

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

SUO MOTO WRIT PETITION NO. 4 OF 2025

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

Ms. Jyoti Chavan, Addl. Govt. Pleader for the State.
Ms. Komal Punjabi a/w Mr. Joel Carlos, Advocate for the BMC.
Mr. Sachindra Shetye, Advocate for State Election Commission.
Mr. Suryakrishnamurthy, Officer of State Election Commission.
Mr. Suresh Kakani, Secretary, State Election Commission, Maharashtra.
Mr. Vinod R. Patil, In-Charge Chief Judicial Magistrate, Esplanade, Mumbai.

**CORAM : SHREE CHANDRASHEKHAR, CJ &
ASHWIN D. BHOBE, J**

DATE : 30th DECEMBER 2025.

(The Court is convened at the residence of Hon'ble the Chief Justice of Bombay High Court.)

P.C. :

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

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

3. The Registrar was informed that the learned Advocate General is travelling and in his place Ms. Jyoti Chavan, the learned

Additional Govt. Pleader appeared for the State of Maharashtra.

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

5. It was on 16th September 2008 that a decision was taken in the meeting of the Administrative Judges' Committee of the High Court of Bombay that the staff of the High Court and the subordinate Courts is exempted from the election duty. It was further resolved and decided in the said meeting of the Administrative Judges' Committee that no information regarding the staff of the subordinate Court, if sought from the Principal Judge, City Civil and Sessions Court Bombay shall be provided to any authority. Under Article 235 of the Constitution of India, the High Court exercises complete control and superintendence over the subordinate Courts including the staff. It was in the light of the Constitutional provisions pertaining to the High Court under Chapter V and subordinate Courts under Chapter VI that the aforementioned decision seems to have been taken by the Administrative Judges' Committee on 16th September 2008.

6. The State Election Commission constituted under Article 243-K, may request the Governor of State to make available to the State Election Commission such staff as may be necessary for the discharge of functions conferred on the State Election Commission under Clauses (1) and (2) of Article 243K. Clause (4) provides that the Legislature of the State may by law make provision for all matters relating to or in connection with elections to the Panchayats (in this case Municipalities). Under Article 243 ZA, the superintendence and control of the preparation of electoral rolls for and the conduct of all the elections to the Municipalities shall be

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

7. Mr. Suryakrishnamurthy, the Deputy Secretary of State Election Commission has also joined the Court proceeding in virtual mode. He has made a statement on instructions that the State Election Commission though an independent body normally does not requisition the Court staff and follow the instructions issued by the Election Commission of India wherever necessary and if not contrary to the policy of the State Election Commission.

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

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

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

10. The Registrar has brought to our notice that without any communication or information the staff of the subordinate Courts were issued letter dated 22nd December 2025 by the Municipal Commissioner, BMC-cum-District Election Officer directing them to report for duty on 30th December 2025 between 03:00 p.m. to 05:00 p.m. On receiving such communication, the In-Charge Chief Metropolitan Magistrate, Esplanade, Mumbai informed the Collector, Mumbai District (Mumbai City) and the Commissioner and District Election Officer, BMC that the High Court has taken a decision vide General/Adm./Jud./2009 dated 31st March 2009 regarding the staff member of the subordinate Courts and made a request for exempting the Court staff from election duty. A similar

communication was issued by the Registrar (Inspection II) on 26th December 2025 attaching a copy of the General Order dated 31st March 2009. The Registrar (Inspection II) has brought to our notice that a similar communication was sent to the Municipal Commissioner, BMC-cum-District Election Officer through email on 26th December 2025 at 05:04 p.m.

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

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

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

14. Having regard to the decision of the High Court taken in the meeting of the Administrative Judges' Committee and the Constitutional and statutory provisions, we hereby direct the Municipal Commissioner, BMC-cum-District Election Officer not to take any action pursuant to the *ex-parte* communication dated 22nd December 2025 directly sent to the Court staff. The Municipal

Commissioner, BMC-cum-District Election Officer is restrained from issuing any letter/communication to the Court staff of High Court or subordinate Courts requisitioning their services for election duty.

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

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

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

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

[ASHWIN D. BHOBE, J.]

[CHIEF JUSTICE]