*1*) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first

importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(*2*) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the 'election'; and, if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

After elaborately setting out the history in England and in India of election legislation vis-a-vis dispute-resolution, Fazl Ali, J. stated:

"If the language used in Article 329(*b*) is considered against this historical background, it should not be difficult to see why the framers of the Constitution framed that provision in its present form and chose the language which had been [427]consistently used in certain earlier legislative provisions and which had stood the test of time."

Likewise the Court discussed the connotation of the expression "election" in Article 329 and observed:

"That word has by long usage in connection with the process of selection or proper representatives in domestic institutions acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote *the entire process culminating in a candidate being declared elected*.... it seems to me that the word 'election' has been used in Part XV of the Constitution in the wide sense, that is to say, *to connote the entire procedure to be gone through to return a candidate to the legislature*..... That the word "election" bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins?"

In order to show that this court cannot invoke its writ jurisdiction to question , he also refers me to the decision rendered inthe case of

A.K.M. Hassan Uzzaman v. Union of India, (1982) 2 SCC 218, where apex court held as follows:-:

> **1.** The transferred case and the appeals connected with it raise important questions which require a careful and dispassionate consideration. The hearing of these matters was concluded four days ago, on Friday, the 26th. Since the judgment will take some time to prepare, we propose, by this Order, to state our conclusions on some of the points involved in the controversy:
>
> (*1*) The High Court acted within its jurisdiction in entertaining the writ petition and in issuing a rule nisi upon it, since the petition questioned the vires of the laws of election. But, with respect, it was not justified in passing the interim orders dated February 12 and 19, 1982 and in confirming those orders by its judgment dated February 25, 1982. Firstly, the High Court had no material before it to warrant the passing of those orders. The allegations in the writ petition are of a vague and general nature, on the basis of which no relief could be granted. Secondly, though the High Court did not lack the jurisdiction to entertain the writ petition and to issue appropriate directions therein, no High Court in the exercise of its powers under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Counts writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution. India is an oasis of democracy, a fact of contemporary history which demands of the courts the use of wise statesmanship in the exercise of their extraordinary powers 220under the Constitution. The High Courts must observe a self-imposed limitation on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are a part of the process of 'election' within the meaning of Article 329(*b*) of the Constitution. We will pronounce upon that question later in our judgment.

To support his claim more and more, the learned counsel for respondent No.8 also places reliance on the decision in the case of

Election Commissioner of India Vrs. Ashok Kumar & Ors, reported in **(2000) 8 SCC 216** ,so also on the decisions , reported in case of **Election Commission of India Vs. State of Haryana,** reported in **(1984) Supp SCC 104.** , in case of **Lakshmi Charan Sen & Others Vs. A. K.M. Hassan Uzzaman & Others,** reported in **(1985) 4 SCC 689** and in case of **Jabir Hussain Naşir Ahmed Boga & Anr. Vs. State of Gujrat & Ors,** reported in **AIR 2006 GUJ 53.** Echoing the submission, advanced by learned counsel for the respondent No. 8, learned counsel for the State respondent too argues that present proceeding is not maintainable since it also comes under the mischief Article 24 (O) (a) of the Constitution as well and to further her case, submits the decision in ***Election Commissioner of India Vrs. Ashok Kumar*** **(supra)** as well as the decision rendered in case reported in **2009 (5) SCC 404**

111. The above contention was objected to by learned counsel for petitioners contending that the present proceeding does not involve any election dispute nor does it question the delimitation of constituencies. He further submits that since the present proceeding has been initiated with a limited prayer without disturbing the ongoing election process only with the intention to further the cause of the ongoing electioneering process and not to halt it and therefore, same cannot be treated as election dispute. Being so, , it is within the competence of this court to invoke the writ jurisdiction to correct the ongoing electioneering process since such a electioneering process has been vitiated by profoundly arbitrary, motivated , capricious and whimsical conduct on the part of the State respondent.

112. In support of his contention, he also relies on the decision of Hon'ble Supreme Court in the case *of Election Commissioner of India* (supra). The relevant part is reproduced below.

> **"20.** Vide para 29 in *Mohinder Singh Gill case*[3] the Constitution Bench noticed two types of decisions and two types of challenges: the first relating to proceedings which *interfere* with the progress of the election and the second which *accelerate* the completion of the election and acts in furtherance of an election. A reading of *Mohinder Singh Gill case*[3] points out that there may be a few controversies which may not attract the wrath of Article 329(*b*). To wit:

(*i*) power vested in a functionary like the Election Commission is a trust and in view of the same having been vested in high functionary can be expected to be discharged reasonably, with objectivity and independence and in accordance with law. The possibility however cannot be ruled out where the repository of power may act in breach of law or arbitrarily or mala fide.

(*ii*) A dispute raised may not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. The Election Commission may pass an order [228]which far from accomplishing and completing the process of election may thwart the course of the election and such a step may be wholly unwarranted by the Constitution and wholly unsustainable under the law.

In *Mohinder Singh Gill case*[3] this Court gives an example (vide para 34). Say after the President notifies the nation on the holding of elections under Section 15 and the Commissioner publishes the calendar for the poll under Section 30 if the latter orders returning officers to accept only one nomination or only those which come from one party as distinguished from other parties or independents, which order would have the effect of preventing an election and not promoting it, the Court's intervention in such a case will facilitate the flow and not stop the election stream.

32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove.

(1).....

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) .....

(4).....

(5)....."

113. What emerges from the above decisions is that and that too clearly that the court needs to respect the sanctity of election and electioneering process and should not interfere with the election once election process has been initiated. But then , there may be extra- ordinary situation demanding extra ordinary measure when a writ court should not perform the role of a helpless spectator of a drama conducted with enormous illegality, arbitrariness and in blatant violation of statue, more so, when Court's intervention is sought for to further the cause of election rather than interfering with it.

114. Reverting to our case and on appreciating the dispute in the light of various decisions , canvass before me, I have found that the basic question in this proceeding is whether notification dated 10.04.13 declaring Nyapin ADC HQ as an urban area was issued arbitrarily/or in mafa fide exercise of power and as such, same is illegal. The fate of other notification, that is, the notification in the WT message, is totally dependent on the outcome of decision on notification dated 10.04.13. Being so, in my considered opinion, the dispute in question by no stretch of imagination can be said to be an election dispute.

115. But then, even one tends to assume that the dispute in the present proceeding some way or other may be treated as an election dispute, still then, in view of the fact that the notification in question was brought into the existence in arbitrary exercise of power with enormous evil consequences of extremely alarming proportion, this court would be well justified in exercising in invoking its extra ordinary jurisdiction to facilitate the free flow of the election aforementioned.

116. It is worth noting here that in the event of the prayers of the petitioners being accepted, it, in my opinion, instead of interfering with the ongoing electioneering process, would help the authority concerned to conduct the election in accordance with constitutional dictum. On the other hand, the event of petitioners and the men from his constituency are left out from taking part in the ongoing election process, then, it would be nothing but huge denial of constitutional right to the citizens living in the area aforesaid.

117. Coming to the contention that the dispute, involved in this proceeding, again questions the delimitation of the constituencies and as such, in view of prohibition in Article 243(O) (a) of the Constitution of India, this Court cannot invoke its writ jurisdiction, I have found such contention is without much substance. Learned counsel for the petitioners has submitted that the delimitation refers to in Article 329 or for that matter under Article 243(O)(a) of the Constitution of India talks about the delimitation, done under the Delimitation Act, 2002.

118. In order to carry out the delimitation, done under the aforesaid Act, certain procedures, prescribed there-under needs to be followed and such

delimitation can be carried out by an authority, constituted there-under. Being so, the alteration of the areas of the Upper 76 Nyapin Anchal Samity & Lower 77 of Nyapin Anchal Samity by notification dated 10.04.13, under no circumstances, can be treated as delimitation of the constituencies as understood in the Article 329 of the constitution of India. But then, in order to alter the territory of Anchal Samities, the procedure, prescribed in Section 55(1) of the Act of 1997 needs to be followed which is however, not done in our instant case which is why the notification above is illegal. Argues-------Learned counsel for the petitioner.

119. On considering the submission, advanced by learned counsel for the petitioners in the light of provisions of law involved together with averments, made in the pleadings of the parties, I have found that arguments so put forward by learned counsel for the petitioners is founded on logic and law and as such, I have no hesitation in coming to the conclusion that the present dispute, not being a dispute over the delimitation of constituencies does not come under prohibition incorporated in Article 329 or for that matter under Article 243(O)(a) of the Constitution of India. In view of above, both the contentions so raised by the respondents are found untenable in law.

120. In regard to allegation that there are some disputed questions of fact which need adjudication by regular court ,and not by this court, exercising writ jurisdiction, the learned counsel for the State respondent as well as the counsel for respondent No.8 have arduously submitted that the facts which the State respondent has quoted in its counter affidavit with regard to availability of infrastructure, in the Nyapin ADC HQ were seriously questioned by the petitioners having filed affidavit-in-reply.

121. More importantly, the contentions of the petitioners in their affidavit-in-reply were again disputed by State respondent. Thus, according to the respondents, there are some serious disputes between the parties over the figures pertaining to availability of infrastructure in the headquarters aforementioned. In support of their claim, they relied on the decision, in the case *of* ***Vinoy Sukla Vs nion of India & Ors.,*** *reported in* ***(2007) 2 SSC 464*** where Hon'ble Supreme Court dismissed a writ petition having found the dispute therein to be a dispute involving disputed question of facts.

122. But the learned counsel for the petitioners has submitted that contention, raised on the count under consideration, based more on fiction than on facts. According to him, the facts, furnished by the State respondents, are bogus and false and the sources thereof are extremely doubtful and dubious. On the other hand, the facts, furnished by the petitioners through their affidavit-in-reply are totally genuine which are being provided by officers authorised to furnish such information to one who makes necessary application in accordance with the procedures, prescribed.

123. These matters were already discussed at length and as such, same needs no further reiteration here. Suffice it to say, that the claim of the respondents that this proceeding involves some disputed questions of fact between the parties over certain matters is founded, not on facts, but, on some surmise instead. Having arrived at such a conclusion, I am to hold that the allegation on this count remains unsubstantiated.

124. This brings me to the question whether this court is prevented from entertaining the present proceeding since the matter in dispute said to be a matter involving policy matters of the State. According to learned counsel for State respondent, the decision to convert areas from rural to urban and vice-versa and the decision relaxing the criteria fixed for conferring status of urban area in the State of Arunachal Pradesh are all policy matters and the court on invoking power of judicial review cannot question the decisions taken on such policy matters.

125. In that connection, the learned counsel for the State respondent has relied on the decision of Hon'ble Supreme Court in the case ***Transport & Dock Worker Union & Ors. Vs. Mumbai Port Trust & Anrs.*** *reported in* ***2011(2) SCC 575 .*** The relevant part is reproduced below:-

> *"41. In our opinion Judges must maintain judicial self-restraint while exercising the powers of judicial review of administrative or legislative decisions. "In view of the complexities of modern society", wrote Justice Frankfurter, while Professor of Law at Harvard University, "and the restricted scope of any man's experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in the disposition of cases. The successful exercise of such judicial power*

calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and imagination operate as limitations of the Constitution. These insights Mr Justice Holmes applied in hundreds of cases and expressed in memorable language: It is misfortune if a Judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong."

126. Before considering the contention aforesaid, I find it necessary what Hon'ble Supreme Court has said in the **Transport & Dock Worker Union & Ors** (supra). Hon'ble Supreme Court in the same judgment also held as follows:-

"44. In administrative matters the Court should, therefore, ordinarily defer to the judgment of the administrators unless the decision is clearly violative of some statute or is shockingly arbitrary. In this connection, Justice Prankfurter while Professor of Law at Harvard University wrote in the Public and its Government:

"With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleaques. His supremacy lay in his recognition of the practical needs of the Government. The great Judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people."

127. Coming back to our case, I have already found that the notification in question was issued (a) in gross violation of the guidelines of the Govt. of India dealing with the matter conferring the status of urban area and (b) such notification was issued also in violation of statutory provision in the form of Section 55(1) of the Act of 1997. Said notification was issued at the behest of political masters who got such notification issued to further their own agenda instead of furthering in the interest of public resorting to arbitrariness of enormous proportion which ultimately deprived a large number of voters including the petitioners from exercising their rights of franchise.

128. In my considered view, the conduct on the part of the State respondent in issuing notice dated 10.04.13 as well as the notice dated 13.04.13 is nothing but shockingly arbitrary and as such, the respondents cannot take shelter under

the cover of plea aforesaid in an action initiated for their arbitrary conduct in issuing the notices aforesaid.

129. The learned counsel for the State respondent has again submitted that the present proceeding is not maintainable since the petitioner could not establish mala fide in issuing the notification dated 10.04.13 as well as notification dated 13.04.13. In that connection, she relies on the decisions of Hon'ble Supreme Court in the case of Union of India and Others Vs. Ashok Kumar and Others, .reported in AIR 2006 SCC 124 wherein it has been held that mere bold assertion is not enough to prove the charge of mala fide, it needs to be established with evidence of convincing nature. In our instant case, however, that was not the case and as such, this proceeding needs to be dismissed for that reason as well.

130. Our forgoing discussion has, now, established more than clear that the State respondent in issuance of notifications under consideration acted so arbitrarily that they threw to wind all guidelines as well as the requirement of law. More importantly, they did so with huge disdain and contempt to the interest of the public placing their own interest on the top of all. If these are not the proof of mala fide, one would be hard-pressed to know what actually constitutes the mala fide. Our forgoing discussion has made all these very very clear and as such, no further discussion on this matter is called for.

131. Learned counsel for the petitioners has submitted that if the election under the Panchayati Raj Act of 1997 is not held in Nyapin ADC HQ., then it will be a clear case of denial of constitutional right of the people of the aforesaid area to have their own government at the grass root level. According to the petitioners, if that happens, it would be a tragic commentary on the performance of democracy as well as democratic institutions in the country and in that event, the people in Nyapin ADC HQ would not have any opportunity to elect their own representative to govern them at the grass root level over a very long period from now.

132. I have considered such submission in the light of averments made in the counter affidavit of the respondent No.4. In trying to allay the above fear on the part of the petitioner, it has been stated that all the areas including Nyapin ADC

HQ which are declared as urban areas would be brought under the cover of Municipality/Nagar Panchayat in phase manner and it will happen sooner than later and in that event, the people in those areas will get the opportunity to elect their own representative to the Municipality/Nagar Panchayat as the case may be.

133. Unfortunately, such a contention from the side of State respondent hardly addresses the apprehensions, harboured by the petitioners. No one can deny the fact that bringing an area under the Municipality/Nagar Panchayat is a time consuming exercise since an area can be declared as Municipal/Nagar Panchayat area, only after fulfilment of several criteria fixed for that purpose, some of which may be too difficult for Nyapin ADC HQ to fulfil, the fact that 80% of the people of a particular place need to engage in avocation other than agriculture may be cited as one of such conditions, having regard to the stage at which Nyapin stands today

134. When above scenario are considered together with the fact even after 66 years of independence, the Nyapin ADC HQ has hardly any infrastructure, worth its name, to qualify even for the urban area, it would be better to leave it to the imagination of the people to work out when such a place, which is situated at far flung area of the country with difficult terrain and thin population, would actually qualify to have its own Municipality/Nagar Panchayat.

135. In that event, the people living in the area aforesaid would have no other option but to leave it to the futurity to decide when they would get their own local bodies to govern them. However, the makers of the Constitution could have never visualised such a situation. Such a revelation only serves to show that in issuing the notification, under challenge, the State respondent has done something which not only makes the mockery of the fundamental right of some of the citizens of the country but it also plays a trick on the most sacrosanct statue of the country, same being the Constitution of India.

136. In view of what I have discussed, hereinbefore and what have emerged therefrom, I am of the clear opinion that the notifications dated 10-04-2013 as well as Notification in WT Fax Msg. dated 13-04-2013 are issued arbitrarily, capriciously, whimsically, and in mala fide exercise of power having far reaching

consequences with enormously huge evil consequences. Accordingly, those two notifications stand set aside.

137. As a consequence of setting aside the aforesaid notifications, this Court calls upon the State respondent as well as State Election Commission, State of Arunachal Pradesh to take steps in holding election, under the Act of 1997, in Nyapin ADC Head Quarter of Kurung Kumey District accordance with the requirement of constitutional dicta and all the statutes which hold the field.

138. While holding of election in Nyapin ADC Head Quarter of Kurung Kumey District in accordance with requirement of law, I make it clear that every effort should be made not to disturb the ongoing election process unless it is absolutely required in view of directions rendered by this Court in this proceeding.

kb