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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**SUO MOTU WRIT PETITION NO.04 OF 2025**

In Re : Order dated 29<sup>th</sup> December 2025 passed by the Municipal Commissioner, Brihanmumbai.

Mr. Milind Sathe, AG with Ms. Neha S. Bhide, GP with Ms. Jyoti Chavan, Addl. G.P. and Ms. G.R. Raghuwanshi, AGP for the State.

Mr. Ravi Kadam, senior advocate with Mr. Pralhad Paranjape and Mr. Santosh Mali, Advocates for the Respondent-BMC.

Mr. Akshay Pansare i/b Mr. Sachindra B. Shetye, Advocates for the Respondent-State Election Commission.

Mr. Akshay P. Shinde, Advocate for the Respondent-Election Commission of India.

**CORAM : SHREE CHANDRASHEKHAR, CJ &  
GAUTAM A. ANKHAD, J.**

**DATE : 4<sup>TH</sup> MARCH 2026**

**PER, GAUTAM A. ANKHAD, J.**

On the eve of the elections to the Brihanmumbai Municipal Corporation, the staff members of the High Court as well as the subordinate Courts were requisitioned for election duty by the Municipal Commissioner-cum-District Election Officer, Brihanmumbai Municipal Corporation, Mumbai. In view of the urgency of the matter, this Court took *suo motu* cognizance on 30<sup>th</sup> December 2025, upon the Registry placing the relevant record before this Court. On the same day, a detailed order was passed inter alia directing the

Municipal Commissioner, BMC-cum-District Election Officer not to act upon the *ex parte* communication dated 22<sup>nd</sup> December 2025, which had been directly addressed to the Court staff. By the said order, the Municipal Commissioner was restrained from issuing any communication requisitioning the services of staff of the High Court or the subordinate Courts for election duty. The Municipal Commissioner was also directed to file a personal affidavit indicating the source of power and jurisdiction under which such directions had been issued. The order dated 30<sup>th</sup> December 2025 is extended and quoted:-

**“P.C. :**

*This Court has been convened in view of the urgency in the matter when the records were produced by the Registry before one of us (Chief Justice) in the afternoon.*

2. *Accordingly, necessary instructions were issued for intimating the learned Advocate General, the learned counsels for the State Election Commission, BMC and Election Commission of India about sitting of the Court at 08:00 p.m. today.*

3. *The Registrar was informed that the learned Advocate General is travelling and in his place Ms. Jyoti Chavan, the learned Additional Govt. Pleader appeared for the State of Maharashtra.*

4. *When this Court assembled at around 08:00 p.m., Ms. Komal Punjabi, the learned counsel for the BMC sought a brief adjournment for seeking instructions in the matter.*

5. *It was on 16<sup>th</sup> September 2008 that a decision was taken in the meeting of the Administrative Judges’ Committee of the High Court of Bombay that the staff of the High Court and the subordinate Courts is exempted from the election duty. It was further resolved and decided in the said meeting of the Administrative Judges’ Committee that no information regarding the staff of the subordinate Court, if sought from the*

*Principal Judge, City Civil and Sessions Court Bombay shall be provided to any authority. Under Article 235 of the Constitution of India, the High Court exercises complete control and superintendence over the subordinate Courts including the staff. It was in the light of the Constitutional provisions pertaining to the High Court under Chapter V and subordinate Courts under Chapter VI that the aforementioned decision seems to have been taken by the Administrative Judges' Committee on 16<sup>th</sup> September 2008.*

6. *The State Election Commission constituted under Article 243-K, may request the Governor of State to make available to the State Election Commission such staff as may be necessary for the discharge of functions conferred on the State Election Commission under Clauses (1) and (2) of Article 243K. Clause (4) provides that the Legislature of the State may by law make provision for all matters relating to or in connection with elections to the Panchayats (in this case Municipalities). Under Article 243 ZA, the superintendence and control of the preparation of electoral rolls for and the conduct of all the elections to the Municipalities shall be vested in the State Election Commission referred to under Article 243K. Clause (2) further provides that the Legislature of the State may by law make provision with respect to all matters relating to or in connection with elections to the Municipalities. We may further refer to Section 159 of the Representation of People's Act, 1951 captioned as "staff of certain authorities to be made available for election work". Section 159 provides that the authorities specified in sub-section (2) shall when so requested by a Regional Commissioner appointed under Clause (4) of Article 324 or the Chief Electoral Officer of the State, make available to any Returning Officer such staff as may be necessary for the performance of any duties in connection with an election. Sub-section (2) enumerates the authorities for the purposes of sub-section (1), but, on a glance at sub-section (2) we find that the High Court or the subordinate Courts do not find mention therein.*

7. *Mr. Suryakrishnamurthy, the Deputy Secretary of State Election Commission has also joined the Court proceeding in virtual mode. He has made a statement on instructions that the State Election Commission though an independent body*

*normally does not requisition the Court staff and follow the instructions issued by the Election Commission of India wherever necessary and if not contrary to the policy of the State Election Commission.*

8. We may also indicate that on 7<sup>th</sup> June 2023, the Election Commission of India issued a communication to the Secretary, Department of Personnel and Training, Ministry of Personnel Government of India, the Secretary, Ministry of Defence, Government of India, Chief Secretaries of all States and Union Territories, and Chief Electoral Officers of States and Union Territories, the paragraph 10.5 of which reads as under :-

*“10.5. The present practice of obtaining the prior approval of the High Court before engaging judicial officers/staff, under exceptional circumstances, for election work to continue.”*

9. We may further indicate the controversy regarding powers to requisition the officer or staff engaged in Courts and Tribunals came up for consideration before this Court on numerous occasions. In Writ Petition (L) No.6968 of 2024 filed by the Charity Commissioner, Maharashtra, a Division Bench observed that any authority or the Electoral Registrar Officer or Collector cannot pass any order requiring the Charity Commissioner or for that matter any other authority to make available its staff having regard to the exercise of the powers by the Charity Commissioner which is in the nature of quasi judicial/judicial. The direction issued as regards requisitioning the staff of the Charity Commissioner was stayed vide order dated 1<sup>st</sup> March 2024. Similar order seems to have been passed in PIL No.109 of 2009 (Consumer Court's Advocates' Association v. State of Maharashtra & Ors.).

10. The Registrar has brought to our notice that without any communication or information the staff of the subordinate Courts were issued letter dated 22<sup>nd</sup> December 2025 by the Municipal Commissioner, BMC-cum-District Election Officer directing them to report for duty on 30<sup>th</sup> December 2025 between 03:00 p.m. to 05:00 p.m. On receiving such communication, the In-Charge Chief Metropolitan Magistrate, Esplanade, Mumbai informed the Collector, Mumbai District

(Mumbai City) and the Commissioner and District Election Officer, BMC that the High Court has taken a decision vide General/Adm./Jud./2009 dated 31<sup>st</sup> March 2009 regarding the staff member of the subordinate Courts and made a request for exempting the Court staff from election duty. A similar communication was issued by the Registrar (Inspection II) on 26<sup>th</sup> December 2025 attaching a copy of the General Order dated 31<sup>st</sup> March 2009. The Registrar (Inspection II) has brought to our notice that a similar communication was sent to the Municipal Commissioner, BMC-cum-District Election Officer through email on 26<sup>th</sup> December 2025 at 05:04 p.m.

11. Notwithstanding the aforementioned communication, a letter dated 29<sup>th</sup> December 2025 was issued on him in the capacity of the Municipal Commissioner addressed to Chief Judicial Magistrate, Mumbai intimating that the request for exempting the staff of the subordinate Court has been declined.

12. At the outset, Ms. Komal Punjabi, the learned counsel appearing for the Brihanmumbai Municipal Corporation made a request after the Court reassembled at 8.45 p.m. to withdraw the communication dated 29<sup>th</sup> December 2025 issued under the signature of the Municipal Commissioner-cum-District Election Officer.

13. However, this request is declined and the Municipal Commissioner-cum-District Election Officer is directed to file his own personal affidavit indicating the powers and jurisdiction under which he has issued directions to the subordinate staff of the District Judiciary to report for duty on 30<sup>th</sup> December 2025 between 03:00 p.m. to 05:00 p.m. for election duty.

14. Having regard to the decision of the High Court taken in the meeting of the Administrative Judges' Committee and the Constitutional and statutory provisions, we hereby direct the Municipal Commissioner, BMC-cum-District Election Officer not to take any action pursuant to the ex-parte communication dated 22<sup>nd</sup> December 2025 directly sent to the Court staff. The Municipal Commissioner, BMC-cum-District Election Officer is restrained from issuing any letter/communication to the Court staff of High Court or subordinate Courts requisitioning their services for election duty.

15. *The affidavit filed by the Municipal Commissioner, BMC-cum-District Election Officer shall be complete in all respect with proper averments and supporting documents.*

16. *Let an affidavit be filed on behalf of (i) State Election Commission (ii) Election Commission of India, and (iii) State of Maharashtra within the same time.*

17. *Post this matter on 5<sup>th</sup> January 2026, to be taken up as first matter at 11:00 a.m.*

18. *Let a copy of this order be communicated to the learned counsels appearing for the parties through usual modes as well as email, WhatsApp etc.”*

2. We have heard Dr. Milind Sathe, the learned Advocate General for the State of Maharashtra; Mr. Ravi Kadam, the learned senior counsel for the Brihanmumbai Municipal Corporation; Mr. Akshay Pansare, the learned counsel for the State Election Commission; and Mr. Akshay P. Shinde, the learned counsel for the Election Commission of India. Pursuant to the directions issued on 30<sup>th</sup> December 2025, affidavits have been filed. The relevant portions of the affidavit dated 2<sup>nd</sup> January 2026 of the Additional Chief Secretary, General Administration Department, Government of Maharashtra are reproduced hereinbelow:

*“5. Section 159 of Representation of Peoples Act, 1951 in Part-X under heading “Miscellaneous”, of that Act provides that staff of certain authotities specified in Sub-section (2) shall be made available for election work when so requested by the Regional Commissioner or Chief Electoral Officers of the State. However, the High Court or the subordinate Courts are rightlty not mentioned in Section 159.*

*6. Therefore, it is submitted that the services of the staff of this Hon’ble Court or that of the subordinate Courts cannot*

*and ought not to be requisitioned by the Central Election Commission or the State Election Commissions for election duty except in exceptional circumstances and that also cannot be done without leave of this Hon'ble Court.*

*7. As far as State Government is concerned during the election process, the responsibility cast upon it is to make necessary arrangements as requisitioned by the Election Commission and in the actual conduct of the election process the State has no role to play."*

3. Dr. Bhushan Gagrani, Municipal Commissioner, BMC-cum-District Election Officer has also filed an affidavit dated 5<sup>th</sup> January 2026 stating as under:

*"7. Thus, considering the Constitutional mandate empowering the State Election Commission, the provisions of the BMC Act and the Orders passed by the State Election Commission on 2 March 1995 and 18 July 2018, the Municipal Commissioner can exercise the powers for requisitioning of necessary staff. There was some ambiguity as regards the requisitioning of various categories of staff, however at this juncture, I hasten to add that the letter dated 29 Decemebr 2025 regarding the requisitioning of the Court staff was issued under an inadvertent interpretation of the Orders and the provisions of the Act. That there was no intention to lower the majesty of the Court and to flout orders passed.*

*11. Considering the requirement of a large numbers by a letter dated 7 October 2025, the BMC wrote to the Secretary, General Administrative Department, State of Maharashtra to share details of employees who could be assigned election duty. Hereto annexed and marked as **Exhibit "D"** is a copy of letter dated 7 October 2025.*

*12. On 30<sup>th</sup> October 2025, the General Administration Department forwarded the said letter to Finance Department for providing the said informaton. On 12 November 2025, a list of 38,188 employees was made available by Director, Audit and Treasury Directorate,*

*Mumbai Government of Maharashtra. In the said list, the staff that could be requisitioned and as provided by the State Government included the names of Court staff. Hereto annexed and marked as **Exhibit “E”** is a copy of email dated 12.11.2025 by attaching employees data extracted from the Sevaarth system.*

*13. In the circumstances, the standard form letters were issued to the Government and Court Staff in exercise of powers conferred by the BMC Act and the Orders of the State Election Commission dated 18 July 2018. In response we have received in all around 5000 requests for exemption. Given the time fixed by the Supreme Court it was not possible to process each request with detailed consideration.*

*14. I was facing emergent circumstances, however, I should have been more prudent and circumspect in dealing with the letter dated 23 December 2025 from the Chief Judicial Magistrate. I realize now that I should have appreciated the purport of his letter and ought not have (in my haste to fulfill my mandate) misread and misinterpreted the letter and its contents. My misreading was unintentional and inadvertent. I have always held the Court in the highest regard and have never had any intention of violating the orders or directions of the Hon’ble Court. I say that on a fuller reflection I ought to have appreciated that notwithstanding the list provided by the State Government, the Court staff could only be requisitioned by following the ECI’s mandate of seeking a prior approval of the Hon’ble High Court.*

*15. I say that in these circumstances I unconditionally withdraw the requisition of Court staff and the withdrawal of the letter dated 29 December 2025 be accepted and I submit that the affidavit be accepted.”*

4. Dr. Bhushan Gagrani, Municipal Commissioner, BMC-cum-District Election Officer has filed further affidavit dated 5<sup>th</sup> January 2026 stating as under:

*“1. I say that after the Hon’ble High Court passed an Order on 30 December 2025 injuncting me from acting in furtherance of the Notice dated 22 December 2025, a direction/letter was issued on the very next day, i.e. on 31 December 2025 to all the Returning Officers extracting a copy of the Court’s Order dated 30 December 2025. By that letter, they were informed that the concerned employee should not be issued Show Cause Notice nor telephonically asked to report for duty. Hereto annexed and marked **Exhibit “1”** is a copy of the Direction dated 31 December 2025.*

*2. However, despite the said letter (perhaps before it was received), on the same day i.e. 31 December 2025, Show Cause Notices were issued by the Central Election Office under my digital signature to certain staff working in the Office of the Sheriff, Bombay. Hereto annexed and marked as **Exhibit “2”** is a copy of one such Show Cause Notice issued on 31 December 2025.*

*3. When this was brought to my notice yesterday, i.e. on 4 January 2025, I directed the Deputy Returning Officer to withdraw and revoke the same as all elections duties of the staff of the Sheriff had already been cancelled. Hereto annexed and marked as **Exhibit “3”** is a copy of the email sent.*

*4. I say that I had immediately acted upon the Hon’ble Court’s order by addressing a direction dated 31 December 2025 to all concerned.”*

5. Mr. K. Suryakrishnamurty, Deputy Secretary, State Election Commission, Maharashtra has also filed an affidavit dated 3<sup>rd</sup> January 2026 stating as under:

*“11. I say that the provisions of Representation of Peoples Act, 1951 are not applicable for conduct of Local Body Elections. The Local Body Elections are conducted under the provisions of Local Acts enacted by State Legislature. As stated above since there are*

*no separate provisions in any of the Local Acts similar to Section 159 of Representation of Peoples Act, 1951, for making staff of certain authorities available for election work/election duties. The State Election Commission in exercising its plenary powers under Article 243K and 243ZA and under the provision of relevant Local Acts, have issued the order dated 2nd March, 1995, which deals with the direction to the authorities for requisition of staff for election duties to the election of local body. The said order has been subsequently amended on 18th July, 2018, both these orders are already annexed to this affidavit.”*

6. Mr. Manohar Parkar, Joint Chief Electoral Officer, Maharashtra State has also filed an affidavit dated 5<sup>th</sup> January 2026 stating as under:

*“5. It is therefore at this juncture itself respectfully submitted that ECI has no role, involvement, or jurisdiction in matters pertaining to municipal elections, including the decisions relating to requisitioning of staff for such elections.*

*10. Apart from various instructions contained in the said leter, para 10.5 which is also reproduced in the order dated 30/12/2025 passed in the present proceeding and which is relevant for the purpose of the present proceedings reads thus:*

*“The present practice of obtaining the prior approval of the High Court before engaging judicial officers/staff, under exceptional circumstances, for election work should continue.”*

*11. Bare perusal of the above instruction would show that it is under exceptional circumstances and with prior approval of the concerned Hon’ble High Court, Judicial officers/staff can be requisitioned for election work related to Parliament, State Legislature, or elections to the offices of the Hon’ble President and*

*Hon'ble Vice-President. However, as aforesaid the present case is not concerning any of the aforesaid elections or to any requisition made by this Respondent."*

7. Based on the statements in the aforesaid affidavits and on instructions from the respective authorities, it is jointly submitted by the learned counsels that the administrative direction in clause 10.5 of the Guidelines dated 7<sup>th</sup> June 2023 issued by the Election Commission of India which mandate that prior approval of the High Court must be obtained before engaging judicial officers or staff for election work and that such engagement can only be called in exceptional circumstances can be made a judicial order so as to avoid any future controversy. For the sake of convenience, clause 10.5 is quoted:

*"10.5 The present practice of obtaining the prior approval of the High Court before engaging Judicial Officers/staff, under exceptional circumstances, for election work should continue."*

8. In view of the above, the statements made by the learned counsels appearing for the State of Maharashtra, Brihanmumbai Municipal Corporation, Election Commission of India and the State Election Commission are accepted. Consequently, clause 10.5 of the Guidelines dated 7<sup>th</sup> June 2023 stands affirmed and shall operate as a binding direction of this Court. It is clarified that recourse to judicial officers or staff of the High Court or subordinate Courts in the State of Maharashtra and Goa for election duty shall be resorted to only in exceptional circumstances. Any such request must set out the exceptional circumstance and the necessity of requisitioning judicial staff. Such a written communication by the concerned

authority shall be addressed to the Registrar General of this Court. Upon receipt of such communication, the Registrar General shall place the same before the Chief Justice on the administrative side for appropriate orders. No requisition shall be enforced or acted upon, unless prior written approval of the Chief Justice is obtained.

9. The Registrar (Judicial-I) shall forward a copy of this order to all concerned authorities for information and compliance. In view of the above directions and the statements recorded, Suo Motu Writ Petition no. 4 of 2025 stands disposed of.

**[GAUTAM A. ANKHAD, J.]**

**[CHIEF JUSTICE]**