



राज्य निवडणूक आयोग, महाराष्ट्र

क्रमांक:-रानिआ/२०१४/प्र.क्र. ०७/का.६,
नवीन प्रशासन भवन, हुतात्मा राजगुरु चौक,
मादाम कामा रोड, मुंबई ४०० ०३२
दिनांक :- २५/११/२०१४

प्रति,
सचिव (सर्व मंत्रालयीन विभाग)
पोलिस महासंचालक
विभागीय आयुक्त (सर्व)
जिल्हाधिकारी (सर्व)
महानगरपालिका आयुक्त (सर्व)
पोलिस आयुक्त (सर्व)
पोलिस अधिक्षक (सर्व)

विषय :- स्थानिक स्वराज्य संस्थांच्या निवडणुका
सर्वोच्च न्यायालयाच्या सिव्हील अपिल क्र.५७५६/२००५ मधील
दि.१९/१०/२००६ च्या निर्णयान्वये कार्यवाही करण्याबाबत...

महोदय,

भारतीय संविधानातील ७३ व्या व ७४ व्या घटना दुरुस्तीद्वारे राज्यातील स्थानिक स्वराज्य संस्थांच्या निवडणुका घेण्याची जबाबदारी राज्य निवडणूक आयोगावर सोपविण्यात आलेली आहे. राज्य निवडणूक आयोगाचा दर्जा, शक्ती व अधिकार यासंदर्भात सर्वोच्च न्यायालयाने सिव्हील ॲप्लिकेशन नं.५७५६/२००५, किशनसिंग तोमर विरुद्ध अहमदाबाद महानगरपालिका व इतर या प्रकरणामध्ये दि.१९/१०/२००६ रोजी महत्वपूर्ण निर्णय दिलेला आहे. या निर्णयातील ठळक बाबी खालीलप्रमाणे आहेत. (प्रत संलग्न)

- (i) It is necessary for all the State Governments to recognise the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India. The State Election Commission enjoys the same status as the Election Commission of India. (para 22)
- (ii) The State Election Commissions are to function independently of the State Government concerned. (para 24 and 26)
- (iii) Same powers are vested in the State Election Commission as the Election Commission of India under Article 324. (para 23 and 25)

- (iv) Government concerned shall have to render full assistance and cooperation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted. (para 27)
- (v) It will be open to the State Election Commission to approach the High Court and thereafter the Supreme Court for a writ of mandamus etc.

२. भारतीय संविधानातील राज्य निवडणूक आयोगाचा दर्जा आणि उपरोक्त सर्वोच्च न्यायालयाचा निर्णय घ्यानी घेता स्थानिक स्वराज्य संस्थांच्या निवडणुका ह्या भारतीय लोकशाही बळकट व सक्षम करण्याकरिता अत्यंत महत्वाच्या आहेत. स्थानिक स्वराज्य संस्थांच्या (महानगरपालिका, नगरपरिषदा/नगरपंचायती, जिल्हा परिषदा, पंचायत समित्या व ग्रामपंचायती) निवडणुकांच्या संबंधात या संस्थांच्या अधिनियम व नियमांतर्गत असलेले राज्य निवडणूक आयोगाचे अधिकार प्रकरणपरत्वे विभागीय आयुक्त, जिल्हाधिकारी, महानगरपालिका आयुक्त यांना प्रदान केलेले आहेत. विधानसभा व लोकसभा निवडणुकांच्या वेळी जी काळजी घेण्यात येते तशीच काळजी व खबरदारी स्थानिक स्वराज्य संस्थांच्या निवडणुकांच्या वेळी घेणे आवश्यक आहे, अन्यथा न्यायालयाचा अवमान होण्याची शक्यता नाकारता येत नाही. स्थानिक स्वराज्य संस्थांच्या निवडणुका घेताना न्यायालयीन निर्णयाचा अवमान झाल्यास राज्य निवडणूक आयोगास संबंधितांविरुद्ध कठोर कारवाई करावी लागेल याची कृपया सर्व संबंधितांनी नोंद घ्यावी असे आपणास कळविण्याचे मला राज्य निवडणूक आयुक्तांचे आदेश आहेत.

३. आपण स्थानिक स्वराज्य संस्थांच्या सर्व निवडणुकांमध्ये (एक पोट निवडणूक असली तरीही) विधानसभा व लोकसभेच्या निवडणुकांमध्ये ज्याप्रमाणे काळजी घेऊन आपली कर्तव्ये व जबाबदा-या पार पाडता व अधिकाराचा योग्य तो वापर करता तशाच प्रकारची काळजी या निवडणुका घेताना घेणे आवश्यक आहे, ही बाब आपल्या निदर्शनास आणून देत आहे.

आपला,
ध. मा. कानेड
 (ध. मा. कानेड)
 अवर सचिव,
 राज्य निवडणूक आयोग

- प्रत,
१. अपर मुख्य सचिव तथा मुख्य राजशिष्टाचार अधिकारी, सामान्य प्रशासन विभाग, मंत्रालय, मुंबई.
 २. प्रधान सचिव, नगरविकास विभाग, मंत्रालय, मुंबई.
 ३. प्रधान सचिव (ग्रामविकास), ग्रामविकास व जलसंधारण विभाग, मंत्रालय, मुंबई.
 ४. राज्य निवडणूक आयोगातील सर्व अधिकारी व कर्मचारी.

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(BEFORE Y.K. SABHARWAL, C.J. AND K.G. BALAKRISHNAN, S.H.
KAPADIA, C.K. THAKKER AND P.K. BALASUBRAMANYAN, JJ.)

KISHANSING TOMAR

Appellant;

Versus

MUNICIPAL CORPORATION OF THE CITY
OF AHMEDABAD AND OTHERS

Respondents.

Civil Appeal No. 5756 of 2005†, decided on October 19, 2006

A. Constitution of India — Arts. 243-U and 243-E — Municipal elections — Timely holding of — Mandatory requirement in Art. 243-U in respect of — Held, it is incumbent upon Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new municipality is constituted in time and elections to a municipality are conducted before expiry of its duration of five years as mandatorily specified in Art. 243-U(1) — State Election Commission shall not put forward any excuse based on unreasonable grounds, and not yield to situations created by vested interests to postpone elections — Any revision of electoral rolls shall be carried out in time, and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls — Except in exceptional circumstances of man-made calamities, such as rioting or breakdown of law and order, or natural calamities, Election Commission would not be justified in delaying the process of election — Rationale behind insertion of Pt. IX-A in general and Art. 243-U in particular, explained

B. Constitution of India — Arts. 243-K, 243-ZA, 324, 243-U & 243-E and 32 & 226 — Elections to municipalities and panchayats — Status, powers and role of State Election Commission (SEC) — Duty of State Government — Timely holding of such elections — Recourse to High Courts and Supreme Court by SEC for writ of mandamus to compel State Government to provide all necessary cooperation and assistance to SEC — Availability of — Held, SECs are to function independently of the State Governments concerned in matters of superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections in their domain — Broad interpretation given to words “superintendence, direction and control” as well as “conduct of elections” in Art. 324 by Supreme Court is equally relevant to powers of SECs — State Government shall abide by directions of SEC in the same manner in which it follows directions of Election Commission of India (EC) during Parliamentary and State Assembly elections — State Government shall have to render full assistance and cooperation to SEC and respect SEC’s assessment of the needs in order to ensure that free and fair elections are conducted — In the domain of elections to panchayats and municipalities, SECs enjoy same status as EC — In terms of Arts. 243-K and 243-ZA the same powers are vested in SEC as in EC under Art. 324, and powers of SEC in respect of conduct of elections is no less than that of EC, in its domain

† From the Final Judgment and Order dated 8-8-2005 of the High Court of Gujarat at Ahmedabad in LPA No. 830 of 2005 in SCA No. 9847 of 2005

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Allowing the appeal in law, the Supreme Court

Held:

a The object of introducing Part IX-A in the Constitution was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. The new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections. The effect of Article 243-U of the Constitution is to be appreciated in the above background. (Paras 12 and 13)

b An analysis of Article 243-U yields the result that in any case, the duration of the municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new municipality is constituted in time and elections to the municipality are conducted before the expiry of its duration of five years as specified in Article 243-U(1). Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects. 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. (Paras 13, 14 and 21)

c The State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years' period as stipulated and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time. Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. (Para 19)

d The fact that certain claims and objections are not finally disposed of while preparing the electoral rolls or even assuming that they are not filed in accordance with law cannot arrest the process of election. The election has to be held on the basis of the electoral rolls which are in force on the last date for making nomination. It is true that the Election Commission shall take steps to prepare the electoral rolls by following due process of law, but that too, should be done timely and in no circumstances, shall it be delayed so as to cause gross violation of the mandatory provisions contained in Article 243-U of the Constitution. (Para 20)

e 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 other circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the municipality. (Para 21)

Special Reference No. 1 of 2002, In re. (2002) 8 SCC 237; Presidential Poll, In re. (1974) 2 SCC 33; Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman. (1985) 4 SCC 689, relied on

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. In this direction, it is necessary for all the State Governments to recognise the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for Parliament and the State Legislatures. In fact, in the domain of elections to the panchayats and the municipal bodies under Part IX and Part IX-A for the conduct of the elections to these bodies the State Election Commissions enjoy the same status as the Election Commission of India.

(Para 22)

The State Election Commissions are to function independently of the State Governments concerned in the matter of their powers of superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections to the panchayats and municipalities. The words, "superintendence, direction and control" as well as "conduct of elections" have been held in the "broadest of terms" by the Supreme Court. This is equally relevant in respect of the powers of the State Election Commission as well.

(Paras 26 and 24)

In terms of Article 243-K and Article 243-ZA(1) the same powers are vested in the State Election Commission as the Election Commission of India under Article 324. The words in the former provisions are in pari materia with the latter provision. From a reading of the said provisions it is clear 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.

(Paras 23 and 25)

Article 243-K(3) also recognises the independent status of the State Election Commission. It is accordingly to be noted that in the matter of the conduct of elections, the Government concerned shall have to render full assistance and cooperation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted.

(Para 27)

Also, for the independent and effective functioning of the State Election Commission, where it feels that it is not receiving the cooperation of the State Government concerned in discharging its constitutional obligation of holding the elections to the panchayats 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 or such other appropriate writ directing the State Government concerned to provide all necessary cooperation and assistance to the State Election Commission to enable the latter to fulfil the constitutional mandate.

(Para 28)

Special Reference No. 1 of 2002, In re. (2002) 8 SCC 237; Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405, applied

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Advocates who appeared in this case :

- a Nidhesh Gupta, S.U.K. Sagar, Ms Bina Madhavan, Rahul Pratap (for Lawyer's Knit & Co.), Advocates, for the Appellant;
S. Muralidhar and Rutwik Panda, Advocates, for Respondent 3;
Soli J. Sorabjee, Senior Advocate (Preetesh Kapur, Ms Hemantika Wahi, Abhishek Mishra and Ms. ...)

b Chronological list of cases cited

- | | |
|--|--------------------------|
| 1. (2002) 8 SCC 237, <i>Special Reference No. 1 of 2002, In re</i> | on page(s)
360b, 362h |
| 2. (1985) 4 SCC 689, <i>Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman</i> | 362a |
| 3. (1978) 1 SCC 405, <i>Mohinder Singh Gill v. Chief Election Commr.</i> | 363a |
| 4. (1974) 2 SCC 33, <i>Presidential Poll, In re</i> | 361e |

The Judgment of the Court was delivered by

- c **K.G. BALAKRISHNAN, J.**— This appeal is directed against the judgment of the Division Bench of the High Court of Gujarat. The appellant filed Special Civil Application No. 9847 of 2005 praying for a writ of mandamus or any other appropriate writ or direction to the respondents in the writ petition, namely, the Municipal Corporation of the City of Ahmedabad, the State of Gujarat and the Gujarat State Election Commission, to take all steps necessary for the purpose of holding elections for constituting the Municipal Corporation of the City of Ahmedabad before the expiry of the duration of the municipal corporation constituted pursuant to the elections held in October 2000. The appellant, who was the writ petitioner before the High Court, was the Chairman of the Standing Committee of the Ahmedabad Municipal Corporation (hereinafter referred to as "AMC"). The elected body of AMC was constituted for the relevant period pursuant to an election held in October 2000 and its term was due to expire on 15-10-2005. The appellant apprehended that the authorities may delay the process of election to constitute the new municipal body and therefore filed the aforesaid writ petition on 23-8-2005. AMC filed an affidavit before the High Court stating that it was the responsibility of the third respondent, namely, the State Election Commission, to conduct the elections in time. The State Election Commission, in a separate affidavit-in-reply, submitted that under the provisions of the Bombay Provincial Municipal Corporations Act, 1949, the State Government had issued a notification on 8-6-2005 determining the wards for the city of Ahmedabad by which the total number of wards had been increased from 43 to 45 and in view of the increase in the number of wards, the Commission was required to proceed with the exercise of delimitation of the wards of the city of Ahmedabad in accordance with the provisions of the Bombay Provincial Municipal Corporation (Delimitation of Wards in the City and Allocation of Reserved Seats) Rules, 1994 and that the Commission had issued a circular requiring the Collectors and the Designated Officers to furnish the details and to make proposals for delimitation of the wards. The Commission contended that it would take two

months' time to complete the process of delimitation as the preparation of voters' list in each ward had to be revised in accordance with the Bombay Provincial Municipal Corporation (Registration of Voters) Rules, 1994. It was alleged by the Commission that it was required to consult the political parties to carry out the delimitation of the wards and that it would take at least six months' time for completing the process of election and the Commission could act only after the State Government issued the notification. The State Government produced a chart showing the detailed steps taken by the State Government at various stages culminating in the issue of notification dated 8-6-2005. a b

2. The appellant contended before the Single Judge that in view of Article 243-U of the Constitution, the authorities were bound to complete the process at the earliest and the elections should have been held before the expiry of the term of the existing municipal corporation. The learned Single Judge accepted the time-frame suggested by the State Election Commission and directed that it should be strictly followed and the process of elections must be completed by 31-12-2005 and that no further extension for holding the elections would be permissible. c

3. Aggrieved by the decision of the Single Judge, the appellant filed a letters patent appeal before the High Court and the Division Bench of the High Court by the impugned judgment held that the time-frame given by the State Election Commission was perfectly justified and the Election Commission was directed to begin and complete the process as per the dates given in its affidavit and the LPA was dismissed. Aggrieved thereby, the present appeal is preferred before us by the appellant. d

4. We heard the appellant's counsel as also the counsel for the respondents. The main thrust of the arguments of the appellant's counsel was that in view of the various provisions contained in Part IX-A of the Constitution of India, it was incumbent on the part of the authorities to complete the process of election before the expiry of the period of five years from the date appointed for first meeting of the municipality. The counsel for the respondents, especially the counsel for the State Election Commission contended that every effort was made by the Election Commission to conduct the elections before the stipulated time, but due to unavoidable reasons, the elections could not be held and the preparation of the electoral rolls and the increase in the number of wards had caused delay in the process of election and under such circumstances the delay was justified in conducting the elections. e f g

5. The question that arises for consideration is whether Article 243-U of the Constitution, by which the duration of the municipality is fixed is mandatory in nature and any violation could be justified in the circumstances stated by the respondents. Article 243-U of the Constitution reads as follows: h

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a "243-U. *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.

b (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;

c 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.

d (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."

6. Article 243-ZA provides that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the municipalities shall be vested in a State Election Commission referred to in Article 243-K.

e 7. Article 243-S states that there shall be constituted Wards Committees consisting of one or more wards, within the territorial area of a municipality having a population of three lakhs or more and that the State Legislature may by law make provision with respect to (a) the composition and the territorial area of a Wards Committee; and (b) the manner in which the seats in a Wards Committee shall be filled.

f 8. Under Article 243-T, it is provided that the seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every municipality and the number of seats so reserved shall bear, as nearly as may be the same proportion to the total number of seats to be filled by direct election in that municipality as the population of the Scheduled Castes in the municipal area or of the Scheduled Tribes in the municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a municipality. Further, clause (2) of Article 243-T says that not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. Clause (3) of this article further provides that not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the

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h

total number of seats to be filled by direct election in every municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a municipality. Clause (6) empowers the State Legislature to make any provision for reservation of seats in any municipality or offices of Chairpersons in the municipalities in favour of Backward Class of citizens. a

9. The provisions contained in the Bombay Provincial Municipal Corporations Act, 1949 also are relevant to be noted here. Section 6 of this Act deals with the duration of a corporation. It reads as under:

"6. Duration of corporation.—(1) Every corporation, unless sooner dissolved, shall continue for a period of five years from the date appointed for its first meeting and no longer. b

(2) A corporation constituted upon the dissolution of a corporation before the expiration of its duration, shall continue for the remainder of the period for which the dissolved corporation would have continued under sub-section (1) had it not been so dissolved." c

10. Section 6-A reads as under:

"6-A. Term of office of Councillors.—The term of office of the Councillors shall be co-terminus with the duration of the corporation."

11. Section 6-B is to the following effect:

"6-B. Election to constitute a corporation.—An election to constitute a corporation shall be completed— d

(a) before the expiration of its duration specified in sub-section (1) of Section 6; or

(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 corporation would have continued is less than six months, it shall not be necessary to hold any election under this section for constituting the corporation for such period." e

12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Constitution (Seventy-fourth) Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. These views were expressed by the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections. In the Statement of Objects and Reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated: f

"In many States, local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular g h

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a elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-government.

Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for:

- b (i) putting on a firmer footing the relationship between the State Government and the urban local bodies with respect to:
- (a) the functions and taxation powers, and
 - (b) arrangements for revenue sharing.
- (ii) ensuring regular conduct of elections,
- (iii) ensuring timely elections in the case of supersession; and
- c (iv) providing adequate representation for the weaker sections like the Scheduled Castes, Scheduled Tribes and women.

Accordingly, it has been proposed to add a new part relating to the urban local bodies in the Constitution to provide for—

* * *

d (f) fixed tenure of 5 years for the municipality and re-election within a period of six months of its dissolution.”

e 13. The effect of Article 243-U of the Constitution is to be appreciated in the above background. Under this article, 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 243-U states that 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. Therefore, the constitutional mandate is that election to a municipality shall be completed before the expiry of the five years’ period stipulated in clause (1) of Article 243-U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner. A proviso is added to sub-clause (3) of Article 243-U that in case of dissolution, 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. It is also specified in clause (4) of Article 243-U that 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.

h 14. So, in any case, the duration of the municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new municipality is constituted in time and

elections to the municipality are conducted before the expiry of its duration of five years as specified in clause (1) of Article 243-U.

15. The counsel for the respondents contended that due to multifarious reasons, the State Election Commission may not be in a position to conduct the elections in time and under such circumstances the provisions of Article 243-U could not be complied with *stricto sensu*. a

16. A similar question came up before the Constitution Bench of this Court in *Special Reference No. 1 of 2002*¹ with reference to the Gujarat Assembly Elections matter. The Legislative Assembly of the State of Gujarat was dissolved before the expiration of its normal duration. Article 174(1) of the Constitution provides that six months shall not intervene between the last sitting of the Legislative Assembly in one session and the date appointed for its first sitting in the next session and the Election Commission had also noted that the mandate of Article 174 would require that the Assembly should meet every six months even after dissolution of the House and that the Election Commission had all along been consistent that normally a Legislative Assembly should meet at least every six months as contemplated by Article 174 even where it has been dissolved. As the last sitting of the Legislative Assembly of the State of Gujarat was held on 3-4-2002, the Election Commission, by its order dated 16-8-2002, had not recommended any date for holding general election for constituting a new Legislative Assembly for the State of Gujarat and observed that the Commission will consider framing a suitable schedule for the general election to the State Assembly in November-December 2002, and therefore, the mandate of Article 174(1) of the Constitution of India to constitute a new Legislative Assembly cannot be carried out. The reference, thus, came up before this Court. b c d e

17. Speaking for the Bench, Khare, J. as he then was, in para 79 of the answer to the reference, held: (SCC p. 288)

"79. However, we are of the view that the employment of the words 'on an expiration' occurring in Sections 14 and 15 of the Representation of the People Act, 1951 respectively show that the Election Commission is required to take steps for holding election immediately on expiration of the term of the Assembly or its dissolution, although no period has been provided for. Yet, there is another indication in Sections 14 and 15 of the Representation of the People Act that the election process can be set in motion by issuing of notification prior to the expiry of six months of the normal term of the House of the People or Legislative Assembly. Clause (1) of Article 172 provides that while promulgation of emergency is in operation, Parliament by law can extend the duration of the Legislative Assembly not exceeding one year at a time and this period shall not, in any case, extend beyond a period of six months after promulgation has ceased to operate. ... The aforesaid provisions do indicate that on the f g h

¹ *Special Reference No. 1 of 2002, In re.* (2002) 8 SCC 237

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a premature dissolution of the Legislative Assembly, the Election Commission is required to initiate immediate steps for holding election for constituting Legislative Assembly on the first occasion and in any case within six months from the date of premature dissolution of the Legislative Assembly."

18. Concurring with the foregoing opinion, Pasayat, J. in para 151, stated as follows: (SCC p. 322)

b "151. The impossibility of holding the election is not a factor against the Election Commission. The maxim of law *impotentia excusat legem* is intimately connected with another maxim of law *lex non cogit ad impossibilia*. *Impotentia excusat legem* is that when there is a necessary or invincible disability to perform the mandatory part of the law that *impotentia* excuses. The law does not compel one to do that which one cannot possibly perform. 'Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him.' Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See *Broom's Legal Maxims*, 10th Edn., at pp. 1962-63 and *Craies on Statute Law*, 6th Edn., p. 268.) These aspects were highlighted by this Court in *Special Reference No. 1 of 1974*. Situations may be created by interested persons to see that elections do not take place and the caretaker Government continues in office. This certainly would be against the scheme of the Constitution and the basic structure to that extent shall be corroded."

f 19. From the opinion thus expressed by this Court, 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. The Election Commission shall try to complete the election before the expiration of the duration of five years' period as stipulated in clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

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20. The majority opinion in *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman*³ held that the fact that certain claims and objections are not finally disposed of while preparing the electoral rolls or even assuming that they are not filed in accordance with law cannot arrest the process of election to the legislature. The election has to be held on the basis of the electoral rolls which are in force on the last date for making nomination. It is true that the Election Commission shall take steps to prepare the electoral rolls by following due process of law, but that too, should be done timely and in no circumstances, it shall be delayed so as to cause gross violation of the mandatory provisions contained in Article 243-U of the Constitution.

21. 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 (*sic* other) circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects. 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.

22. In our opinion, 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. In this direction, it is necessary for all the State Governments to recognise the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for Parliament and the State Legislatures. In fact, in the domain of elections to the panchayats and the municipal bodies under Part IX and Part IX-A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.

23. In terms of Article 243-K and Article 243-ZA(1) the same powers are vested in the State Election Commission as the Election Commission of India under Article 324. The words in the former provisions are in *pari materia* with the latter provision.

24. The words, "superintendence, direction and control" as well as "conduct of elections" have been held in the "broadest of terms" by this Court in several decisions including *Special Reference No. 1 of 2002, In re*¹

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a and *Mohinder Singh Gill case*⁴ and the question is whether this is equally relevant in respect of the powers of the State Election Commission as well.

b 25. From a reading of the said provisions it is clear 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.

c 26. The State Election Commissions are to function independent of the State Governments concerned in the matter of their powers of superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections to the panchayats and municipalities.

d 27. Article 243-K(3) also recognises the independent status of the State Election Commission. It states that upon a request made in that behalf the Governor shall make available to the State Election Commission "such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1)". It is accordingly to be noted that in the matter of the conduct of elections, the Government concerned shall have to render full assistance and cooperation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted.

e 28. Also, for the independent and effective functioning of the State Election Commission, where it feels that it is not receiving the cooperation of the State Government concerned in discharging its constitutional obligation of holding the elections to the panchayats 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 or such other appropriate writ directing the State Government concerned to provide all necessary cooperation and assistance to the State Election Commission to enable the latter to fulfil the constitutional mandate.

f 29. Taking into account these factors and applying the principles of golden rule of interpretation, the object and purpose of Article 243-U is to be carried out.

g 30. As the elections to the Ahmedabad Municipal Corporation have already been held and the new municipal body constituted, no further direction is required in the matter. With these observations, we dispose of the appeal with no order as to costs.

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⁴ *Mohinder Singh Gill v. Chief Election Commr.*, (1978) 1 SCC 405