

(2015) 03 KAR CK 0111

In the Karnataka High Court

Case No : Writ Petition Nos. 7939-40/2015 (LB-BMP), 8041 and 8318/2015 (LB-ELE)

C.K. Rama Murthy and Others

APPELLANT

Vs

State Election Commission and Others

RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Constitution of India, 1950 — Article 243K, 243-K, 243K(3), 243Q, 243T
Karnataka Municipal Corporations Act, 1976 — Section 21, 21(3), 3, 4, 421

Citation : (2015) 4 AKR 206 : (2015) ILR Kar 2724 : (2015) 4 KarLJ 8

Hon'ble Judges : B.V. Nagarathna, J.

Bench : Single Bench

Advocate : D.N. Nanjunda Reddy, Senior Counsel for Nishanth A.V., for the Appellant; K.N. Phaneendra, SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

B.V. Nagarathna, J.—"A democratic form of Government would survive only if there are elected representatives to rule.... Any decision to postpone elections on unreasonable grounds is anathema to a democratic form of Government and it is subject to judicial review on traditionally accepted grounds..... It is the duty of the State Election Commission to see that election is done in a free and fair manner to keep democratic form of Government vibrant and active." Election Commission, In Re: Special Reference No. 1 of 2002, (2002) 8 SCC 237 (Gujarat Assembly Election matter). The aforesaid observations of the Hon'ble Supreme Court have been relied upon by the petitioners in these cases to seek a direction to respondent-State Election Commission ("Commission" for short) to hold election to the respondent-Bruhat Bengaluru Mahanagara Palike (BBMP) on or before 22.4.2015. A direction is also sought to determine the wards and reservation of seats for the purpose of holding election on completion of the present term of the Corporation.

Factual Matrix:

2. Petitioners in W.P. Nos. 7939-40/2015 are presently holding the office of Councillors of BBMP representing Ward No. 168-Pattabhiramanagar and Ward No. 179-Shakambarinagar respectively, whereas the petitioners in W.P. No. 8041-8318/2015 are elected Councillors of Ward No. 187-Puttenahalli and Ward No. 51-Vijinapura Ward respectively. It is their case that election to Bengaluru Mahanagara Palike was held on 11.11.2001 and the term of the Corporation was for a period of five years which came to an end in November 2006. However, the State Government did not hold election in time on the ground that there was a proposal mooted by the State Government to reconstitute the territorial jurisdiction of Bengaluru Mahanagara Palike ("BMP" for short) by inclusion of seven City Municipal Councils and one Town Municipality. Therefore, an administrator was appointed by the State Government to look after the affairs of BMP. At that stage, one Sri. P.R. Ramesh, a former Councillor questioned before this Court the appointment of an administrator in W.P. No. 15482/2006. The Division Bench of this Court by its order dated 2.7.2008, allowed the writ petition and directed the State Government to conduct election to BMP by initiating steps at the earliest. That order was assailed before the Hon'ble Supreme Court, which also vacated the stay granted earlier. Subsequently, the Commission published notification dated 6.3.2010 to hold elections to BBMP and elections were held and the first meeting of the newly constituted Corporation was held on 23.4.2010. It is averred that the period of five years has to be reckoned from the date of the first meeting and therefore the term of the present Council would come to end on 22.4.2015. According to the petitioners, the State Government would have to hold elections and discharge its constitutional obligations as stipulated in Article 243U of the Constitution. However, there have been no steps initiated in that direction, instead the State Government has mooted a proposal to bifurcate or even trifurcate BBMP and there have been several correspondences in that regard between the District in-charge Minister of Bengaluru and the Hon'ble Chief Minister. In fact, the Councillors have discussed the issue regarding division of BBMP and the Council has unanimously resolved that no such division may take place. However Government of Karnataka has constituted a Committee under the Chairmanship of Sri. B.S. Patil, Former Chief Secretary to conduct a study with regard to division of BBMP. The said Committee had to submit its Report in three months time from the date of its constitution i.e., 22.9.2014. But, the term of the Committee has been extended for a period of six months from 24.12.2014. By the time the Report is submitted, the term of the Corporation would expire and that the State Government has adopted dilatory tactics to postpone holding of election to BBMP, is the contention of the petitioners.

3. Placing reliance on the provisions of the Constitution and the observations of the Hon'ble Supreme Court in the case of Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and Others, , petitioners have sought a direction to the respondent-authorities to hold elections by 22.4.2015.

4. Respondent-State has not filed any objections, but has filed two memos after

conclusion of arguments in the matter. On 19.3.2015, a memo was filed enclosing a copy of show cause notice dated 18.3.2015 issued by the State Government to the Councillors, Commissioner of BBMP and others under Section 99 of the Karnataka Municipal Corporation Act, 1976 (hereinafter referred to as "the Act" for the sake of brevity) seeking explanation on or before 30.3.2015 and to show cause as to why action under Section 99 of the Act should not be initiated against them. On the previous day i.e., 18.3.2015 another memo was filed on behalf of the State enclosing Government Order dated 22.9.2014 by which the Committee was constituted to submit a Report of bifurcation/trifurcation of BBMP.

5. Learned counsel for Commission has filed a statement stating that the Commission has been making sincere efforts since 17.6.2013 to ensure holding election to the respondent-BBMP in time, but its efforts in that direction have been futile, as the State Government has not taken steps to notify delimitation of wards or reservation of seats in respect of 198 constituencies or wards of BBMP. Copies of the correspondences have been annexed to the statement. It has been stated that delimitation of wards for the purpose of election to the Corporation had to be undertaken by the State Government under Section 21 of the Act and thereafter reservation of seats had to be made under section 7 of the Act. That the Commission is a constitutional authority under Article 243K of the Constitution and superintendence, direction and control of the preparation of the list of voters and conduct of elections to the Municipal Corporations is vested in the Commission under Article 243ZA read with Section 55 of the Act. That the Commission is not the prescribed authority for undertaking the exercise of delimitation of wards and reservation of seats. Unless the said exercise is carried out by the State Government, the Commission would not be in a position either to declare or to conduct election to BBMP. That on the receipt of the Census Report of 2011, the Commission had addressed letter dated 17.6.2013 to the Principal Secretary, Urban Development Department requesting the State Government to undertake the exercise of delimitation of wards of all urban local bodies and to furnish list of delimitation of wards and reservation of seats to the Commission at least twelve months prior to the date of elections. Subsequently, reminders have been addressed by the Commission to the State as the term of office of BBMP would expire shortly and election has to be held. Orders of this Court as well as the Hon"ble Supreme Court have been referred to by the Commission requesting the State Government to furnish details of issuance of notification of delimitation of wards and reservation of seats. According to the Commission, there has been no response to those letters. The Commission has also appraised the State Government about the judgment of the Supreme Court in the case of Kishansingh Tomar and it is the case of the Commission that despite several reminders, the State Government has not taken steps with regard to delimitation of wards as well as reservation of constituencies. It is further averred that the Commission has passed order dated 29.1.2015 nominating the Deputy Commissioner of Bengaluru and other such officers as the

District Election Officers in respect of different zones for the purpose of preparation of electoral rolls for conduct of elections. The said order has been published in the official gazette on 29.1.2015. Subsequently on 7.2.2015, officers have been nominated as Returning Officers, Additional Returning Officers and Assistant Returning Officers respectively for the purpose of conduct of election to BBMP.

6. In response, Commissioner of BBMP has passed an order on 13.2.2015 nominating the Electoral Officers for the purpose of preparation of ward wise voters list for the ensuing election, which order has been published in the official gazette on 18.2.2015. The Commission has also averred that steps have been taken to get Hand Books containing guidelines to the Returning Officers and the other Polling Staff of Election Zones published for the purpose of holding election to the BBMP and also steps have been initiated for supply of indelible ink needed on the date of poll.

7. According to the Commission, a period of two months is required after the notification of delimitation of wards and reservation of wards by the State Government for the purpose of identification of the polling stations and for taking steps with regard to holding of polls and announcing results. It has been stated that it is not possible to prepare voters' list before delimitation of the wards as boundaries of 198 wards may vary while carrying out the exercise of delimitation of wards and the voters of one particular ward may be shifted to another ward. All these exercises are, a time consuming process and therefore according to the Commission, a minimum period of two months is required after issuance of the notifications regarding delimitation of wards and reservation of wards by the State Government. It is contended that a period of six weeks is required as per the calendar of events to hold election and announce results and thus a period of 3 1/2 months is required to conduct election after the notification of delimitation of wards and reservation of wards by the State Government. In the above context, the Commissioner has sought for appropriate directions in the matter.

BBMP has not filed any objections in the matter.

Contentions:

8. I have heard learned senior counsel instructed by learned counsel, for the petitioners, learned Advocate General for the State and learned counsel for the respondent-Commission and the BBMP and perused the material on record.

9. Drawing my attention to the provisions of the Constitution, learned senior counsel appearing for the petitioners contended that constitution of Municipalities is envisaged under Article 243Q of the Constitution. Under clause 1 of Article 243U, every Municipality, unless sooner dissolved has a life term of five years from the date appointed for its first meeting and no longer. Therefore by the end of the term of five years, a new Council has to be constituted. This is also envisaged under sub-clause (a) of Clause (3) of Article 243U, which states that an election to constitute a Municipality shall be completed before the expiration

of its duration specified in clause (1). Hence, they contended that there is a constitutional obligation and mandate to hold election before the term of the Council comes to an end and in the instant case, it is 22.4.2015, by placing reliance on the opinion of the Hon''ble Supreme Court in Special Reference No. 1 of 2002.

10. They further contended that having regard to the dictum of the Hon''ble Supreme Court in the case of Kishansingh Tomar, unless there are natural calamities which would make it impossible for holding election in time, no reason can be given by the State Government for escaping the mandate of the Constitution. They contended that the State Government in the instant case has been slack in not taking steps with regard to delimitation of constituencies and reservation of wards after the publication of census figures in the year 2013 and as a result, the State Government is pleading difficulties in holding election in time, which cannot be the case having regard to the constitutional mandate. They therefore contended that this is a fit case where this Court ought to issue directions to the State Government to hold election to BBMP in time.

11. In response, learned Advocate General appearing for the State put-forth the plea that the State Government has constituted a Committee to examine the issue of division of BBMP into two or three units. This has become necessary on account of the merger of other Municipalities and Town Panchayath to the BMP made in the year 2007 being a disastrous exercise. The Committee is yet to submit its Report and it has time to do so till June 2015. On studying the Report of the Committee, a decision would be taken with regard to the bifurcation or trifurcation of BBMP. When once that decision is taken, then BBMP would not be in existence. So at this stage, it is not necessary to hold election on account of the proposed division of BBMP. He therefore contended that this Court may not issue any direction to hold election.

12. Along with a memo, Government Order constituting the Committee and also the time granted to the Committee to submit its Report has been produced. He also submitted that if BBMP does not exist at all, then Article 243U would not apply and that is another reason why no direction need be issued to the respondents at this stage. Contending that after a decision is taken with regard to bifurcation or trifurcation of BBMP, voters'' list would be updated, delimitation of constituencies would be made and reservations of seats would be made afresh in respect of the remaining Larger Area. As the State Government has not taken up any such exercise, election to BBMP cannot be held, was the contention of the State.

13. Along with another memo, a copy of the show cause notice dated 18.3.2015 was filed by the State Government to contend that action would be initiated under Section 99 of the Act for dissolution of the BBMP and therefore at this stage, it would be futile to give directions to hold election as BBMP itself would be dissolved and an administrator would be appointed in which case election would have to be held within a period of six months from the date of

appointment of administrator if by then division of BBMP does not take place. In the circumstances, it was contended that the expiry of the term of present Council would become irrelevant and for that reason also no direction could be issued for holding election by 22.4.2015. Learned Advocate General submitted that the writ petition would not call for any directions to be issued at this stage with regard to holding election to BBMP and that no fault could be found with the State Government for not taking steps pursuant to the publication of the Census figures.

14. On the other hand, learned counsel for the Commission submitted that having regard to the dicta of the Hon''ble Supreme Court that there can be no excuse to postpone election and having regard to the paucity of time, on the existing delimitation of constituencies and reservation of seats which was made for the election held in the year 2010, poll could be held if directions are issued in that regard.

15. Learned counsel for the Commission submitted a compilation comprising of orders of this Court as well as orders of the Hon''ble Supreme Court with regard to holding election for BBMP between the years 2006 and 2010. While being apologetic and pleading helplessness in the matter, learned counsel for Commission nevertheless accepted the fact that the Commission being an independent constitutional body is under a duty to hold election in time.

16. Learned counsel for BBMP stated that the term of the present Council would come to an end on 22.4.2015 and that appropriate directions may be issued in the matter.

17. In reply, learned senior counsel for petitioners contended that the issue regarding bifurcation or trifurcation of the BBMP is a non-issue as far as the present Council is concerned. Having regard to the mandate of Article 243U of the Constitution, they contended that any proposal the State Government may have with regard to bifurcation or trifurcation of BBMP has no relevance to the holding of election on or before 22.4.2015. Therefore, it was their submission that the State Government cannot take umbrage under the proposal to divide BBMP to escape from mandate of the Constitution. According to them, whatever may be the proposal of the State Government, they would be put into action as and when the Report of the Committee is submitted and accepted by State Government and decision taken, which is a long-drawn out process and the State Government cannot use that as a reason or excuse or ruse to postpone holding of election to the Civic Body.

18. Learned Senior Counsel for petitioners also contended that issuance of the show cause notice by the State Government under Section 99 of the Act is also mis-conceived. According to them, even if for a moment, it is to be assumed that the present Council is to be superseded and an administrator is to be appointed, that would not extend the time for holding election to BBMP. The appointment of an administrator is no doubt for a period of six months at the most, but

appointment of administrator at the present juncture would not automatically grant time of six months to the State Government to hold election to the Civic Body. Referring to Article 243U, they contended that if there is a dissolution of the Corporation and an administrator appointed thereon, such appointment of administrator is for a maximum period of six months from the date of dissolution and before the expiration of a period of six months election would have to be held. They referred to proviso to clause (3) and also clause (4) of the Article 243U to contend that those provisions do not provide for a hiatus when once the term of the Corporation expires even if an administrator is to be appointed. They, therefore, contended that excuses given by the State Government may not weigh with the Court so as to decline issuance of directions in the matter.

Point for consideration:

19. Having regard to the provisions of the Constitution and the Act, whether any direction could be issued for holding election to the BBMP?

Legal Framework:

20. At this stage, it would be relevant to refer to the relevant Constitutional provisions. Chapter IX-A of the Constitution deals with Municipalities. Article 243Q speaks of three kinds of Municipalities, which reads as under:

"Article 243Q. Constitution of Municipalities:--

(1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township. (2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part."

Article 243U, which is to be considered in the instant case speaks about the duration of Municipalities and it reads as under:

"Article 243U. Duration of Municipalities, etc-

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution. (2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in Clause (1).

(3) An election to constitute a Municipality shall be completed, -

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved."

Article 243ZA speaks about elections to the Municipality, which is extracted as under:--

"Article 243ZA.-Elections to the Municipalities.-

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities."

The relevant provisions of the Act can be referred as under:--

"8. Term of office of Councillors.

(1) Save as otherwise provided in this Act, the term of office of Councillors,-

(i) directly elected at a general election shall be five years;

(ii) nominated by the Government under clause (b) of sub-section (1) of section 7 shall, subject to the pleasure of the Government, be five years.

(2) The term of office of the Councillors shall commence on the date appointed

for the first meeting of the corporation.

(3) Notwithstanding anything contained in this Act, where two-thirds of the total number of Councillors required to be elected have been elected, the Corporation shall be deemed to have been duly constituted under this Act.

(4) If any casual vacancy occurs it shall be filled, as soon as may be, by the election of a person thereto. The person so elected shall hold office only so long as the person in whose place he is elected would have held had the vacancy not occurred:

Provided that no election to fill a casual vacancy shall be held if the vacancy occurs within four months before the expiry by efflux of time of the term of office of the Councillors. (5) A Councillor may resign his office at any time by notice in writing addressed to the Mayor and delivered to him and such resignation shall take effect from the date on which it is delivered.

xxx

99. Power of Government to dissolve Corporation.--(1) If in the opinion of Government the Corporation is not competent to perform or makes default in the performance of any of the duties imposed on it or undertaken by it, by or under this Act or any other law for the time being in force or exceeds or abuses its powers or fails to carry out the directions or orders given by Government to it under this Act or any other law or is acting in a manner prejudicial to the interests of the Corporation, the Government may, by an order published, together with a statement of the reasons therefor, in the official Gazette, declare the Corporation to be incompetent or in default or to have exceeded or abused its powers, or to have failed to carry out the directions given to it, or to have acted in a manner prejudicial to the interests of the Corporation, as the case may be, and may [dissolve it].

Provided that before making an order of dissolution as aforesaid reasonable opportunity shall be given to the corporation to show cause why such order should not be made. (2) When the corporation is dissolved by an order under sub-section (1), the following consequences shall ensue,-

(a) all the Councillors of the Corporation shall, on such date as may be specified in the order, cease to hold office as such Councillors without prejudice to their eligibility for election under sub-section (8);

(b) during the period of dissolution of the Corporation, all powers and duties conferred and imposed upon the Corporation and the Standing Committees of the Corporation by or under this Act or any other law shall be exercised and performed by an Administrator appointed by Government in that behalf;

(c) all property vested in the Corporation shall, until it is reconstituted, vest in Government.

(3) Government may direct that the Administrator shall be a whole-time officer

and when such a direction is issued, he shall be paid out of the Corporation funds such monthly salary and allowances as Government may from time to time, by order, determine and the Corporation shall make such contribution towards the leave allowances, pension and provident fund of the officer as may be required by the conditions of service under the Government, to be paid by him or for him, as the case may be.

(4) During the period of dissolution of the Corporation, references in any enactment or law for the time being, in force to the Mayor of the Corporation shall be construed as references to the Administrator appointed under clause (b) of sub-section (2).

(5) During the period of dissolution of the Corporation, the Administrator shall in the discharge of his functions be guided by such directions in matter of policy involving public interest as the Government may by order specify; and if any question arises whether a direction relates to a matter of policy involving public interest the decision of the Government shall be final.

(6) Government may, by notification, appoint an advisory committee consisting of not less than fifteen and not more than twenty-five persons who shall be qualified to become Councillors under this Act to assist the Administrator.

(7) x x x

(8) When a Corporation is dissolved it shall be reconstituted in the manner provided under this Act before the end of six months from the date of such dissolution:

Provided that where the remainder of the period for which the dissolved Corporation would have continued is less than six months it shall not be necessary to hold an election under this section for constituting a Corporation for such period. (9) A corporation constituted upon the dissolution before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Corporation would have continued had it not been so dissolved.

(10) An order of dissolution of the Corporation under sub-section (1) together with a statement of the reasons therefor shall be laid before both Houses of the State Legislature as soon as may be after it is made."

Relevant Judicial Precedents:

21. Before analyzing the provisions of law and having regard to the background of the present case, it would be appropriate to cite the relevant judicial precedents at this stage.

a) Referring to His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , the Hon"ble Supreme Court, in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, observed as under:

"198. This Court in the case of Kesavananda Bharati held by majority that the power of amendment of the Constitution contained in Article 368 does not permit altering the basic structure of the Constitution. All the seven Judges who constituted the majority were also agreed that democratic set-up was part of the basic structure of the Constitution. Democracy postulates that there should be periodical elections, so that people may be in a position either to re-elect the old representatives or, if they so choose, to change the representatives and elect in their place other representatives."

(Underlining by me)

b) The judgments of the Hon"ble Supreme Court on various facets concerning holding election in time may be adverted to at this stage.

(i) Re: Free and Fair Periodical Election:

"It is no doubt true that democracy is a part of the basic feature of the Indian Constitution and periodical, free and fair election is the substratum of democracy. But, there is no free and fair periodic election, it is a doomsday for democracy. This was emphasized in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, thus:

"12. A free and fair election based on universal adult franchise is the basic, the regulatory procedures vis-?-vis the repositories of functions and the distribution of legislative, executive and judicative roles in the total scheme, directed towards the holding of free elections, are the specifics. The super authority is the Election Commission, the kingpin is the Returning Officer, the minions are the presiding officers in the polling stations and the electoral engineering is in conformity with the elaborate legislative provisions." So far as the framing of the schedule or calendar for election is concerned, according to the Hon"ble Supreme Court, the same is in the exclusive domain of the Election Commission, which is not subject to any law framed by Parliament. In Special Reference No. 1 of 2002, it has been observed that "Parliament is empowered to frame law as regards conduct of elections but conducting elections is the sole responsibility of the Election Commission. As a matter of law, the plenary powers of the Election Commission cannot be taken away by law framed by Parliament. If Parliament makes any such law, it would be repugnant to Article 324. Holding periodic, free and fair elections by the Election Commission are part of the basic structure."

In the words of the Constitution Bench of the Supreme Court in T.N. Seshan v. Union of India (1995) 4 SCC 611ENDLAWFINDER :

"Democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country. In order to ensure the purity of the election process it was thought by our Constitution-makers that the responsibility to hold free and fair elections in the country should be entrusted to an independent body which would be insulated from political and/or

executive interference." Thus Election conducted at regular, prescribed intervals is essential to the democratic system envisaged in the Constitution. So is the need to protect and sustain the purity of the electoral process.

(ii) Re: CONSTITUTIONAL SCHEME OF HOLDING ELECTION:

"According to the Hon'ble Supreme Court, the constitutional scheme with regard to holding of the elections to Parliament and the State Legislatures is quite clear. First, the Constitution has provided for the establishment of a high-powered body to be in charge of the elections to Parliament and the State Legislatures and of elections to the offices of President and Vice-President. That body is the Commission. Article 324 of the Constitution contains detailed provisions regarding the constitution of the Commission and its general power. The superintendence, direction and control of the conduct of elections referred to in Article 324(1) of the Constitution are entrusted to the Commission. The words "superintendence", "direction" and "control" are wide enough to include all powers necessary for the smooth conduct of elections. The general powers of superintendence, direction and control of the elections vested in the Commission under Article 324(1) naturally are subject to any law made either under Article 327 or under Article 328 of the Constitution. The word "election" in Article 324 is used in a wide sense so as to include the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the result of the process. Article 324 of the Constitution operates in areas left unoccupied by legislation and the words "superintendence", "direction" and "control" as well as "conduct of all elections" are the broadest terms which would include the power to make all such provisions. Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , A.C. Jose Vs. Sivan Pillai and Others, and Kanhiya Lal Omar Vs. R.K. Trivedi and Others, .

Thus, the Election Commissioner is a high Constitutional Authority charged with the duty of ensuring free and fair election and the purity of electoral process. But man-made situation intended to defer holding of election should be sternly dealt with and should not normally be a ground for deferring election vide. In re: Special Reference No. 1 of 2002.

In Election Commission of India Vs. State of Tamil Nadu and Others, , it was observed: (SCC p.381, para 5) as under:

"5. The Election Commission of India is a high constitutional authority charged with the function and the duty of ensuring free and fair elections and of the purity of the electoral process. It has all the incidental and ancillary powers to effectuate the constitutional objective and purpose. The plenitude of the Commission's powers corresponds to the high constitutional functions it has to discharge. In an exercise of the magnitude involved in ensuring free and fair elections in the vastness of our country, there are bound to be differences of perception as to the law and order situation in any particular constituency at any

given time and as to the remedial requirements. Then again, there may be intrinsic limitations on the resources of the Central Government to meet in full the demands of the Election Commission. There may again be honest differences of opinion in the assessment of the magnitude of the security machinery. There must, in the very nature of the complexities and imponderables inherent in such situations, be a harmonious functioning of the Election Commission and the Governments, both State and Central. If there are mutually irreconcilable viewpoints, there must be a mechanism to resolve them. The assessment of the Election Commission as to the state of law and order and the nature and adequacy of the machinery to deal with situations so as to ensure free and fair elections must, prima facie, prevail. But, there may be limitations of resources. Situation of this kind should be resolved by mutual discussion and should not be blown up into public confrontations. This is not good for a healthy democracy. The Election Commission of India and the Union Government should find a mutually acceptable coordinating machinery for resolution of these differences."

(iii) Re: Role of State Election Commission:

"The words, "superintendence, direction and control" as well as "conduct of elections" have been held in the "broadest of terms" by the Hon"ble Supreme Court in several decisions including Special Reference No. 1 of 2002, and this is equally relevant in respect of the powers of the State Election Commission as well. According to the Hon"ble Supreme Court in Kishansing Tomar, while referring to Article 243ZA, it held thus:

"From a reading of the said provisions it is clear that the powers of the State Election Commission in respect of conduct of election is no less than that of the Election Commission of India in their respective domains. These powers are, of course, subject to the law made by Parliament or by the State Legislatures, provided the same do not encroach upon the plenary powers of the said Election Commissions. The State Election Commissions are to function independent of the State Governments concerned in the matter of their powers of superintendence, direction and control of all elections and preparation of electoral roll for, and the conduct of, all elections to the panchayats and municipalities.

xxx

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

Also, for the independent and effective functioning of the State Election

Commission, where it feels that it is not receiving the cooperation of the State Government concerned in discharging its constitutional obligation of holding the elections to the panchayats or municipalities within the time mandated in the Constitution, it will be open to the State Election Commission to approach the High Courts, in the first instance, and thereafter the Supreme Court for a writ of mandamus or such other appropriate writ directing the State Government concerned to provide all necessary cooperation and assistance to the State Election Commission to enable the latter to fulfill the constitutional mandate."

(iv) Re: Holding of election in time to Local Bodies:

"In *Kishansing Tomar*, the appellant therein sought a writ of mandamus or any other appropriate writ or direction to the respondents in the writ petition, namely, the Municipal Corporation of the City of Ahmedabad, the State of Gujarat and the Gujarat State Election Commission, to take all steps necessary for the purpose of holding elections for constituting the Municipal Corporation of the City of Ahmedabad before the expiry of the duration of the Municipal Corporation constituted pursuant to the elections held in October 2000." The Hon'ble Supreme Court opined thus:

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

"In many States, local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-government." 13.....Under this article, the duration of the municipality is fixed for a term of five years and it is stated that every municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243U states that election to constitute a municipality shall be completed-(a) before the expiry of its duration specified in clause (1), or (b) before the expiration of a period of six months from the date of its dissolution. Therefore, the constitutional mandate is that election to a

municipality shall be completed before the expiry of the five years" period stipulated in clause (1) of Article 243U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner. A proviso is added to sub-clause (3) of Article 243U that in case of dissolution, the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the municipality for such period. It is also specified in clause (4) of Article 243U that a municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued under clause (1) had it not been so dissolved.

14. So, in any case, the duration of the municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new municipality is constituted in time and elections to the municipality are conducted before the expiry of its duration of five years as specified in clause (1) of Article 243U.

xxx

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

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

21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the

authorities from holding elections to the municipality, but they are exceptional circumstances and under no (sic other) circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects. It is only when the municipality is dissolved for any other reason and the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the municipality for such period.

22. In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State Governments to recognize the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for Parliament and the State Legislatures. In fact, in the domain of elections to the panchayats and the municipal bodies under Part IX and Part IX-A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.

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

22. At this stage, the relevant judicial precedents with regard to holding election to BBMP could be referred to.

a) In P.R. Ramesh - Vs- State of Karnataka and Others (W.P. No. 15482/2006 and connected writ petition), a Division Bench of this Court on 2.7.2008 considered petitioner's case therein seeking issuance of calendar of events to hold election to BMP and the validity of the notification appointing an Administrator for BMP. The said writ petitions were in the nature of public interest litigation. In those writ petitions, the stand of the State Government was that there was a proposal for re-constitution of the territorial jurisdiction of BMP which was mooted in June 2005. Bangalore City Corporation, surrounded by seven City Municipal Councils and one Town Municipal Council, were proposed to be integrated with Bangalore City Corporation, for all practical purposes, in order to provide better services and development, to form BBMP. Thereafter, a draft notification was issued to constitute BBMP on 2.11.2006 and on 8.11.2006, Government Order was issued to complete delimitation of wards. In the said writ

petitions, this Court held as under:--

"15. In the light of the law declared by the Apex Court in the aforementioned judgment, the contentions urged by respondents 1 and 2 stating that due to merger or amalgamation of different urban local bodies and panchayats into the Mahanagara Palike to establish what is known as Bruhat Bangalore Mahanagara Palike, it had become necessary to appoint an Administrator and defer the elections, cannot be accepted as a legal and justifiable ground to postpone the elections and continue the affairs of the local body by appointing an Administrator.

16. Even if it is assumed, as is sought to be urged in the detailed statement of objections filed by the State Government, that there was no deliberate intention on the part of the Government to postpone the elections and to appoint the Administrator and that postponement of the elections was a bona fide act on the part of the State Government, the action taken cannot be justified. As the whole process of merger of the urban local bodies and some villages situated around the Mahanagara Palike was initiated way back in the year 2005 and as elections could not have been held without completing the delimitation process for the areas included in the Mahanagara Palike, it cannot be inferred that the postponement was a mala fide act. However, this cannot come to the rescue of the State Government and the 2nd respondent for justifying an otherwise impermissible or illegal act, as the law on the point is interpreted and declared by the Apex Court holding that no excuse can be put forth for not completing the elections within time and before the expiry of the period of the elected body.

17. Having said so, the present realities and the developments that have taken place are also required to be looked into. Revision of electoral rolls has taken place as elections to the Legislative Assembly were conducted in the State during the month of May 2008. The State Government ought to have initiated steps to conduct the elections to the Bruhat Bangalore Mahanagara Palike in accordance with law. Without there being any justification, the process of elections is deferred and the Administrator is continued. Such a situation cannot be permitted as it violates the provision contained under Article 243-U. Therefore, in our view, it is just and necessary to direct the State Government to conduct elections to the Bruhat Bangalore Mahanagara Palike initiating steps in this regard at the earliest."

Thereafter, on 31.3.2009, two months time was granted from 1.6.2009 for completion of the electoral process. In CCC No. 196/2009, this Court extended the time for conducting the election by another four months from 1.6.2009.

b) In W.P. No. 15482/2006 and connected matters, specific directions were issued on 17.9.2009 for conduct of election. Those writ petitions were followed by Writ Appeals, which were disposed on 8.12.2009. (K. Devan v. State of Karnataka and Others in W.A. No. 4331/2009 and connected writ petitions) by a Division Bench of this Court (of which I was a member). In those batch of cases,

the legality and validity of notification dated 30.11.2009 making reservation for various categories in 198 wards of BBMP were assailed. Taking note of the earlier orders of this Court and by placing reliance on Kishansingh Tomar and other judgments of the Hon"ble Supreme Court, directions were issued for holding elections in time. The relevant portions are at para 34, 35 and 36, which are as under:

"34. In view of the said memo filed by the State, the Election process can go on as per the notification issued by the State Election Commission. We, however direct the first respondent to re-do the reservation of seats for reserved categories of the Scheduled Caste and Scheduled Tribes in conformity with Article 243T of the Constitution of India and Section 7 sub-Section (2) clauses (a) and (b) and provisos of the said Section in respect of 198 constituencies of BBMP, on the basis of the statistics regarding the population of Scheduled Caste and Scheduled Tribe available with the State Government on the basis of the population census of 2001 which is also made available by the petitioners at Annexure-B in W.P. No. 35885/09, by strictly adhering to the said provisions of the Constitution of India and KMC Act including the rotation of seats regarding reservation of various categories.

35. For the reasons stated supra, we are not interfering with either the determination of the wards or the notification dated 7.12.2009 of State Election Commission in scheduling the calendar of events for conduct of Election to the BBMP. But the aforesaid direction shall be complied with by the first respondent and submit a report of compliance within two weeks to facilitate the State Election Commission and the Commissioner of BBMP to go ahead with the elections of BBMP as per the decision rendered by this court in W.P. No. 15482/06 and connected matters strictly adhering to the schedule mentioned in the notification dated 7.12.09 issued by the second respondent-State Election Commission.

36. For the reasons stated supra, we pass the following order:

(i) Writ Appeal No. 4331/2009 partly succeeds. Paragraph Nos. 5 and 6 in the Government Order dated 21.7.2009 pertaining to guidelines regarding reservation without affecting determination of the wards are hereby quashed.

(ii) Writ Petition Nos. 35885/2009, 35886/2009, 35917/2009, 35918/2009, 35919/2009, 36138-36145/2009, 36279/2009, 36280/2009, 36282/2009, 36357/2009 are partly allowed quashing only the reservation made insofar as Scheduled Caste and Scheduled Tribes, Backward Classes and Women in the Government Order dated 30.11.2009 with a direction to the State Government to redo the same strictly in conformity with Article 243T of the Constitution of India read with Section 7 of KMC Act within two weeks from today on the basis of the statistics regarding population available on the basis of 2001 census and submit the compliance report strictly within two weeks from the date of this order. The Rules under Section 21(3) need not be made for this Election, but the State

Government shall comply with the statutory provisions of sub-section (3) of Section 21 to frame the Rules for the purpose of sub-sections (1) and (2) of Section 21 of KMC Act by following the procedure contemplated under Section 421 of the KMC Act for future Elections of all the City Municipal Corporations in the Karnataka State. The same shall be made within six months from the date of receipt of a copy of this judgment.

(iii) The second respondent shall make all necessary arrangements to adhere to its schedule mentioned in its notification dated 7.12.2009 for conducting Election to the BBMP. Under no circumstance, extension of time shall be given by this court to comply with out directions.

(iv) For the reasons stated supra, Writ Petition Nos. 26699/2009, 25293/2009 and 25294/2009 are dismissed as they are in relation to challenge made to delimitation of wards which cannot be granted in view of Article 243-ZG of the Constitution of India.

(v) The Registrar (Judicial) of this court is directed to furnish the carbon copy of the operative portion of this judgment to the learned Addl. Government Advocate appearing on behalf of the State Government and counsel for the State Election Commission and also to the BBMP Commissioner for taking steps in accordance with Article 243-T."

Reasons assigned by State Government for not being able to hold election to BBMP:

23. In the present writ petitions, the State Government has given two main reasons as to why elections to BBMP cannot be held at the end of term of the present Council. The first is with regard to bifurcation or trifurcation of BBMP in which event, according to learned Advocate General, BBMP itself would not be in existence and therefore there is no need to hold election to the said body. Learned Advocate General submitted that a Committee has been constituted to submit its Report by June 2015 and on consideration of the said Report, proposal to divide BBMP would be put into action and therefore no purpose would be served by holding election to the present Body in April 2015. The second reason put-forth by the State is that show cause notices dated 18.3.2015 have been issued to the members of the Council seeking their reply to the same by 30.3.2015. That there is a likelihood of the Council being dissolved and an Administrator being appointed, then election could be held within a period of six months from the date of dissolution and in such a circumstance Article 243U would not be applicable, was the submission.

24. The aforesaid two circumstances have been cited by the State Government in order to contend that at the present juncture election need not be held to BBMP. While considering this aspect of the matter, it is necessary to analyze the relevant provisions of the Constitution as well as the Act, which have been extracted above as they have been relied upon by petitioners to seek directions for holding elections in time.

25. Article 243Q of the Constitution speaks of three types of Municipalities:- (a) A Nagar Panchayat for a transitional area that is to say, an area in transition from a rural area to an urban area; (b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area.

26. Section 3 of the Act deals with the constitution of a larger urban area and establishment of a Corporation. BBMP is a larger urban area. Section 4 of the Act deals with inclusion and exclusion of areas in, or from the larger urban area. Under Section 4 of the Act, the Governor has power to exclude from the limits of the larger urban area, any local area comprised therein and every such notification shall define the limits of the local area to which it relates. Sub-section (3) of Section 4 of the Act states that save as otherwise provided in the Act or any other law for the time being in force, when a local area is excluded from the larger urban area, (i) the rights and liabilities of the Corporation in such area shall vest in Government and (ii) Government shall, after consulting the Corporation, determine what portion of the Corporation and other property of the Corporation shall vest in Government for the benefit of the inhabitants of such local board and how the liabilities of the Corporation shall be apportioned between the Corporation and Government. If the procedure under Section 4 of the Act is complied with, the State Government can constitute the excluded area from the larger urban area into a Municipality with a Municipal Council, which would then be governed under the provisions of the Karnataka Municipalities Act, 1964 ("1964 Act" for short).

27. Therefore, as the legal position stands today, bifurcation or trifurcation of BBMP cannot be done by a stroke of the pen, but must follow the prescribed procedure envisaged under section 4 of the Act. In fact, when a smaller urban area is constituted into a larger urban area so as to form a Corporation, Section 503 of the Act applies and by operation of law a smaller urban area functioning as a City Municipal Council under the 1964 Act, immediately before the date of the said declaration in respect of the said area shall become a body competent to exercise the powers and perform the duties conferred by the provisions of the Act as a Corporation in respect of the said area, until a Corporation is duly constituted for the area within the jurisdiction of such body under the provisions of the Act. But when areas are excluded from the limits of larger urban area, they get transformed as Municipalities for a smaller urban area and 1964 Act would then apply. Thus, the division of BBMP into smaller areas is a time consuming exercise and it has to follow the prescribed legal procedure and by 22.4.2015, the procedure cannot be completed. This is because under sub-section (2) of Section 4 of the Act, any notification to be issued by the Governor excluding from the limits of the larger urban area (territory of BBMP herein) in the local area comprised therein must be issued in the form of a draft notification published in the Official Gazette for information of all persons likely to be affected and for inviting objections and suggestions within a period of one month from the date of publication. Also, the draft notification must be referred to the Corporation i.e. BBMP in the instant case for expressing its views thereon within

a period of one month. In fact, so far there has been no determination of the areas which have to be excluded from the limits of BBMP so as to form a local area to be transformed into a smaller urban area. Such determination of the smaller urban area by resorting to Section 4 of the Act has not yet been done in the instant case. In fact, determination must be made having regard to sub-clause (2) of Article 243Q, which states that a smaller urban area means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other facts as he may deem fit, specify by public notification.

28. In fact, in *P.R. Ramesh v. State of Karnataka*, a Division Bench of this Court has categorically held that process of merger of urban local bodies and some villages situated around the Mahanagara Palike to form the BBMP cannot be a reason to postpone holding election and that merely because certain areas were to be merged to form the BBMP was no excuse to contend that election could be delayed, this was because, it would violate Article 243U of the Constitution. In that case direction was issued to conduct election within three months from the date of the said order. The aforesaid observations are squarely applicable to the present case also.

29. In the instant case, what has been contended now is there is a proposal to exclude certain areas from the territorial jurisdiction of BBMP to form smaller urban areas. Merely because there is an intention to do so, cannot be a factor to be taken into consideration for the purpose of postponing the election to the Civic Body.

30. As already noted before any exercise could be carried out consultation with the Civic Body is imperative. Therefore, without having consultation with the Civic Body, the State Government cannot unilaterally take a decision to divide BBMP. Hence, it is of utmost necessity at the present juncture that there ought to be a reconstitution of the BBMP Council before the State Government decides to take steps for the division of the BBMP, as any such division would have to be done in consultation with the Council of BBMP. For that purpose, election must be conducted in time so that the BBMP Council is reconstituted for the purpose of giving its inputs with regard to proposed division of BBMP. Thus the reason given by the State that the division of BBMP is imminent and therefore at this stage, election to BBMP is not necessary, cannot be accepted. Also, the division of BBMP cannot be made unilaterally by the State Government without consulting the Council, for which, reconstitution of the Council is an absolute necessity. This is in addition to the mandate of the Constitution as stipulated in Article 243U, which shall be discussed next.

31. Reliance placed on the judgment of the Hon'ble Supreme Court in *The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others*, is of no assistance to the State Government, as in that case the Hon'ble Supreme Court was considering the process of conversion of an area from Municipal

Council to Municipal Corporation. The Hon^{ble} Supreme Court opined that Article 243U cannot apply to that case when one description of Municipality is ceased by constituting another Municipality of a better description. That would be a case of inclusion or merger. Also, such a situation does not arise under the Act. In fact, under the Act, when a smaller urban area is constituted into a larger urban area, Section 503 of the Act applies but when from a larger urban area smaller area is to be excluded then Section 4 of the Act would apply and constitution of the smaller urban areas would be as per 1964 Act.

32. Thus, proposal to divide BBMP cannot be a reason or excuse to postpone the election to existing Body. Further any proposal for constitution of a smaller urban area by excluding areas from the BBMP requires consultation with the Corporation and after inviting objections and suggestions from the public. Therefore, there must be a Civic Body in existence before areas could be excluded from it. Having regard to the distinct fact situation in the said case and factual position in the present case, the aforesaid judgment cannot be pressed into service by the State Government.

33. The second reason given by the State Government for not resorting to election for reconstitution of the Corporation in the instant case, is on account of action being initiated under Section 99 of the Act. That section gives power to the Government to dissolve the Corporation. Dissolution of the Corporation is nothing but supersession of the existing Civic Body. Under Section 99 of the Act, if the circumstances mentioned therein, prevail, then the State Government may initiate steps for dissolution of the Corporation by issuance of show cause notices to the Councillors and other persons of the Corporation and giving them reasonable opportunity to give their reply to the show cause notice. After considering the reply, if the Corporation is dissolved, then certain consequences would ensue. The Councillors of the Corporation shall, on such date or the date as may be specified in the order of dissolution cease to hold office as such Councillors without prejudice to their eligibility for election under sub-section (8) of Section 99. During the period of dissolution of the Corporation all powers and duties conferred and imposed upon the Corporation and the Standing Committees of the Corporation by or under the Act or any other law shall be exercised and performed by an Administrator appointed by the Government in that behalf. All property vested in the Corporation shall, until it is reconstituted, vest in Government. The Administrator who is appointed by the Government would substitute in place of the Mayor of the Corporation and he would discharge his functions guided by such directions in the matter of policy involving public interest as the Government may by order specify. Government may also appoint an Advisory Committee to assist the Administrator. Sub-section (8) of Section 99 of the Act, states that when a Corporation is dissolved, it shall be reconstituted in the manner provided in the Act before the end of six months from the date of its dissolution. The proviso states that when the remainder of the period for which the dissolved Corporation would have continued is less than six months, it shall not be necessary to hold election under sub-section (8) of Section 99 for

constituting a Corporation for such period. Sub-section (9) States that a Corporation constituted upon the dissolution before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Corporation would have continued had it not been so dissolved. Sub-sections (8) and (9) of Section 99 are in pari materia with Clauses (3) and (4) of Article 243U of the Constitution.

34. According to the State, if the Corporation is dissolved before 22.4.2015, then the Administrator would be appointed and in that case reconstitution of the Corporation has to be before the end of six months from the date of such dissolution. Then election need not be held by 22.4.2015 as on dissolution, the Administrator can function for period of six months from the date of such dissolution. It is, thus, the stand of the State that as action has been initiated by issuance of show cause notices dated 18.3.2015 in all probability, the Corporation would be dissolved and hence, no direction need be issued for holding election at this stage.

35. I have considered this submission made on behalf of the State in light of the Article 243U of the Constitution. As already noted, sub-clauses (8) and (9) of Section 99 of the Act are in pari materia with clauses (3) and (4) of Article 243U of the Constitution. Therefore, it is necessary to analyze that Article. Clause (1) of Article 243U categorically states that every Municipality (Corporation in the instant case), unless sooner dissolved under any law for the time being in force (Karnataka Municipal Corporation Act, 1976, in the instant case) shall continue for five years from the date appointed for its first meeting and no longer. The import of Clause (1) is that a period of five years from the date of the first meeting of the Corporation is the term fixed for a Corporation. This term is, however, subject to dissolution of the Corporation by the State Government. Therefore, the intent is to make it mandatory for a Corporation to function for a period of five years, in the absence of steps being taken for its dissolution. The second intent of sub-clause (1) becomes clear by the inclusion of the words "and no longer". The purpose of inclusion of the aforesaid expression is that on the completion of five years, the Corporation cannot continue for any further duration. Therefore, it is incumbent upon the State Election Commission and other authorities including the State Government to carry out the mandate of the Constitution and ensure that a new body is constituted in time by holding election before expiry of five years as stipulated in the said clause. Thus, the period of five years is constitutionally stipulated and it is the maximum period. That is also the minimum period of a Corporation, unless dissolved earlier. For no reason whatsoever the term of five years can be extended beyond five years. Thus, by virtue of Clause (1) to Article 243U, the term of the Corporation has been fixed with certainty. Of course, the Hon'ble Supreme Court in Kishansingh Tomar has taken note of realities of life and stated that there could be exceptional circumstances for not holding election in time, such as natural calamities, but the fact that there could be certain reasons to postpone the election would not empower the Commission to justify delay in the process of

conduct of election. Postponement of election must be under exceptional circumstances as stated by the Hon''ble Supreme Court. Thus, the object of Clause (1) of Article 243U is to ensure that there is no delay in the process of holding election in time by allowing urban bodies to continue beyond the statutory period of five years.

Clause (2) of Article 243U is not relevant for this case and hence, would not necessitate any consideration.

Clause (3) of Article 243U deals with reconstitution of a Corporation in two circumstances: (a) before the expiry of its duration specified in Clause (1) i.e., before five years from the date appointed for its meeting and (b) before the expiration of period of six months from the date of its dissolution. Thus, if the Corporation is dissolved and an Administrator is appointed, then the maximum period during which an Administrator could function is only six months from the date of dissolution and before that period Corporation has to be reconstituted. But proviso to sub-clause (b) of Clause (3) is significant. It states that when the remainder of the period for which the dissolved Corporation would have continued is less than six months, then it shall not be necessary to hold any election under that clause for constituting the Corporation for such period. The crucial words in this proviso are significant. It means that if the Corporation is dissolved, and having regard to the term of the Municipality being five years from the date of its first meeting, if the remainder period is less than six months, then it would not be necessary to hold election to reconstitute the Corporation for the remainder period. In such an event the reconstitution would have to be only under sub-clause (a) read with Clause (1) of Article 243U i.e., on completion of five years from the date appointed for its first meeting, which would in any case expire during the period the administrator is appointed. Hence, under no circumstance, can dissolution of a Corporation extend the term of the Corporation beyond five years from the date appointed for its first meeting, which would in any case expire during the period the administrator is appointed. This becomes further clear on a reading of Clause (4) of Article 243U. It states that a Municipality (Corporation in the instant case) constituted upon its dissolution before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under Clause (1), had it not been so dissolved. Therefore, the term of the Corporation is fixed as five years. If within that period of five years, the Corporation is dissolved and it is reconstituted before the expiration of five years, then the reconstituted Corporation would continue only for the remaining period within the said period of five years, had it not been dissolved. Thus, irrespective of the fact, that a Corporation being dissolved and reconstituted, its term of five years would not get altered.

36. Thus, on a conjoint reading of Clauses (3) and (4) of Article 243U, what emerges is that dissolution of the Corporation would not extend its term beyond five years from the date for its first meeting. If there are more than six months

remaining on dissolution and its reconstitution, a Corporation would function only for the remainder period, till expiration of five years. But if the remainder of the period of dissolved Municipality is less than six months, then it is not necessary to hold any election for reconstituting the Corporation as the term of Corporation would automatically come to an end during the period Administrator is appointed and election would have to be held to reconstitute the Corporation under clause (1).

37. Thus, when the term of the Corporation expires, then automatically under Clause (1) r/w sub-clause (a) of Clause (3) of Article 243U, election would have to be held. This is irrespective of the fact as to whether the Corporation has been dissolved or not. If it is dissolved and reconstituted, then in terms of Clause (4) it is only for the remainder period of the five year term. On the other hand, if it is dissolved and if the remainder period is less than six months, then on expiry of the term, it would have to be reconstituted irrespective of the Administrator being appointed. Thus, the contention of the State that election need not be held on the expiry of the term of the present Council, in view of its dissolution and appointment of an Administrator being imminent, in which case, the Administrator could function for a period of six months from the date of dissolution and beyond the five year term is misconceived.

38. In the instant case, even if an Administrator is appointed immediately and the remaining period of Corporation being in any case, less than six months, then the Corporation would cease to function on the expiry of its term i.e., on 22.4.2015 and election would have to be held (although the Administrator would be functioning at the helm of affairs of the Corporation) and not prior to the expiration of a period of six months from the date of its dissolution. Therefore, if during the period of six months when the Administrator is appointed to a Corporation, the remainder of the term of the Corporation expires, then it has to be reconstituted forthwith and not wait till the expiry of six months from the date of its dissolution. That is why the proviso categorically states that when the remainder period of the dissolved Municipality is less than six months, then it is not necessary to reconstitute the Municipality under sub-clause (b) of Clause (3) as during the period of six months when the Administrator is functioning when the term of the Municipality would come to an end election would have to be held before the expiry of its duration under Clause (1) and sub-clause (a) of Clause (3).

39. As already noted, sub-clause (4) makes the aforesaid interpretation explicit by stating that any reconstitution of the dissolved Corporation under sub-clause (b) of (3) would be only for the remainder period for which the dissolved Corporation would have continued in Clause (1) had it not been so dissolved. Thus, reconstitution of the Corporation on its dissolution would not give a fresh lease of life to the Corporation by five years, but it is restricted upto the date when its five term would end from the date of its first meeting. Also sub-clause (b) of Clause (3) restricts the period during which an Administrator can function

upto six months only from the date of its dissolution. Thus, reconstitution of a Corporation under Clause (1) of Article 243U read with sub-clause (a) of Clause (3) and reconstitution of a Corporation after dissolution under sub-clause (b) of Clause (3) are distinct. But the common aspect in both cases is that reconstitution on the expiry of the term of the Corporation or on dissolution cannot be beyond a period of five years as the term of a Corporation is five years and no longer. Thus, the contention of the State that dissolution of the Corporation would enable an Administrator to be appointed for a maximum period of six months and hence, till then, election need not be held even if by then the term of the Corporation ends is incorrect and rejected.

40. Having regard to the mandate of the Constitution election to BBMP must be held in time without reference to the aforesaid two reasons cited by the State Government.

Re: Stand of the State Election Commission:

41. At this juncture, it is necessary to consider what has been expressed by the Commission.

42. Learned counsel for Commission submitted that the State Government has not taken up delimitation of wards and neither has reservation of wards been made despite the publication of census figures of 2011 in the year 2013. According to him, possibly this is due to the fact that the State Government is under the impression that it could postpone holding of election to BBMP and hence it has not taken any step in the aforesaid direction.

43. In this context, it would be relevant to consider orders passed by this Court in W.P. No. 45231/2012 in which the Commission was a petitioner seeking a direction with regard to holding of elections to 209 local bodies in the State whose term was expiring in February/March 2013. That writ petition was disposed on 29.11.2012 by the Division Bench of this Court (of which I was a member) as the State Government had filed an affidavit sworn to by the Secretary to the Government, Department of Urban Development, Bangalore, contending that there was a constitutional mandate to hold elections to the Municipalities before the expiry of the term of office of the elected members and that the State was fully committed to discharge its constitutional obligation in that regard.

44. Thereafter two interlocutory applications were filed by the State seeking extension of time for holding elections as the wardwise reservation had not yet been finalized. I.A. 2 was filed by the Commission stating that any extension of time granted to the State Government would throw the schedule out of gear and may lead to unavoidable crisis. Having regard to the situation that had come about and being required to conduct elections to all 209 urban local bodies in the State as the term of office was expiring between 10.2.2013 and 28.2.2013 and taking note of the fact that if the elections were not conducted in time, it could lead to appointment of Administrators in all the urban local bodies and the fact

that Assembly Elections were also due in April and May 2013, time was extended only by four days to prepare the final wardwise reservation and accordingly the applications were disposed by a Division Bench of this Court on 20.12.2012.

45. Order dated 29.11.2012 was assailed by the State before the Hon"ble Supreme Court which disposed the Special Leave Petitions on 1.2.2013 with the following observations:--

"4. As far as the rotation of the constituencies for the reserved categories is concerned, the High Court did give time to the State Government on two earlier occasions to inform the State Commission about the manner in which it proposed to effect the rotation. Ultimately, in its order passed on 20th December, 2012, the High Court gave two days for that purpose. None of these orders have been complied with by the State Government and the State Election Commission has moved a contempt application before the Karnataka High Court which is pending.

5. In view of these circumstances, we are clearly of the view that the State Election Commission is within its right to proceed with the elections within the time frame as required by the Constitution and the State enactments. It will have to proceed on the basis of the existing electoral rolls. As far as the rotation of the seats meant for the reserved categories is concerned, the State Government should furnish its proposal to the State Election Commission on or before the 4th February, 2013. In the event, the State Government does not furnish the information by that date, it would be open to the State Election Commission to proceed on the basis of the reservation of seats as are presently existing.

6. With this order, the special leave petitions are disposed of."

(underlining by me)

46. In the interregnum, the Commission had issued directions to the Deputy Commissioners with regard to holding elections, which was assailed before this Court in W.P. No. 6817/2013 and connected matters as a public interest litigation. By order dated 12.2.2013, a Division Bench of this Court by the following order disposed the writ petitions:

"19. On stern and thoughtful consideration of the submissions made at the Bar, it appears that the contentions raised by the parties are virtually oriented towards the interpretation of the order of the Supreme Court in particular that "it would be open to the State Election Commission to proceed on the basis of reservation of seats as are existing" and what exactly the said observation would mean. This Court will have jurisdiction to decide the question which is res integra. If the said question or proposition is already dealt with and decided by the Supreme Court, it would not be open for this Court to embark upon the exercise of explaining what the said observation would mean. This Court will have no jurisdiction to give clarification on the orders passed by the Supreme Court. The parties if they so feel that they require any clarification, it is open to them to approach the Supreme Court.

20. In view of the above observations, Writ Petitions are disposed of."

That order was assailed before the Hon"ble Supreme Court and while permitting the petitioner to withdraw the writ petition it observed as under:

"We reluctantly accept the request of the learned counsel and grant leave to the petitioner to withdraw the writ petition.

However, Keeping in view the background facts and the orders passed by the High Court and this Court, we consider it imperative to direct Chief Secretary, State of Karnataka and all officers subordinate to him to comply with the directions given by State Election Commission, Karnataka in the matter of holding elections to local bodies and extend full co-operation to it. We also direct that no officer of the State Government or any other functionary shall make an attempt to frustrate the process initiated by the State Election Commission for holding and completing the election for the local bodies in accordance with the mandate of Article 243U of the Constitution."

47. Having regard to the observations of the Hon"ble Supreme Court made on 1.2.2013 with regard to rotation of constituencies for the reserved categories not being prepared in time and the direction issued to proceed with the existing electoral rolls and without reference to the census figures of 2011 elections were conducted to 209 urban bodies. I am of the view that those observations of the Hon"ble Supreme Court are squarely applicable to the present case for two reasons: firstly, because elections cannot be postponed by contending that delimitation of the constituencies has not been made and reservation of wards has not been determined. That would be contrary to the mandate of Article 243U of the Constitution. Secondly, if the State Government intends to modify the territorial jurisdiction of BBMP by exclusion of certain areas, then initiating an exercise with regard to delimitation of constituencies at this stage, would be futile insofar as BBMP is concerned. Even though these two steps have not been taken, election to BBMP could be held on the existing delimitation of wards and updated voters list. Further, at this juncture it is difficult to predict as to whether indeed the proposal of the State Government to divide the BBMP would fructify. But that cannot be the reason to postpone the election. As already held, the existence of the Civic Body for the metropolis is not only a constitutional requirement, but also a necessity for local Governance. In case, the State Government decides to divide BBMP, then on the process of division being completed, there would be redetermination of delimitation of wards as the territorial jurisdiction of the present Body as well as BBMP the new Body/Bodies to be formed would have to be determined. But till then, there cannot be a vacuum as far as Municipal Governance is concerned.

48. Thus, despite the reasons assigned by the State for not holding election in time to the BBMP, I am of the considered view that having regard to constitutional mandate and the judgments of the Hon"ble Supreme Court on the point, elections to BBMP must be held on the expiry of the present term. Also

having regard to the proposed division of BBMP mooted by the State Government, election must be held on the existing delimitation of wards. The voters list has been updated from time to time and the election would have to take place based on the updated voters list. Of course, one may opine that such a view would be giving a go-bye to the census figures of 2011 published in the year 2013. It may be so, but as already stated, those are not considerations or reasons which can weigh with the Court for postponing the elections. In fact, State Election Commission ought not to yield to any vested interest to postpone the elections which would have to be held within the stipulated time. Delimitation of constituencies, reservation of wards and revision of electoral rolls had to be carried out by now and if it has not been done, that cannot be a reason to postpone election. Election would have to be conducted on the existing electoral rolls, delimitation of wards. In fact, the Commission in consultation with the State ought to have taken up the aforesaid exercise in time. Not having done so cannot be a reason to violate the mandate of Article 243U of the Constitution. Reiterating Kishansingh Tomar, the reasons cited for postponing elections must be "exceptional circumstances", but the very fact that there could be certain reasons to postpone the election cited by the State Government would not empower the Commission to justify delaying the election. In fact, the two reasons given by the State Government to postpone the holding of election to BBMP are not in my view exceptional circumstances.

49. The object of Article 243U is to ensure that there is no delay in the process of election and thereby allow Municipal Bodies to continue beyond the period of five years. As the State Election Commission has power of superintendence, direction and control of elections and preparation of electoral rolls as well and as that power is coupled with a duty, being an independent authority, it must be exercised scrupulously. In case the State Election Commission is not receiving co-operation in the matter of timely conduct of elections for Municipal bodies, then the Hon'ble Supreme Court has opined, it could approach the High Court for a writ of mandamus or other appropriate directions for necessary co-operation and assistance to be rendered by the State Government so as to enable the Commission to fulfill its constitutional obligations.

50. In the instant case, the Commission has not approached this Court. On the other hand, it is pleading helplessness in the matter. A Constitutional body cannot so plead when it a matter of carrying out the vision and mandate of the Constitution. No reason is assigned as to why the Commission has not approached this Court in time for seeking appropriate directions for holding election to BBMP. The Commission is well aware of the orders passed by this court since 2008 with regard to holding of election on completion of the term in the year 2006. Election had to be held to BBMP in the year 2006, ultimately it was held in the year 2010 after this Court's intervention leading to issuance of several positive directions to hold election in time which were approved by the Hon'ble Supreme Court. The Commission cannot be apologetic and state that it is not receiving co-operation from the State Government in the matter of

delimitation of wards and reservation of wards for the purpose of holding election.

51. Therefore, having regard to the fact that the State Government is thinking of dividing BBMP and a Committee in that regard has been set up for the purpose of submission of its Report, election could be held on the existing delimitation of wards and already updated electoral rolls. Helplessness pleaded on the part of the Commission cannot also be a reason in the absence of any exceptional circumstance to postpone election.

52. In case the decision to divide BBMP is not taken to its logical conclusion then the State has to be directed to carry out the exercise of delimitation of wards for the subsequent election to be held in the year 2020, in an expeditious manner. It is needless to observe that in case, the proposal to divide BBMP is fructified, then new circumstances would emerge which would have to be taken note of by the State Government as well as the Commission. Then again delimitation of wards and reservation of wards and revision of electoral rolls would have to take place before constitution of civic bodies of smaller urban areas. Till those bodies are constituted, there cannot be any hiatus or vacuum so far as the constitution of BBMP is concerned.

53. Keeping in mind the Constitutional provisions as well as the judgments and orders of the Hon"ble Supreme Court and for reasons stated above, writ petitions would have to be allowed with the following directions:--

"i) The respondents are directed to complete the process of election to BBMP on or before 30.5.2015.

ii) The said election shall be conducted on the existing delimitation of wards and updated electoral rolls.

iii) The State Government shall publish notification regarding rotation of seats meant for reserved category on or before 13.4.2015 and on such publication the Commission shall issue calendar of events so as to conclude the entire electoral process on or before 30.5.2015.

iv) In the event, the State Government does not publish notification regarding rotation of seats wardwise, it would be open to the Commission to proceed on the basis of the reservation of seats as are presently existing."

54. Writ petitions are allowed in the aforesaid terms.

55. Parties to bear their respective costs.

56. Office to furnish operative portion of this order to learned counsel for respective parties for taking necessary action in the matter.