

SURESH MAHAJAN

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v.

STATE OF MADHYA PRADESH AND ANR.

(Writ Petition (Civil) No. 278 of 2022)

MAY 10, 2022

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**[A. M. KHANWILKAR, ABHAY S. OKA AND
C. T. RAVIKUMAR, JJ]**

Election Laws:

Madhya Pradesh Municipal Act, 1956 – s. 10(1) – Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 – ss. 12, 23 and 30 – Madhya Pradesh Municipalities Act, 1961 – s. 29 – Issue pertaining to non-conduct of elections in respect of large number of local bodies – State not able to complete the triple test formalities hence, reservation for OBC category could not be provisioned by State Election Commission – Also, the State conducting activities of delimitation or formation of wards, thus, elections could not be held – Held: Conduct of elections to install the newly elected body in the concerned local self-government cannot brook delay, owing to the Constitutional mandate in Art. 243-E and 243-U including the provisions in the concerned State Legislation – Delay may be permitted only when the dissolution of a local body is necessitated before the expiry of the term of that local body – Thus, all concerned are obliged to ensure that newly elected body is installed in every local body before the expiry of the 5 years term of the outgoing elected body and in case of appointment of an Administrator by the State, regime cannot continue beyond 6 months – This Constitutional mandate is inviolable – Amendment in the concerned enactments authorizing the State Government to determine the number and extent of wards to be constituted in the local bodies, and delimitation or formation of wards cannot be a tangible ground to not notify election programme within the time frame specified – Delimitation is a continuous exercise and it ought to commence well in advance – Completion of delimitation exercise or triple test formality can wait, if not completed before the expiry of five years term of the outgoing elected body – Therefore, State Election Commission is directed to proceed to issue election

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- A *programme without any further delay as and when the elections becomes due and without waiting for compliance of triple test – Until triple test formality is completed, no reservation for other backward classes can be provisioned – If the triple test formality is not completed before the issue of election programme, the Seats, except reserved for the SCs and STs, be notified as for the General category – As and when the delimitation exercise or the triple test formality is completed, elections conducted thereafter may have to abide by such dispensation.*
- B *category – As and when the delimitation exercise or the triple test formality is completed, elections conducted thereafter may have to abide by such dispensation.*

Vikas Kishanrao Gawali v. State of Maharashtra (2021)

- C **6 SCC 73; Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad & Ors. (2006) 8 SCC 352 : [2006] 7 Suppl. SCR 454; K. Krishna Murthy (Dr.) & Ors. v. Union of India & Anr. (2010) 7 SCC 202 : [2010] 6 SCR 972 – referred to.**

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Case Law Reference

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|--------------------------------|--------------------|----------------|
| (2021) 6 SCC 73 | referred to | Para 5 |
| [2006] 7 Suppl. SCR 454 | referred to | Para 6 |
| E [2010] 6 SCR 972 | referred to | Para 25 |

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 278 of 2022.

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Under Article 32 of The Constitution of India

Gautam Awasthi, Ayush Choudhary, Devanshu Yadav, Sameer Pandey, Varun Thakur, Brajesh Pandey, Anilender K. Pandey, Advs. for the Petitioner.

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Tushar Mehta, SG, K. M. Nataraj, ASG, Saurabh Mishra, D. S. Parmar, Bharat Singh, AAGs, P. S. Patwalia, Sr. Adv., Harmeet Singh Ruprah, Manish Yadav, Ms. Indira Bhakar, Mrinal Gopal Elker, Sharath Nambiara, Vinayak Sharma, Siddharth Seth, Kartik Seth, M/s Chambers of Kartik Seth, Nikhil Jain, Advs. for the Respondents.

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The Judgment of the Court was delivered by A

A. M. KHANWILKAR, J.

1. This writ petition assails the validity of Section 10(1) of the Madhya Pradesh Municipal Act, 1956, Sections 12, 23 and 30 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 and Section 29 of the Madhya Pradesh Municipalities Act, 1961 as being arbitrary and usurping the powers and independence of the State Election Commission.

2. By stated amendments, the State Government has been authorized to issue notification from time to time determining the number and extent of wards to be constituted in the concerned local bodies. More or less, similar situation obtains in the dispensation provided for in the State of Maharashtra, after the amendment of relevant enactments as noted in our order dated 04.05.2022 passed in SLP(C) No. 19756 of 2021 and connected cases.

3. The grounds urged in the present writ petition are similar to the issues raised and involved in the aforementioned matters pertaining to State of Maharashtra. This Court vide order dated 04.05.2022 has already noted that deeper examination of the questions raised by the parties will be necessary; and, therefore, the matters have been ordered to be posted for further hearing. It is appropriate that even this matter is heard along with the said group of cases. We order accordingly. D E

4. Reverting to the issue of non-conduct of elections in respect of large number of local bodies in the State of Madhya Pradesh, even that is no different. As a matter of fact, the number in this State is quite staggering. The chart handed over to the Court by the learned counsel for the Madhya Pradesh State Election Commission, indicates that there are about 321 urban local bodies, where elections have not been held from 2019-2020. Further, the local bodies at the grassroot level (rural local bodies) where elections have not been held in the same manner are around 23,073, as of now. F

5. The elections have not been held assumedly for the same reason as in the case of State of Maharashtra, namely, the State has still not been able to complete the triple test formalities as predicated in the decision of this Court in *Vikas Kishanrao Gawali Vs. State of Maharashtra*¹. G

¹ (2021) 6 SCC 73 H

- A As a result of which, reservation for Other Backward Classes (OBC) category cannot be provisioned by the State Election Commission. This has happened despite the peremptory directions given by this Court vide successive orders, including dated 03.03.2022. This Court had made it amply clear that conduct of elections to install the newly elected body in the concerned local self-government cannot brook delay, owing to the Constitutional mandate exposites in Article 243-E and 243-U including the provisions in the concerned State Legislation in that regard.
- B 6. A somewhat hiatus situation occurs and is permitted only when the dissolution of a local body is necessitated before the expiry of the term of that local body. Else, the term of the local self-government has been specified as 5 (five) years from its first meeting, “and no longer”, in Article 243-E as well as in Article 243-U. This has been restated by the Constitution Bench of this Court in *Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad & Ors.*².
- C 7. Thus, all concerned are obliged to ensure that the newly elected body is installed in every local body before the expiry of 5 (five) years term of the outgoing elected body. Even in case of dissolution before the expiry of five years period, where an Administrator is required to be appointed by the State, that regime cannot be continued beyond 6 (six) months by virtue of relevant provisions in the respective State Legislation(s).
- D 8. This constitutional mandate is inviolable. Neither the State Election Commission nor the State Government or for that matter the State Legislature, including this Court in exercise of powers under Article 142 of the Constitution of India can countenance dispensation to the contrary.
- E 9. Despite such constitutional mandate, the reality in the State of Madhya Pradesh as of now, is that, more than 23, 263 local bodies are functioning without the elected representatives for last over two years and more. This is bordering on break down of rule of law and more so,
- F G palpable infraction of the constitutional mandate *qua* the existence and functioning of such local self- government, which cannot be countenanced.

² (2006) 8 SCC 352

H (paras 12 to 14 and 22 to 28, in particular)

10. The fact that the State legislature has effected amendments in the concerned enactment(s) authorizing the State Government to determine the number and extent of wards to be constituted in the local bodies within the State also cannot be a tangible or legitimate ground to not notify the election programme within the time-frame specified by the Constitution and the law made by the Legislature in that regard.

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11. In any case, the ongoing activity of delimitation or formation of ward cannot be a legitimate ground to be set forth by any authority much less the State Election Commission - to not discharge its constitutional obligation in notifying the election programme at the opportune time and to ensure that the elected body is installed before the expiry of 5 (five) years term of the outgoing elected body. If there is need to undertake delimitation - which indeed is a continuous exercise to be undertaken by the concerned authority - it ought to be commenced well-in-advance to ensure that the elections of the concerned local body are notified in time so that the elected body would be able to take over the reigns of its administration without any disruption and continuity of governance (thereby upholding the tenet of Government of the people, by the people and for the people). In other words, the amendment effected to the stated enactments cannot be reckoned as a legitimate ground for protracting the issue of election programme of the concerned local bodies.

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12. Therefore, we direct the State Election Commission by way of interim order, to issue election programme without any further delay on the basis of the wards as per the delimitation done in the concerned local bodies when the elections had become due consequent to expiry of 5 (five) years term of the outgoing elected body or before coming into force of the impugned Amendment Act(s) whichever is later. On that notional basis, the State Election Commission ought to proceed without any exception in respect of concerned local bodies where elections are due or likely to be due in the near future without waiting even for the compliance of triple test by the State Government for providing reservation to Other Backward Classes. We have no manner of doubt that only such direction would meet the ends of justice and larger public interests consistent with the constitutional mandate that the local self-government must be governed by the duly elected representatives uninterrupted except in case of its dissolution before expiry of the term on permissible grounds.

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- A 13. For, until the triple test formality is completed “in all respects” by the State Government, no reservation for Other Backward Classes can be provisioned; and if that exercise cannot be completed before the issue of election programme by the State Election Commission, the seats (except reserved for the Scheduled Castes and Scheduled Tribes which is a constitutional requirement), the rest of the seats must be notified as for the General Category.
- B 14. It was urged that population of OBC in some of the local bodies is more than 50% and for that reason, percentage indicated in the report submitted by the Commission is a conservative approach and needs to be taken forward. That cannot be the basis to disregard the constitutional mandate and need to observe triple test procedure indicated by this Court. The political parties who claim to be the protagonist of participation of OBC in the governance of local bodies, are free to nominate candidates belonging to OBC category in the concerned constituencies and even against all the General seats available after reserving for Schedule Castes and Schedule Tribes. We do not wish to dilate any further on the plea under consideration.
- C 15. We once again reiterate that the process of delimitation work and/or triple test compliance is a continuous, complex, time consuming and more so without any timeline (directly linked to the expiry of the term of the outgoing elected body). Whereas, the conduct of elections for installing newly elected body to take over the reins from the outgoing elected representative whose term had expired, is explicitly provided for by the Constitution and the relevant enactments. Therefore, the former need not detain the issue of election programme by the State Election Commission, in respect of local bodies as and when it becomes due much less overdue, including where the same is likely to become due in the near future.
- D 16. Be it noted that as and when the delimitation exercise or triple test formality, as the case may be, is completed, the elections conducted thereafter may have to abide by such dispensation.
- E 17. If the grounds pressed into service by the State authorities were to be accepted, it would be infeasible for any Election Commission - be it Madhya Pradesh State Election Commission - to notify the election programme well-in-time and to ensure that newly elected body is installed before the expiry of 5 (five) years tenure of the outgoing elected body.

That would defeat the constitutional mandate and go against the tenet of local self-government by democratically elected representatives, uninterrupted. A

18. To put it differently, completion of delimitation exercise or be it triple test formality, as the case may be, can wait if not completed well before the expiry of five years term of the outgoing elected body, including giving enough time to the Election Commission to complete the election process within such time. Thus, the declaration of election programme cannot be delayed by the Election Commission on that account. For, it would inevitably result in creating hiatus situation upon expiry of 5 (five) years term of outgoing elected body. Such an eventuality needs to be eschewed by all the duty holders. *A priori*, it is not only a constitutional obligation of the State Election Commission but also of the State Government including of the constitutional Courts. B

19. In view of the above, we have no hesitation in directing the Madhya Pradesh State Election Commission to proceed on notional basis and issue election programme in respect of concerned local body by reckoning the delimitation/formation of wards thereof as on the date when the election of the concerned local body had “in fact” become due or before coming into force of the (impugned) Amendment Act, which is under-challenge before this Court in the present proceedings, whichever is later. C

20. The State election Commission must do so not later than two weeks from today. The State Government shall extend adequate logistical support to the State Election Commission for accomplishing the task in terms of this order. D

21. During the course of the argument, our attention was drawn to the First Report dated 05.05.2022 prepared by the Backward Classes Commission constituted by the State Government, as the first step towards the triple test obligation as per the decision of this Court. However, we do not intend to examine the said report or comment upon it in the present proceedings. F

22. Suffice it to note that mere preparation of the First Report by the stated Commission cannot be regarded as complete compliance of triple test requirement. In one sense, it is an inchoate situation and only a step towards final declaration by the State Government to provide specified just percentage of reservation for OBC category local body wise. G

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- A 23. Mr. Tushar Mehta, learned Solicitor General was at pains to impress upon us that the First Report having been prepared by the Backward Classes Commission appointed by the State dated 05.05.2022, the State Government would now move into action and undertake the remaining steps to notify the seats to be reserved for Other Backward Classes in the concerned local bodies. *Prima facie*, going by the spirit of the judgment of this Court in *Vikas Kishanrao Gawali* (supra), even that exercise needs to be undertaken by the especially appointed Commission (dedicated) for that purpose. The report as presented to us has not engaged itself in that exercise which it ought to have done local body wise. Hence, this report in the present form will be of no avail.
- B 24. In other words, the exercise of collation of empirical data and after analysis thereof, the Commission is expected to make recommendation regarding the number of seats to be reserved for Other Backward Classes “local body wise”. Apparently, that exercise has not been undertaken by the Commission. The State Government can act upon only thereafter and as per the recommendations of the Commission - which is an independent body created to ensure that there is no overbreadth of such reservation in the “concerned local body”.
- C 25. Be it noted by all concerned that the nature and purpose of reservation in the context of local self-government is markedly different from that for higher education and public employment, as expounded by the Constitution Bench³ of this Court.
- D 26. As aforesaid, the State Election Commission need not wait any further, but shall notify the election programme without any further delay in respect of local self-government whose election(s) had become due; and in the present case, as aforesaid, overdue in respect of 23,263 local bodies across the State of Madhya Pradesh, as of now.
- E 27. Acceding to the argument set forth on behalf of the State of Madhya Pradesh would be over-looking and in fact a case of violation of the successive directions given by this Court to the State Election Commission to speed up the election process in respect of local bodies where elections are due/overdue and to proceed without providing reservation for Other Backward Classes (but limited to the constitutional reservation for Scheduled Castes and Scheduled Tribes) until the
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- F ³ *K. Krishna Murthy (Dr.) & Ors. vs. Union of India & Anr.*, (2010) 7 SCC 202 [para 82(i)]

completion of triple test formality by the State “in all respects”. As and when, the formalities of triple test are completed, that can be reckoned for future elections to be held thereafter. However, elections which are already due need not and cannot be delayed on that count in view of the constitutional mandate.

28. We were also informed by the learned counsel appearing for the Madhya Pradesh State Election Commission during the course of arguments that some writ petitions are pending before the High Court in which interim orders have been passed and that may come in the way of the State Election Commission to notify the election programme. In that regard, we make it clear and also direct that the State Election Commission must abide by the directions and observations in this order uninfluenced by any order of the High Court or the Civil Court on the subject of elections of the concerned local self-government, as the case may be. If any order passed or to be passed hereafter by the High Court or the Civil Court in the State of Madhya Pradesh, is in conflict with the directions given by this Court, the same shall be deemed to have been superseded in terms of this order and not to be acted upon without the prior permission of this Court.

29. As requested by Mr. Tushar Mehta, learned Solicitor General, we place on record that all steps taken by the State Election Commission and we may add even the State Government, on the basis of the directions given in terms of this order will be subject to the outcome of these proceedings.

30. We once again make it clear that if delimitation is not done by the State Government in terms of Amendment Act(s) of 2022 or the triple test requirement is completed “in all respects” for providing reservation to OBC category, the State Election Commission shall give effect to this order also in respect of upcoming elections of local bodies which would/had become due by efflux of time.

31. We also make it clear that this order and directions given are not limited to the Madhya Pradesh State Election Commission/State of Madhya Pradesh; and Maharashtra State Election Commission/State of Maharashtra in terms of a similar order passed on 04.05.2022, but to all the States/Union Territories and the respective Election Commission to abide by the same without fail to uphold the constitutional mandate.

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- A 32. List this matter on 12.07.2022, to be heard along with SLP(C) No. 19756 of 2021.
33. The Madhya Pradesh State Election Commission to file compliance report in due course.
- B 34. In case of any difficulty, liberty is granted to the Madhya Pradesh State Election Commission to apply before the returnable date so as to ensure that the election programme in respect of concerned local body is taken forward without any interruption.

Nidhi Jain
(Assisted by : Shashwat Jain, LCRA)

Directions issued.