

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6920/2015 & C.Ms. No.18134, 25570, 26645, 31309 of 2015**

Pronounced on: 29th January, 2016

SANJANA GAHLOT & ANR.

..... Petitioners

Through: Petitioners in person.

Versus

THE STATE ELECTION COMMISSION & ORS..... Respondents

**Through: Mr.Sumeet Pushkarna, Adv. with
Mr.Siddhartha Nagpal, Adv. along with
Mr.R.S.Parmal, Dy.Secretary, State Election
Commission.**

**Mr.Rahul Mehra, Sr.Standing Counsel with
Mr.Sanjoy Ghose, ASC, Ms.Pratishtha Vij,
Mr.Sanyog Bahadur, Mr.Shekhar Budakot, Adv.
for GNCT of Delhi**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

Ms.G.ROHINI, CHIEF JUSTICE

1. This public interest petition is filed bringing to the notice of this Court, the alleged inaction on the part of the respondents in filling up the casual vacancies in all the three Municipal Corporations of Delhi which are stated to be lying vacant since December, 2013.

2. It is pleaded in the writ petition that the councillors in the Municipal Ward Nos.44, 55, 67, 86, 124, 136, 168, 214 and 238 had resigned and consequently casual vacancies have occurred in 9 Municipal Wards on 20.12.2013. Similarly, 4 additional vacancies occurred on 07.02.2015

consequent to resignation of Councillors of the Municipal Ward Nos.126, 166, 176 and 199. It is pleaded that in spite of the fact that the General Parliamentary Elections were held in April-May, 2014 and thereafter, elections to Delhi Assembly were held in February, 2015, the State Election Commissioner/respondent No.1 failed to take steps to fill up the above said casual vacancies in terms of the mandatory provisions of the Delhi Municipal Corporation Act, 1957 (for short 'the DMC Act').

3. In the affidavit filed by the respondent no.1/State Election Commission dated 28.08.2015, the fact that 13 casual vacancies are existing has not been disputed and it is explained that the Commission also desires to conduct election at the earliest and accordingly by letter dated 24.02.2015 requested the Government of NCT of Delhi to arrange the funds to meet the expenditure of about Rs.21 crores. That apart, the Commission also requires manpower of about 4,500 ground level personnel and 50 officers to be appointed as Returning Officers, Election Observers, Expenditure Observers, Assistant Returning Officers and Sector Officers which has to be made available by the Government for a period of about two months. The North Delhi Municipal Corporation which is the Nodal Corporation for all the three Corporations for the purpose of the bye-elections has also addressed a letter dated 11.03.2015 requesting the Government of NCT of Delhi to arrange the funds of Rs.21 crores as advance to meet the election expenditure.

4. It is further stated that once the funds are provided by the State Government along with the manpower, the Commission can immediately start the election process. The Commission has accordingly filed an application being CM No.18134/2015 seeking a direction to the Government

of NCT of Delhi to provide the requisite funds and other resources for the conduct of elections to the casual vacancies occurred in 13 Municipal Wards.

5. The respondent No.4/Government of NCT of Delhi filed a short affidavit dated 14.10.2015 stating that the manpower requirement and the finance involved in the conduct of the elections are matters to be finalized by the State Election Commission in consultation with the Government of NCTD and the same is under progress. It is further stated that the process of delimitation of Wards of all the three Municipal Corporations of Delhi has been taken up in pursuance of the order of the Lieutenant Governor dated 18.09.2015 and the same is in progress. It is explained that the Municipal Elections were held in April, 2012 on the basis of the delimitation exercise carried out in the year 2007 on the basis of 2001 census. Since the distribution of population of the city has undergone substantial changes in the past 10 years, delimitation exercise is imperative for conducting the next Municipal Elections which are due in April, 2017 in terms of Section 3(6) of the DMC Act. The issues of the release of funds and manpower for the purpose of conducting elections to fill up the casual vacancies will be taken up with the State Election Commission and the logistical support as may be practical would be extended to the State Election Commission.

6. We have heard the Petitioners appearing in person and the learned counsel for the Respondents.

7. Section 2(5) of the DMC Act defines the casual vacancies as a vacancy occurring otherwise than by efflux of time in the office of a councillor or an alderman or in any other elective office. Section 12 which provides for filling up casual vacancies in councillorship reads as under:-

“12. Filling of casual vacancies in councillorship:- (1) When a casual vacancy occurs in the office of a councillor the Election Commission shall, as soon as may be after the occurrence of such vacancy and subject to the provisions of sub-section (2), by a notification in the Official Gazette, call upon the ward concerned to elect a person for the purpose of filling the vacancy in accordance with the provisions of this Act and the rules and orders made thereunder before such date as may be specified in the notification:

Provided that no election shall be held to fill a casual vacancy occurring within six months prior to the holding of a general election under section 11.

(2) If the vacancy be a vacancy in a seat reserved for the Scheduled Castes the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to one of the Scheduled Castes.

(3) If the vacancy be a vacancy in a seat reserved for women the notification issued under subsection (1) shall specify that the person to fill that seat shall be a woman.”

8. A reading of Section 12 shows that whenever a casual vacancy occurs the Election Commission shall call upon the ward concerned by a notification in the official gazette, to elect a person for the purpose of filling up the vacancy before such date as may be specified in the notification. The only exception to the above rule is that a casual vacancy occurring within six months prior to the holding of a general election under Section 11.

9. The petition was heard to some extent on 18.12.2015 and having taken note of the State Election Commission’s stand that steps are already in progress for conduct of elections for filling up the casual vacancies in terms of Section 12 of the DMC Act, the matter was adjourned to 22.12.2015 to

enable the learned Standing Counsel for the Government of NCTD to get instructions regarding the availability of the manpower sought by the State Election Commission for conducting the elections.

10. In the meanwhile, a fresh affidavit dated 07.12.2015 has been filed on behalf of the State Election Commission stating that under the provisions of Section 3 of the DMC Act, the Wards of all the 3 Corporations have to be delimited on the basis of Census - 2011 as the next General Election to the Corporations have to be held on the basis of newly delimited wards. The process for delimitation has already commenced and the scheduled date fixed for issue of final order of delimitation of wards is 31.07.2016 and the next Municipal Elections are due to be held in April, 2017. While furnishing the particulars of the logistics required for the election to be conducted, it is further stated that the State Election Commission is committed to hold the elections as soon as the logistical needs are made available. It is further stated that a minimum of three months time would be required by the Commission to conduct by-elections to 13 Wards after the required funds and manpower are provided by the Government of NCT of Delhi.

11. As is evident from the affidavits filed on behalf of the State Election Commission, there are 70 assembly constituencies in Delhi and there are 272 municipal wards/seats. These 272 wards are spread across the 3 Municipal Corporations in Delhi, namely, South Delhi Municipal Corporation (SDMC), North Delhi Municipal Corporation (NDMC) and East Delhi Municipal Corporation (EDMC). It is also apparent that as per Section 3(6) of the DMC Act, the Central Government has the power to conduct delimitation of wards and the said power has been delegated by the

Central Government to the Lieutenant Governor and in turn the Lieutenant Governor by proceedings dated 18.09.2015 has assigned the work of fresh delimitation of wards to the Delhi State Election Commissioner. It is admitted in the affidavit of the State Election Commission that for conducting the by-elections, the assembly electoral rolls in force for the time being has to be adopted and as per Rule 14 of the Delhi Municipal Corporation (Election of Councillors) Rules, 2012, an exact time schedule for holding the by-elections has to be prepared which would require a minimum of 27 days from the date of issue of notification for elections till the date of poll.

12. It is contended by the petitioners that the failure on the part of the respondents in filling up the casual vacancies amounts to violation of the principles enshrined in Part-IX and IXA of the Constitution of India as well as the provisions of the Delhi Municipal Corporation Act, 1957. It is also contended that the plea of the respondent No.1/State Election Commission that they are unable to conduct the elections for filling up the casual vacancies on account of lack of funds and manpower is untenable. It is also submitted by the petitioners that the action of the Government of NCT of Delhi in not providing funds and manpower to the State Election Commission is deliberate and intentional so as to avoid conduct of by-elections to the wards.

13. The learned counsels appearing for the respondents have merely reiterated the stand taken in the counter affidavits that the delimitation process is still in progress and that the State Election Commission lacks the required funds and manpower.

14. Admittedly, the elections to the Municipal Corporations of Delhi are to be held in April, 2017, i.e., after more than a year. As per Section 12, the by-elections can be withheld only in one contingency i.e. where the general elections under Section 11 of the Act is occurring within six months.

15. As noticed above, though both the respondent Nos.1 and 4 expressed their readiness to conduct the by-elections, it is un-understandable as to why the elections could not be conducted to fill up the casual vacancies till date. Except stating that the delimitation of wards is in progress, no justifiable reason could be shown by the respondent Nos.1 and 4 for their failure to conduct the elections. However, it is clear from the affidavit filed on behalf of the respondent No.1/State Election Commission that for conducting the by-elections, the assembly electoral rolls for the time being in force have to be adopted. That being the case, it is not open to the respondent Nos.1 and 4 to avoid or postpone conduct of by-elections merely on the ground of ongoing process of delimitation of wards. In the light of the material available on record and the stand taken by the respondent Nos.1 and 4 in their response, we are of the view that the elections for filling up the casual vacancies of the councillors of the Municipal Wards cannot be postponed any longer.

16. While considering the issue relating to holding of elections of Municipal Corporations of city of Ahmedabad, a five-judge Bench of Supreme Court in *kishansing Tomar v. Municipal Corporation of the City of Ahmedabad & Ors.*, (2006) 8 SCC 352 reinforced the need for timely holding of the municipal elections and the mandatory requirement of Part IX and Part IX-A of the Constitution of India. The following excerpts from the said judgment may be usefully extracted hereunder:

“12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Constitution (Seventy-fourth) Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities.....

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19. From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years' period as stipulated in clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

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21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the municipality, but they are exceptional circumstances and under no (sic other) circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. But that should be an exceptional circumstance and

shall not be a regular feature to extend the duration of the municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects. It is only when the municipality is dissolved for any other reason and 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 elections for constituting the municipality for such period.

22. In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State Governments to recognise the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for Parliament and the State Legislatures. In fact, in the domain of elections to the panchayats and the municipal bodies under Part IX and Part IX-A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.”

17. We, therefore, consider it appropriate to direct the respondents to comply with the constitutional mandate by conducting the by-elections within a time frame. Accordingly, the writ petition is disposed of with the following directions:-

- i. The Government of NCT of Delhi/respondent Nos.2 and 4 shall make available the manpower sought by the State Election Commission as well as the required funds within four weeks from today for conducting the elections for filling up the casual

vacancies in terms of the provisions of DMC Act,

- ii. The respondent No.1/State Election Commission shall take the necessary further steps and complete the by-elections to all the casual vacancies existing as on today in the three municipal corporations of Delhi within three months thereafter.

18. The writ petition and all the pending applications are disposed of accordingly.

CHIEF JUSTICE

JAYANT NATH, J

JANUARY 29, 2016

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