

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 20.12.2023

Pronounced on : 22.12.2023

Case:- WP(C) No. 2942/2023
CM No. 7026/2023

**1. Mohd. Arif Age 38 years
S/o Mohd. Ayoub
R/o Ward no. 16, Rajouri
President Municipal Council,
Rajouri.**

.....Petitioner(s)

**2. Shakeel Ahmed Mir Age 58
years
S/o Abdul Aziz Mir
R/o Ward no. 7, Thanamandi,
President Municipal Committee,
Thanamandi.**

**3. Mumtaz Ahmed Age 51 years
S/o Sahib Din
R/o Ward no. 7, Surankote
President Municipal Committee,
Surankote.**

**4. Sunil Sharma Age 58 years
S/o Sh. Labhu Ram
R/o Ward no. 16, Poonch
President Municipal Council,
Poonch.**

Through: Mr. Abhinav Sharma, Sr. Advocate
with
Mr. Abhirash Sharma, Advocate.
Mr. Ronik Sharma, Advocate.

Vs

**1. UT of J&K
Through Principal Secretary to Govt.
Housing and Urban Development Department
Civil Secretariat, Jammu.**

**2. Director
Urban Local Bodies.**

3. Deputy Commissioner, Rajouri.

4. Deputy Commissioner, Poonch

..... Respondent(s)

Through: Mr. D. C. Raina, Advocate General
with
Mr. S. S. Nanda, Sr. AAG.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

- 01.** What is the term of office of the President/Vice-President of a municipality committee constituted under the J&K Municipal Act, 2000 (in short "**the Act**") is the legal question which calls for adjudication in this petition.
- 02.** Four petitioners who are Presidents of the respective Municipal Committees/Councils in district Poonch and Rajouri are claiming that their respective terms of office are to be reckoned to have started from the dates their election as president came to be notified under section 27 of the Act and they entered the office upon being administered with oath, and, therefore, from that date onwards, the term of five (5) years of the Presidentship of Municipal Committees/Councils are to be counted which cannot be prematurely ended from the end of the respondents.
- 03.** On the other hand, the term of office of the petitioners as President of the respective Municipal Committees/Councils

is being reckoned by the respondents to end by reference to the date of holding the first meeting of the respective Municipality, and that is being reckoned to be the date when petitioners came to be so elected in a meeting by the elected members of the respective Municipal Committees/Councils.

- 04.** Heard Mr. Abhinav Sharma, learned senior counsel assisted by Mr. Abhirash Sharma, Advocate & Mr. Ronik Sharma, Advocate appearing for the petitioners & Mr. D. C. Raina, learned Advocate General assisted by Mr. S. S. Nanda, learned Sr. AAG appearing for the respondents and perused the pleadings and the record.
- 05.** Given the nature of the subject matter of the writ petition and the fact that it involves a pure question of law in the form of interpretation of the relevant provisions of the Act, this writ petition is being taken up for adjudication as timely adjudication is of essence.
- 06.** The Act came into being to consolidate, amend and replace the law relating to the municipalities in Jammu and Kashmir. It envisages the classes, composition and function of municipalities.
- 07.** In terms of section 223, a municipality is defined meaning any area declared by or under the Act to be a Municipality.

Government is empowered to constitute a municipality with a power to specify the class to which a municipality shall belong that is for a small town, medium town or the capital cities of Jammu & Kashmir. For a small town, a municipality constituted is to be known as 'Municipality Committee', for a medium town, municipality constituted is to be known as 'Municipal Council' and for capital cities of Jammu & Kashmir, municipality constituted is to be known as 'Municipal Corporation'.

08. For a municipality to be constituted, the Government is vested with a power to issue notification to propose any local area to be a municipal area under the Act. For a given Municipality constituted by the Government, the composition of the Municipality is also provided by determining the number of members to comprise the Municipality and how the membership of a given Municipality is to be constituted that is by direct election and also by nomination.

09. In the context of the present case, the issue in picture is the terms of office of the elected President and Vice-President of a Municipality. In this context, the relevant provisions of law in the Act to be noted before coming to deliberate upon are spelled out herein next.

10. In terms of section 20, every municipality is to be a body corporate to be known by the name of 'Municipal Council' or 'Municipal Committee' of its municipal area and is to have a perpetual succession and common seal with power to acquire and hold property and also vested with right and liability to sue and be sued in its corporate name.

11. Section 13 of the Act provides terms of office of members and which is reproduced as under:-

"13. Term of office of members

(1) The term of office of elected members shall be five years from the date appointed for the first meeting of the municipality.

(2) The term of the nominated members shall be coterminous with the term of elected members.

(3) When as a result of an enquiry held under Chapter XVII, an order declaring the election of any member void has been made such member shall forthwith cease to be the member of the municipality.

(4) The members shall be entitled to receive allowances for attendance at meetings of the municipality and of its committees at such rates as may be prescribed by the Government from time to time."

12. Section 14 provides duration of municipality which is also reproduced as under:-

"14. Duration of municipality.

(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) An election to constitute a municipality shall be completed –

(a) *before the expiry of its duration specified in sub-section (1)*
;

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

Provided that when 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 section for constituting the municipality for such period :

Provided further that the first election to a municipality constituted after the commencement of this Act, may be held within a period of 1 [two years] of its being notified as a municipality :

2 [Provided also that the first election to any Municipality constituted after the commencement of the Act may be postponed by the Government for climatic or other reasons and the elections to such Municipality shall be held within a period of three years of its being notified as a Municipality.]

[(2-A) Notwithstanding anything to the contrary contained in this Act, fresh elections may be held for vacant seats within a period of one year from the date of first election for any Municipal Committee where two-third members have not been elected at an election and till constitution of a Municipal Committee the powers of such Committee may be exercised by such Administrator as may be appointed by the Government in this behalf].

(3) A municipality constituted upon the dissolution of 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."

13. Section 22 provides for election of President and Vice-President which is reproduced as under:-

"22. Election of President and Vice-President.

Every Municipal Committee or Municipal Council shall elect through ballot one of its elected members to be the President and another to be the Vice-President, and the member so elected shall become President or the Vice-President, as the case may be, of the Municipal Committee or a Municipal Council :

Provided that the office of President in Municipal Committee and Municipal Councils shall be reserved for Scheduled Castes, Scheduled Tribes and women in accordance with the provisions made in section 12 :

Provided further that if the office of the President or Vice-President is vacated during his tenure on account of death, resignation, removal or no-confidence motion, a fresh election for the remainder of the period shall be held from the same category.

- 14.** Section 23 provides for term of office of and honorarium to President and Vice-President which is reproduced as under:-

“23. Term of office of and honorarium to President and Vice-President.

(1) The term of office of President or Vice-President shall be five years or the residue of the term of his office as a member, whichever is less.

(2) An outgoing President and Vice-President shall if otherwise qualified, be eligible for re-election.

(3) The President and Vice-President shall be entitled to the payment of such honorarium and allowances for attendance at meeting of the municipality and its committee at such rate as may be prescribed by the Government from time to time.”

- 15.** Section 27 provides for notification of elections and nominations which is reproduced as under:-

27. Notification of elections and nominations.

(1) Every election or nomination of a member and election of President and Vice-President of a Municipal Committee or Municipal Council shall be notified in the Government Gazette and no member shall enter upon his duties until his election or nomination has been so notified and until, he has made or subscribed at a meeting of the Municipal Committee or Municipal Council, an oath or affirmation of his allegiance to the Constitution of India in the following form, namely:—

*“I, AB, having been elected (or nominated)
Member/President/Vice-President of a Municipal
Committee or Municipal Council of _____do*

swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and I will faithfully discharge the duties upon which I am about to enter.”.

(2) Every election of a member shall be notified in the Government Gazette by the Chief Electoral Officer and every election of a President and Vice-President shall be notified by the Government in the Government Gazette within thirty days from the date of declaration of the result of such election.

(3) If any such person omits or refuses to take or make the oath or affirmation as required by sub-section (1) within thirty days of the date of notification of his election or nomination, as the case may be, his election or nomination, as the case may be, shall be deemed to be invalid, and his seat shall become vacant.

- 16.** Sections 28, 29, 30, 31, 32 & 33 provides for provisions with respect to meeting of the municipality which are reproduced as under:-

28. Time for holding meetings.

(1) Every election or nomination of a member at such time as may be from time to time, be fixed by the bye-laws.

(2) The President, or in his absence during his incapability to attend to his duties or during the vacancy of his office, the Vice-President may, whenever he thinks fit and shall, within a period of ten days from the date of receipt of a requisition signed by not less than one half of the total number of members of the municipality, convene either an ordinary or a special meeting at any other time : Provided that the requisition shall specify the purpose for which the meeting is to be held.

(3) If the President or the Vice-President fails to convene a meeting of the municipality within a period of ten days from the date of receipt of such requisition, the member who signed the requisition may request the officer nominated by the Government to convene the meeting.

(4) The officer appointed by the Government on receipt of request under sub-section (3) shall within a period of ten days of such request, convene the meeting.

29. Ordinary and special meetings.

(1) Every meeting of municipality shall be either ordinary or special.

(2) All business may be transacted at an ordinary meeting unless required by this Act or the rules framed thereunder to be transacted at a special meeting.

30. Quorum.

(1) The quorum necessary for the transaction of business at a special meeting of a municipality shall be one-half of the number of sitting members of the municipality.

(2) The quorum necessary for the transaction of business at an ordinary meeting of a municipality shall be such number or proportion of the members of the municipality as may, from time to time, be fixed by the bye-laws, but shall not be less than three :

Provided that, if at any ordinary or special meeting of a municipality, a quorum is not present, the Chairman shall adjourn the meeting to such other day, as he may think fit and the business which would have been brought before the original meeting if there had been a quorum present, shall be brought before, and transacted at the adjourned meeting.

31. Chairman of meeting.

At every meeting of a municipality the President, or, in his absence or during the vacancy of his office, the Vice-President and if there be no President or Vice-President, then such one of the members, as the members present may elect, shall preside.

32. Vote of majority decisive.

Except as otherwise provided by this Act or the rules, all questions which come before any meeting of a municipality shall be decided by a majority of the votes of the members present, and in case of an equality of votes the Chairman of the meeting shall have a second or casting vote.

33. Records and publication of proceedings.

(1) Minutes of the proceedings at each meeting of a municipality shall be drawn up and recorded in a book to be kept for the purpose, which shall be signed by the Chairman of the meeting or of the next ensuing meeting.

(2) The minutes of the proceedings referred to under subsection (1) shall be published in such manner as the Government may direct, and shall, at all reasonable times

and without charge, be open to inspection by any inhabitant.

(3) A copy of resolution passed at any meeting of a municipality shall, within three days from the date of the meeting, be forwarded to the Deputy Commissioner and the Director.”

- 17.** In terms of section 34, Government is vested with the power to frame and provide bye-laws relatable to the meetings and other ancillary and incidental matters. In exercise of power so vested under section 34, the Jammu and Kashmir Municipality (Procedure for Conduct of Meetings) Bye-laws 2005 (in short **“Bye-Laws 2005”**) have been framed.
- 18.** In terms of Bye-Laws 2005, rule 3 provides for day, time and place of meetings and rule 6 provides for election of President and Vice-President. Rule 9 provides for ordinary meeting of a municipality taking place at least once every month and rule 10 provides for quorum.
- 19.** Rule 27 provides for powers of person presiding in absence of President and Vice-President.
- 20.** Rule 7 being the most important rule provides for President to preside over the meeting as soon as he is elected.
- 21.** From the reading and understanding of the aforementioned relevant sections and rules, the picture which comes out is like this that though every Municipality is of a perpetual succession but it gets constituted for every five (5) years

term upon holding of election under section 10 and that is the reason section 14 provides for duration of municipality to continue for five (5) years from the date appointed for its first meeting and no longer. Accordingly, the term of office of the elected and nominated members is co-terminus with the five (5) years term of municipality as provided under section 13.

22. With respect to President and Vice-President of a given municipality, section 23 provides that the term of office is five (5) years without further mentioning as the inception date for reckoning of the said five (5) years period.

23. Before proceeding further with respect to the legal aspect of the case, the relevant factual aspect concerning the petitioners' status needs to be set out as follows:-

a) Petitioner no. 1 came to be elected as President of Municipal Committee, Rajouri on 18.11.2018 which election came to be notified vide SRO no. 605 dated 24.12.2018. The petitioner no. 1 came to take the oath of office on 18.01.2019 and upon his election, a Municipal Committee meeting came to be held on 30.01.2019.

b) Petitioner no. 2 came to be elected as President of the Municipal Committee, Thanamandi

which came to be notified vide SRO no. 596 dated 24.12.2018. The petitioner no. 2 was administered oath of office on 17.01.2019 and presided over meeting of the Municipal Committee, Thanamandi on 13.02.2019.

c) Petitioner no. 3 came to be elected as President of Municipal Committee, Surankote as notified vide SRO no. 562 dated 13.12.2018. The petitioner no. 3 came to be administered oath of office in December 2018.

d) Petitioner no. 4 came to be elected as President of the Municipal Council, Poonch which came to be notified vide SRO no. 561 dated 13.12.2018. The petitioner no. 4 came to be administered an oath of office in December 2018.

All the petitioners reckoned that it is only after having entered their office upon being administered with oath of office, the first meeting convened under their presidentship is the starting date for counting the term of five (5) years for the respective Municipality and, therefore, their term as President is to end, accordingly.

24. It is by the conjoint reading and understanding of the section 23 with section 27, the petitioners have fallen under

a misconception that they became President of the respective Municipal Committee/Council only upon taking oath and entering their office, and, therefore, the first meeting of Municipality which came to be held after their entering upon office as President shall be the starting date of five (5) years for the duration of their respective Municipality to last. This understanding of the petitioners is misconceived and misplaced.

25. Although the Act provides under sections 28, 29, 30 & 31 for ordinary and special meeting, timing and holding of said two kinds of meeting, quorum for the meeting, and chairmanship of the said meeting, but the word **“first meeting”** obtaining in section 14 as well as in section 13 in relation to duration of municipality and in term of office term of the members is the one from where the petitioners have drawn their conclusion and conviction that it is only upon the election as President, getting notified under section 27 of the Municipal Act attending with oath taking, that first ordinary meeting of the Municipal Committee which took place was to set start the term of their respective municipality and their term of office simultaneously.

26. The reason why the legislature came to keep the tenure of the Municipality and the term of its elected and nominated

members to run concurrently for a period of five (5) years from its first meeting poses a question as to when that first meeting is to be reckoned to have taken place. Section 14 and section 13 read with rule 7 provides a key to answer the confusion entertained at the end of the petitioners to self-stretch their tenure in the office as President of respective Municipal Committee/Council.

27. Rule 7 of the Bye-Laws 2005 provides the answer and that is when the elected members come forward for their first assembly in a meeting on being convened by the Executive Officer for the purpose of election from amongst themselves of the President and Vice-President of given Municipality which is to be the first meeting of the municipality taking place, as upon election as President the same very meeting from that moment onwards is to get presided over by the elected President notwithstanding the fact that the president elect's notification as envisaged under section 27 of the Act is yet to be gazetted and administration of the oath office to take place thereupon.

28. Therefore, in the present case when the petitioners came to be elected as President of their respective municipal Committee/Council the duration of the respective municipality for five (5) years is to be counted for its termination date and the petitioners cannot out stay the

said five (5) years of tenure. Thus, with respect to each municipality in reference in the present case, the date of election of the petitioners as presidents of respective municipalities is to be read and reckoned as first meeting of the municipality and five (5) years term to be counted therefrom so as to coincide with the term of office of the petitioners as president for five (5) years with term of five (5) years their respective municipalities.

29. It is made clear here that coming into being of S.O. no. 150 of 2021 dated 27.04.2021 has no retrospective effect to determine the tenure of the petitioners and it is by the aforesaid interpretation of the position of law obtaining at the time of election of the petitioners as being Presidents of the respective Municipal Committees/Councils that the adjudication of this writ petition is taking place.

30. This writ petition is, accordingly, ***disposed of***.

(RAHUL BHARTI)
JUDGE

JAMMU
22.12.2023

Bunty

Whether the order is speaking: Yes

Whether the order is reportable: Yes