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(Proceedings through Video Conferencing/WhatsApp)

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

CWP No.18262 of 2020 (O&M)

Date of Decision :02.02.2021

(Reserved on: 19.01.2021)

Gurmukh Singh Sohal and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Vikas Bahl, Sr.Advocate with
Mr.Parvinder Singh, Mr.Ramandeep Singh and
Ms.Drishtana Singh, Advocate for the petitioners

Mr.S.P.S.Tinna, Addl.A.G., Punjab

Mr.Satwant Singh Rangi, Advocate
for respondents no.6 & 7

ASHOK KUMAR VERMA, J.

CM No.12126 of 2020

This is an application filed under Order 6 Rule 17 read with
Section 151 of the CPC for seeking leave to amend the writ petition in
hand. CM is allowed as prayed for.

CM No.39 of 2021

This is an application filed under Section 151 of the CPC for placing on record the reply filed by respondent no.4. CM is allowed as prayed for.

1. Briefly, the facts culled out from the present amended writ petition are that the petitioners have approached this Court under Articles 226/227 of the Constitution of India for quashing the Notification dated 31.7.2020 (Annexure P-2) vide which the Delimitation Board has been constituted for fresh delimitation of wards of Municipal Corporation, SAS Nagar under the Delimitation of Wards of Municipal Corporation Order 1995 (for short 'Order of 1995'), which is said to be in violation of Clause 3 of the Order of 1995 as the Mayor, Senior Deputy Mayor or Deputy Mayor have not been made member of the Board and no Councillor of the Municipal Corporation has been made an associate member which is in violation of Clause 3 (2) of the Order of 1995 and the two nominated members who have been made members of the Delimitation Board are members of ruling political party and one of the nominated members is facing trial under Sections 302, 307, 326, 324, 201 and 34 of the Indian Penal Code read with Section 27 of the Arms Act 1959 vide FIR No. RC-9(S)/2012/CBI/SCB/CHG year 2012 dated 13.12.2012 registered with the SCB/CBI Chandigarh, in which final report (charge-sheet) dated 28.12.2013 (Annexure P-4) has been submitted before the Trial Court and there existed no circumstance as envisaged under Clause 4 of the Order of 1995 for the Constitution of the Delimitation Board. There is a further challenge to the notification dated

23.3.2020 (Annexure P-7) issued by the Government of Punjab inasmuch as the term of the Municipal Corporation had not elapsed at the time of making the said notification and there existed no circumstances to dissolve the Municipal Corporation thereby the State of Punjab was not entitled to exercise the powers under Section 407-A of the Punjab Municipal Corporation Act 1976 (Punjab Act 42 of 1976) (for short 'Act of 1976') to pass the impugned notification dated 23.3.2020 (Annexure P-7). Further challenge is to the draft notification dated 23.10.2020 (Annexure P-11) issued by the Government of Punjab vide which objections have been invited against the Draft Scheme of Delimitation inasmuch as the constitution of the Board under the Order of 1995 is in violation of Clause 3 and Clause 3 (2) of the Order of 1995. There is also a challenge to the notification dated 5.11.2020 (Annexure P-19) issued by the Government of Punjab whereby draft of rules with respect to Municipal Corporation, SAS Nagar for division of wards and to determine the number of representatives to be elected from each such wards, has been issued.

2. Learned Senior counsel for the petitioners have, *inter alia*, made the following submissions:-

(i) It is argued that the term of the Municipal Corporation had not elapsed at the time of making notification dated 23.3.2020 (Annexure P-7) and there existed no circumstances to dissolve the Municipal Corporation and therefore, the State of Punjab was not entitled to exercise the powers under Section 407-A of the Act of 1976 to pass the impugned notification (Annexure P-7).

(ii) It has been argued that the notification dated 31.07.2020 (Annexure P-2) is in violation of Rule 3 of the Order of 1995, whereby Delimitation Board has been constituted by the State of Punjab without making Mayor, Senior Deputy Mayor and Deputy Mayor as the member of the Delimitation Board and 5 Councillors as associate members.

(iii) It is argued that two nominated members, namely, Kuljit Singh Bedi-respondent no.6 and Amarjit Singh-respondent no.7 have been wrongly nominated as members in the Delimitation Board since respondent no.6-Kuljit Singh Bedi belongs to the Ruling Party and respondent no.6-Amarjit Singh is brother of a Cabinet Minister who is facing criminal trial under Sections 302/307 of the IPC and charges have been framed against him.

(vi) It is further argued that the notification dated 23.3.2020 (Annexure P-7) has been illegally issued inasmuch as the term of the Municipal Corporation had not elapsed at the time of making the said notification and there existed no circumstance to dissolve the Municipal Corporation, thereby the State of Punjab was not entitled to exercise the powers under Sub Section (1) of Section 407-A of the Act of 1976 to pass the impugned notification (Annexure P-7). The term of the Municipal Corporation SAS Nagar was to expire on 17.08.2020 as the election of the Mayor, Senior Deputy Mayor and the Deputy Mayor was conducted on 18.8.2015 and therefore, the tenure of the Municipal Corporation for a period of 5 years shall commence from the first date of meeting of election of Mayor etc. As such, notification (Annexure P-7) is said to be in violation of Section 7 of the Act of 1976.

(v) Learned Senior counsel for the petitioners in support of his submissions has relied on the judgments of the Hon'ble Apex Court in **Dravida Munnetra Kazhagam (DMK) vs. Secretary Governors Secretariat and others** (IA No. 182868/2019 in CIVIL APPEAL NOS. 5467, 5469/2017 decided on 6.12.2019), **Anugrah Narain Singh and another vs. State of U.P. and others**, (1996) 6 SCC 303 and **Atam Parkash vs. State of Haryana**, (1986) 2 SCC 249.

3. On the other hand, learned counsel for the State has, *inter-alia*, made the following submissions:-

(i) It has been vehemently controverted by the learned State counsel that the term of the house comes to an end on 17.8.2020 as the election of the Mayor, Senior Deputy Mayor and Deputy Mayor had been conducted on 18.8.2015 which is reflected from the letter dated 13.8.2015 (Annexure P-6) on the basis that the first meeting of the elected house was held on 27.4.2015 and not on 18.8.2015. As per Article 243U of the Constitution of India as also Section 7 read with Section 38 of the 1976 Act, duration of Municipal Corporation shall continue for 5 years from the date appointed for its first meeting and as such the term of the Municipal Corporation, SAS Nagar, expired on 26.4.2020. The house of the Municipal Corporation successfully completed five years tenure and therefore, the house has not been dissolved under Section 407 of the 1976 Act.

(ii) It is argued that the petitioners have approached this Court belatedly by challenging the notification dated 23.3.2020 (Annexure P-7) whereby the Governor of Punjab has opined that election to 8 Municipal

Corporations including Municipal Corporation, SAS Nagar, cannot be held before the expiry of the term and as such the Governor of Punjab appointed Commissioners of Municipal Corporation, SAS Nagar, to exercise and perform all the powers of the Municipal Corporation till it is reconstituted. After expiry of about 7 months, the petitioners have approached this Court by challenging the notification (Annexure P-7). Furthermore, the notification dated 23.3.2020 should have been challenged immediately by aggrieved persons, namely, Mayor, Senior Deputy Mayor or Deputy Mayor and not by the petitioners who have no locus standi to file the present petition.

(iii) It is argued that notification dated 05.11.2020 (Annexure P-19) has been issued under Section 8(2) of the Act of 1976 after considering the objections and suggestions submitted by the public and final decision has been taken after deciding the same as per the provisions of the rules.

(iv) So far as the contention of the petitioners with regard to nomination of members of Delimitation of Board is concerned, it has been argued by the learned counsel for the State that the Mayor, Senior Deputy Mayor and Deputy Mayor and any Councillors were not holding their posts as the term of the Corporation has already expired on 26.04.2020 and the notification constituting the Delimitation Board by nominating the members was made vide notification dated 31.7.2020 (Annexure P-2). After the dissolution of the house due to expiry of the term of the house, Rule 3 of the Order of 1995 would not be applicable, in view of proviso to Rule 3.

(v) So far as the argument with regard to two nominated members, namely, Kuljit Singh Bedi-respondent no.6 who is said to belong to Ruling Party and Amarjit Singh-respondent no.7 who is said to be brother of Cabinet Minister and against whom trial is pending, is concerned, it is argued that there is no such disqualification to be a member of the Delimitation Board under the provisions of Order of 1995.

(vi) Last but not the least, it is argued that similar matters have already been considered and dismissed by this Court vide Order dated 16.12.2020 passed in ***CWP Nos. 20082 of 2020 (Rinka Puri and others Vs. Union of India and others)*** and in similar matters being ***CWP No. 11619 of 2020 (Kulwinder Singh vs. Union of India and others) and other connected matters***, this Court passed a detailed order dated 11.08.2020 while vacating stay in those matters, ***Davinder Kapoor and others Vs. State of Punjab and others, 2014(1) RCR (Civil) 104 and Rajinder Kumar and others Vs. State of Punjab, 2014 (85) RCR (Civil) 370.***

4. We have given our thoughtful consideration to the submissions made by learned counsel for the parties and perused the paper-book.

5. We do not find any merit in the submissions of the learned Senior Counsel for the petitioners. Before proceeding further, it would be proper to reproduce the relevant provisions:-

Article 243U of the Constitution of India is reproduced as under:-

“243U. Duration of Municipalities, etc

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer: Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1)

(3) An election to Constitute a Municipality shall be completed,

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution: Provided that where 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 clause for constituting the Municipality for such period

(4) 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, clause (1) had it not been so dissolved.”

Sections 7, 35 and 38 of 1976 Act read as under:-

“7. Duration of Municipal Corporation.- (1) Every Municipal Corporation, save as otherwise provided in this Act, shall continue for five years from the date appointed for its first meeting and no longer. (Emphasis supplied)

Explanation. - In this section "first meeting" shall mean the meeting of the newly constituted Corporation held for the election of its Mayor and Deputy Mayor under section 38 of this Act. (Emphasis supplied)

(2) All Corporations 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 Legislative.

(3) An election to constitute a Corporation shall be completed-

(a) before the expiry of its duration specified in sub-section (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 Corporation would have continued is less than six months, it shall not be necessary to hold any election under clause (b) for constituting the Corporation for such period.

(4) The first election to a Corporation constituted after the commencement of the Punjab Municipal Corporation (Amendment) Act, 1994 shall be held within a period of six months of its being notified as a Corporation.

(5) A Corporation constituted upon the dissolution of a Corporation before the expiration of its duration, shall continue only for the remainder of the period for which the dissolved Corporation would have continued under sub-section (1) had it not been so dissolved.

35. Oath or affirmation by councillors.-(1) *Every councillor other than an associate councillor, shall, before taking his seat, make and subscribe at a meeting of the Corporation an oath or affirmation according to the following form namely:-*

"I, A, B., having been elected [-]1 as councillor of the Municipal Corporation of ----- do swear in the name of God solemnly affirm that I will bear true faith and

allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

(2) If a person sits or votes as a councillor before he has complied with the requirements of sub-section (1), he shall be liable in respect of each day on which he so sits or votes to a penalty of three hundred rupees to be recovered as an arrear of tax under this Act.

38. Election of Mayor, Senior Deputy Mayor, Deputy Mayor and their term of office. - (1) The Corporation shall, in the prescribed manner, elect one of its members to be the Mayor and other two members to be the Senior Deputy Mayor and the Deputy Mayor of the Corporation.

[(2) The election under sub-section (1) shall be conducted at a meeting of the Corporation to be convened immediately after the meeting held for making and subscribing oath or affirmation by the councillors under section 35 but not later than one month from the date on which election of the councillors is notified under section 17.] (Emphasis supplied).

(2-A) The term of office of a Mayor, Senior Deputy Mayor and Deputy Mayor shall be co-terminus with their term as councillors.]

(3) On the occurrence of any casual vacancy in the office of the Mayor, Senior, Deputy Mayor or Deputy Mayor, the Corporation shall within one month of the occurrence of such vacancy elect one of its members as Mayor or Senior Deputy Mayor or Deputy Mayor, as the case may be, and every person so elected shall hold office for the remainder of his predecessor's term of office.

(4) The Mayor or the Senior Deputy Mayor or the Deputy Mayor shall hold office from the time of his election until the election of his successor in office, unless in the meantime he

resigns his office as Mayor or Senior Deputy Mayor or Deputy Mayor or his term of office as a member of the Corporation terminates in any manner or unless in the case of any of the Deputy Mayors he is elected as Mayor. They shall be eligible for re-election.

(5) The Mayor shall be entitled to the payment of such honorarium and may be given such facilities in respect of residential accommodation, telephone, conveyance and the like as may be prescribed.

(6) The Mayor shall have access to the record of the Corporation and may issue directions to the Commissioner or call for reports from him with a view to ensuring proper implementation of the decision of the Corporation.”

Rule 3 of the Order of 1995 is reproduced as under:-

“3. Constitution of Board- (1) For the purposes of carrying out the provisions of these rules, the Government shall constitute a Delimitation Board for each Municipality consisting of the following members namely:-

(i) The Deputy Commissioner of the District in which the Municipal Council/Nagar Panchayat is situated or any other Officer nominated by him in this behalf;

(i)(a) member of the Punjab Legislative Assembly representing the concerned Municipality.]

(ii) Sub-Divisional Officer;

(iii) The Deputy Director, Local Government of the region concerned.

(iv) The President or Administrator of the Municipal Council or Nagar Panchayat concerned; and

(v) Executive Officer of the Municipal Council or Nagar Panchayat concerned.]

(vi) [Two members] nominated by the Government by notification.]

*[(2)] The Board shall associate with itself for the purpose of assisting it in its day to day functioning not more than five members of a Municipality having due regard to the representation of various political parties and groups in the composition of the Municipality. The names of the associate members shall be sponsored to the Director by the Executive Officer of the concerned Municipality in consultation with the concerned Deputy Commissioner. **This provision shall however, not apply in the case of a dissolved Municipality.** (Emphasis supplied)*

6. We do not agree with the submissions of the learned Senior counsel for the petitioners. The judgments relied upon by the learned Sr. Counsel are of no help and are not applicable to the facts and circumstances of the present case.

7. So far as the argument with regard to expiry of the term of the Municipal Corporation is concerned, learned counsel for the State has contended that the term of the Corporation came to an end on 26.4.2020 and not on 17.8.2020. A conjoint reading of Article 243U of the Constitution of India, Sections 7 and 38 of the 1976 Act shows that the term of Municipal Corporation shall continue for 5 years from the date appointed for its first meeting. Article 243U of the Constitution of India mandates that every municipality unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Further Explanation to Section 7 defines the term of “first meeting” which means the meeting of the newly constituted Corporation held for the election of its Mayor and Deputy Mayor under Section 38 of the Act of 1976. Sub-Section (1) of Section 38 provides that the Corporation shall elect one of its member to

be the Mayor and other 2 members to be the Senior Deputy Mayor and the Deputy Mayor of the Corporation. Sub-Section (2) of Section 7 provides that election under Sub-section (1) shall be conducted at a meeting of the Corporation to be convened immediately after the meeting held for making and subscribing oath or affirmation by the Councillors under Section 35 but not later than one month from the date on which election of the Councillors is notified under Section 17. Section 38 (2) of the 1976 Act imposes an obligatory duty on the house to immediately conduct the election of the Mayor and two other members as Senior Deputy Mayor and Deputy Mayor. Similar issue came to be considered before a Division Bench of this Court in **Davinder Kapoor, supra** wherein the question was posed as to whether the meeting held on 22.7.2008 would be the first meeting which was disrupted due to quarrel ensued at the instance of the members themselves or would be the meeting dated 24.7.2009 when 9 members were administered the oath for their office or the meeting dated 4.5.2010 when the remaining 16 members took oath and election of the President, Senior Vice President and the Junior Vice President was successfully conducted. Answering to the aforesaid question posed in the light of Article 243U of the Constitution of India, the Division Bench observed as under:-

“12....The aforesaid Article 243U of the Constitution of India and Section 13 of the Act clearly provide that every Municipality shall continue for five years from the date appointed for its first meeting and no longer. The mandate of these provisions is clear that in no circumstance, the term of a Municipality shall be more than five years. The date from which the term of five years of a Municipality is to be

counted is the date appointed for its first meeting. In explanation to Section 13(1) of the Act, the expression "first meeting" has been defined as the meeting of the newly constituted Municipality held for the election of its President and Vice-President. Rule 3 (1) of the Rules of 1994 empowers the Deputy Commissioner or any other officer authorised by him to convene the first meeting of the elected members of the Municipality within a period of fourteen days of the publication of the notification of the election of members of a newly constituted Municipality. In the notice issued for the said purpose, it is to be clearly stated that oath of allegiance will be administered to the members and election of the President and Vice- President shall be held in the said meeting. Sub Rule (2) of Rule 3 further makes it clear that in case any elected member is unable or refused to take oath of allegiance, he will be allowed to take such oath of allegiance in the subsequent meeting. In the aforesaid provisions of the Constitution, the Act and the Rules of 1994, it has nowhere been stated that only the said meeting will be deemed to be the first meeting of the Municipality, in which the oath is administered to all the elected members of the Municipality and election of the President and Vice-President is held. The date on which the Deputy Commissioner convenes the meeting of the newly elected members of the Municipality under Rule 3 of the Rules of 1994, is deemed to be the date appointed by the Deputy Commissioner for the first meeting of the Municipality under sub-section (1) of Section 13 of the Act, from which the period of five years duration of the Municipality is to be counted. The starting point of the duration of the Municipality does not depend upon the fact whether any transaction has been conducted in the first meeting or not; or whether the elected members of the Municipality have been administered oath or not; or the election of President

and Vice-President of the Municipality has been held or not. We have to give true meaning to the words "the date appointed for its first meeting" used in Article 243U of the Constitution of India and Section 13(1) of the Act. After the election of the members of a Municipal Council, as per the requirement of the Rules of 1994, names of the elected members are to be notified. After such notification, the Deputy Commissioner has been empowered to convene the first meeting of the Council under Rule 3 of the Rules of 1994, in which oath is to be administered to the newly elected members and election of the President and Vice-President is to be held. When for the first time, the Deputy Commissioner fixes the date for convening such meeting, it is to be taken as "the date appointed for its first meeting", irrespective of the fact whether in such meeting any transaction has taken place or not; or the same has been adjourned for one reason or the other. Sub rule (2) of Rule 3 of the Rules of 1994 clearly provides that if due to any reason, the elected member is unable or refused to take oath of allegiance as required by sub-rule (1) within the stipulated period, then he will be allowed to take such oath of allegiance in the subsequent meeting. This sub-rule further indicates that the date on which the first meeting is convened and held is the date appointed for first meeting of the Municipality. Thus, for all intents and purposes, the said date which was fixed by the Deputy Commissioner shall be deemed to be the date appointed for first meeting of the Municipality and the term of five years is to be counted from that date. Holding of a meeting and appointing a date for a meeting are two different things. Once a date for convening a meeting of a newly constituted Municipality is fixed by the Deputy Commissioner under Rule 3 (1) of the Rules of 1994, the requirement of Section 13(1) of the Act is complete and duration of the Municipality is to be counted from the said

date, irrespective of the fact whether in the said meeting the oath of allegiance was taken by the newly elected members or nor, and election of the President/Vice-President was held or not, or postponed for one reason or the other. The duration of a Municipality, in any circumstance, cannot be more than five years, because in Article 243U of the Constitution as well as Section 13(1) of the Act, the words "no longer" have been used. This indicates that in no circumstance, the duration of a Municipality can be extended beyond five years. The first meeting of a Municipal Council convened by the Deputy Commissioner under Rule 3 (1) of the Rules of 1994 is a statutory meeting and such a meeting cannot be termed as special or general meeting. Whether any transaction is transacted in that meeting or not is not material, particularly for the purpose of counting the term of five years of the Municipal Council. It is mandatory for the Deputy Commissioner to call the first meeting within the specified time from the date of publication of the notification of the election of members of a newly constituted Municipality. It has been made mandatory because the day, on which the first meeting is convened is deemed to be the appointed day of the first meeting and for the starting point of duration of the Municipality. Therefore, the Deputy Commissioner cannot delay convening of the first meeting. It is the mandatory requirement that he shall convene the first meeting within fourteen days of the publication of notification of the election of newly elected members, so that term of the Municipality is not extended for a longer period. That is why in sub-rule (2) of Rule 3 of the Rules of 1994, it has been made clear that if any elected member is unable or refused to take oath of allegiance in the first meeting, he will be allowed to take such oath of allegiance in the subsequent meeting. If the interpretation, as given by learned counsel for the appellants, is accepted that the first meeting of a

Municipality will be the meeting in which all the newly elected members are administered oath and election of President and Vice-President is held, then there is no certainty of the term of a Municipal Council. It may exceed beyond five years in many cases, which is not the intend and purpose of the Constitution as well as the Act. In such circumstances, the term of the Municipal Council will not be according to the legislation, but it will be as per the desire of the members of the Council, who deliberately and intentionally may not attend the first meeting and get it postponed for one reason or the other. There may be many circumstances where the first meeting of a Municipal Council has to be postponed, or if the meeting is convened, some of the members are not administered oath, or if they are administered oath, election of the President and Vice President is not held. In that situation, the term of the Municipal Council cannot be extended beyond five years by taking the adjourned date as the date of first meeting. If we take the example of the instant case. In the first meeting held on 22.7.2008, some unidentified persons snatched the attendance and proceeding register and ran away, due to which neither the oath could be administered to the newly elected members of the Municipal Council, nor election of the President and Vice-President could be held. In the second meeting held on 24.7.2009, only nine elected members of the Municipal Council were administered oath and the remaining members did not attend the meeting to take the oath. The so called election of President and Vice President in that meeting was held to be invalid and in the third meeting held on 4.5.2010, oath was administered to the remaining 16 elected members of the Council, and election of the President and Vice President was held.

14. *In our considered opinion, as observed by the learned Single Judge, the word "held" used in explanation to Section*

13(1) of the Act does not mean the meeting in which the transaction of administering oath to the members and election of President and Vice President actually takes place, rather it means a meeting which is convened under the provisions of the Act for the purpose of administering oath and for election of the President and Vice President. It would not make any difference if the said meeting is successful on that day or not, but in all circumstances, tenure of the Municipality shall be counted from the date, which is appointed for its first meeting. In our opinion, the learned Single Judge has rightly held that tenure of the Municipality shall not be counted from the date when all the newly elected members were administered oath or from the date of the meeting when election of the President and Vice President actually took place. Thus, we do not find any illegality in the order passed by the learned Single Judge.”

The aforesaid observations of the Division Bench of this Court are fully applicable to the facts and circumstances of the present case. In the aforesaid case, the Division Bench was considering the impact of Section 13 of the Punjab Municipal Act, 1911 which is akin to Section 7 of the 1976 Act in the present case. In this case also, in view of mandate under Article 243U of the Constitution of India, the term of the Municipal Corporation would continue for five years from the date appointed for its first meeting. As per Section 7 of the 1976 Act, the term of the Municipal Corporation shall continue for 5 years from the date appointed for its first meeting. As per Section 38 (2) of the 1976 Act, the election of the Mayor, Senior Deputy Mayor, Deputy Mayor was supposed to be conducted at a meeting of the Corporation to be convened immediately after the meeting held for making and subscribing oath or

affirmation by the Councillors under Section 35 but not later than one month from the date on which election of the Councillors is notified under Section 17. Thus, a conjoint reading of Article 243U of the Constitution of India, Sections 7 and 38 of the 1976 Act shows that the term of Municipal Corporation shall continue for 5 years from the date appointed for its first meeting. In the present case, election of the Corporation was notified on 04.03.2015 and the house was statutorily duty bound to conduct election within one month. It is not disputed that the first meeting for oath was held on 27.4.2015. However, according to the petitioners, the election of the Mayor, Senior Deputy Mayor and the Deputy Mayor was conducted on 18.8.2015 which is after about four months which is against the intent of the legislation mandated under Article 243U of the Constitution of India and Sections 7 and 38(2) of the Act of 1976. In this view of the matter, the term of the Municipal Corporation commenced from 27.4.2015 which is the date appointed for its first meeting which is reflected in the proceedings of the meeting held on 27.4.2015 (Annexure P-8) which reads as under:-

Serial No.	Agenda	Pronounced order/ resolution
	Regarding swearing in of elected councillors of Municipal Corporation Sahibzada Ajit Singh Nagar	The President welcomed all the members present in the meeting. Oath was taken on dated 27.4.2015 at 11 am by new elected members of ward no.1 to 50 (except seat of ward no.29 due to death of Smt.Amteshwar Kaur) of Municipal Corporation Sahibzada Ajit Singh Nagar at

		meeting hall of Municipal Corporation Sector 68. The whole exercise was carried out peacefully.
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8. A perusal of the aforesaid proceedings of the meeting shows that oath was taken on 27.4.2015 and the meeting was carried out peacefully. When first meeting was held on 27.4.2015, the tenure of the Corporation expired on 26.4.2020 after completing the tenure of full five years as required under the aforesaid rules. Needless to say that when the notification dated 23.3.2020 (Annexure P-7) was issued, it was the period when the country was de-railed and went out off track due to insurmountable barriers caused on account of pandemic of COVID-19 and in order to avoid the stalemate, the State in its wisdom would have acted upon by issuing notification dated 23.3.2020 (Annexure P-7).

9. Furthermore, notification dated 23.3.2020 (Annexure P-7) issued by respondent-State shows that the term of the Municipal Corporation would expire on 26.4.2020 and as such the house of the Municipal Corporation, SAS Nagar, has not been dissolved under Section 407 of the 1976 Act, rather the tenure of full five years has been completed by the Corporation and after completion of full term of five years, enabling provisions of Section 407-A of the 1976 Act have been invoked vide notification dated 23.3.2020 (Annexure P-7) thereby conferring the powers on Commissioner, Municipal Corporation, SAS Nagar. Moreover, after the dissolution of the house on expiry of its terms, the provisions of Rule 3 of the 1995 Rules would not apply. A perusal of proviso to Rule 3 makes it crystal clear that nothing contained

in Rule 3 shall apply to a Corporation which has been dissolved on expiry of its term.

10. Another aspect in the present case is that the notification dated 23.3.2020 (Annexure P-7) has been challenged belatedly by the petitioners by filing the present original/unamended writ petition on 28.10.2020 which is after 7 months of the issuance of the notification dated 23.3.2020. Even draft notification dated 5.11.2020 (Annexure P-19) has been issued. Even this petition has been filed after three months of the issuance of notification dated 31.7.2020 (Annexure P-2) vide which the Delimitation Board has been constituted for fresh delimitation of the Wards. In such matters, unnecessary delay of even a single day is fatal. For argument sake, even if it is assumed that the notifications dated 23.3.2020 and 31.7.2020 have been wrongly issued, but in the present case, the unexplained and unreasonable delay in resorting to the extraordinary remedy available under Article 226 of the Constitution of India is fatal and terrible. It is settled proposition of law that it is not so that there is any period of limitation of the Courts to exercise their extraordinary jurisdiction under Article 226, nor is it so that there can never be a case where the courts cannot interfere in a matter after lapse of certain length of time. However, it would be sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to unsettle the settled. In the present case, if this Court interferes with the action of the official respondents at this belated

stage, it would amount to unsettle the settled which is not permissible and practicable in the eyes of law.

11. The argument of the learned senior counsel for the petitioners with regard to nomination of members of ruling party and pendency of trial under Section 302 of the IPC against one of the nominated members of the Delimitation Board, learned Sr. Counsel for the petitioners has not been able to show any provisions in the rules that such persons cannot be a member of the Delimitation Board. It is also not disputed that respondent-Amarjit Singh has not been convicted. Furthermore, it is to be noticed that the present writ petition has not been filed seeking issuance of a writ of quo warranto.

12. Apart from that, similar matter has already been considered by this Court in **CWP No.20082 of 2020** (Rinka Puri and others Versus Union of India and others decided on 16.12.2020) wherein, it has been held as under :-

“22. Article 243-ZG clearly lays down bar to the interference by Courts of law in electoral matters and 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 and even 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. The issue is no longer res integra. While considering this aspect, the Hon’ble Apex Court in Anugrah Narain Singh’s case (supra) has held as under:-

“24. The validity of Sections 6-A, 31, 32 and 33 of the UP Act dealing with delimitation of wards cannot be questioned in a court of law because of the express bar imposed by Article 243ZG of the Constitution. Section 7 contains rules for allotment of seats to the Scheduled Castes, the Scheduled Tribes and the Backward Class people. The validity of that Section cannot also be challenged. That apart, in the instant case, when the delimitation of the wards was made, such delimitation was not challenged on the ground of colourable exercise of power or on any other ground of arbitrariness. Any such challenge should have been made as soon as the final order was published in the Gazette after objections to the draft order were considered and not after the notification for holding of the elections was issued. As pointed out in Lakshmi Charan Sen's Case, that the fact that certain claims and objections had not been disposed of before the final order was passed, cannot arrest the process of election.”

23. While considering the impact of Article 243ZG (b) of the Constitution, a Full Bench of this Court in Prithvi Raj's case, *supra* has held as under:-

“27. An "election", under the Municipal Act, commences with the issuance of a notification, by the State Government, under Section 13-A(2) of the Municipal Act. The election is thereafter held by the State Election Commission. The 'election' concludes, as provided in the aforementioned statutory provision, with the declaration of the result. Thus, a petition that "calls into question" an "election", during the period of the "election", would not be entertained, under Article 226 of the

Constitution of India. Redress to any such grievance, would have to await the outcome of the election and then also would be urged, by filing an election petition, under the provisions of the Election Commission Act.

33. An appraisal of the provisions of Article 226 of the Constitution, and the judgments of the Hon'ble Supreme Court, as noticed herein above, in our considered opinion, clearly postulate that once the electoral process commences, with the issuance of a notification, under the Municipal Act, any grievance, touching upon an "election" would be justiciable, only by way of an election petition. Interference by Courts in election matters, after the commencement of the election process, would not be permissible, except to the limited extent noticed herein above."

24. The scope of interference in such type of matters while exercising the writ jurisdiction was also considered by a Constitution Bench of the Supreme Court in Meghraj Kothari v. Delimitation Commission and others, AIR 1967 SC 669 wherein prayer was for quashing the notification issued in pursuance of sub section (1) of S. 10 of the Delimitation Commission Act, 1962, in respect of delimitation of certain Parliamentary and Assembly constituencies in the State of Madhya Pradesh. The said petition was dismissed on the ground that under Article 329(a) of the Constitution, the said notification could not be questioned in any court. The question was further considered by the Hon'ble Apex Court in Pradhan Sangh Kshettra Samiti & Ors (supra) with

regard to the elections to the Panchayats in Uttar Pradesh wherein it was held as under:-

“45.It is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the court to dictate the manner in which the same would be done....”

25. *Keeping in view, the aforesaid ratio of law laid down by the Hon’ble Apex Court and followed by the Full Bench of this Court, we are of the considered opinion that both the writ petitions are not maintainable in as much as election process has commenced vide Notifications dated 27.11.2020 and 1.12.2020 issued by the State Election Commission notifying the programme holding the general/bye elections of the Municipal Corporations, Municipal Councils and Nagar Panchayats. As reproduced above, the date for preparation of electoral rolls is upto 9.12.2020, draft of publication of electoral rolls is by 10.12.2020, last date for filing claims and objections and disposal of the same are 16.12.2020 and 23.12.2020 respectively. Final publication of electoral rolls is on 5.1.2021. Intervention of this Court, in exercise of writ jurisdiction under Article 226 of the Constitution at this stage, which may even remotely suggest the stalling of elections, is improper. The object and purport of introduction of Chapter IX-A in the Constitution of India by the 74th Constitutional Amendment 1992 was/is to facilitate the conduct of elections without putting any hindrance and taboo which is the fundamental requirement of democracy. Election to the local bodies is the grass root of democracy which is a process by which much decision-making authority is shifted to the lowest*

geographic and social levels. Any action of the Court or any individual which may, by any means, hamper or obstruct the democratic process is anti thesis to the spirit of these constitutional provisions.

26. *The principles of natural justice are not embodied rules and they cannot be imprisoned within the strait-jacket of a rigid formula. The requirements of natural justice depend on the circumstances of each case, the nature of the enquiry, the rules under which the official respondents are acting, the subject matter being dealt with and so forth. In the present case, scheme and policy for delimitation of wards has been framed under the statute, right to file objections and suggestions has been given to the residents of the Municipal areas. After consideration of the objections, final notification has been made. In this view of the matter, principles of natural justice would not require personal hearing to be given especially when all relevant circumstances were taken into consideration before issuing final notification of delimitation of wards.”*

13. Similarly, in ***Kulwinder Singh Vs. Union of India and others (CWP No.11619 of 2020 and other connected matters decided on 25.01.2021)***, these points have already been decided by this Court wherein it has been observed as under:-

“10. *From perusal of Rule 4 of the 1972 Rules, it is apparent that the said provisions prescribe the duties of the Delimitation Board. The duties of the Delimitation Board are to divide the Municipality into such number of Wards as may be necessary having regard to the elected members determined by the State Government, for the Municipality*

and the number of seats reserved for members of Scheduled Caste, Backward Classes and women and to re-adjust the wards as and when the limits of the Municipality are altered or there is increase in the population of the municipality or there is abnormal variation in population or voting figures of some of the wards of the municipalities, which requires, such readjustment.

11. *As noticed above, the petitioners have already given up the argument with regard to constitution of Delimitation Board which is reflected in the Order dated 18.9.2020 passed by this Court. It is evident from the record that the notification for constitution of Delimitation Board is issued on the basis of Rule 3 (1) of the 1972 rules for Municipalities under Clause 6 and 7 of the Order 1995. Before the present writ petitions have been filed, the Union of India had already issued letter dated 25.03.2020 (Annexure R3/1) whereby to the similar effect is the letter dated 28.7.2020 (Annexure R-3/2) issued by the Registrar General and Census Commissioner, India to Chief Secretary to Government of Punjab and the notification dated 18.08.2020 (Annexure R-3/3) issued by the Government of Punjab requesting it to give effect to the changes in existing administrative boundaries, if any latest by 31.12.2020 since the date of freezing of boundaries is upto 31.12.2020. However, the said letters were not annexed along with the writ petition by the petitioners nor the same had been brought to the notice of this Court at the initial stage which resulted into passing the stay order dated 11.8.2020 which caused vacation of stay vide order dated 18.9.2020 passed by this Court. From the conduct of the petitioners, it is apparent that the petitioners have not come to this Court with clean hands since there is concealment and suppression of candid and material facts and documents which has vitiated the entire proceedings. We are constrained to*

observe that more often than not, the process of the court is being abused. It has to be remembered that court's proceedings are sacrosanct and should not be allowed to be polluted by such unscrupulous persons.

12. *So far as the arguments of learned counsel for the petitioners with regard to notification dated 18.8.2020 (Annexure R-3/3) is concerned, that the said notification would operate prospectively and thus the illegality of forming of Delimitation Board before issuance of notification dated 18.8.2020 does not stand cured. Suffice it to say that the previous Notification dated 21.11.2019 (P-4) stands replaced by Notification dated 18.08.2020 (R-3/3) and such replacement takes effect from 21.11.2019. Consequently, the formation of Delimitation Board cannot be said to be 'tainted' in the eyes of law.*

13. *Assuming for the sake of arguments that the notification dated 18.08.2020 (R-3/3) is prospective still we are of view that same would not make the notification dated 14.07.2020 directing formation of delimitation board illegal. A perusal of the notification dated 21.11.2019 and 18.08.2020 would show that same have been issued by invoking Rule 8(iv) of the Census Rules, 1990, whereas the Delimitation Board has been notified by invoking Rule 3(1)(vi) of the 1972 Rules. The 1972 Rules have been framed in view of Section 240 of the Punjab Municipal Act, 1911 which in-turn has a Constitutional Backing as well as Independence from any other Acts in existence. Thus, it is seen that there is no conflict amongst the Rules involved, vis-à-vis constitution of Board is concerned which ipso-facto would make it void. The freeze is on delimitation of boundaries and not on actual constitution of Board. Vide notification dated 14.07.2020 (P-4) only delimitation board was constituted and boundaries were not expanded/shrunk. Since on 18.08.2020, notification ordering de-freezing of*

boundaries was issued therefore the final publication Under Rule 9 would be saved. Hence, even this argument raised by Ld. Counsel for petitioner is without merit.

14. *The argument regarding grant of insufficient time for filing objections to notification dated 14.07.2020 (P-5) is also without any merit. We are of the opinion that insufficiency of time for filing objections cannot be a ground for striking down the Constitution of Board, especially when no time has been prescribed by the Rules 1972. The validity of the said Rules, which do not provide for any specific time, are not even under challenge before this Court. Even otherwise, it is not the case of the petitioner that he did not know about the notification pertaining to constitution of Delimitation Board. Further, we are of definitive opinion that when specific statutory rules of 1972 are in place governing the procedure and process for de-limitation, then 1979 Rules cannot be applied so as to imply any time frame for calling of objections.*

15. *Likewise, the argument that certain areas have been completely left out during the delimitation process and same has been done in tearing hurry are also without any merit. It is clear from the pleading of the parties, to which there is no rebuttal that the Statutory Boundary of Municipalities are not being changed and in fact, division of wards as per population is being done. It has been specifically mentioned in the affidavit filed by respondent no 6 that the seats have been fixed as per Rule 3 of the Determination of number of Elected Members and Reservation of Offices of Presidents of Municipalities Rules, 1994. As per Rule 3, Schedule-I, the criteria for determining the number of elected members in Municipal Councils and Panchayats is on the basis of population as ascertained at the last proceeding census of which the relevant figures have been published. Further, in view of the fact no person has*

been debarred from casting his/her vote and all the voters are permitted to cast their vote in their jurisdiction, we are convinced that no prejudice has been caused to any voter as alleged.”

14. In such matters, the scope of judicial review is very limited. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. In the present case, we find no perversity, arbitrariness and illegality in the action of the official respondents.

15. In view of the above, we see no reason to interfere with the action of the official respondents. The writ petition fails and is dismissed accordingly, with no order as to costs. Consequent upon the dismissal of this writ petition, Misc. Application (CM No.12127 of 2020) for staying the operation/execution and effect of the notification 31.7.2020 (Annexure P-2) and others shall stand disposed of accordingly.

(ASHOK KUMAR VERMA)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

02.02.2021

MFK

Whether speaking/reasoned
Whether Reportable

Yes
Yes