

JVS.

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

WRIT PETITION NO. 156 OF 2026

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Nilesh Chhaburao Bhojane	}	Petitioner
Versus		
State of Maharashtra & Ors.	}	Respondents

Mr. Navroz Seervai, Senior Advocate with Mr. Mayur Khandeparkar, Mr. Nishant Shashidharan, Mr. Vikramjit Singh Garewal, Mr. Nakul Jain, Mr. Nivit Srivastava, Ms. Sneha Patil, Ms. Aditi Sinha and Ms. Isha Vyas i/b. Maniar Srivastava Associates, Advocates for the Petitioner.

Ms. Neha S. Bhide, Government Pleader with Mr. Kedar B. Dighe, Additional Government Pleader and Ms. G. R. Raghuwanshi, AGP for Respondent No. 1-State.

Mr. Irfan Shaikh with Mr. Akshay Pansare and Mr. Nipun Sawane, Advocates for Respondent No. 2-State Election Commission.

Mr. Tejesh Dande with Mr. Bharat Gadhavi, Mr. Sarvesh Deshpande and Mr. Vinayak Shelar, Advocates for Respondent Nos. 3 to 6-NMMC.

Mr. A. Y. Sakhare, Senior Advocate with Mr. Ajay Varekar, Advocates for Respondent No. 7.

Mr. Chirag Shah, Mr. Vishal Acharya, Adv. Bhavya Shah, Advocates for Respondent No. 9.

Mr. Abhay Jadhav, Legal Head of NMMC, Ms. Anusha Shete, Asst. Legal Officer of NMMC, Ms. Priti Lata Kurathi, Returning Officer of NMMC and Mr. Sukhdeo Yedve, Assistant Returning Officer, NMMC are present.

**CORAM: SHREE CHANDRASHEKHAR, CJ. &
GAUTAM A. ANKHAD, J.**

DATE: 9th JANUARY 2026

PER SHREE CHANDRASHEKHAR, CJ.:

On 8th January 2026, the following order was passed: -

“On 7th January 2026, the following order was passed :-

“Mr. Navroz Seervai, the learned senior counsel for the petitioner referred to the provisions under section 10(1D) of the Maharashtra Municipal Corporations Act, 1949 and laid a stress on the expression “councillor” to submit that the disqualification as conceived under sub-section (1D) shall apply to a “sitting councillor” and not to a candidate who seeks to contest election as a councillor.

2. The learned senior counsel has then referred to the last paragraph of the order dated 31st December 2025 and submitted that the said order is ex-facie illegal and the same is liable to be quashed by declaring the petitioner eligible to contest the election for the post of a “councillor”.

3. Mr. A.Y. Sakhare, the learned senior counsel appearing for the respondent no.7 seeks some time for filing an affidavit to bring on record certain factual aspects.

4. This request is declined for the reason that the order under challenge must be tested with reference to the materials which were before Election Returning Officer as on the date of determination.

5. Post this matter tomorrow, that is, 8th January 2026 under the heading “High on Board”, with an understanding that this writ petition shall be disposed of finally. The petitioner to complete the records. The respondent no.7 may also produce the records which were before the Election Returning Officer. Mr. Tejesh Dande, the learned counsel appearing for the 6th respondent-the Election Returning Officer shall provide copies of the records to the learned counsel for the petitioner and the respondent no.7 and file the same in the registry of this Court in the course of the day.”

2. At the outset, Mr. Surel Shah, the learned senior counsel for the respondent no. 9 makes a statement that the respondent no. 9 has since withdrawn his candidature for election as Ward Councilor for Ward No. 17A of Navi Mumbai Municipal Corporation.

3. On instructions, Mr. Navroz Seervai, the learned senior counsel for the petitioner states that as per the information given to Mr. Mayur Khandeparkar, the learned assisting counsel, the respondent no. 12 has also withdrawn his candidature.

4. Mr. Navroz Seervai, the learned senior counsel for the petitioner states that all the respondents have been duly served except the respondent no. 12.

5. As regards withdrawal of the candidature by the contesting

candidates, Mr. Sachindra B. Shetye, the learned counsel for the State Election Commission and Mr. Tejesh Dande, the learned counsel for the Election Returning Officer shall take instructions and apprise the Court on the next date of hearing.

6. Raising an objection to the maintainability of this writ petition, Mr. A. Y. Sakhare, the learned senior counsel for the respondent no. 7 submitted that there are judicial precedents and constitutional bar under Article 243ZG of the Constitution of India and, in view thereof, the present writ petition is not maintainable. The learned senior counsel referred to a Full Bench decision of this Court in “Karmaveer Avtade”¹ and endeavoured to demonstrate that in view of the Full Bench judgment, a writ petition challenging the acceptance or rejection of nomination paper is not maintainable. Besides other decisions, the learned senior counsel for the respondent no. 7 extensively read out the decision in “Anugrah Singh”² and submitted that the election for the municipality which has been notified after 9 years in the State of Maharashtra should not be impeded or stalled in any manner whatsoever by virtue of an order passed by this Court. The learned senior counsel also referred to the order passed by the Hon’ble Supreme Court on 16th September 2025 in Special Leave to Appeal (C) No. 19756 of 2021 and submitted that there is a clear direction by the Hon’ble Supreme Court to conclude the elections by 31st January 2026 and an attempt made in Review Petition No. 180 of 2025 filed in Writ Petition No. 16799 of 2025 for an interim order has been rejected by this Court.

7. Mr. Tejesh Dande, the learned counsel for the Election Returning Officer and Mr. Sachindra B. Shetye, the learned counsel for the State Election Commission have also raised objections to the maintainability of this writ petition.

8. On the other hand, Mr. Navroz Seervai, the learned senior counsel for the petitioner referred to the provisions under sections 10 (1D), 11 and 12 of the Maharashtra Municipal Corporations Act, 1949 (in short, “the Act of 1949”) and submitted that the order passed by the Election Returning Officer on 31st December 2025 holding the nomination of the petitioner invalid is ex-facie illegal. This is the submission made on behalf of the petitioner that the provisions under section 10(1D) of the Act of 1949 shall apply to a sitting Councilor. Mr. Navroz Seervai, the learned senior counsel for the petitioner submits that the issue whether section 10(1D) shall apply to a sitting Councilor is no more res integra and any controversy whatsoever stands settled by the decisions of this Court in Writ Petition Nos. 9592 of 2013, 6775 of 2018, 12923 of

1. *Karmaveer Tulshiram Avtade v. State Election Commission & Ors.* : 2021 SCC OnLine Bom 1150

2. *Anugrah Narain Singh & Anr. v. State of Uttar Pradesh & Ors.* : (1996) 6 SCC 303

2018 and other cases.

9. We have bestowed our careful consideration to the objection raised on behalf of the respondents. Notwithstanding the bar under Article 243ZG of the Constitution of India, the Hon'ble Supreme Court has rendered judgments holding that the powers of the writ Court under Article 226 of the Constitution of India can be exercised provided such interference does not impede the process of election. This has been considered by the Hon'ble Supreme Court in "Ashok Kumar"³, "Jammu and Kashmir National Conference"⁴ and "Kishorchandra Rathod"⁵.

10. Sections 10(1D), 11 and 12 of the Act of 1949 read as under :-

10. Disqualification for being a councillor.

"10 (1D) A Councillor shall be disqualified for being a Councillor, if such Councillor has constructed or constructs by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions of this Act or the Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts; or has directly or indirectly been responsible for, or helped in his capacity as such Councillor in, carrying out such illegal or unauthorised construction or has by written communication or physically obstructed or tried to obstruct, any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure. Such disqualification shall be for the remainder of his term as a Councillor from the date of the declaration of such structure to be illegal or unauthorised by the concerned authority under the provisions of the said Acts or, as the case may be, from the date of commission of the act of interference or obstruction by the Councillor against the Competent Authority.

11. Disabilities from continuing as councillor.

A councillor shall cease to hold office as such if at any time during his term of office he, -

(a) becomes disqualified for being a councillor by reason of the provisions of section 10;

(b) absents himself during three successive months from the meetings of the Corporation, except from temporary illness or other cause to be approved by the Corporation;

3. *Election Commission of India v. Ashok Kumar & Ors.* : (2000) 8 SCC 216

4. *Union Territory of Ladakh & Ors. v. Jammu and Kashmir National Conference and Anr.*: (2023) SCC OnLine SC 1140

5. *Kishorchandra Chhanganalal Rathod v. Union of India & Ors.* : (2024) 13 SCC 237

(c) *absents himself from, or is unable to attend, the meetings of the Corporation during six successive months from any cause whatever, whether approved by the Corporation or not; or*

(d) *acts as a councillor or as a member of any committee of the Corporation by voting on, or taking part in the discussion of, or asking any question concerning, any matter in which he has directly or indirectly by himself or his partner any such share or interest as is described in clause (b) of sub-section (2) of section 10 of in which he is professionally interested on behalf of a client, principal or other person.*

12. Questions as to disqualification to be determined by the Judge.

(1) *If any doubt or dispute arises whether a councillor has ceased to hold office as such under section 11, such councillor or any other councillor may, and at the request of the Corporation, the Commissioner, shall refer the question to the Judge.*

(2) *On a reference being made to the Judge under sub-section (1), such councillor shall not be deemed to be disqualified until the Judge after holding an inquiry in the manner provided by or under this Act determines that he has ceased to hold office.”*

11. Impeding or stalling the process of election, in our opinion, is one thing and interference in a few Constituency or Ward etc. is another thing. Being alive to limitations under Article 226 of the Constitution of India, we are of the prima facie opinion that there is no absolute bar to entertain a writ petition in the matters like the present one which prima facie demonstrate illegal and arbitrary exercise of powers by the Election Returning Officer. Having regard to the non-applicability of section 10(1D) of the Act of 1949, we are inclined to entertain this writ petition and grant ad-interim order in terms of prayer clauses (c) and (d) of the prayer clause, which read as under :-

“(c) that pending the hearing and final disposal of this Petition, this Hon’ble Court be pleased to stay the effect, execution, implementation and operation of the impugned order dated 31st December 2025 (Exhibit “O” to the Petition);

(d) that pending the hearing and final disposal of this Petition, this Hon’ble Court be pleased to stay the general election 2025 to seat of councillor of ward no. 17A of the Navi Mumbai Municipal Corporation.”

12. The State Election Commission, the Commissioner, Navi Mumbai Municipal Corporation, the Chief Electoral Officer and the Election Returning Officer, Navi Mumbai Municipal Corporation shall not proceed further as regards the election on the seat of Councillor for Ward No. 17A of the Navi Mumbai Municipal Corporation.

13. Mr. Sachindra B. Shetye, the learned counsel for the State Election Commission made a statement that the present petitioner cannot be included in the list of validly nominated candidate and he shall not be now able to contest the elections.

14. Let an affidavit be filed in this regard by tomorrow.

15. Post this matter tomorrow, that is, 9th January 2026 under the heading "For Final Disposal".

2. Pursuant to the order dated 8th January 2026, the State Election Commission has filed its reply through Mr. K. Suryakrishnamurty, Deputy Secretary, State Election Commission Maharashtra stating that the preparation for electronic voting machines by affixing the ballot papers for the respective seat is in progress and it is not possible to accept the nomination of the petitioner and to permit him to contest the elections to the seat of Councillor from Ward No. 17A of Navi Mumbai Municipal Corporation. In the same breath, this affidavit states that the process of EVM preparation will not be done for the seat 17A in Navi Mumbai Municipal Corporation. In the affidavit dated 8th January 2026, 2nd respondent-State Election Commission states as under: -

"5. On 15th December 2025, the State Election Commission had issued the Election Program for General Elections to 29 Municipal Corporations in the State including Navi Mumbai Municipal Corporation.

6. As per the above-mentioned Election Program, the period for filing nominations was from 23rd December 2025 to 30th December 2025. The scrutiny of the nomination papers was scheduled on 31 December 2025.

7. The period for withdrawal of candidature was till 3 pm on 2nd January 2026 and the list of contesting candidates was

scheduled to be published on 3rd January 2026.

8. *At present, the preparation of Electronic Voting Machines by affixing the ballot papers for the respective seats is in progress, therefore it is not possible to accept the Nomination of the Petitioner and permit the Petitioner to contest the General Election to the seat of Councillor from Ward no 17A of Navi Mumbai Municipal Corporation. In view of the order passed by this Hon'ble Court on 8th January 2025, the process of EVM preparation will not be done for the seat 17A in Navi Mumbai Municipal Corporation.*
9. *I submit that in view of the Full Bench judgement of this Hon'ble Court in Karmaveer Tulshiram Autade & Ors vs State Election Commission & Ors reported in AIR 2021 Bom 90 this Hon'ble Court may pass appropriate orders."*

3. Mr. Irfan Shaikh, the learned counsel for the State Election Commission referred to the Full Bench decision of this Court delivered at Aurangabad in "*Tilottama w/o Sanjay Kinkhede v. Municipal Commissioner, Nagpur & Ors.*" 2021 (2) Mh.L.J. 685 to submit that the disqualification under section 10(1D) of the Act of 1949 shall incur even to a candidate who seeks election as a Ward Councillor.

4. Mr. Tejes Dande, the learned counsel for 6th respondent – Election Returning Officer , General Elections-2025 states that this Court may permit the on-going elections to be held as per the schedule and if the stay granted by this Court vide order dated 8th January 2026 is vacated, necessary arrangements shall be made as per the directions of this Court.

5. In the "Short Submissions" tendered in the Court, the respondent no.7 makes out the following grounds for vacating the interim order dated 8th January 2026 and dismissing the writ petition, which are extracted below: -

- "1. The Respondent No.7 states and submits that the Panel System of

voting is followed Navi Mumbai Municipal Elections. Four wards form one constituency i.e. the voters in the constituency get to choose 1 candidate each from 4 wards i.e. voter gets 4 votes. As far the Petition is concerned Ward No.17 A, Ward No. 17 B, Ward No.17 C and Ward No.17 D form one constituency.

2. If the elections for Ward No.17A is stayed or postponed its automatically going to effect the elections for the other wards i.e. Ward No. 17 B to 17D.
3. 45,000 Voters for the constituency may have to come twice for voting and declaration of results for the entire Navi Municipal Elections will have to be stayed as the outcome may effect the results of this constituency if results are declared. Since 45000 voters voting for 3 people may be of no use.
4. The statutory Right of all candidates to have a free and fair and non-biased voting may get affected, if the elections for all wards are not conducted together.
5. The candidates of all the four wards will have to campaign again if the election of one ward is postponed and therefore the candidates of other 3 wards also need to be heard and need to be made a party in the Petition.
6. The Fundamental right of voters will be affected if elections are postponed since on the subsequent date of voting some voters of the constituency may not be available as that day may not be a holiday for the voters. Declaring holiday in the said constituency also may not help since some voters may be working outside the constituency.
7. If the name of the Petitioner is allowed to be added then the list of contesting candidates and symbols will have to be allotted and some more arrangements will have to be made and therefore either the polling date will have to be changed or the results date will have to be changed which will cause of lot of inconvenience and hardships on the State Election Commission.
8. Even if election of ward no.17A is stayed and required to be rescheduled then counting and declaration of result of entire/all wards of Municipal Corporation will have postponed, which in effect will be postponing election of entire Municipal Corporation i.e. 111 Councilors.
9. Considering the above the Petition may be rejected and interim order be vacated or in the alternative if this Hon'ble Court is of the opinion that the Petition deserves to be allowed then necessary orders be passed considering the abovementioned scenario so that the candidates and the voters get a free and fair election."

6. Mr. A. Y. Sakhare, the learned senior counsel for the

respondent no.7 draws our attention to the election programme published on 2nd January 2026 and submits that the elections for the Navi Mumbai Municipal Corporation cannot be stalled. The learned senior counsel refers to the notification dated 6th October 2025 which indicates that the total number of Councillors to be elected is 111. There are 27 wards of 4-Councillors and one ward of 3-Councillors. The notification dated 6th October 2025 issued under section 5 of the Maharashtra Municipal Corporation Act, 1949 (for short, the Act of 1949) indicates that there is no 5-Councillors ward within the territorial area of Navi Mumbai Municipal Corporation. As to Ward No. 17, this is the submission of Mr. A. Y. Sakhare, the learned senior counsel that Ward No. 17 is a 4-Councillors ward in which every electorate has right to cast four votes and if the election for Ward No.17A is stalled and held on a subsequent date, the voters would have to come again to cast their votes.

7. To elaborate upon the powers of the writ Court under Article 226 of the Constitution of India in the light of the judgments rendered by the Hon'ble Supreme Court, we may first indicate that in "*Anugrah Narain Singh & Anr. v. State of Uttar Pradesh & Ors.*" (1996) 6 SCC 303 by virtue of an order passed by the High Court the notification for holding municipal elections in the State of Uttar Pradesh was stayed. This was the distinctive feature in the said case that there were two conflicting decisions relating to the same elections in the writ petitions filed by the aggrieved parties, one in the Allahabad High Court, Principal Seat and another at Lucknow Bench. The Principal Seat of Allahabad High Court had stopped the entire election process ignoring the decision of the Lucknow Bench and, that too, one week prior to the voting for the municipality. Another important feature which was found by the

Hon'ble Supreme Court in the said case was that the High Court had ignored that the process of reservation for various wards and de-limitation of the constituencies were completed before June 1995. There were ample opportunity under the statutory provisions to raise objections before finalization of the de-limitation process. It was in that context that the Hon'ble Supreme Court held that the validity of the laws relating to de-limitation and allotments of seat made under Article 243ZA cannot be questioned in any other Court.

8. In paragraphs 16 to 22, 37 and 39 of the reported judgment in "*Union Territory of Ladakh & Ors. v. Jammu and Kashmir National Conference & Anr.*" (2023) SCC OnLine SC 1140, the Hon'ble Supreme Court observed as under: -

"16. *It requires no reiteration that the powers of this Court and the High Courts vested under the Constitution cannot be abridged, excluded or taken away, being part of the Basic Structure of our Constitution. Reference need only be made to decisions in His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala, (1973) 4 SCC 225; Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1; Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625; L Chandra Kumar v. Union of India, (1997) 3 SCC 261 and more recently, to Kalpana Mehta v. Union of India, (2018) 7 SCC 1 and Rojer Mathew v. South Indian Bank Limited, (2020) 6 SCC 1, all of which were rendered by a Bench of 5 or more learned Judges. Section 12 of the 1997 Act need not detain us. Insofar as Section 13 of the 1997 Act is concerned, it is by now too well-settled that the availability of alternative efficacious remedy is no bar to the exercise of high prerogative writ jurisdiction, in the light of various decisions, including but not limited to, State of Uttar Pradesh v. Mohammad Nooh, 1958 SCR 595; Madhya Pradesh State Agro Industries Development Corporation Ltd. v. Jahan Khan, (2007) 10 SCC 88; Maharashtra Chess Association v. Union of India, (2020) 13 SCC 285. Even on the anvil of Radha Krishan Industries v. State of Himachal Pradesh, (2021) 6 SCC 771, Section 13 of the 1997 Act does not, and cannot, impede a Constitutional Court from proceeding further. We do not wish to multiply established authorities on the point but would add the very recent Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority,*

2023 SCC OnLine SC 95 to the list enumerated above.

- 17.** *At the threshold, it is noted that the ECI deals with the conduct of elections to the Parliament, the State Legislative Assemblies and the State Legislative Councils. The Union Territory of Ladakh does not currently have a Legislative Assembly. The last election to the Parliamentary constituency was held in the year 2019. That said, first things first. The Legal Opinion by the Law Department remains internal advice, and advice alone, and as such, the learned ASG was correct in contending that the same would not create/confer any right in favour of R 1. In Mahadeo v. Sovan Devi, 2022 SCC OnLine SC 1118 (where one of us, Vikram Nath, J. was part of the coram), the Court, after considering various case-laws, held that “It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. ...”*
- 18.** *In Kalpana Mehta (supra), Hon. Dipak Misra, C.J.I., with whom 4 learned Judges concurred, stated:*

“40. While focussing on the exercise of the power of judicial review, it has to be borne in mind that the source of authority is the Constitution of India. The Court has the adjudicating authority to scrutinise the limits of the power and transgression of such limits. The nature and scope of judicial review has been succinctly stated in Union of India v. Raghbir Singh [Union of India v. Raghbir Singh, (1989) 2 SCC 754] by R.S. Pathak, C.J. thus : (SCC p. 766, para 7)

“7. ... The range of judicial review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law. ... With this impressive expanse of judicial power, it is only right that the superior courts in India should be conscious of the enormous responsibility which rest on them. This is specially true of the Supreme Court, for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on all courts within the territory of India.”

And again : (SCC p. 767, para 11)

“11. Legal compulsions cannot be limited by existing legal propositions, because there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as “fairness” or “reasonableness”, but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within

the new parameters.”

The aforesaid two passages lay immense responsibility on the Court pertaining to the exercise of the power keeping in view the accepted values of the present. An organic instrument requires the Court to draw strength from the spirit of the Constitution. The propelling element of the Constitution commands the realisation of the values. The aspiring dynamism of the interpretative process also expects the same.

41. This Court has the constitutional power and the authority to interpret the constitutional provisions as well as the statutory provisions. The conferment of the power of judicial review has a great sanctity as the constitutional court has the power to declare any law as unconstitutional if there is lack of competence of the legislature keeping in view the field of legislation as provided in the Constitution or if a provision contravenes or runs counter to any of the fundamental rights or any constitutional provision or if a provision is manifestly arbitrary.

42. When we speak about judicial review, it is also necessary to be alive to the concept of judicial restraint. The duty of judicial review which the Constitution has bestowed upon the judiciary is not unfettered; it comes within the conception of judicial restraint. The principle of judicial restraint requires that Judges ought to decide cases while being within their defined limits of power. Judges are expected to interpret any law or any provision of the Constitution as per the limits laid down by the Constitution.

43. In *S.C. Chandra v. State of Jharkhand* [*S.C. Chandra v. State of Jharkhand*, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897], it has been ruled that the judiciary should exercise restraint and ordinarily should not encroach into the legislative domain. In this regard, a reference to a three-Judge Bench decision in *Suresh Seth v. Indore Municipal Corpn.* [*Suresh Seth v. Indore Municipal Corpn.*, (2005) 13 SCC 287] is quite instructive. In the said case, a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956. Repelling the submission, the Court held that it is purely a matter of policy which is for the elected representatives of the people to decide and no directions can be issued by the Court in this regard. The Court further observed that this Court cannot issue directions to the legislature to make any particular kind of enactment. In this context, the Court held that under our constitutional scheme, Parliament and Legislative Assemblies exercise sovereign power to enact law and no outside power or authority can issue a direction to enact a particular kind of legislation. While so holding, the Court referred to the decision in *Supreme Court Employees' Welfare Assn. v. Union of India* [*Supreme Court Employees' Welfare Assn. v. Union of India*, (1989) 4 SCC 187 : 1989 SCC (L&S) 569] wherein it was held that no court can direct a legislature to enact a particular law and similarly when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the

delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated authority.

44. Recently, in *Census Commr. v. R. Krishnamurthy* [*Census Commr. v. R. Krishnamurthy*, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589], the Court, after referring to *Premium Granites v. State of T.N.* [*Premium Granites v. State of T.N.*, (1994) 2 SCC 691], *M.P. Oil Extraction v. State of M.P.* [*M.P. Oil Extraction v. State of M.P.*, (1997) 7 SCC 592], *State of M.P. v. Narmada Bachao Andolan* [*State of M.P. v. Narmada Bachao Andolan*, (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875] and *State of Punjab v. Ram Lubhaya Bagga* [*State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117 : 1998 SCC (L&S) 1021], held: (*R. Krishnamurthy case* [*Census Commr. v. R. Krishnamurthy*, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589], SCC p. 809, para 33)

“33. From the aforesaid pronouncement of law, it is clear as noonday that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion.”

45. At this juncture, we think it apt to clearly state that the judicial restraint cannot and should not be such that it amounts to judicial abdication and judicial passivism. The Judiciary cannot abdicate the solemn duty which the Constitution has placed on its shoulders i.e. to protect the fundamental rights of the citizens guaranteed under Part III of the Constitution. The constitutional courts cannot sit in oblivion when fundamental rights of individuals are at stake. Our Constitution has conceived the constitutional courts to act as defenders against illegal intrusion of the fundamental rights of individuals. The Constitution, under its aegis, has armed the constitutional courts with wide powers which the courts should exercise, without an iota of hesitation or apprehension, when the fundamental rights of individuals are in jeopardy. Elucidating on the said aspect, this Court in *Virendra Singh v. State of U.P.* [*Virendra Singh v. State of U.P.*, AIR 1954 SC 447] has observed : (AIR p. 454, para 34)

“34. ... We have upon us the whole armour of the Constitution and walk from henceforth in its enlightened ways, wearing the breastplate of its protecting provisions and flashing the flaming sword of its inspiration.”

46. While interpreting fundamental rights, the constitutional courts should remember that whenever an occasion arises, the courts have to adopt a liberal approach with the object to infuse lively spirit and vigour so that the fundamental rights do not

suffer. When we say so, it may not be understood that while interpreting fundamental rights, the constitutional courts should altogether depart from the doctrine of precedents but it is the obligation of the constitutional courts to act as sentinel on the qui vive to ardently guard the fundamental rights of individuals bestowed upon by the Constitution. The duty of this Court, in this context, has been aptly described in *K.S. Srinivasan v. Union of India* [*K.S. Srinivasan v. Union of India*, AIR 1958 SC 419] wherein it was stated : (AIR p. 433, para 50)

“50. ... All I can see is a man who has been wronged and I can see a plain way out. I would take it.”

47. Such an approach applies with more zeal in case of Article 32 of the Constitution which has been described by Dr. B.R. Ambedkar as “the very soul of the Constitution — the very heart of it — the most important Article”. Article 32 enjoys special status and, therefore, it is incumbent upon this Court, in matters under Article 32, to adopt a progressive attitude. This would be in consonance with the duty of this Court under the Constitution, that is, to secure the inalienable fundamental rights of individuals.”

(emphasis supplied)

- 19.** The observations afore-referred are in perfect sync with what is expected of Constitutional Courts. They are not restricted only to Articles 32 or 226 of the Constitution but lay down a talisman of sorts.
- 20.** The learned ASG also submitted that the Appellants were entitled to take an independent decision. This goes against their stand before the learned Division Bench. If we were to agree with this, the obvious import, then, would be that the Appellants were required to take a decision independently. As noted in Paragraphs 5 and 11 of the Impugned Judgment, the Appellants contended that the ECI was the competent authority to allot symbols and not the Election Authority. What then was the reason for the Appellants to shift stands? When read in conjunction with the finding at Paragraph 13 of the Impugned Judgment the Appellants' acts leave no shred of doubt in our minds, that circumstances forcing this Court to intercede have arisen. Let us for a moment, however, consider that the Appellants, as now sought to be projected, were entitled to arrive at an independent decision. Yet, such decision could not be whimsical, arbitrary or capricious. It would necessarily have to be : (a) in accordance with lawful discretion; (b) reasonable, and; (c) equitable and just. The Court would indicate that a genuine request, in the attendant facts, could not have been turned down only on the ground that there was no provision for the same, when such request could be acceded to (i) without any violation of law, and; (ii) is within the jurisdictional domain and capacity of the authority concerned, and; (iii) does not prejudice any other stakeholder, and; (iv) does not militate against public interest.

21. The High Court, being a Constitutional Court, is not, by any stretch of imagination, precluded from issuing a direction of the nature issued by it in the instant case, under Article 226 of the Constitution of India, more so when such direction does not violate any statutory provision. In *High Court of Tripura v. Tirtha Sarathi Mukherjee*, (2019) 16 SCC 663, this Court had answered, in the affirmative, as to the power of the High Courts under Article 226 to direct for actions, in a rare and exceptional situation, which do not find mention in the provisions concerned. Noticing and relying upon *High Court of Tripura (supra)*, in *Aish Mohammad v. State of Haryana*, 2023 SCC OnLine SC 736, we held:

“**24.** Moreover, the learned Civil Judge (Junior Division) found no ground to interfere with the adverse remarks yet granted liberty to the appellant to move for expunction thereof. The learned Civil Court erred in assuming that it had the power to do so, in the absence of any such provision in the Punjab Police Rules, 1934. **There may be cases where a High Court under Articles 226 or 227 of the Constitution of India or this Court in exercise of its constitutional powers may specifically direct** for fresh consideration of a representation, **even in the absence of specific provisions.** In *High Court of Tripura v. Tirtha Sarathi Mukherjee*, (2019) 16 SCC 663, the question that arose was whether, in the absence of a statutory provision, a writ petitioner could seek reevaluation of examination answer scripts? Answering, this Court held:

“**20.** The question however arises whether even if there is no legal right to demand re-valuation as of right could there arise circumstances which leave the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for re-valuation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. **The wide power under Article 226 may continue to be available even though there is no provision** for re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.

21. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for re-valuation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for re-valuation will the writ court exercise its undoubted constitutional

*powers? **We reiterate that the situation can only be rare and exceptional.***

(emphasis supplied)"

(emphasis supplied by us via bolding)

22. *Elections to any office/body are required to be free, fair and transparent. Elections lie at the core of democracy. The authority entrusted by law to hold/conduct such elections is to be completely independent of any extraneous influence/consideration. It is surprising that the Union Territory of Ladakh not only denied R 1 the Plough symbol, but even upon timely intervention by the learned Single Judge, has left no stone unturned not only to resist but also frustrate a cause simply by efflux of time."*

37. *We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions supra, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time¹⁰, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power per se of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order.*

39. *This case constrains the Court to take note of the broader aspect of the lurking danger of authorities concerned using their powers relating to elections arbitrarily and thereafter, being complacent, rather over-confident, that the Courts would not interfere. The misconceived notion being that in the ultimate eventuate, after elections are over, when such decisions/actions are challenged, by sheer passage of time, irreversible consequences would have occurred, and no substantive relief could be fashioned is just that - misconceived. However, conduct by authorities as exhibited herein may seriously compel the Court to have a comprehensive re-think, as*

to whether the self-imposed restrictions may need a more liberal interpretation, to ensure that justice is not only done but also seen to be done, and done in time to nip in the bud any attempted misadventure. We refrain from further comment on the Appellants, noting the pendency of the contempt proceeding."

9. In paragraphs 4 to 8 of the reported judgment in “*Kishorchandra Chhanganlal Rathod v. Union of India & Ors.*” (2024) 13 SCC 237, the Hon’ble Supreme Court observed as under: -

- “4. We, however, do not approve the view taken by the High Court that the order of delimitation of constituencies, issued in exercise of statutory powers under the Delimitation Act, is entirely insusceptible to the powers of judicial review exercisable under Article 226 of the Constitution.
5. Although Article 329 undeniably restricts the scope of judicial scrutiny re: validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, it cannot be construed to have been imposed for every action of delimitation exercise. If judicial intervention is deemed completely barred, citizens would not have any forum to plead their grievances, leaving them solely at the mercy of the Delimitation Commission. As a constitutional court and guardian of public interest, permitting such a scenario would be contrary to the Court's duties and the principle of separation of powers.
6. This understanding is supported by a three-Judge Bench decision of this Court in *Dravida Munnetra Kazhagam v. State of T.N.* [*Dravida Munnetra Kazhagam v. State of T.N.*, (2020) 6 SCC 548, para 14] where the Court was called upon to interpret Articles 243-O and 243-ZG of the Constitution, which mirror the aforementioned Article 329. Rejecting the contention that these provisions place a complete bar on judicial intervention, it was noted that a constitutional court can intervene for facilitating the elections or when a case for mala fide or arbitrary exercise of power is made out. Using this, the Court directed delimitation to be conducted for nine new districts. Recently, a three-Judge Bench of this Court in *State of Goa v. Fouziya Imtiaz Shaikh* [*State of Goa v. Fouziya Imtiaz Shaikh*, (2021) 8 SCC 401, para 67] , affirmed the ratio of the above-cited decision while discussing principles on Article 329(a), and rejected the contention which sought to prove it as per incuriam.
7. Therefore, while the Courts shall always be guided by the settled principles regarding scope, ambit and limitations on the exercise of judicial review in delimitation matters, there is nothing that precludes them to check the validity of orders passed by the

Delimitation Commission on the touchstone of the Constitution. If the order is found to be manifestly arbitrary and irreconcilable to the constitutional values, the Court can grant the appropriate remedy to rectify the situation.

8. *In order to prove that any kind of judicial intervention is fully prohibited, the respondents relied upon a Constitution Bench decision of this Court in Meghraj Kothari v. Delimitation Commission [Meghraj Kothari v. Delimitation Commission, 1966 SCC OnLine SC 12] . A closer examination of the aforementioned case, however, would show that the Court in that case restricted judicial intervention when the same would unnecessarily delay the election process. This is writ large from the following paragraph, where the Court explicated the reason behind adopting the hands-off approach: (SCC OnLine SC para 20)*

“20. In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under Sections 8 and 9 were published in the Gazette of India and in the Official Gazettes of the States concerned, these matters could no longer be reagitated in a court of law. There seems to be very good reason behind such a provision. If the orders made under Sections 8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Section 10(2) of the Act clearly demonstrates the intention of the legislature that the orders under Sections 8 and 9 published under Section 10(1) were to be treated as law which was not to be questioned in any court. (emphasis supplied)”

10. In "*Dravida Munnetra Kazhagam v. State of Tamil Nadu*" (2020) 6 SCC 548, the Hon'ble Supreme Court rejected the contention that the provisions under Articles 243-O and 243-ZG of the Constitution place a complete bar on judicial intervention. It was held that a Constitutional Court can intervene to facilitate the elections or where a case for *mala fide* or arbitrary exercise of powers is made out. The decision in "*Meghraj Kothari v. Delimitation Commission & Ors.*" (1966) SCC OnLine SC 12, was considered by

the Hon'ble Supreme Court in "*Kishorchandra Chhaganlal Rathod*". The Hon'ble Supreme Court held that the decision in "*Meghraj Kothari*" restricted the judicial intervention in cases where such intervention would unnecessarily delay the the election process. As we have noted in the order dated 8th January 2026, that interference in the matters like the present one would not impede the process of Municipal Elections. In the present case, without any inquiry or adjudication it is found on the face of the records that the nomination paper of the petitioner has been held invalid by applying a wrong provision of law. There is not even a need to reflect on the argument made on behalf of the respondent no.7 that the whole of the provisions under section 10 shall apply to a candidate seeking election as a Ward Councillor. This case is definitely of a unusual and exceptional kind. That was precisely the reason we granted interim order on 8th January 2026. In "*Tilottama Sanjay Kinkhede*", Mrs. Tilottama Sanjay Kinkhede and Mrs. Pragati Ajay Patil had contested the elections for Prabhag 14-D and Mrs. Pragati Ajay Patil was declared elected. In the background of this fact that Mrs. Pragati Ajay Patil was an elected Councillor, the scope of section 10(1D) of the Act of 1949 was considered by the Full Bench while delivering its opinion that the disqualification under section 10(1D) shall incur even where the elected candidate was found to have made illegal/unauthorized construction prior to his election. We need to keep in mind the fact-situation in which the decision in "*Tilottama Sanjay Kinkhede*" was delivered by the Full Bench. In the present case, there is however no dispute that the petitioner is not an elected Ward Councillor and his nomination paper has been held invalidated on the ground that he has incurred disqualification under section 10(1D). We have referred to the

judicial precedents of this Court whereunder a consistent view has been taken by this Court that the disqualification under section 10(1D) shall not incur to a candidate at the stage of his filing of nomination paper. Section 11 of the Act of 1949 makes it further clear that a Councillor shall cease to hold office and become disqualified for being a Councillor, if at any time during his term of office, he does the specified acts mentioned under sub-section (1) to section 10. There is no indication as to disqualification for contesting an election as Ward Councillor if the candidate is found to have made an illegal/unauthorize construction. Section 12 provides that the Commissioner of the Corporation shall refer the question to the Judge if any doubt or dispute arises whether a Councillor has ceased to hold office as such under section 11. It further provides that on a mere reference made to the Judge under sub-section (1) such Councillor shall not be deemed to be disqualified until the Judge after holding an inquiry in the manner provided by or under this Act determines that he has ceased to hold office. The order dated 31st December 2025 is patently illegal and is accordingly quashed. Consequently, the nomination paper submitted by the petitioner is held valid and we hereby direct the respondent-Election Returning Officer to include his name in the list of the candidates who are permitted to contest the election from Ward No.17A, Navi Mumbai Municipal Corporation.

11. Writ Petition No. 156 of 2026 is allowed in terms of prayers (a) and (b). The elections as per schedule shall continue with necessary arrangements, if any, to be made by the respondent nos.2, 3, 4 and 6. The said respondents shall do the needful by virtue of the order passed by this Court, holding that the nomination paper submitted by the petitioner is valid and his name shall be included in the list

of validly nominated candidates to contest the election from Ward No.17A of the Navi Mumbai Municipal Corporation.

12. Interim order dated 8th January 2026 is vacated.
13. Parties to act on an authenticated copy of this order.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]