
(1984) 08 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 210 of 1984

Om Prakash Sood and Another

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 03-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 40

Himachal Pradesh Municipal Corporation Act, 1979 — Section 14, 4(3), 5

Citation : AIR 1985 HP 53 : (1984) 13 ILR HP 443

Hon'ble Judges : P.D. Desai, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; P.N. Nag, General and Kedar Ishwar, for the Respondent

Judgement

P.D. Desai, C.J.—The petitioners are residents of Shimla and they are registered as voters in the electoral rolls of the Shimla Assembly Constituency. The first petitioner was also an elected member of the Shimla Municipal Committee (hereinafter to be referred to as "the Municipal Committee") from 1960 to 1966.

2. The Local-Self Government in the town of Shimla has passed through several vicissitudes. The last general election to the Municipal Committee was held sometime in 1960 under the provisions of the Punjab Municipal Act, 1911 (hereinafter to be referred to as the "Punjab Act") which was then applicable to the local area declared to be the Municipality of Shimla. By a notification dt. May 16, 1966, which was published in the Punjab Government Gazette (Extraordinary) dt. May 17, 1966, the Governor of Punjab superseded the Municipal Committee with immediate effect in exercise of the powers conferred by Section 238 of the Punjab Act and directed that all powers and duties of the Municipal Committee be exercised and performed by an Administrator until the Committee was reconstituted. The validity of the said notification was challenged in Civil Writ Petitions Nos. 42 and 44 of 1967, which came to be heard and decided by a Full Bench of three Judges of the Delhi High Court (Himachal

Bench). The decision of the Full Bench is reported in *Suraj Parkash Vs. State of Punjab and Others*, . The Full Bench quashed the impugned notification but reserved to the State Government the right to proceed to supersede the Municipal Committee, if it was so advised, in accordance with law. I. D. Dua, J., speaking for the Full Bench, made the following pertinent observations in the penultimate paragraph of the judgment (at p. 412) (of D. L. T.) : (at p. 42 of AIR) :

".....It is in the end hoped that speedy and effective steps would be taken for holding fresh elections so that the electorates of Simla are not deprived, for a day longer than is absolutely necessary of the exercise of their cherished democratic right of franchise to elect their representatives to manage their own local affairs. Arbitrarily depriving them of this right, seems to me to be a grave violation of their basic statutory right, tolerated only in the States which pay mere lip homage to democracy. Such violations in this Republic are an affront to the wisdom and labour of the framers of our Constitution. Mere drafting of Constitution, if may be remembered, does not make the State democratic. It is the people who have to exert themselves to enforce the Constitution and to adopt the principles enshrined therein in their day-to-day life. To this end, the Government departments, the local bodies as well as every patriotic citizen must strive, if we have to survive as a free democratic nation. Before closing, I should point out the truism that it is the close watchful eye of the public that makes both the Administrator and the statesman virtuous. The word "public" is not to be confused with the few selfish opportunists, but it means the men of integrity and intelligence interested in having an honest and efficient administrative set up. It is unnecessary to say anything more in this context."

Be it stated that the judgment in *Suraj Parkash's* case was delivered on June 16, 1967. No election to the Municipal Committee was, however, held after the decision was rendered. The Municipal Government appears to have been entrusted once again to the old Municipal Committee which seems to have continued to hold office till June 27, 1969, that is, for a period of two years thereafter.

3. The Himachal Pradesh Municipal Act, 1968 (hereinafter to be referred to as the "Himachal Act") was enacted by the Legislative Assembly of Himachal Pradesh and it came into force on and with effect from February 3, 1969. Section 284 of the said Act, inter alia, repealed the Punjab Act as in force in the territories transferred to Himachal Pradesh u/s 5 of the Punjab Re-organisation Act, 1966. u/s 285(1) (b) of the said Act, however, anything done or any action taken including, inter alia, the municipalities constituted under the repealed Act, were, so far as may be, deemed, unless the State Government otherwise directed, to have been done or taken or constituted under the corresponding provisions of the Himachal Act. The Municipality of Shimla accordingly stood duly constituted under the Himachal Act on and with effect from February 3, 1969. No election to the Municipal Committee was, however, held even while the said Act continued to

apply and remained in force in the local area comprising the Shimla Municipality.

4. The Capital of Himachal Pradesh (Development and Regulation) Act, 1968, (hereinafter to be referred to as the "Capital Act") came into force on and with effect from June 27, 1969. The legislation was a special exercise undertaken with a view to re-enacting and modifying the law in relation to the development and regulation of municipal affairs of the Capital Town of Himachal Pradesh. It extended u/s 1(2) to the local area comprised within the Municipality of Shimla immediately before the commencement of the Act and to such other area as may, from time to time, be included by the State Government within the limits of the Corporation. Section 3 provided that on and from the commencement of the Act, the local area comprised within the Municipality of Shimla immediately before the commencement of the Act shall be deemed to have been withdrawn from the operation of the Himachal Act. Section 5 provided that the area to which the Act extended including the area as may, from time to time, be included within the limits of the Corporation, shall be a Municipal Corporation under the Act to be called the Simla Municipal Corporation. The Corporation was to consist of the Administrator and ten members, all to be appointed by the State Government. The term of office of the members, other than ex-officio members, was to be five years. u/s 15, the Corporation was to be a body corporate. It would thus appear that with the enactment of Capital Act, Shimla city ceased to have an elected Municipal Government and that the powers of the Local Government were vested in an Administrator and ten members to be appointed by the State Government. Be it stated that the Capital Act continued to remain in force till October 17, 1980, on which day, out of ten members appointed by the State Government, eight were ex-officio members holding different posts under the State Government.

5. The Himachal Pradesh Municipal Corporation Act, 1979 (hereinafter to be referred to as the "Corporation Act"), which was enacted for the establishment of Municipal Corporation for certain cities in Himachal Pradesh, came into force on and with effect from October 18, 1980. Section 443 of the Corporation Act repealed, inter alia, the Capital Act in the area constituted to be a city or included in a city with effect from the day on which it was so constituted or included. Section 3(1) of the Corporation Act, as originally enacted, empowered the State Government to constitute the Municipality of Shimla to be the city of Shimla. In exercise of the powers conferred by the said sub-section, the Municipal Corporation of Shimla was constituted to be the city of Shimla by a notification issued on November 10, 1980. Sections 4, 5 and 14 of the Corporation Act, as originally enacted, are relevant for the present purposes and they are set. out hereunder in extenso :

"4. Constitution of Corporation and interim arrangement for carrying on its functions till its constitution.-- (1) For the purposes of carrying out the provisions of this Act, there shall be a Corporation charged with the municipal Government of a city. The Corporation for city of Simla shall be known as the Municipal

Corporation of Simla and the Corporation for every other city constituted under Sub-section (2) of Section 3 shall be known by the name of "the Municipal Corporation of....." (name of the city).

(2) Every Corporation shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of the Act, to acquire, hold and dispose of property and may by the said name sue and be sued.

(3) As soon as may be after the appointed day a Corporation which shall be composed of elected councillors, associate councillors and co-opted councillors, if any, shall be constituted from such date as may be specified in this behalf by notification by the Government.

(4) Notwithstanding anything contained in Sub-section (3), on and with effect from the appointed day all powers and duties conferred and imposed upon the Corporation by or under this Act or any other law shall be exercised and performed by the Commissioner till a Corporation is constituted under the aforesaid sub-section.

5. Elected councillors, mode of election and associate councillors.-- (1) Elected councillor shall be chosen by direct election on the basis of adult suffrage from various wards into which the city shall be divided in accordance with the provisions of this Act.

(2) The Government shall, from time to time, by notification in the official Gazette, fix the number of elected councillors for a Corporation :

Provided that the total number of elected councillors for a Corporation shall be one councillor over a population of three thousand but the number of the Commissioner should not increase twenty-one.

(3) The determination of number under Sub-section (2) shall not affect the then composition of the Corporation until the expiry of term of office of the councillors then holding office.

(4) Out of the number of elected councillors determined under Sub-section (2) there shall be reservation of seats for members of scheduled castes and the number of seats to be so reserved for the members of scheduled castes shall, as nearly as may be, bear the same ratio to the . total number of elected councillors as the population of scheduled castes bears to the total population of the city.

(5) Every member of the Himachal Pradesh Legislative Assembly representing the constituency in which the city or any part thereof is situate shall be an associate councillor:

Provided that an associate councillor shall not be entitled to vote at, but shall subject to the other provisions of this Act, have the right to speak in and otherwise take part in the proceedings of, any meeting of the Corporation or its committee of which he may be a member.

14. General Elections of Councillors.--(1)A general election of councillors shall be held for the purpose of constituting the Corporation u/s 4.

(2) A general election shall also be held for the purpose of filling the vacancies arising by efflux of time in the office of the councillors and such an election shall be held and completed before the expiry of the term under Sub-section (1) of Section 7.

(3) For the aforesaid purposes the Director shall, by one or more notifications published in the Official Gazette, call upon all the wards to elect councillors in accordance with the provisions of this Act and the Rules and orders made thereunder before such date or dates as may be specified in the notification or notifications."

6. It will be seen that u/s 4(3), as soon as may be after the appointed day, that is, the day on which the notification u/s 3(1) or (2) is published, the Corporation composed inter alia of elected councillors, is required to be constituted from such date as may be specified in the behalf by a notification by the Government and that till such Corporation is constituted, all powers and duties conferred upon the Corporation are to be exercised and performed by the Commissioner, on and with effect from the appointed day, u/s 4(4). Elected councillors are required to be chosen on the basis of adult suffrage by direct election from wards of the city in accordance with the provisions of the Act. Be it stated again --that although the notification u/s 3(1) constituting the city of Shimla was issued on November 10, 1980, and published on November 22, 1980, the Corporation composed, inter alia, of elected councillors has still not been constituted.

7. The Himachal Pradesh Municipal Corporation (Amendment) Act, 1984 (hereinafter to be referred to as the "Amendment Act"), which came into force on and with effect from May 30, 1984, made amendments in certain provisions of the Corporation Act. Section 2 of the Amendment Act substituted Sub-section (1) of Section 5 of the Municipal Corporation Act by the following sub-section :

"(1). Elected councillor from each municipal ward constituted u/s 8 shall be chosen by direct election by the persons who have attained the age of 18 years and whose names are entered in the electoral roll referred to in Section 11."

It would thus appear that the elected councillors from each municipal ward are now required to be chosen by direct election by persons who have attained the age of 18 years and not on the basis of adult suffrage.

8. The Governor of Himachal Pradesh promulgated an Ordinance called The Himachal Pradesh Municipal Corporation (Amendment and Validation) Ordinance, 1984, (hereinafter called "the Ordinance") which came into force on and with effect from July 10, 1984. The amendment, which is material for the purpose of the present case is to be found in Clause 2 of the Ordinance which substituted the following sub-section for Sub-section (1) of Section 3 of the Corporation Act:

"(1) For the purposes of this Act the area comprised within the limits of the

Shimla Municipal Corporation constituted u/s 5 of the Capital of Himachal Pradesh (Development and Regulation) Act, 1968. shall be the city of Shimla."

The amendment was necessitated because Sub-section (1) of Section 3, as originally enacted, used the expression ""the municipality of Shimla" although, in fact, on the date on which the Corporation Act came into force, the "municipality of Shimla" had ceased to exist and the "Shimla Municipal Corporation" constituted by the Capital Act was the body corporate in existence. Clause 6 of the Ordinance enacts the validating provisions and, more particularly, saves the constitution of the Municipal Corporation of Shimla as a result of the issuance of the notification dated November 10, 1980.

9. The foregoing journey through the various enactments makes it clear that the local area comprised in the city of Shimla was and is governed by statutes which provide for . the establishment of an elected municipal Government and that except for the intervening period during which the Capital Act was in force (June 27, 1969 to October 17, 1980) the citizens of Shimla were entitled to have a municipal administration run by councillors chosen by direct election. The history which has been traced above, however, shows that for a period of about 15 years, they have been altogether denied the right of Local Self-Government partly on account of legislative intervention (for a period of about 11 years) and partly by reason of executive inaction (for the remainder period). Besides, while the Capital Act was in operation, appointment of members of the Corporation appears to have been made largely from amongst the officers of the State Government, although such members could have been appointed from amongst the citizens of Shimla to provide them indirect representation. Not only has the pious hope expressed in *Suraj Parkash Vs. State of Punjab and Others*, thus remained unfulfilled so far, but an assurance, presently to be mentioned, held out to a Division Bench of this Court in the recent past, after the enactment of the Corporation Act, has also still not been carried out.

10. In *Yoginder Lal Sharma v. Municipal Corporation, Shimla* ILR (1983) HP 457 : AIR 1984 NOC 137 certain directions were sought for the enforcement of the statutory duties entrusted to the Corporation. The Division Bench, which heard the writ petition, traced the legislative history relating to the municipal Government in the city of Shimla and passed the following strictures (at pages 461 and 462) for the failure on the part of the State Government to compose an elected Corporation, while recording, at the same time, an assurance held out to the Court that the composition of an elected Corporation was under the consideration of the State Government:

"A word about the municipality of Shimla..... In fact, ever since 1968 the Municipal Committees have been headed by the nominees of the State Government. Unfortunately the Himachal Pradesh Municipal Corporation Act did not alter the prevailing conditions. Over the last decade different political parties came to rule this State. It appears that all the political parties were united in one thing, that is, not to allow the citizens of Shimla to elect its municipal body. The

result is that a Corporation, which was to be constituted u/s 4(3) of the Act has not come into existence and all the powers and duties conferred and imposed on the Corporation are being exercised by the Commissioner in terms of Section 4(4) of the Act. Though Section 403 empowers the Government to supersede the Corporation, the need of supersession has not arisen since the Government has ensured that the Corporation is not constituted. After the supersession of the erstwhile municipal committee the body had been governed by Administrators. Many a time these Administrators have been holding other charges also in addition to their being the Administrator..... It is pitiable indeed to see those very representatives of the people running the Government, who will cry themselves hoarse in the name of democracy if the legislative assembly is dissolved and President rule enforced, denying the people their democratic right over decades to run their municipalities because of petty political considerations. But we hasten to add that we have been assured that the present Government is considering the matter of conducting elections to constitute the Corporation of Shimla."

The imperative need to hold elections to the Corporation could not possibly have been voiced in stronger terms. Even though the assurance recorded in the last portion of the extracted observations was held out on behalf of the State Government as far back as September 1983, the election has still not been held and the municipal Government in this capital town is still being run by persons other than the elected representatives of the people.

11. Though the requirement of holding an early election to ensure Local Self-Government for the city of Shimla has been emphasised twice over by judicial pronouncements, the continuing inaction on the part of the State Government calls for a reiteration of the imperative need to hold such election without any further delay. The preamble to the Constitution, inter alia, recites that the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic, enacted and gave to themselves the Constitution. The words "Democratic Republic" are words of great significance. They embody the firm belief of the founding fathers that the composition and structure of an ideal State for which they were striving must inhere a system of Government in which the supreme power of governance at all levels rests in the body of citizens entitled to vote and that it is exercised by representatives chosen directly or indirectly by them. Article 40 of the Constitution contained in the Chapter relating to the Directive Principles of State Policy enacts that the State will take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. This directive principle also points in the same direction. The reason why the organisation of municipal governments as units of Local Self-Government was not mentioned in Article 40 is that prior to the enactment of the Constitution, Municipalities were already established under various State laws which provided for the management of the municipal government through elected representatives and the founding fathers, therefore, assumed that there

was no need to reiterate the requirement of local self-government at the level. Against the aforesaid background it is inconceivable to think of the continued existence for such a long period of a municipal Government, which is not chosen by direct election, in the capital town of the State.

12. On behalf of the State Government, the Secretary and Under Secretary, Local Self-Government have filed returns. In the affidavit dt. May 28, 1984. filed by the Secretary, the steps taken to install an elected municipal Government in the city of Shimla have been traced. It is averred that after the decision in *Suraj Parkash Vs. State of Punjab and Others*, the Municipal Committee started functioning. However, it was found that the Municipal Committee was not functioning properly and, therefore, the Capital Act was enacted which brought into existence the Shimla Municipal Corporation. Upon the enactment of the Corporation Act, the Corporation was duly constituted under the relevant provisions of the said Act. The Chief Electoral Officer was then appointed as the Director to supervise the conduct of election in the wards u/s 10. The learned Advocate-General stated to the Court that initially the Deputy Chief Electoral Officer was appointed as Director on May 20, 1983, and that subsequently, in his place and stead, the Chief Electoral Officer was appointed as Director on September 21, 1983. The work relating to the framing of rules u/s 33 for regulating the election of councillors was then taken up and draft rules were prepared by the Chief Electoral Officer. At that stage, however, an "ambiguity" was noticed in the Corporation Act which made it difficult to finalise the rules and to hold the election in accordance with such rules. The ambiguity was that the elected councillors were required to be chosen by direct election on the basis of adult suffrage u/s 5(1) but the word "adult suffrage" having not been defined in the Act, it was not "firmly known" as to at which age a person would become entitled to vote. Under the circumstances, the Amendment Act prescribing the age of voters was enacted in May, 1984. Certain other amendments in the Corporation Act are also stated to be still under the consideration of the Government. Representations are also stated to have been received from the residents of 42 villages adjoining the Corporation limits for inclusion of those areas within the limits of the Corporation. The proposal to bring within the Corporation limits small townships and colonies of the Shimla Development Corporation like Kasumpti, Totu, Sanjauli and Dhalli, was also stated to be under the active consideration of the Government. The final decision to be arrived at in these matters and the consequential action to be taken would take some more time. The measures being taken by the Government, however, would indicate that active steps were being taken in the direction of holding election to the Corporation and that the allegation that the Government was negligent in the discharge of its statutory duty was wholly unfounded.

13. In the affidavit dt. August 1, 1984, filed by the Under Secretary, it has been averred that a notification was duly published in the Official Gazette on May 30, 1984 inviting objections or suggestions against the proposal to include 42 adjoining villages within the limits of the Corporation within a period of six weeks

from the date of such publication. The objections are stated to have been received and to be under examination of the Government, After the decision with regard to the inclusion of all or some of those villages within the Corporation limits is taken, the work of delimitation of wards, preparation of electoral rolls, determination of the number of councillors to be elected from each ward etc. would be taken up. In compliance with the Court's oral direction to the State Government to file an affidavit indicating the proposed election programme and the approximate time limit within which the Government expected to complete the election, the following averments are found to have made in the affidavit:

"4. That as soon as the decision is taken to include the villages within the Municipal Corporation, Shimla, the process of election will start according to the election laws and the time schedule for holding the elections.

5. It is evident that all the above mentioned procedure will take considerable time and it will be difficult for the Government to state, at this stage, as to when the elections of the Municipal Corporation, Shimla, will take place."

Be it stated that, according to the information given by the learned Advocate-General to the Court, the proposal with regard to the inclusion of the adjoining areas within the Corporation limits has reached an advanced stage. The objections and suggestions have been pending decision with the Government since July 31, 1984 and meanwhile the formality relating to the consultation with the Corporation under Sub-section (3) of Section 3 has been duly complied with. The Corporation has already conveyed its agreement to the proposal concerning the inclusion of 42 villages within the Corporation limits under its letter dt. January 23, 1984.

14. The returns filed on behalf of the State Government do not detract from the conclusion recorded earlier, namely, that the executive inaction is largely responsible for denying to the citizens of Shimla, for a long period a municipal administration run by councillors chosen from time to time by direct election. The last municipal election, as earlier pointed out, was held sometime in 1960. The regular tenure of a Municipal Committee under the Punjab Act was three years. The term of the Municipal Committee elected in 1960, therefore, came to an end in 1963. However, by virtue of the statutory provision which entitles the existing members to continue in office till new members are elected, the Municipal Committee continued in office till it was superseded for the alleged acts of omission and commission three years later by the notification dt. May 17, 1966. Here was the first lapse on the part of the Punjab government which failed to hold elections in 1963 as enjoined by the statute and allowed the old Municipal Committee to outlive its term for a period of as many as three years although its administration was apparently not satisfactory, After the supersession also, no concrete steps appear to have been taken to hold fresh elections to the Municipal Committee, which was apparently the most obvious course, and the Administrator continued to head the municipal administration till the decision in Suraj Parkash Vs. State of Punjab and Others, was rendered about thirteen

months later. This was the second lapse and for such lapse both the Punjab Government and the Himachal Pradesh Administration must be held responsible. Indeed, in Suraj Parkash's case (supra), both these lapses have been adversely commented upon in the following words (at p. 411) (of DLT): (at p. 42 of AIR) :

"..... On the facts of the present case, I, for my part, find it extremely difficult to appreciate the omission on the part of the Punjab Government to hold elections in 1963 as enjoined by the Statute. Even the Himachal Pradesh Administration does not seem to have taken any effective steps since 1st November, 1966 to hold fresh elections. The pendency of the writ petition seems to me to be of little consequence because on no conceivable rational grounds can this circumstance stand in the way of the constitution of a fresh Municipal Committee in accordance with law..... It is not without significance that we have not been informed even during the hearing that the Government was prepared to hold fresh elections as soon as the petitions are disposed of.....The circumstances disclosed in this case unfortunately seem to give an unhappy impression that whereas the Punjab Government was for certain reasons somewhat unfavourably inclined towards the members of the superseded Committee, the Himachal Administration is more favourably disposed towards them. They have also given us an impression that the Government has been considering the Committee to be bound to obey all of its directions, whether or not authorised by the statute, and that the autonomy of the Committee was something which did not require to be recognised, or respected."

15. After the decision in Suraj Parkash's case was rendered on June 16, 1967, the old Municipal Committee was again reinstated and it was allowed to continue to function till June 27, 1969, that is, the day on which the Capital Act came into force, although its term had expired long time back. No attempt whatever appears to have been made by the Himachal Pradesh Administration to hold fresh elections to the Municipal Committee during the intervening period in spite of the clear observations made in Suraj Parkash's case that speedy and effective steps should be taken in that direction and in face of the fact the Municipal Committee was not "functioning properly" as disclosed in the affidavit of the Secretary, Local Self-Government Department, filed in this proceeding. Instead, the Capital Act was enacted to get rid of the Municipal Committee and to regulate the municipal affairs. This is the third lapse and the responsibility therefore is required to be fixed on the Himachal Pradesh Administration.

16. The Capital Act, which remained in force for a period of about 11 years, divested the city of Shimla of an elected municipal government. The municipal administration was entrusted during the said period to an Administrator and to a committee consisting of members appointed by the State Government. The committee, by and large, consisted of government officers although appointment thereto could have been made from amongst the citizens of Shimla to enable them to indirectly participate in the municipal administration. The executive

inertia, to review the position periodically enabled the Corporation Act to hold the field for a decade and more coupled with the denial of right of even indirect participation in the municipal administration during such period. This is the fourth lapse for which the Himachal Pradesh Government cannot but invite an adverse comment.

17. The Corporation Act, which repealed the Capital Act, came into force on October 18, 1980, The Municipal Corporation of Shimla was thereunder constituted to be the city of Shimla on November 10, 1980. The Corporation Act casts a statutory duty on the State Government to compose a Corporation consisting, inter alia, of elected councillors as soon as may be after the said day. No effective step in the said direction was, however, taken till May 20, 1983 when an appointment to the office of the Director to supervise the conduct of election was for the first time made. For a period of about two years and eight months, therefore, no initiative was taken in the direction of holding an election. Taking shelter under the transitory provisions, the municipal government was entrusted to the care of the Commissioner and the same situation obtains even now, although a period of about four years will be shortly completed since the Corporation Act came into force. No explanation whatever has come forth as to why a period of about two years and eight months was allowed to elapse before the Director was appointed. That apart, an election could have been validly held under the rules framed under the Himachal Act, the applicability and operation whereof were saved by each of the succeeding statutes including the Corporation Act. No satisfactory explanation is coming forth as to why the election was still not held to comply with the statutory duty. This is the fifth lapse and the State Government cannot be spared for its failure to discharge its statutory duty in that regard.

18. Even after the appointment of the Director, nearly eighteen months have lapsed but progress is being made at snail's pace in the direction of holding the election. The explanation given for the leisurely manner in which the progress is being made is not satisfactory. The framing of the rules could have been expedited and the legislative amendments, if any, could have been made much earlier, the expression "adult suffrage" could hardly be regarded as "ambiguous" and it is difficult to appreciate as to how it could have been genuinely felt that its meaning was not "firmly known" so that a legislative amendment was essential before the election could be held. Besides, although the Corporation had signified its assent to the proposal concerning the inclusion of 42 adjoining villages within the Corporation limits as far back as in January 1984, the statutory notification in this regard was not published till May 30, 1984. The delay is unexplained and inexcusable. This is the sixth lapse for which again fault must be found with the State Government.

19. Even now when asked specifically to indicate the approximate time-limit within which the election is expected to be held, all that the State Government has been able to come forth and say is that "all the above mentioned procedure

will take considerable time and it will be difficult for the Government to state, at this stage, as to when the elections of the Municipal Corporation, Shimla, will take place."

20. In the context of these facts and against the aforesaid background, the earlier quoted observations of this Court in *Voginder Lal Sharma's case* (ILR (1983) Him Pra 457) to the effect that over the last decade the different political parties, which came to rule this State, appeared to be united in one thing, that is, not to allow the citizens of Shimla to elect its municipal body, are amply justified. Experience has shown that merely expressing pious hopes and recording assurances that the election will be held early have served no purpose. The time has now arrived for an effective judicial intervention so that the election could be ordered to be held within a reasonable time.

21. The power of the Court to issue writ directing the State to perform a public duty including, inter alia, the duty to hold an election, cannot possibly be questioned. In *de Smith's Judicial Review of Administrative Action* (Fourth Edition) it has been observed at p. 549 :

".....the High Court has statutory power to order an election to a local government office to be held on a day appointed by it. This power, which was formerly exercisable on an application for mandamus, may be used either when the authority has failed to hold an election at all or when an election that has been held is a nullity."

At page 592 it is observed that a writ of mandamus would go on the application of any aggrieved party to compel the performance of a wide range of public or quasi-public duties, performance of which had been wrongly refused. The writ could issue, inter alia, to compel the holding of an election to the office or to prevent the unlawful packing of a Corporation. In *Administrative Law* by H. W. R. Wade (Fifth Edition) it has been observed at p. 623 :

"As well as illegal action, by excess or abuse of power, there may be illegal inaction, by neglect of duty. Public authorities have a great many legal duties, under which they have an obligation to act, as opposed to their legal powers, which give them discretion whether to act or not."

At Pp. 632, 633 and 634, it is observed as follows :

".....Modern government is based almost exclusively on statutory powers and duties vested in public bodies, and mandamus is the regular method of enforcing the duties.....Today the majority of applications for mandamus are made at the instance of private litigants complaining of some breach of duty by some public authority..... Within the field of public law the scope of mandamus is still wide and the court may use it freely to prevent breach of duty and injustice."

22. Judicial decisions have affirmed this principle in no uncertain terms even in cases where the power is conferred in enabling terms. The locus classicus on the subject is the decision of the House of Lords in *Julius v. Lord Bishop of Oxford*, (1880) 5 AC 214 which has received approval at the hands of the Supreme Court in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, The statute in that case said that "it shall be lawful" for a Bishop to issue a commission of enquiry in case of an alleged misconduct by a clergyman either on the application of a complainant or of his own motion. In the context of such statutory language it was held that it merely conferred a power. However, Earl Cairns, L. C. said at Pp. 222, 223 and 225 as follows :

"But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person on whom the power is reposed to exercise that power when called upon to do so.....The cases to which I have referred appear to decide nothing more than that where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the court will require it to be exercised."

Lord Penzance said at p. 229 ;

"The words "it shall be lawful" are distinctly words of permission only they are enabling and empowering words. They confer a legislative right and power on the individual named to do a particular thing; and the true question is, not whether they mean something different, but whether, regard being had to the person so enabled, to the subject-matter, to the general objects of the statute, and to the person, or class of persons, for whose benefit the power may be intended to have been conferred, they do or do not create a duty in the person on whom it is conferred, to exercise it."

Lord Blackburn said at Pp. 241 and 244 :

".....if the object for which the power is conferred be for the purpose of enforcing a right, there may be a duty cast on the donee of the power to exercise it for the benefit of those who have that right when required on their behalf..... The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right."

23. In *Hirday Narain's* case (supra) the Supreme Court observed as follows :

".....If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his

authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right -- public or private -- of a citizen."

24. These judicial pronouncements of high authority show that even where enabling or discretionary power is conferred on a public authority, the words which are permissive in character may be construed as involving a duty to exercise the power, if some legal right or entitlement is conferred or enjoyed and, for the purpose of effectuating such right or entitlement, the exercise of such power is essential. If there is failure on the part of the donee to exercise such power accordingly, the court will require it to be exercised.

25. The present case stands on a much higher footing. Section 4, Sub-section (3), does not confer an enabling or discretionary power. In terms, it imposes a statutory duty upon the State Government to hold an election for the purpose of constituting a Corporation consisting, inter alia, of elected councillors "as soon as may be after the appointed day". Having regard to the object and purpose of the statute and the language in which the duty is imposed, there is no manner of doubt that its enforcement can be secured by the issue of an appropriate writ.

26. Cases in which Courts in India have intervened and directed the holding of an election are not wanting. An illustrative case is *Budha Mal v. State of Punjab* (1967) 69 PLR 974. The Municipal Election Rules, 1952 enacted under the Punjab Act prescribed the mode and procedure for holding municipal election. Rule 63 prescribed grounds for declaring an election void. The Election Commissioner was constituted the competent authority to hold an enquiry into the validity of an election, if challenged. Under Rule 63 read with Section 254, if any one or more of the grounds for declaring an election void was established at the enquiry, the Election Commissioner was required to submit to the State Government a report that the election of the returned candidate be declared to be void. Rule 69 provided that under such circumstances the Election Commissioner or the Punjab Government as the case may be, shall direct that a new election shall be held. Section 255 required the State Government to pass the necessary orders on receiving the report of the Election Commissioner and such orders were to be notified in the official gazette. The facts in that case were that the report was made by the Election Commissioner on November 8, 1966, declaring the election of a returned candidate as null and void and the consequential notification issued by the State Government on March 23, 1967 was duly published in the official gazette. No direction was, however, issued by the Election Commissioner or the State Government for holding a new election for several months. One of the questions raised for decision in the case related to the mandatory duty cast upon the Election Commissioner or the Punjab Government, as the case may be, to hold a new election under such circumstances and the relief sought in that context was to compel the performance of such duty. The Court observed that

more than four months and fifteen days had elapsed between the date on which the Election Commissioner made his report and the issuance of the consequential orders of the State Government. No explanation was forthcoming as to why it took the State Government so much time to pass the necessary orders. Five more months had elapsed since the issuance of the notification and still no direction for the holding of a new election had been given. The constituency had, therefore, remained unrepresented for a period of ten months and the constituency's representative, who could have had an important voice in the administration of the municipal affairs, could not do so as the election was not held. The court then proceeded to make the following pertinent observations at Pp. 983 and 984 :

"The essential character of a democratic form of Government is bound to be lost if the executive becomes so unmindful of its mandatory duty,..... Freedom of franchise is a valuable right which must not be destroyed or delayed, and the working of the democratic machinery ought not to be suspended, or, unlawfully interfered with. The basic feature of a democracy is, that the Sovereign power resides in the people as a whole, and is exercised through the elected representatives. A democratic ideal will be delusive if Government servants can stall its functioning by delaying elections, or by not calling upon the constituency to fill the vacancy by electing its representatives. In such a contingency as has occurred in the instant case, the democratic functioning remains suspended, and all this, because of the remissness of the executive. It is of consequence, that the wishes and opinions, not excluding even prejudices of the voters shall count, as also their interests, represented But when a constituency, through an executive act of omission, remains unrepresented, the wishes, the opinions and the interests of the electorate become mute and voiceless. The effective prevention of the democratic process by allowing the vacancy to remain unfilled is not a trite or a negligible omission; it cannot be dismissed from thought as a trifling peccadillo, or a mere trivia, or minutiae too trumpery to call for serious notice. The municipal committee as well as those for whose benefit, the institution of the local Government is intended, are entitled to the judgment, intelligence, experience, guidance and counsel for the elected representatives of the people in the constituency. The executive in this case, has deprived a section of the community from the services of its elected representatives. The inordinate delay in not inviting the electors to choose their nominee cannot but be deprecated, especially when it has remained unexplained, and was avoidable.

The statutory right to elect candidates for municipal constituency could not, either directly or indirectly, be denied or abridged, but the non-compliance with the statutory provisions has in this case, violated the exercise of their right; and till the constituency is called to elect its representative, the franchise stands abridged. The voter in this constituency has been shut off from the ballot box, which is obnoxious to the statutory guarantee of the right to vote.

The principle underlying the policy of the rule of law while conferring right also imposes an obligation not only on the citizen, but also on the State. The State which has rights, has also undeniable duties, enforceable under the law. Where the law permits, legal obligation owned by the State can be enforced in a court of law. Any contravention of law by or in the name of the State can be resisted in the judicial forum. So also, violations of any rights, whether of the citizen, or by the citizen, or the State, or by the State, may be judicially resisted and the rights may be enforced. *Lex non a rege est violanda*, the law is not to be violated by the king is an old maxim, and equally applicable to the modern State. The discharge of a legal duty on the part of the State is not only a statutory obligation but also a moral one, to which the principle *noblesse oblige* is attracted. In this case, there is a statutory obligation to hold election. Even if law were to afford no remedy for enforcing it, there is imposed a duty upon this court to remedy the wrong and interfere by mandamus (see *Veley v. Burden* (1841) 12 A 265).

In a case like the present, the duty to hold an election was ministerial in its character and there is no controversy as to the existence of the conditions upon which the call of the election was founded. The officer responsible, or, the State Government, can be compelled by mandamus to make the call and hold election. Mandamus, in the circumstances, is an appropriate remedy to compel performance by officers and by the State, of their duty with respect to the holding of an election. The statute does not invest the State Government, or any of its officers with the arbitrary power of refusing to take any action. On the contrary, it is their statutory duty to conform to the letter and spirit of Rule 69. The State whose duty for holding election is purely ministerial can, in an appropriate case, be compelled to act by a writ of mandamus. This court is not without power to issue mandamus in a case like the present, where, in consequence of laches, the holding of an election has been unduly delayed. A writ of mandamus to compel the holding of an election is competent at the instance of an elector or a candidate....."

The court consequentially issued a writ of mandamus directing the State of Punjab to hold a new election within a period of three months in compliance with the duty cast upon it under Rule 69.

27. The observations made in *Budha Mal's* case (1967 (69) PLR 974 (*supra*)) apply with greater force on the facts and in the circumstances of the present case. Against the backdrop unfolded earlier, the need for the issuance of a writ for the performance of the statutory duty to hold election is, indeed, far more imperative in the instant case. It is high time that the impediments, if any, which exist in the way of holding the election were successfully got over and the election held within a reasonable time.

28. The next question which must inevitably arise is as to what is the lime limit within which the election should be directed to be held. In this connection we have been taken through the relevant provisions of the Corporation Act, the

Himachal Pradesh Municipalities (Wards) Rules, 1970 and the Himachal Pradesh Municipal Election Rules, 1970. The two sets of Rules which are still the law in force have been referred to only for illustrative purposes because the draft rules framed u/s 33 of the Corporation. Act are stated to be broadly in alignment with the provisions contained in those Rules. The Court's attention has been invited to: (a) Sections 3, 5, 8, 14 and 16 of the Act, (b) Rules 3, 4, 5 & 6 of the Himachal Pradesh Municipalities (Wards) Rules, 1970 and (c) Rules 3 to 18 and 32 to 65 of the Himachal Pradesh Municipal Election Rules, 1970. The circumstance that this will be the first general election under a new statute after a long interval of time and that, therefore, a lot of spade work would be necessary was pressed into service to plead for a longer than usual time being allowed for holding the election. The aspect that the various time-bound stages of election process as contemplated by different statutory provisions will not permit the election being held in immediate future was also highlighted. Besides, the Court's attention was drawn to the fact that the rules u/s 33 have still to be promulgated. Having considered the matter in depth in light of the submission made before us and having applied our mind to each step in the process of election required to be taken under the relevant statutory provisions and making all reasonable concessions in order to enable all formalities being observed for the holding of the election without any inconvenience or difficulty, we are of the view that a direction should issue to the State Government to hold the election and to constitute the Corporation within the meaning of Sub-section (3) of Section 4 of the Corporation Act on or before May 30, 1985. We hasten to add that such a long period of ten months is allowed to the State Government only because of the peculiar facts and circumstances of the present case and that what as particularly weighed with us in that connection is the circumstance that a general election is to be held for the first time under a new statute in a metropolitan town after a lapse of about a score and five years. The time limit of ten months fixed accordingly is, therefore, not to be regarded as a precedent.

29. For the foregoing reasons, the writ petition succeeds and it is allowed. Writ will issue to the first respondent directing it to constitute the Shimla Municipal Corporation as required under Sub-section (3) of Section 4 on or before May 30, 1985. The first respondent will pay to the petitioners the costs of the petition quantified at Rs. 1500A. The cases be deposited within a period of one month in the Registry of this Court. Mr. K. D. Sood states that since the writ petition is in the nature of a public interest litigation, the petitioners have expressed their desire to contribute the sum realised by way of costs to the High Court Legal Aid and Assistance Fund from which free legal aid is being provided to the needy and poor litigants.