

**(1998) 02 AHC CK 0074**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 5184 of 1998**

Abdul Qayyum

APPELLANT

Vs

State of U.P. and others

RESPONDENT

**Date of Decision :** 18-02-1998

**Acts Referred:**

Constitution of India, 1950 — Article 14, 243(P), 243Q, 243R, 243R(2)  
Uttar Pradesh Municipalities Act, 1916 — Section 54(2), 87A

**Citation :** AIR 1998 All 223 : (1998) 2 AWC 1029 : (1998) 2 UPLBEC 918

**Hon'ble Judges :** M. Katju, J;D.K. Seth, J

**Bench :** Division Bench

**Advocate :** Vijendra Singh, for the Appellant;

**Final Decision :** Dismissed

## Judgement

D. K. Seth, J.—In this writ petition, vires of U. P. Act No. 14 of 1994 whereby Section 54(2) of the United Provinces Municipalities Act, 1916 (hereinafter called as the Act) has been sought to be substituted by way of amendment has been challenged.

2. Learned counsel for the petitioner Shri Vijendra Singh assailed the validity of the said amended Section 54 (2) of the Act on two grounds ; First, that the amendment is ultra vires to Article 243U of the Constitution and as such the same is invalid. Second, that the substituted Section 54 (2) of the Act is discriminatory and is violative of Article 14 of the Constitution, in that it introduces restriction on tenure of one year in respect of the office of the Vice-President while all other office bearers under different Acts have not been subjected to such restrictions and that it has been discriminatory between President and Vice-President.

3. We have heard Shri Vijendra Singh, learned counsel for the petitioner and the learned standing counsel at length.

4. Article 243U of the Constitution provides that "every Municipality" shall

continue for five years from the date appointed for its first meeting unless dissolved earlier. Clause (2) of Article 243U prohibits amendment in any law with regard to the dissolution of municipality before expiry of five years as mentioned in clause (1). Clause (4) provides that 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).

5. Mr. Singh sought to contend that the Amendment Act being Act No. 12 of 1994 seeking to limit tenure of the office of the Vice-President is hit by clause (2) of Article 243U.

6. Article 243U deals with the duration of Municipality. Municipality has been defined in Article 243P to mean "an institution of self-government constituted under Article 243Q. Article 243Q provides "Constitution of Municipalities" and Article 243R provides for "Composition of Municipalities". Clause (1) of Article 243R provides that Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area. Article 243R(2) empowers the State legislature to make law for providing representation in the Municipality and the manner of election of the Chair " person of the Municipality. Article 243ZF provides for continuance of existing laws of the Municipality as are not inconsistent with the provision of Part IXA of the Constitution. Part IXA of the Constitution has not laid down any provision with regard to the tenure of the office of the Vice-President.

7. Municipality and its members are two different and distinct entities. The Municipality is an institution of self-government comprising of the members. The members may be removed or replaced on account of disqualification or otherwise. The office-bearers may be elected or recalled/re moved and the five years term of the Municipality as contained in Article 243U is sure and certain even when a Municipality is dissolved and a fresh Municipality is constituted upon such dissolution, inasmuch as the fresh Municipality, if so constituted, would continue only for the residual part of five years mentioned in Article 243U. The Vice-Chairman or its members thus cannot be identified with the Municipality. Municipality is the Institution of which the Vice-Chairman is an office-bearer. He may be one of the components for composition of the Municipality but he is not the Municipality. Therefore, the period of tenure provided in Article 243U does not apply to the tenure of the office of Vice-President. Office-bearer of the Municipality is a distinct and separate entity from the institution inasmuch as while the Municipality is an institution, a body corporate, the office-bearers are elected for the time being from among the members of the institution. The election of Vice-Chairman having not been provided in Part IXA, by no stretch of imagination it can be said that the restriction of the tenure of office of Vice-Chairman to one year offends any provision contained in Part IXA and particularly Article 243T, which does not at all include the tenure of the office of the office-bearers. Therefore, we are unable to agree with the first contention of

Mr. Singh.

8. So far as the second contention of Mr. Singh is concerned, Section 54 of the Act provides for the election, term of office and resignation of Vice-President. The term of office has been provided in sub-section (2) of Section 54 of the Act providing one or residue period of membership whichever is less. Article 14 of the Constitution cannot be invoked on the ground that the term of the office of Vice-President under some other enactment is wider than Section 54 (2). Inasmuch as the Vice-President in respect of other authorities or bodies are a separate and distinct class by itself than that of the Vice-President elected under the Municipality Act. Absence of similar provisions in other enactments cannot be borrowed to invoke Article 14 of the Constitution. Similarly, President and Vice-President being altogether different nomenclature and being different posts cannot also be equated as similar class. They are distinct and separate classes by themselves. Part IXA was Included for introducing a democratic process to be followed unanimously throughout the territories of India. The entire stress, as borne by Part IXA, is on the democratic functioning of the institutions of self-government. If the State Legislature feels that it is in furtherance of the object or democratisation that Vice-President is to be elected by rotation without precluding an incumbent from seeking re-election, it furthers democratic ideals and process. Then again Section 87A of the Act provides for removal of the President by a no-confidence motion while no such provision has been provided for removal of the Vice-President. Sub-section (2) of Section 54 appears to be inconsonance with the provision incorporated in Section 87A that a no-confidence motion against a President cannot be brought within one year of his appointment. Instead of providing for removal of Vice-President through no-confidence, the tenure having been restricted to one year, it presupposes re-election of the Vice-President with the confidence of the members after the expiry of such tenure. Therefore, we see no reason to hold that by reason of incorporation of sub-section (2) of Section 54 by way of amendment replacing the old one Article 14 of the Constitution is offended on either of the two grounds argued by Mr. Singh. Therefore, we are unable to persuade ourselves to agree with the second contention of Mr. Singh"as well.

9. In the result, we find no merit in the contention of Mr. Singh and there is no justifiable ground to hold that the amendment is inconsistent with Article 243U of the Constitution or for that matter Part IXA of the Constitution or to hold that it offends Article 14 of the Constitution.

10. The writ petition fails and is rejected.

11. However, there will be no order as to cost.