

TEM NO.5

COURT NO.3

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 19756/2021

(Arising out of impugned final judgment and order dated 22-10-2021 in WP No. 11744/2021 passed by the High Court Of Judicature At Bombay At Aurangabad)

RAHUL RAMESH WAGH

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

(IA No. 161602/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 23878/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 156051/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT AND IA No. 23879/2022 - EXEMPTION FROM FILING O.T., IA No. 156052/2021 - EXEMPTION FROM FILING O.T., IA No. 19520/2022 - EXEMPTION FROM FILING O.T., IA No. 7458/2022 - INTERVENTION APPLICATION, IA No. 6134/2022 - INTERVENTION APPLICATION, IA No. 28258/2022 - INTERVENTION APPLICATION, IA No. 419/2022 - INTERVENTION/IMPLEADMENT, IA No. 8129/2022 - MODIFICATION OF COURT ORDER, IA No. 156048/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 19518/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 156049/2021 - PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS AND IA No. 422/2022 - RECALLING THE COURTS ORDER)

WITH

T.C. (C) No. 25/2022 (XVI-A)

W.P. (C) No. 141/2022 (X)

(IA No. 31332/2022 - INTERVENTION/IMPLEADMENT, IA No. 30425/2022 - STAY APPLICATION)

MA 323/2022 in SLP(C) No. 20160/2021 (IX)

(FOR CLARIFICATION/DIRECTION ON IA 18311/2022, FOR EXEMPTION FROM FILING O.T. ON IA 18313/2022, IA No. 18311/2022 - CLARIFICATION/DIRECTION, IA No. 18313/2022 - EXEMPTION FROM FILING O.T.)

W.P. (C) No. 207/2022 (X)

(FOR STAY APPLICATION ON IA 43322/2022, FOR APPLICATION FOR PERMISSION ON IA 49736/2022, IA No. 49736/2022 - APPLICATION FOR PERMISSION, IA No. 43322/2022 - STAY APPLICATION)

W.P. (C) No. 234/2022 (X)

(FOR ADMISSION and IA No.49150/2022-EX-PARTE AD-INTERIM RELIEF and IA No.49151/2022-EXEMPTION FROM FILING O.T.)

W.P. (C) No. 238/2022 (X)

(FOR ADMISSION and I.R. and IA No.49974/2022-GRANT OF INTERIM RELIEF and IA No.49985/2022-EXEMPTION FROM FILING AFFIDAVIT)

W.P. (C) No. 250/2022 (X)

T.C. (C) No. 31/2022 (XVI-A)

T.C. (C) No. 29/2022 (XVI-A)

T.C. (C) No. 30/2022 (XVI-A)

T.C. (C) No. 28/2022 (XVI-A)

T.C. (C) No. 27/2022 (XVI-A)

W.P. (C) No. 1316/2021 (X)

(IA No. 28202/2022 - AMENDMENT OF THE PETITION, IA No. 44522/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 157427/2021 - EXEMPTION FROM FILING O.T., IA No. 44897/2022 - EXEMPTION FROM FILING O.T., IA No. 44523/2022 - EXEMPTION FROM FILING O.T., IA No. 44895/2022 - INTERVENTION APPLICATION, IA No. 1261/2022 - INTERVENTION APPLICATION AND IA No. 157430/2021 - STAY APPLICATION)

T.C. (C) No. 26/2022 (XVI-A)

W.P. (C) No. 184/2022 (X)

(FOR ADMISSION and IA No.39000/2022-EX-PARTE STAY)

Date : 04-05-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE ABHAY S. OKA

HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Mr. Hrishikesh Chitale, Adv.

Mr. Vijay Kari Singh, Adv.

Mr. Kaustubh Kadasne, Adv.

Mr. Chandra Prakash, AOR

Mr. Devdatta P. Palodkar, Adv.

Mr. Shashibhushan P. Adgaonkar, AOR

Mr. Rana Sandeep Bussa, Adv.

Mr. Omkar Deshpandey, Adv.

Mr. K. Parameshwar, Adv.

Mr. Kailas Bajirao Autade, AOR
Ms. Sregurupriya, Adv.

Mr. Sudhanshu S. Choudhari, AOR
Mr. Mahesh P. Shinde, Adv.
Ms. Rucha A. Pande, Adv.

Mr. Devadatt Kamat, Sr. Adv.
Mr. Vatsalya Vigya, AOR

Mr. Santosh Paul, Sr. Adv.
Mr. Vikrant Yadav, Adv.
Dr. G.K. Sarkar, Adv.
Ms. Malbika Sarkar, Adv.
Ms. Anzu. K. Varkey, AOR
Ms. Bharti Tyagi, AOR
Mr. Rahul Joshi, AOR

For Respondent(s)

Mr. Anand Dilip Landge, AOR

Mr. Ajit Kadethankar, Adv.
Mr. A.T. Sanas, Dy. Commissioner
(State Election Commission, Maharashtra)

Mr. Shekhar Naphade, Sr. Adv.
Mr. Shyam Divan, Sr. Adv.
Mr. C. Aryama Sundaram, Sr. Adv.
Mr. Rahul Chitnis, Adv.
Ms. Aishwarya Dash, Adv.
Mr. Kumar Mitakshara, Adv.
Mr. Sachin Patil, AOR
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.
Mr. Shreeyash Lalit, Adv.
Ms. Shwetal Pnde, Adv.

Mr. Suhas Kadam, Adv.
M/S. Black & White Solicitors, AOR

Mr. Kailas Bajirao Autade, AOR
Mr. Sudhanshu S. Choudhari, AOR
Ms. Bharti Tyagi, AOR
Mr. Shashibhushan P. Adgaonkar, AOR
Mr. Randhir Kumar Ojha, AOR
M/S. Lambat & Legiteam, AOR

Mr. Samrat Krishnarao Shinde, AOR

Ms. Jyoti Thakur, Adv.
Mr. Kishor Kambat, Adv.

For Intervenor(s)

Mr. P. Wilson, Sr. Adv.

Mr. Arvind S. Avhad, AOR
Mr. Abhishek Krishna, Adv.

Mr. Hitesh Kumar Sharma, Adv.
Mr. B.A. Wadhmare, Adv.
Mr. S.K. Rajora, Adv.
Mr. Subhash S. Kadam, Adv.
Mr. Abhijit S. Kamble, Adv.

Mr. Shakul R. Ghatole, Adv.
Mr. Firdos T. Mirza, Adv.
Mr. Purshottam B. Patil, Adv.
Ms. Jaikriti S. Jadeja, AOR
Ms. Prapti Allagh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

W.P.(C) No. 234 of 2022.

At the request of Mr. Sudhanshu S. Choudhary, learned counsel appearing for the respondent No. 6, delinked. List this matter tomorrow, i.e., 05.05.2022.

Rest of the cases

Heard learned counsel for the parties.

These petitions have questioned the Constitutional validity of the Sections 2,3,4(1)(a) and 5 of the Mumbai Municipal Corporation Act, the Maharashtra Municipal Corporations Act and Maharashtra Municipal Councils, Nagar Panchayats, Industrial Townships Act (Amendment) Act, 2022, Sections 2,3,4 5 and 6 of the Maharashtra Village Panchayat and the Maharashtra Zilla Parishad and Panchayat Samiti (Amendment Act), 2022; and Section 2 of

the Mumbai Municipal Corporation (Amendment) Act, 2022.

The thrust of the challenge is that under the constitutional scheme, the authority regarding delimitation ought to be with the State Election Commission. That has been taken away owing to the coming into force of the Amendment Act(s) with effect from 11.03.2022.

As regards this main question, deeper examination may be necessary for which these petitions must proceed for further hearing.

However, we called upon the learned counsel for the Maharashtra State Election Commission to explain as to why the elections in large number of local bodies (around 2486) across the State of Maharashtra, though overdue, and in some cases even overdue for two years, have not been taken forward despite the peremptory direction given by this Court vide successive orders, including dated 03.03.2022.

The response of the State Election Commission was that it had taken steps in right earnest until the Amendment Act(s) came into force; and further until the delimitation is done by the State Government under the stated Amendment Act(s), it was not possible for it to

proceed in the matter.

In the background of this submission, we observe and hold that the process of delimitation being a continuous exercise may be continued by the State of Maharashtra, subject to the outcome of these petitions, but that would be relevant only for future elections after such exercise is completed. For that, the elections of local bodies (around 2486) which had become due on expiry of five years term and required to be conducted before expiry of such term in terms of Article 243-E and 243-U of the Constitution of India, including Sections 6 and 6(B) read with Section 452A(2) of the Maharashtra Municipal Corporation Act and related provisions in other enactments governing elections of local bodies, the conduct of elections of such local bodies cannot brook any delay. This mandate is exposted by the Constitution Bench of this Court in *Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad & Ors.* reported in (2006) 8 SCC 352 (paras 12 to 14 and 22 to 28, in particular).

Accordingly, the election programme of such local bodies must proceed and the State Election Commission is obliged to notify the election programme within two weeks

from today in respect of such local bodies including to continue with the process from the stage as on 10.3.2022, on the basis of the delimitation done prior to coming into force of the Amendment Act(s) w.e.f. 11.03.2022.

In other words, the delimitation as it existed prior to 11.03.2022 in respect of concerned local bodies be taken as notional delimitation for the conduct of overdue elections and to conduct the same on that basis in respect of each of such local bodies.

Insofar as providing reservation for scheduled castes and scheduled tribes, the mandate of the Constitution and statutory provision must be followed; and in so far as other backward classes, compliance of triple test as predicated by this Court in *Vikas Kishanrao Gawali Vs. State of Maharashtra* reported in (2021) 6 SCC 73 must be adhered to. Absent such compliance, no reservation can be provided in the local bodies for that category which may go for elections with immediate effect in terms of this order.

As requested by the learned counsel for the State, 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.

We make it clear that until the delimitation is done by the State Government in terms of Amendment Act(s) of 2022, the State Election Commission shall give effect to this order also in respect of upcoming elections in respect of local bodies which would become due by efflux of time.

List these petitions/matters on 12.07.2022.

The State Election Commission to file compliance report before the next date of hearing. In case of any difficulty, liberty is granted to the State Election Commission to apply before the returnable date and to ensure that election programme in respect of concerned local body is taken forward without any interruption.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)