IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF DECEMBER, 2020

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION NO.49814 OF 2019 (LB-RES-PIL)
c/w
WRIT PETITION NO.245 OF 2020 (LB-RES-PIL)

IN W.P NO.49814 OF 2019

BETWEEN:

1. SRI GURUNATH
S/O NAGAPPA ULLIKASHI
AGED 41 YEARS
OCC: SOCIAL WORKER
PRESIDENT OF SAMATA SENA,
HUBBALLI, R/O NO.33,
SRI BHUVANESHWARI NAGAR
NEAR AYURYVEDIC COLLEGE
HEGGERI, OLD WARD NO.41
NEW NO.57 (AFTER DELIMITATION)
OLD HUBBALLI-580024
DIST DHARWAD.

2. SRI LOHIT
S/O NAGARAJ GAMANAGATTI
AGED 36 YEARS
OCC: SOCIAL WORKER AND SECRETARY
SAMATA SENA, HUBBALLI
R/O NO.33, LIDKAR COLONY
GOKUL ROAD, WARD NO.35
NEW NO.37 (AFTER DELIMITATION)
HUBBALLI-580030
DIST DHARWAD.

...PETITIONERS

(BY SRI S.P SHANKAR, SENIOR ADVOCATE A/W
SMT MAMATA GURURAO KULKARNI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REP BY ITS PRL. SECRETARY
URBAN DEVELOPMENT DEPARTMENT
M S BUILDING
DR AMBEDKAR VEDDHI
BANGALORE-560001

2. COMMISSIONER
STATE ELECTION COMMISSION
CUNNINGHAM ROAD
BANGALORE-560 001

… RESPONDENTS

(BY SHRI PRABHULING K NAVADGI, ADVOCATE
GENERAL A/W SHRI VIJAYKUMAR A PATIL, AGA FOR R-1;
SHRI K.N PHANINDRA SENIOR ADVOCATE FOR
SMT VAISHALI HEGDE ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE APPROPRIATE DIRECTIONS TO RESPONDENTS TO HOLD ELECTION FOR 82 WARDS OF HUBBALLI AND DHARWAD CORPORATION AS EXPEDITIOUSLY AS POSSIBLE, BUT WITHIN A TIME FRAME AND TO GRANT SUCH OTHER RELIEF ON ANY OTHER TERM AS MAY BE EXPEDIENT IN THE INTERESTS OF JUSTICE, AND ETC.

IN W.P NO.245 OF 2020

BETWEEN:

NAGARAJ
S/O MALLESHAPPAGOURI
AGED 41 YEARS
OCC; SOCIAL WORKER
R/O NO 190, CHANDRANATH,

VIJAYANAGAR OLD WARD NO.33
NEW WARD 52
HUBBALLI – 580032.

...PETITIONER

(BY SHRI S.P SHANKAR, SENIOR ADVOCATE A/W
SMT MAMATA GURURAO KULKARNI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REP BY ITS PRL. SECRETARY
URBAN DEVELOPMENT DEPARTMENT
M S BUILDING
DR AMBEDKAR VEEDHI
BANGALORE – 560001.

2. COMMISSIONER
STATE ELECTION COMMISSION
CUNNINGHAM ROAD
BANGALORE-560 001

… RESPONDENTS

(BY SHRI PRABHULING K NAVADGI, ADVOCATE
GENERAL A/W SHRI VIJAYKUMAR A PATIL, AGA FOR R-1;
SHRI K.N PHANINDRA, SENIOR ADVOCATE FOR
SMT VAISHALI HEGDE ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR SUCH OTHER WRIT, ORDER OR DIRECTION QUASHING G.O. DATED 17-12-2019, ANNEXURE C, PASSED BY RESPONDENT NO 1, AND ETC.

THESE PETITIONS COMING ON FOR PRELIMINARY HEARING THROUGH VIDEO CONFERENCING THIS DAY, ***CHIEF JUSTICE*** MADE THE FOLLOWING:

ORDER

We have heard the submissions of the learned senior counsel appearing for the petitioners in both the petitions, the learned Advocate General for the State Government and the learned senior counsel appearing for the State Election Commission. These two petitions concern the general elections of Hubballi-Dharwad Municipal Corporation (for short, "the said Corporation") which has been established under the provisions of the Karnataka Municipal Corporations Act, 1976 (for short, "the said Act of 1976").

2. So far as the factual position is concerned, there is no dispute that the term of the said Corporation expired on 6th March, 2019. Since then, the general election has not been held. There are few factual aspects which need to be gone into. On 28th December, 2017, a notification as contemplated under clause (a) of sub-section (1) of Section 21 of the said Act of 1976 was published regarding delimitation of Wards. A notification dated 10th August, 2018 was published in accordance with clause (c) of sub-section (1) of Section 21 of the said Act of 1976 of the reservations. Writ petitions were filed before the Dharwad Bench of this

Court (W.P. Nos.107314-107315 of 2018) for challenging the said notifications. It is necessary to quote the order dated 26th September, 2019 passed by the Bench at Dharwad in the said writ petitions which reads thus:

> *"The present writ petitions are filed challenging the notification relating to wards of Hubballi-Dharwad Municipal Corporation.*
>
> *The learned Additional Advocate General appearing on behalf of the State has filed a memo stating that the impugned notifications dated 28.12.2017 and 10.08.2018 would be withdrawn and fresh notification would be notified after taking note of the grievances of the petitioners in accordance with law.*
>
> *In light of the said submission, the writ petitions are disposed of as requiring no further orders. Contentions of both the parties are kept open."*
>
> (underline supplied)

On this aspect, this Court has passed an order on 13th November, 2020. In the said order, it is observed that the decision of the State Government of withdrawing both the notifications had never seen the light of the day and that statement of the learned Additional Advocate General recorded in the order dated 26th September, 2019 was not acted upon by issuing fresh notifications.

3. An affidavit was filed by the State Government of Shri A.Vijayakumar enclosing therewith a notification dated 12th November, 2020 withdrawing both the aforesaid notifications. A *prima facie* observation was made in the said order that the fact of issuing the notification on 12th November, 2020 amounts to overreaching the authority of the Court. For dealing with this issue, another affidavit was filed by the State Government of Shri Tushar Girinath, in charge Principal Secretary to the Government, Urban Development Department. In the said affidavit, it is stated that a communication dated 17th December, 2019 was issued by the Government to the Deputy Commissioner of Dharwad directing him to carry out a fresh delimitation of Wards in respect of the said Corporation. The State Government has stated that it is committed to holding expeditious elections. The officer has tendered an unconditional apology for the inadvertent error that crept in in the withdrawal order of 12th November, 2020 which suggested that as per the direction of this Court that the withdrawal order was being passed. We accept the apology tendered by the officer and treat the matter as closed.

4. It is not necessary for us to go into the controversy as to how a memo was filed by the learned Additional Advocate General before the Dharwad Bench stating that both the aforesaid notifications would be withdrawn though no such order was passed by the State Government. As it transpires, the notifications were withdrawn in November, 2020 nearly fourteen months after the aforesaid order was passed by the Bench at Dharwad. The learned Advocate General states that the State is taking appropriate steps to ensure that such incidents are not repeated. We accept the assurance given by the State through the learned Advocate General.

5. In the process, the constitutional mandate contained in clause (3) (a) of Article 243U of the Constitution of India (for short, "the Constitution") was the casualty. Though assurances were given by the State Government on 26th September, 2019 to the Dharwad Bench that fresh notifications will be issued, the said notifications have not seen the light of the day for the last fifteen months. In fact, the affidavit filed by Shri Tushar Girinath records that the Deputy Commissioner of Dharwad District was already

instructed on 17th December, 2019 to take up the work of delimitation of Wards. However, for one year, no action was taken.

6. At this stage, the learned Additional Government Advocate pointed out that no further steps could be taken by the State Government in view of the interim order of stay passed on 17th February, 2020 in W.P. No.49814 of 2019. The prayer in W.P. No.49814 of 2019 is for issuing a writ of *mandamus* for holding elections of the said Corporation in a time frame.

7. Now coming to W.P. No.245 of 2020, the prayer is for quashing the order dated 17th December, 2019 passed by the State Government which is at Annexure-C. The said order refers to the order dated 26th September, 2019 passed by Dharwad Bench which we have referred earlier. A direction is issued under the said order at Annexure-C to carry out a fresh exercise of delimitation of Wards. Another prayer made in the said writ petition is for issuing a writ of *mandamus* directing the holding of elections of the said Corporation.

8. The submission of the learned senior counsel for the petitioners in both the petitions is firstly, that the action of the State Government of withdrawing the notifications dated 28th December, 2017 and 10th August, 2018 is a nullity and therefore, the order dated 26th September, 2019 passed by Dharwad Bench is not binding. The learned senior counsel submitted that even the order at Annexure-C which is the subject matter of challenge in W.P. No.245 of 2020 is completely illegal inasmuch as on the date on which the said order was passed, there was no order passed by the State Government withdrawing the notifications dated 28th December, 2017 and 10th August, 2018. He submitted that the said fact is proved by the order dated 12th November, 2020 issued by the State Government. He would, therefore, submit that there is no impediment in holding the elections in terms of the notifications dated 28th December, 2017 and 10th August, 2018 and that the elections should be ordered to be held in terms of those notifications as the elections are already long overdue.

9. The stand of the State Government is reflected from the submissions of the learned Advocate General and the learned Additional Government Advocate. As per the instructions of the State, the learned Additional Advocate General at Dharwad Bench filed a memo in the pending petition. However, inadvertently a formal order of withdrawal of the said notifications was not issued by the State Government. It is pointed out in the subsequent affidavit filed by Shri Tushar Girinath that inadvertently a statement was made that the aforesaid two notifications were withdrawn in terms of the order dated 26th September, 2019 passed by the Dharwad Bench. In the said affidavit, an assurance is given that the State Government is committed to holding of elections of the said Corporation expeditiously.

10. So far as violation of the constitutional mandate under clause 3(a) of Article 243U of the Constitution is concerned, the law has been laid down by this Court in W.P. No.10216 of 2020 and connected petitions (*M.Shivaraju & Another .v. State of Karnataka*) by the judgment and order dated 4th December, 2020. The said decision is in the case of overdue elections of Bruhat Bengaluru Mahanagara Palike

(BBMP). As in the case of the said election, even in this case, none of the respondents have come out with the excuse of the pandemic of COVID-19 as a ground to delay the election. Therefore, as held in the said decision, non-holding of election is a complete violation of the constitutional mandate of sub-clause (a) of Article 243U of the Constitution and there is no valid excuse for not holding the elections. It ought to have been complied before 6th March, 2019.

11. The other issue which is dealt with in the said decision is about the applicability of the amendment carried out by the State Legislature by enacting the Karnataka Municipal Corporations (Third Amendment) Act, 2020 (for short, "the Amendment Act"). The amendment, *inter alia,* provides for establishment of a Delimitation Commission.

12. There is one more observation which we need to make which may not have a direct bearing on the result of these petitions. The State Government has come out with a stand that it is interested in holding overdue elections as expeditiously as possible. Sub-Se ction 2-A was added by the Amendment Act to Section 21 of the said

Act of 1976 which provides that the State Government shall constitute a Delimitation Commission consisting of such number of members as may be prescribed to recommend to the State Government the manner of delimitation of Wards in each Corporation. Thus, the number of members of the Delimitation Commission will have to be prescribed. The term 'prescribed' has been defined in sub-section (29) of Section 2 of the said Act of 1976 to mean "prescribed by the Rules made under this Act." So far, no such Rules appear to have been framed by the State Government and unless such Rules are framed, the constitution of Delimitation Commission will be something which is impossible.

13. Apart from the finding which is recorded in the judgment and order dated 4th December, 2020, if sub-section 2-A of Section 21 is to be implemented which is introduced by the Amendment Act, there is no possibility that in the near future, even the Delimitation Commission can be constituted in the absence of the Rules.

14. Now coming to the controversy which arose out of the withdrawal of the notifications dated 28th December, 2017

and 10th August, 2018, the fact remains that notwithstanding the memo filed before the Dharwad Bench on 26th September, 2019, the actual withdrawal of the notifications was not made till 12th November, 2020. As observed earlier, more importantly, the assurance recorded in the memo that fresh notifications will be issued was never complied with. In fact, before the interim order was passed in February 2020, the entire process of issuing fresh notifications ought to have been completed. But that was not done.

15. There are two reasons why it will not be appropriate to go into the controversy about the manner in which the said two notifications were withdrawn. Firstly, there is no substantive challenge to the act of withdrawal and especially to the order dated 12th November, 2020. Secondly, if the Court goes into the said challenge, the net effect will be further delay in the holding of general elections of the said Corporation which ought to have been completed before 6th March, 2019. There is already a complete violation of the constitutional mandate. Now, as a Constitutional Court, this Court will have to ensure that due to the proceedings filed before the Court, the elections are not delayed any further.

16. As regards W.P. No.245 of 2020, perhaps the grievance which was made on the date of filing of the petition was fully justified, as there was no order passed by the State Government of withdrawal of both the notifications. Subsequently, on 12th November, 2020, the said notifications have been withdrawn. Therefore, now the challenge to Annexure-C will not survive.

17. In the light of the above discussion, W.P. No.49814 of 2019 will succeed and we pass the following order:

ORDER

(i) We direct the State Government to complete the exercise of delimitation of Wards by publishing a notification as required under clause (a) of sub-section (1) of Section 21 of the said Act of 1976 within a period of six weeks from today;

(ii) A notification prescribing the reservation as required under clause (c) of sub-section (1) of Section 21 of the said Act of 1976 shall be published within a maximum period of two months from the date on which the notification

under clause (a) of sub-section (1) of Section 21 of the said Act of 1976 is published;

(iii) The State Election Commission shall complete the exercise of making electoral roll of the Wards within a period of three months from the date on which the notification under clause (a) of sub-section (1) of Section 21 of the said Act of 1976 is published;

(iv) The State Election Commission shall declare the election schedule/election program within forty five (45) days from the date of publication of the electoral roll;

(v) In view of the subsequent order dated 12th November, 2020, no relief can be granted in W.P. No.245 of 2020 and it does not survive for consideration;

(vi) Both the petitions are disposed of with the above directions with no order as to costs.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

vgh*