
(2010) 07 UK CK 0028
In the Uttarakhand High Court

Rajiv Lochan Sah

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Constitution of India, 1950 — Article 243U

Uttar Pradesh Municipalities Act, 1916 — Section 10A, 10A(1), 10A(2), 10A(4), 39

Citation : AIR 2010 Utt 94 : (2010) 2 UC 1122

Hon'ble Judges : J.S. Khehar, C.J.;V.K. Bist, J

Bench : Division Bench

Judgement

J.S. Khehar, C.J.—At the time of the original filing of the instant writ petition, the tenure of the members of the Municipal Boards/ Nagar Panchayats for various municipalities in the entire State of Uttarakhand was to expire on the mid-night falling between 14th and 15th February, 2008. It is, therefore, that the instant writ petition was filed, so as to persuade the concerned authorities to convene the process of election and to complete it before the expiry of the tenure of the members of the Municipal Boards/ Nagar Panchayats.

2. It is not a matter of dispute, that the process of election was thereupon conducted in furtherance of the various directions issued by this Court on 24.03.2008. As such, the prayer made by the petitioner for conducting the process of election stood satisfied.

3. Despite the aforesaid, learned Counsel for the petitioner, during the course of hearing of the instant writ petition today, contends that he had assailed the constitutional validity of sub-Section (4) of Section 10-A of the Uttarakhand (The Uttar Pradesh Nagar Palika Adhiniyam, 1916) (Adoption and Modification Order, 2002), whereby sub-Section (4) was added to Section 10-A. Section 10-A of the Uttar Pradesh Municipalities Act, 1916, as it presently exists, is being extracted hereunder:

10-A. Term of municipality.- Every municipality shall, unless sooner dissolved u/s 39, continue for five years from the date appointed for its first meeting and no

longer.

(2) An election to constitute a municipality shall be completed,

(a) before the expiry of its term specified in Sub-section (1); or

(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 sub-section for constituting the municipality for such period.

(3) 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 Sub-section (1), had it not been so dissolved.

(4) Notwithstanding anything to the contrary contained in any other provision of this Act, where due to unavoidable circumstances or in the public interest, it is not practicable to hold an election to constitute a Municipal Council/Nagar Panchayat before the expiration of its duration, then until the due constitution of such Municipal Council/Nagar Panchayat, all powers, functions and duties of Municipal Council/Nagar Panchayat, shall be exercised, performed and discharged by the District Magistrate, or by such Gazetted Officer not below the rank of Sub-Divisional Magistrate, to be appointed in this behalf by the District Magistrate and such District Magistrate or such Officer shall be called the "Administrator" and such Administrator shall be deemed in law to be the Chairman/President or Committee, as the occasion may require:

Provided that the term of the Administrator appointed under this section, shall not exceed six months or till the new constitution of new Board.

So as to assail the constitutional validity of sub-Section (4) of Section 10-A (extracted hereinabove), it is the vehement contention of the learned Counsel for the petitioner, that the same violates the mandate of Article 243U of the Constitution of India. Article 243U is being reproduced below:

243 U. 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.

4. The pointed assertion at the hands of the learned Counsel for the petitioner is based on Clause (1) of Article 243U, wherein the emphasis at the hands of the learned Counsel for the petitioner, is to the words "... shall continue for five years from the date appointed for its first meeting and no longer". According to the learned Counsel for the petitioner, the tenure of municipalities can be five years and no more, and as such, any authorization under the provisions of the Uttar Pradesh Municipalities Act, 1916, so as to authorize extension of the tenure of the Board beyond five years, will violate the mandate of Clause (1) of Article 243U.

5. In order to adjudicate upon the controversy raised by the petitioner, it is imperative to first examine sub-Section (1) of Section 10-A. A perusal of sub-Section (1) reveals, that the same words as have been used in Article 243U have been reproduced therein, namely, that the tenure of the municipality would be "... for five years from the date appointed for its first meeting and no longer". Sub-Section (2) of Section 10-A reiterates the aforesaid constitutional mandate contained in Article 243U, in as much as, it requires that the election process be completed before the expiry of the tenure of the existing members of the Municipal Boards/ Nagar Palikas, in terms of sub-Section (1) of Section 10-A.

6. The contention of the learned Counsel for the petitioner in connection with the validity of sub-Section (4) of Section 10-A is, that the same authorizes an extension in the tenure of the members of the Municipal Boards/Nagar Palikas beyond the period of five years. We have perused sub-Section (4) of Section 10-A (extracted hereinabove). It is not possible for us to accept the contention of the learned Counsel for the petitioner. In our considered view, sub-Section (4) of Section 10-A does not authorize the extension of the tenure of the members of the municipality beyond the term of five years. In fact, a closer examination of the aforesaid provision reveals, that on the completion of the tenure of five years, the existing members would be replaced, either by the District Magistrate or by a Gazetted Officer not below the rank of Deputy Collector. In sum and

substance, therefore, the members elected to the Municipal Boards/Nagar Palikas would not continue for a period in excess of their tenure of five years. Sub-Section (4) of Section 10-A of the Uttar Pradesh Municipalities Act, 1916, in our view, furthers the mandate of Article 243U of the Constitution of India, by preventing the existing members of the Municipal Boards/Nagar Palikas from continuing beyond the term for which there were elected. Rather than authorizing the extension of the tenure of the office of the existing members of the municipality, sub-Section (4), in our view, the provision curtails their tenure in consonance with the mandate of Article 243U of the Constitution of India. Not only sub-Section (4) of Section 10-A, but also sub-Sections (1) and (2) of Section 10-A of the Uttar Pradesh Municipalities Act, 1916 (as discussed in the foregoing paragraph) are drawn to give effect to Article 243U of the Constitution of India. We are, therefore, of the considered view, that sub-Section (4) of Section 10-A of the Uttar Pradesh Municipalities Act, 1916 (as applicable to the State of Uttarakhand) does not violate Article 243U of the Constitution of India.

7. For the reasons recorded hereinabove, the instant writ petition is disposed of as having been partly rendered infructuous (in so far as holding election to the Municipal Boards/Nagar Palikas, are concerned). The challenge of the petitioner to the constitutional validity of sub-Section (4) of Section 10-A of the Uttar Pradesh Municipalities Act, 1916 is, however, declined.

8. The instant writ petition stands disposed of in the aforesaid terms.