

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 15972 of 2016

Date of decision: December 05, 2016

Monika and others

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.M.L.Sharma, Advocate in CWP No15972 and Mr Chetan Mittal, Sr. Advocate with Mr. Kunal Mulwani, Advocate in CWP No. 18730 for the petitioners.

Ms. Shubhra Singh, Additional AG Haryana and
Mr. Gaurav Bansal, AAG, Haryana.

Mr. Parveen Sharma, Advocate for
Mr. Arvind Singh, Advocate for respondent No.4.

Mr. Deepak Balyan, Advocate for respondent No.5.

Mr. Puneet Bali, Senior Advocate with
Mr. Rajat Mor, Advocate for respondent No.7.

Ajay Kumar Mittal,J.

1. This order shall dispose of CWP Nos.15972 and 18730 of 2016, as according to the learned counsel for the parties, the issues involved in both the petitions are common. However, the facts are being extracted from CWP No.15972 of 2016.

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2. In CWP No.15972 of 2016, the petitioners pray for a direction to the respondents to hold elections of Pradhan, Nagar Parishad, Bahadurgarh in view of the provisions of Section 24 of the Haryana Municipal Act, 1973 (in short, “the Act”) which provides that every election of the President shall be notified by the State Government in the Official Gazette within 30 days from the date of the declaration of the result in view of the provisions of Section 24 of the Act and Rule 70 of the Haryana Municipal Election Rules, 1978 (in short, “the Rules”). Direction has also been sought to the respondents to hold elections of the Pradhan, Nagar Parishad, Bahadurgarh, District Jhajjar within 48 hours as per the provisions of Section 24 of the Act and Rule 70 of the Rules. Prayer has also been made for a direction to the respondents not to allow Member of Parliament/Member of Legislative Assembly (MP/MLA), Bahadurgarh constituency to exercise their vote in the elections to the post of Pradhan, Nagar Parishad, Bahadurgarh in view of the law laid down by this Court in LPA No.592 of 2013, *Sanjeev Kumar Verma vs. Director, Local Bodies, Chandigarh*, decided on 11.02.2015. The petitioners further pray that the respondents be directed to keep the votes of the MP/MLA separate and not to count the same in the elections and if a candidate gets majority without considering their votes with a margin of three, then the result be declared forthwith. However, in CWP No.18730 of 2016, additionally, it has been urged that after the constitution of new Nagar Parishad, Bahadurgarh in the absence of any subsequent notification whereby MP/MLA have been notified to have voting rights, the earlier notification having lapsed, the writ petition is liable to be accepted.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners are

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residents of Bahadurgarh, District Jhajjar. They have been elected as members of the Nagar Parishad, Bahadurgarh and have also been administered the oath for the same on 22.5.2016. As per the case of the petitioners, earlier the election was held on 13.11.2009 and the oath was taken on 16.12.2009. The Pradhan was elected on 11.1.2010. Now the elections have been held on 22.5.2016 and oath was given on 24.6.2016. The election for the President, Nagar Parishad was fixed on 22.5.2016. One of the petitioners i.e. Monika wife of Kapoor Rathee resident of Ward No.15, Jatwara Mohalla, Bahadurgarh filed CWP No.14404 of 2016 seeking a writ of mandamus directing respondent Nos. 3 to 6 not to allow Member of Parliament from Rohtak and MLA, Bahadurgarh to exercise their vote in the election for the post of Pradhan Nagar Parishad, Bahadurgarh in view of the provisions of Article 243R of the Constitution of India, Section 9 of the Act and the law laid down by this Court in *Sanjeev Kumar Verma's* case (supra). The said writ petition came up for hearing before this Court. Vide order dated 22.7.2016, it was directed that the respondents shall keep the votes cast by the MLA and MP in a separate sealed cover and produce the same in court on the next date of hearing. However, the declaration of result shall be subject to further order to be passed by this court. Vide order dated 27.7.2016, learned counsel for the petitioner stated that the election which was scheduled for 22.7.2016 had not been conducted. In view thereof, the said writ petition had been rendered infructuous and was disposed of as such. According to the petitioners, the ruling party BJP had no majority and they had only six members. They were bent upon not to hold election. The Administrator had been appointed for the last one and a half years which was hampering the development of the area and smooth running and functioning of the Nagar Parishad. The ruling party was bent upon to

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influence the members of the Municipal Council and they were doing day and night work to persuade the members of the Nagar Parishad to come to their side and increase the majority but all the members except six which belonged to BJP were not coming to the side of BJP. Therefore, the ruling party was not holding the elections of the Pradhan Nagar Parishad.

4. Thereafter, the official respondents held meeting for elections on 22.7.2016 at 4 PM and order was passed by the Sub Divisional Magistrate on 19.7.2016. The same was received by one of the petitioners on 20.7.2016 at 2 PM. As there was no alternative remedy except to file the writ petition, the petitioners after reaching Chandigarh on 20.7.2016 at 6 PM filed the present petition on 21.7.2016 in view of the urgency and the same was fixed for hearing on 22.7.2016 wherein notice of motion was issued. As the respondent ruling party had no majority, the SDM proceeded on leave on the day the elections were to be held intentionally with malafide intention. Had the elections been held, BJP would have lost the elections. Therefore, with manipulation, the SDM was sent on leave and the election was not held with intentional and malafide motive. On representation of the members of the Nagar Parishad, elections were held. The total strength of the members is 31 and the petitioners who are filing the present writ petition are 16. The petitioners have also the support of six members of INLD and in case both the Member of Parliament/MLA are not allowed to cast their votes and their votes are not considered in elections, the petitioners are in winning position as they are in majority and, thus, the respondents are bent upon not to hold the elections under the pressure of the ruling party. Therefore, the petitioners apprehend that the elections will not be held at any cost and they have no other alternative remedy except to file the present writ petition for

directing the respondents to hold the elections in view of the provisions of Section 24 and Rule 70 of the Rules.

5. According to the petitioners, as per Section 24 of the Act and Rule 70 of the Rules, every election of the member shall be notified in the Official Gazette by the State Election Commission not earlier than one week before the expiry of duration of the existing municipality. Every election of the President shall be notified by the State Government in the Official Gazette within thirty days from the date of declaration of the result of such election. It has been reiterated that the election was held on 22.5.2016 and the same should have been notified in the Official Gazette within 30 days from the date of the declaration of result i.e. 21.6.2016. On representation made by the members, the date was fixed for 22.7.2016. On that day again, the election was not held as the SDM was on leave. Further, as per Rule 70 of the Rules, the Deputy Commissioner or any Gazetted Officer appointed by him in this behalf shall within a period of 30 days of the publication of notification of the names of the members elected to the committee convene first meeting of the newly constituted committee on 48 hours notice to be delivered at their ordinary place of residence. The notice shall clearly state that the oath of allegiance will be administered to the members present and that the election of President and Vice President shall be held in the meeting. The convener shall administer the oath to the members and shall preside over the meeting till the election of the President and Vice President. In the present case, the meeting was not held intentionally with malafide motive not to hold the elections to the post of President Nagar Parishad as the ruling party was not in majority. The petitioners also pray not to allow Member of Parliament/MLA of Bahadurgarh constituency to cast their vote in the elections of Nagar Parishad and in the alternative, if they cast their votes, the

same be kept separate and be not counted. Hence the instant writ petitions by the petitioners with the prayers mentioned above.

6. A short reply has been filed by respondent No.7 Smt. Sheela Devi wherein it has been inter alia stated that the petitioners did not disclose the fact that the election process has already been completed and respondent No.7 has been declared President/Chairperson/Municipal Council, Bahadurgarh. The only remedy available with the petitioners is to file an election petition in accordance with the rules. Therefore, the prayer made by the petitioners for a direction to the official respondents to conduct elections has been rendered infructuous. Secondly, the prayer of the petitioners that MP/MLA shall not have any right to vote in the elections of President and the Vice President, it may be noticed that proviso to Section 9 of the Act only contemplates that the MP/MLA shall not have any right to contest for the election of President or Vice President. There is no restriction on their casting vote at the time of election of President or Vice President being nominated Members. Further, Rules 74 prescribes that the only remedy with the petitioners is to file an election petition. On these premises, prayer for dismissal of the writ petitions has been made. The State and other respondents have also supported the version of respondent No.7.

7. We have heard learned counsel for the parties.

8. The prayer for directions to hold the election of President has been rendered infructuous as the election has taken place on 22.8.2016.

Now, the following issues arise for consideration in these petitions:-

- (i) Whether Member of Parliament and Member of Legislative Assembly have right to vote in the election of President and Vice President of the Municipal Council;

(ii) Whether notification by virtue of section 9(3)(ii) of the Act for including the name of Member of Parliament or Member of Legislative Assembly as nominated members of the Municipal Council for exercising the right to vote in the election of President/Vice President is required to be issued afresh after the expiry of the period of original term of the municipal council whereas their term as MP/MLA is still existing?

9. Taking up first issue, the matter is no longer res-integra. It may be noticed that proviso to Section 9(3) (ii) & (iii) of the Act clearly specifies that MP/MLA shall not have a right to contest the election for the post of President or Vice President whereas there is no restriction on their right to vote for such election. The Full Bench of five Judges of this Court in ***Sanjeev Kumar Verma vs. Director, Urban Local Bodies, Chandigarh and others***, 2015(1) RCR (Civil) 991 had opined to this effect in the following terms:-

“31. As far as the issue with regard to restriction of the right of nominated members is concerned, in our opinion, it does not survive as subsequently in the year 2000 the first proviso to sub-section (3) of Section 9 was substituted providing that the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of President or Vice-President, and the further amendment made in this proviso in the year 2005 by Haryana Act No.10 of 2005, which was omitted vide Haryana Act No.18 of 1996, was again inserted. After the said amendment the proviso to Section 9(3), which is in existence today, provides that the persons referred to in clause (i) above shall not have any right to vote and the persons referred to in clauses (ii) and (iii) shall not have

any right to contest for the election of President or Vice-President. This amendment in this proviso is in consonance of Section 18(1) of the Act which provides that only an elected member of the Committee can be elected as President or Vice-President of the Committee. Now in this proviso there is no limitation or restriction to the right of vote of these persons. Therefore, at present there is no issue before us that the right of the nominated members, who have been nominated under clauses (ii) and (iii) has been restricted by the proviso added to Section 9(3) of the Act. Nobody has challenged this provision. Though we have strong reservation against the interpretation given by the Full Bench in *Raj Pal Chhabra* and *Krishan Kumar Singla's* cases (supra) in this regard, as in our view, the Full Bench have not properly appreciated clause (b) of Article 243R(1) and Article 243ZA(2) of the Constitution, which have given ample powers to the State legislature to make provisions by law with respect to all matters relating to or in connection with, election to the Municipality and election of the President or Vice-President. In our view, the State legislature in its wisdom had restricted the voting right of the nominated members under clauses (ii) and (iii) to the extent that these persons shall not have voting rights in the election or removal of President or Vice-President of the Committee and according to us such restriction cannot be said to be arbitrary or ultra vires to Article 243R. Since as held above this issue does not arise at present, we are not commenting further on this issue.

On the second issue, it was held in *Raj Pal Chhabra's* case, particularly in view of unamended provisions of Section 21(3) which made no distinction between nominated members and elected members of the Committee, and where Section 21(3) itself provided that no confidence motion could be carried out against the President or Vice-President with the support of not less

than two-third members of the Committee, that the nominated members of the Committee under clause (ii) of Section 9(3) of the Act being members of the Committee would have the right to vote while carrying out no confidence motion against the President or Vice-President. It was held that such persons could not be excluded from the right to vote in the meeting convened for no confidence motion. When the matter was pending before the Full Bench in ***Raj Pal Chhabra's*** case, an amendment was made in sub-section (1) of Section 18 of the Act substituting the words "one of its members" with the words "one of its elected members", and further an amendment was also made in sub-section (3) of Section 21 and the words "not less than two-thirds of the members" were substituted with words "not less than two-thirds of the elected members". This amendment was not taken into consideration by the Full Bench in ***Raj Pal Chhabra's*** case (supra) on the ground that in that case the resolution of no confidence motion was passed much before the aforesaid amendment came into force and was held to be not applicable in that case but when this issue again came up for consideration in ***Krishan Kumar Singla's*** case (supra), these amendments were considered by the Full Bench and it was held that nominated members of the Committee, who have been nominated under clause (ii) of Section 9(3) would be deemed to be the elected members of the Committee and fall under the expression "elected members" used in Section 21(3) of the Act as these members having been elected from a larger constituency than that of the Municipal Committee and being nominated to the Municipal Committee by virtue of their being elected as members of the House of People, Legislative Assembly or Council of States, as the case may be, for the constituency of which Municipal Committee is a segment. When the Full Bench in ***Krishan Kumar Singla's*** case gave the aforesaid interpretation to

Sections 18 and 21(3) of the Act, Section 13-B had already been inserted in the Act vide Haryana Act No.13 of 1997 which clearly provided that no person shall be elected as member of the Municipal Committee, Member of the Legislative Assembly or Member of Parliament simultaneously, and if an elected member of the Committee is elected to the Legislative Assembly or Parliament, as the case may be, he shall cease to continue as elected member of the Committee from the day he is elected as a Member of the Legislative Assembly or Member of Parliament. This mandatory provision was not considered by the Full Bench in *Krishan Kumar Singla's* case (supra). It appears that this provision was not brought to the notice of the Full Bench.

The learned counsel for the appellant argued that the interpretation to Section 21(3) of the Act as given by the Full Bench in *Krishan Kumar Singla's* case is perfectly valid and reasonable and achieves the object of the provisions of the Act and the same does not require any re-consideration by this Bench. According to the learned counsel even insertion of Section 13-B in the Act does not have any impact on the interpretation given by the earlier Full Bench. According to the learned counsel, the whole scheme of making provisions for nominating the members of the Assembly or the Parliament, is to strengthen democracy at the grass root level and the nominated members cannot be debarred from participating in the process of considering no confidence motion against the President or Vice-President of the Committee. The learned counsel while referring to sub-section (3) of Section 21, particularly to the words "not less than two-third of the elected members of the Committee" and while putting much emphasis on the word "the", argued that the nominated members, who are elected from the larger constituency, on their nomination also become elected members of the Committee. According to him, this was

the only interpretation which could be given to harmonize the various provisions of the Act. It has been further argued that the nominated members under clause (ii) of Section 9(3) have an unrestricted right to vote in the meetings, therefore, they cannot be restricted from exercising their right to vote in the special meetings convened for considering no confidence motion, and even if they have not participated in the meeting their number has to be taken into consideration for counting the percentage of two-thirds of the elected members for passing of the no confidence motion.

Article 243R provides that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area. This part of Article 243R is mandatory as the word "shall" has been used. In sub-article (2) of Article 243R, the State Legislation has been given the power to enact laws with regard to the manner of election of the Chairperson of a Municipality and also for providing 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. As far as the voting rights of such nominated members in the meetings of the Committee are concerned, it has been categorically stated that the persons mentioned in clause (i) shall not be given the right to vote in the meetings of the Municipality. However, with regard to the persons mentioned in clauses (ii), (iii) and (iv) nothing has been mentioned and it has been left to the wisdom of the State Legislature whether to give them the voting rights in the meetings of the Municipality or not. Thus, it is clear that Article 243R recognizes two types of members, i.e., the elected members and the nominated members of the Municipality. There is nothing in Article

243R which provides that the nominated members of the Municipality shall be considered as elected members of the Municipality. Rather, sub-Article (1) provides that 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. Thus, in Article 243R we find that there is no intention that the nominated members would be deemed to be the elected members of the Committee. There is also no mandate under Article 243R that such kind of nominated members under clauses (ii) and (iii) must be given the right to vote in the election and removal of the President or Vice-President of the Committee. Rather clause (b) of this Article clearly empowers the Legislature of a State to provide by law the manner of election of the Chairperson of a Municipality. Obviously, being nominated members of the Committee, they could not have been given the right to contest the election of the President or Vice-President. Even this right only vests in the elected members of the Committee. Therefore, a clear distinction has been made by the State Legislature between the elected and nominated members of the Committee while enacting the law with regard to their right to vote in the election or removal of the President of the Municipal Committee. The proviso to Section 9(3) of the Act clearly provides that the nominated person has no right to contest the election of the President or Vice-President. The said right has been given only to the elected members of the Committee. In our view Section 9 (3) can be considered to be only in the nature of a removal of doubt clause. It appears to have been added as a matter of abundant caution. If the provisions are examined in the background of the objectives and purpose of the Seventy third and Seventy Fourth Amendment, which is to provide for direct democracy at the third tier, which is evident from the mandate whether in Article 243C (in relation to

Panchayats) or Article 243R (in relation to Municipalities) that all seats shall be filled by persons chosen by direct election, then even in the absence of such a provision, persons provided representation in terms of clause (b) of Article 243R, could not justifiably be considered to have any right or claim to be elected as President or Vice President i.e., claim any elective office in these bodies. The emphasis is not only on direct democracy in the Panchayats and Municipalities (the third tier) as a whole, but direct democracy for each level therein. This is manifested when provisions of Article 243C(5)(b) are noticed which provide that the Chairperson of Panchayat at intermediate level or distinct level shall be elected, by and from amongst, the elected members thereof. The intention is only to enable providing for representation to them in the Municipalities. But providing for such representation is not mandatory. Legislature may or may not make provision for such representation. Further, Section 18 clearly provides that one of the elected members of the Committee shall further be elected as President of the Committee. This amendment was made vide Haryana Act No.18 of 1996 where "one of its elected members" was added in the said Section. We have to give a plain meaning to this amendment, i.e., only an elected member can become President of the Municipal Committee. The nominated member cannot be elected as President or Vice-President of the Committee. This aspect has not been considered by the Full Bench in **Krishan Kumar Singla's** case (supra). This position was further clarified by the amendment made in 2005 vide Haryana Act No.10 of 2005, whereby in place of first proviso, the new proviso was substituted, namely, "Provided that the persons referred to in clause (i) above shall not have right to vote in the meetings of the municipalities and the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of president or vice-

president." Thus, as per the Scheme and provisions of the Act and the Constitution, there is a difference between an elected member of the Committee and a nominated member of the Committee, and a nominated member of the Committee cannot be deemed to be an elected member of the Committee. The above distinction was further made clear by the legislature while inserting Clause 14-A in Section 2 of the Act vide Haryana Act No.26 of 2006, which reads as under:-

"(14-A) "Member" means a member of the municipality duly elected or nominated by the State Government." This definition of the "Member" further provides that there are two categories of members, one is elected and other is nominated by the State Government. Therefore, in our opinion, a nominated member cannot be deemed to be the elected member of the Committee.

32 to 34 xxxxxxxxxxxxxxxx

35. Now we will examine the impact of Section 13-B, which was inserted vide amendment made by Haryana Act No.13 of 1997, and was not taken into consideration by the Full Bench in **Krishan Kumar Singla's** case (supra) while giving the interpretation that a nominated member of the Committee under Clause (ii) of Section 9(3) of the Act is deemed to be the elected member of the Committee and would fall under the expression "elected member" as provided under Section 21(3) of the Act. Clause (b) of Article 243V(1) clearly provides that a person shall be disqualified for being chosen as, and for being, a member of a Municipality if he is so disqualified by or under any law made by the Legislature of the State. Thus, this clause clearly empowers the State Legislature to enact a law providing disqualification for being a member of a Municipality. In view of the said provision, the State Legislature has enacted Section 13-B and inserted the same in the principal Act vide Haryana Act No.13 of 1997. Sub-

section (1) of Section 13-B clearly provides that no person shall be an elected member of Committee, member of Legislative Assembly of the State or member of Parliament simultaneously. Sub-section (2) further provides that if an elected member of the Committee is elected to the Legislative Assembly or Parliament, as the case may be, he shall cease to continue as an elected member of the Committee from the date he is declared as elected to the Legislative Assembly or Parliament, as the case may be. This Section clearly mandates that the member of Legislative Assembly of the State or member of Parliament cannot be an elected member of the Committee, and if the elected member of the Committee is elected to the State Legislative Assembly or Parliament he shall cease to continue as an elected member of the Committee from the date he is declared as elected to the Legislative Assembly or Parliament. It means that a member of State Legislative Assembly or member of Parliament cannot remain as elected member of the Committee. If he cannot remain as elected member of the Committee, then he cannot be deemed to be the elected member of the Committee and, thus, would not fall under the expression "elected member" as provided under Section 21(3) of the Act. The said interpretation given by the Full Bench is contrary to the provisions of Section 13-B which was not even discussed by the Full Bench. Thus, in our opinion, a nominated member of the Committee under clauses (ii) and (iii) of sub-section (3) of Section 9, who has been nominated as member of the Committee by virtue of his office, can be considered to be member of the Committee, but in light of the aforesaid Sections 18(1), 13-B and 9(2) of the Act, he cannot be considered and held to be an elected member of the Committee. Being a nominated member, he may cast vote at the time of election of President or Vice-president, but in view of the bar created vide proviso added vide Haryana Act No.10 of 2005 he shall not have any right to

contest the election of the President or Vice-president as he is not the elected member of the Committee, and as per Section 18(1) of the Act only the elected member of the Committee can be elected as President or Vice-president.”

In other words, only embargo for the nominated members under Proviso to Section 9(3)(ii) & (iii) of the Act is with respect to right to contest for the post of President or Vice President whereas there is no restriction so as to cast vote during their election. The above decision was followed by this Court in *Darshan Singh Vs. State of Punjab* 2016(1) RCR (Civil) 236.

10. Before adjudicating the second issue arising in the present petitions, it would be expedient to refer to the relevant statutory provisions which read thus:-

Section 2(14A)

“Member” means a member of the municipality duly elected or nominated by the State Government.”

Section 3A

“3A. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the municipalities shall be vested in the State Election Commission constituted under Articles 243K and 243ZA of the Constitution of India in the manner as may be prescribed by rules:

Provided that the State Election Commission shall consult the State Government before announcing the date of elections so that the State Government may, if so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission under Articles 243K and 243ZA of the Constitution of India and this Act.

Section 9 (2) and (3) (i) & (ii)

9 (1) xxxxxxxx

(2) Save as provided in sub-section (3), all the seats in the municipality shall be filled in 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.

(3) In addition to person chosen by direct election from the territorial constituencies, the State Government shall, by notification in the Official Gazette, nominate the following categories of persons as members of a municipality :—

(i) not more than three persons in case of Municipal council and not more than two persons in case of Municipal Committee having special knowledge or experience in municipal administration;

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

(iii) Members of the Council of States, registered as electors within the Municipal area:

Provided that the person referred to in clauses (ii) and (iii) above shall not have any right to contest for the election of President or Vice President.

Provided further that the Executive Officer in the case of a Municipal Council and the Secretary in the case of a Municipal Committee, shall have the right to attend all the meetings of the municipality and to take part in discussion but shall not have the right to vote therein.

Section 11(2)

11. (1) xxxxxxxx

(2) The term of the nominated member shall be co-terminus with the term of elected members.

Section 12

12. (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 :

Provided that a municipality shall be given a reasonable opportunity of being heard before its dissolution :

Provided further that all municipalities existing immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992 shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the State Legislature.

(2) An election to constitute a municipality shall be completed,—

(a) before the expiry of its duration specified in subsection (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 the Haryana Municipal (Amendment) Act, 1994, may be held within a period of one year of its being notified as a municipality:

Provided further that elections to the municipalities where no elected body exists at the time of commencement of this Act may be held within a period of one year.

(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) If a municipality is not reconstituted before the expiration of its duration laid down in sub-section (1), it shall be deemed to have been dissolved on the expiry of the said duration and, thereupon, provisions of sub-section (2) of section 254 shall be applicable.

Section 13

13. If a member of a committee wishes to resign his office, he shall submit an application in writing to the Deputy Commissioner. If such resignation is accepted, it shall be notified in the Official Gazette on a date not less than fifteen days and not more than sixty days after the receipt of the said member's application by the Deputy Commissioner whereupon the member shall be deemed to have vacated his seat :

Provided that if a member who has submitted an application to resign wishes to withdraw his resignation, he may apply to the Deputy Commissioner within fifteen days of the receipt by the Deputy Commissioner of his application to resign, and the application to resign shall then be deemed to have been withdrawn.

Section 13A

13A. (1) A person shall be disqualified for being chosen as and for being a member of a municipality—

(a) If he is so disqualified by or under any law for the time being in force for the purposes of election to the Legislature of the State of Haryana :

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age if he had attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State of Haryana ;

(c) if he has more than two living children :

Provided that a person having more than two children on or upto the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified.

(2) If any question arises as to whether a member of a municipality has become subject to any of the disqualifications mentioned in sub-section (1), the question shall be referred for the decision of such authority and in such manner as may be prescribed by rules.

Section 13-B(1)

Restriction on simultaneous or double membership:

13B(1) No person shall be an elected member of Committee, member of Legislative Assembly of the State or member of Parliament simultaneously.

Section 15

15. (1) Whenever a vacancy occurs by the death, resignation or removal, or by the vacation of a seat under the provisions of sub-section (4) of section 11, of any member, the vacancy shall be filled within six months of the occurrence of such vacancy in accordance with the provisions of this Act and the rules.

Provided that no election shall be held to fill a casual vacancy occurring within six months prior to the holding of a general election.

(2) Every person elected or nominated, to fill a casual vacancy, shall be elected or nominated to serve for the remainder of his predecessor's term of office.

Section 18

18. (1) Every Municipal Committee or Municipal Council shall, from time to time, elect one of its elected members to be president for such period as may be prescribed, and the member so elected shall become president of the Municipal Committee or Municipal Council :

Provided that the office of the president in Municipal Committee and Municipal Councils shall be reserved for Scheduled Castes and women in accordance with the provisions made in section 10 :

Provided further that if the office of president is vacated during his tenure on account of death resignation or no confidence motion, a fresh election for the remainder of the period shall be held from the same category. (2) Every Municipal Committee or Municipal Council shall also, from time to time, elect one of its elected members to be vice president :

Provided that if the office of the vice-president is vacated during his tenure on account of death, resignation or no confidence motion a fresh election for the remainder of the period shall be held.

(3) The term of office of the vice-president shall be for a period of five years or for the residue period of his office as a member, whichever is less.

Section 24(1) & (2)

24. (1) Every election or nomination of a member and election of a president of a Municipal Committee or Municipal Council shall be notified in the official Gazette and no member shall enter upon his duties until his election has been so notified and until, notwithstanding anything contained in the Oaths Act, 1969 elected members has taken or made at a meeting of the Municipal Committee or Municipal Council an oath or affirmation of hi-allegiance to India and the Constitution of India in the following form, namely :—

"I AB, having been elected member of a Municipal Committee or Municipal Council of _____ do solemnly swear (or affirm) that I will be faithful and bear true allegiance to India and 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 Official Gazette by the State Election Commission and every election of a president shall be notified by the State Government in the official Gazette within thirty days from the date of declaration of the result of such election, and if no notification is issued within the said period, the election shall be deemed to have been notified.

Section 26

26. (1) Every meeting of a committee shall be either ordinary or special.

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

(3) When a special and an ordinary meeting are called for the same day the special meeting shall be held as soon as the necessary quorum is present.

Section 27

27. (1) The quorum necessary for the transaction of business at a special meeting of a committee shall be one-half of the number of the members of the committee actually serving at the time, but shall not be less than three.

(2) The quorum necessary for the transaction of business at an ordinary meeting of a committee shall be such number or proportion of the members of the committee 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 committee 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, whether there be a quorum present thereat or not.

Rule 19

19. Election programme and appointment of Returning Officer.-

(1) The State Election Commissioner, Haryana shall frame a programme for elections hereinafter referred to as the “election programme” of a committee.

(2) The election programme shall be published at least five clear days before the first day fixed for making nominations and shall specify the date or dates, on, by or within which;

(i) the nomination papers shall be presented;

Provided that a period of not less than five days shall be prescribed for presentation of nomination papers.

(ii) the list of nomination papers shall be posted;

(iii) the nomination papers shall be scrutinised;

(iv) Omitted;

(v) Omitted;

(vi) a candidate may withdraw his candidature;

(vii) the list of contesting candidates shall be posted;

(viii) the list of polling stations shall be posted;

(ix) the poll shall be held;

Provided that the date of poll shall not be earlier than the seventh day after the last date fixed for the withdrawal of candidatures:

(x) the ballot papers shall be counted (here time and place fixed for the purpose shall also be specified); and

(xi) the result of election shall be declared.

(3) The State Election Commissioner, Haryana shall authorise the Deputy Commissioner to designate a

Returning Officer who shall be an officer of the Government for every committee:

Provided that nothing in this rule shall prevent the Deputy Commissioner from designating the same person to be the Returning Officer for more than one committee;

(4) The Deputy Commissioner may appoint one or more Assistant Returning Officers in the performance of his functions.

(5) Every Assistant Returning Officer shall, subject to the control of Returning Officer, be competent to perform all or any of the functions of the Returning Officer:

Provided that no Assistant Returning Officer shall perform any of the functions of the Returning Officer which relate to the scrutiny of nominations unless the Returning Officer is unavoidably prevented from performing the said functions.

(6) The election programme shall be published at least five clear days before the first date for making nominations, by posting a copy of it at the office of the Deputy Commissioner, at the office of the committee concerned and at such other conspicuous places in the said committee as may be determined by the Deputy Commissioner in this behalf. The last dates for making nomination papers, their scrutiny and withdrawal shall not be public holidays. If any of the last dates for these purposes happens to be a public holiday such nominations, scrutiny and withdrawal shall take place the next succeeding day, which is not a public holiday.

(7) Subject to the provisions of sub-rule (6), the State Election Commissioner, Haryana may, by an order amend, vary or modify the election programme at any time:

Provided that unless the State Election Commissioner, Haryana otherwise directs, no such order shall be deemed to invalidate any proceedings already taken before the date of the order.

Rule 70

70. Oath of allegiance and election of President etc.-

(1) (a) Unless the Government otherwise directs, the Deputy Commissioner or any gazetted officer appointed by him in this behalf shall within thirty days, after the publication of the notification of the names of the members elected to a committee, convene the first meeting of the newly constituted committee at forty-eight hours notice to be delivered at their ordinary place of residence to administer an oath of allegiance under section 24 of the Act. The notice shall clearly state that the oath of allegiance will be administered to the members present.

(b) The Deputy Commissioner or any gazetted officer appointed by him in this behalf shall, within a period of thirty days of the meeting referred to in clause (a), convene a meeting of the members of the committee at forty-eight hours notice to be delivered at their ordinary place of residence. The notice shall clearly state that the oath of allegiance will be administered to the left over members of the committee and that the election of the President and Vice-President shall be held in the meeting. The convener shall preside over the meeting till the election of the President and Vice-President is over:

Provided that such meeting shall be deemed to be validly convened meeting of the committee. Notwithstanding anything contained in any bye-laws made under the provisions of section 31 of the Act, the administration of oath of allegiance and the election of the President and

Vice-President shall be recorded as part of the proceedings in the minutes of the “meetings.”

(2) The oath of allegiance shall be administered to a member who was not present at the meetings convened under sub-rule (1) or to a member elected or nominated to fill a casual vacancy subsequently by the Chairman of the meeting at which such member appears to take such oath.

(3) The term of office of the President shall be for five years or the residue of the term of his office as a member whichever is less. The President shall be elected from amongst the members of the Committee.

(4) The offices of the Presidents in the municipalities shall be filled up from amongst the members belonging to the general category, Scheduled Castes, Backward Classes and women by rotation which will be determined in the manner as detailed below:

Provided that the number of offices of the President reserved for the Scheduled Castes and Backward Classes in the State shall bear as may be the same proportion to the total number of such offices of the municipalities as the population of the Scheduled Castes and Backward Classes in the State bears to the total population of the State:

Provided further that not less than one third of the total number of offices of the President in the municipalities shall be reserved for women including the offices reserved for Scheduled Castes and Backward Classes women. The reservation of offices for women shall rotate to different municipalities which will be determined by draw of lots by a committee consisting of the Director, Local Bodies and Deputy Commissioners of the districts concerned or their nominee. If women of the

reserved category are not available, then the office of the President shall be filled up from the male member of the said reserved category:

Provided further that the number of offices of the President for Scheduled Castes and Backward Classes shall be determined on the basis of their population and shall rotate to different municipalities firstly, having largest population of Scheduled Castes, secondly, from the remaining municipalities having largest population of Backward Classes and they rotate in the subsequent terms of offices of the municipalities having their next largest population and so on. In case percentage of population of two Municipal Committees or Municipal Councils as regards Backward Classes and Scheduled Castes is the same the reservation will be determined by draw of lots to be conducted by a committee consisting of Director, Local Bodies and Deputy Commissioner of district concerned or his nominee.

Provided further that in case of office of the Municipal Council reserved for the Backward Classes, the President shall be elected from amongst the members belonging to the Backward Classes and in case of Municipal Committees, the member of Backward Class shall be deemed to be elected as President of the municipality reserved for the Backward Classes.

Rule 74

74. Election not to be questioned except by petition:-

No election shall be called in question except by an election petition presented in accordance with these rules.

Rule 75

75. Election petition.- (1) An election petition against the return of a candidate to an election or against the

return of a President or Vice-President or against unsuccessful candidate with a view to his disqualifications under section 272 on the ground of corrupt practices or material irregularity in the procedure shall be in writing, signed by a person who was a candidate at such election or an elector, shall be presented to the Tribunal within thirty days after the day on which the result of the election is declared by the Returning Officer.

(2) The petitioner shall enclose with the petition copies of the petition and of its enclosures equal to the number of respondents.

Explanation:- For the purposes of this rule, in a constituency in which a candidate is deemed to be elected under the provisions of rule 31 the day on which the list of contesting candidates is posted under the provisions of sub-rule (1) of rule 30, shall be deemed to be the day on which the result of the election was declared.

Rule 76

76. Contents of petition.- (1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies and shall where necessary, be divided into paragraphs numbered consecutively and shall be signed by petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908 (5 of 1908).

(2) The petition shall be accompanied by a list signed and certified in the like manner setting forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit sworn before a Magistrate of the first class or a Notary or a Commissioner of Oaths and shall be in form 9.

(3) The Tribunal may upon such terms as to cost and otherwise as it may direct at any time allow the particulars included in the said list to be amended or order such further and better particular in regard to any matter referred to therein to be furnished as may, in its opinion, be necessary for the purpose of ensuring fair and effectual trial of the petition:

Provided that particulars as to any additional corrupt practice not contained in the said list shall not be added by means of any such amendment.

Article 243R of the Constitution of India

“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 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.

Article 243ZG of the Constitution of India

243ZG. Bar to interference by Courts in electoral matters.- Notwithstanding anything in this Constitution,—

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;
- (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

11. A perusal of the above provisions shows that Section 2(14A) of the Act defines “member” of the municipality duly elected or nominated by the State Government. According to Section 3A of the Act, the superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to the municipalities has been vested in the State Election Commission. Section 9 of the Act prescribes the number of elected members of municipalities. Clause (i) of sub section 3 of section 9 of the Act provides that the State Government shall by notification in the Official Gazette nominate not more than three persons in case of Municipal

Council and not more than two persons in case of Municipal Committee having special knowledge or experience in municipal administration. Section 9(3)(ii) of the Act provides for nomination of members of the House of people and the Legislative Assembly of State representing constituencies which comprise wholly or partly, the municipal area. According to the first proviso to this sub section, the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of President or Vice President. Section 11(1) of the Act defines the term of the office of elected members of the municipality as five years. Section 11(2) of the Act provides that the term of the nominated members shall be coterminous with the term of the elected members. Section 12 of the Act prescribes the duration of municipality which shall continue for five years from the date appointed for its first meeting. Disqualification for membership of a municipality has been laid down under Section 13A of the Act. Section 15 of the Act relates to filling up of casual vacancies. Section 18 of the Act deals with election of President and Vice President of Municipal Committee or Municipal Council. According to Section 24(1) of the Act, every election or nomination of a member and election of a President of a Municipal Committee or Council shall be notified in the official gazette. Under Section 24(2) of the Act, every election of a member shall be notified in the Official Gazette by the State Election Commission not earlier than one week before the expiry of the during of the existing municipality and every election of a President shall be notified by the State Government in the Official Gazette within thirty days from the date of declaration of the result of such election. Section 26 of the Act provides for ordinary and special meetings of a committee. Section 27 of the Act defines quorum of the meeting of a committee which is one half of the number of members actually serving at

the time but not less than three. Rule 19 of the Rules prescribes election programme and appointment of Returning Officers. According to Rule 70 of the Rules, the Deputy Commissioner or any Gazetted Officer appointed by him shall within a period of thirty days of the publication of the notification of the names of the members elected to a committee convene the first meeting of the newly constituted committee at forty eight hours notice to be delivered at their ordinary place of residence stating that the oath of allegiance will be administered to the members present and that the election of President and Vice President shall be held in the meeting. Rules 74 of the Rules prescribes that no election shall be called in question except by election petition. The procedure of filing an election petition and contents of the petition are contained in Rules 75 and 76 of the Rules. Article 243R of the Constitution of India provides for composition of municipalities. Clause 2 thereof inter alia provides that the legislature of State may by law provide for the representation in a municipality of the persons having special knowledge or experience in municipal administration and 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. Article 243ZG of the Constitution of India restricts interference by courts in electoral matters. It has been provided that no election of a municipality shall be called in question except in an election petition.

12. Examining the scope of Section 9(3) of the Act, the category of the nominated members has been specified therein which are divided into different categories i.e. one who are nominated in their personal capacity being a person of special knowledge or experience in municipal administration, others who are nominated by virtue of being representatives

of the people being elected as members of Parliament and Legislative assembly and also members of the Council of States registered as elector within the Municipal area. On plain reading of Section 9 (3) of the Act, it emerges that only mandatory requirement under the said provision is that every nomination in terms thereof is required to be notified in the Official Gazette. The complete scheme of the Act shows that MP/MLA are notified as nominated member by virtue of their office and as a necessary corollary in those circumstances they shall remain nominated member till the expiry of their term as MP/MLA. It nowhere envisages that fresh notification for nomination of MP/MLA is required to be issued after every municipal election. However, their term with the Municipal Council shall come to an end with the expiry of the term of the Municipal Council. Even if accepting the plea of the petitioners that the tenure of the nominated member has to be coterminous with the tenure of the elected member and a fresh notification is required to be issued on the constitution of the fresh Municipal Council, the same can only be applicable in the case of persons defined in clause (i) as they are nominated due to personal special knowledge or experience in Municipal Administration and would not apply for the members falling under clause (ii) & (iii) as they are being nominated by virtue of their office and not as an individual. Their tenure as a nominated member shall end only on vacation of their office as MP/MLA and the same cannot be even extended or shortened by reading the word co-terminus alone without harmoniously construing the same with the object of the Act.

13. To put it differently, according to the statutory provisions, the basic legal requirement is that every election/nomination ought to be notified in the Official Gazette. Once having done so, there is no mandate of the Act on the basis of which it could be claimed that fresh notification is to

be issued for nomination of MP/MLA after every municipal election. If we were to accord such a meaning to the provision, in that situation, it would tantamount to making addition of certain words in the statute which otherwise were not intended to be so. It is well settled that the statute should be read as it is and court cannot add words to a statute or read words into it which are not there. Reference may be made to the judgment in ***Union of India & another Vs. Deoki Nandan Aggarwal***, 1992 Supp.(1) SCC 323 wherein it was observed by the Apex Court as under:-

“14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot re- write, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.....”

14. Further, in ***Union of India & another Vs. Shardinu***, (2007) 6 SCC 276, it was recorded by the Supreme Court that the provisions of the statute have to be read as a whole and in its context. The court can interpret a law but cannot legislate. The relevant portion reads thus:-

“25. Our attention was also invited to a decision of this Court in ***Padma Sundara Rao (Dead) & Ors. v. State of T.N. & Ors.*** [(2002) 3 SCC 533]. Their Lordships held that casus omissus cannot be supplied by the Court. The provisions of the statute have to be read as a whole and in its context. When language of the provision is plain and unambiguous the question of supplying casus omissus does not arise. The Court can interpret a law but cannot legislate. Therefore, the submission of learned Addl. Solicitor General that since the contingency which has arisen in the present case was not foreseen by the draftsmen or by the Parliament, therefore, the casus omissus may be supplied by this Court i.e. since the incumbent has been facing the charge, his tenure should be cut short. We regret we cannot cure the lacunae by exercising the power under [Article 142](#) of the Constitution and uphold the order of termination especially when such contingency has not been made a ground for disqualification for holding the post. Therefore, the submission of learned Addl. Solicitor General cannot be accepted.”

15. Still further, Apex Court in ***B.Premanand and others Vs. Mohan Koikal and others***, (2011) 4 SCC 266, observed that the statute should be read as it is without distorting or twisting its language following literal rule of interpretation as under:-

24. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or

twisting its language. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean."

16. The interpretation placed by us as noticed hereinbefore, is in accordance with the provisions of the Constitution of India as well in as much as, under sub clause (ii) of clause 2(a) of Article 243-R of the constitution of India, the State Legislature has been given powers to enact laws with regard to members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprises wholly or partly the municipal area whereby they have the right to vote in the meetings of the municipality. According to plain reading of Article 243-R of the Constitution of India read with Section 9(3) (ii) of the Act, wherever notification has been issued in respect of MP/MLA being nominated members of the municipality, there is no requirement that fresh notification has to be issued every time after the term of the municipality has expired where the MP/MLA still continues to be so. To hold otherwise,

would be taking away the right of MP/MLA to vote in the election of President/Vice President of the Municipal Council which has been guaranteed to them by the Constitution of India read with Section 9(3) (ii) of the Act.

17. Learned counsel for the petitioners had laid great emphasis on the term “co-terminus” used in Section 11(2) of the Act to buttress their submission that fresh notification would mandatorily be required after the dissolution of the earlier municipality. We do not find any substance in this submission as well. On combined reading of sections 9, 11, 15, 18, 21 and 24 of the Act and Rule 70 of the Rules and applying the rule of literal interpretation and without doing any violence to the language of the statute, the only conclusion that would follow is that the use of the word co-terminus Section 11(2) of the Act signifies that the tenure of the nominated members shall end for the purpose of the Act with them. It shall, however, recommence as soon as the fresh election of the municipal council takes place. The term of the MP/MLA in such situation shall also start with them but it shall be for the remainder of their term as MP/MLA. On conjoint reading of Section 11(2) with Section 9 of the Act, giving any other meaning to ‘co-terminus’ could give dangerous results. To illustrate, the tenure of the MP/MLA as well as elected members is of 5 years. However, it is not essential that the tenure of both remains for the same period. MP/MLA are nominated members only by virtue of their office and not otherwise. If the expression ‘co-terminus’ was to be interpreted narrowly, then there is every possibility of a situation where EX-MP/MLA whose balance term is shorter than the Municipal Council may ask for extended period in the office of Municipality claiming that his tenure as nominated member in Municipal

Council is co-terminus with the Municipality. In other words, if the tenure of MP/MLA had expired but period of Municipality had subsisted, MP/MLA, who had lost his election, can still claim that under section 11(2) of the Act, he is entitled to the extended term of Nominated member of Municipal Council. This could not be the intention of the Legislature in enacting Sections 9(3) (ii) and 11(2) of the Act.

18. The upshot of the above discussion is that the issuing of fresh notification, in the present case was not required and therefore non-issuance thereof cannot be held to be fatal as the MP/MLA hold the office as nominated members of the municipality by virtue of their being Members of Parliament and Legislative Assembly and their nomination as well as right to vote is governed by the constitutional mandate of Article 243R of the Constitution of India read with Section 9(3) (ii) of the Act. The status of nominated member of the Municipality though would cease on the expiry of the term of Nagar Parishad but would be revived for the remaining term of their being MP/MLA on the election and constitution of fresh municipality and would come to an end only on the dissolution of the Legislative Assembly/Parliament.

19. In all fairness to learned counsel for the petitioners, advertent to the judgments relied upon by the learned counsel for the petitioners, it may be noticed that in *State of MP and another vs. Mahendra Kumar Saraf and others*, 2005(4) MPHT 185, the words terminus and co-terminus had been interpreted. It was held that the term of the President and councillor comes to an end after five years from the appointed date of the first meeting. As per Section 47(1) of MP Municipalities Act, 1961, the President and Vice President shall be deemed to have entered their respective offices from the

date of their election and the outgoing President or the Vice President, as the case may be shall cease to function as President or Vice President. Section 36(4) of the said Act says that the term of the President shall be co-terminus with the term of the Council. In ***Kashmiri Lal vs. The State of Punjab***, AIR 1984 Punjab 87, it was pronounced that notification in the Official Gazettee is a sine qua non. The word notification, its publication and effect of its non issuance has been discussed in detail by Full Bench of this Court. It was laid down that Notification' shall mean a notification published under proper authority in the Official Gazette. In ***Bhawani Deen Mishra vs. State of MP and others, Writ Petition No.2266 of 2015 decided on 22.4.2015***, question was of notification of nominated members of a Mandi committee. It was concluded that without notification they are not entitled to be considered as members of the committee. The issue was whether in the absence of publication of notification in the Official Gazettee, persons nominated under Section 11(1)(h)(i) and (j) of the Adhiniyam actually become members of Mandi Committee or not so as to entitle them to participate in the meeting for motion of No confidence. It was held that provisions of the Adhiniyam were mandatory in nature. The purpose of publication of election and nomination in the Official Gazettee was to make known to public the particulars of the persons constituting Mandi committee. Apex Court in ***Kulsum R. Nadiadwala vs. State of Maharashtra and others***, 2012(6) SCC 348, held that it is mandatory to comply with both cumulative requirements of notice under section 4 of the Land Acquisition Act, 1894, i.e., to publish the notification in Official Gazettee and by public notices of the substance of the notification to be published in the locality where the land was proposed to be acquired. In ***Kirti Parsad Jain and others vs. State of Haryana and others***, 1991(1) PLR 693, this court required that acceptance of resignation

by member of municipal committee is to be notified within 60 days of receipt of application. It is only on publication of notification that member shall be deemed to have vacated his seat. In ***Khaliquz Zaman vs. State of UP and others, 2005*** All. LJ 1537, the Allahabad High Court interpreted Article 243R(2) of the Constitution of India to hold that it excludes the nominated members to vote only in the meeting. It was held that the word meeting as has been used in proviso to Article 243R(2) of the Constitution cannot be interpreted to include an election. Consequently, nominated members can also vote in the election held for the post of vice President. The writ petition challenging the election of Vice President on that ground was dismissed. In ***Yogesh Mittal vs. State of UP and others, 2015(3)*** All LJ 182, it was held by the Allahabad High Court that a nominated member of an elected body shall hold office during the pleasure of the State Government. Conferring on nominated members a right to vote and stipulating that such members shall hold office during the pleasure of the State Government would seriously encroach on their independence and would constitute a hanging sword on every nominated member. In ***Suman and others vs. state of Haryana and others, 2007(3)*** RCR (Civil) 16 (P&H), it was held that the rules which require conduct of election of President or Vice President of a Municipal committee and do not prescribe any quorum, their election cannot be challenged for want of quorum. In ***K. Venkatachalam vs. A Swamickan, 1999(4)*** SCC 526, the Apex Court was considering disqualification of an assembly member. It was laid down that bar of Article 239(b) of the Constitution of India will not come into play when case falls under Articles 191 and 193 or under Article 173(c) and Section 5 of the Representation of the People Act, 1951. Period and purpose for filing an election petition has been specified. It was further held that Article 226 of the Constitution of

India is couched in widest possible terms and unless there is clear bar to jurisdiction of the High Court, its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of the Constitution of India. In ***Smt.Naravadi Bai Choudhary and others vs. State of MP and others***, 2005(2) MPHT 119, it was held by the Madhya Pradesh High Court that election process commences only when Election Commission notifies the election. The propositions of law enunciated in these decisions are unexceptionable. However, each case has to be decided on its own facts. The factual matrix in the present cases being different, the petitioners cannot derive any advantage from the said decisions.

20. In view of the above, we do not find any merit in the writ petitions and the same are hereby dismissed.

(Ajay Kumar Mittal)
Judge

December 05, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether referred to reporter or not

Yes/No
Yes