

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
HON'BLE SRI JUSTICE R.C. KHULBE

29TH JULY, 2022

WRIT PETITION (M/S) No. 1769 OF 2022

Between:
Prashant Chauhan.
...Petitioner

and

State of Uttarakhand and others.
...Respondents

And

WRIT PETITION (M/S) No. 1773 OF 2022

Between:
Rao Afaq Ali.
...Petitioner

and

State of Uttarakhand and others.
...Respondents

And

WRIT PETITION (M/S) No. 1774 OF 2022

Between:
Abhishek Pal.
...Petitioner

and

State of Uttarakhand and others.
...Respondents

And

WRIT PETITION (M/S) No. 1785 OF 2022

Between:
Rao Farmood.
...Petitioner

and

State of Uttarakhand and others.
...Respondents

And

WRIT PETITION (M/S) No. 1796 OF 2022

Between:

Aabid Hasan.

...Petitioner

and

State of Uttarakhand and others.

...Respondents

And

WRIT PETITION (M/S) No. 1797 OF 2022

Between:

Arun Tyagi.

...Petitioner

and

State of Uttarakhand and others.

...Respondents

And

WRIT PETITION (M/S) No. 1798 OF 2022

Between:

Abad Ali.

...Petitioner

and

State of Uttarakhand and others.

...Respondents

And

WRIT PETITION (M/S) No. 1800 OF 2022

Between:

Masooq Ali.

...Petitioner

and

State of Uttarakhand and others.

...Respondents

And

WRIT PETITION (M/S) No. 1802 OF 2022

Between:
Arshad.

...Petitioner

and

State of Uttarakhand and others.

...Respondents

Counsel for the petitioners in : Mr. Arvind Vashishtha, the learned
WPMS No. 1785 of 2022, WPMS Senior Counsel assisted by Mr. Kaushal
No. 1796 of 2022, WPMS No. 1798 Pandey, the learned counsel
of 2022 and WPMS No. 1802 of
2022.

Counsel for the petitioners in : Mr. Gaurav Singh, the learned counsel.
WPMS No. 1769 of 2022, WPMS
No. 1773 of 2022 and WPMS No.
1774 of 2022

Counsel for the petitioner in WPMS : Mr. Prem Kaushal, the learned counsel.
No. 1797 of 2022

Counsel for the petitioner in WPMS : Mr. Amar Murti Shukla, the learned
No. 1800 of 2022. counsel.

Counsel for the State of : Mr. Pradeep Joshi and Mr. Anil Kumar
Uttarakhand. Bisht, the learned Additional Chief
Standing Counsel for the State of
Uttarakhand.

Counsel for the State Election : Mr. Sanjay Bhatt, the learned counsel.
Commission.

JUDGMENT : (per Sri Vipin Sanghi, C.J.)

In all these writ petitions, there is firstly a challenge to the order dated 18.11.2021 issued by the Government of Uttarakhand, Department of Panchayat on the subject of reservation and allocation of seats in Gram Panchayats, Kshettra Panchayats and District Panchayat of District Haridwar for the 3-Tier Panchayati elections.

2. The petitioners have further assailed, in their respective petitions, the subsequent similar orders, all dated 13.07.2022, whereby actual allocation of the seats in the Gram/ Kshettra/ District Panchayat have been made for the reserved categories in terms of the earlier order dated 18.11.2021.

3. Part-IX of the Constitution, containing Articles 243, 243A to 243-O were inserted into the Constitution by a Constitution (Seventy-third Amendment) Act, 1992 w.e.f. 24.04.1993. This part deals with the subject of Panchayats. Article 243B states that there shall be constituted in every State, Panchayats at the village, intermediate, and district levels in accordance with the provisions of Part IX. Article 243C lays down the composition of the Panchayats. All the seats in the Panchayat shall be filled by direct election from territorial constituencies in the Panchayat area. Under Article 243C(3), the Legislature of a State may, by law, provide for the representation of the Chairpersons of the Panchayats. Under Article 243D of the Constitution of India, seats are required to be reserved for the Scheduled Castes and Scheduled Tribes in the Panchayats, and the number of seats so reserved shall

bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat, as the population of the Scheduled Castes in that Panchayat area, or of the Scheduled Tribes in that Panchayat area, bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

4. Article 243D(2) states that not less than one third of the total number of seats reserved under clause (1) shall be reserved for women, belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. For women, reservation is granted under Article 243D(3), which states that not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women, and such seats may be allotted by rotation to different constituencies in a Panchayat.

5. Clause (4) of Article 243(D) states that the offices of the Chairpersons in the Panchayats at the village or any other level, shall be reserved for the

Scheduled Castes the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. It further provides that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats, at each level in any State, shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level, as the population of the Scheduled Castes in the State, or of the Scheduled Tribes in the State, bears to the total population of the State. It further provides that not less than one third of the total number of offices of Chairpersons in the Panchayats at each level, shall be reserved for women. It further provides that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

6. Clause (6) of Article 243(D) states that nothing in Part-IX shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat, or offices of Chairpersons in the Panchayats, at any level, in favour of backward class of citizens.

7. Article 243E(1) states that every Panchayat, 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.

8. In the State of Uttar Pradesh, the United Provinces Panchayat Raj Act, 1947, and Uttar Pradesh Kshettra Panchayat and Zila Panchayat Act, 1961 were in vogue when the aforesaid constitutional amendment was made. In the light of said constitutional amendment vide which Chapter IX was inserted, it appears that Chapter III-A was inserted in the said U.P Panchayat Raj Act, 1947 (hereinafter referred to as the "U.P. Act") by U.P. Act 09 of 1994.

9. Section 11-A(1) of the U.P. Act states that there shall be a Pradhan of the Gram Panchayat, who shall be the Chairperson thereof. Sub-Section (2) of the said Section states that the State Government shall, by order, reserve offices of Pradhans for the Scheduled Castes, the Scheduled Tribes, and the Backward Classes. It further provides that the number of offices of Pradhan reserved for the Scheduled Castes, Scheduled Tribes and the Backward Classes in the State shall bear, as nearly

as may be, the same proportion to the total number of such offices, as the population of the Scheduled Castes in the State, or the Scheduled Tribes in the State, or the Backward Classes in the State bears to the total population of the State. It further provides that the reservation for the Backward Classes shall not exceed twenty-seven percent of the total number of offices of Pradhans. It further provides that if the figure of population of the Backward Classes is not available, their population may be determined by carrying out a survey in the prescribed manner. It further provides that not less than one-third of the total number of Offices of Pradhans, reserved under sub-section (2), shall be reserved for women belonging to the Scheduled Castes, Scheduled Tribes and the Backward Classes. It further provides that not less than one-third of the total number of offices of Pradhans, including the number of offices of Pradhans reserved under sub-section (3), shall be reserved for women. The offices of the Pradhans reserved under Section 11-A shall be allotted by rotation to different Gram Panchayats, in such order, as may be prescribed. Under the U.P. Act, the Uttar Pradesh Panchayat Raj (Reservation and Allotment of Seats and

Offices) Rules, 1994 were framed by the State of Uttar Pradesh (hereinafter referred to as the "U.P. Rules").

10. The State of Uttarakhand was formed by virtue of the Uttar Pradesh Reorganisation Act, 2000 on 09.11.2000. By virtue of Section 86 of the U.P. Reorganisation Act, 2000, the laws in force immediately before the appointed day, continued to apply to the State of Uttarakhand. Consequently, the Uttar Pradesh Panchayat Raj Act, 1947, and the Rules framed thereunder continued to govern the field in the State of Uttarakhand.

11. The Panchayat Raj elections in the State, it appears, were held after the formation of the State for the first time in the year 2002; for the second time in the year 2010, and; for the third time in the year 2015-16. The reservation to the Scheduled Castes, Scheduled Tribes and Backward Classes, apart from reservation of women, were granted in all these Panchayat Raj elections in accordance with the U.P. Act and the U.P. Rules.

12. It is not in dispute that so far as the last election is concerned, reservations were worked out on

the basis of the population/ demographic data gathered during the 2011 General Census, with regard to the percentage of population in the State, of Scheduled Castes; Scheduled Tribes of the total population of the State. So far as Backward Classes are concerned, a rapid survey was conducted in 2013 to determine the percentage of Backward Classes in the State.

13. The Legislature of the State of Uttarakhand framed the Uttarakhand Panchayati Raj Act, 2016 (Uttarakhand Act No. 11 of 2016) on 07.04.2016 (hereinafter referred to as the "Uttarakhand Act"). Section 194 of the Uttarakhand Act repealed the Uttar Pradesh Panchayat Raj Act, 1947 and Uttar Pradesh Kshettra Panchayat and Zila Panchayat Act, 1961, as applicable to the State of Uttarakhand. It further provided that notwithstanding such repeal, anything done or any action taken under the said enactment shall be deemed to have been done or taken under the corresponding provisions of the Uttarakhand Act. Section 10A was inserted in the Uttarakhand Act by Act No. 10 of 2019 w.e.f. 25.07.2019. Section 10A provides for reservation for the post of Pradhan. Section 10A of the Uttarakhand Act is similar to Section 11A of the U.P.

Act. However, the reservation, for the Backward Classes, has been capped at 14 percent of the total number of seats of Pradhan, which, under the U.P. Act, has been capped at 27 percent.

14. The definition of the expression "Rules", contained in Section 2(35) of the Uttarakhand Act, was substituted by the Uttarakhand Panchayati Raj (Second Amendment) Act, 2019 (Uttarakhand Act No. 09 of 2020) on 16.01.2020. Under the amended definition of "Rules", the same means *"rules made under this Act but until such rules are not promulgated rules means rules promulgated under the Uttar Pradesh Panchayati Raj Act, 1947 and the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Act, 1961."*

15. We may now come to the present controversy raised by the petitioners in these Writ Petitions.

16. The elections to the Panchayats in the District of Haridwar in the State of Uttarakhand have been due since December 2020. However, they have not been held, statedly, on account of the COVID-19 pandemic.

17. In Writ Petition (PIL) No. 87 of 2022, we have passed an order on 05.07.2022, wherein, the learned counsel for the State Election Commission stated on instructions before us, that, the process of delimitation had been completed, and that the process of preparation of the electoral rolls would take three weeks, and it was stated that the notification for conduct of elections shall positively be issued in the first week of August, 2022. In this regard, the communication of the State Election Commission to the Secretary, Panchayati Raj Department dated 04.07.2022 was tendered in Court and taken on record. This Court had bound down the State Election Commission to its statement, and directed the State Election Commission to ensure that there is no further delay in the conduct of elections. The Court also directed the State Election Commission to facilitate issuance of notification by the State Government in light of the judgment of the Supreme Court in ***Suresh Mahajan Vs. State of Madhya Pradesh and Another, 2022 SCC OnLine SC 589***, and a direction was issued to the State Government to positively issue the relevant notification within the said time frame.

18. Now, the present batch of writ petitions has been preferred by the petitioners, primarily, raising a grievance to the reservation of seats in different Panchayats of District Haridwar, and to the rotation of the reserved seats resorted to by the respondents.

19. The primary submission of Mr. Arvind Vashistha, the learned senior counsel for the petitioners, is that there is no reliable data available with the State, on the basis of which the reservation for the reserved classes, as aforesaid, has been worked out. He submits that the last General Census was conducted in the year 2011, when, insofar as the Scheduled Castes and Scheduled Tribes are concerned, the demographic data was collected. In relation to the Backward Classes, only a rapid survey was conducted in 2013. He submits that the Supreme Court, in ***Vikas Kishanrao Gawali v. The State Of Maharashtra, 2021 (6) SCC 73***, while upholding the constitutional validity of Article 243D and Article 243T of the Constitution, went on to observe that in relation to the quantum of reservation provided for the Backward Classes under the State legislations, the onus lies on the executive to conduct a rigorous investigation into the pattern of backwardness that acts

as a barrier to political participation, which are quite different from the patterns of disadvantages in the matter of access to education and employment. It was left open to the petitioners, or aggrieved party, to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court. In particular, learned Senior Counsel has placed reliance upon paragraph no. 9 of the said judgment in **Vikas Kishanrao Gawali** (supra), which reads as under: -

"9. Besides this inviolable quantitative limitation, the State Authorities are obliged to fulfil other pre-conditions before reserving seats for OBCs in the local bodies. The foremost requirement is to collate adequate materials or documents that could help in identification of backward classes for the purpose of reservation by conducting a contemporaneous rigorous empirical inquiry into the nature and implications of backwardness in the local bodies concerned through an independent dedicated Commission established for that purpose. Thus, the State legislations cannot simply provide uniform and rigid quantum of reservation of seats for OBCs in the local bodies across the State that too without a proper enquiry into the nature and implications of backwardness by an independent Commission about the imperativeness of such reservation. Further, it cannot be a static arrangement. It must be reviewed from time to time so as not to violate the principle of overbreadth of such reservation (which in itself is a relative concept and is dynamic). Besides, it must be confined only to the extent it is proportionate and within the quantitative limitation as is predicated by the Constitution Bench of this Court."

20. Thus, the submission of learned senior counsel is that the order dated 18.11.2021 issued by the State of Uttarakhand, which proceeds on the General Census of the year 2011 and on the rapid Survey of 2013 for the

Backward Classes Category, is erroneous, and the State is bound to conduct a fresh survey before proceeding to determine the extent of reservation to be granted to the reserved categories for the forthcoming elections. He submits that on the basis of 2011 General Census, and the rapid survey, percentages of Scheduled Castes; Scheduled Tribes, and; Backward Classes have been worked as 18.76, 2.89, 15.98 % respectively, which is erroneous, as it is stale.

21. Further submission of learned counsel for the petitioner is that the Uttarakhand Act was enacted on 07.04.2016. Since the Uttarakhand Act also repealed the U.P. Act and the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Act, 1961, consequently, the U.P. Rules also stood repealed. It was only by way of amendment, vide Uttarakhand Act No. 09 of 2020, that the definition of "Rules" was substituted on 16.01.2020 to mean rules made under the Uttarakhand Act, but until such rules are not promulgated, rules means rules promulgated under the U.P. Act and the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Act, 1961. Thus, there was a re-adoption of the U.P. Rules – since no separate Rules have been framed by the State of

Uttarakhand under the Uttarakhand Act, on and from 16.01.2020.

22. Learned Senior Counsel submits that, since the U.P. Rules have been adopted afresh by the State of Uttarakhand, while applying the policy of rotation, the forthcoming Panchayat elections in District Haridwar, of the State of Uttarakhand, cannot be considered as the fourth election, and should be considered as the first election.

23. The U.P. Rules provided for allotment of seats by rotation and allotment of offices by rotation. Rules 4 and 5 read as under :-

"4. Allotment of seats by rotation. (1)
Subject to the provisions of other sub-rules, the seats reserved in a Gram Panchayat shall be allotted to different territorial constituencies in the Gram Panchayat in the following order:-

- (a) Women belonging to the Scheduled Tribes;*
- (b) the Scheduled Tribes;*
- (c) women belonging to the Scheduled Castes;*
- (d) the Scheduled Castes;*
- (e) women belonging to the backward classes;*
- (f) the backward classes; and*
- (g) women.*

(2) If on the basis of population of the Scheduled Tribes or of the Scheduled Castes or of the Backward Classes in a Panchayat area, only one seat can be re-served for the Scheduled Tribes or for the Scheduled Castes or for the Backward Classes, as the case may be, such seat shall go to a woman belonging

to the Scheduled Tribes or to the Scheduled Castes or the Backward Classes, as the case may be.

(3) If on the basis of population in a Panchayat area, a seat can not be re-served for the Scheduled Tribes or for Scheduled Castes or for the Backward Classes, the order mentioned in sub-rule (1) shall be so adhered to as if there was no reference in it to the Scheduled Tribes or to the Scheduled Castes or to the Backward Classes, as the case may be.

(4) The number of seats as provided in Rule 3 shall be allotted to different Territorial Constituencies on the basis of population in the descending order, that is, from amongst the territorial constituencies in a Gram Panchayat, the territorial constituency having the largest population of the Scheduled Tribes shall be allotted to them, and the territorial constituency having the largest population of the Scheduled Castes shall be allotted to them, and the territorial constituency having the largest population of the Backward Classes shall be allotted to them, and in the subsequent election the allotment shall be done in the aforesaid manner so however that as far as may be, the territorial constituency allotted in the previous election to the Scheduled Tribes shall not be allotted to the Scheduled Tribes, and the territorial constituency allotted to the Scheduled Castes shall not be allotted to the Scheduled Castes and the territorial constituency allotted to the Backward Classes shall not be allotted to the Backward Classes:

Provided that if in any election, the population of the Scheduled Tribes, or of the Scheduled Castes or of the Backward Classes can not be ascertained territorial constituency-wise, the descending order may be determined on the basis of number of families in the territorial constituencies, of the Scheduled Tribes, or of the Scheduled Castes or of the Backward Classes, as the case may be.

(5) Not less than one-third of the territorial constituencies allotted to the Scheduled Tribes, the Scheduled Castes or the Backward Classes under Sub-rule (4) shall be allotted to the women belonging to the Scheduled Tribes, the Scheduled Castes or the Backward Classes, as the case may be.

(6) Not less than one-third of the territorial constituencies remaining after allotment under Sub-rule (4) shall be allotted to women, so however that the territorial constituencies having the largest population excluding the population of the Scheduled Tribes, the Scheduled Castes and the Backward Classes shall be allotted to them and in the subsequent election the allotment shall be made in the aforesaid manner so however that the territorial

constituencies allotted to women in the previous election shall not be allotted to women.

5. Allotment of offices by rotation.-(1)

The number of offices of Pradhans as provided in Rule 3 for the Scheduled Tribes, the Scheduled Castes and the Backward Classes shall be distributed Khand-wise for being allotted to the constituent Gram Panchayats so, however, that the number of offices of Pradhans for the Scheduled Tribes, the Scheduled Castes, and the Backward Classes for the constituent Gram Panchayats shall bear, as nearly as may be, the same proportion to the number of offices of Pradhans as provided in Rule 3 as the population of the Scheduled Tribes in the Khand or of the Scheduled Castes in the Khand or of the Backward Classes in the Khand bears to the total population of the Scheduled Tribes in the State, or to the total population of the Scheduled Castes in the State or to the total population of the Backward Classes in the State, as the case may be.

(2) The number of offices of Pradhan for the Scheduled Tribes, the Scheduled Castes and the Backward Classes as determined under sub-rule (1) shall be allotted to different Gram Panchayats in the Khand on the basis of the ratio of their population in the Panchayat area to the total population of the Panchayat area, in the descending order, that is, from amongst the Gram Panchayats in the Khand. The Gram Panchayat in whose territorial area the ratio of population of the Scheduled Tribes is highest shall be allotted to them, and the Gram Panchayat in whose territorial area the ratio of population of the Scheduled Castes is highest shall be allotted to them, and the Gram Panchayat in whose territorial area the ratio of population of the Backward Classes is highest shall be allotted to them and in the subsequent election the allotment shall be made in the aforesaid manner, so, however, that as far as may be, the Gram Panchayat allotted in the previous election to the Scheduled Tribes, shall not be allotted to the Scheduled Tribes, and the Gram Panchayat allotted to the Scheduled Castes shall not be allotted to the Scheduled Castes and the Gram Panchayat allotted to the Backward Classes shall not be allotted to the Backward Classes:

Provided that if the population of the Scheduled Tribes or the Scheduled Castes or Backward Classes in the Panchayat area is less than two, the office of Pradhan of the Gram Panchayat for such Panchayat area shall not be allotted to the Scheduled Tribes, the Scheduled Castes or the Backward classes, as the case may be.

(3) Not less than one-third of the Gram Panchayats allotted to the Scheduled Tribes, the Scheduled Castes or the Backward Classes under sub-rule (2) shall be allotted to the women belonging to the Scheduled Tribes, the Scheduled Castes or the Backward Classes, as the case may be.

(4) Not less than one-third of the Gram Panchayats remaining after allotment under sub-rule (2) shall be allotted to women so however that the territorial areas of the Gram Panchayats allotted to them have the largest population, excluding the population of the Scheduled Tribes, the Scheduled Castes and the Backward Classes, and in the subsequent election the allotment shall be done in the afore-said manner so however that the Gram Panchayat allotted to women in the previous election shall not be allowed to women.

(5) The provisions of sub-rules (1), (2) and (3) of Rule 4 shall mutatis mutandis apply to the allotments of offices of Pradhan and this rule.

24. Having heard Mr. Arvind Vashistha, the learned Senior Counsel for the petitioners; Mr. Pradeep Joshi, the learned Additional Chief Standing Counsel for the State of Uttarakhand, and; Mr. Sanjay Bhatt, the learned counsel for the State Election Commission, we find no merit in the present Writ Petitions, and we are inclined to dismiss the same.

25. There can be no manner of doubt that the State is obliged to collect and collate contemporaneous data, and conduct an inquiry into the nature and implications of backwardness in the local bodies concerned through an independent dedicated Commission established for that purpose, for the

purpose of reservation of seats for the Backward Classes. As observed by the Supreme Court in **Vikas Kishanrao Gawali** (supra), the percentage of reservation of seats for the Backward Classes cannot be static, and it must be reviewed from time to time, so as not to violate the principle of overbreadth of reservation.

26. However, the even more important question is, whether, the elections of the Gram Panchayats, which have been due since the year 2020, can be allowed to be stalled merely because, either, the circumstances have not permitted the collection of contemporaneous data, or, the State has failed in carrying out the exercise of collection of demographic data in time?

27. Under Article 243E of the Constitution, and Section 12 of the Uttarakhand Act, every Gram Panchayat, unless sooner dissolved, shall continue for five years from the date fixed of its first meeting and **"no longer"**. Thus, the Constitutional intent and the intent of the State Legislature was clear, that the tenure of the Gram Panchayat, and every member of the Gram Panchayat, shall be five years from the date fixed for its first meeting, and no more. In our view, merely because contemporaneous data, with regard to the

Other Backward Classes, has not been collected since 2013 in the State, it is no ground to defer the allocation and rotation of seats, and the same has to be made on the basis of the last general census and rapid survey conducted in the State in 2011 and 2013 respectively.

28. If the aforesaid submission of the petitioners were to be accepted, it would be very easy for one or the other party, to put a spanner in the wheels and stall the election process, despite the term of the erstwhile Panchayat having come to an end, and despite the Constitutional and legislative intent being very clear, that the said term and tenure of the Panchayat, and the elected representatives in the Panchayat, is fixed for five years, and no more. In this regard, we may also rely on the observations made by the Supreme Court in **Suresh Mahajan** (supra). It reads as follows :-

"4. Reverting to the issue of non-conduct of elections in respect of large number of local bodies in the State of Madhya Pradesh, even that is no different. As a matter of fact, the number in this State is quite staggering. The chart handed over to the Court by the learned counsel for the Madhya Pradesh State Election Commission, indicates that there are about 321 urban local bodies, where elections have not been held from 2019-2020. Further, the local bodies at the grassroot level (rural local bodies) where elections have not been held in the same manner are around 23,073, as of now.

5. The elections have not been held assumedly for the same reason as in the case of State of Maharashtra, namely, the State has still not been able

to complete the triple test formalities as predicated in the decision of this Court in *Vikas Kishanrao Gawali Vs. State of Maharashtra*¹. As a result of which, reservation for Other Backward Classes (OBC) category cannot be provisioned by the State Election Commission. This has happened despite the peremptory directions given by this Court vide successive orders, including dated 03.03.2022. This Court had made it amply clear that conduct of elections to install the newly elected body in the concerned local self-government cannot brook delay, owing to the Constitutional mandate expounded in Article 243-E and 243-U including the provisions in the concerned State Legislation in that regard.

6. A somewhat hiatus situation occurs and is permitted only when the dissolution of a local body is necessitated before the expiry of the term of that local body. Else, the term of the local self-government has been specified as 5 (five) years from its first meeting, "and no longer", in Article 243-E as well as in Article 243-U. This has been restated by the Constitution Bench of this Court in ***Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad & Ors.***

7. Thus, all concerned are obliged to ensure that the newly elected body is installed in every local body before the expiry of 5 (five) years term of the outgoing elected body. Even in case of dissolution before the expiry of five years period, where an Administrator is required to be appointed by the State, that regime cannot be continued beyond 6 (six) months by virtue of relevant provisions in the respective State Legislation(s).

8. This constitutional mandate is inviolable. Neither the State Election Commission nor the State Government or for that matter the State Legislature, including this Court in exercise of powers under Article 142 of the Constitution of India can countenance dispensation to the contrary.

9. Despite such constitutional mandate, the reality in the State of Madhya Pradesh as of now, is that, more than 23,263 local bodies are functioning without the elected representatives for last over two years and more. This is bordering on break down of rule of law and more so, palpable infraction of the constitutional mandate qua the existence and functioning of such local selfgovernment, which cannot be countenanced.

10. The fact that the State legislature has effected amendments in the concerned enactment(s) authorizing the State Government to determine the number and extent of wards to be constituted in the local bodies within the State also cannot be a tangible

or legitimate ground to not notify the election programme within the time-frame specified by the Constitution and the law made by the Legislature in that regard.

11. In any case, the ongoing activity of delimitation or formation of ward cannot be a legitimate ground to be set forth by any authority much less the State Election Commission - to not discharge its constitutional obligation in notifying the election programme at the opportune time and to ensure that the elected body is installed before the expiry of 5 (five) years term of the outgoing elected body. If there is need to undertake delimitation - which indeed is a continuous exercise to be undertaken by the concerned authority - it ought to be commenced well-in-advance to ensure that the elections of the concerned local body are notified in time so that the elected body would be able to take over the reigns of its administration without any disruption and continuity of governance (thereby upholding the tenet of Government of the people, by the people and for the people). In other words, the amendment effected to the stated enactments cannot be reckoned as a legitimate ground for protracting the issue of election programme of the concerned local bodies.

12. Therefore, we direct the State Election Commission by way of interim order, to issue election programme without any further delay on the basis of the wards as per the delimitation done in the concerned local bodies when the elections had become due consequent to expiry of 5 (five) years term of the outgoing elected body or before coming into force of the impugned Amendment Act(s) whichever is later. On that notional basis, the State Election Commission ought to proceed without any exception in respect of concerned local bodies where elections are due or likely to be due in the near future without waiting even for the compliance of triple test by the State Government for providing reservation to Other Backward Classes. We have no manner of doubt that only such direction would meet the ends of justice and larger public interests consistent with the constitutional mandate that the local self-government must be governed by the duly elected representatives uninterrupted except in case of its dissolution before expiry of the term on permissible grounds.

15. We once again reiterate that the process of delimitation work and/or triple test compliance is a continuous, complex, time consuming and more so without any timeline (directly linked to the expiry of the term of the outgoing elected body). Whereas, the conduct of elections for installing newly elected body to take over the reins from the outgoing elected

representative whose term had expired, is explicitly provided for by the Constitution and the relevant enactments. Therefore, the former need not detain the issue of election programme by the State Election Commission, in respect of local bodies as and when it becomes due much less overdue, including where the same is likely to become due in the near future.

16. Be it noted that as and when the delimitation exercise or triple test formality, as the case may be, is completed, the elections conducted thereafter may have to abide by such dispensation.

17. If the grounds pressed into service by the State authorities were to be accepted, it would be infeasible for any Election Commission - be it Madhya Pradesh State Election Commission - to notify the election programme well-in-time and to ensure that newly elected body is installed before the expiry of 5 (five) years tenure of the outgoing elected body. That would defeat the constitutional mandate and go against the tenet of local self-government by democratically elected representatives, uninterrupted.

18. To put it differently, completion of delimitation exercise or be it triple test formality, as the case may be, can wait if not completed well before the expiry of five years term of the outgoing elected body, including giving enough time to the Election Commission to complete the election process within such time. Thus, the declaration of election programme cannot be delayed by the Election Commission on that account. For, it would inevitably result in creating hiatus situation upon expiry of 5 (five) years term of outgoing elected body. Such an eventuality needs to be eschewed by all the duty holders. A priori, it is not only a constitutional obligation of the State Election Commission but also of the State Government including of the constitutional Courts.

19. In view of the above, we have no hesitation in directing the Madhya Pradesh State Election Commission to proceed on notional basis and issue election programme in respect of concerned local body by reckoning the delimitation/formation of wards thereof as on the date when the election of the concerned local body had "in fact" become due or before coming into force of the (impugned) Amendment Act, which is under-challenge before this Court in the present proceedings, whichever is later."

29. Learned Senior Counsel for the petitioners submits that the State has now constituted a

Commission to examine the aspect of backwardness of the Backward Classes. As observed by the Supreme Court, this is a continuing exercise, and cannot be a reason to violate the Constitutional mandate of holding of Panchayat elections every five years. Permitting such like objections to be raised would gravely undermine the constitutional goal of establishing local self-governance at the Gram Panchayat levels. We, therefore, reject the first argument raised by the learned Senior Counsel for the petitioners, premised upon the observations made by the Supreme Court in ***Vikas Kishanrao Gawali*** (supra).

30. The second submission of the learned Senior Counsel for the petitioners also does not appeal to us. This is for the reason that the first three elections to the Gram Panchayats were held in the State when the U.P. Act, the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Act, 1961, and the U.P. Rules were in vogue and applicable to the State of Uttarakhand.

31. The Uttarakhand Act came into force on 07.04.2016. Even though it repealed, vide Section 194, the U.P. Act and the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Act, 1961, it further provided that

"notwithstanding such repeal, anything done, or any action taken under the said enactment, shall be deemed to have been done or taken under the corresponding provisions of this Act". Thus, the three prior elections to the Gram Panchayat, held in the years 2002, 2010 and 2015-16, are deemed to have been held under the corresponding provisions of the Uttarakhand Act.

32. The submission of the learned Senior Counsel for the petitioners, that, since the U.P. Rules were re-adopted on 16.01.2020, by amendment and substitution of the definition of the expression "Rules" contained in Section 2(35) of the Uttarakhand Act, the forthcoming Gram Panchayat elections should be treated as the first election, has no force and basis.

33. The earlier three elections, held in the State of Uttarakhand, have been held by applying the policy of rotation of the reserved seats. Those elections cannot be wished away. Moreover, Section 24 of the Uttar Pradesh General Clauses Act, 1904, which is also applicable to the State of Uttarakhand, also has the effect of maintaining continuity of the actions taken by virtue of orders issued under the U.P. Rules.

34. For the aforesaid reasons, we do not find any merit in the present Writ Petitions and dismiss the same, leaving the parties to bear their respective costs.

35. In sequel thereto, all pending applications also stand disposed of.

VIPIN SANGHI, C.J.

R.C. KHULBE, J.

Dt: 29th July, 2022
Rahul