

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF APRIL 2015

: PRESENT :

HON'BLE MR. D.H.WAGHELA, CHIEF JUSTICE

AND

HON'BLE MR. JUSTICE RAM MOHAN REDDY

WRIT APPEAL Nos. 1225 & 1234-36 / 2015 (LB-ELE)

BETWEEN

1. THE CHIEF SECRETARY
STATE OF KARNATAKA
VIDHANA SOUDHA, BENGALURU-560001.
2. STATE OF KARNATAKA
URBAN DEVELOPMENT DEPARTMENT
VIKASA SOUDHA, BENGALURU-560 001,
REF. BY ITS PRINCIPAL SECRETARY.

...APPELLANTS

(common in all the appeals)

(BY PROF. RAVIVARMA KUMAR, ADVOCATE GENERAL,
A/W SRI A.S.PONNANNA, ADDL. ADVOCATE GENERAL,
SRI R.DEVDAS, PRL. GOVERNMENT ADVOCATE, &
SMT. SHWETA KRISHNAPPA, HCGP.)

A N D

IN W.A.Nos. 1225 & 1234 / 2015 :

1. MR. C.K.RAMA MURTHY
S/O V. KRISHNA MURTHY
AGED ABOUT 49 YEARS
P/A NO.1246, 25TH A MAIN
9TH BLOCK, JAYANAGAR,
BENGALURU - 560069.
2. MR. B. SOMASHEKAR
S/O BACHEGOWDA, AGED ABOUT 46 YEARS
1192, 18TH MAIN, J P NAGARA
BENGALURU - 560078.
3. STATE ELECTION COMMISSION
KSCMF BUILDING, ANNEXE NO.8
CUNNINGHAM ROAD, BENGALURU-560 052,
REP. BY ITS SECRETARY.

4. BRUHAT BENGALURU MAHANAGARA PALIKE
N R SQUARE, BENGALURU-560002,
REP. BY ITS COMMISSIONER.

IN W.A.Nos. 1235-36 / 2015 :

1. MR. L. RAMESH
AGED ABOUT 47 YEARS
S/O N. LINGARAJU, R/A 35, 17TH B CROSS
17TH B MAIN, 5TH PHASE, J P NAGAR
BENGALURU - 560078.
2. MR. P. SUKUMARAN
AGED ABOUT 46 YEARS
R/A MUNIKALAPPA LAYOUT, NO 392
VINAYAKA STREET, BENGALURU-560016.
3. STATE ELECTION COMMISSION
KSCMF BUILDING, ANNEXE NO.8
CUNNINGHAM ROAD, BENGALURU-560052,
REP. BY ITS SECRETARY.
4. BRUHAT BENGALURU MAHANAGARA PALIKE
N R SQUARE, BENGALURU-560002,
REP. BY ITS COMMISSIONER.

... RESPONDENTS

(BY SRI D.N.NANJUNDA REDDY, SR. COUNSEL,
A/W SRI NISHANTH A.V., ADVOCATE, FOR C/R-1
IN W.A. Nos. 1225 & 1234/2015.
SRI V.LAKSHMINARAYAN, SR. COUNSEL, A/W
SRI A.SHIVARAMA & SRI CHANDRASHEKAR, ADVOCATES,
FOR C/R-1 IN W.A.Nos. 1235-36/2015.
SRI K.N.PHANINDRA, ADVOCATE FOR R-3.
SRI ASHOK HARANAHALLI, SR. COUNSEL, FOR R-4.)

WRIT APPEALS FILED U/S 4 OF THE KARNATAKA HIGH
COURT ACT PRAYING TO SET ASIDE THE ORDER DATED
30.3.2015 PASSED IN WRIT PETITION NOS. 7939-40/2015 C/W
WRIT PETITION NOS. 8041 & 8318/2015.

THESE APPEALS COMING ON FOR JUDGMENT THIS DAY,
CHIEF JUSTICE DELIVERED THE FOLLOWING:

J U D G M E N T

D.H.WAGHELA, CJ (ORAL) :

1. These appeals are preferred by the State Government from the common judgment and order dated 30.3.2015 in Writ Petition Nos. 7939-40/2015 C/W Writ Petition Nos. 8041 & 8318/2015. Respondent Nos.1 and 2 herein, who were the main petitioners before learned Single Judge and who claimed to be councilors of the Bruhath Bengaluru Mahanagara Palike ('BBMP' for short) had pressed their petitions for a *writ of mandamus* directing the State Government to hold elections to BBMP on or before 22.4.2015.

2. The background in which the petitions were pressed included the fact that, earlier in November 2006, when the term of BBMP came to an end, the State Government had not held the election in time and, after the matter reaching this court, the Division Bench had directed the State Government on 2.7.2008 to conduct elections to the then Bengaluru Mahanagara Palike by initiating steps at the earliest. Even then, the Election Commission had published notification dated 6.3.2010

to hold the election to BBMP and the first meeting of the newly constituted Corporation was held on 23.4.2010. Therefore, the term of the present Corporation was expiring on 22.4.2015, but no steps were being initiated to hold the election.

3. As against such case of the original petitioners, the State Government had contended before learned Single Judge that it had issued show cause notice dated 18.3.2015 to the BBMP and others under Section 99 of the Karnataka Municipal Corporations Act, 1976 (the Act' for short), to show cause why further action should not be initiated under that section. On the other hand, by Government Order dated 22.9.2014, a Committee was constituted to submit a report on bifurcation or trifurcation of the BBMP. The State Election Commission, respondent No.3 herein, stated before learned Single Judge that it was making sincere efforts since 17.6.2013 to ensure holding of election to the BBMP in time, but the State Government had not taken steps to notify delimitation of wards or reservation of seats in respect of 198 constituencies or wards of BBMP.

Of late, the Commission was stated to have passed order dated 29.1.2015, nominating the Deputy Commissioner of Bengaluru and other such officers as District Election Officers and subsequently, on 7.2.2015, other officers were nominated as Returning Officers, Additional Returning Officers and Assistant Returning Officers for the purpose of conducting the election. According to the Commission, period of two months was required after the notification of delimitation of wards and reservation of wards by the State Government and it was not possible to prepare voters' list before delimitation of wards as boundaries of 198 wards may vary while carrying out the exercise of delimitation of wards and voters of one particular ward may be shifted to another ward. The Commission also contended that period of six weeks was required as per the calendar of events to hold election and announce results and thus, period of 105 days was required to conduct election after the notification of delimitation of wards and reservation of seats by the State Government. Under such circumstances, the Commission sought appropriate directions in the matter.

4. After considering the contentions of the parties and advertent to the Constitutional provisions and the precedents cited at the bar, learned Single Judge has, in the impugned judgment, arrived at the conclusion that reconstitution on expiry of the term of BBMP or dissolution of BBMP could not be beyond a period of five years as the term of BBMP was expiring on 22.4.2015, and it cannot be extended any longer. It is held that, under no circumstances, can dissolution of BBMP could extend its term beyond five years and, even if an Administrator is to be appointed immediately, the Corporation would cease to function on the expiry of its term i.e., on 22.4.2015, and election would have to be held. It is categorically held in the impugned judgment that reconstitution on the expiry of the term of the Corporation or on dissolution, could not be beyond the period of five years as the term of the Corporation was five years and no longer. On such basis, the petitions were allowed with the directions, *inter alia*, to complete the process of election to BBMP on or before 30.5.2015 on the basis of existing delimitation of wards and updated electoral rolls. The State Government is further

directed to publish notification regarding rotation of seats meant for reserved category on or before 13.4.2015.

5. Being aggrieved by the above decision and directions, the State Government has preferred the present intra-court appeals, mainly on the ground that the basis of the impugned decision is inconsistent with the express provisions of Article 243U of the Constitution as also the scheme of Part IX-A of the Constitution.

6. Learned Advocate General Prof. Ravivarma Kumar briefly argued for the State that the mandatory provisions of Article 243U did prescribe the time limit for duration of municipalities and for completing the election to constitute a municipality, but, in case of dissolution of the municipality, the overall period of duration of the municipality for five years could not take within its sweep, the period allowed for holding and completing election. Consequently, no directions in the nature of *writ of mandamus* could have been issued and prescription of time limits for various stages of election process was unwarranted. He also submitted that the

State did not get an opportunity before learned Single Judge to place on record the efforts put in and steps taken by it to ensure a free and fair election in time to ultimately achieve good governance by the very important institution of local self government in the rapidly expanding metropolis of Bengaluru.

7. Learned Advocate General introduced by filing a memo, the factum of the State Government having issued the notification dated 18.4.2015 dissolving BBMP with immediate effect, in exercise of the powers vested in the State Government under sub-section (1) of Section 99 of the Act. The contesting parties have not disputed the fact that the notification, as aforesaid, is issued, whereby the facts obtaining at the time of the impugned judgment have materially been altered. However, the appeals have been argued for urgent orders, without any objection to this court considering the whole matter on the basis of the facts obtaining now, in view of the sensitivity of the matter and repercussions of any delay in obtaining the final decision. Thus, even as the appeals have been argued *in extenso* by learned counsel

appearing on either side, they have been heard for final disposal and are being disposed by this judgment on the basis of the additional facts brought on record.

8. Even as learned counsel for respondents have sought to support the impugned decision and justified the interpretation put upon the provisions of Article 243U of the Constitution, it would be apposite to take an overview of the scheme and such provisions of Part IX-A of the Constitution, as are relevant for the present purpose.

(a) By virtue of Article 243P(e), a Municipal Corporation is included in the definition of "Municipality" for being an institution of self-government constituted under Article 243Q. Article 243Q(1) mandates constitution in every State, of a Municipal Corporation for a larger urban area, in accordance with the provisions of Part IX-A. Article 243R provides for composition of Municipalities and direct election from the territorial constituencies in the municipal area and division of territorial constituencies for that purpose. Article 243T provides for mandatory reservation of seats

for candidates belonging to SCs and STs in such proportion as to bear, as nearly as may be, to the same proportion to the total number of seats to be filled by direct election, as the population of SCs and STs in the municipal area bears to the population in that area, and such seats may be allotted by rotation to different constituencies. Not less than $1/3$ of the total number of seats reserved for the SCs and STs have to be reserved for women belonging to SCs or, as the case may be, STs. Not less than $1/3$ (including the number of seats reserved for women belonging to the SCs and the STs) of the total number of seats to be filled by direct election have to be reserved for women and such seats could be allotted by rotation to different constituencies in a Municipality.

(b) The crucial provisions of Article 243-U may be reproduced in full, as under:

“243U. Duration of Municipalities, etc.-

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Municipality shall be completed,-

- (a) before the expiry of its duration specified in clause (1);
- (b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued

under, clause (1) had it not been so dissolved.”

9. The above scheme of Part IX-A of the Constitution and the relevant provisions thereof would clearly indicate that a Municipal Corporation, by definition, must be constituted under Article 243Q and that Article mandates it to be constituted in accordance with the other provisions of Part IX-A. Article 243R requires the municipal area to be divided into territorial constituencies to be known as wards. Then Article 243T mandates reservation of seats for SCs and STs as also women. These are conditions for constitution of Municipalities in accordance with the provisions of Part IX-A. Article 243U provides for duration of the Municipality as well as time limits for completion of election to constitute a Municipality.

10. Analysing the provisions of Article 243U, it is clear that every Municipality shall continue for five years from the date appointed for its first meeting, unless dissolved earlier, under any law for the time being in force. The time limits set out in clause (3) of the Article, for

completing the election for constituting a Municipality, are prescribed to be, before expiry of its duration as specified in clause (1), and, in case of the duration having been cut short by dissolution, before the expiration of six months from the date of its dissolution. Exceptions to these time limits are prescribed in proviso to clause (3) and clause (4) of the Article. Some confusion is caused by the proviso to clause (3) insofar as it stipulates that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under that clause for constituting the Municipality for such period. The phrase "for such period" in the proviso is significant and must be given its effect in construing the whole Article including clause (4) thereof. Plain reading of the proviso would indicate that in cases of the Municipalities of which the full duration of five years is cut short by dissolution within that term, the election to constitute such Municipality will have to be completed within six months from the date of its dissolution, but such election will not be necessary only for the period for

which the dissolved Municipality would have continued, if such remaining period of the Municipality were less than six months. Thus, isolating the provisions for completing the election, only two time limits are prescribed by Article 243U and they are: (i) before expiry of the duration of Municipality as specified in clause (1), and (ii) where the Municipality is dissolved before its duration for five years, before expiration of a period of six month from the date of its dissolution. In that view of the matter, adequate care is taken by Article 243U to ensure timely election and to minimize the period during which anybody who is not elected directly by the people could head and manage the institution of local self government. These provisions would guide the court in applying them to the facts of the present case. Although nothing contrary is pointed out from the precedents cited at the bar, they may also be adverted to as follows.

11.(a) In the matter of Special Reference No. 1 of 2002 [(2002)8 SCC 237], the Apex Court was pleased to observe that a democratic form of Government would survive only if there are elected representatives to rule,

and any decision to postpone election on unreasonable grounds is anathema to a democratic form of Government and it is subject to judicial review on traditionally accepted grounds.

(b) In *Indira Nehru Gandhi Vs. Raj Narain* (1975 Supp. SCC 1), the Apex Court observed that democracy postulates that there should be periodical elections, so that people may be in a position either to re-elect the old representatives or, if they so choose, to change the representatives and elect in their place other representatives.

(c) In *M.S.Gill Vs. Chief Election Commissioner* [(1978)1 SCC 405], it was observed that a free and fair election based on universal adult franchise is the basic, the regulatory procedures vis-à-vis, the repositories of functions and the distribution of legislative, executive and judicative roles in the total scheme, directed towards the holding of free elections, are the specifics.

(d) In *Election Commission of India Vs. State of Tamil Nadu* (1995 Supp(3) SCC 379), it was observed that there

must, in the very nature of the complexities and imponderables inherent in such situations, be a harmonious function of the Election Commission and the Governments, both State and Central.

(e) In *Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad and others* [(2006)8 SCC 352], it was observed that it was clear from a reading of Article 243ZA that the powers of the State Election Commission in respect of conduct of elections is no less than that of the Election Commission of India in their respective domains. These powers are, of course, subject to the law made by Parliament or by the State Legislatures, provided the same do not encroach upon the plenary powers of the said Election Commissions. Where the Election Commission feels that it is not receiving the co-operation of the State Government concerned in discharging its constitutional obligation of holding the elections to the panchayaths or municipalities within the time mandated in the Constitution, it will be open to the State Election Commission to approach the High Courts,

in the first instance, and thereafter the Supreme Court for a *writ of mandamus*.

Under Article 243U, the duration of the Municipality is fixed for a term of five years and it is stated that every Municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243U states that an election to constitute a municipality shall be completed – (a) before the expiry of its duration specified in clause (1); or (b) before the expiration of a period of six months from the date of its dissolution. It is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. Any revision of electoral rolls shall be carried out in time and, if it cannot be carried out within a reasonable time, election has to be conducted on the basis of the then existing electoral rolls. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no

circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities.

It is further observed that, it is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the Municipality for such period. The entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new Municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution.

(2) A Division Bench judgment of the Gujarat High Court in *Gujarat Pradesh Panchayat Parishad and Hiteshbhai Kantilal Barot Vs. State Election Commission and others*, delivered on 29.9.2005, was also cited for the legal proposition quoted therein, i.e., a quotation from the earlier Division Bench judgment, headed by the then

Hon'ble Chief Justice Shri B.N.Kirpal (as His Lordship then was), which observed that the provisions of Part IX and Part IX-A do not contemplate any hiatus. The elections are required to be regularly held and the only time that an unelected body can exist is when it is superseded. Even then it is incumbent to hold the elections within six months of the supercession. Any attempt on the part of the Executive or the State Legislature not to hold elections cannot be permitted.

12. Having referred to the scheme of Part IX-A, it may be pertinent to also allude to relevant parts of the Statement of Objects and Reasons appended to the Constitution (73rd Amendment) Bill, 1991 which was enacted as the Constitution (74th Amendment) Act, 1992. It is, *inter alia*, stated therein that in many States, local bodies had become weak and ineffective on account of variety of reasons, including failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. Having regard to such inadequacies, it was considered necessary that provisions relating to Urban Local Bodies are

incorporated in the Constitution particularly for, *inter alia*, ensuring regular conduct of elections and timely elections in the case of supercession. Accordingly, it was proposed to add a new part relating to the Urban Local Bodies in the Constitution to provide, *inter alia*, for fixed tenure of five years for the Municipality and re-election within six months of end of tenure. If a Municipality is dissolved before expiration of its duration, elections to be held within a period of six months of its dissolution.

13. In the facts of the present case, as noted earlier, the term and duration of BBMP constituted by the earlier election was to expire on 22.4.2015 and, till the decision impugned in the appeals, the Municipal Corporation was not dissolved. As noted in the impugned judgment, only half-hearted and delayed measures were being taken for holding the election in time and the election programme was not declared even while the appeals were being heard. However, during the hearing of the appeals, Government Order dated 18.4.2015 was notified to dissolve BBMP with immediate effect in exercise of the

powers of the State Government under Section 99 of the Act. That admitted fact clearly took out the case from the ambit of sub-clause (1) of Article 243U and consequently the time limit fixed under clause (3)(a) of Article 243U would apply. That, however, would not mean that the duration of BBMP could stand extended in view of the limitation imposed on the duration of the Municipality in clause (1) of Article 243U. In such circumstances, the only course open for the Election Commission was to complete the process of election to reconstitute the BBMP and fall back upon provisions of sub-clause (b) of clause (3) of Article 243U. In other words, even under the changed circumstances, election was required to be held and completed before expiry of six months from the date of notification dated 18.4.2015. Such time limit having been expressly prescribed in the Constitution, there was no occasion for any reduction or extension of the period of six months by a judicial order or otherwise. Therefore, the directions issued in the impugned decision have to be set aside.

14. On the other hand, the impugned decision itself observed in paragraph-35 as under:

“35.

Clause (3) of Article 243U deals with reconstitution of a Corporation in two circumstances: (a) before the expiry of its duration specified in clause (1) i.e., before five years from the date appointed for its meeting and (b) before the expiration of period of six months from the date of its dissolution. Thus, if the Corporation is dissolved and an Administrator is appointed, then the maximum period during which an Administration could function is only six months from the date of dissolution and before that period, Corporation has to be reconstituted.”

In the same paragraph, it is held;

“..... Hence, under no circumstance, can dissolution of a Corporation extend the term of the Corporation beyond five years from the date appointed for its first meeting, which would in any case expire during the period the administrator is appointed. Therefore, the term of the Corporation is fixed as five year. If within that period of five

years, the Corporation is dissolved and it is reconstituted before the expiration of five years, then the reconstituted Corporation would continue only for the remaining period within the said period of five years, had it not been dissolved. Thus, irrespective of the fact, that a Corporation being dissolved and reconstituted, its term of five years would not get altered."

The court further went on to hold in paragraph-37 of the impugned judgment as under:

"37. Thus, when the term of the Corporation expires, then automatically under clause (1) r/w sub-clause (a) of clause (3) of Article 243U, election would have to be held. This is irrespective of the fact as to whether the Corporation has been dissolved or not. If it is dissolved and reconstituted, then in terms of clause (4) it is only for the remainder period of the five year term. On the other hand, if it is dissolved and if the remainder period is less than six months, then on expiry of the term, it would have to be reconstituted irrespective of the Administrator being appointed. Thus, the contention of the State that election need not be held on the expiry of the term of the present Council, in view of its

dissolution and appointment of an Administrator being imminent, in which case, the Administrator could function for a period of six months from the date of dissolution and beyond the five year term is misconceived."

15. Having regard to the above anomaly and inconsistency in the impugned judgment, the appeals had to be admitted and, in view of the change of factual matrix, the directions issued in the impugned judgment have also to be set aside. It has to be further clarified that, in view of the scheme and express provisions of Article 243U, the above view adopted in the impugned judgment cannot be confirmed and has to be overruled.

16. Accordingly, and to the above extent, the appeals are allowed and the impugned judgment is set aside, with no order as to cost.

Although it may not be necessary in view of the observations of the Apex Court recorded herein above, it may be appropriate to add that the State Government and the State Election Commission should perform their duties and constitutional obligations so as to ensure,

within time, reconstitution of BBMP in accordance with law to sub-serve the underlying object of the 74th Amendment of the Constitution.

The interim applications made in the appeals do not survive and stand disposed accordingly.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

ckc/-