

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 1923 of 2023

Rina Kumari

Petitioner

Versus

1. State of Jharkhand through Chief Secretary, Jharkhand, Ranchi.
2. The Election Commissioner, State Election Commission, Jharkhand, Ranchi.
3. The Secretary Town Development and House Department, Jharkhand, Ranchi.

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Respondents

With

W.P.(C) No. 2290 of 2023

1. Roshni Khalkho
2. Arun Kumar Jha
3. Binod Kumar Singh
4. Sunil Kumar Yadav.

Petitioners

Versus

1. The State of Jharkhand
2. The Chief Secretary, Govt. of Jharkhand, Ranchi
3. The Principal, Dept. of Urban development and Housing, Govt. of Jharkhand, Ranchi.
4. Municipal Commissioner, Ranchi Municipal Corporation, Ranchi.

... Respondents

CORAM : SRI ANANDA SEN, J.

For the Petitioner(s) : Mr. Binod Singh, Advocate
(WPC No. 2290/2023)
Mr. Kaushik Sarkhel, Advocate
(WPC No. 1923 of 2023).
For the State : M/s Shahabuddin, SC-VII.
Mr. Gaurav Raj, AC to AAG
For Election Commission: Mr. Sumeet Gadodia, Advocate.

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13/04.01.2024: These two writ petitions are taken up together.

2. Heard learned counsel Mr. Binod Singh, Mr. Kaushik Sarkhel, appearing on behalf of the petitioners, Mr. Shahabuddin, learned SC-VII and Mr. Gaurav Raj, AC to AAG II for the State and Mr. Sumeet Gadodia, learned counsel for the State Election Commission.

3. In WP(C) No.1923 of 2023, the petitioner has prayed for a mandamus directing the State to immediately and forthwith notify election process for Nagar Panchayat, Jamtara, as the term of Nagar Panchayat, Jamtara was to expire on May 2023. Further prayer has been made that if the elections are not notified and could not be held before the expiry of the term of the Nagar Panchyat, the seating

members be allowed to function till the fresh elections are held. A prayer has also been made by way of amendment to quash the order by which, after expiry of the term of Nagar Panchayat, Jamtara, Administrator has been appointed.

4. In WP(C) No. 2290 of 2023, prayer has been made for a direction to hold election of Ranchi Municipal Corporation in view of the mandate under Article 243(U) of the Constitution of India and also in terms of Section 16(4) and 20 of the Jharkhand Municipal Act, 2011, since five years term of the elected body has already expired on 27.04.2023. Further prayer has been made to quash the Notification No. 1680 dated 28.4.2023, issued by respondent No. 4 whereby administrator has been appointed for administering the activities of the municipality, after expiry of the term of the elected members.

5. Thus in both writ petitions, the petitioners have prayed for a direction upon the respondents to notify the election of Municipal Corporation, Municipality and Nagar Panchayat.

6. During course of arguments, it has been brought to the notice of this Court that in the entire State of Jharkhand, the term of all the Nagar Panchayats and Municipalities have come to an end and all these bodies are administered by Administrators in place of any elected body.

7. Mr. Binod Singh and Mr. Kaushik Sarkhel, counsel for the petitioners submit that under Article 243(U) of the Constitution, every municipality, if not dissolved, shall continue for five years. They further submitted that before expiry of the term, steps should have been taken by the Election Commission and the State to notify the elections, to see that the elected body is set at its place. They further argued that in the State of Jharkhand, though the term of these elected bodies has to come to an end long back, yet neither the State Election Commission nor the Government has taken any serious steps to ensure that the elections of Municipal Corporation, Municipalities and Nagar Panchyat are held within time. As per them, by no stretch of imagination, these bodies which are the pillars of the democracy can be left to be administered by an Administrator, nominated by the State. It is the mandate of the Constitution that the people should be given power to administer the same by electing their representatives. They also contended that if the election cannot be held for any reason, as per Section 16(8) of the Municipal Act, 2011, before the expiry of the period of five years specified in sub-section(4), the council shall stand dissolved on the expiration of the said period, and all the powers and functions be vested in the municipal authorities under this Act or under any other law for the time being in force, shall be exercised or performed, as the case may be, by such person or persons to be designated as Administrator or Board of Administrators as the State Government may, by notification, appoint till the

general election. They further argues that this provision of law is a temporary provision and cannot be allowed to continue in perpetuity on the garb of not holding election on frivolous ground. They allege against the Government that on frivolous grounds, the State is not notifying the elections, rather they are intending to run the entire system through the persons of their choice, which is impermissible in a democratic set up. They further argue that the ground taken by the State for not holding election, is contrary to the judgment of the Hon'ble Supreme Court delivered in the case of **Suresh Mahajan V. State of M.P.**, reported in **(2022) 12 SCC 770**, as the "triple test formalities" which is being used as a shield by the State, for not holding the election, is not mandatory and even without completing the "triple test formalities", the election of the local bodies can be held. They argue that when the Hon'ble Supreme Court has already held that without completing the "triple test formalities", election of the local bodies can be held, thus by not notifying the same, the State is shirking their responsibility. On these grounds they pray to allow the writ applications.

8. Mr. Shahabuddin, learned SC-VII argues that in terms of judgment of the Hon'ble Supreme Court in the case of **Vikas Kishanrao Gawali V. State of Maharashtra**, reported in **(2021) 6 SCC 73**, the "triple test formalities" had to be conducted and completed for identifying seats for Other Backward Classes (OBC) for reservation. Without identifying the seats to be reserved for OBCs with the "triple test formalities", no election of the local bodies can be held. If the elections are held without reserving seats for OBC, the same will create problem and will amount to depriving the OBC. It is his contention that a "Dedicated Commission" has already been constituted to undertake the "triple test formalities" by collecting empirical data in relation to the OBCs so that proper decision can be taken in respect of reserving seats for OBC candidate. As per the State, the work has been assigned to the State Backward Class Commission to collect the empirical data and to submit a report, which will take some time. Only thereafter elections can be declared/notified. He, after going through the counter affidavit, submits that within three months the said data can be obtained and thereafter proper decision can be taken in this aspect. *[Be it noted that the said affidavit is of the month of November 2023 and the three months will expire on 6th February, 2024 and it is an admitted fact that there is no Chairperson of the State Backward Class Commission].* On this ground, the respondent further submits that since the term of elected body has come to end, as per Section 16(8) of the Jharkhand Municipal Act, 2011, administrator has been appointed.

As per him, the appointment of administrator cannot be challenged as the same is as per law. Thus the prayer made to this effect is also not liable to be

entertained.

So far as direction to notify the election is concerned, counsel for the State submits that once the process of obtaining empirical data is completed and the report is received, proper decision will be taken to notify the election after reserving the seats for OBCs.

9. Mr. Sumeet Gadodia, learned counsel appearing on behalf of State Election Commission fairly submits that the State Election Commission had already taken a decision and had recommended holding of election of Municipal Corporation, Municipalities and Nagar Panchayat, not only once but twice. The State had once notified the same but cancelled the said notification and on the second occasion, they did not even bothered to notify the same and is sitting tight. He also submits that the ground taken by the State as defence is now *non est*, in view of the judgment of the Hon'ble Supreme Court in the Case of **Suresh Mahajan (Supra)**. He further submits that being the recommending authority, they only can recommend to the State Government but the entire duty is of the State to notify the election, which the State has failed to perform.

10. After hearing the parties, I find that a prayer has been in the writ petitions, by way of mandamus, for a direction upon the State to notify the election of Municipal Corporation, Municipalities and Nagar Panchayat, specially Ranchi Municipal Corporation and Jamtara Nagar Panchayat. It is also admitted by the parties including the State and State Election Commission that the term of all the Municipalities and Corporation in the State of Jharkhand has come to an end and is now functioning under Administrator.

11. Part IX-A of the Constitution of India deals with Municipalities. Article 243(Q) of the Constitution deals with the constitution of municipalities. Article 243(R) provides for composition of municipalities. As per the said provision, all seats in municipalities shall be **filled by persons chosen by direct election from the territorial constituencies in the municipal area** and for which municipal area shall be divided into territorial constituencies to be known as wards. Article 243(S) provides for constitution and composition of Wards Committees etc. and Article 243(T) provides for reservation of seats. Duration of Municipalities is provided under Article 243(U) of the Constitution. It provides that every municipality shall continue for five years from the date appointed for its first meeting and no longer. The only exception is if the municipality is dissolved prior to the aforesaid period.

12. Thus from the aforesaid provisions of the Constitution, it is quite clear that municipality must consist of elected persons. This process is democratic as the seats are to be filled up by persons chosen by direct election from the territorial

constituencies in the municipal area. This democratic process is the life line of the country, which cannot be throttled. Any delay in election or deferring the same on frivolous grounds amounts to destroying democracy. The State by no stretch of imagination can delay this democratic process, especially when the State Election Commission has already recommended for holding such election. It is the constitutional mandate to hold such election and no one can defy the same even by indirect means.

13. The Hon'ble Supreme Court in the case of **Suresh Mahajan Vs. State of M.P.** reported in **(2022) 12 SCC 770** in para 8 has held that this constitutional mandate is inviolable. Neither the State Election Commission nor the State Government or the State Legislature, including Court in exercise of powers under Article 142 of the Constitution of India can countenance dispensation to the contrary. Thus it is clear that no one can stall the process of election of local bodies, which is the mandate as per the provision of Article 243(R) of the Constitution.

14. In this case, the ground taken by the State for not notifying the election is the direction given by the Hon'ble Supreme Court in the case of **K. Krishna Murthy (Dr.) and Others Vs. Union of India and Another**, reported in **(2010) 7 SCC 202**. As per the aforesaid judgment, an exercise has to be undertaken to identify the seats to be reserved for the OBCs. For that purpose "triple test formalities" has to be conducted. As per the State, the aforesaid "triple test formalities" is in the process of completion, as the identification of OBC's seats, which are to be reserved, has not yet been finalized but will soon be. Their ground is that a Dedicated Commission has already been set up and the State Backward Class Commission has been vested with the power to collect empirical data and submit a report, so that process of identifying seats for reservation for OBC can be initiated, the election can be held.

15. The ground taken by the State is not at all acceptable and cannot be sustained, as by no stretch of imagination, it can be presumed that the process can be completed soon, inasmuch as admittedly the post of Chairperson of Jharkhand State Backward Class Commission is vacant. Further, in view of judgment passed by the Hon'ble Supreme Court in the Case of **Suresh Mahajan (Supra)** also, the argument of the State does not making out any ground.

16. Similar situation arose in the case which has been dealt with by the Hon'ble Supreme Court in the case of **Suresh Mahajan (Supra)**. Considering all the aspects, the Hon'ble Supreme Court held that the election can very well be held and non-compliance of "triple test formalities" cannot come in the way to hold election. In **Suresh Mahajan's** case, the issue of reservation of OBC's seat had

cropped up, which was in fact considered and a direction was given to the State to hold election, even if the “tripe test formalities” remained to be achieved. In the aforesaid judgment, the Hon'ble Supreme Court has done away with the said impediment. The situation is same here. The Hon'ble Supreme Court in the aforesaid case in para -9 had taken note of the fact that a large number of local bodies are functioning without elected representatives and held that this is bordering on breakdown of rule of law and more so, palpable infraction of the Constitutional Mandate. It is necessary to quote para 9 of the aforesaid judgment, which runs as under;

“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 breakdown of rule of law and more so, palpable infraction of the constitutional mandate qua the existence and functioning of such local self-government, which cannot be countenanced.”

17. In paragraph 11 of the aforesaid judgment, the Hon'ble Supreme Court has held that even any amendment effected to enactments also cannot be reckoned as a legitimate ground for protracting the issue of election programme of the local bodies concerned. It is necessary to quote paragraph 11 of the judgment, which reads as under;

“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 authority concerned — it ought to be commenced well in advance to ensure that the elections of the local body concerned 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 the 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 local bodies concerned.”

18. So far as “triple test formalities” is concerned, in paragraph 13 of the aforesaid judgment, the Hon'ble Supreme Court has held that non-compliance of the triple test formality cannot be a ground to defer the election. Further it has been held that the seats except reserved for Scheduled Castes and Scheduled Tribes, the rest of the seats must be notified as for the General Category.

Paragraph 13 of the said judgment, reads as under:-

“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.”

Thus the Hon'ble Supreme Court directed that the Election should be notified even if the “triple test formalities” has not yet been completed. From the aforesaid judgment, the issue has been set at rest and now as per the judgment, it is not sine qua non to conclude the “triple test formalities” before holding elections for a local body. It is thus clear that elections can be held even if “triple test formalities” is under process and/or has not yet been completed. Non-completion of the “triple test formalities” for identifying seats to be reserved for OBCs is not at all a ground to defer or delay election of local self-government.

19. The aforesaid direction is not only applicable in the case of Madhya Pradesh or Maharashtra, rather this direction is for all the States, Union Territories and the respective Election Commissions. All are to abide by the same, without fail, to uphold the constitutional mandate. Paragraph 31 of the aforesaid judgment has clarified this, which is quoted below:-

“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 4-5-2022 [Rahul Ramesh Wagh v. State of Maharashtra, (2022) 12 SCC 798] , but to all the States/Union Territories and the respective Election Commission to abide by the same without fail to uphold the constitutional mandate.”

20. The judgment in the case of **Suresh Mahajan (Supra)** is dated 10th May 2022 and now we are in the month of January 2024 i.e. more than one year eight months has elapsed, yet the State has not complied with the direction given by the Hon'ble Supreme Court in the case of **Suresh Mahajan (Supra)** by notifying the Election. This is a very sorry state of affair, where democracy at the lowest tier is strangulated. The constitutional mandate has been shelved, which is impermissible, even if it is for a short period. This is sacrilege.

21. Thus in view of the judgment rendered in the case of **Suresh Mahajan (Supra)**, it is the sacred constitutional duty of the State Election Commission to recommend for holding of Election in the Municipal Corporation, Municipalities and Nagar Panchayat, not only for Ranchi Municipal Corporation

and Jamtara Nagar Parishad, but also for all the other Municipalities, within the State of Jharkhand, whose term has come to an end.

22. At this stage, Mr. Sumeet Gadodia, learned counsel for the State Election Commission submits that they have already recommended for holding election twice. The first recommendation was accepted and election was notified, but later on the same was cancelled and so far as the second recommendation is concerned, no action has been taken by the State Government. He further undertakes that State Election Commission will again recommend within a period of three weeks for holding such election.

23. The Government cannot sit over the recommendation of the State Election Commission and throttle the voice of the people. In fact, the process of election should have started much before the term of sitting members came to an end. **Thus immediately on receipt of the recommendation of the State Election Commission, State Government will issue necessary notifications for holding such election in relation to Municipal Corporation, Municipalities and Nagar Panchayats in the State of Jharkhand within four weeks.**

24. So far as reservation of OBC seats are concerned, the same will be governed by the judgment of the Hon'ble Supreme Court rendered in the case of ***Suresh Mahajan (Supra)***.

25. So far the *ad hoc* system of appointment of administrator in terms of Section 16(8) of the Jharkhand Municipal Act, 2011 is concerned, the same is absolutely a temporary arrangement. This temporary arrangement cannot be allowed to continue for long. Thus it is more important to hold election at the earliest. The basic tenet:- "*Government by the people, of the people and for the people*" is to be applied, reinforced and implemented in true letter and spirit. Running these constitutional bodies by an administrator defies this basic tenet of democracy.

26. Since I have already passed order directing the State Government to notify the elections immediately on receipt of the recommendation of the State Election Commission, I am not inclined to interfere with the orders in relation to appointment of the administrators.

27. The State must ensure to provide all facilities so that the democratic process of election of Municipal Corporation, Municipalities and Nagar Panchayat is not hampered or hindered by any means.

28. With the aforesaid observations and directions, these writ petitions stand **allowed**.

29. Pending Interlocutory Applications, if any, stand disposed of.

30. Let copies of this order be immediately communicated to the Chief

Secretary of the State of Jharkhand, the Principal Secretary, Department of Urban Development and Housing, Govt. of Jharkhand as well as the State Election Commission by FAX/e-mail for compliance.

Anu/-Cp2

(ANANDA SEN, J.)