

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

**LPA No.270/2023 (Srinagar Wing)
LPA No.236/2023 (Jammu Wing)**

Reserved on: 29.12.2023
Pronounced on:30.12.2023
At Srinagar.

LPA No. 270/2023 (Srinagar Wing)

Subhash Chander Koul and others **...Appellants.**

Through: Mr. Junaid Rashid, Advocate.
Mr. Bakht Parvaiz, Advocate.
Vs.

Union Territory of J&K and others. **.... Respondents.**

Through: Mr. Rais-ud-Din Ganai, Dy.AG.

LPA No. 236/2023 (Jammu Wing)

Mohd. Arif **...Appellant.**

Through: Mr. Dhiraj Chowdhary, Sr. Advocate, with
Mr. Rohan Sharma, Advocate.
Vs.

Union Territory of J&K and others. **.... Respondents.**

Through: Mr.S. S. Nanda, Sr. AAG.

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE**

J U D G M E N T

(N. Kotiswar Singh, CJ)

1. The present appeals are directed against the judgments and orders passed by the learned Single Judges of this Court, one at the Jammu Wing

**LPA No.270/2023 (Srinagar Wing)
LPA No.236/2023 (Jammu Wing)**

and another at Srinagar Wing. Since the issues involved in both these appeals are common, these appeals are taken up together and decided by this common judgment and order.

2. LPA No.270/2023 has been preferred before the Srinagar Wing of this Court against the Order dated 14.12.2023, passed by the learned Single Judge in WP(C) No. 3205/2023, in which the petitioners had sought a Writ of Mandamus commanding the respondents to allow the petitioners to discharge duties as Presidents of the respective Municipal Committees in terms of Article 243-U, Section 13 & 14 of the Jammu and Kashmir Municipal Act 2000 (hereinafter referred to as the “Act”), and challenging the opinion rendered by the Department of Law, Justice and Parliamentary Affairs, dated 30.10.2023 and also for prohibiting the respondents from dissolving the Municipal Committees of Shopian, Dooru Verinag and Kokernag, before the expiry of five years term.

3. LPA No.236/2023 has been preferred at the Jammu Wing against the Order dated 22.12.2023 passed by the learned Single Judge in WP(C) No. 2942/2023, in which the petitioner had sought for quashing the official communication bearing No. DULBJ/202314200 dated 18.10.2023 by which it was stated that the appellant-petitioner has completed the tenure as the President of the Municipal Committee, Rajouri.

4. The reliefs sought in both the writ petitions by the respective appellants/petitioners were declined and the petitions were dismissed. Being aggrieved by the same, the petitioners have filed the aforesaid two appeals.

5. The issue to be decided in these appeals related to the term of the appointment of the appellants as the Presidents of the respective Municipal Committees of Shopian, Dooru Verinag, Kokernag, and Rajouri, which according to them, is for five years as provided under Section 13 of Jammu and Kashmir Municipal Act 2000 (‘Act’ for short) which is yet to be over. According to the appellants, Section 13 of the Act provides that the term shall be five years from the date of the first meeting of the Municipal Committee, and the respondent authorities had admitted in their document,

and it has been clearly mentioned by the Director, Urban Local bodies that the first date of the meeting of the Committee in respect of Dooru Verinag was on 01.05.2019, in respect of Kokernag and Shopian, the first meetings of the Municipal Committees were held on 13.10.2019 and 05.01.2019 and in respect of Rajouri, it was held on 28.01.2019.

6. Therefore, by virtue of Section 13 of the Act, the petitioners would be entitled to remain in the office beyond the period shown against each of the Committees. Accordingly, the petitioners approached the Writ Courts seeking quashing of the said expiry dates mentioned in the said document. However, the writ petitions were dismissed by the Writ Courts.

7. Thus, the issue which arises for consideration before us is, when the tenure of a President of a Municipal Committee will come to an end.

It appears from the records that while the authorities in the Srinagar Division had taken a consistent view that the term of the office of the members of the Municipal Committees expired after 5 years from the date of the first meeting of the respective Committees and the date of the first meeting of the Committees determined by the authorities was with reference to the election of the Presidents of the Committees.

On the other hand, with respect to the Jammu Division, the date of the first meeting of the Committees has been shown to be the date when the Municipal Committees after the election of the Presidents, conducted their normal businesses.

8. Section 13 of the Jammu and Kashmir Municipal Act, 2000 provides for the term of office of the members, which is, 5 years from the date appointed for the first meeting of the municipality. For convenience, Section 13 of the Jammu and Kashmir Municipal Act, 2000 is reproduced herein below:-

“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.”

Section 14 of the Act further provides for the duration of the municipality, which is 5 years, and it emphatically states that it shall not continue longer than five years from the date appointed for its first meeting.

Section 14 reads as follows:

“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.....”

9. Since the term of office of the elected members is five years from the date appointed for the first meeting of the municipality, it requires to be ascertained when the first meeting of the municipality can be said to have taken place. The Act does not define the expression “the first meeting of the municipality”. Neither it mentions when the first meeting of the municipality is to be held, and as such, the same has to be inferred from the various provisions of the Act and the Bye-laws made in that regard.

10. As we proceed to examine the same, it may be noticed that the office of the President with which we are directly concerned, is to be filled up by way of election from amongst the elected members of the respective Municipal Committees, as provided under Section 22 of the Act. Section 22 of the Act reads as follows: -

“22. Election of President and Vice-President. — Every Municipal Committee or Municipal Council shall elect 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 Council 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.”

11. The term of the office of the President and Vice-President is mentioned under Section 23 which reads as follows:

“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.”

12. Section 23, therefore, provides that the term of office of the President may be 5 years or residue of the term of the office as a member of the Committee whichever is less.

13. It is also to be noted that a person elected as a President will continue to be so unless removed under the Act and Bye-laws framed hereunder or till the term of the Municipal Committee subsists.

14. The provisions of Sections 13 and 23 of the Act are to be read together to understand the actual duration of the term of the President. As mentioned above, the President is one of the elected members of a Municipal Committee. Therefore, ordinarily, the term of the President will be co-terminus with the term of the elected members of the Committee and the fact that such an elected member of the Municipal Committee in turn gets elected as a President will not endow him with any additional period for functioning as a President after the Municipal Committee has ceased to exist. Therefore, to understand the provisions of Sections 13 and 23 of the Act, we must first understand the actual duration of the term of the office of the elected members of the Municipal Committee.

15. As mentioned above, the term of office of the elected members of the Municipal Committee will be 5 years from the date appointed for the first meeting of the municipality. Therefore, the next crucial aspect that is required to be ascertained is, what is “the date appointed for the first meeting of the municipality” mentioned in Sections 13 and 23 of the Act.

16. From the pleadings and contentions, the plea of the Presidents who are appellants in these two appeals is that the first meeting of the Municipal Committee is the one when the first business meeting of the Municipal Committee takes place and not with reference to the meeting which is held for the appointment of the President or the Vice-President as the case may be. To understand this better, we must look at the Jammu and Kashmir Municipality (Procedure for Conduct of Meetings) Bye-Laws, 2005 which was subsequently amended by the Jammu and Kashmir Municipality (Procedure and Conduct of Business) Bye-laws 2021. In the Bye-laws of 2021, it has been clearly mentioned under Bye-law 3 (1) that the first meeting of a Municipal Committee for the election of President or Vice-President after the general election shall be held as early as possible but not later than 30 days after the publication of the results of the election, though the old Bye-laws of 2005 does not specifically mention so.

17. Bye-law 3 of the old Jammu and Kashmir Municipality (Procedure for Conduct of Meetings) Bye-laws, 2005 provided as follows:

“3. Date, time and place of meeting-(1) The date, time and place of a meeting for the election of President and Vice-President of a Municipal Committee or a Municipal Council after a general election shall be determined by the Deputy Commissioner of the concerned district.

(2) The date, time and place of subsequent meetings of a Municipal Committee or a Municipal Council shall be fixed by the President by a general or special order passed in that behalf.”

18. In contradistinction to the aforesaid old Bye-laws of 2005, the new amended Bye-Law 3 (1) of Jammu and Kashmir Municipality (Procedure and Conduct of Business) Bye-laws, 2021 reads as follows: -

“3. Date, time and place of meetings of a Municipal Committee or a Municipal Council.

(1) The first meeting of a Municipal Committee or a Municipal Council for the election of President and Vice President after general election shall be held as early as possible but not later than thirty days after the publication of results of the election of the Members and the date, time and place of such meeting shall be determined by the Deputy Commissioner of the concerned district.

(2) The date, time and place of subsequent meetings of a Municipal Committee or a Municipal Council shall be fixed by the President by a general or special order passed in that behalf.”

19. Though it may be stated as contended by the appellants that the amended Bye-laws of 2021 will not be applicable in the present case, as the Municipal Committees were constituted in the year 2019 because framing these new Bye-laws, yet we have chosen to refer to these amended Bye-laws of 2021 to understand the provisions of the Act.

Even if do not refer to the amended Bye-laws of 2021, and refer to the old Bye-laws of 2005, from a reading of Bye-laws 3 of the old Bye-laws, it becomes clear that the election of the President and Vice-President after the general election is to be held on the date, time and place as may be determined by the Deputy Commissioner of the concerned district.

Further, a close examination of Bye-law 3(2) of old Bye-laws of 2005 would show that the subsequent meetings of the Municipal Committee shall not be determined by the Deputy Commissioner but by the President by a general or special order on that behalf.

20. From the above, what we can understand is that till the President of the Municipal Committee is elected, the Committee does not carry out the normal activities/business transactions. It is only when the President is elected that the Committee begins to transact its routine business. However, to effectuate the same, the President is required to be elected. Thus, election of the President is one of the most important official businesses undertaken by the newly elected members of the Municipal Committee before they start other businesses of the Committee.

21. That is why soon after the general elections, a meeting is held for the election of the President or the Vice-President at the time and place determined by the concerned Deputy Commissioner. The meeting is merely convened by the Deputy Commissioner, and he does not take part in the meeting since he is not a member of the Committee. The manner of election of the President or Vice-President is provided under Chapter II in Bye-law 6 and Bye-law 7 of the old Bye-laws of 2005. In the said election, the

Deputy Commissioner does not take part nor presides over it. The said meeting is presided over by a member who is not a candidate for election to the President, but who is either the consensus candidate or the senior most among the members as may be determined by the executive officer and such presiding member shall have a right to exercise his vote in the election of the President. It has been also provided under Bye-law 7 that as soon as the President is elected, he shall preside over the meeting for transaction of the rest of the business thereof.

22. From the above, it is very clear that the election of the President is held in the first meeting of the elected members of the Committee and to consider any other agenda fixed, and for the rest of the meeting, the elected President will preside over. Thus, the meeting for election of the President is the first formal meeting of the elected members of the Committee. It is mentioned under Bye-law 3(2) that all “*subsequent*” meetings of a Municipal Committee shall be fixed by the President by a general or special order passed on that behalf. The use of the word “*subsequent*” in Bye-law 3(2) is significant. The word “*subsequent*” itself implies there was a previous meeting, and such a previous meeting is the one which is held for the election of the President. This is the first formal meeting of all the elected members of the Municipality Committee. There, thus, cannot be any doubt that the meeting which is held for election of the President or Vice-President of the Municipal Committee after the general election is the first meeting of the Municipality Committee. This interpretation stands fortified by the subsequently amended Bye-laws of 2021. Under the new amended Bye-laws of 2021, it has been specifically mentioned that the first meeting of the Municipal Committee will be for the election of the President or Vice-President, and as far as the Bye-law 3(2) of the new Bye-laws is concerned, it remains the same. It provides that the date, time, and place of subsequent meetings of a Municipal Committee shall be fixed by the President by a general or special order passed on that behalf. Bye-law 7 of the old Bye-laws of 2005 makes it abundantly clear that if there is any other agenda other than the election of the President and Vice-President,

the meeting will continue for consideration of these additional agenda which will be presided over by the elected President. A similar provision is made under Bye-law 6 in the new Bye-laws of 2021.

23. Thus, from the above, it is evident that the date for the meeting for election of a President or Vice-President is also the first meeting of the elected members of the Municipality. No Municipality can function and discharge its duties without there being an elected President. Hence, the elected members of the Municipal Committee must first “meet” to elect the President and the Vice-President at the earliest. It, therefore, becomes the first official meeting of the Municipal Committee to begin their usual activities.

24. Of course, there may be cases where the President is not allowed to preside over the meeting of the Municipal Committee as in the case where the President is sought to be removed. In such cases, the statute has provided for someone else to take the role of the President. It has been specifically provided under Section 25 (3) of the Act that when it relates to the motion of no confidence against the President or Vice-President, the President or the Vice-President of the Municipality shall not preside over such a meeting, and such meeting shall be presided over by such a person, and convened in such manner, as may be prescribed.

25. Accordingly, the reckoning of the 5 years term of the elected members of the Municipal Council will be from the date when the meeting is held for the election of the President and Vice-President, which also happens to be the first meeting of the Municipality Committee in terms of Section 13 (1) of the Act. Consequently, on completion of 5 years from the date when the election of the President takes place, the term of the office of elected members will expire. As mentioned above, Section 23 of the Act provides that the term of the office of the President or the Vice-President shall be 5 years or the residue of the term of his office as a member, whichever is less.

26. The term of the President is correlated to the term of the elected members of the Committee. However, there may be a situation where there

may be a gap between the first meeting to elect the President, and when the elected President is sworn in as in the case in LPA No. 236 of 2023. In the said case, the meeting for the election of the President of the Municipal Committee, Rajouri was held on 18.11.2018. After the election of the President on 18.11.2018, he was sworn in as the President only on 18.01.2019 after more than a month of the election.

27. As regards the elected members of the Municipal Committee, Rajouri, their 5-year term would start running from 18.11.2018, when the first meeting took place to elect the President. If the elected President was also sworn on the same day on 18.11.2018, his 5 years term as the President would also start running from the same date as those of the elected members of the Committee. But in this case, his election was notified only 24.12.2018 and he was sworn in as the President on 18.1.2019. If the President, the appellant in LPA No. 236 of 2023 claims that his term would start running from 18.01.2019, his term would end on 17.01.2024 on completion of 5-year term. He thus, would continue to be the President even though the other elected members of the Committee would have ceased to be members w.e.f. 17.11.2023 and the Municipal Committee would also have ceased to exist after 17.11.2023. This would be an absurd situation, not contemplated under the law.

28. To deal with such a situation, the latter part of Section 23(1) of the Act has been added which makes it very clear that the term of the office of the President shall be 5 years *or the residue of the term of the office as a member whichever is less*. This is for this reason that the President himself is firstly an elected member of the Committee, and as an elected member of the Municipality Committee, he cannot continue for more than 5 years stipulated under the Act. Though the President is elected for a term of 5 years, that cannot exceed the tenure as an elected member of the Municipal Committee.

Thus, the term of the President is not referable only to the office of the President but also to his membership as a member of the Municipal Committee, whichever is shorter.

To sum up, if the elected President is sworn in on the same day he is elected, the term of the President will run concurrently with the term of the elected members. However, if the President is sworn in at a subsequent point in time, to that extent, the term of the elected President will be curtailed because of the provisions of the second part of Section 23 (1) which provides that the term of the President will be for *the residue of the term of his office as a member*, even if it is less than that of the tenure of 5 year provide for the President.

29. It is inconceivable that while the other elected members of the Council will cease to hold office on completion of 5 years from the date of the first meeting of the Council, the President would continue to hold office as the President, though he also has ceased to be an elected member of the Committee, merely on the ground that the tenure of the President is for 5 years, which would be contrary to the second part of Section 23(1). It would amount to giving an additional period of tenure to the President after ceasing to be a member of the Committee, which is not contemplated under the statute. The elected President will continue to be a President so long as he also remains the elected member of the Committee. The moment he ceases to be an elected member of the Committee, he automatically ceases to be President of the Committee.

30. Accordingly, for the reasons discussed above, even though it has been mentioned under Section 23 of the Jammu and Kashmir Municipal Act, 2000 that the term of the office of the President shall be 5 years, he being first an elected member of the Municipality Committee, he will cease to be an elected member of the Committee on expiry of 5 years from the date appointed for the first meeting of the Municipality and consequently, he will also cease to be the President of the Committee accordingly.

31. Before we conclude, we would like to deal with another contention of the appellant in LPA No.236/2023, wherein the appellant has contended that the Director of Municipal Committee had himself written to the Principal Secretary, Housing and Urban Development Department that the first meeting of the Rajouri Municipal Committee was held on 28.01.2019

and if that is so, the 5 years will lapse on 27.01.2024 and the official respondents cannot resile from that stand and take a different view by now by saying that the term of the Rajouri Municipal Committee would expire on 21.11.2023. He submits that the principle of estoppel will apply, and the respondent authorities are bound to honour their stand taken earlier. It has been submitted that it is also on record that the petitioner was given the honorarium only with effect from January 2019 after he was administered oath on 18.01.2019 and after that, the first meeting of the Council was held on 28.01.2019 with the petitioner presiding over the meeting as the President of the Municipal Committee in which several business transactions relating to the affairs of the Committee were made.

32. We are of the view that though the authorities cannot make a U-turn and take a different stand later, yet there cannot be estoppel against the statute. If there is a specific statutory provision that the term of the elected members of the Committee will lapse after 5 years of the first meeting of the Municipality Committee, and every municipality cannot continue any longer as provided under Section 14 of the Act, irrespective of any stand taken by the authority to the contrary, there cannot be any extension of the term of the President dehors the statute and against the statutory provision. Accordingly, even if, the Director had written a letter to the Secretary as mentioned above, it cannot confer any right on the petitioner to continue as the President beyond the statutory period of five years from 18.11.2023 when the election of the President was held which was the first meeting of the Municipal Committee as discussed above. The date of taking oath by the elected President will not make any difference, once the date of holding the first meeting of the Municipal Committee has been ascertained.

33. As also noticed above, Section 14 of the Act makes it very clear that every municipality unless sooner dissolved under any law for the time being in force shall continue for 5 years from the date appointed for the first meeting and no longer, and accordingly, if the term of the Municipality had come to an end on 21.11.2023 as per the official reckoning on completion of 5 years after the date of the first meeting of the Municipality, it cannot

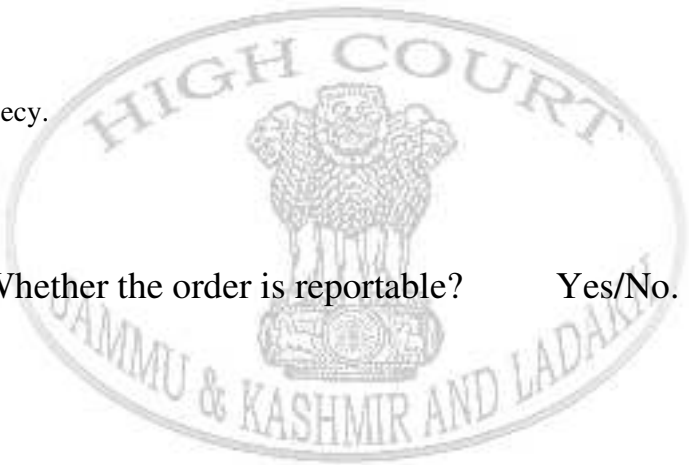
continue any longer than 21.11.2023 even if the term of the President has not completed 5 years from the date he assumes office as the President.

34. Accordingly, for the reasons discussed above, we are of the opinion that there is no merit in these two appeals. Consequently, both the appeals, LPA No.270/2023 (Srinagar Wing) and LPA No.236/2023 (Jammu Wing) are dismissed.

(M. A. CHOWDHARY)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

Srinagar
30.12.2023
Abdul Qayoom, Secy.



Whether the order is reportable? Yes/No.