HAJI ABDUL GANI KHAN & ANR. A

v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 237 of 2022)

FEBRUARY 13, 2023 B

[SANJAY KISHAN KAUL AND ABHAY S. OKA, JJ.]

Constitution of India – Arts.170 and 239A – Jammu and Kashmir Reorganisation Act, 2019 – s.13 – Art. 170 forming part of Chapter III of Part VI of the Constitution under the title "The State Legislature" – Issue of applicability of Art.170 to the Union Territory of J&K – Held: As far as the Legislative Assembly of the Union territory of J&K is concerned, Art.170 will have no application as it forms a part of Chapter III of Part VI which deals with only the State Legislature – It has no application to the Legislatures of Union Territories – The reason is that the Legislative Assemblies of the concerned Union Territories will be governed by the law made by the Parliament in accordance with Art.239A and not by the provisions of Chapter III of Part VI – By virtue of s.13 of the J&K Reorganisation Act, with effect from 31st October 2019, Art. 239A became applicable to the Union Territory of J&K. C D E

Delimitation Act, 2002 – s.9 – Jammu and Kashmir Reorganisation Act, 2019 – ss.60 and 62 – Action of constituting a Delimitation Commission for the Union Territory of Jammu and Kashmir under provisions of the Delimitation Act, 2002 and exercise of delimitation undertaken by the Commission – Readjustment of seats – Legality and validity of – Held: Part V of the J&K Reorganisation Act deals with the Delimitation of Constituencies – By virtue of clause (a) of sub-section (1) of s.62, the provisions of the Delimitation Act, 2002 were made applicable to the Union Territory of J & K with effect from 31st October 2019 – Sub-section (1) of s.60 provides that the exercise of the division of the newly constituted Union Territory into 90 assembly constituencies and providing for reservation may be undertaken by the Election Commission – However, the purport of s.62 is that if a Delimitation Commission is constituted under the Delimitation Act 2002, the exercise provided by clauses (a) to (c) of sub-section (1) of s.60 F G H

shall be carried out by the Delimitation Commission – Sub-section (2) of s.62 refers to readjustment of the constituencies – Purport of sub-section (2) of s.62 is that readjustment means the creation of 90 constituencies in the newly set up Union territory – Thus, the process of readjustment contemplated by sub-section (2) of s.62 is nothing but the exercise of delimitation under sub-section (1) of s.60.

Delimitation Act, 2002 – s.9 – Jammu and Kashmir Reorganisation Act, 2019 – ss.62 and 63 – Constitution of Delimitation Commission for the Union Territory of Jammu and Kashmir – Exercise of delimitation/ readjustment of the constituencies undertaken on the basis of 2011 census figures – Challenge to – Held: By virtue of clause (b) of sub-section (1) of s.62 of the J&K Reorganisation Act, the year 2001 appearing in sub-section (1) of s.9 of the Delimitation Act, 2002 will have to be read as 2011 – Thus, nothing illegal about the exercise of delimitation/ readjustment of the constituencies undertaken by the Delimitation Commission for purposes of dividing the Union Territory into 90 constituencies on the basis of the 2011 census figures – Clause (b) of sub-Section (1) of s.62 of the J&K Reorganisation Act amended the Delimitation Act, 2002 by providing that words and figures 'census held in the year 2001' appearing in the Delimitation Act shall be construed as 'census held in the year 2011' – To its application to the Union territory of J & K, the year 2001 in sub-section (1) of s.9 of the Delimitation Act, 2002 has been substituted by the year 2011 and therefore, distribution of seats in the House of the People and seats assigned to the Legislative Assembly will have to be readjusted on the basis of 2011 census and the delimitation will have to be carried out on the basis of the figures of the census held in the year 2011 – Effect of s.63 is that once the exercise of readjustment/delimitation is made on the basis of 2011 census figures, the same will be frozen till the relevant figures of the first census taken after 2026 are available – Therefore, the exercise of delimitation/readjustment of the seats in the Union Territory of J & K was required to be made by the Delimitation Commission on the basis of the figures of the 2011 census – In view of s.63, further readjustment can be carried out only after the publication of figures from the census held after the year 2026.

Delimitation Act, 2002 – ss.10(6) and 10A – Jammu and Kashmir Reorganisation Act, 2019 – s.62 – Action of constituting a Delimitation Commission for the Union Territory of Jammu and Kashmir – Delimitation exercise – Time limit provided u/s.10(6) – If mandatory – Held: s.10A of the Act, 2002 itself indicates that the time limit of 31st July 2008 fixed under sub-Section (6) of s.10 is not sacrosanct as it confers a power on the Hon'ble President to defer the delimitation exercise in a State under certain circumstances – Sub-section (6) of s.10 of the Delimitation Act, 2002 uses the word "endeavour" – Thus, the time limit provided in sub-section (6) of s.10 was never intended to be mandatory – While amending s.2(f) of the Delimitation Act by the J&K Reorganisation Act, sub-section (6) of s.10 has not been amended for enlarging the period provided thereunder – However, the intention of the legislature as reflected in sub-sections (2) and (3) of s.62 of the J&K Reorganisation Act is crystal clear – The very fact that the duty of making the readjustment as per sub-sections (2) and (3) of s.62 on the basis of the 2011 census figures has been entrusted to the Delimitation Commission suggests that the legislature intended that the Delimitation Commission for the Union Territory of Jammu & Kashmir will remain unaffected by the requirement of completing the exercise by the end of July 2008 – The provisions of sub-Sections (2) and (3) of s.62 will have to be interpreted in a manner that gives effect to the intention of the legislature – If it is held that due to the failure of the legislature to modify the time limit provided in sub-Section (6) of s.10 of the Delimitation Act, 2002, the Central Government is powerless to appoint a Delimitation Commission for the newly created Union territory, the provisions of s.62 of the J&K Reorganisation Act will be rendered nugatory.

Delimitation Act, 2002 – Delimitation Commission for the Union Territory of Jammu and Kashmir – Chairperson of the Delimitation Commission – Term of appointment of the Chairperson – Under notification dated 6th March 2020, appointment of the Chairperson of the Delimitation Commission who was a retired Judge of this Court was for a period of one year – By notification dated 3rd March 2021, the said period was extended up to two years – By third impugned notification dated 21st February 2022, the said period of two years was extended to two years and two months – Held: Once the Delimitation Commission was established, there is

A *nothing wrong if the Central Government extended the period of appointment of the Chairperson till the task of delimitation/ readjustment was completed – Delimitation Act, 2002 is silent about the term of the appointment of the Chairperson.*

Constitution of India – Arts. 3, 4 and 239A – Conversion of B *an existing State into one or more Union territories – Power of the Parliament – Conjoint reading of Arts. 3,4 and 239A – Held: Parliament by making a law can convert an existing State into one or more Union territories.*

Practice and Procedure – Constitutional validity of a statute C *– Challenge to – Challenge has to be specifically pleaded – Held: When a party wants to challenge the constitutional validity of a statute, he must plead in detail the grounds on which the validity of the statute is sought to be challenged – The Constitutional Courts cannot interfere with the law made by the Legislature unless it is specifically challenged by incorporating specific grounds of* D *challenge in the pleadings – The reason is that there is always a presumption of the constitutionality of laws – The burden is always on the person alleging unconstitutionality to prove it – A Constitutional Court cannot casually interfere with legislation made by a competent Legislature only by drawing an inference from the* E *pleadings that the challenge to the validity is implicit.*

Interpretation of Statutes – Held: A statute cannot be interpreted in a manner that will render some of its provisions otiose – A statute must be construed and interpreted in such a manner as to make it workable.

F *Doctrines/ Principles – Equality – Two unequals cannot be treated as equals.*

Words and Phrases – Word "endeavour" – Use of the word in Sub-section (6) of s.10 of the Delimitation Act, 2002.

G **Dismissing the writ petition, the Court**

HELD: 1. <u>Issue of applicability of Article 170 having the title "Composition of the Legislative Assemblies" to the Union Territory of J & K.</u>

1.1. Article 170 forms part of Chapter III under the title H **"The State Legislature". Chapter III has been incorporated in**

Part VI of the Constitution which deals with the States. Though much emphasis was laid on the violation of the provisions contained in the second Proviso to Clause (3) of Article 170 by the petitioners, but the said Article does not deal with the legislatures of Union Territory at all. Articles 239A and 239AA which are included in Part VIII of the Constitution are the Articles that deal with the creation of a body to function as legislature and Council of Ministers for certain Union Territories. [Para 18][532-B-D]

1.2. Article 239A as it originally stood provided that Parliament may by law create for the Union Territory of Puducherry a body to function as a Legislature for the Union Territory or a Council of Ministers or both. Such a body to act as a Legislature of the Union Territory covered by Article 239A may be elected or partly nominated and partly elected. By virtue of Section 13 of the J&K Reorganisation Act, with effect from 31st October 2019, Article 239A became applicable to the Union Territory of J and K. As noted by clause (2) of Article 239A, the law contemplated by clause (1) of Article 239A shall not be deemed to be an amendment to the Constitution for the purposes of Article 368 notwithstanding that it contains any provision which amends or has the effect of amending the Constitution. [Para 18][532-G-H; 533-A-B]

1.3. On a conjoint reading of Articles 3,4 and 239A, it is found that:- (a) Parliament by making a law can convert an existing State into one or more Union territories; (b) Parliament is empowered by law to create a body of legislature for the Union territories of Puducherry and J&K. Accordingly, sub-Section (2) of Section 14 of the J & K Reorganisation Act provides that there shall be a Legislative Assembly for the Union Territory of J & K.; and (c) Even if the law made by Parliament creating a body of legislature for Union territories of Puducherry and J&K has the effect of amending certain parts of the Constitution, it shall not be deemed to be an amendment of the Constitution for the purposes of Article 368. [Para 19][533-B-E]

1.4. As far as the Legislative Assembly of the Union territory of J & K is concerned, Article 170 will have no

application as it forms a part of Chapter III of Part VI which deals with only the State Legislature. It has no application to the Legislatures of Union Territories. The reason is that the Legislative Assemblies of the concerned Union Territories will be governed by the law made by the Parliament in accordance with Article 239A and not by the provisions of Chapter III of Part VI. As Article 170 is not applicable to the Legislature of the Union Territory of J & K, the main thrust of the argument that certain provisions of the J&K Reorganisation Act and actions taken thereunder are in conflict with Article 170 and in particular Clause (3) thereof is clearly misconceived and deserves to be rejected. [Para 23][534-D-F]

Issue of delimitation of constituencies of the Legislative Assembly of the Union territory of J and K.

2.1. There were two earlier enactments dealing with the establishment of the Delimitation Commission. The first one was the Delimitation Commission Act, 1962 and the second one was the Delimitation Act, 1972. Both the Acts were not applicable to the State of Jammu and Kashmir as the definition of the State incorporated in both Acts specifically excluded the State of Jammu and Kashmir. The same is the case with the Delimitation Act, 2002. Section 3 of the J&K RP Act laid down the requirement of the establishment of the Delimitation Commission which provided that the Delimitation Commission shall distribute the seats in the Legislative Assembly to single member territorial constituencies and delimit them having regard to various factors mentioned in sub-section (2) of Section 3. Section 4-B of the J&K RP Act provided for the Delimitation Commission to pass an order regarding the delimitation of constituencies and publish the same. In fact, the Delimitation of Assembly Constituencies Order, 1995 was issued which was applicable to the State of Jammu and Kashmir. [Para 24][534-G-H; 535-A-B]

2.2. By virtue of sub-section (5) of Section 14 of the J&K Reorganisation Act, the said Delimitation Order of 1995 was amended as provided in the Third Schedule thereof. The Third Schedule contains the details of the amendments to the delimitation of the assembly constituencies made by the said

Delimitation Order of 1995 in relation to the existing 83 assembly constituencies out of a total 107 as provided in sub-section (3) of Section 14. 24 constituencies covered by the Pakistan occupied area were obviously not covered by the Delimitation Order. Thus, by virtue of sub-section (5) of Section 14, the delimitation of 83 constituencies of the Legislative Assembly of the Union Territory of J & K was incorporated in the form of the Third Schedule which sets out the boundaries of and the areas incorporated in the new individual 83 constituencies. [Para 25][535-D-F]

2.3. Part V of the J & K Reorganisation Act deals with the Delimitation of Constituencies. By virtue of clause (a) of sub-section (1) of Section 62, the provisions of the Delimitation Act, 2002 were made applicable to the Union Territory of J & K with effect from 31st October 2019. [Para 26][535-F-G]

2.4. The delimitation of 83 constituencies of the Union Territory was made under the J&K Reorganisation Act and was incorporated in the Third Schedule as provided in sub-section (5) of Section 14. By virtue of the mandate of sub-section (1) of Section 60, the total number of seats in the Legislative Assembly of the Union Territory was required to be increased from 107 to 114. Thus, by excluding 24 seats from Pakistan occupied areas, the mandate was to increase the seats from 83 to 90. For giving effect to the increase in the number of seats as aforesaid, the exercise of delimitation for dividing the Union Territory into 90 constituencies and determining the number of seats to be reserved for Scheduled Castes and Schedule Tribes was required to be undertaken. Sub-section (1) of Section 60 provides that the said delimitation exercise may be undertaken by the Election Commission. However, sub-section (2) of Section 62 provides that the readjustment of the constituencies as provided under Section 60 in the successor Union Territory of J & K into assembly constituencies shall be carried out by the Delimitation Commission to be constituted under the Delimitation Act, 2002 as amended by the J&K Reorganisation Act. Sub-section (1) of Section 60 provides that the exercise of the division of the newly constituted Union Territory into 90 assembly constituencies and

providing for reservation may be undertaken by the Election Commission. However, the purport of Section 62 is that if a Delimitation Commission is constituted under the Delimitation Act 2002, the exercise provided by clauses (a) to (c) of sub-section (1) of Section 60 shall be carried out by the Delimitation Commission. However, sub-section (2) of Section 62 refers to the readjustment of the constituencies. But, the purport of sub-section (2) of Section 62 is that the readjustment means the creation of 90 constituencies in the newly set up Union territory. Thus, the process of readjustment contemplated by sub-section (2) of Section 62 is nothing but the exercise of delimitation under sub-section (1) of Section 60. [Para 27][539-A-F]

2.5. The provisions of the Delimitation Act 2002 indicate what is readjustment. By virtue of Clause (b) of sub-section (1) of Section 62 of the J&K Reorganisation Act, the year 2001 stands substituted by the year 2011 in relation to the Legislative Assembly of the Union Territory of J & K. Under Section 9 of the Delimitation Act, 2002, a specific power has been conferred on the Delimitation Commission of conducting the Delimitation exercise. By virtue of clause (b) of sub-section (1) of Section 62 of the J&K Reorganisation Act, the year 2001 appearing in sub-section (1) of Section 9 of the Delimitation Act, 2002 will have to be read as 2011. Therefore, the Delimitation Commission established under the Order dated 6th March 2020 had to undertake the exercise of delimitation or readjustment on the basis of the census figures of 2011 as the earlier exercise of delimitation of the constituencies of the erstwhile State was not made on the basis of the census figures of 2011. For the reasons stated above, there is nothing illegal about the exercise of delimitation/readjustment of the constituencies undertaken by the Delimitation Commission for the purposes of dividing the Union Territory into 90 constituencies on the basis of the 2011 census figures. [Paras 28 and 29][539-G; 540-D-E; 541-F-H; 542-A]

2.6. In the First Schedule to the RP Act of 1950, a total of 6 seats were allocated to the erstwhile State of Jammu and Kashmir with no reservation for Scheduled Castes and Schedule Tribes.

Section 10 of the J&K Reorganisation Act provides that out of the 6 seats allocated to the erstwhile State, 5 will be allocated to the Union Territory of J & K and one will be to the Union Territory of Ladakh. That is how Section 11 provides thereof that the Delimitation of Parliamentary Constituencies Order, 1976 stands amended as provided in the Second Schedule of the said Act. Thus, the delimitation of the five parliamentary constituencies of the Union Territory of J & K and one constituency of the Union Territory of Ladakh was made by virtue of Section 11 as provided in the Second Schedule. [Para 30][542-B-D]

2.7. Clause (c) of sub-section (1) of Section 60 of the J&K Reorganisation Act provides that considering the increase in the number of seats of the Legislative Assembly, the adjustments in the boundaries and description of the extent of the Parliamentary Constituencies in each Union Territory may be made by the Election Commission. Sub-section (3) of Section 62 provides that readjustment of the constituencies as provided in Section 11 in the successor Union Territories into Parliamentary Constituencies shall be carried out by the Delimitation Commission. The readjustment referred to in sub-section (3) of Section 62 is the adjustment of boundaries and description of the extent of the Parliamentary Constituencies as provided in sub-section (1) of Section 60. This became necessary as a result of the requirement of readjustment /delimitation of 90 constituencies of the Legislative Assembly. Therefore, there is no illegality associated with the delimitation /readjustment of Parliamentary constituencies of the Union Territory of J & K undertaken by the Delimitation Commission. [Para 31][542-E-G]

Legality of the appointment of the Delimitation Commission by the Notification of 6th March 2020

3.1. When the impugned notification dated 6th March 2020 constituting the Delimitation Commission requires the Delimitation Commission to undertake the exercise of the delimitation of Assembly and Parliamentary Constituencies in the Union Territory of J & K, it refers to the exercise of readjustment as provided in sub-section (2) and (3) of Section 62 which is

nothing but delimitation exercise contemplated by sub-section (1) of Section 60 due to the reason of the increase in the membership of the Legislative Assembly from 83 to 90. Moreover, the readjustment was necessary to be made on the basis of the census figures of the 2011 census as contemplated by Section 4 and sub-section (1) of Section 9 of the Delimitation Act, 2002 as amended by clause (b) of sub-section (1) of Section 62 of the J&K Reorganisation Act. [Para 32][542-H; 544-A-C]

3.2. The Delimitation Act, 2002 contemplates the constitution of only one Delimitation Commission and not more than one. The Delimitation Act, 2002 was made applicable for the first time to the State of Jammu and Kashmir with effect from 31st October 2019. Even the Delimitation Acts of 1962 and 1972 were not applicable to the State of Jammu and Kashmir. By virtue of the J&K Reorganisation Act, not only provisions of the Delimitation Act, 2002 were made applicable to the Union Territory of J & K, but a mandatory duty of readjustment of the constituencies in the Union Territory both of the Legislative Assembly and Parliament was entrusted to the Delimitation Commission by sub-Sections (2) and (3) of Section 62. Till 31st October 2019, the Delimitation Commission for the State/Union Territory of J & K under the Delimitation Act, 2002 could not have been established as the said enactment was not made applicable to the State of Jammu and Kashmir till then. [Para 33][544-D-E]

3.3. Sub-section (6) of Section 10 of the Delimitation Act, 2002 uses the word "endeavour". Section 10A of the Delimitation Act, 2002 itself indicates that the time limit of 31st July 2008 fixed under sub-Section (6) of Section 10 is not sacrosanct as it confers a power on the Hon'ble President to defer the delimitation exercise in a State under certain circumstances. Thus, the time limit provided in sub-section (6) of Section 10 was never intended to be mandatory. While amending Section 2(f) of the Delimitation Act by the J&K Reorganisation Act, sub-section (6) of Section 10 has not been amended for enlarging the period provided thereunder. However, the intention of the legislature as reflected in sub-sections (2) and (3) of Section 62 of the J&K

Reorganisation Act is crystal clear. The very fact that the duty of making the readjustment as per sub-sections (2) and (3) of Section 62 on the basis of the 2011 census figures has been entrusted to the Delimitation Commission suggests that the legislature intended that the Delimitation Commission for the Union Territory of Jammu & Kashmir will remain unaffected by the requirement of completing the exercise by the end of July 2008. The provisions of sub-Sections (2) and (3) of Section 62 will have to be interpreted in a manner that gives effect to the intention of the legislature. If it is held that due to the failure of the legislature to modify the time limit provided in sub-Section (6) of Section 10 of the Delimitation Act, 2002, the Central Government is powerless to appoint a Delimitation Commission for the newly created Union territory, the provisions of Section 62 of the J&K Reorganisation Act will be rendered nugatory. A statute cannot be interpreted in a manner that will render some of its provisions otiose. A statute must be construed and interpreted in such a manner as to make it workable. Therefore, the argument based on sub-Section (6) of Section 10 of the Delimitation Act 2002 will have to be rejected. [Para 34][544-H; 545-A-E]

3.4. Articles 2 and 3 of the Constitution enable the Parliament to create new States and Union territories. Accordingly, the two new Union territories have been created. The J&K Reorganisation Act which created the two new Union territories assigns the role of readjustment of constituencies to the Delimitation Commission under the Delimitation Act, 2002. Article 4 of the Constitution permits the Parliament to incorporate such provisions in the law made in accordance with Article 3 for the formation of new States and Union territories, which may be necessary to give effect to the provisions of the law. Such a law may also contain provisions as to representations in Parliament and in the Legislature of the State or States affected by such law. Therefore, such law which is made under Article 3 can always provide for readjustment of the Constituencies in the newly constituted States or Union territories through the Delimitation Commission. Hence, there is no illegality associated with the establishment of the Delimitation Commission under the impugned Order dated 6th March 2020. [Para 35][545-F-H; 546-A]

3.5. Under the notification dated 6th March 2020, the appointment of the Chairperson of the Delimitation Commission who was a retired Judge of this Court was for a period of one year. By the notification dated 3rd March 2021, the said period was extended up to two years. By the third impugned notification dated 21st February 2022, the said period of two years was extended to two years and two months. Once the Delimitation Commission was established, there is nothing wrong if the Central Government extended the period of appointment of the Chairperson till the task of delimitation/readjustment was completed. The Delimitation Act, 2002 is silent about the term of the appointment of the Chairperson. [Para 36][546-B-C]

Exclusion of the North-Eastern States from the purview of the notification dated 6th March 2020

4.1. Another challenge is to that part of the second impugned notification dated 31st March 2021 by which the States of Arunachal Pradesh, Assam, Manipur and Nagaland were excluded from the purview of the Delimitation Commission constituted under the notification dated 6th March 2020. In the counter affidavit filed by the Union of India, reliance has been placed on the letter dated 22nd February 2021 issued by the Deputy Secretary (NE-III), Ministry of Home Affairs, Government of India. In paragraphs 5 and 6 of the counter affidavit, it is stated that the Delimitation Commission set up on 12th July 2002 under the Chairmanship of a retired Judge of this Court had completed the delimitation exercise in respect of the entire country except for four North-Eastern States of Assam, Arunachal Pradesh, Manipur and Nagaland. It is stated that delimitation of these four States was deferred due to security reasons. Section 10A of the Delimitation Act, 2002 permitted such a course to be adopted. Though these four States were a part of the notification dated 6th March 2020, it is stated in the letter dated 22nd February 2021 that there were number of petitions pending in this Court as well as in the Manipur High Court concerning delimitation exercise in North-Eastern States and that in the Court cases, discrepancies in census figures of 2001 in relation to these States were pointed out. In fact, it is stated that a number of notices have been issued

regarding the said discrepancies. Therefore, the said letter was issued with the approval of the competent authority in which it was stated that it may not be conducive to grant an extension for the process of delimitation in the four North-Eastern States. The term of the Chairman of the Delimitation Commission constituted under the first impugned notification dated 6th march 2020 was to expire on 5th March 2021. In view of the aforesaid letter, while extending the term of the Chairman by one more year by the second impugned notification dated 3rd March 2021, the said four States were excluded. Thus, in effect, the term of the Delimitation Commission constituted under the notification dated 6th March 2020 was extended by a period of one year only in relation to the Union territory of J & K. By the third impugned notification, the period was further extended by a period of two months. Section 10A of the Delimitation Act, 2002 itself permits the postponement of the exercise of delimitation in certain contingencies. Moreover, the position and the status of the newly created Union Territory of J&K under the Constitution is completely different from the four North-Eastern States. In its applicability to the Union Territory of J & K, Sections 4 and 9 of the Delimitation Act, 2002 stand amended by requiring readjustment to be carried out on the basis of the census figures of 2011. In case of the North Eastern States, there is no such amendment. Therefore, two unequal cannot be treated as equals. Hence, the argument based on the violation of Constitutional provisions including Article 14 deserves to be rejected. [Para 37][546-D-H; 547-A-E]

4.2. There is a great deal of substance in the argument of the learned Solicitor General that the challenge to the notification dated 6th March 2020 was belatedly made by filing the present petition on 28th March 2022 and for the said delay, there is no valid explanation. Moreover, the notification dated 6th March 2020 was substantially acted upon by completing the exercise of delimitation as the draft Order was also published on 14th March 2022. [Para 39][548-B]

4.3. In the writ petition, the first prayer is for challenging the increase in number of seats from 107 to 114. The said provision is made by sub-Section (1) of Section 60. Without

challenging the legality of any of the provisions of the J&K Reorganisation Act, it is contended that the Act of increasing the number of seats is violative of Articles 81, 82, 170, 330 and 332 of the Constitution of India. Article 81 deals with the composition of the House of the People; Article 82 deals with the readjustment and allocation of seats of the House of Parliament after the census and Article 170 deals with legislatures of the States. None of these provisions deal with the Legislature of any Union territory. Article 330 deals with the reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People. Article 332 deals with the reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States. Both these provisions do not deal with reservation of seats for the House of legislature of Union Territories. In any case, even assuming that Article 332 can be applied to the reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislatures of Union territories, it is not shown how the act of increasing the total number of seats in the legislature will offend Article 332, so long as the reservation is maintained as per the formula provided under Article 332. [Para 40][548-C-F]

4.4. Another argument sought to be made is that the provision made for 114 seats in the legislature of the newly constituted Union Territory of J & K is illegal. This submission calls for no consideration as there is no challenge to the validity of sub-section (1) of Section 60 of the J&K Reorganisation Act. [Para 41][548-G]

4.5. Another argument was canvassed that the Delimitation Order of 2008 published by the Election Commission cannot be deviated from. The perusal of the said Order shows that it reproduces the delimitation of the Parliamentary and Legislative Assembly Constituencies made by the Delimitation of Parliamentary and Assembly Constituencies Orders of 1976 and 1995 for the State of Jammu and Kashmir. Both the orders of 1976 and 1995 have been expressly modified by the J&K Reorganisation Act by virtue of Sections 11(4) and 14(5) as provided in the second and third Schedules thereto. Hence, the argument deserves to be rejected. [Para 42][548-H; 549-A-B]

4.6. The petitioners have overlooked the fact that clause (b) of sub-Section (1) of Section 62 of the J&K Reorganisation Act has further amended the Delimitation Act, 2002 by providing that words and figures 'census held in the year 2001' appearing in the Delimitation Act shall be construed as 'census held in the year 2011'. To its application to the Union territory of J & K, the year 2001 in sub-section (1) of Section 9 of the Delimitation Act, 2002 has been substituted by the year 2011 and therefore, distribution of seats in the House of the People and seats assigned to the Legislative Assembly will have to be readjusted on the basis of 2011 census and the delimitation will have to be carried out on the basis of the figures of the census held in the year 2011. The effect of Section 63 is that once the exercise of readjustment/delimitation is made on the basis of 2011 census figures, the same will be frozen till the relevant figures of the first census taken after 2026 are available. Therefore, the exercise of delimitation/readjustment of the seats in the Union Territory of J & K was required to be made by the Delimitation Commission on the basis of the figures of the 2011 census. In view of Section 63, further readjustment can be carried out only after the publication of figures from the census held after the year 2026. [Para 43][549-C-E]

4.7. Reliance placed on the opinion of the Attorney General is misplaced as it deals only with the provisions of the A.P. Reorganisation Act, 2014. The petitioners cannot rely upon the answer given by Hon'ble Minister in the Lok Sabha as it deals with delimitation of Constituencies in Telangana in the context of Article 170. In any event, the said opinion as well as the answer given by the Hon'ble Minister have no bearing on the interpretation of the J&K Reorganisation Act. [Para 44][549-F-G]

4.8. A vague attempt was made by the petitioners to submit that the exercise which is undertaken for the newly created Union territory of J & K was not undertaken on the basis of the Uttar Pradesh Reorganisation Act, 2000 and Andhra Pradesh Reorganisation Act, 2014. In both the Acts, there is no provision which is *pari materia* with clause (b) of sub-Section (1) of Section 62 of the J&K Reorganisation Act which amended the provisions

of the Delimitation Act 2002 in its applicability to the newly formed Union Territories by substituting the year 2001 with 2011. [Para 45][549-G-H; 550-A]

4.9. There is absolutely no merit in any of the contentions raised by the petitioners. The findings rendered in the judgment are on the footing that the exercise of power made in the year 2019 under clauses (1) and (3) of Article 370 of the Constitution is valid. The issue of the validity of the exercise of the said powers is the subject matter of petitions pending before this Court. Therefore, this Court has not dealt with the issue of validity. Nothing stated in this judgment shall be construed as giving imprimatur to the exercise of powers under clauses (1) and (3) of Article 370 of the Constitution. [Para 46][550-B-C]

Engineering Kamgar Union v. Electro Steel Casting, **2004 (6) SCC 36;** *Mangal Singh & Anr. v. Union of India,* **1967 (2) SCR 109;** *Meghraj Kothari v. Delimitation Commission & Ors.,* **1967 (1) SCR 400 – referred to.**

Case Law Reference

2004 (6) SCC 36	**referred to**	**Para 9(g)**
1967 (2) SCR 109	**referred to**	**Para 9 (r)**
1967 (1) SCR 400	**referred to**	**Para 10(f)**

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 237 of 2022.

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

Ravi Shankar Jandhyala, Sr. Adv., Sunny Kumar, Sriram P., Advs. for the Petitioners.

Tushar Mehta, SG, K.M. Nataraj, ASG, Shailesh Madiyal, Kanu Agrawal, Ms. Neela Kedar Gokhale, Saurav Roy, Nakul Chengappa K K, Ms. Akriti A Manubarwala, Parth Awasthi, Vaibhav Sabharwal, Sudhanshu Prakash, Ms. Vinayaka S Pandit, Rajan Parmar, Akshay Kumar, Arvind Kumar Sharma, Gurmeet Singh Makker, Ms. Taruna Ardhendumauli Prasad, Amit Sharma, Dipesh Sinha, Ms. Pallavi Barua, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY S. OKA, J.

1. The main challenge in this writ petition under Article 32 of the constitution of India is to the legality and validity of the action of constituting a Delimitation Commission for the Union Territory of Jammu and Kashmir under provisions of the Delimitation Act, 2002 and the exercise of delimitation undertaken by the Commission.

RELEVANT FACTS

2. The Constitution (Application to Jammu and Kashmir) Order, 2019 bearing C.O. No.272 was issued by the Hon'ble President of India on 5th August 2019. The said order was issued in the exercise of powers conferred by clause (1) of Article 370 of the Constitution of India. The said order directed that all the provisions of the Constitution, as amended from time to time, shall apply in relation to the State of Jammu and Kashmir, subject to modifications made to Article 367 as set out in the said order. By the said order, Clause (4) was added to Article 367 providing that the expression "Constituent Assembly of the State referred to in clause (2)" in the proviso to clause (3) of Article 370 of the Constitution, shall be read as "Legislative Assembly of the State". On 6th August 2019, a declaration under Clause (3) of Article 370 of the Constitution bearing C.O.No.273 was made by the Hon'ble President of India on the recommendation of the Parliament, by which it was declared that all the clauses of Article 370 shall cease to be operative.

3. The Jammu and Kashmir Reorganisation Act, 2019 (for short, 'the J&K Reorganisation Act') was enacted which provided for the reorganisation of the State of Jammu and Kashmir by dividing it into two Union Territories. A new Union Territory of Ladakh was created comprising territories of Kargil and Leh Districts in the erstwhile State of Jammu and Kashmir. The Union Territory of Jammu and Kashmir (for short, 'the Union Territory of J & K) was formed comprising the existing State of Jammu and Kashmir other than Kargil and Leh Districts. The J&K Reorganisation Act came into force with effect from 31st October 2019. By virtue of Section 13 thereof, Article 239A of the Constitution of India which was earlier applicable only to the Union Territory of Puducherry, became applicable to the Union Territory of J & K. Article 239A confers a power on the Parliament to enact a law for creating a legislature for the Union Territory.

4. The Delimitation Act, 2002 which was not applicable to the erstwhile State of Jammu and Kashmir, was made applicable by virtue of Section 62 of the J&K Reorganisation Act to the newly formed Union Territory of J&K. On 6th March 2020, the Central Government constituted a Delimitation Commission under Section 3 of the Delimitation Act, 2002 for the purpose of delimitation of Assembly and Parliamentary Constituencies in the Union Territory of J & K as well as the States of Arunachal Pradesh, Assam, Manipur and Nagaland. The Commission was headed by a retired Judge of this Court. The Election Commissioner and the State Election Commissioner were made ex-officio members of the Delimitation Commission. The term of appointment of the Chairperson was fixed as one year. By a notification dated 3rd March 2021, the earlier notification dated 6th March 2020 appointing the Delimitation Commission was amended by deleting the States of Arunachal Pradesh, Assam, Manipur and Nagaland from the purview of the Delimitation Commission. By the same notification, the term of the Chairperson was extended to two years. The notification dated 6th March 2020 was further amended by a notification dated 21st February 2022 by providing that the term of the Chairperson shall be for two years and two months.

5. Sub-Section (1) of Section 60 of the J&K Reorganisation Act provides that the number of seats in the Legislative Assembly of Union Territory of J & K shall be increased from 107 to 114. Sub-Section (4) of Section 14 provides that 24 seats in the Legislative Assembly of the Union territory of J & K shall remain vacant and shall not be taken into account for reckoning the total membership of the Assembly.

PLEADINGS

6. Very wide and sweeping prayers have been made in the present writ petition invoking Article 32 of the Constitution of India. The first challenge is to the provision regarding the increase in the number of seats in the Legislative Assembly of Union territory of J & K. The second challenge is to the modification made of the notification dated 6th March 2020 by deleting the States of Arunachal Pradesh, Assam, Manipur and Nagaland from the purview of the

Delimitation Commission. The third challenge is to the constitution of the Delimitation Commission itself under the notification dated 6th March 2020. The challenge is on the ground that after the Delimitation of Parliamentary and Assembly Constituencies Order, 2008 (for short

"the Delimitation Order of 2008") was issued by the Election Commission of India, the existing Delimitation Commission was wound up and therefore, it was inappropriate and illegal to constitute a new Delimitation Commission. The petitioners contended that the Delimitation Commission has been appointed under the notification dated 6th March 2020 by usurping the jurisdiction of the Election Commission of India (for short, 'the Election Commission) and therefore, the constitution of the Delimitation Commission was *ultra vires* the provisions of sub-Sections (2) and (5) of Section 60 of the J&K Reorganisation Act. There is also a challenge to the constitution of the Delimitation Commission on the ground of infringement of clause (3) of Article 170 as well as Articles 14, 19 and 21 of the Constitution.

7. We may note here that on 13th May 2022, this Court recorded a submission of Shri Ravi Shankar Jandhyala, the learned senior counsel appearing for the petitioners that the petitioners are not seeking to assail abrogation of Article 370 of the Constitution. In view of this statement, this Court observed that certain allegations made on that behalf in the pleadings are to be ignored. This Court also noted that the challenge really was to the exercise undertaken in respect of the delimitation pursuant to the notification dated 6th March 2020 as amended by further notifications dated 3rd March 2021 and 21st February 2022.

8. A counter affidavit has been filed by the Union of India pointing out that during the pendency of this writ petition, on 5th May 2022, a notification has been published by the Delimitation Commission in the exercise of powers under sub-Section (2) of Section 4 and sub-Section (2) of Section 9 of the Delimitation Act, 2002 containing the order of the delimitation of Assembly Constituencies of the Union territory of J & K and Parliamentary Constituencies. It is also pointed out that by a further order dated 20th May 2022, the Central Government exercised powers under sub-Sections (2) and (3) of Section 62 of the J&K Reorganisation Act appointing 20th May 2022 as the date on which order dated 5th May 2022 issued by the Delimitation Commission shall come into force. The counter affidavit also notes that earlier, a draft order was published by the Delimitation Commission on 14th March 2022 containing proposals for delimitation of the Constituencies, and objections and suggestions to it were invited. Copies of the notifications/orders dated 5th May 2022 and 20th May 2022 have been placed on record by the Election Commission – Respondent no.5. There is a rejoinder filed by the

A petitioners dealing with the counter affidavits filed by the Union of India and the Election Commission.

SUBMISSIONS OF THE PETITIONERS

9. Shri Ravi Shankar Jandhyala, the learned senior counsel appearing for the petitioners has made detailed submissions. The summary of his submissions is as under:

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(a) That the 2nd proviso to clause (3) of Article 170 of the Constitution lays down that until the figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust the total number of seats in the Legislative Assembly readjusted on the basis of the 1971 census and the division into territorial constituencies as may be readjusted on the basis of 2001 census. The exercise undertaken of delimitation/readjustment of the Assembly and Parliamentary Constituencies of Union Territory of J & K by appointing the Delimitation Commission under the impugned notification dated 6th March 2020 is completely in violation of 2nd proviso to clause (3) of Article 170. Similarly, the 3rd proviso to Article 82 imposes an embargo on the readjustment of allocation of seats in the House of the People readjusted on the basis of the 1971 census and the division of States into territorial constituencies as may be readjusted on the basis of the 2001 census till the figures of the first census conducted after 2026 are available. A similar embargo has been imposed by Articles 330 and 332 of the Constitution on reserving the seats for Scheduled Castes and Scheduled Tribes till figures of the first census conducted after 2026 are available;

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(b) Earlier, the embargo was applicable till figures of the first census taken after the year 2000 were available. It was modified by the Constitution (84th Amendment Act, 2001) by substituting the year 2026 for the year 2000. The Government cannot undermine the objects and reasons for the said amendment;

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(c) Till the figures of the first census conducted after the year 2026 become available, the number of members of the Legislative Assembly of the States remains the same.

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Therefore, the effort to divide the Union territory of J & K into territorial constituencies was illegal and uncalled for;

(d) Though the petitioners may not have challenged the validity of Section 62 of the J&K Reorganisation Act, the same is violative of clause (3) of Article 170 of the Constitution and therefore, the provisions of Section 62 cannot be implemented. He submitted that the number of Constituencies in Legislative Assemblies of the State can be readjusted only in accordance with Article 170 and in particular, the 2nd proviso to clause (3) thereof, and therefore, any attempt to make any readjustment of the constituencies of the Union Territory of J & K violates Article 170. The constitution of the Legislative Assembly of the Union Territory of J & K must remain the same till the figures of the first census conducted after the year 2026 are made available;

(e) In view of Articles 82 and 83, constituencies of the House of the People for the Union territory of J & K cannot be reconstituted without the publication of the results of the first census conducted after the year 2026;

(f) The opinion rendered by the learned Attorney General for India on 6th July 2016 concerning the implementation of Section 26 of the Andhra Pradesh Reorganisation Act, 2014 (for short, 'the 2014 Act') is very relevant. The learned Attorney General for India opined that there was a conflict between Section 26 of the 2014 Act and Article 170 of the Constitution and therefore, Article 170 will prevail. It was submitted that the said opinion will govern the relevant provisions of the J&K Reorganisation Act as well;

(g) A *non-obstante* clause in a statute cannot override the provisions of the Constitution. Reliance was placed upon a decision of this Court in the case of ***Engineering Kamgar Union v. Electro Steel Casting***[1] on this behalf;

(h) The delimitation order of 2008 published by the Election Commission cannot be deviated from. The guidelines issued by the Election Commission are very relevant on this behalf;

[1] 2004 (6) SCC 36

(i) As under Section 62 of the J&K Reorganisation Act, the work of delimitation has been entrusted to the Election Commission, the notification dated 6th March 2020 which permits Delimitation Commission to undertake the said exercise, is completely illegal;

(j) It is a settled law that this Court can take judicial notice of the proceedings of the Houses of Parliament. A question was asked in the Lok Sabha by a Hon'ble Member regarding undertaking the delimitation of the constituencies in the State of Telangana along with the Union territory of J & K. The answer given by Shri Nityanand Rai, the Hon'ble Minister of State in the Ministry of Home Affairs on 3rd August 2021 to the question was that the total number of seats in the Assembly of each State will be readjusted after the first census is published after the year 2026;

(k) In any event, the appointment of the Delimitation Commission under the order dated 6th March 2020 is completely contrary to Section 3 of the Delimitation Act which provides that the Delimitation Commission shall be constituted at the earliest. Sub-Section (6) of Section 10 of the Delimitation Act, 2002 requires the Delimitation Commission to complete the exercise and to publish orders under sub-Section (1) of Section 10, not later than 31st July 2008. Hence, the orders passed by the Delimitation Commission constituted under the notification dated 6th March 2020 are in complete violation of the mandate of sub-Section (6) of Section 10;

(l) The Delimitation Act, 2002 contemplates the constitution of a single Delimitation Commission and not multiple Commissions. He would, therefore, submit that the constitution of the Delimitation Commission is completely illegal;

(m) The States of Arunachal Pradesh, Assam, Manipur and Nagaland were illegally excluded from the purview of the notification dated 6th March 2020. The said action was taken on the basis of the letter dated 22nd February 2021 addressed by the Deputy Secretary of the Ministry of Home Affairs, stating that considering the litigations pending

concerning the delimitation exercise in North-Eastern States, the delimitation exercise should not be undertaken in the said States. The earlier notification cannot be modified on the basis of the views of a Deputy Secretary. The Union of India and the Election Commission cannot apply different yardsticks to different States. There was no reason to exclude the other States included in the notification dated 6th March 2020;

(n) Sections 59 to 63 of the J&K Reorganisation Act are not only violative of the express provisions of the Constitution but also contradictory to each other. These Sections confer the power of delimitation both on the Election Commission and the Delimitation Commission which makes these Sections completely illegal. Sub-Section (1)(b) of Section 11 of the Delimitation Act, 2002 permits the Election Commission to make any changes in the boundary, area, or the extent of any constituency as described in the delimitation order already issued and published;

(o) The act of omission of the words "but does not include the State of Jammu and Kashmir" from Section 2(f) of the Delimitation Act, 2002 by sub-Section (1) of Section 62 of the J&K Reorganisation Act infringes Article 14 of the Constitution of India;

(p) Consolidation of all the delimitation orders was already made by the Election Commission in accordance with Section 9 of the Representation of the People Act, 1950;

(q) Articles 2 to 4 of the Constitution are subject to other provisions of the Constitution and the provisions of the said Articles cannot override the Constitutional scheme; and

(r) Notwithstanding the orders dated 5th May 2020 and 20th May 2022 passed in the exercise of powers under sub-Section (1) of Section 10 of the Delimitation Act, 2002, the present writ petition is maintainable. The decision of the Constitution Bench of this Court in the case of ***Meghraj Kothari v. Delimitation Commission & Ors.***[2] will have no application to the facts of the present case.

[2] 1967 (1) SCR 400

A **SUBMISSIONS OF THE UNION OF INDIA**

10. Shri Tushar Mehta, the learned Solicitor General of India appearing for the Union of India has made the following submissions:

(a) Writ petition suffers from delay and latches as the Delimitation Commission was constituted by the impugned notification dated 6th March 2020. The notification was amended on 3rd March 2021 by deleting the States of Arunachal Pradesh, Assam, Manipur and Nagaland. Thereafter, on 14th March 2022, a draft delimitation order was published by the Commission. As late as on 28th March 2022, the present petition has been filed. For challenging the notification dated 6th March 2020, the present writ petition has been filed after a lapse of more than two years;

(b) During the pendency of this petition, the delimitation order under sub-Section (1) of Section 10 of the Delimitation Act, 2002 has been issued by the Delimitation Commission which has been brought into force with effect from 20th March 2022;

(c) Under sub-Section (2) of Section 10 of the Delimitation Act, 2002, there is a complete bar on any Court questioning the order passed under sub-Section (1) of Section 10. In view of the decision of the Constitution Bench in the case of ***Meghraj Kothari***[2], the bar under sub-Section (2) of Section 10 is applicable also to a remedy under Article 226 of the Constitution. Article 329 also creates a bar on interference by Courts in the matters of validity of any law relating to the delimitation of constituencies. An order of delimitation of constituencies has been held to be a law and therefore, now the orders dated 5th May 2020 and 20th May 2022 cannot be questioned;

(d) Sections 60 and 62 of the J&K Reorganisation Act operate in different fields. Section 60 generally refers to the delimitation of constituencies and Section 62 deals with the delimitation of constituencies on the basis of census figures of the 2011 census. He pointed out that sub-Section (1) of Section 60 which confers power on the Election Commission of delimitation uses the word "may" whereas Section 62 uses the word "shall";

(e) The Election Commission by a letter dated 2nd September 2019 informed the Government of India that since the Delimitation Commission is constituted under Section 62 of the J&K Reorganisation Act which is carrying out readjustment of Parliamentary and Legislative Assembly constituencies, it was not necessary for the Election Commission to undertake the exercise under Section 60 of the Delimitation Act;

(f) Article 3 specifically empowers Parliament by law to form a new State/Union Territory and the said law referred to in Article 3 must provide for the appropriate amendments to the First Schedule and Fourth Schedule for giving effect to the provisions of the law. Clause (2) of Article 4 specifically provides that no such law shall be deemed to be an amendment of the Constitution for the purpose of Article 368. Reliance was placed upon a decision of the Constitution Bench in the case of ***Mangal Singh & Anr. v. Union of India***[3] on this behalf; and

(g) Clauses (3) of Articles 81 and Article 170 do not apply to the Union territories at all.

REJOINDER

11. The learned senior counsel appearing for the petitioners by way of rejoinder urged that though there may not be any specific challenge in the present petition to the validity of the provisions of the J&K Reorganisation Act, the said challenge can always be inferred. He submitted that the issues of inconsistency between the Constitutional provisions and the provisions of the J&K Reorganisation Act have not been answered by the learned Solicitor General of India.

CONSIDERATION OF SUBMISSIONS

Developments concerning the State of Jammu and Kashmir in the year 2019

12. (a) On 5th August 2019, the Constitution (Application to Jammu & Kashmir) Order, 2019 (for short 'the 2019 Presidential Order') was promulgated by the Hon'ble

[3] 1967 (2) SCR 109

President of India in the exercise of powers under clause (1) of Article 370 of the Constitution of India. The said order was issued in concurrence with the Government of the State of Jammu and Kashmir. Clause (2) of the 2019 Presidential Order provided that all the provisions of the Constitution of India, as amended from time to time, shall apply in relation to the State of Jammu and Kashmir subject to exceptions and modifications set out in the said order. Clause (4) was added by the said Order to Article 367 in relation to the State of Jammu and Kashmir which provided that the expression "Constituent Assembly of the State referred to in clause (2)" in the proviso to clause (3) of Article 370 of the Constitution shall be read as "Legislative Assembly of the State". The 2019 Presidential order was brought into force with immediate effect;

(b) The second important development was the declaration under Clause (3) of Article 370 of the Constitution (for short 'the said declaration') made by the Hon'ble President on the recommendation of the Parliament. It was declared that from 6th August 2019, all clauses of Article 370 shall cease to be operative, subject to the exceptions incorporated in the said declaration. It was provided therein that notwithstanding anything contained to the contrary in Articles 152 and 308 as well as any other Article of the Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, all the provisions of the Constitution of India as amended from time to time shall apply to the State of Jammu and Kashmir;

(c) Thus, in view of the 2019 Presidential Order and the said declaration, with effect from 6th August 2019, all the provisions of the Constitution of India became applicable to the State of Jammu and Kashmir except the modifications provided in the 2019 Presidential Order. As a result of the said declaration and the 2019 Presidential Order, the special status of the State of Jammu and Kashmir under the Constitution by virtue of Article 370 virtually came to an end;

(d) Another important development that followed was the enactment of the J&K Reorganisation Act which received the assent of the Hon'ble President on 9th August 2019. 31st October 2019 was fixed as the appointed day under the J&K Reorganisation Act by the Central Government. By virtue of Sections 3 and 4 thereof, with effect from 31st October 2019, a new Union Territory came into existence known as the Union Territory of Ladakh. The said Union Territory comprises of the areas covered by Kargil and Leh districts. From the appointed day, the Union Territory of J & K was also created. The said Union Territory comprises of the territories of the erstwhile State of Jammu and Kashmir except the area covered by the Union Territory of Ladakh. Thus, with effect from 31st October 2019, the State of Jammu and Kashmir ceased to exist and the Union Territories of Ladakh, as well as Jammu & Kashmir, were brought into existence;

(e) The Delimitation Act, 2002 became applicable to the Union territory of J & K as the definition of "State" in clause (f) of Section 2 thereof includes the Union Territories having a Legislative Assembly. In addition, many other Central enactments incorporated in Table-1 of the Fifth Schedule to the J&K Reorganisation Act became applicable to the Union territory of J & K;

(f) The Representation of the People Act, 1951 (for short 'the RP Act of 1951') was not applicable to the elections to fill in the seats in either House of Parliament in the State of Jammu and Kashmir and the House of Legislature of the said State. An amendment was carried out to the RP Act of 1951 by the J&K Reorganisation Act by which the provisions of the RP Act of 1951 were made applicable to both the newly created Union Territories. Prior to that, The Jammu and Kashmir Representation of the People Act, 1957 (for short "J&K R.P Act") was applicable to the State. We may note here that as the Representation of the People Act, 1950 (for short 'the RP Act of 1950'), was applicable to the

A State of Jammu and Kashmir, the same continues to apply to the two newly created Union Territories;

(g) By virtue of Section 13 of the J&K Reorganisation Act, the provisions contained in Article 239A which were earlier applicable only to the Union Territory of Puducherry were made applicable to the Union Territory of J and K. Article 239A, inter alia, provides that Parliament may by law create a body to function as a legislature of the Union Territory of Puducherry.

The issue of the validity of provisions of the J&K Reorganisation Act.

13. We may note here that during the course of the hearing of submissions of the learned senior counsel appearing for the petitioners, he attempted to assail the validity of certain provisions of the J&K Reorganisation Act. Therefore, we pointed out to him that there is no challenge incorporated in the present writ petition to the constitutional validity of any of the provisions of the J&K Reorganisation Act. The initial response of the senior counsel was that he does not wish to challenge the provisions. However, subsequently, he submitted that the challenge to the relevant provisions of the J&K Reorganisation Act is implicit in this writ petition.

14. There cannot be any doubt that when a party wants to challenge the constitutional validity of a statute, he must plead in detail the grounds on which the validity of the statute is sought to be challenged. In absence of the specific pleadings to that effect, Court cannot go into the issue of the validity of statutory provisions. The Constitutional Courts cannot interfere with the law made by the Legislature unless it is specifically challenged by incorporating specific grounds of challenge in the pleadings. The reason is that there is always a presumption of the constitutionality of laws. The burden is always on the person alleging unconstitutionality to prove it. For that purpose, the challenge has to be specifically pleaded by setting out the specific grounds on which the challenge is made. A Constitutional Court cannot casually interfere with legislation made by a competent Legislature only by drawing an inference from the pleadings that the challenge to the validity is implicit. The State gets a proper opportunity to defend the legislation only if the State is made aware of the grounds on which the legislation is sought to be challenged.

15. Though an opportunity was available to the petitioners to challenge the provisions of the J&K Reorganisation Act, the petitioners have chosen not to do so. We may also note here that the petitioners are also not questioning the 2019 Presidential Order and the said declaration. Therefore, we will have to proceed on the footing that the 2019 Presidential Order, the said declaration and the provisions of the J&K Reorganisation Act are valid. It is in this context that the submissions made across the Bar will have to be appreciated.

Findings on the challenges in the Writ Petition

16. The Constitution makes a clear distinction between the States and Union Territories as can be seen from Article 1 and the First Schedule. Part V of the Constitution deals with the Union. Chapter II of Part V deals with Parliament. Part VI deals with the States. Chapter III of Part VI deals with the State Legislature. Part VIII of the Constitution independently deals with the Union Territories.

17. Article 3 provides that Parliament may by law form new States and alter the areas, boundaries or names of the existing States. The explanation I provides that in clauses (a) to (e) of Article 3, a "State" includes "Union Territory". Thus, Explanation I makes it amply clear that the power of Parliament under Clause (a) of Article 3, to make a law to form a new State or to alter a boundary of a State includes a power to make a law to form a new Union Territory. Explanation II clarifies that the power conferred by clause (a) on Parliament to enact the law to form a new State includes a power to form a Union Territory by uniting parts of any State or Union Territory to any other State or Union Territory. Clause (1) of Article 4 provides that any law made by Parliament as provided in Article 3 shall contain such provisions for the amendment of the First Schedule (containing the list of States and Union Territories) and Fourth Schedule (containing allocation of seats in the Council of States) as may be necessary for the purposes of giving effect to the provisions of the law. Such a law may also contain such supplemental, incidental and consequential provisions including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law as Parliament may deem necessary. Clause (2) of Article 4 clarifies that no such law made by Article 3 shall be deemed to be an amendment of the Constitution for the purposes of Article 368. By the same law, a provision can be made as to the representation in Parliament and in the legislature of the Union

A Territory created by such law. The Constitution Bench in the case of **Mangal Singh**[3] has held that the power under Article 4 is wide enough even to reduce the total members of the Legislative Assembly below the minimum prescribed by clause (1) of Article 170.

18. Firstly, we will deal with the issue of applicability of Article B 170 having the title "Composition of the Legislative Assemblies" to the Union Territory of J & K. Article 170 forms part of Chapter III under the title "The State Legislature". Chapter III has been incorporated in Part VI of the Constitution which deals with the States. Much emphasis was laid on the violation of the provisions contained in the second Proviso to Clause (3) of Article 170 by the learned counsel appearing for the C petitioners. But we may note here that the said Article does not deal with the legislatures of Union Territory at all. Articles 239A and 239AA which are included in Part VIII of the Constitution are the Articles that deal with the creation of a body to function as legislature and Council of Ministers for certain Union Territories. For the sake of convenience, we D are reproducing Article 239A which reads thus:

> "**239A. Creation of local Legislatures or Council of Ministers or both for certain Union territories— (1) Parliament may by law create [for the Union territory of [Puducherry] —**
>
> E **(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or**
>
> (b) a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law.
>
> F (2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution."
>
> (emphasis added)

G Article 239A as it originally stood provided that Parliament may by law create for the Union Territory of Puducherry a body to function as a Legislature for the Union Territory or a Council of Ministers or both. Such a body to act as a Legislature of the Union Territory covered by Article 239A may be elected or partly nominated and partly elected.

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By virtue of Section 13 of the J&K Reorganisation Act, with effect from 31st October 2019, Article 239A became applicable to the Union Territory of J and K. As noted by clause (2) of Article 239A, the law contemplated by clause (1) of Article 239A shall not be deemed to be an amendment to the Constitution for the purposes of Article 368 notwithstanding that it contains any provision which amends or has the effect of amending the Constitution.

19. On a conjoint reading of Articles 3,4 and 239A, we find that:-

a) Parliament by making a law can convert an existing State into one or more Union territories;

b) Parliament is empowered by law to create a body of legislature for the Union territories of Puducherry and J&K. Accordingly, sub-Section (2) of Section 14 of the J & K Reorganisation Act provides that there shall be a Legislative Assembly for the Union Territory of J & K.; and

c) Even if the law made by Parliament creating a body of legislature for Union territories of Puducherry and J&K has the effect of amending certain parts of the Constitution, it shall not be deemed to be an amendment of the Constitution for the purposes of Article 368.

20. Now coming to the J&K Reorganisation Act, it is apparent that the said law has been made by Parliament in the exercise of powers under Articles 3,4 and 239A. The said law created two Union territories in place of the State of Jammu and Kashmir. The said law provides for the amendment of the First and Fourth schedule for giving effect to its provisions. Section 13 provides for amendment of Article 239A for applying the same to the Union territory of J & K. Section 13 is a supplemental and consequential provision made by Parliament as provided in clause (1) of Article 4 for the purposes of giving effect to the creation of the new Union territory of J and K. In view of clause (2) of Article 4, though Section 13 has the effect of amending Article 239A, it will not be affected by Article 368 of the Constitution.

21. Under sub-section (2) of Section 14 of the J&K Reorganisation Act, a Legislative Assembly for the Union territory of J and K has been created. Sub-section (3) provides that the total number of seats in the Legislative Assembly of the Union territory of J & K to be filled by the persons chosen by direct election shall be 107. Clause (a) of sub-section

(4) of Section 14 provides that 24 seats in the Legislative Assembly of the said Union territory shall remain vacant until the area of the Union Territory under the occupation of Pakistan ceases to be so occupied. We may note here that under the Constitution of Jammu and Kashmir, the seats in the State Legislative Assembly excluding 24 seats earmarked for Pakistan occupied territory were 87 out of which 7 seats were reserved for Scheduled Castes and Schedule Tribes.

22. As far as the number of constituencies is concerned, we must also refer to Part V of the J&K Reorganisation Act having the title "Delimitation of Constituencies". Sub-section (1) of Section 60 provides that the number of seats in the Legislative Assembly of the Union territory of J & K shall be increased from 107 to 114. However, the excluded 24 seats covered by Pakistan occupied territory remain the same. Thus, the total number of seats available now for holding elections to the Legislative Assembly of the Union territory of J & K is 90.

23. Hence, as far as the Legislative Assembly of the Union territory of J & K is concerned, Article 170 will have no application as it forms a part of Chapter III of Part VI which deals with only the State Legislature. It has no application to the Legislatures of Union Territories. The reason is that the Legislative Assemblies of the concerned Union Territories will be governed by the law made by the Parliament in accordance with Article 239A and not by the provisions of Chapter III of Part VI. As Article 170 is not applicable to the Legislature of the Union Territory of J & K, the main thrust of the argument that certain provisions of the J&K Reorganisation Act and actions taken thereunder are in conflict with Article 170 and in particular Clause (3) thereof is clearly misconceived and deserves to be rejected.

The exercise of Delimitation

24. Now, we come to the issue of delimitation of constituencies of the Legislative Assembly of the Union territory of J and K. There were two earlier enactments dealing with the establishment of the Delimitation Commission. The first one was the Delimitation Commission Act, 1962 and the second one was the Delimitation Act, 1972. Both the Acts were not applicable to the State of Jammu and Kashmir as the definition of the State incorporated in both Acts specifically excluded the State of Jammu and Kashmir. The same is the case with the Delimitation Act, 2002. We may note here that Section 3 of the J&K RP Act laid down

the requirement of the establishment of the Delimitation Commission which provided that the Delimitation Commission shall distribute the seats in the Legislative Assembly to single member territorial constituencies and delimit them having regard to various factors mentioned in sub-section (2) of Section 3. Section 4-B of the J&K RP Act provided for the Delimitation Commission to pass an order regarding the delimitation of constituencies and publish the same. In fact, the Delimitation of Assembly Constituencies Order, 1995 was issued which was applicable to the State of Jammu and Kashmir. Section 4-C of the J&K RP Act conferred power on the Election Commission to correct any printing mistakes in the final order of the Delimitation Commission or any error or omission. The Election Commission was also empowered to make amendments when the boundaries or names of any district or any territorial division mentioned in the final order of the Delimitation Commission were altered.

25. By virtue of sub-section (5) of Section 14 of the J&K Reorganisation Act, the said Delimitation Order of 1995 was amended as provided in the Third Schedule thereof. The Third Schedule contains the details of the amendments to the delimitation of the assembly constituencies made by the said Delimitation Order of 1995 in relation to the existing 83 assembly constituencies out of a total 107 as provided in sub-section (3) of Section 14. 24 constituencies covered by the Pakistan occupied area were obviously not covered by the Delimitation Order. Thus, by virtue of sub-section (5) of Section 14, the delimitation of 83 constituencies of the Legislative Assembly of the Union Territory of J & K was incorporated in the form of the Third Schedule which sets out the boundaries of and the areas incorporated in the new individual 83 constituencies.

26. Now we come to Part V of the of J&K Reorganisation Act which deals with the Delimitation of Constituencies. By virtue of clause (a) of sub-section (1) of Section 62, the provisions of the Delimitation Act, 2002 were made applicable to the Union Territory of J & K with effect from 31st October 2019. For the sake of convenience, we are reproducing Sections 60 to 63 of the J&K Reorganisation Act which read thus:

> **60. (1) Without prejudice to sub-sections (3) of section 14 of this Act, the number of seats in the Legislative Assembly of Union territory of Jammu & Kashmir shall be increased**

A **from 107 to 114, and delimitation of the constituencies may be determined by the Election Commission in the manner hereinafter provided—**

(a) the number of seats to be reserved for the Scheduled Castes and the Scheduled Tribes in the Legislative
B **Assembly, having regard to the relevant provisions of the Constitution;**

(b) the assembly constituencies into which the Union territory shall be divided, the extent of each of such constituencies and in which of them seats shall be reserved
C **for the Scheduled Castes or for the Scheduled Tribes; and**

(c) the adjustments in the boundaries and description of the extent of the parliamentary constituencies in each Union territory that may be necessary or expedient.

D (2) In determining the matters referred to in clauses (b) and (c) of sub-section (1), the Election Commission shall have regard to the following provisions, namely:—

(a) all the constituencies shall be single-member constituencies;

E (b) all constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them, regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and conveniences to the public; and

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

G (3) The Election Commission shall, for the purpose of assisting it in the performance of its functions under sub-section (1), associate with itself as associate members, four persons as the Central Government may by order specify, being persons who are the members of the Legislative Assembly of the Union territory of Jammu & Kashmir or four members of the House of the People representing the Union territory of Jammu and Kashmir:

Provided that none of the associate members shall have a right to vote or to sign any decision of the Election Commission.

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(4) If, owing to death or resignation, the office of an associate member falls vacant, it shall be filled as far as practicable, in accordance with the provisions of sub-section (3).

(5) The Election Commission shall—

(a) publish its proposals for the delimitation of constituencies together with the dissenting proposals, if any, of any associate member who desires publication thereof in the Official Gazette and in such other manner as the Commission may consider fit, together with a notice inviting objections and suggestions in relation to the proposals and specifying a date on or after which the proposals will be further considered by it;

(b) consider all objections and suggestions which may have been received by it before the date so specified; and

(c) after considering all objections and suggestions which may have been received by it before the date so specified, determine by one or more orders the delimitation of constituencies and cause such order or orders to be published in the Official Gazette, and there upon such publication, the order or orders shall have the full force of law and shall not be called in question in any court.

(6) As soon as may be after such publication, every such order relating to assembly constituencies shall be laid before the Legislative Assembly of the Union territory of Jammu and Kashmir.

61. (1) The Election Commission may by notification in the Official Gazette,—

(a) correct any printing mistakes in any order made under section 60 or any error arising therein from inadvertent slip or omission; and

(b) where the boundaries or name of any territorial division mentioned in any such order or orders is or are altered, make such amendments as appear to it to be necessary or expedient for bringing such order up-to-date.

(2) Every notification under this section relating to an assembly constituency shall be laid, as soon as may be after it is issued, before the Legislative Assembly.

A **62.** (1) On and from the appointed day, notwithstanding the publication of orders under sub-section (1) of section 10 of the Delimitation Act, 2002 or anything contained in sub-section (2) or sub-section (4) of the said section, **the Delimitation Act, 2002 shall be deemed to have been amended as provided below:**

B **(a) in section 2(f), the words "but does not include the State of Jammu and Kashmir" shall be omitted; and**

(b) for the purpose of delimitation of Assembly and Parliamentary Constituencies, the words and figure "census held in the year 2001", wherever occurring, shall be
C **construed as words and figure "census held in the year 2011".**

(2) Readjustment of the constituencies as provided under section 60 in the successor Union territory of Jammu & Kashmir into Assembly Constituencies, shall be carried by
D **the Delimitation Commission, to be constituted under the Delimitation Act, 2002 as amended by this Act, and shall take effect from such date as the Central Government may, by order, published in the Official Gazette, specify.**

(3) Readjustment of the constituencies as provided under
E **section 11 in the successor Union territory of Jammu & Kashmir into Parliamentary Constituencies, shall be carried by the Delimitation Commission, to be constituted under the Delimitation Act, 2002 as amended by this Act, and shall take effect from such date as the Central Government may, by order, published in the Official Gazette, specify.**

F **63. Special provisions as to readjustment of Assembly and Parliamentary Constituencies.—** Notwithstanding anything contained in sections 59 to 61, until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust the division of successor Union
G territory of Jammu and Kashmir into Assembly and Parliamentary Constituencies and any reference to the "latest census figures" in this Part shall be construed as a reference to the 2011 census figures."

(emphasis added)

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27. As noted earlier, the delimitation of 83 constituencies of the Union Territory was made under the J&K Reorganisation Act and was incorporated in the Third Schedule as provided in sub-section (5) of Section 14. By virtue of the mandate of sub-section (1) of Section 60, the total number of seats in the Legislative Assembly of the Union Territory was required to be increased from 107 to 114. Thus, by excluding 24 seats from Pakistan occupied areas, the mandate was to increase the seats from 83 to 90. For giving effect to the increase in the number of seats as aforesaid, the exercise of delimitation for dividing the Union Territory into 90 constituencies and determining the number of seats to be reserved for Scheduled Castes and Schedule Tribes was required to be undertaken. Sub-section (1) of Section 60 provides that the said delimitation exercise may be undertaken by the Election Commission. However, sub-section (2) of Section 62 provides that the readjustment of the constituencies as provided under Section 60 in the successor Union Territory of J & K into assembly constituencies shall be carried out by the Delimitation Commission to be constituted under the Delimitation Act, 2002 as amended by the J&K Reorganisation Act. Sub-section (1) of Section 60, as noted earlier, provides that the exercise of the division of the newly constituted Union Territory into 90 assembly constituencies and providing for reservation may be undertaken by the Election Commission. However, the purport of Section 62 is that if a Delimitation Commission is constituted under the Delimitation Act 2002, the exercise provided by clauses (a) to (c) of sub-section (1) of Section 60 shall be carried out by the Delimitation Commission. However, sub-section (2) of Section 62 refers to the readjustment of the constituencies. But, the purport of sub-section (2) of Section 62 is that the readjustment means the creation of 90 constituencies in the newly set up Union territory. Thus, the process of readjustment contemplated by sub-section (2) of Section 62 is nothing but the exercise of delimitation under sub-section (1) of Section 60.

28. If we see the provisions of the Delimitation Act 2002, it indicates what is readjustment. Section 4 reads thus:-

> **"4. Duties of the Commission**.—(1) The readjustment made, on the basis of the census figures as ascertained at the census held in the year 1971 by the Delimitation Commission constituted under section 3 of the Delimitation Act, 1972 (76 of 1972), of the allocation of seats in the House of the People to the several States

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

(2) Subject to the provisions of sub-section (1) and any other law for the time being in force, the Commission shall
B **readjust the division of each State into territorial constituencies for the purpose of elections to the House of the People and to the State Legislative Assembly on the basis of the census figures as ascertained at the census held in the year [2001]:**

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

(emphasis added)

D What is important to note is that by virtue of Clause (b) of sub-section (1) of Section 62 of the J&K Reorganisation Act, the year 2001 stands substituted by the year 2011 in relation to the Legislative Assembly of the Union Territory of J & K.

29. Under Section 9 of the Delimitation Act, 2002, a specific power
E has been conferred on the Delimitation Commission of conducting the Delimitation exercise. Section 9 reads thus:

"9. Delimitation of constituencies.— (1) The Commission shall, in the manner herein provided, then, distribute the seats in the House of the People allocated to each State
F **and the seats assigned to the Legislative Assembly of each State as readjusted on the basis of 1971 census to single-member territorial constituencies and delimit them on the basis of the census figures as ascertained, at the census held in the year [2001]**, having regard to the provisions of the
G Constitution, the provisions of the Act specified in section 8 and the following provisions, namely:—

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

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

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

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

(2) The Commission shall—

(a) publish its proposals for the delimitation of constituencies, together with the dissenting proposals, if any, of any associate member who desires publication thereof, in the Gazette of India and in the Official Gazettes of all the States concerned and also in such other manner as it thinks fit;

(b) specify a date on or after which the proposals shall be further considered by it;

(c) consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration, hold one or more public sittings at such place or places in each State as it thinks fit; and

(d) thereafter by one or more orders determine—

(i) the delimitation of parliamentary constituencies; and

(ii) the delimitation of assembly constituencies, of each State."

(emphasis added)

As noted earlier, by virtue of clause (b) of sub-section (1) of Section 62 of the J&K Reorganisation Act, the year 2001 appearing in sub-section (1) of Section 9 of the Delimitation Act, 2002 will have to be read as 2011. Therefore, the Delimitation Commission established under the Order dated 6th March 2020 had to undertake the exercise of delimitation or readjustment on the basis of the census figures of 2011 as the earlier exercise of delimitation of the constituencies of the erstwhile State was not made on the basis of the census figures of 2011. For the reasons stated above, there is nothing illegal about the exercise of

delimitation/readjustment of the constituencies undertaken by the Delimitation Commission for the purposes of dividing the Union Territory into 90 constituencies on the basis of the 2011 census figures.

30. Before we deal with the issue of the legality of the appointment of the Delimitation Commission, we must deal with parliamentary constituencies in the newly created Union Territories of J&K and Ladakh. In the First Schedule to the RP Act of 1950, a total of 6 seats were allocated to the erstwhile State of Jammu and Kashmir with no reservation for Scheduled Castes and Schedule Tribes. Section 10 of the J&K Reorganisation Act provides that out of the 6 seats allocated to the erstwhile State, 5 will be allocated to the Union Territory of J & K and one will be to the Union Territory of Ladakh. That is how Section 11 provides thereof that the Delimitation of Parliamentary Constituencies Order, 1976 stands amended as provided in the Second Schedule of the said Act. Thus, the delimitation of the five parliamentary constituencies of the Union Territory of J & K and one constituency of the Union Territory of Ladakh was made by virtue of Section 11 as provided in the Second Schedule.

31. We have already quoted Section 60 of the J&K Reorganisation Act. Clause (c) of sub-section (1) thereof provides that considering the increase in the number of seats of the Legislative Assembly, the adjustments in the boundaries and description of the extent of the Parliamentary Constituencies in each Union Territory may be made by the Election Commission. Sub-section (3) of Section 62 provides that readjustment of the constituencies as provided in Section 11 in the successor Union Territories into Parliamentary Constituencies shall be carried out by the Delimitation Commission. The readjustment referred to in sub-section (3) of Section 62 is the adjustment of boundaries and description of the extent of the Parliamentary Constituencies as provided in sub-section (1) of Section 60. This became necessary as a result of the requirement of readjustment/delimitation of 90 constituencies of the Legislative Assembly. Therefore, there is no illegality associated with the delimitation/readjustment of Parliamentary constituencies of the Union Territory of J & K undertaken by the Delimitation Commission.

The legality of the appointment of the Delimitation Commission by the Notification of 6th March 2020

32. The impugned notification dated 6th March 2020 constituting the Delimitation Commission reads thus:

"MINISTRY OF LAW AND JUSTICE

Legislative Department

NOTIFICATION

New Delhi, the 6th March, 2020

S.O. 1015 (E). – In exercise of the powers conferred by Section 3 of the Delimitation Act, 2002 (33 of 2002), the Central Government hereby constitutes the Delimitation Commission for the purpose of delimitation of Assembly and Parliamentary constituencies in the Union territory of Jammu & Kashmir and the States of Assam, Arunachal Pradesh, Manipur and Nagaland, consisting of the following member, namely:-

(i) Justice (Retd.) Ranjana Prakash Desai - Chairperson

(ii) Shri Sushil Chandra,

Election Commissioner - Member, (ex officio)

(iii) The State Election Commissioner of the concerned State of Union Territory appointed under clause (1) of article 243K or under clause (1) of article 243L of the Constitution, as the case may be.

2. The appointment of Justice (Retd.) Ranjana Prakash Desai shall be for a period of one year from the date of the publication of this notification in the Official Gazette or till further orders, whichever is earlier.

3. The said Delimitation Commission shall delimit the constituencies, -

(i) of the Union territory of Jammu & Kashmir in accordance with the provisions of Part V of the Jammu & Kashmir Reorganisation Act, 2019 (34 of 2019) and the provisions of the Delimitation Act, 2002 (33 of 2002).

(ii) of the States of Assam, Arunachal Pradesh, Manipur and Nagaland in accordance with the provisions of the Delimitation act, 2002 (33 of 2002)."

(emphasis added)

Hence, it is obvious that when the said notification requires the Delimitation Commission to undertake the exercise of the delimitation of Assembly and Parliamentary Constituencies in the Union Territory of J & K, it refers to the exercise of readjustment as provided in sub-section (2) and (3) of Section 62 which is nothing but delimitation exercise contemplated by sub-section (1) of Section 60 due to the reason of the increase in the membership of the Legislative Assembly from 83 to 90. Moreover, the readjustment was necessary to be made on the basis of the census figures of the 2011 census as contemplated by Section 4 and sub-section (1) of Section 9 of the Delimitation Act, 2002 as amended by clause (b) of sub-section (1) of Section 62 of the J&K Reorganisation Act.

33. One of the contentions raised by the petitioners is that the Delimitation Act, 2002 contemplates the constitution of only one Delimitation Commission and not more than one. As noted earlier, the Delimitation Act, 2002 was made applicable for the first time to the State of Jammu and Kashmir with effect from 31st October 2019. Even the Delimitation Acts of 1962 and 1972 were not applicable to the State of Jammu and Kashmir. By virtue of the J&K Reorganisation Act, not only provisions of the Delimitation Act, 2002 were made applicable to the Union Territory of J & K, but a mandatory duty of readjustment of the constituencies in the Union Territory both of the Legislative Assembly and Parliament was entrusted to the Delimitation Commission by sub-Sections (2) and (3) of Section 62. Till 31st October 2019, the Delimitation Commission for the State/Union Territory of J & K under the Delimitation Act, 2002 could not have been established as the said enactment was not made applicable to the State of Jammu and Kashmir till then.

34. Sub-section (6) of Section 10 of the Delimitation Act, 2002 reads thus:

> **"10. Publication of orders and their date of operation.—**
>
> **xxx xxx xxx**
>
> (6) The Commission shall endeavour to complete and publish each of its orders referred to in sub-section (1) in the manner provided in that sub-section, 2 [within a period not later than 31st day of July, 2008] under section 3."

Sub-section (6) uses the word "endeavour". Section 10A of the Delimitation Act, 2002 itself indicates that the time limit of 31st July 2008

fixed under sub-Section (6) of Section 10 is not sacrosanct as it confers a power on the Hon'ble President to defer the delimitation exercise in a State under certain circumstances. Thus, the time limit provided in sub-section (6) of Section 10 was never intended to be mandatory. While amending Section 2(f) of the Delimitation Act by the J&K Reorganisation Act, sub-section (6) of Section 10 has not been amended for enlarging the period provided thereunder. However, the intention of the legislature as reflected in sub-sections (2) and (3) of Section 62 of the J&K Reorganisation Act is crystal clear. The very fact that the duty of making the readjustment as per sub-sections (2) and (3) of Section 62 on the basis of the 2011 census figures has been entrusted to the Delimitation Commission suggests that the legislature intended that the Delimitation Commission for the Union Territory of Jammu & Kashmir will remain unaffected by the requirement of completing the exercise by the end of July 2008. The provisions of sub-Sections (2) and (3) of Section 62 will have to be interpreted in a manner that gives effect to the intention of the legislature. If it is held that due to the failure of the legislature to modify the time limit provided in sub-Section (6) of Section 10 of the Delimitation Act, 2002, the Central Government is powerless to appoint a Delimitation Commission for the newly created Union territory, the provisions of Section 62 of the J&K Reorganisation Act will be rendered nugatory. A statute cannot be interpreted in a manner that will render some of its provisions otiose. A statute must be construed and interpreted in such a manner as to make it workable. Therefore, the argument based on sub-Section (6) of Section 10 of the Delimitation Act 2002 will have to be rejected.

35. Articles 2 and 3 of the Constitution enable the Parliament to create new States and Union territories. Accordingly, the two new Union territories have been created. The J&K Reorganisation Act which created the two new Union territories assigns the role of readjustment of constituencies to the Delimitation Commission under the Delimitation Act, 2002. Article 4 of the Constitution permits the Parliament to incorporate such provisions in the law made in accordance with Article 3 for the formation of new States and Union territories, which may be necessary to give effect to the provisions of the law. Such a law may also contain provisions as to representations in Parliament and in the Legislature of the State or States affected by such law. Therefore, such law which is made under Article 3 can always provide for readjustment of the Constituencies in the newly constituted States or Union territories

through the Delimitation Commission. Hence, we hold that there is no illegality associated with the establishment of the Delimitation Commission under the impugned Order dated 6th March 2020.

36. Under the notification dated 6th March 2020, the appointment of the Chairperson of the Delimitation Commission who was a retired Judge of this Court was for a period of one year. By the notification dated 3rd March 2021, the said period was extended up to two years. By the third impugned notification dated 21st February 2022, the said period of two years was extended to two years and two months. Once the Delimitation Commission was established, there is nothing wrong if the Central Government extended the period of appointment of the Chairperson till the task of delimitation/readjustment was completed. The Delimitation Act, 2002 is silent about the term of the appointment of the Chairperson.

Exclusion of the North-Eastern States from the purview of the notification dated 6th March 2020

37. Another challenge which is seriously pressed is to that part of the second impugned notification dated 31st March 2021 by which the States of Arunachal Pradesh, Assam, Manipur and Nagaland were excluded from the purview of the Delimitation Commission constituted under the notification dated 6th March 2020. In the counter affidavit filed by the Union of India, reliance has been placed on the letter dated 22nd February 2021 issued by the Deputy Secretary (NE-III), Ministry of Home Affairs, Government of India. In paragraphs 5 and 6 of the counter affidavit, it is stated that the Delimitation Commission set up on 12th July 2002 under the Chairmanship of a retired Judge of this Court had completed the delimitation exercise in respect of the entire country except for four North-Eastern States of Assam, Arunachal Pradesh, Manipur and Nagaland. It is stated that delimitation of these four States was deferred due to security reasons. Section 10A of the Delimitation Act, 2002 permitted such a course to be adopted. Though these four States were a part of the notification dated 6th March 2020, it is stated in the letter dated 22nd February 2021 that there were number of petitions pending in this Court as well as in the Manipur High Court concerning delimitation exercise in North-Eastern States and that in the Court cases, discrepancies in census figures of 2001 in relation to these States were pointed out. In fact, it is stated that a number of notices have been issued regarding the said discrepancies. Therefore, the said letter was

issued with the approval of the competent authority in which it was stated that it may not be conducive to grant an extension for the process of delimitation in the four North-Eastern States. The term of the Chairman of the Delimitation Commission constituted under the first impugned notification dated 6th march 2020 was to expire on 5th March 2021. In view of the aforesaid letter, while extending the term of the Chairman by one more year by the second impugned notification dated 3rd March 2021, the said four States were excluded. Thus, in effect, the term of the Delimitation Commission constituted under the notification dated 6th March 2020 was extended by a period of one year only in relation to the Union territory of J & K. By the third impugned notification, the period was further extended by a period of two months. Section 10A of the Delimitation Act, 2002 itself permits the postponement of the exercise of delimitation in certain contingencies. Moreover, the position and the status of the newly created Union Territory of J&K under the Constitution is completely different from the four North-Eastern States. In its applicability to the Union Territory of J & K, Sections 4 and 9 of the Delimitation Act, 2002 stand amended by requiring readjustment to be carried out on the basis of the census figures of 2011. In case of the North Eastern States, there is no such amendment. Therefore, two unequal cannot be treated as equals. Hence, the argument based on the violation of Constitutional provisions including Article 14 deserves to be rejected.

38. The learned counsel appearing for the petitioners did not dispute that the draft order of delimitation was issued on 14th March 2022. The final order was issued on 5th May 2022 which was brought into force with effect from 20th May 2022. While accepting that he has not challenged these subsequent orders, the learned counsel submitted that the petitioners cannot challenge the said order in view of sub-Section (2) of Section 10 which lays down that every such order shall have the force of law and shall not be called in question in any Court. In fact, the learned Solicitor General by relying upon a decision of the Constitution Bench in the case of ***Megharaj Kothari***[2] urged that the intention of the legislature is that once an order passed by the Delimitation Commission is published in accordance with sub-Section (1) of Section 10, the same are treated as law, which cannot be questioned in any Court. In paragraph 21 of the said decision, the Constitution Bench held that though orders passed under Sections 8 and 9 of the Delimitation Act, 2002 in accordance with sub-Section (1) of Section 10 are not part of an act of the Parliament

A but its effect would be the same. In any event, the order of the Delimitation Commission has not been questioned in this petition.

39. We may note here that there is a great deal of substance in the argument of the learned Solicitor General that the challenge to the notification dated 6th March 2020 was belatedly made by filing the present
B petition on 28th March 2022 and for the said delay, there is no valid explanation. Moreover, the notification dated 6th March 2020 was substantially acted upon by completing the exercise of delimitation as the draft Order was also published on 14th March 2022.

40. In the writ petition, the first prayer is for challenging the increase
C in number of seats from 107 to 114. The said provision is made by sub-Section (1) of Section 60. Without challenging the legality of any of the provisions of the J&K Reorganisation Act, it is contended that the Act of increasing the number of seats is violative of Articles 81, 82, 170, 330 and 332 of the Constitution of India. Article 81 deals with the composition of the House of the People; Article 82 deals with the readjustment and
D allocation of seats of the House of Parliament after the census and Article 170 deals with legislatures of the States. None of these provisions deal with the Legislature of any Union territory. Article 330 deals with the reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People. Article 332 deals with the reservation of seats
E for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States. Both these provisions do not deal with reservation of seats for the House of legislature of Union Territories. In any case, even assuming that Article 332 can be applied to the reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislatures of Union territories, it is not shown how the act of increasing the total number of
F seats in the legislature will offend Article 332, so long as the reservation is maintained as per the formula provided under Article 332.

41. Another argument sought to be made is that the provision made for 114 seats in the legislature of the newly constituted Union Territory of J & K is illegal. This submission calls for no consideration as
G there is no challenge to the validity of sub-section (1) of Section 60 of the J&K Reorganisation Act.

42. Another argument was canvassed that the Delimitation Order of 2008 published by the Election Commission cannot be deviated from. The perusal of the said Order shows that it reproduces the delimitation
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of the Parliamentary and Legislative Assembly Constituencies made by the Delimitation of Parliamentary and Assembly Constituencies Orders of 1976 and 1995 for the State of Jammu and Kashmir. Both the orders of 1976 and 1995 have been expressly modified by the J&K Reorganisation Act by virtue of Sections 11(4) and 14(5) as provided in the second and third Schedules thereto. Hence, the argument deserves to be rejected.

43. The petitioners have overlooked the fact that clause (b) of sub-Section (1) of Section 62 of the J&K Reorganisation Act has further amended the Delimitation Act, 2002 by providing that words and figures 'census held in the year 2001' appearing in the Delimitation Act shall be construed as 'census held in the year 2011'. To its application to the Union territory of J & K, the year 2001 in sub-section (1) of Section 9 of the Delimitation Act, 2002 has been substituted by the year 2011 and therefore, distribution of seats in the House of the People and seats assigned to the Legislative Assembly will have to be readjusted on the basis of 2011 census and the delimitation will have to be carried out on the basis of the figures of the census held in the year 2011. The effect of Section 63 is that once the exercise of readjustment/delimitation is made on the basis of 2011 census figures, the same will be frozen till the relevant figures of the first census taken after 2026 are available. Therefore, the exercise of delimitation/readjustment of the seats in the Union Territory of J & K was required to be made by the Delimitation Commission on the basis of the figures of the 2011 census. In view of Section 63, further readjustment can be carried out only after the publication of figures from the census held after the year 2026.

44. Reliance placed on the opinion of the learned Attorney General of India is misplaced as it deals only with the provisions of the A.P. Reorganisation Act, 2014. The petitioners cannot rely upon the answer given by Hon'ble Minister in the Lok Sabha as it deals with delimitation of Constituencies in Telangana in the context of Article 170. In any event, the said opinion as well as the answer given by the Hon'ble Minister have no bearing on the interpretation of the J&K Reorganisation Act.

45. A vague attempt was made by the learned senior counsel appearing for the petitioners to submit that the exercise which is undertaken for the newly created Union territory of J & K was not undertaken on the basis of the Uttar Pradesh Reorganisation Act, 2000 and Andhra Pradesh Reorganisation Act, 2014. In both the Acts, there is

A no provision which is *pari materia* with clause (b) of sub-Section (1) of Section 62 of the J&K Reorganisation Act which amended the provisions of the Delimitation Act 2002 in its applicability to the newly formed Union Territories by substituting the year 2001 with 2011.

46. Thus, there is absolutely no merit in any of the contentions
B raised by the petitioners. We may, however, clarify that the findings rendered in the judgment are on the footing that the exercise of power made in the year 2019 under clauses (1) and (3) of Article 370 of the Constitution is valid. We are aware that the issue of the validity of the exercise of the said powers is the subject matter of petitions pending before this Court. Therefore, we have not dealt with the issue of validity.
C Nothing stated in this judgment shall be construed as giving our imprimatur to the exercise of powers under clauses (1) and (3) of Article 370 of the Constitution.

47. Hence, writ petition is dismissed with no order as to costs.

Bibhuti Bhushan Bose
(Assisted by : Varun Dhond, LCRA)

Writ petition dismissed.