

**A.F.R.****Reserved****Case :-** WRIT - C No. - 14031 of 2022**Petitioner :-** Shakuntla Devi**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Man Bahadur Singh**Counsel for Respondent :-** C.S.C.,Ashok Kumar Giri,Ashok Kumar Tiwari,Syed Ahmed Faizan,Ten Singh,Zaheer Asghar**Hon'ble Manoj Kumar Gupta,J.****Hon'ble Ram Manohar Narayan Mishra,J.***(Per Manoj Kumar Gupta, J.)*

1. The petitioner is elected Chairperson of Nagar Palika Parishad, Siswan Bazar, District Maharajganj. She has challenged the notification dated 26.04.2022 issued by respondent no.1, the State Government, addressed to District Magistrates of 67 districts, directing them to initiate exercise for delimitation of wards in 151 Municipalities, which have been newly constituted or have undergone extension of municipal limits since the last general election. The list of such Municipalities is annexed alongwith the impugned notification. Nagar Palika Parishad, Siswan Bazar is at serial no.22. The petitioner has also prayed for a writ of mandamus restraining the respondents from initiating process for holding fresh election of Nagar Palika Parishad, Siswan Bazar, Maharajganj expected to be held by the end of the year – 2022 and from interfering in the functioning of the petitioner as Chairperson of Nagar Palika Parishad, Siswan Bazar until the expiry of the term of Nagar Palika on 31.03.2027 unless dissolved earlier.

2. The above reliefs have been claimed in the backdrop of following facts:

2(1). Siswan Bazar, District Maharajganj was initially notified as a Nagar Panchayat under Section 3 of the U.P. Town Areas Act, 1914 vide notification dated 3.02.1953. It comprised of 14 wards and the total population of the Nagar Panchayat as per census of India 2011 was 20963. The last election of Nagar Panchayat, Siswan Bazar was held on 12.12.2017, whereby the Chairperson and 14 Ward members were elected, followed by constitution of the Nagar Panchayat.

2(2). Later on, the State Government decided to create a new Municipal Council (Nagar Palika Parishad) in Siswan Bazar, Maharajganj by adding 22 revenue villages/ 17 Gram Panchayats in the existing Nagar Panchayat area and accordingly, issued a draft notification dated 10.12.2019. It was followed by a final notification dated 31.12.2019 issued under clause (2) of Article 243-Q of the Constitution of India read with Section 3 (2) of the U.P. Municipalities Act, 1916, thereby including the area mentioned in Schedule I of the notification in the transitional area of Nagar Panchayat Siswan Bazar. Additionally, the transitional area of Nagar Panchayat Siswan Bazar, Maharajganj mentioned in Schedule II of the notification was notified as a smaller urban area (Municipal Council) to be known as Municipal Council Siswan Bazar, District Maharajganj.

2(3). It led to filing of P.I.L. No.1822 of 2020 (Anoop Kumar Pathak

and another Vs. State of U.P. and others) for direction (i) to the State respondents to dissolve the erstwhile Nagar Panchayat Siswan Bazar, Maharajganj; (ii) to constitute the Municipal Council and Ward Committees and (iii) to appoint administrator in Municipal Council, Siswan Bazar, District Maharajganj. The said writ petition was disposed of by order dated 8.02.2021 with direction to the District Magistrate, Maharajganj to hold election of newly created Municipal Council, Siswan Bazar, as early as possible, however not later than three months from the date of communication of the order. The operative part of the order is as follows:-

*“In the case at hand evidently with the Notification dated 31.12.2019 Municipal Council, Siswan Bazar, District Maharajganj is constituted. It was the bounden duty of the District Magistrate as early as possible make preliminary arrangements for the holding of **first elections**. Non holding of election for over one year reflects inaction and non performance of statutory obligation, by the District Magistrate.*

*In view whereof the District Magistrate, Maharajganj is directed to hold election of newly created Municipal Council, Siswan Bazar, as early as possible, however not later than three months from the date of communication of this order.”*

2(4). In pursuance of the above direction, the State Government vide its communication dated 2.06.2021 addressed to District Magistrate, Maharajganj directed him to appoint administrator and to initiate process for constitution of newly created Nagar Palika Parishad, Siswan Bazar by holding the elections. The District Magistrate vide order dated 8.06.2021 issued in purported exercise of power under

Section 333 of the U.P. Municipalities Act, 1916 constituted a Committee of five persons to exercise the power and perform the duties and functions of newly created Nagar Palika Parishad until it is established.

2(5). At this stage, Smt. Ragni Devi, the elected Chairperson of Nagar Panchayat Siswan Bazar, challenged the order of State Government dated 2.06.2021 and the consequential order of the District Magistrate dated 8.06.2021 appointing Committee to manage the affairs of the newly created Nagar Palika Parishad by filing Writ-C No.13629 of 2021 (Smt. Ragni Devi Vs. State of U.P. and 3 others). The said writ petition was dismissed by order dated 9.08.2021, upholding both the orders.

2(6). Smt. Ragni Devi aggrieved by the order of this Court dated 8.02.2021 passed in the PIL and the order dated 9.08.2021 passed in her writ petition approached the Supreme Court by filing SLP No.4233 of 2021 and SLP No.13806 of 2021 respectively. Both the SLPs were dismissed by the Supreme Court by common order dated 17.9.2021. The Supreme Court, while upholding the decisions of this Court to hold first election of the newly constituted Municipal Council, again directed the authorities to: *“ensure that the elections for establishing the newly constituted Municipal Council Siswan Bazar, is conducted at the earliest and, in any case, completed within two months from today and report compliance in that behalf.*

*The State must ensure that all logistical support is provided to the State Election Commission to ensure that the elections are conducted by adhering to appropriate Covid-19 protocol, as would be in force at the relevant time.*

*If there is laxity on the part of the State in ensuring completion of the elections within two months from today, the Chief Secretary of the State of Uttar Pradesh shall be personally responsible in that behalf.”*

2(7). On 23.9.2021, District Magistrate, Maharajganj sent a communication to the Director, Lucknow in regard to compliance of the order of Supreme Court. While making reference to the letter of State Government dated 21.9.2021 in connection with the exercise for determining the number of wards and delimitation, he was requested to complete the said exercise under intimation to him.

2(8). On 25.9.2021, the State Government issued a notification inviting objections and suggestion to the draft order relating to delimitation as stipulated under Section 11-B (2) of the U.P. Municipalities Act, 1916. It was followed by a final notification dated 7.12.2021, thereby dividing the Nagar Palika into 25 Wards.

2(9). On 14.02.2022, the State Election Commission, U.P. in consultation with the State Government issued notification notifying the election programme for electing the chairperson and members of Nagar Palika Parishad, Siswan Bazar. In pursuance thereof, election was held on 13.03.2022 and results were declared on 15.03.2022. The

petitioner was declared elected as Chairperson of Nagar Palika Parishad, Siswan Bazar and a certificate to the said effect was issued in her favour by the Returning Officer dated 15.03.2022. On 22.03.2022, the State Election Commission notified the names of chairperson and members, who were elected. On 29.03.2022, the petitioner subscribed to oath of office. On 1.04.2022, first meeting of the newly constituted Nagar Palika was held.

2(10). On 26.04.2022, the State Government issued the impugned communication addressed to District Magistrates of 57 districts on the subject relating to delimitation of wards of the newly constituted municipalities (83 Nagar Panchayats, 2 Nagar Palika Parishads and one Nagar Nigam). The said exercise was also directed to be held in 66 municipalities that had undergone change of boundaries/ extension of areas, being 66 in number (36 Nagar Pachayats + 21 Nagar Palika Parishads + 9 Nagar Nigams). This took the tally to 151 municipalities in all. The delimitation in the above municipalities was directed to be held on basis of census of the year 2011. The proposal was to be forwarded to the State Government by 5.5.2022 in the proforma prescribed by Government Orders dated 4.04.2017 and 19.07.2017. Nagar Palika Parishad, Siswan Bazar, Maharajganj is enlisted at serial no.22 in the list annexed with the communication and where the said exercise was also to be held. The petitioner, who was elected on 13.03.2022, apprehending that the impugned communication is a step

towards holding fresh election and will have the effect of curtailing her term of five years has preferred the instant petition.

3. The State respondents as well as the State Election Commission U.P. have filed separate counter affidavits. In reply, the petitioner has filed separate rejoinder affidavits.

4. One Roshan Kumar has sought impleadment, alleging that he proposes to contest the election to be held after completion of the impugned exercise relating to delimitation and is therefore interested in opposing the writ petition.

5. We have heard Sri Rakesh Pande, learned Senior Counsel assisted by Sri Man Bahadur Singh for the petitioner, Sri Ambrish Shukla, learned Additional Chief Standing Counsel for respondents no.1, 3 & 4, Sri Ten Singh for the State Election Commission U.P., Sri Ashok Kumar Tiwari, for respondent no.5 i.e. Nagar Palika Parishad through its Executive Officer and Sri S.F.A. Naqvi, learned Senior Counsel assisted by Sri Ashok Kumar Giri on behalf of the intervenor - Roshan Kumar.

6(a). Sri Rakesh Pande, learned Senior Counsel appearing on behalf of the petitioner submitted that the term of a Municipality under Article 243-U of the Constitution and Section 10-A of the U.P. Municipalities Act is five years from the date appointed for its first meeting. The first meeting of the newly constituted Nagar Palika Parishad was held on 1.04.2022 and, therefore, its five years term would expire on

31.03.2027. The impugned notification directing the District Magistrates to initiate the exercise of delimitation of wards of municipalities which were newly created/limits extended for holding fresh election, may be legal and valid where elections have not been held after the upgradation/extension of boundaries, but not in case of Nagar Palika Parishad Siswan Bazar, which was constituted as a Municipality for the first time after the election dated 13.03.2022. It was not a case of dissolution of an existing Municipality and, therefore, the tenure will be governed by clause (1) of Article 243-U and not by clause (4) which applies in case of premature dissolution on the occurrence of certain contingencies envisaged under Section 30 of the U.P. Municipalities Act, 1916.

6(b). The election held on 11.3.2021 was the first election of the newly constituted Municipality and its tenure of five years is sacrosanct by virtue of Article 243-U of the Constitution read with Section 10-A of the U.P. Municipalities Act, 1916.

6(c). In support of the above submission, he placed reliance on the decision of this Court in Ragni Devi Vs. State of U.P. and others as well as the judgement of the Supreme Court in SLP Nos.4233 of 2021 and 13806 of 2021 dated 17.09.2021, wherein this Court and the Supreme Court have held that upon creation of a new municipality i.e. Nagar Palika Parishad Siswan Bazar, the existence of predecessor municipality i.e. Nagar Panchayat, Siswan Bazar had ceased. The



administrator appointed to manage the affairs of the new municipality was under mandate to hold election of newly created municipality so that the charge is handed over to it.

6(d). He further submitted that before notifying fresh election of newly constituted Nagar Palika Parishad, the exercise relating to determination of number of wards and their delimitation was duly held and this fulfilled the requirement of Section 11-A and 11-B of the U.P. Municipalities Act, 1916 and Article 243-S of the Constitution.

6(e). He further submitted that the Election Commission harbouring under some misconception issued the election notification mistakenly using the term 'bye-election', but also simultaneously referring to Section 13-G which unequivocally relates to issuance of notifications for general elections. The term of the newly constituted Municipality is protected by constitutional mandate and cannot be shortened by wrong use of some word in the election notification. The election held in the past in which the petitioner was elected as Chairperson of the newly constituted Municipality was for all practical purposes, a general election and not a bye-election and consequently, the provisions of Article 243-U (4) cannot be pressed to curtail the constitutional guarantee.

6(f). It is also urged that there cannot be any estoppel or waiver of the rights conferred by the Constitution. Learned Senior Counsel for the petitioner has placed reliance on the judgment of the Supreme Court in

**Olga Tellis and others Vs. Bombay Municipal Corporation and others<sup>1</sup>** and a Division Bench judgment of this Court in **Achhey Lal Vs. V.C. Gorakhpur University<sup>2</sup>**.

7(i). Per contra, Sri Ambrish Shukla, learned Additional Chief Standing Counsel submitted that the election held on 13.03.2021 was a bye-election and not a general election, as is also mentioned in the election notification issued by the State Election Commission dated 14.02.2022. According to him, the aforesaid notification when it refers to Section 13-G makes a reference to the power of State Election Commission to make provision with respect to issuing of orders generally on all matters relating to conduct of election (clause q). He also submitted that the notification is referable to Section 13-H of the U.P. Municipalities Act 1916 relating to issuance of election notification by State Election Commission in respect of bye-election.

7(ii). The emphasis was on the fact that the election in which the petitioner was elected as Chairperson was a bye-election and not a general election and consequently, clause (iv) of Article 243-U of the Constitution and Section 10-A (3) of the U.P. Municipalities Act, 1916 will come into play and the petitioner as well as other members elected in pursuance of the aforesaid notification shall continue in office only for remainder of the period for which the dissolved Municipality would have continued under clause (1), had it not been so dissolved. He also

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1 1985 (3) SCC 545

2 1985 U.P.L.B.E.C. 38

placed reliance on the order of Supreme Court dated 23.11.2021 passed on the application of State Election Commission U.P. in SLP filed by Ragini Devi whereby the Supreme Court had extended the time prescribed earlier for holding the elections.

7(iii). He further placed reliance on provisions of Section 3-A, Section 3-B (8), Section 10-A and Section 151-A of the Representation of People Act, 1950.

7(iv). He further submitted that the petitioner does not have any cause of action to file the instant petition. According to him, what has been challenged as a notification, is in fact only a communication sent by the State Government to District Magistrates of various districts where the Municipalities have undergone upgradation/expansion of boundaries to undertake the exercise of delimitation of wards. It is not an election notification, therefore, the challenge is premature and based on mere apprehension.

8. Sri Ten Singh, learned counsel for the State Election Commission U.P. as well as Sri S.F.A. Naqvi, learned senior counsel appearing for the intervenor, adopted the arguments of Sri Ambrish Shukla, learned Additional Chief Standing Counsel.

9. The questions which fall for our consideration are: -

(i) Whether the writ petition is premature, based on mere apprehension, and is liable to be dismissed in limine?

(ii) What was the effect of the notification dated 31.12.2019, issued by the Governor, in exercise of power under Article 243-Q of the Constitution, read with Section 3 of the U.P. Municipalities Act, 1916?

(iii) What was the status of the Municipality constituted in pursuance of the election held on 13.3.2022?

(iv) Whether the term of the newly constituted Municipality is governed by clause (1) of Article 243-U or clause (4) of Article 243-U?

(v) What would be the effect of use of word “bye election” in the election notification dated 14.2.2022, issued by State Election Commission, U.P. on the status of the newly constituted Municipality?

(vi) Whether the High Court, in exercise of power under Article 226, can grant any relief to the petitioner?

10. We first proceed to examine the plea relating to writ petition being premature and based on mere apprehension. The impugned notification dated 26.4.2021, issued by the State Government, is addressed to the District Magistrates of 57 districts wherein 151 existing municipalities have either been reconstituted or their territorial

limits extended since the last general elections held in the year 2017. It directs them to initiate the exercise of determination and delimitation of wards and supply the details in prescribed format appended to the GOs dated 4.4.2017 and 19.7.2017 by the stipulated date, i.e. 5.5.2022. The said exercise was to be held on basis of the data of 2011 Census.

11. Section 11-A of the Act relates to delimitation of wards and it reads thus: -

***11A. Delimitation of wards. - (1) For the purpose of election of members of a municipality every municipal area shall be divided into territorial constituencies to be known as wards in such manner that the population in each ward shall, so far as practicable, be the same throughout the municipal area.***  
***(2) Each ward shall be represented by one member in the municipality.***

12. The exercise of delimitation of wards as per the above provision is held for the purpose of holding election of members of a municipality. It is a step-in-aid towards constitution of a municipality which under Section 9 comprises of the elected Chairperson (President); elected members; ex-officio members; nominated members and Chairperson of the Committees established under Section 104 of the Act.

13. In paragraph nos. 35, 36 and 41 of the writ petition, it is specifically asserted by the petitioner that the above exercise of determination and delimitation of wards was intended to be held in the newly created, upgraded and extended Municipalities, along with other

urban local bodies, whose terms are expiring by end of the year 2022. It is also asserted that the said exercise was not required to be undertaken in respect of the petitioner's municipality, the election of which was held recently on 13.3.2022, after carrying out the same exercise, i.e. determination of wards and their delimitation. In paragraph 15 and 16 of the counter affidavit filed by the State, it is asserted that the exercise relating to determination of number of wards and delimitation in respect of the petitioner's municipality is being undertaken, as its term is expiring in December, 2022 and consequently, fresh elections are to be held. Same stand has been taken by the State Election Commission, U.P. in the counter affidavit filed by it.

14. It is evidently clear that the impugned exercise for determination of wards and their delimitation in respect of Nagar Palika Parishad, Siswan Bazar, Maharajganj, was undertaken in pursuance of the impugned notification to pave way for holding of fresh elections in December, 2022, when elections of other municipalities is also scheduled to be held. As the specific case of the petitioner is that its term is upto 31.3.2027 and fresh exercise undertaken in pursuance of the impugned notification will have the effect of curtailing the duration of Municipality she is heading, she definitely has an actionable right in presenti to challenge the notification and the consequential exercise, to protect her constitutional and statutory rights. The petitioner cannot be made to wait till the notification for holding the election is published,

when the stand of the respondents is clear and unambiguous in relation to the proposed election scheduled to be held in December, 2022. We thus find no force in the contention that the petition is premature, or is based on mere apprehension.

15. We now proceed to examine the issues arising in the case on merits.

16. A bird's-eye view of the relevant provisions of the Constitution, particularly Part IX-A, inserted by the Constitution (Seventy Fourth Amendment) Act, 1992, and cognate enactments which deal with Municipalities, will help in understanding and analysing the issues at hand. Part IX-A came into effect from 1.6.1993. It defines "Municipality" under Article 243-P(e), as an institution of self-government constituted under Article 243-Q.

17. Article 243-Q relates to Constitution of Municipalities and reads as follows: -

**243Q. Constitution of Municipalities -**

*(1) There shall be constituted in every State,—*

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

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

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

*Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.*

*(2) In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.*

18. Article 243-Q envisages three levels of Municipalities to administer (i) a transitional area, that is to say an area in transition from a rural area to an urban area, to be known as a Nagar Panchayat; (ii) a smaller urban area, to be known as a Municipal Council and (iii) a larger urban area, i.e. a Municipal Corporation. Article 243-Q(2) defines these to mean such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

19. In order to carry out the mandate of the Constitution (Seventy Fourth Amendment) Act, 1992, the U.P. Municipalities Act, 1916 was amended. Section 3 of the Act provides for the Declaration etc. of the transitional areas and smaller urban areas and reads thus: -

**3. Declaration etc. of transitional area and smaller urban area -**  
*(1) Any area specified by the Governor in a notification under clause (2) of Article 243-Q of the Constitution with such limits as are specified therein to be a transitional area or a smaller urban area, as the case may be.*



*(2) The Governor may, by a subsequent notification under clause (2) of Article 243-Q of the Constitution, include or exclude any area in or from a transitional area or a smaller urban area referred to in sub-section (1), as the case may be.*

*(3) The notifications referred to in sub-sections (1) and (2)] shall be subject to the condition of the notification being issued after the previous publication required by Section 4 and notwithstanding anything in this section, no area which is, or is part of, a cantonment shall be declared to be a transitional area or a smaller urban area or be included therein under this section.*

20. Section 3 is similar provision in the U.P. Municipal Corporation Act, 1957 and it reads thus: -

***Section 3 – Declaration of larger urban area -***

*(1) Any area specified by the Governor in a notification under Clause (2) of Article 243-Q of the Constitution with such limits as are specified therein to be larger urban area, shall be known as a City, by such name as he may specify.*

*(2) Where, by a subsequent notification under Clause (2) of Article 243-Q of the Constitution the Governor includes any area in a city, such area shall thereby become subject to all notifications, rules, regulations, bye-laws, orders and directions issued or made under this or any other enactment and in force in the city at the time immediately preceding the inclusion of such area and all taxes, fees and charges imposed under this Act, shall be and continue to be levied and collected in the aforesaid area.*

21. In the case at hand, the State Government by notification dated 31.12.2019, included the areas mentioned in Schedule-I of the Notification in the transitional area of Nagar Panchayat, Siswan Bazar, Maharajganj, and simultaneously upgraded Nagar Panchayat, Siswan Bazar, Maharajganj to the level of a Municipal Council, i.e. a smaller urban area comprising of territorial area mentioned in Schedule-II of the Notification. It is referable to the constitutional power vested in the

Governor under Article 243-Q of the Constitution and Section 3 of the U.P. Municipalities Act, 1961.

22. The aforesaid exercise was called in question by *Ragini Devi*, the then Chairperson of Nagar Panchayat by way of a writ petition<sup>3</sup> before this Court, on the ground that she was elected on 1.12.2017 and the notification issued by the State Government dated 31.12.2019 had the effect of cutting short her tenure of five years. She also called in question the order passed by the State Government dated 2.6.2021 and the consequential order of the District Magistrate dated 8.6.2021, appointing a Committee to manage the affairs of newly constituted Nagar Palika Parishad. However, the challenge was repelled by this Court by its order dated 9.8.2021, holding that the exercise undertaken in pursuance of notification issued by the State Government was referable to Section 3(1) of the Act, whereunder as noted above, the Governor is vested with the power to issue notification in terms of clause (2) of Article 243-Q of the Constitution, declaring the transitional area of a Nagar Panchayat as a Municipal Council (smaller urban area) with such limits, as are specified therein. As a necessary corollary thereof, it was held that Section 333 of the Act would come into play and the Municipal Council which was newly created, would be managed by the District Magistrate, or other officer, or committee, or authority appointed by him in this behalf, until a Municipality is

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<sup>3</sup> Writ – C No. 13629 of 2021

established, after holding of first elections thereof.

23. Section 333 of the Act is reproduced for ready reference: -

***333. Exercise by District Magistrate of Municipality's power pending establishment of Municipality*** - When a new municipality is created under this Act, the District Magistrate, or other officer, or committee, or authority appointed by him in this behalf, may until a Municipality is established, exercise the powers and perform the duties and functions of the Municipality, and, he or it shall, for the purposes, aforesaid be deemed to be the Municipality :

*Provided always that the District Magistrate or such other officer, or committee, or authority shall, as early as possible, make preliminary arrangements for the holding of first elections and generally of expediting the assumption by the Municipality of its duties when constituted.*

24. The relevant part from the judgment of this Court dated 9.8.2021 in Writ Petition No. 13629 of 2021 (Smt. Ragini Devi vs. State of U.P.) is reproduced below: -

*As regards Section 333-A, the same deals with the consequence of the declaration of smaller urban area with the notification issued under Section 3(1) of the Act, 1916. Section 333 of the Act, 1916 makes provision for the transitional period and confers the power on the District Magistrate, or other officer, or Committee or authority appointed by him in this behalf, to exercise the power and perform the duties & functions of the Municipality, till an elected body takes over.*

25. The Supreme Court while dismissing the SLP<sup>4</sup> filed by Ragini Devi, endorsed the finding that although the notification dated 31.12.2019 refers to Section 3(2) of the U.P. Municipalities Act, 1916, but as a matter of fact, thereby the area in question had been upgraded to a Municipal Council and thus, the erstwhile Nagar Panchayat had

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4 SLP No. 4233 of 2021

ceased to exist. The relevant observations made in this behalf by the Supreme Court are as follows: -

*The argument though attractive, at the first blush, clearly overlooks the dispensation provided for under Article 243-Q of the Constitution of India. It refers to municipalities or Municipal Council areas of different types such as Nagar Panchayat, Municipal Council and Municipal Corporation, depending on the area and other factors to establish such an entity. Although, the notification refers to Section 3(2) of the Uttar Pradesh Municipalities Act, 1916 (for short, "the 1916 Act") the fact remains that the area in question has been upgraded to Municipal Council area. It is, therefore, not a case of expansion of Nagar Panchayat area as is sought to be projected by the petitioner(s).*

*Perhaps, keeping that in mind in another case, the High Court vide order dated 09.08.2021 in Writ Petition(C) No. 13629 of 2021 rejected the claim of the petitioner(s) therein on the finding that the Nagar Panchayat of which the petitioner(s)' claim to be elected representative had ceased to be in existence with the creation of Municipal Council (Nagar Palika Parishad) as defined in sub-Section (9-B) of Section 2 of the 1916, Act and with the creation of new municipality by virtue of the stated notification, the provision of Section 333 of the 1916 Act would follow. That view is a possible view.*

26. The Supreme Court also deprecated inaction on part of the State in not holding fresh election for the newly created Municipal Council, Siswan Bazar, Maharajganj in the time frame prescribed by this Court in PIL No. 1822 of 2020. The Supreme Court issued fresh direction to the State Election Commission, U.P. to ensure holding of elections for establishing the newly constituted Municipal Council, Siswan Bazar, Maharajganj at the earliest, however not later than two months from the date of the order.

27. There are several precedents on the subject, which take the same

view. We proceed to note some of those to have a better understanding of the legal implications of exercise of power under Article 243-Q of the Constitution.

28. In **State of Maharashtra and Another vs. The Jalgaon Municipal Council**<sup>5</sup>, Supreme Court considered the provisions of the Constitution (Seventy Fourth Amendment) Act, 1992 and held that the effect of exercise of power under Article 243-Q is that the predecessor Municipality ceases to exist. In consequence it was held that Article 243-U which guarantees a fixed duration of five years to a Municipality, cannot be applied to a case where the area of one description is converted into an area of another description and one description of Municipality is ceased by constituting another Municipality of a better description. In line with the said reasoning, it was also held that the statutory provisions do not contemplate a situation where the erstwhile Municipality would continue to exist, as it would result in anomaly and confusion. The relevant part from the judgment is reproduced below: -

*21. Having heard the learned Counsel for the parties at length on this aspect we are of the opinion that the said hiatus is an unavoidable event which must take place in the process of conversion of Municipal Council into a Municipal Corporation. Reliance on Article 243-U by the learned counsel for the respondents in this context is misconceived. The use of expression 'a municipality' in sub-Article (3) of Article 243-U in the context and in the setting in which it is employed suggests and means the duration of the same type of municipality coming to an end and the same type of successor municipality taking over as a*

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5 2003 (9) SCC 731

*consequence of term of the previous municipality coming to an end. Article 243-U cannot be applied to a case where the area of one description is converted into an area of another description and one description of municipality is ceased by constituting another municipality of a better description. Article 243-U(3) cannot be pressed into service to base a submission on that an election to constitute a municipal corporation is required to be completed before the expiry of duration of a municipal council.*

*The constitution of Municipal Corporation would require notification of larger urban area and a Municipal Corporation to govern it. The area shall have to be divided into wards with the number of corporators specified and reservations made. The Corporation would need to nominate councillors. The territorial limits may need to be altered. The State Election Commission cannot conduct election without specifying numbers and boundaries of wards. New rules, bye-laws etc. shall need to be framed and municipal tax structure may need to be recast. The statutory provisions do not contemplate a situation where the same area may be called a smaller and larger area simultaneously and process of constitution of Municipal Corporation being commenced and completed though the Municipal Council continues to exist. Such an action would result in anomaly and confusion if not chaos.*

29. Again, a Division Bench of this Court in **Keshav Dev Kushwaha vs. State of U.P. and Others**<sup>6</sup>, relying on observations made by the Supreme Court in **State of Maharashtra vs. Deep Narain Chavan**<sup>7</sup>, observed as follows: -

*“At the outset, it must be noted that the petition in question is not one which is filed in the public interest. The petition is by an elected member of the Nagar Palika Parishad, Firozabad. Elections to the Nagar Palika Parishad were held on 26 June 2012 and the petitioner claims an indefeasible right to hold office for a period of five years. In fact, that is the basis on which prayer (iii) seeks a mandamus to the respondents not to curtail the term of the Nagar Palika Parishad and to allow the petitioner and other elected members to continue to perform their duties.*

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6 2014 (9) ADJ 536

7 (2002) 10 SCC 565

*Such a submission cannot be countenanced. The elected members of the Nagar Palika Parishad had, in fact, resolved on 20 October 2011 to recommend the constitution of a municipal corporation. Be that as it may, there is no merit in the plea of the petitioner that elected members of the erstwhile Nagar Palika Parishad must continue until their term of five years comes to an end. This point is no longer res integra and is governed by a decision of the Supreme Court in **State of Maharashtra Vs. Deep Narayan Chavan, (2002) 10 SCC 565** where the Supreme Court, while dealing with the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, held as follows:*

*".. under Section 341 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 when the whole of the local area comprising a municipal area ceases to be a municipal area, with effect from the date on which such local area ceases to be a municipal area, the Council constituted for such municipal area shall cease to exist or function and the Councillors of the Council shall vacate office. Article 243-U of the Constitution unequivocally indicates that 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. The expression "unless sooner dissolved under any law for the time being" would bring within its sweep the provisions of Section 341 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and therefore the moment the Corporation is constituted in accordance with law, the elected Municipal Council would cease to function and so also the Councillors, though elected will have to vacate the office..."*

30. Another Division Bench of this Court in **Nagar Palika Parishad vs. State of U.P. and Others**<sup>8</sup>, dealt with the issue as follows: -

*"16. Apart from what is said above, Article 243U of the Constitution of India suggests and means the duration of the same type of Municipality coming to an end and the same type of successor Municipality taking over as a consequence of term of the previous Municipality coming to an end either prior to the period of 5 years or at the end of 5 years. In other words Article*

*243U cannot be pressed into service in a case where the area of one description is converted into an area of another description and one description of Municipality is ceased by constituting another Municipality of a better description, that is to say that where the dissolution is fair accompli and the Municipality cannot be revived as it was before, the same cannot be termed a dissolution as envisaged under Article 243U and in such an event the provisions of Article 243U are not at all violated if an Administrator is appointed under Section 8AA.”*

31. The same view has been taken by this Court in **Smt. Mohini Sharma vs. State of U.P.**<sup>9</sup>. The relevant part from the said judgment is as follows: -

*“18. A bare perusal of the Section 5 of U.P. Municipalities Act, 1916, would go to show that whereby a notification referred to in sub-section (2) of Section 3 the Governor includes any area in a transitional area or smaller urban area, such area shall thereby become subject to all notifications, rules, regulations, bye-laws, orders, directions, issued or made under this or any other enactment and in force throughout the transitional area or smaller urban area, at the time immediately preceding the inclusion of the area. Thus the affairs of the same will have to be governed under the provisions of U.P. Municipalities Act, 1916 and it may be true that Pradhan in question has been elected for a period of five years but once the very identity of the Gram Panchayat in question has been lost on account of inclusion of such area, then the provisions of U.P. Panchayat Raj Act, 1947, would not at all operate and same will have to be governed under the provisions of the U.P. Municipalities Act, 1916. Any other view would tantamount to diluting the provisions of Section 5 of U.P. Municipalities Act, 1916.*

*20. Article 243-E deals with duration of Panchayat, Article 243-U deals with duration of Municipalities and both the constitutional provisions share in common the expression "unless sooner dissolved under any law for the time being in force". Once Governor takes a call for constitution of municipality in exercise of authority conferred under the constitution namely Article 243-Q that specifically refers to three type of municipalities i.e. Nagar Panchayat for transitional area, a Municipal Council for a*



*smaller urban area and Municipal Corporation for a larger urban area, the moment declaration is made under Article 243-Q read with Section 3 of the U.P. Municipalities Act, 1916, by the State Government, then the said municipal body would be a sovereign body having both constitutional and statutory status. As already noted in the earlier part of the judgement, the constitutional as well as statutory provisions pertaining to 'Panchayats' would go to show that object of Part IX of the Constitution was to introduce the panchayat system at grass root level and strengthen the panchayat system by giving uniform constitutional vibrant units of administration in the rural area so that there can be rapid implementation of rural development sector. Once there is complete transformation from rural area to urban area having regard to population of area, the density of population therein, the revenue generated from local administration, the percentage of employment in non-agricultural activities, the economic importance and other factors, made by the State Government, then the said area is denoted in the notification would be out from the purview of Part IX of the Constitution and the provisions of U.P. Panchayat Raj Act, 1947 and the affairs of the said area treating the same to be urban area would be covered by the provisions of Part IX A of Constitution alongwith the provisions of U.P. Municipalities Act, 1916.”*

32. In **Nilesh Singh Vs. State of U.P. and 4 others**<sup>10</sup>, the effect of issuance of notification under Article 243-Q of the Constitution was considered in the context of the provisions of the U.P. Municipalities Act, 1916 and the U.P. Panchayat Raj Act, 1947. The Gram Pradhan of the panchayat area, which was upgraded to a Nagar Panchayat and as a consequence whereof he ceased to be in office, had challenged the notification. This Court in its judgment dated 8.09.2022 considered the constitutional scheme and repelled the plea holding as follows:-

*“5. Constitution defines a 'Panchayat' under Article 243(d) as an institution of self-government constituted under Article 243-B, for*

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<sup>10</sup> Writ-C No.25471 of 2022

*the rural areas. Article 243-E mandates 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.*

*6. Similarly under Section 12 of the U.P. Panchayat Raj Act, 1947, the term of the Gram Panchayat is five years. Our Constitution is a living document. The Parliament while introducing the 74th Amendment, 1992 conferring constitutional status to institutions of self-Government like Panchayats and Municipalities, was alive of the reality that urbanisation is making inroads in the rural areas. The constitutional scheme envisages constitution of a Nagar Panchayat for a transitional area that is to say, an area in transition from a rural area to an urban area; Municipal Council for a smaller urban area; and Municipal Corporation for a larger urban area.*

*9. Under Section 3-A(2) of the Act, every Nagar Panchayat or Municipal Council constituted under sub-section (1) is a body corporate. Thus, with the issuance of the impugned notification, an entirely new body in the name of Nagar Panchayat - Haisar Bazar has come into existence. It has a separate and distinct identity from its predecessor i.e., the Gram Panchayats whose territories have been merged in constituting the Nagar Panchayat. The provision of Article 243-E and Section 12 of the U.P. Panchayat Raj Act cannot be read in isolation but harmoniously, alongwith the other provisions of the Constitution and the Act. Under Section 333 of the Act, the District Magistrate has been invested with power to perform the functions and duties of the newly constituted Municipality until the holding of first election.”*

33. Having regard to the legal position enunciated above, we hold that the effect of the Notification dated 31.12.2019 was that Nagar Panchayat, Siswan Bazar, ceased to exist. The territorial limits of the erstwhile Nagar Panchayat, Siswan Bazar, was expanded by including therein 22 revenue villages/17 Gram Panchayats. A new Municipality of better description (Municipal Council), by the name Nagar Palika Parishad, Siswan Bazar, came to be constituted. This resulted in coming

into being of a new entity, independent and distinct from erstwhile Nagar Panchayat. It is a body corporate in terms of Section 3-A(2) of the U.P. Municipalities Act, 1916. Thereafter, followed the exercise for its composition as provided by Article 243-R which reads thus: -

*243R. Composition of Municipalities - (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.*

*(2) The Legislature of a State may, by law, provide—*

*(a) for the representation in a Municipality of—*

*(i) persons having special knowledge or experience in Municipal administration;*

*(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;*

*(iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;*

*(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S:*

*Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality; (b) the manner of election of the Chairperson of a Municipality.*

34. Article 243-R contemplates that all seats in a municipality shall be filled by persons chosen by direct election from the territorial constituencies in the municipal area and for this purpose, each municipal area shall be divided into territorial constituencies to be known as “wards”. The legislature of a State may by law, provide for the representation in a municipality of persons having special knowledge or experience in municipal administration; the members of

the House of People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the municipal area, the members of the Council of State and the members of the Legislative Council of the State, registered as electors within the municipal area; the Chairpersons of the Committee constituted under clause (5) of Article 243-S. In order to carry out the constitutional mandate, the U.P. Municipalities Act, 1916 was amended by U.P. Act No. 12 of 1994 and Section 9 thereof prescribes for the manner of Composition of Municipalities as follows: -

**9. Composition of Municipality.** - (1) A Municipality shall consist of a President, who shall be its Chairperson, and, -

(a) the elected members, whose number shall, -

(i) in the case of a Nagar Panchayat, be not less than 10, and not more than 24; and

(ii) in the case of a Municipal Council, be not less than 25 and not more than 55, as the State Government may, by notification in the Official Gazette specify;

(b) the ex-officio members, comprising all members of the House of the People and the State Legislative Assembly representing constituencies which comprise wholly or partly the municipal area;

(c) the ex-officio members, comprising all members of the Council of States and the State Legislative Council who are registered as electors within the municipal area;

(d) nominated members, who shall be nominated by the State Government, by notification in the Official Gazette, from amongst persons having special knowledge or experience in municipal administration and whose numbers shall in the case of

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(i) Nagar Panchayat, be not less than two and not more than three;

(ii) Municipal Council, be not less than three and not more than five;

(e) the Chairperson of the committees, if any, established under Section 104, if they are not members under any of the foregoing clauses :

*[Provided that the persons referred to in clause (d) shall hold office during the pleasure of the State Government and they shall have the right to vote in the meetings of the Municipalities.]*

*Provided further that any vacancy in any category of members referred to in clauses (a) to (e) shall be no bar to the constitution or reconstitution of a municipality.*

35. It is clear from the Constitutional Scheme and the statutory provisions that first step towards composition of a Municipality is to initiate exercise for holding election of the Chairperson (President) and its members. The direction of the Supreme Court and this Court to the State Election Commission, U.P. to hold elections was intended to achieve the above constitutional mandate. Indisputably, the elections of newly constituted Nagar Palika Parishad, Siswan Bazar, was held on 13.3.2022. The result of the election of twenty five ward members and Chairperson was declared on 15.3.2022. They subscribed to oath of office on 29.3.2022 and the first meeting of the newly constituted municipality was held on 1.4.2022. The above exercise aided in the composition of the Municipality in terms of Article 243-R and Section 9 of the U.P. Municipalities Act, 1916.

36. We now proceed to examine as to what would be the duration of the Municipality so constituted and composed. Article 243-U prescribes for the term of Municipalities and it reads thus: -

***243U. Duration of Municipalities, etc. -***

*(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer: Provided that a Municipality shall be given a reasonable opportunity of being*

*heard before its dissolution.*

*(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).*

*(3) An election to constitute a Municipality shall be completed,—*  
*(a) before the expiry of its duration specified in clause (1);*  
*(b) before the expiration of a period of six months from the date of its dissolution:*

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

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

37. Likewise, Section 10-A of the U.P. Municipalities Act, 1916 provides as under: -

**10A. Term of municipality.** - *(1) Every municipality shall, unless sooner dissolved under Section 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 Municipality before the expiry of its term, then until the due constitution of such Municipality, all the powers, functions and duties of the Municipality shall be exercised and performed by the District Magistrate or by a Gazetted Officer not below the rank of a Deputy Collector appointed by the District Magistrate in this behalf, and such District Magistrate or Officer shall be called the Administrator, and such Administrator shall be deemed in law to be the Municipality, the President or the Committee as the occasion may require.*

38. Article 243-U(1) is a constitutional guarantee, extended to every municipality to a fixed term of five years from the date appointed for its first meeting, unless sooner dissolved under any law for the time being in force. Section 10-A(1) is pari materia with the above constitutional provision and was inserted in the statute to give effect to the constitutional mandate.

39. The contention of learned Additional Chief Standing Counsel as noted above is that Article 243-U itself draws an exception in relation to the duration of municipalities. The term of five years is subject to a municipality being dissolved under any law, as had happened in the instant case and consequently, the new municipality constituted in its place will continue only for the remainder of the period, i.e. upto December, 2022 in terms of clause (4) of Article 243-U.

40. In support of the said contention, he has placed heavy reliance on the use of word “bye-election” in the notification issued by the State Election Commission dated 14.2.2022. He further placed reliance on

the order of the Supreme Court dated 23.11.2021, passed on the applications filed by the State Election Commission, seeking further time from the Supreme Court to hold the elections. It is submitted by him that the Supreme Court while extending the time limit for holding election, had approved the time frame given in para 22 of the additional affidavit filed on behalf of the State Government and wherein at Item No. 15, the election that was to be held, was described as a “bye-election”.

41. Per contra, learned counsel for the petitioner, submitted that dissolution envisaged under clause (1) of Article 243-U, is that prescribed by Section 30 of the U.P. Municipalities Act, 1916 on happening of certain contingencies and not as a result of automatic dissolution of municipality, consequent to its upgradation to a higher level, inasmuch as, it results in formation of a new and distinct entity and not the continuation of the earlier municipality. He further submitted that the constitutional protection to the duration of municipality cannot be curtailed by use of any wrong word in the election notification, particularly, when the election held in March 2022 was after undertaking exercise of delimitation and reservation of constituencies.

42. Undoubtedly, Article 243-U guarantees a fixed term of five years to every municipality. The same provision however also provides that the term of a municipality can be curtailed consequent to its dissolution



**“under any law for the time being in force”.**

43. The phrase “**under any law**” has been defined in Concise Law Dictionary as follows: -

**Under a law:** *The words “under a law” signify those cases where the disqualification to stand for election is not to be found in the parliamentary statute itself but is imposed by virtue of power enabling this to be done; in other words, where it is imposed by a law made by a subordinate law making authority.*

44. According to the above definition, the phrase “under any law” refers to a law made by a subordinate law making authority and not the Parliament itself. Such law is to be found in the U.P. Municipalities Act, 1916. In fact, Section 10-A unequivocally clarifies the legal position in this behalf while referring to Section 30 of the U.P. Municipalities Act, 1916 as the relevant piece of law in respect of premature dissolution of a municipality on happening of certain contingencies. Section 30 is as follows: -

**30. Power of State Government to dissolve the municipality.-** *If at any time the State Government is satisfied that a municipality persistently makes default in the performance of duties imposed upon it by or under this Act or any other law for the time being in force or exceeds or abuses more than once its powers, it may, after having given the municipality a reasonable opportunity to show cause why such order should not be made, by order, published with the reasons therefor in the Official Gazette, dissolve the municipality.*

45. Clause (4) of Article 243-U prescribes that a municipality constituted upon the dissolution of a municipality before expiration of its duration, shall continue only for remainder of the period for which

the dissolved municipality would have continued under clause (1), had it not been so dissolved.

46. It is noteworthy that under Section 30, the State Government is invested with power to dissolve a Municipality on ground of persistent default on its part in performance of duties imposed upon it by or under the Act, or any other law for the time being in force, or in cases of repeated abuse of its power.

47. As the dissolution under Section 30 is based on specific charges, it has to be preceded by an opportunity of hearing. Article 243-U also refers to a dissolution of municipality which has to be preceded by an opportunity of hearing. The opportunity of hearing envisaged under the above two provisions is not the same as an opportunity provided to file objections to draft notification [Section 4(2)], before the status of a municipality is changed or its territorial limit extended in exercise of power under Article 243-Q and Section 3 of the Act. Moreover, in such cases, the municipality of one description ceases automatically upon constitution of municipality of a higher description and no separate proceeding/order is required for dissolution. This conclusively suggests that the dissolution which is spoken of in clause (1) of Article 243-U of the Constitution, is that provided under the statutory law, i.e. the U.P. Municipalities Act, 1916, or other cognate enactments. Clause (4) of Article 243-U prescribes for the same eventuality, i.e. dissolution of municipality under any statutory law in force, like Section 30 in case at

hand and not where the municipality had ceased to exist as a result of a municipality of higher description being constituted in its place.

48. The reliance placed by learned Additional Chief Standing Counsel on the order of the Supreme Court dated 23.11.2021 also does not hold any ground. It seems that the order was passed on the impleadment and modification applications, filed by the State Election Commission, U.P. and the State Government, in which the State Government filed an additional affidavit pointing out that before holding the election, various statutory compliances have to be made, like exercise for undertaking reservation of seats under Section 9-A, delimitation of wards and issuance of delimitation order under Section 11-A and 11-B, preparation of electoral roll for every ward and its revision as per Section 12-B and 12-G and in which, considerable time will be consumed. The affidavit also mentions that the last general election of the local bodies in the State was held in the month of November 2017 and the existing term of the local bodies is going to expire in November 2022. Therefore, it was further asserted as follows:-

*“22. That in the aforesaid background for completion of various formalities as per provisions contained in the Uttar Pradesh Municipalities Act, 1916, the process for holding Election 2022 of Urban Local Bodies in the State, shall have to be commenced at least six months prior to November 2022 that is during the period of April – May 2022. As such it would be highly appropriate to hold the election of Municipal Council (Nagar Palika Parishad) Siswa Bazar alongwith proposed Municipal Body Election of year 2022.*

23. It is needless to mention that in view of the above facts and circumstances of the case at least a minimum period of about 4 months is humbly sought for from this Hon'ble Court in ends of justice for completion of all the procedural formalities/requirements to comply with the provisions as contained in Section 9 to Section 13 of the Uttar Pradesh Municipalities Act, 1916 before conducting a free and fair election as directed by this Hon'ble Court vide its order dated 17.09.2021.

24. That it is most respectfully submitted that the process for delimitation exercise is under progress and for the aforesaid constituency and if the order for delimitation is finally issued then the said period of 4 months will be reduced by 15 days.

26. It is, therefore, most respectfully and humbly prayed that this Hon'ble court may very kindly be pleased to allow the instant Miscellaneous application no. 1720 of 2021, in the interest of justice and equity so that election of Municipal Council (Nagar Palika Parishad) Siswa Bazar may be smoothly conducted within a period of four months and pass any order or further orders as deemed fit and proper in the given facts and circumstances."

49. In paragraph 20 of the said affidavit, by way of illustration, a time schedule for taking various actions for holding the election was disclosed, which is as follows: -

"20. That in this connection it is relevant to mention here that for the purpose of compliance of the aforesaid Statutory Provisions as contained in the U.P. Municipalities Act, 1916, the procedure to be followed is a very time consuming process. To illustrate the time Schedule for various actions is shown in column 3 of the following chart: -

S. No.	Action	Requires Time
1.	To issue direction for determination/D-Limitation of various wards constituting the local body.	30 days
2.	To issue direction to the Director of a Local Body/District Magistrates, to submit a proposal for determining the number of wards.	
3.	To issue a provisional notification	

	notifying the proposed no. of wards and D-Limitation of wards, for inviting objection to it.	
4.	The District Magistrate to get the aforesaid provisional notification published in the local newspaper for inviting objection to it.	
5.	The District Magistrate to forward the objections received against the provisional notification alongwith its comments/recommendations.	
6.	The State Govt. to scrutinize and finalize the objection received from the District Magistrate.	
7.	The State Govt. to issue final notification notifying the number and D-Limitation of wards as finalized.	
8.	The State Election Commission to prepare final revised Electoral list.	For all the aforesaid work 20 days are required.
9.	After the issuance of final notification, notifying the number and D-Limitation of wards by the State Govt., the District Magistrate to collect, after conducting the Rapid Survey, Figures regarding population of backward classes and to forward such figures to the State Govt.	10 days
10.	The State Govt. to issue direction to the Director local bodies/District Magistrate for providing the details of “Reserved Wards” and “Reserved Chairman of a local body”.	For the work mentioned from Serial No. 10 to 14, a total of 30 days are required.
11.	The State Govt. to notifying a provisional notification notifying details of the “Reserved Wards” and “Reserved Chairman of a Ward” for objections if any to its.	
12.	The Director local body/District Magistrate to publish the provisional notification notifying the “Reserved Wards” and then “Reserved Chairman of a	

	local body” for inviting objections to it if any.	
13.	The State Govt. to direct D.M. to forward objections received against the provisional notification alongwith its comments/ Recommendations.	
14.	The State Govt. after scrutinizing and finalized the objections received through the District Magistrate to notify final notification of “Reserved Wards” and Reserved Chairman of a local body”.	
15.	Holding of By-Elections by the State Election Commission after issuing Notification.	For the work mentioned from Serial No. 15 to 24, a total of 30 days are required.
16.	The State Election Commission to issue notification for holding Elections.	
17.	The District Magistrate/Election Officer to issue Public Notice.	
18.	The Returning Officer to issue Public Notice	
19.	To purchase and submit Nomination forms.	
20.	The Scrutiny of nomination form	
21.	Withdrawal of a candidature by a contestant.	
22.	Allotment of Symbol	
23.	To hold Election	
24.	To hold counting	

50. The Supreme Court deprecated inaction on part of the State Authorities in conducting the election within time prescribed as per order dated 17.9.2021, but having regard to the prayer of the respondents and various statutory compliances that were to be made, extended the time limit, observing thus: -

*“We direct all concerned to ensure that the elections are*

*conducted in conformity with the schedule noted herein above and that the time frame for giving effect to the said schedule commences from today.*

*No request for further extension on any ground will be countenanced hereafter.*

*We may note that we are not impressed by the submissions made by the State Election Commission as well as the State Government that to avoid duplication to election process, the subject election may be allowed to be conducted along with elections of other corporations/councils in November, 2022, or for that matter, when the Assembly elections are due in March, 2022. Instead, we direct the State Election Commission and all the duty holders to ensure that the election to the subject Municipal Council/Nagar Palika Parishad is completed as per the time schedule, referred to above, and the period therefor commences from today, as aforesaid.”*

51. It is apparent from the order of the Supreme Court that it specifically repelled the request made by the State Government and State Election Commission, U.P. to hold election of Nagar Palika Parishad, Siswan Bazar, Maharajganj, along with the election of other Corporations/Councils in November 2022, but rather directed them to hold election as per above time frame. The time schedule given by the State Government in para 22 of its additional affidavit was noted in the order in context of its plea that four month period was required to make the statutory compliances. While doing so, the Supreme Court had not made any adjudication regarding nature of election to be held viz – general election or bye-election, nor any such controversy was ever raised before it. On the other hand, the additional affidavit of the State Government when read as a whole, was intended towards seeking permission to hold general election of the newly constituted Municipal

Council, Siswan Bazar, Maharajganj, along with other urban local bodies scheduled in November 2022, or in alternative within four months after completing the formalities as per the time schedule given in para 20 of the affidavit. Consequently, the submission of learned Additional Chief Standing Counsel does not merit acceptance.

52. After the dissolution of Nagar Panchayat and constitution of Municipal Council, Siswan Bazar, Maharajganj, the State Government was required to notify general election for establishing the municipality in terms of Section 333 of the Act. This Court while deciding PIL No. 1822 of 2022, by order dated 8.2.2021, had also issued a direction to District Magistrate to make arrangements for **the holding of first elections**. It was upheld by the Supreme Court, consequent upon dismissal of SLP filed by *Ragini Devi*, coupled with fresh direction “to ensure that the elections for establishing the newly constituted Municipal Council, Siswan Bazar, Maharajganj, is conducted at the earliest”. The State Government was thus required to notify general elections for constitution of Nagar Palika Parishad in the newly constituted Municipal Council. The said exercise was to be done by the State under Section 13-A, in consultation with the State Election Commission. As a new municipality was being constituted for the first time, it ought to have been given its full term of five years. However, the State Election Commission under some misconception, notified bye-election, while referring to its power under Section 43-C and



Section 13-G of the Act. This would mean that the term of the newly elected municipality would be only for the remainder of the term of the erstwhile municipality. It was contrary to the mandate of Article 243-U(1). The election notification has to be read and interpreted in line with the constitutional ethos, or else, it would result in complete annihilation of the safeguards provided under the Constitution.

53. Section 13-H on which reliance has been placed by learned Additional Chief Standing Counsel also has no application to the facts of the instant case. It empowers the State Election Commission to fill up seat of a member when it falls vacant, or is declared vacant, or his election is declared void. In such an eventuality, the bye-election of the ward concerned is held, as would be evident from plain reading of sub-section (1) of Section 13-H, which is reproduced below:-

***“13-H. Bye-elections--(1) Subject to the provisions of sub-section (2) of Section 13-I, when the seat of a member, elected to a Municipality becomes vacant or is declared vacant or his election is declared void, the State Election Commission shall in consultation with the State Government by a notification in the Official Gazette, call upon the ward concerned to elect a person for the purpose of filling the vacancy caused before such date as may be specified in the notification and the provisions of this Act and of the Rules and Orders made thereunder, shall apply, as far as may be, in relation to the election of member to fill such vacancy.”***

54. Likewise, the submissions made by learned Additional Chief Standing Counsel placing reliance on certain provisions of the Representation of People Act, 1951 also has no relevance to the issue involved, therefore, there is no need of a detailed discussion of the said

provisions.

55. It is noteworthy that both general election and bye-election is held on basis of adult suffrage. The basic difference between a general election and a bye-election lies in the procedure followed in holding such election. A general election is generally preceded by reservation of seats (Article 243 -T of the Constitution and Section 9-A); delimitation of wards (Section 11-A and 11-B); preparation and revision of electoral rolls (Section 12-B and 12-G), whereas the aforesaid exercise may or may not be done before holding a bye-election.

56. In the case at hand, all the above exercises were duly undertaken. This is evident from the illustrative chart supplied by the State Government through its additional affidavit filed before the Supreme Court in the matter of Ragini Devi<sup>11</sup>. It reveals that the State Government took 30 days time for completing the exercise of delimitation of wards, 20 days time for finalizing the electoral list, 30 days time for completing the exercise relating to reservation of seats. How reservation was applied to the seat of Chairperson and Members is available on the official website '<http://sec.up.nic.in>' of the State Election Commission, U.P. and being in public domain, we take judicial notice of the same.

57. Fundamentally, we find that all steps, which are required to be taken under law, had been followed while holding the election in

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11(SLP No.4233 of 2021)

question. In the ultimate analysis, we find no qualitative difference in the election that had been held except the use of terminology 'bye-election' in the election notification. Otherwise, the election satisfied all the requirements of law.

58. Once we find that the election held on 13.3.2022 was after making all statutory compliances as were required under law for holding a general election, we have no hesitation in declaring that the duration of the Municipality i.e. Nagar Palika Parishad, Siswan Bazar, Maharajganj elected on 13.3.2022 would be five years from the date of its first meeting in terms of Article 243-U read with Section 10-A of the Act of the U.P. Municipalities Act. The present Municipality is entitled to run its full duration of five years from the date of its first meeting. The stand of the State respondents that its term would expire in November, 2022 and therefore, exercise for holding general election of the Municipality is being taken to constitute a new Municipality in its place, cannot be countenanced, being in teeth of the constitutional mandate.

59. It would not have been possible for us to give the above relief, had the election been conducted without the exercise of delimitation, preparation of electoral roll and application of the reservation roster.

60. In consequence, we allow the writ petition and quash the impugned notification/communication dated 26.4.2022 in so far as it relates to Nagar Palika Parishad, Siswan Bazar, Maharajganj enlisted at

serial no.22 in the list annexed with the notification and restrain the respondents from holding fresh elections of Nagar Palika Parishad, Siswan Bazar, Maharajganj until it completes its full duration of five years from the date of its first meeting unless dissolved earlier in accordance with law.

61. No order as to costs.

**Order Date :-** 12.10.2022  
SL/Jaideep

(Ram Manohar Narayan Mishra, J.) (Manoj Kumar Gupta, J.)