

(2006) 03 GAU CK 0010
In the Gauhati High Court
Case No : Writ Petition (C) No. 57 of 2006

Abdul Mazid

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Constitution of India, 1950 — Article 213, 217, 219, 226, 56
Gauhati Municipal Corporation Act, 1971 — Section 146, 15, 15(1), 15(3), 20
Gauhati Municipal Corporation Election Rules, 1973 — Rule 107, 2, 21B, 21C, 21D

Citation : (2006) GLT 521 Supp

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : B.D. Konwar, for the Appellant; K.C. Mahanta, N. Dutta and B.D. Das, for the Respondent

Judgement

I.A. Ansari, J.—What shall, within the meaning of Section 5(ix) of the Gauhati Municipal Corporation Act, 1971 (in short, the "GMC Act"), be construed as the date of election of the Mayor or Deputy Mayor for the purpose of computing their term is the core issue raised in the present writ petition. When the result of the election of a Mayor or Deputy Mayor is directed by the Court not to be given effect to, and in consequence thereof, when the Mayor or Deputy Mayor, as the case may be, has not been able to function as the Mayor or Deputy Mayor, whether the period, during which the Mayor or the Deputy Mayor concerned has not been allowed to function, would be counted towards computing the term of one year, for the purpose of Section 5(ix) of the GMC Act, is yet Anr. question, which has arisen for determination in the present writ petition.

Background Facts:

2. In exercise of the powers conferred by Clause (1) of Article 213 of the Constitution of India, the Governor of Assam promulgated the Guwahati Municipal Corporation (Amendment) Ordinance, 2004, vesting in the Members of the House of People and the Members of the Assam Legislative Assembly,

representing the constituencies, which comprise fully or partly the Corporation area, the right to attend and speak at all meetings of the Corporation and also the right to vote. A Notification, in this regard, was accordingly published, on 29.12.2004, in the Assam Gazette (Extra-Ordinary) by the Government of Assam, Legislative Department, for general information. A notice, u/s 15 of the GMC Act, was, then, issued, on 06.01.2005, notifying 11.01.2005 as the date of election for the offices of Mayor and Deputy Mayor of the Guwahati Municipal Corporation (hereinafter referred to as "the GMC"). Polls for election of Mayor and Deputy Mayor of the GMC were to be accordingly held on 11.01.2005. However, on 11.01.2005 itself, a writ petition, under Article 226 of the Constitution of India, was filed by some of the elected Councillors of the GMC challenging the constitutionality and validity of the Notification, dated 29.12.2004, aforementioned. This writ petition gave rise to W.P.(C) No. 254/2005. When the writ application was moved, on 11.01.2005, the Court, while ordering issuance of notice of motion, passed also an interim order directing that the election to the offices of Mayor/ Deputy Mayor may be proceeded with and the Ex-Officio members may be allowed to vote, but their votes should be kept separately and no result of the election scheduled to be held shall be announced without prior leave of the Court. On the same day, i.e., 11.01.2005, a mention was made before the Court, at 3.35 PM, by Mr. P.K. Goswami, learned Senior counsel, appearing for the writ Petitioners, to the effect that though the order was passed at 12.05 PM and an attempt was made by the counsel for the Petitioners to inform the person concerned about the interim directions of the Court and though the directions had been verbally communicated, the election process was allowed to go through and that according to the information received, the result had also been announced. Responding to the submissions so made on behalf of the writ Petitioner in WP(C) No. 254/05, Mr. K.N. Choudhury, learned Additional Advocate General, Assam, however, submitted to the Court that before the interim directions passed by the Court could be communicated to the person concerned, the counting was already over. At this stage, the Court passed an order directing that the results of the election shall be kept in abeyance and no Gazette Notification shall be issued and the result shall not be acted upon without prior approval of the Court. However, while so passing the interim direction, the Court made it clear that it was passing the order without entering into the correctness or otherwise of the rival submissions, which had been made before it.

3. Thereafter, on 13.04.2005, the Guwahati Municipal Corporation (Amendment) Act, 2005, (in short, the GMC (Amendment) Act, 2005) was enacted repealing the Guwahati Municipal Corporation (Amendment) Ordinance, 2004. Clause (a) of Sub-section (1) of Section 5 was, in terms of the GMC (Amendment) Act, 2005, amended conferring on the members of the House of the People and the members of the Assam Legislative Assembly representing the constituencies, which comprise fully or partly, of the Corporation area, the right to attend and speak at all meetings of the Corporation and to cast vote. The GMC

(Amendment) Act, 2005, was accordingly published in the Assam Gazette (Extra-Ordinary) by the Government of Assam, Legislative Department, for general information.

4. On 12.05.05, W.P.(C) No. 254/05 aforementioned was disposed of on being withdrawn by the writ Petitioners and the interim directions passed, on 11.01.05, as indicated above, were accordingly vacated. This was followed by Gazette Notification, dated 16.05.2005, which was published in terms of Section 81(3) of the GMC Act, notifying the names of the persons elected as Mayor and Deputy Mayor of the GMC. The present writ Petitioner, on being so notified elected as Deputy Mayor, assumed accordingly the charge of the said office on 16.05.2005. However, barely eight months of the assuming the charge of the office of the Deputy Mayor of the GMC by the present Petitioner, a notice was issued, on 02.01.06, notifying the date of election for the offices of the Mayor and Deputy Mayor u/s 15 of the GMC Act. This notice has come to be challenged by the Petitioner in this writ petition. While ordering issuance of the notice of motion, on 06.01.2006, in this case, the Court directed, in the interim, that the result of the elections to be held on 10.01.2006, in terms of impugned Notification, dated 02.01.2006, shall be kept in abeyance, no Gazette Notification shall be published in this regard and that the result shall not be acted upon without prior leave of this Court.

5. The polls for election of the Mayor and the Deputy Mayor were, then, held on 10.01.06. On having participated in the election so held for the office of Deputy Mayor, the Respondent No. 5 herein has appeared and prayed for vacating the interim order so as to enable him to assume charge of the office of the Deputy Mayor, if he is declared elected.

6. As the vacating of the interim directions passed in this writ petition, on 06.01.2005, would have frustrated the writ petition itself, and as the learned Counsel for the parties were in agreement that the writ petition be heard and disposed of expeditiously, the writ petition was accordingly taken up for hearing.

7. I have heard Mr. B.D. Konwar, learned Counsel for the Petitioner, and Mr. B.D. Das, learned Counsel appearing on behalf of the private Respondent, namely, Respondent No. 5. I have also heard Mr. K.C. Mahanta, learned Additional senior Government Advocate, appearing on behalf of the Respondent Nos. 1 and 2, and Mr. S. Katakey, learned Standing counsel for Respondent Nos. 3 and 4. Mr. N. Dutta, learned Senior Counsel, has also been heard as Amicus Curiae. Submissions made on behalf of the Petitioner:

8. Presenting the case on behalf of the Petitioner, Mr. B.D. Konwar, learned Counsel for the Petitioner, has submitted that the term of the office of a Deputy Mayor is, according to Section 5(ix) of the GMC Act, one year from the date of his election. What shall, however, be construed as the date of election, points out Mr. Konwar, is the prime question for determination in the present writ petition. If this Court holds, further points out Mr. Konwar, that the date of election of the

Mayor and Deputy Mayor would be the date of polling, then, as the date of election of the present Petitioner was 11.01.2005, his term should be taken to have expired on 10.01.2006.

9. In the case at hand, however, submits Mr. Konwar, there are 2(two) reasons why the date of election in respect of the present Petitioner cannot be construed to be 11.01.2005. The first ground, according to Mr. B.D. Konwar, is that u/s 81 of the GMC Act, the Commissioner of Plains Division shall preside over the meeting of the Councillors of the GMC in which the Mayor and the Deputy Mayor are elected and, on conclusion of the election, the Commissioner shall report to the State Government the name of the person elected as the Mayor or Deputy Mayor and the State Government shall, then, publish the name in the official Gazette. Until the time, according to Mr. Konwar, the requisite Notification, in terms of Section 81(3), is published, the election of the person as Mayor or Deputy Mayor is not complete. Seeking to derive support for this submission, Mr. B.D. Konwar has drawn my attention to the provisions of Sections 423 and 424 of the GMC Act and submitted that a careful reading of Sections 423 and 424 of the GMC Act makes it clear that provisions made for submission of the report by the Commissioner to the State Government is not a mere formality; rather, it is, according to Mr. Konwar, aimed at determining if the proceedings of the meeting, in which the elections were held, need to be annulled or shall be allowed to survive. Explaining his above submissions, Mr. B.D. Konwar points out that Section 423 of the GMC Act provides that the Government has the power to annul the proceedings of the GMC and these proceedings, according to Mr. Konwar, would also include the proceedings of the meeting in which elections for the offices of the Mayor as well as the Deputy Mayor take place. This apart, Section 424 of the GMC Act, further points out Mr. Konwar, empowers the Government to suspend the execution of any such resolution or order, which is in contravention of the GMC Act. It is contended by Mr. Konwar that since the Government has the power to annul, in an appropriate case, the proceedings of the election of the GMC, the purpose of submitting to the Government the report as regard the elections of the Mayor and the Deputy Mayor would mean, if construed realistically, that until the time the Government finds that the elections have been held in accordance with law, it may not publish the Notification and until the time in Notification is published, the elected person cannot take charge of his office and cannot be treated to have assumed charge of his office.

10. In the present case, submits Mr. Konwar, the Court, by its interim directions, passed on 11.01.05, had stopped the result of the election from being acted upon and it was only after the publication of the requisite Gazette Notification, u/s 81(3) of the GMC Act, on 16.05.2005, that the present Petitioner could assume charge of the office of the Deputy Mayor. In the light of these facts, it is abundantly clear, submits Mr. Konwar, that the Petitioner's date of election shall be counted with effect from 16.05.2005 i.e. the date, when the Gazette Notification was published in terms of Section 81(3) of the GMC Act.

11. It is submitted by Mr. B.D. Konwar that "election" means the process of being elected and the term of the office is of the elected member and not of contesting members. When candidates, further submits Mr. Konwar, offer themselves for election, they are called candidates and unless elected, the term of none such candidate would commence. Thus, the term of an elected member or office-bearer would commence, contends Mr. Konwar, when the member or the office-bearer stands elected and the result of his election is duly notified as required under the Act and/or the Rules relevant thereto. The expression "date of their elections", occurring in Section 5(ix) of the GMC Act, would mean, further contends Mr. Konwar, the date on which the person concerned, whose term is in dispute, was declared elected and when he became eligible to assume charge of office of the mayor or the Deputy Mayor, as the case may be.

12. Apart from literal constructions, the completed process of election comprehends, according to Mr. Konwar, nomination, recording of votes, counting of votes or declaration of results, publication and notification of the result. Recording of votes or holding of the poll is, submits Mr. Konwar, a mere stage in the process of election. Even when votes are counted, the candidates contesting the poll, submits Mr. Konwar, do not acquire the status of a Mayor or Deputy Mayor. The status of Mayor or Deputy Mayor, emphasizes Mr. Konwar, is acquired on being declared elected and unless the status is acquired, the term of the Mayor or Deputy Mayor cannot begin to run. Therefore, the expression "date of their elections" means, insists Mr. Konwar, the date on which the result is notified as contemplated u/s 81(3) of the GMC Act and not the date on which the person concerned contested the poll or the votes were counted or even when the result of the election was, in terms of Rule 107 of the Rules of Guwahati Municipal Corporation Election Rules, 1973, announced by the Commissioner, who had presided over the meeting of the election.

13. Mere holding of poll, which means a recording of polls, without any thing more would be, submits Mr. Konwar, inconsequential; recording and counting of vote is, points out Mr. Konwar, a preliminary stage, which determines as to who has become, following a democratic process, eligible for assuming charge of the office. Declaration and publication of the result is according to Mr. Konwar, integral and inseparable part of the process of holding and completing the process of election. No election process, contends Mr. Konwar, can be said to be complete unless the votes are recorded, the votes are counted and those, who have secured highest numbers of votes, are declared elected and the result is published as required by the GMC Act.

14. Support is sought to be derived for his above submissions by Mr. Konwar from the decisions in *Ram Pyare Chaudhary and Another Vs. State of Uttar Pradesh and Others*, , *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, , *Election Commission of India Vs. Shivaji and Others*, , *Dinesh Prasad Yadav Vs. State of Bihar and Others*, and *V. Achuthanandan v. P.J. Francis* reported in (1999) 2 SCC 737.

15. In the case at hand, submits Mr. Konwar, even if one were to assume that the result of the counting votes was declared, on 11.01.2005, by the Presiding Officer, yet what needs to be noted, according to Mr. Konwar, is that the result of the election had been kept in abeyance by the authority concerned and no Gazette Notification was issued. Moreover, the authorities have not, further points out Mr. Konwar, acted upon the result of the election This Court had, submits Mr. Konwar, specifically directed that the elections to the officers of the Mayor and the Deputy Mayor may be proceeded with and the Ex-Officio members may be allowed to vote, but their votes should be kept separately and no result of the election, scheduled to be held, shall be announced without prior leave of this Court and, later on, when this Court was informed that the election process had been gone through and the results had been announced or declared, this Court had specifically provided that the results of the election shall be kept in abeyance and no Gazette Notification shall be issued and the results shall not be acted upon without prior approval of this Court. These interim directions were, points out Mr. Konwar, not modified until withdrawal of the writ petition and disposal thereof on 12.05.2005. No act or action, submits Mr. Konwar, can be attributed to the present Petitioner reflecting that the Petitioner had discharged the function of the Deputy Mayor as contemplated under the GMC Act before 16.05.2005. Thus, the Petitioner, according to Mr. Konwar, acquired the status of Deputy Mayor only after the interim directions imposed by this Court were vacated on 12.05.2005 and the result of the election was published in the official Gazette on 16.05.2005. The Petitioner may, therefore, be allowed, pleads Mr. Konwar, to continue to function as Deputy Mayor of the GMC till 15.05.2006.

16. Drawing attention of this Court to the interim directions, which had been passed, on 11.01.2005, restraining every one from acting upon the result of the election, Mr. Konwar has submitted that the effect of this interim direction was that the Petitioner could not function as Deputy Mayor until 16.05.2005. The Petitioner, thus, submits Mr. Konwar, despite having been elected, could not function as Deputy Mayor on the orders of this Court and since, according to Mr. Konwar, no act of the Court can be allowed to harm any one, it will be in the interest of justice and consistent with the provisions of the GMC Act and also the Rules framed thereunder if the present Petitioner is allowed to function as Deputy Mayor and complete his term of one year until 15.05.2005. In support of these submissions, Mr. Konwar has placed reliance on I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, , State (Delhi Administration) Vs. Laxman Kumar and Others, , Jang Singh Vs. Brijlal and Others, , Johri Singh Vs. Sukh Pal Singh and Others, , Rajesh D. Darbar and Others Vs. Narasingrao Krishnaji Kulkarni and Others, , South Eastern Coal fields Ltd. v. State of M.P reported in (2003) 8 SCC 664 , and Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others,

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT No. 5.

17. Controverting the above submissions made on behalf of the private

Respondent, has submitted that in the light of the provisions of Section 55 of the GMC Act, the term of the GMC is for five years from the date of publication of the result of the general election. Pointing out to the provisions of Section 5(ix) of the GMC Act, Mr. Das contends that the scheme of the GMC Act provides that there shall be five Mayors and five Deputy Mayors within a period of five years and there is no provision in the GMC Act to give relief to any Mayor or Deputy Mayor, who loses time, in assuming charge of his office as Mayor or Deputy Mayor, on account of either his own personal reasons or on account of any stay order granted by the Court. No Mayor or Deputy Mayor is, therefore, contends Mr. Das. entitled to get more than one year term from the date of his election.

18. Section 81 and Section 5(ix) of the GMC Act, if read with Rule 107 of the Guwahati Municipal Corporation (Election) Rules 1973, will clearly show, submits Mr. Das, that the term of the Office of the Mayor or Deputy Mayor is one year from the date of declaration of their result and not with effect from the date of publication of the Notification u/s 81(3) of the GMC Act and since, in the present case, the results had been declared by the Presiding Officer on 11.01.2005, the Petitioner stood elected as Deputy Mayor on 11.01.2005 and he is, therefore, according to Mr. Das, not entitled to get his term extended beyond 11.01.2006.

19. Mr. Das has also submitted that a careful reading of Sections 30, 42, 48, 56 and 146 of the GMC Act would clearly show that the publication of the matters relating to the provisions embodied in the Sections aforementioned is a condition precedent, but the same is not so as regards the election of Mayor or Deputy Mayor and, therefore, Notification, in the official Gazette, is not necessary for any one to function as the Mayor/Deputy Mayor and it is, thus, clear, according to Mr. Das, that the term of the Mayor/Deputy Mayor would begin from the announcement of the results of the election under Rule 107 of the Rules of 1973 and not from the date of publication of the result in the Official Gazette in terms of Section 81(3).

20. Mr. Das has further submitted that the declaration of the results, in the official Gazette in terms of Section 81(3), in respect of the election of the Mayor/Deputy Mayor would only mean announcement of the results of the election for information of the general public and, the same not being a condition precedent for enabling an elected Mayor or Deputy Mayor to function as the Mayor/Deputy Mayor, it cannot be said that the term of the Mayor/Deputy Mayor would begin from the date of publication of the results of the election in the official Gazette. To derive support for these submissions, Mr. Das has referred to State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, and State of Haryana and others Vs. Ch. Bhajan Lal and others,

21. Articles 56 and 67 of the Constitution of India shows, points out Mr. Das, that the term of the President and Vice President of India would be for five years from the date, when he enters his office. Similarly, Article 83 of the Constitution of India shows, points out Mr. Das, that the term of the House of People, which is for five years, has to be counted from the date appointed for its first meeting

and, under Articles 217 and 219 of the Constitution of India, a Judge of a High Court assumes his office by subscribing to his oath. Therefore, there being, according to Mr. Das, specific provisions in the GMC Act for publication of notification in the Gazette in respect of matters concerning Sections 30, 42, 56, 146, etc., and the same being absent in respect of the assuming of the charge of the office of the Mayor or Deputy Mayor, the scheme of the GMC Act can be safely held to be that the term of the Mayor or Deputy Mayor commences from the date of declaration of the results of the election of the Mayor/Deputy Mayor by the Commissioner under Rule 107 and their functioning as Mayor or Deputy Mayor does not depend on publication of the results of their election in the official Gazette inasmuch as the publication of the notification of the result of the election is merely, reiterates Mr. Das, for information of the general public and not for any other purpose.

22. In the present case, what needs to be noted, emphasizes Mr. Das, is that though an interim order was passed by the Court at one stage, the fact remains that when the writ petition was withdrawn, it was disposed of without any protection given to the present Petitioner and, hence, the interim order cannot be read for the purpose of giving any benefit to any person, for, according to Mr. Das, nothing survived after withdrawal of the writ petition. It is further submitted by Mr. Das that allowing the present Petitioner to hold the office of the Deputy Mayor beyond 10.01.2006 would be tantamount to issuing a writ of mandamus contrary to what the law provides. In support of this contention, Mr. Das has referred to *State of U. P. and others Vs. Harish Chandra and others*,

23. It is submitted by Mr. Das that if the loss period, allegedly suffered by the Petitioner, is compensated by giving him the remaining period of the so-called term of one year as contended on behalf of the Petitioner, the effect would be as good as extending the term of five years of the GMC itself, which is not permissible, for, this Court cannot legally allow the term of the Councillors to go beyond the period of five years. In support of these submissions, Mr. Das has placed reliance on *Ranbir Singh Vs. Satbiro Devi and Others*,

SUBMISSIONS OF AMICUS CURIAE 24.

Appearing as Amicus Curiae, Mr. N. Dutta, learned Senior counsel, has submitted that Section 20 of the GMC Act envisages constitution of several standing committee. Sub-section (1) of Section 15 of the GMC Act shows, points out Mr. Dutta, that the GMC shall, at its first meeting, elect one of its members to be the Mayor and one of its members other than the Mayor to be the Deputy Mayor and that the GMC shall also elect members of different standing committees from amongst its Councillors. These provisions show, contends Mr. Dutta, that not only that the elections of the Mayor and Deputy Mayor have to be over in the very first meeting of the GMC, but that even the members of the various standing committees have to be elected in the first meeting itself. Sub-section (2) of Section 15 shows, points out Mr. Dutta, that each standing committee shall, at its first meeting, elect one of its members other than the Mayor to be its Chairman.

This, in turn, shows, according to Mr. Dutta, that the election of the Mayor has to be over before the election for Chairmanship of various standing committees take place. Sub-section (3) of Section 15 makes it abundantly clear, further points out Mr. Dutta, that the Mayor and the Deputy Mayor holds the office from the time of their election and, hence, the Mayor must be deemed to have been elected, when the election result, in the first meeting of the GMC, is announced. Viewed thus, submits Mr. Dutta, it becomes abundantly clear that Notification, which Section 81(3) provides for, is not a condition precedent for the purpose of enabling a person to act as a Mayor or a Deputy Mayor.

25. In the case at hand, however, according to Mr. Dutta, when the Court had stopped the result of the elections from being acted upon, the consequence was that the term of the elected Mayor or Deputy Mayor had stopped running and until the time the Court vacated its prohibitory directions on 16.05.2005, the term of the election of Mayor or Deputy Mayor cannot be said to have started running. No act of the Court, further contends Mr. Dutta, can prejudice anyone and in the present case, since it is the Court, which had stopped the elected Deputy Mayor from acting as a Deputy Mayor, the Deputy Mayor concerned needs to be, perhaps, allowed to complete his term of one year. To strengthen his submission that during the period, when the result of the election is kept suspended by order of the Court, this period shall not be counted for the purpose of computing the term of the office of the Petitioner as Deputy Mayor, Mr. Dutta has referred to, and relied upon, *M. Ramalinga Thevar Vs. State of Tamil Nadu and Others*, , *Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others*, , *Venkataswamappa Vs. Special Deputy Commissioner (Revenue)*, and *Aircraft Employee's Housing Co-operative Society Ltd. Vs. Secretary, Rural Development and Panchayat Raj, Govt. of Karnataka, Bangalore, and others*, SUBMISSIONS MADE ON BEHALF OF THE STATE RESPONDENTS AND THE GMC

26. Mr. K.C Mahanta, learned Additional Senior Govt. Advocate, appearing on behalf of the State Respondents, and Mr. S. Katakey, learned Standing Counsel for the GMC, have submitted, in tune with each other, that as far as the holding of the election by means of the impugned Notification, dated 02.01.2006, is concerned, the same is in accordance with the relevant provisions of law and though holding of the elections is valid, it is for this Court to determine if, in the face of the facts of the present case and attending circumstances, the present Petitioner needs to be allowed to complete his term of office of one year as Deputy Mayor with effect from 16.05.2005, when the Notification u/s 81(3) was published.

Since when does the term of office of Mayor or Deputy Mayor commence- An Analysis

27. In the light of the submissions made by the learned Counsel as noted hereinabove, let me, now, determine if the Petitioner has been able to make out any case for interference by this Court in exercise of its powers under Article 226 of the Constitution of India. While considering this aspect of the matter, what

may be noted, at the very outset, is that under Clause (ix) of Section 5, as introduced by the Guwahati Municipal Corporation (Amendment) Act, 1995, the term of office of the Mayor and the Deputy Mayor shall be one year from "the date of their elections". Unlike the Representation of the Peoples Act, 1951, the GMC Act does not specify as to what the date of election shall be. The question, therefore, is as to what shall be regarded as the date of election of the Mayor or of the Deputy Mayor. A search for an answer to this question brings me to Section 15 of the GMC Act, which, as the same stands amended, with effect from 05.05.1994, after introduction of the GMC (Amendment) Act, 1994, reads as follows:

Section 15. Election of Mayor, Deputy Mayor and Chairman.- (1) The Corporation shall at its first meeting elect,-

(a) one of its members to be the Mayor;

(b) One of its members other than the Mayor to be the Deputy Mayor; and

(c) Members of the different Standing Committees from amongst its members.

(2) Each Standing Committee shall at its first meeting after the election referred to in Clause (a) of Sub-section (1) elect one of its members other than the Mayor to be its Chairman.

(3) The Mayor, Deputy Mayor or Chairman shall be entitled to hold office from the time of his election and until the election of his successor provided that in the meantime he does not cease to be a Councillor.

On the occurrence of any vacancy in the office of Mayor, Deputy Mayor or Chairman, the Corporation or Standing Committee as the case may be, shall at its next meeting elect a successor, who shall be entitled to hold office so long as the person in whose place he is elected would have been entitled to hold it, if the vacancy had not occurred.

28. A careful reading of Clauses (a) and (b) of Sub-section (1) of Section 15 shows that the election for the office of Mayor and Deputy Mayor shall be held at the "first" meeting of the GMC. The question, therefore, is as to when the "first" meeting of the GMC shall be held?

29. The answer to the question, as to when the "first" meeting of the GMC shall be held, can be found in Section 77, which runs as follows:

First meeting after general election.- The first meeting of the Corporation after the general election of Councillors shall be held as early as possible but not later than six weeks from the date of announcement of the results of the election and shall be convened by the District Magistrate (Executive)

30. A bare reading of Section 77 of the GMC Act shows that the "first" meeting of the GMC shall be held not later than six weeks from the date of announcement of the result of the general election of the Councillors and that this "first"

meeting shall be convened by the District Magistrate.

31. Let me, now, take note of the provisions of Section 81 of the GMC Act, which, I find, provides as follows:

81. Presiding Officer at meeting for the election of the Mayor.- (1) Notwithstanding anything contained in Section 80 or elsewhere in this Act, a meeting for election of the Mayor and the Deputy Mayor, shall be presided over by the Commissioner of the Plains Division:

Provided that such Presiding Officer shall not have any vote.

(2) If equality of votes is found to exist between any candidates for election as Mayor or Deputy Mayor, the determination of the person who shall be deemed to have been elected shall be made by lot, to be drawn in the meeting in such a manner as the Presiding Officer may determine.

(3) The presiding Officer shall report to the State Government the name of the person elected as Mayor or Deputy Mayor and the State Government shall publish such name in the Official Gazette.

32. From a combined reading of Sections 77 and 81 of the GMC Act, what transpires is that the "first" meeting of the GMC has to be held within six weeks from the date of the announcement of the result of the general election of the Councillors. This meeting shall be convened by the District Magistrate and presided over by the Commissioner. From the contents of Sub-section (1) of Section 15, it also becomes abundantly clear that it is in this "first", meeting that the elections to the offices of Mayor and Deputy Mayor shall take place.

33. The question, now, is this: whether the date of the election of the Mayor or Deputy Mayor shall be counted from the date, when their elections take place under Section, 15 or the date, when the State Government publishes the name of the Mayor or Deputy Mayor in the official Gazette in terms of Sub-section (3) of Section 81 ?

34. To put it differently, what is required to be determined, in the present writ petition, is as to what shall be treated as the date, when the Mayor or Deputy Mayor can be said to have been elected. As the date of the election of the Mayor or Deputy Mayor has not been defined or specified in the GMC Act or the Rules framed thereunder, recourse to other relevant provisions of the GMC Act and the Rules framed thereunder are required to be taken note of in order to find out the answer to this momentous question. While considering this aspect of the present case, what may be noted is that the word "election" has been defined, under Clause (c) of Section 59 of the GMC Act, to mean an "election" held under the provisions of the GMC Act or of any Rules made thereunder. The election of the Mayor or Deputy Mayor is, therefore, "election" within the meaning of Section 59(c) of the GMC Act.

35. Before proceeding further, what is also pertinent to note is that in Dinesh

Prasad Yadav Vs. State of Bihar and Others, which Mr. Konwar relies upon, the Apex Court, in para 10, observed,

10. Although the expression "election" has been defined under the Rules, but the said definition has been specifically confined to the election in accordance with the Rules. The election under Rules 21-B to 21-X is only by way of ballot. There is no provision for nominations under the Rules. Therefore, the definition of "election" under Rule 2(xvi) read with Rules 21-B to 21X only means the election as provided under the Rules by way of ballot. The expression "election" as defined under the Rules has to be interpreted in the context of the Rules and would not, therefore, go contrary to the interpretation given by us to the said expression in the context of the provisions of the Act.

36. From the observations made in Dinesh Prashad Yadav (supra), what becomes transparent is that the meaning of the word "election", under any Act and/or Rules, would have to be interpreted in the context of the provisions of the Act and the Rules relevant thereto and not otherwise. We have to, therefore, confine ourselves to the provisions of the GMC Act and the Rules made thereunder for the purpose of determining as to what can be regarded as the date of election of the Mayor or Deputy Mayor and as to when the term of the office of a Mayor or Deputy Mayor, under the scheme of the GMC Act and the Rules, can be said to commence.

37. My quest for an answer to the above question brings me to the Gauhati Municipal Corporation Election Rules, 1973 (in short, "the GMC (Election) Rules of 1973"). It may be carefully noted that the relevant provisions of Rule 107 of the GMC (Election) Rules of 1973 reads as follows:

107. Election of Mayor or Deputy Mayor-(1) Every candidate for election to Mayor or Deputy Mayor u/s 81 of the Act shall be proposed by one councillor and seconded by Anr. councillor at the meeting held for the purpose. The names of all the candidates proposed and seconded shall be read out by the Presiding Officer and the votes of the councillors present at the meeting shall then be taken by ballot. The District Magistrate or the person authorized shall make adequate arrangements for securing the privacy of the ballot.

(2) Every councillor wishing to vote shall be supplied with a voting paper on which the names of all the candidates shall be printed, typed, or legibly written in the following form:

Sl. No. Name Vote 1. (a) 2. (b) 3. (c)

Each councillor shall then proceed to the place set apart for the purpose and there place a mark against the name of the candidate for whom he wishes to vote. He shall then fold up the voting paper so as to conceal his vote and insert the same in the ballot box. The ballot box shall be so constructed that the voting paper may be inserted therein but not extracted therefrom without the box being opened. The Presiding Officer shall then open the box and count the votes in the

presence of the councillors and declare the result of the election.

(3)

(4)(a)....

(b)

(5)

38. Since Rule 107, quoted hereinabove, provides that the Presiding Officer, upon counting, in the presence of the Councillors, the votes polled, declare the result of the election, can it be said that the date of the election of the Mayor or Deputy Mayor shall be the date, when the "first" meeting of the GMC is held and wherein the result of the election of the Mayor or Deputy Mayor is declared by the Commissioner of the Plains Division? In other words, whether the date of the election, for the purpose of computing the term of office of a Mayor or Deputy Mayor, shall be the date on which the result of the election is declared in terms of Rule 107 by the Commissioner of Plains Division or the date on which the Gazette notification is published by the State Government in terms of Sub-section (3) of Section 81 is the question, which, now, arises for determination.

39. My endeavour to find a correct answer to the question, posed above, brings me to Section 20 of the GMC Act, which falls under the heading, "Standing Committee", and this Section, I notice, states as under:

Section 20 Constitution of Standing Committee. - There shall be Standing Committees dealing respectively with, -

(i) Taxation and Finance, and Planning and Development (or Standing Finance Committee);

(ii) Public Works;

(iii) Public Health, Conservancy and Water Supply;

(iv) Assessment, Markets and Trades;

(v) Appeals.

40. From a close reading of Section 20 of the GMC Act, it becomes clear that there shall be as many as five Standing Committees of the GMC. How the Standing Committees are to be constituted or how its members shall be selected or elected and who will head such Committees are also clarified by Section 15 of the GMC Act. Let me, therefore, revert to Section 15, which, if I may repeat, reads as follows:

Section 15. Election of Mayor, Deputy Mayor and Chairman.- (1) The Corporation shall at its first meeting elect,-

(a) one of its members to be the Mayor;

(b) one of its members other than the Mayor to be the Deputy Mayor; and

(c) Members of the different Standing Committees from amongst its members.

(2) Each Standing Committee shall at its first meeting after the election referred to in Clause (a) of Sub-section (1) elect one of its members other than the Mayor to be its Chairman.

(3) The Mayor, Deputy Mayor or Chairman shall be entitled to hold office from the time of his election and until the election of his successor provided that in the meantime he does not cease to be a Councillor.

On the occurrence of any vacancy in the office of Mayor, Deputy Mayor or Chairman, the Corporation or Standing Committee as the case may be, shall at its next meeting elect a successor, who shall be entitled to hold office so long as the person in whose place he is elected would have been entitled to hold it, if the vacancy had not occurred.

41. From a microscopic reading of Section 15, what becomes evident is that the GMC shall, at its "first" meeting, elect not only (a) one of its members as Mayor and (b) one of its members, other than the Mayor, to be Deputy Mayor, but also (c) members of the different Standing Committees from amongst its Councillors. The question, now, is as to whether any of the Standing Committees can be headed by the Mayor as a Chairman? The answer to this crucial question is found contained in Sub-section (2) of Section 15, which reads,

(2) Each Standing Committee shall, at its first meeting after the election referred to in Clause (a) of Sub-section (1), elect one of its members other than the Mayor to be its Chairman.

42. Since close on the heels of the provisions of Clauses (a), (b) and (c) of Sub-section (1) of Section 15, Sub-section (2) of Section 15 provides that each Standing Committee shall, at its first meeting, after the election referred to in Clause (a) of Sub-section (1) of Section 15, elect one of its members other than the Mayor to be its Chairman, it logically follows that the "election" to the office of the Mayor has to be over before the elections for the office of the Deputy Mayor or the Offices of the Chairmen of various Standing Committees take place, because the Mayor Cannot be Chairman of any of the Standing Committees nor can he be the Deputy Mayor too. In other words, the "election" to the office of the Mayor, and also the Deputy Mayor, shall, in the light of the provisions of Section 15(2), precede the "elections" of the Chairmen of various Standing Committees.

43. The scheme of the GMC Act, admittedly, shows that various Standing Committees, as conceived u/s 20, are imperative for effective functioning of the GMC. A close analysis of the scheme of the GMC Act, therefore, shows that within a period of six weeks from the date of the announcement of the result of the general election of the Councillors, the "first" meeting of the GMC must be held and in this meeting, the Mayor, Deputy Mayor and also Chairman of each of

the five Standing Committees shall be elected. What also clearly follows from the scheme of the GMC Act is that the election for the office of the Mayor shall precede the election of the Deputy Mayor as well as of the Chairman of each of the standing Committees. If the scheme, as conceived under the GMC Act, has to have any meaningful existence, not only the Mayor and the Deputy Mayor, but even the Chairmen of various Standing Committees shall be elected in the very "first" meeting of the GMC, which has to be convened by the District Magistrate within six weeks of the announcement of the results of the general election of the Councillors and the same has to be presided over by the Commissioner of Plains Division.

44. The question, therefore, which, once again, stares at us is this: whether the scheme of the GMC Act and the Rules framed thereunder show that the date of election of a Mayor or Deputy Mayor shall, for the purpose of computing their term of office, be the date of declaration of the result by the Commissioner of Plains Division under Rule 107 or the date of publication of the Gazette notification in terms of Sub-section (3) of Section 81. As already indicated above, while it has been submitted, on behalf of the Petitioner, that the term of office of the Mayor or Deputy Mayor commences from the date of publication of the result of the election in the official Gazette in terms of Sub-section (3) of Section 81, what is contended, on behalf of Respondent No. 5, is that the date of election of the Mayor or the Deputy Mayor shall be the date on which the "first" meeting of the GMC is held and the result is declared by the Presiding Officer, i.e., the Commissioner of Plains Division, and that the publication of the Gazette notification u/s 81 (3) is not a condition precedent for the purpose of computing the date of election of the Mayor or Deputy Mayor. To the same effect is, as already indicated hereinabove, the contention of Mr. N. Dutta, learned Amicus Curiae, in as much as Mr. Dutta too submits that since, according to Sub-section (3) of Section 15, the Mayor, Deputy Mayor or Chairman shall be entitled to hold office from "the time of his election", it is but natural to infer that the election of the Mayor, Deputy Mayor or Chairman, for the purpose of computing their respective term, should be the "time of their election" and not the publication of the result of their election in the official Gazette. Substantially, therefore, the contention of Mr. BD Das, learned Counsel for the Respondent No. 5, and Mr. N Dutta, learned Amicus Curiae, are same with regard to the date from which the term of office of the Mayor or Deputy Mayor shall be treated to have commenced.

45. While ascertaining as to which of the two views- one presented, on behalf of the Petitioner, and the other, presented on behalf of the Respondent No. 5, and also the learned Amicus Curiae, - is correct, what needs to be borne in mind is that there is nothing in the GMC Act or the Rules framed thereunder that the election to the office of the Mayor, Deputy Mayor or Chairmen of various Standing Committees of the GMC shall be held after the expiry of the term of the Mayor, Deputy Mayor or Chairman of various Standing Committees of the GMC. Far from this, what Sub-section (3) of Section 15 shows is that the Mayor, Deputy Mayor or Chairman, as the case may be, shall be entitled to hold office

until election of his successor takes place provided that the Mayor, Deputy Mayor or Chairman does not, in the meantime, cease to be a Councillor.

46. What, thus, surfaces, in the light of the provisions of Sub-section (3) of Section 15, is that until the "election" to the office of the Mayor, Deputy Mayor or Chairman takes place, the Mayor, Deputy Mayor or Chairman, as the case may be, continues to hold his office till election of his successor takes place unless, of course, if he does not, in the meantime, cease to be a Councillor.

47. What is, now, of immense importance to note is that u/s 55 of the GMC Act. The term of the elected members of the GMC is for five years from the date of publication of the result of the general election and u/s 5(ix) of the GMC Act, the term of the office of the Mayor and Deputy Mayor shall be one year from "the date of their elections". Thus, ordinarily, as contended by Mr. BD Das, there shall be five Mayors and Deputy Mayors during the five-year term of the members of the GMC. However what is of paramount importance to note is that in terms of Sub-section (3) of Section 15, as already indicated hereinbefore, the Mayor, Deputy Mayor or Chairman shall hold the office until the time his successor is elected provided, in the meantime, he does not cease to be a Councillor meaning thereby that unless he ceases to be a Councillor or the over-all term of five years of the GMC, as conceived u/s 55, is complete, the Mayor, Deputy Mayor or Chairman, as the case may be, continues to hold the office for a term of, at least, one year and may, in a given case, until the election of his successor.

48. Thus, while Section 5(ix) makes the term of office of an elected Mayor, Deputy Mayor or Chairman one year, Sub-section (3) of Section 15 makes them continue until the election of their successors-in-office take place. If Sub-section (3) of Section 15 is taken to its logical end, it would, indisputably emerge that a functional Mayor, Deputy Mayor or Chairman would continue to hold office even beyond the period of one year and until the time the election of his successor takes place. The scheme of election of Mayor, Deputy Mayor and Chairman, as envisaged by the GMC Act, thus makes a clear distinction between an elected and functional Mayor, Deputy Mayor and Chairman, on the one hand, and an elected, but non functional Mayor, Deputy Mayor and Chairman, on the other.

49. What, thus, crystallizes from the above discussion is that though, ordinarily, the term of office of the Mayor or the Deputy Mayor shall be one year from date of their elections, it is, in a given case, possible that if there is delay in holding of the meeting of the GMC to elect a new Mayor or Deputy Mayor, during the subsistence of the term of a functional mayor or Deputy Mayor, the functional Mayor or the Deputy Mayor, who already holds the office, would continue beyond his term of one year and until a view set of Mayor or Deputy Mayor stands elected. Thus, there can be a situation, where all the Mayors and the Deputy Mayors may not get full term of one year.

50. It is also of great significance to note that while the "first" meeting of the Councillors of the GMC shall be held, in terms of Section 77, within six weeks

from the date of commencement of the result of the general election of the Councillors, the GMC Act and the Rules framed thereunder do not lay down any time-frame as to when the meeting to elect the successor to such a Mayor or Deputy Mayor shall take place. However, since the term of office of a Mayor and Deputy Mayor is one year from the date of his election, it is imperative that the elections be held before the expiry of the term of one year of the Mayor or the Deputy Mayor, who has been elected .in the very "first" meeting of the Councillors of the GMC, which is held, in terms of Section 77, within a period of six weeks from the date of the announcement of the result of the general election of the Councillors.

51. To put it differently, while it is possible that if there is delay in holding of elections to elect a new set of Mayor and Deputy Mayor, the functional Mayor and/or Deputy Mayor, as the case may be, can continue to remain as Mayor and/or Deputy Mayor beyond the period of one year from the date of their elections, it is not possible, under the scheme of the GMC Act, to reduce this period to less than one year from the date, when the functional Mayor or Deputy Mayor became entitled to assume charge of his office subject, of course, to the condition that such extended period of the term of office of a functional Mayor or Deputy Mayor cannot override the outer limit of the term of five years of the GMC as fixed u/s 55 of the GMC Act. In short, the term of the office of a functional Mayor or the Deputy Mayor cannot be reduced to less than one year, though such a term may extend beyond the period of one year, because of delay in holding of the elections to elect the successor-in office of such a functional Mayor or Deputy Mayor.

52. At any rate, in the light of the provisions of Section 15(3), it is possible that during the subsistence of the term of office of a functional Mayor, Deputy Mayor or Chairman, and before their term of office is complete, "elections" to the offices of the Mayor, Deputy Mayor or Chairman may take place and a newly elected set of Mayor, Deputy Mayor or Chairman for each of the five Standing Committees may emerge. Hence, if the date of election of a Mayor or Deputy Mayor is construed as the date on which he is declared elected by the Commissioner of Plains Division in terms of Rule 107, the resultant effect of such an interpretation would be that either there would be two sets of Mayor or Deputy Mayor at a given point of time or the term of functional Mayor or the Deputy Mayor, during the subsistence of whose term, the election for electing the new Mayor or Deputy Mayor took place, shall stand terminated even before his term of one year is actually complete. None of these two interpretations or constructions of the scheme of the GMC Act and the Rules framed thereunder can be said to be reasonable, pragmatic or workable, for, neither can there be two sets of Mayor and Deputy Mayor running their offices simultaneously nor would it be possible, in the face of the provisions of Section 5(ix) and 15(3), to snap and reduce the term of one year of the office of a functional Mayor or Deputy Mayor merely because elections for electing a new set of Mayor and Deputy Mayor has taken place.

53. What also needs to be noted is that the GMC (Election) Rules, 1973, is a piece of subordinate legislation and the same cannot override the GMC Act. Taking cue from Rule 107, it cannot be said that with the declaration of the result in terms of Rule 107, the term of the office of the Mayor or the Deputy Mayor commences. If such a broad meaning is allowed to be attributed to Rule 107, it would make the requirement of the publication of the result in the Gazette, in terms of Section 81(3), otiose, redundant and, at best, an idle formality leading to incongruent and highly unworkable situations as projected hereinabove. The interpretation, as suggested on behalf of the private Respondents, must, therefore, be eschewed.

54. That there can be, under a statute, a difference between a mere declaration of the result of an election, on the one hand, and the commencement of the term of an elected person, on the other, becomes abundantly clear if one carefully analyses, and bears in mind, the provisions of Article 83 of the Constitution of India, for, Article 83(2) shows that the term of five years of the House of People commences from the date appointed for its first meeting. Thus, though a person may stand elected as a member of the House of the People and his result may have been declared by the Returning Officer, his term of five years would not start running until the date appointed for the first meeting of the House of the People. Thus, there is a time-lag between the declaration of the result and the commencement of the term of a person as an elected representative. Similar, in spirit, is the scheme under the GMC Act and the Rules framed thereunder.

55. Because of what have been pointed out above, it becomes transparent that Section 15(3) warrants that during the subsistence of the term of a Mayor/ Deputy Mayor and/or of Chairmen of various Standing Committees, the elections for the offices of the Mayor/ Deputy Mayor and Chairman of various Standing committees should take place. If the date of election, for the purpose of computing the term of office of the Mayor or Deputy Mayor, within the meaning of Section 5(ix), be taken to be the date on which the polls for electing the Mayor/Deputy Mayor takes place, counting is done and the result is, in terms of Rule 107, declared by the Commissioner of Plains Division, the consequence would be, if I may reiterate, that during the subsistence of the term of office of a set of functional Mayor/Deputy Mayor and the Chairman of Standing Committees, Anr. set of elected, but non functional Mayor/Deputy Mayor and Chairman of various Standing Committees would surface. What would logically follow from such a situation is that there would be two Mayors, two Deputy Mayors and two Chairman for each of the Standing Committees. Attributing such a meaning to the expression "the date of their elections", which occurs in Section 5(ix), would make the entire scheme of the GMC Act absurd, illogical, incoherent, impractical and non-workable. The only way in which a coherent and logical meaning can be attributed to the expression "the date of their elections", occurring in Section 5(ix), is, if we interpret the expression "the date of their elections", to mean the date on which the Gazette Notification u/s 81(3) is published and the elected Mayor, Deputy Mayor or Chairman becomes functional. The publication of the

result of an election in terms of the scheme of an enactment, is, thus, a concomitant of an election process. One has to bear in mind that there is difference, howsoever subtle it may be, between a mere declaration of the result of an election and formal official confirmation of the result of the election by notifying the result of an election, as envisaged in an Act or the Rules, in order to enable an elected person to assume charge of his office and become functional.

56. Indeed, in the case at hand, the polls for the elections of the Mayor and Deputy Mayor, in which the Petitioner stood elected, took place on 11.01.2005. Since the result had been declared, according to the admitted case of the parties, on 11.01.2005, by the Presiding Officer in terms of Rule 107, the term of the present Petitioner shall be treated to have commenced, at the earliest, with effect from 11.01.2006. Since the new elections, in the present case, wherein Respondent No. 5, has participated in the election so held for the office of the Deputy Mayor, were held on 10.01.2006, it would mean, if Mr. BD Das's contention is taken to its logical conclusion, that even when the Petitioner was to continue until 10.01.2006 as the Deputy Mayor, Respondent No. 5 too would become a Deputy Mayor, on 10.01.2006, from the time of his election as envisaged by Sub-section (3) of Section 15. Thus, in a given case, if I may reiterate, it is possible that during the term of a Mayor or Deputy Mayor, the election for his successor-in-office takes place. If the date of the election has to be treated as the date of declaration of result by the Commissioner of Plains Division in terms of Rule 107, then, it would mean that either there shall be two Deputy Mayor on a given date or the term of the Mayor/Deputy Mayor (during subsistence of whose term of office, the elections to elect a new set of Mayor and Deputy Mayor took place) would stand terminated. Such interpretation will do violence to the meaning of the words, "term of office", which Section 5(ix) embodies. The only harmonious construction, which can be attributed to Section 5(ix) vis-a-vis Section 15(3), is that while it is possible, and, rather desirable, to hold election for the offices of the Mayor and Deputy Mayor during the subsistence of the term of office of Anr. set of already elected and functional Mayor or Deputy Mayor, yet the newly elected Mayor or Deputy Mayor would remain non functional. Such elected, but non functional Mayor or Deputy Mayor would be able to assume the charge of office and become functional only when the Gazette notification, in terms of Section 81(3), is published by the Government and, further, when the term of office of, at least, one year of the already elected and functional Mayor and Deputy Mayor is complete.

57. The object of publication of the result of the election of the office of the Mayor or Deputy Mayor, in terms of Section 81(3), is, therefore, not an idle formality nor is it aimed at merely giving information to the public at large about the result of the elections; rather, the object of the publication is to give final official confirmation to the result of the polls enabling the newly elected Mayor or Deputy Mayor to assume charge of his office and become functional as Mayor or Deputy Mayor.

58. What crystallizes from the above discussion is that ordinarily, during the subsistence of the term of a functional Mayor or Deputy Mayor and Chairman of the Standing Committees, election for the next Mayor should first take place and after the result of such an election is declared under Rule 107, the election for the next Deputy Mayor and, then, Chairman of various Standing Committees should take place in the same meeting in which the election of the Mayor has taken place; but the term of the offices of the newly elected Mayor/Deputy Mayor or Chairman functional Mayor/Deputy Mayor (during the subsistence of whose term, the elections have taken place,) is complete and a Gazette Notification, in terms of Section 81(3), is published. Thus, the publication of the result in the official Gazette, in terms of Section 81(3), is a condition precedent for a person to assume charge of the office of the Mayor/the Deputy Mayor.

59. The impression that when an enactment or Rules provide for publication of the result of an election, such publication forms an integral and inseverable part of the entire election process is strengthened from the fact that the Apex Court. In *Ram Pyare Choudhary (Supra)*, observed thus,

If the poll has become necessary and is held the unavoidable and inescapable stage of counting of votes and the next stage of announcement of result and subsequently publicizing the result are part and parcel and necessary adjuncts of conducting poll.

60. At yet Anr. place in *Ram Pyare Choudhary (Supra)*, the Apex Court observed and reiterated,

Mere holding of poll which means recording of votes without anything more would be inconsequential. It is the counting of votes and the consequent declaration of result showing who amongst the of votes which would determine who has become eligible for office by the democratic process. Therefore, recording of votes is a preliminary stage, the counting of votes and declaration of result are integral and inseparable election process can be said to be complete unless the votes are recorded, they are counted and those who have secured higher number of votes are declared elected and the result is publicized, as required by the relevant provision. Rule 445(1) provides that the term of office of the elected members of a Committee of Management of a cooperative society shall be three cooperative years including the cooperative year of their election. This provision indicates the terminus quo of commencement of the term, viz., that the term of office of the elected members would be three cooperative years including he year of their election. Election means process of being elected and the term of office is of the elected member, not of contesting member. When candidates offer themselves for election, they are called candidates and unless elected the term of such candidates would not commence. Their term would commence when elected. The expression year of their election even on literal and grammatical construction would mean the year in which the member concerned whose term is in dispute, is declared elected meaning thereby he become eligible for office and entitled to enter office as a member. Apart from

literal construction, the completed process of election comprehends nomination, recording of votes, counting of votes and declaration of result and publicizing and notifying the result. There ends the process of election. Recording of votes is a mere stage in the process of election. Even when votes are recorded, the candidates contesting the poll do not esquire the status of members of Committee of Management. That status is acquired on being declared elected. And unless that status is acquired the term of office as member cannot begin to run therefore the expression "cooperative year of their election year" upon true construction can only mean the year in which the member is declared elected and not the year in which he contested the poll.

61. On a microscopic reading of what the Supreme Court has observed in *Ram Pyare Choudhary (Supra)*, there can remain no room for doubt that not only that the announcement of the result of the election is imperative to bring to an end the process of election, but mat the process of election would also include, as an indispensable adjunct of conducting of poll, the publication of the result of the election in terms of the law relevant thereto. Hence, when, in the case at hand, the statute provides for publication of the result of the election in the Official Gazette, it logically follows, in the face of the scheme of the GMC Act, as discussed above, that the publication of the result of the election in the official Gazette, in terms of Section 81(3), is a condition precedent for enabling an elected Mayor or Deputy Mayor to become functional.

62. What is, however, important to note is that the once poll is held as a part of the programme of the election, it must progress to the statutory end of declaration of result and "unless the term begins to run, it cannot come to an end". Made it clear the Apex Court, in *Ram Piyare Choudhary (Supra)*, "Once poll was held as a part of the programme of the election it must progress to the statutory end of declaration of result. Unless the term begins to run, it cannot come to an end."

63. In a nutshell, what emerges from the above discussion is that the publication of the result of the election of the Mayor or the Deputy Mayor of the GMC, in terms of Sub-section (3) of Section 81 of the GMC Act, is a condition precedent for the purpose of enabling an elected Mayor or Deputy Mayor to assume charge of his office and that the term of such an elected Mayor or Deputy Mayor would start running from the date of publication in the Official Gazette. Thus, expression, "the date of their elections", which occurs in Section 5(ix), would mean the date of publication of the result of the election in the Official Gazette in terms of Sub-section (3) of Section 81.

64. What must also be borne in mind is that unless the term of an elected Mayor or Deputy Mayor commences with the publication of the result of their election in the official Gazette as envisaged by Section 81(3), the term of their office cannot start running and unless their term starts running, the question of the term being over by efflux of a period of one year from the date on which the result of the election was declared by the Presiding Officer, in terms of Rule 107, does not

arise at all.

65. Bearing in mind what has been pointed out above, when I revert to the factual matrix of the present case, what becomes glaringly noticeable to the eyes is that the election of the present writ Petitioner for the office of the Deputy Mayor took place on 11.01.2005 and the result of this election was declared on 11.01.2005 itself. However, the fact remains that due to interim directions passed, on 11.01.05, in WP(C) No. 254/05, the result of the election of the present Petitioner was kept in abeyance, the result was not acted upon and the result was not published in the Official Gazette in terms of Section 81(3). After the said writ petition was disposed of on 12.05.2005, on the same being withdrawn, the interim directions aforementioned were vacated on 12.05.05. The Gazette Notification, in terms of Section 81(3), then, came to be published on 16.05.2005.

66. What emerges from the discussion held above, as a whole, is that in the present case, since the declaration of the result, made under Rule 107 on 11.01.2005, had not been acted upon by publication of the official Gazette in terms of Section 81(3), the question of time having started running from the date of the said declaration, made on 11.01.2005, does not arise at all. In fact, the time started running with effect from 16.05.2005, when the publication of the result of the election in the official Gazette, in this regard, took place. The term of one year of the present Petitioner would, thus, be over on 15.05.2006. That such an eventuality is possible in a given case, when the Court passes an interim order is clear from the case of Dinesh Prasad Yadav (Supra), wherein, following the order of injunction passed in a civil suit, the result of the election had not been acted upon by making declaration and though the term of three years commencing from the date of the poll was over, the Apex Court made it clear that the term of the elected office-bearers had not started running without the requisite declaration having been made. Notwithstanding, therefore, the fact that the period of three co-operative year was over from the date of the poll, the Apex Court directed that the elected office-bearers be allowed to complete their term of office commencing from the declaration and publication of the result of their election.

67. In the case at hand, since the present Petitioner's term of one year had not started running with effect from 11.01.2005 and his term had, in fact, started running with effect from 16.05.2005, this Court, by allowing the present Petitioner.

68. In the case at hand, since the present Petitioner's term of one year had not started running with effect from 11.01.2005 and his term had, in fact, started running with effect from 16.05.2005, this Court, by allowing the present Petitioner to complete his term of one year, would not be acting contrary to the law in as much as it is the legal right of the present Petitioner to continue as elected Deputy Mayor of the GMC until completion of his full term on 15.05.2006 and the Respondent No. 5's right, if any, to assume charge of his office would

commence thereafter and, that too, on publication of the result of the election in the official Gazette in terms of Section 81(3). In view of the fact that Section 15(3) envisages that a Mayor or Deputy Mayor would continue to hold office until the election of his successor, the fact that Respondent No. 5's election has been held during the subsistence of the term of the present Petitioner does not make the election of the Respondent No. 5 illegal. The impugned Notification, dated 02.01.2006, whereby the present elections were convened and whereunder the new elections for electing Mayor and Deputy Mayor took place on 10.01.2006, cannot, therefore, be interfered with.

69. In the result and for the foregoing reasons, this writ petition partly succeeds. While the election of Respondent No. 5, as Deputy Mayor, is not interfered with, it is hereby directed that the Petitioner be allowed to complete the term of one year as elected Deputy Mayor of the GMC with effect from 16.05.2005. The interim directions passed in this writ petition, on 06.01.2006, shall accordingly stand vacated and the result of the election, in question, held on 10.01.2006, shall be declared and the Respondent No. 5 shall, if he is declared elected, be entitled to assume charge of the office of the Deputy Mayor after the expiry of the term of the present Petitioner and upon requisite publication of the Notification in the Official Gazette, in terms of Section 81(3), in favour of Respondent No. 5.

70. With the above observations and directions, this writ petition shall stand disposed of.

71. No order as to costs.