IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 975 of 2017
Reserved on: 26.5.2017.
Decided on: 29th May, 2017

Raju Thakur ...Petitioner.

Versus

State Election Commission and others ...Respondents.

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting? [1] Yes

For the Petitioner: **Mr. B.C. Negi, Senior Advocate, with Mr. Nitin Thakur, Advocate.**

For the Respondents: **Mr. Dilip Sharma, Senior Advocate, with Ms. Nishi Goel, Advocate, for respondents No. 1 and 2.**
Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Mr. V.S. Chauhan, Additional Advocate Generals, Mr. Kush Sharma and Mr. Puneet Rajta, Deputy Advocate Generals, for respondent No.3.

Justice Tarlok Singh Chauhan, Judge:

Aggrieved by the order passed by respondent No.1 on 9.5.2017 (Annexure P-2) whereby the elections to the Shimla Municipal Corporation have been postponed, the petitioner has filed the instant writ petition for the following substantive reliefs:

"i) *Issue a writ of certiorari to quash Annexure P-2 i.e. office order dated 09.05.2017.*

[1] Whether reporters of the local papers may be allowed to see the judgment? yes

ii) *Issue a writ of mandamus directing the respondent authorities not to implement Annexure P-2 i.e. office order dated 09.05.2017.*

iii) *Issue a writ of mandamus directing the respondent authorities to conduct election on time and to constitute a duly elected Shimla Municipal Corporation on or before 04.06.2017.*

iv) *Issue a writ of mandamus directing the concerned authorities to initiate appropriate necessary disciplinary proceedings against erring officials and qua removal of the present incumbent heading respondent No.1."*

Certain undisputed facts may be noticed.

2. The previous elections to Municipal Corporation, Shimla were held in May, 2012 and the Municipal Corporation was constituted on 4.6.2012 with a term of five years which admittedly is due to expire on 4.6.2017, on which date a new elected body is required to be constituted as per the mandate of law.

3. This position is not even disputed by respondent No.1, who in its reply has admitted that the term of the Municipal Corporation is going to expire on 4.6.2017. However, it is submitted that the Deputy Commissioner, Shimla in the capacity of Electoral Registration Officer (respondent No.2) vide letter dated 30.3.2017 was asked by respondent No.1 to get the draft electoral rolls verified. The schedule for the preparation of electoral rolls was also issued and sent vide letter dated 11.4.2017. This exercise of

verification of the electoral rolls was started by respondent No.2 and thereafter even the draft electoral rolls were published on 11.4.2017 for calling objections. However, a very large number of complaints were received regarding errors in such rolls not only from the various political parties like Bhartiya Janta Party (BJP), Communist Party of India (Marxist) (CPM) (Annexures R-1/3 and R-1/4), but even the Municipal Corporation had passed unanimous resolution (Annexure R-1/5) requesting that the date for filing objections and suggestions be extended. In the meanwhile, this Court also in its order dated 27.4.2017 in CWP No. 815 of 2017 directed the acceptance of complaints on Sunday the 30th April, 2017 and on Monday the 1st May, 2017. This direction was fully carried out and it was still expected that the polls would be held timely.

4. The respondent No.2 completed the process and even published the final electoral rolls on 5.5.2017. However, the political parties as also certain interested persons were still not satisfied with the final electoral rolls and again made numerous complaints annexed with the reply as Annexures R-1/7 to R-1/14. Discrepancies in the electoral rolls were even highlighted by the print media. Thus, it became absolutely clear that there were still errors

in the electoral rolls and efforts to correct them in time had not succeeded.

5. It was with a view to check this situation that the Election Commission of India (office of the Chief Electoral Officer, H.P.) was requested vide letter dated 5.5.2017 to intimate the office of respondent No.1 the total number of voters enrolled in Legislative Assembly segments relatable to the area of Municipal Corporation, Shimla. The Chief Electoral Officer informed that total number of such electors as per their record as on 1.1.2017 was 85,546 and it appeared that this was much lower than the number of voters published in the electoral rolls for the Shimla Municipal Corporation on 5.5.2017 which was 88,167.

6. It was further averred that while some difference always remains, yet in the instant case the difference was substantial and moreover, 2200 applications were still pending decision. Therefore, taking into consideration the entirety of the facts and circumstances, respondent No.1 issued order dated 9.5.2017 (Annexure P-2) with a view to ensure that the elections are conducted in a free and fair manner as is expected of respondent No.1 and the same reads thus:

" *MUNICIPAL CORPORATION ELECTIONS*

STATE ELECTION COMMISSION HIMACHAL PRADESH

No. SEC-13-96/2017-III-764 dated the 9th May, 2017.

ORDER

Whereas this Commission had directed the Electoral Registration Officer-cum-Deputy Commissioner, Shimla district, to undertake the process for preparation of electoral rolls of the Municipal Corporation Shimla vide Notification No. SEC-13-96/2017-III-568-79 dated 11th April, 2017.

And whereas the Electoral Registration Officer-cum-Deputy Commissioner, Shimla district had prepared and notified the electoral rolls of Municipal Corporation Shimla on 5.5.2017, which shows the number of the electors as 88167. As this appeared on the higher side, the Chief Electoral Officer, H.P. (which is an office of Election Commission of India) was requested to inform the number of electors in the Legislative Assembly Constituency areas relatable to the Municipal Corporation Shimla. The CEO, HP had on 05.05.2017 informed the total number of electors enrolled by them was 85546 for the Municipal Corporation area. Considering that both the electoral rolls were prepared with reference to the same qualifying date i.e. 01.01.2017, the difference was on the higher side. Though some difference always occurs, but this difference is substantial, keeping in mind that further around 2200 applications were still pending with the Revising Authorities. A report was accordingly sought from the ERO-cum-Deputy Commissioner Shimla district.

And whereas the ERO-cum-Deputy Commissioner Shimla vide letter No. SML-LFA-Election(300)/2017-2033 dated 08th May, 2017 has reported inter-alia that the some areas which falls under Gram Panchayat(s) had got included inadvertently.

And whereas this Commission has also received many complaints from political parties, the Mayor/Councilors of Municipal Corporation Shimla and the public regarding discrepancies in the electoral rolls such as that the electors are not appearing in the relevant wards, address of the electors is incomplete, names of many eligible electors have been left out and many persons have got included in the electoral rolls who are not so entitled.

Keeping in view the above, the Commission has reached the conclusion that in the interest of fair and smooth elections, it will be appropriate to correct the electoral rolls. Therefore, the State Election Commission, in exercise of the powers vested in it under Article 243ZA of the Constitution of India, Section 9 of the Himachal Pradesh Municipal Corporation Act, 1994 read with Rule 24 of the Himachal Pradesh Municipal Corporation Election Rules, 2012 hereby directs special revision of the electoral rolls of Municipal Corporation Shimla as per following programme:-

Sr.No.	*Exercise to be undertaken*	*Period*
1.	*Verification of electors already enrolled in the final electoral rolls and receipt of claims and objections by the Revising Authorities.*	*15.05.2017 To 24.05.2017*
2,	*Preparation of list of voters whose names are proposed for addition/deletion/correction.*	*24.05.2017 To 29.05.2017*
3.	*Service of notices to such electors by the Revising Authorities.*	*30.05.2017 To 03.06.2017*
4.	*Disposal of cases by the Revising Authorities.*	*05.06.2017 To 12.06.2017*
5.	*Appeal by the aggrieved voters to the ERO-cum-Deputy Commissioner Shimla.*	*Within three days from the passing of order by Revising Authorities.*
6.	*Disposal of appeals.*	*Within three days from the filing of appeals.*
7.	*Preparation of supplementary lists-II and insertion of corrections*	*23.06.2017.*

	in the finally published electoral rolls.	

By Order
State Election Commissioner
Himachal Pradesh."

7. It was after the incorporation of Part IXA in the Constitution of India vide 74th Amendment Act, which came into force from 1.6.1993 that the municipalities as institution of self governance were given the constitutional status.

8. For adjudication of this lis, it is Article 243U of the Constitution of India that is of utmost importance and reads thus:

"***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 leave continued under, clause (1) had it not been so dissolved."

9. Section 5 of the Himachal Pradesh Municipal Corporation Act, 1994 prescribes the duration of Municipal Corporation and reads thus:

*"**5. Duration of Corporation**.- (1) The Corporation, unless sooner dissolved under section 404 of this Act, shall continue for five years from the date appointed for its first meeting.*

(2) An election to constitute the 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 where 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 this section for constituting the Corporation for such period.

> *(3) A Corporation constituted upon its dissolution 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."*

10. Section 9 of the Himachal Pradesh Municipal Corporation Act, relates to the Election to the Corporation and reads thus:

> *"**9. Election to the Corporation.**--(1) The superintendence, direction and control of the preparation of electoral rolls, delimitation of wards, reservation and allotment of seats by rotation for, and the conduct of all elections of the Corporation, shall be vested in the State Election Commission.*
>
> *(2) The Government as well as the Corporation shall, when so requested by the State Election Commission, make available to the Commission such staff [material and monetary resources] as may be necessary for the discharge of the functions conferred on the State Election Commission by sub-section (1).*
>
> *(3) The Commission shall frame its own rules and lay down its own procedure."*

11. The superintendence, direction and control of the preparation of electoral rolls, delimitation of wards, reservation and allotment of seats by rotation for, and the conduct of all elections to the Municipalities, are vested in

the State Election Commission referred to in Article 243K, subject to the provisions of the Constitution, the Legislature of a State has been conferred with power to make provision with respect to all matters relating to, or in connection with, elections to the Municipalities as would be evident from Article 243ZA of the Constitution, which reads thus:

> *"**243ZA. Elections to the Municipalities**.- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.*
>
> *(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.*

12. The State Legislature in furtherance to Part IXA of the Constitution has incorporated the Municipal Corporation Act, 1994 and Municipal Corporation Election Rules, 2012. Chapter-II therein deals with Delimitation and Reservation of Wards, Chapter IV deals with Electoral Rolls, Chapter VI deals with conduct of elections and Chapter VIII deals with counting of votes and declaration of results.

13. For the adjudication of this petition, the provisions relevant are contained in Rules 22, 23, 24 and 33, which read thus:

"**22.** ***Disposal of claims and objections****: (1) On the date, time and place fixed under the provisions of* ***rule 20,*** *the Revising Authority shall hear and* ***decide within 10 days or such shorter period as may be specified by the Commission*** *the claims and objections under the provisions of these rules, and shall record his decision in the registers in* ***Forms 7, 8 and 9*** *as the case may be.*

(2) Copy of the order relating to the objection shall be given on payment of Rs.15/- to the claimant against receipt and objector immediately, if he is present. Otherwise he can get the copy of the same on payment of Rs.25/- in cash against receipt.

(3) Any person aggrieved by an order passed under the provisions of ***sub-rule (1),*** *may, within 3 days from the date of the order, file an appeal to* ***Electoral Registration Officer****, who shall as far as practicable, within a week, decide the same.*

(4) If it appears to the ***Electoral Registration Officer*** *that due to inadvertence or error during the preparation of* ***draft*** *Electoral rolls, names of electors have been left out of the Electoral roll or the names of dead persons or persons who ceased to be or are not ordinarily resident in the ward or part thereof have been included in the Electoral roll* ***or certain voters have been shown in the wrong ward or polling station*** *and that remedial action is required to be taken under this sub-rule, shall* ***within seven days from the date of publication of draft Electoral roll*** *–*

(a) prepare a list of the name and other particulars of such electors;

(b) exhibit on the notice board of his office a copy of the list together with a notice as to the date(s) and place(s) at which the matter of inclusion of the names in Electoral roll or deletion of the names from the Electoral roll shall be considered; and

(c) after considering any verbal or written objection that may be preferred, decide whether all or any of the names may be included in or deleted from the Electoral roll.

***(23) Final publication of Electoral roll**. – (1) The Revising Authority as soon as it has disposed of all the claims or objections presented to it, shall forward the same alongwith the register of such claims or objections and the orders passed by it thereon to the **Electoral Registration Officer**, who shall cause the Electoral roll to be corrected in accordance with such orders or the orders passed on appeal by him under sub-rule (3) of rule 22 **and corrections consequential to sub-rule (4) of rule 22,** as the case may be, and shall publish the **final Electoral roll, on a date fixed by the Commission** by making a complete copy thereof available for inspection and display a notice thereof in Form-17 in his office and also in the offices of the Corporation and the Tehsil concerned.*

(2) On such publication, the Electoral roll with or without amendments shall be the electoral roll of the ward or part thereof and shall come into force from the date of its publication under this rule.

***(24) Special Revision of Electoral rolls.** – Notwithstanding anything contained in rule 23, the Commission may at any time, for the reasons to be recorded, direct a special revision for any ward or part thereof in such a manner as it may think fit:*

Provided that, subject to, other provisions of these rules, the Electoral rolls for the wards or part thereof as in force at the time of the issue of any such directions shall continue to be in force until the completion of the special revision, so directed.

***(33) Election Programme. – (**1) the State Election Commissioner shall frame a programme of general elections*

of the Corporation or a programme to fill up any casual vacancy in a Corporation or hold election to a Corporation which has been dissolved (hereinafter referred to as "election programme").

(2) The election programme shall specify the date or dates on, by, or within which –

(i) the nomination papers shall be presented;

(ii) the nomination papers shall be scrutinized:

(iii) a candidate may withdraw his candidature:

(iv) the list of contesting candidates shall be affixed;

(v) the list of polling stations shall be pasted:

(vi) the poll, if necessary shall be held on……..from …….A.M. to …….P.M. (the hours of poll shall not be less than six hours).

(vii) the counting in the event of poll, shall be done ……. (here time and place fixed for the purpose shall also be specified); and

(viii) the result of the election shall be declared.

(3) The election programme shall be published seven days before the date of filing of nomination papers by pasting a copy at the office of the Deputy Commissioner, Tehsil and Corporation and at such other conspicuous places in the Corporation as may be determined by the Deputy Commissioner in this behalf.

(4) The period for filing of nomination papers shall be three working days and the date of scrutiny shall be the next working day from the last date of filing of nomination papers. The date of withdrawal shall be the third working day from the date of scrutiny. The date for affixing the list of contesting candidates shall be the same as fixed for withdrawal of candidature. The list of polling stations shall be published approximately one month before the date of poll or on a date as may be specified by the Commission. The gap between the date of withdrawal and the date of poll

shall atleast be ten days and the day of poll shall preferably be a Sunday or any gazetted holiday.

(5) The Commission may be an order amend, vary or modify the election programme.

Provided that unless the Commission otherwise directs, no such order shall be deemed to invalidate any proceedings taken before the date of the order."

14. It would be noticed that the provisions of the local statutes as have been reproduced above, in fact, only follow what has otherwise been provided for by Article 243, more particularly Article 243U. Therefore, it is the interpretation of Article 243U, upon which the entire adjudication of the instant lis hinges.

15. Having set-out the relevant provisions of law, we would now deal with the rival contentions of learned counsel for the parties.

16. Mr. B.C. Negi, Senior Advocate, assisted by Mr. Nitin Thakur, Advocate, learned counsel for the petitioner would vehemently argue that the order dated 9.5.2017 (Annexure P-2) cannot withstand judicial scrutiny as it has been issued in violation of the provisions of Article 243U of the Constitution as interpreted by the Constitutional Bench of the Hon'ble Supreme Court in ***Kishansing Tomar*** vs. ***Municipal Corporation of the City of Ahmedabad and others (2006) 8 SCC 352.*** While, on the other hand, Mr. Shrawan Dogra, learned Advocate

General, assisted by Mr. V.S. Chauhan, learned Additional Advocate General would vehemently argue that it was on account of bonafide reasons as already set out hereinabove that the respondent No.1 was compelled to postpone the elections or else the same could not have been held in a free and fair manner as many of the electors would have been deprived of their right of franchise and vote to elect their representatives.

We have heard learned counsel for the parties and have gone through the material placed on record.

17. At the outset, we may notice that the petitioner has not raised or levelled directly or indirectly or even tactically any allegations of malafide and, therefore, we would presume that the impugned order was issued bonafidely.

18. However, nonetheless the question that still remains open for consideration is whether the action of the respondents conforms to the law laid down in ***Kishansing Tomar's*** case (supra).

19. In order to appreciate this point, it would be necessary to first refer to the decision itself.

20. Kishansing Tomar was the Chairman of the Standing Committee of the Ahmedabad Municipal Corporation, to which the elected body was constituted for

the relevant period pursuant to an election held in October, 2000 and its term was due to expire on 15.10.2005. He apprehended that the authorities may delay the process of election to constitute the new municipal body and therefore filed a writ petition before the Gujarat High Court on 23.8.2005. The Ahmedabad Municipal Corporation filed an affidavit before the High Court stating that it was the responsibility of the State Election Commission to conduct the elections in time. The State Election Commission in a separate affidavit in reply submitted that under the provisions of the Bombay Provincial Municipal Corporation Act, 1949, the State Government had issued a notification on 8.6.2005 determining the wards for the city of Ahmedabad by which the total number of wards had been increased from 43 to 45 and therefore, in view of the increase in the number of wards, the Commission was required to proceed with the exercise of delimitation of the wards of the city of Ahmedabad in accordance with the provisions of the Bombay Provincial Municipal Corporation (Delimitation of Wards in the City and Allocation of Reserved Seats) Rules, 1994. It was alleged by the Commission that it was required to consult the political parties to carry out the delimitation of the wards and that it would take at least six months time for completing the process of election and the

Commission could act only after the State Government issued the notification. The State Government produced a chart showing the detailed steps taken by the State Government at various stages culminating in the issue of notification dated 8.6.2005.

21. Kishansing Tomar contended before the learned Single Judge that in view of Article 243U of the Constitution, the authorities were bound to complete the process at the earliest and the elections should have been held before the expiry of the term of the existing Municipal Corporation. However, the learned Single Judge accepted the timeframe suggested by the State Election Commission and directed that it should be strictly followed and the process of elections must be completed by 31st December, 2005, and that no further extension for holding the elections would be permissible.

22. Aggrieved by the decision of the learned Single Judge, Sh. Kishansing Tomar filed LPA before the High Court and the learned Division Bench of the High Court upheld the order passed by learned Single Judge and further held that the timeframe given by the State Election Commission was perfectly justified and the Election Commission was directed to begin and complete process as

per the dates given in its affidavit and accordingly the L.P.A. was dismissed.

23. It was in this background that Kishansing Tomar approached the Hon'ble Supreme Court wherein the main thrust of his argument was that in view of various provisions contained in Part IXA of the Constitution of India, it was incumbent on the part of the authorities to complete the process of election before the expiry of the period of five years from the date appointed for first meeting of the Municipality. Whereas, the case of the State Election Commission was that every effort was made by it to conduct the elections before the stipulated time, but due to unavoidable reasons, the elections could not be held and the preparation of the electoral rolls and the increase in the number of wards had caused delay in the process of election and under such circumstances the delay was justified in conducting the elections.

24. The Hon'ble Supreme Court after setting out in detail the relevant provisions of the Constitution of India contained in Articles 243U, 243ZA, 243S and 243T as also the provisions of the Bombay Provincial Municipal Corporations Act, 1949 held as under:

> *"12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Seventy Fourth Amendment Act, 1992. The object of introducing these*

provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. These views were expressed by the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before the Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a Constitutional status to such bodies and to ensure regular and fair conduct of elections. In the statement of objects and reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated :

> *"In many States, local bodies have become weak and ineffective on account of variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-Government.*

Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for :

(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to :

(a) the functions and taxation powers, and

(b) arrangements for revenue sharing.

(ii) ensuring regular conduct of elections,

(iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

Accordingly, it has been proposed to add a new Part relating to the Urban Local Bodies in the Constitution to provide for ---

** ** ** **

(f) fixed tenure of 5 years for the Municipality and re- election within a period of six months of its dissolution."

13. The effect of Article 243-U of the Constitution is to be appreciated in the above background. Under this Article, the duration of the Municipality is fixed for a term of five years and it is stated that every Municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243-U states that election to constitute a Municipality shall be completed - (a) before the expiry of its duration specified in clause (1), or (b) before the expiration of a period of six months

from the date or its dissolution. Therefore, the constitutional mandate is that election to a Municipality shall be completed before the expiry of the five years' period stipulated in Clause (1) of Article 243-U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner. A Proviso is added to Sub-clause (3) Article 243-U that in case of dissolution, 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. It is also specified in Clause (4) of Article 243-U that 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.

14. *So, in any case, the duration of the Municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new Municipality is constituted in time and elections to the Municipality are conducted before the expiry of its duration of five years as specified in Clause (1) of Article 243-U.*

15. *The counsel for the respondents contended that due to multifarious reasons, the State Election Commission may not be in a position to conduct the elections in time and under such circumstances the*

provisions of Article 243-U could not be complied with stricto sensu.

16. *A similar question came up before the Constitution Bench of this Court in Special Reference No. 1 of 2002 with reference to the Gujarat Assembly Elections matter. The Legislative Assembly of the State of Gujarat was dissolved before the expiration of its normal duration. Article 174(1) of the Constitution provides that six months shall not intervene between the last sitting of the Legislative Assembly in one session and the date appointed for its first sitting in the next session and the Election Commission had also noted that the mandate of Article 174 would require that the Assembly should meet every six months even after dissolution of the House and that the Election Commission had all along been consistent that normally a Legislative Assembly should meet at least every six months as contemplated by Article 174 even where it has been dissolved. As the last sitting of the Legislative Assembly of the State of Gujarat was held on 3.4.2002, the Election Commission, by its order dated 16.8.2002, had not recommended any date for holding general election for constituting a new Legislative Assembly for the State of Gujarat and observed that the Commission will consider framing a suitable schedule for the general election to the State Assembly in November-December, 2002 and therefore the mandate of Article 174(1) of the Constitution of India to constitute a new Legislative Assembly cannot be carried out. The Reference, thus, came up before this Court.*

17. *Speaking for the Bench, Justice Khare, as he then was, in paragraph 79 of the Answer to the Reference, held : (SCC p.288)*

> "79. *However, we are of the view that the employment of the words "on an expiration" occurring in Sections 14 and 15 of the Representation of the People Act, 1951 respectively show that the Election Commission is required to take steps for holding election immediately on expiration of the term of the Assembly or its dissolution, although no period has been provided for. Yet, there is another indication in Sections 14 and 15 of the Representation of People Act that the election process can be set in motion by issuing of notification prior to expiry of six months of the normal term of the House of the People or Legislative Assembly. Clause (1) of Article 172 provides that while promulgation of emergency is in operation, Parliament by law can extend the duration of the Legislative Assembly not exceeding one year at a time and this period shall not, in any case, extend beyond a period of six months after promulgation has ceased to operate.....The aforesaid provisions do indicate that on the premature dissolution of the Legislative Assembly, the Election Commission is required to initiate immediate steps for holding election for constituting Legislative Assembly on the first occasion and in any case within six months from the date of premature dissolution of the Legislative Assembly."*

18. *Concurring with the foregoing opinion, Pasayat, J. in paragraph 151, stated as follows : (SCC p.322)*

> *"151. The impossibility of holding the election is not a factor against the Election Commission. The maxim of law impotentia excusat legem is intimately connected with another maxim of law lex no cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him." Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims, 10th Ed., at pp 1962-63 and Craies on Statue Law, 6th Edn., p.268.) These aspects were highlighted by this Court in Special Reference No. 1 of 1974. Situations may be created by interested persons to see that elections do not take place and the caretaker Government continues in office. This*

certainly would be against the scheme of the Constitution and the basic structure to that extent shall be corroded."

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

20. *The majority opinion in Lakshmi Charan Sen & Ors. Vs. A.K.M. Hassan Uzzaman & Ors. (1985) 4 SCC 689 held that the fact that certain claims and objections are not finally disposed of while preparing the electoral rolls or even assuming that they are not filed in accordance with law cannot arrest the process of election to the Legislature. The election has to be held on the basis of the electoral rolls which are in force on the last date for making nomination. It is true that Election Commission shall take steps to prepare*

the electoral rolls by following due process of law, but that too, should be done timely and in no circumstances, it shall be delayed so as to cause gross violation of the mandatory provisions contained in Article 243-U of the Constitution.

21. *It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election Commission would be justified in delaying the process of election after consulting the State Govt. and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the Municipality for such period.*

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

(underlining supplied by us).

25. Incidentally, both the parties have relied upon the aforesaid decision and would interpret it in a manner as would best serve them. It is here that the theory of precedents and binding effect of decision assumes significance.

26. It is more than settled that it is the ratio of a case which is applicable and not what logically flows therefrom. A case is only an authority for what it actually decides and not logically flows from it. Observations of court are not to be read as Euclid's theorems nor as provisions of

the statutes. These observations must be read in the context in which they appear and judgments of courts are not to be construed as statutes.

27. On the subject of precedents Lord Halsbury, L.C., said in **Quinn vs. Leathem, 1901 AC 495**:

> *"Now before discussing the case of Allen Vs. Flood (1898) AC1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."*

28. Lord Mac Dermot in **London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at P.761**), observed:

> *"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."*

29. Lord Reid in **Home Office. V. Dorset Yatch Co. (1970 (2) All ER 294)** said:

> *"Lord Atkin's speech..is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament."*

30. Lord Morris in **Herrington v. British Railways Board, (1972) 2 WLR 537** said:

> *"There is always peril in treating the words of a speech or judgment as though they are worlds in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."*

31. The following words of Lord Denning in the matter of applying precedents have become locus classicus.

> *"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*
> *xxx xxx xxx "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My*

plea is to keep the path to justice clear of obstructions which could impede it."

32. In **Ambica Quarry Works v. State of Gujarat and others (1987) 1 SCC 213**, the Hon'ble Supreme Court held that the ratio of any decision must be understood in the background of the facts of that case. Relying on **Quinn v. Leathem (1901) AC 495**, it has been held that the case is only an authority for what it actually decides, and not what logically flows from it.

33. In **Krishena Kumar v. Union of India and others (1990) 4 SCC 207**, the Constitution Bench of the Hon'ble Supreme Court while dealing with the concept of ratio decidendi, has referred to **Caledonian Railway Co. v. Walker's Trustees (1882) 7 App Cas 259:46 LT 826 (HL) and Quinn (supra)** and the observations made by Sir Frederick Pollock and thereafter proceeded to state as follows:-

"The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts

of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th edn., Vol.26, para 573)."

"The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi." *(Emphasis added)*

34. In **Islamic Academy of Education v. State of Karnataka (2003) 6 SCC 697**, the Hon'ble Supreme Court has made the following observations:-

"2.....The ratio decidendi of a judgment has to be found out only on reading the entire judgment. Infact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment."

35. In **Union of India v. Amrit Lal Manchanda and another (2004) 3 SCC 75**, it has been stated by the Hon'ble Supreme Court that observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. The observations must be read in the context in which they appear to have been stated. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

36. In State of **Orissa v. Mohd. Illiyas (2006) 1 SCC 275**, it has been stated by the Hon'ble Supreme Court thus:-

> *"12.....According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment."*

37. In **Oriental Insurance Co. Ltd. Vs. Smt. Raj Kumari and Ors.; 2007 (13) SCALE 113**, the well known proposition, namely, it is ratio of a case which is applicable and not what logically flows therefrom is enunciated in a lucid manner by the Hon'ble Supreme Court and it was observed thus:

> *"10.Relinace on the decision without looking to the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates –(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct," or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an, authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See:State of Orissa v. Sudhansu Sekhar Misra and*

Ors. (1970) ILLJ 662 SC and Union of India and Ors. V. Dhanwanti Devi and Ors. (1966) 6 SCC 44. A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathern (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in wich such expressions are found and a case is only an authority for what it actually decides."

38. In **Som Mittal v. Government of Karnataka (2008) 3 SCC 574** the Hon'ble Supreme Court observed that judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a judge uses a phrase or expression with the intention of emphasizing a point or accentuating a principle or even by way of a flourish of writing style.

39. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation (**See**: **Arasmeta Captive Power Company Private Limited and another v. Lafarge India Private Limited AIR 2014 SC 525**.)

40. Now, adverting to the judgment in ***Kishansing Tomar's*** case (supra), it would be noticed that the Hon'ble Supreme Court has categorically observed therein that the very purpose of inserting Part IXA in the Constitution by introducing various provisions as per 74th Amendment Act, 1992 was that in many States the local bodies were not working properly and even the timely elections were not being held and the nominated bodies were continuing for long periods. Even the elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities.

41. The Hon'ble Supreme Court also took into consideration the Statement of Objects and Reasons in the Constitution Amendment Bill relating to urban local bodies wherein it was recognised that the local bodies in many States had become weak and ineffective on account of a variety of reasons including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies were not able to perform effectively as vibrant democratic units of self-Government. One of the object for

introducing the aforesaid provision was to ensuring the regular conduct of elections.

42. In paragraph 14 of the aforesaid judgment, it has been specifically observed by the Hon'ble Supreme Court that duration of the Municipality is fixed as five years from the date of its first meeting and no longer and it is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new Municipality is constituted in time and elections to the Municipality are conducted before the expiry of its duration of five years as specified in Clause (1) of Article 243U.

43. It would further be noticed that a contention had been putforth by the respondent therein before the Hon'ble Supreme Court that due to multifarious reasons, the State Election Commission may not be in a position to conduct the elections in time and there could be instances where the provisions of Article 243-U like the case before the Hon'ble Supreme Court cannot be complied with stricto sensu.

44. The Hon'ble Supreme Court after considering the contention in light of the earlier Constitution Bench judgment in Special Reference No.1 of 2002 in (2002) 8 SCC

237, held that State Election Commission, should not put forward any excuse based on unreasonable grounds that the election should not be completed in time rather the Election Commission should try to complete the election before the expiration of the duration of five years period as stipulated in Clause (5). Any revision of electoral rolls should be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. It was further clarified that the Election Commission should complete the election process within the aforesaid time and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

45. Learned Advocate General would vehemently argue that the Hon'ble Supreme Court in paragraph 19 of its report has categorically observed that the State Election Commission should not put forward any excuse based on unreasonable grounds that the elections are not being postponed by taking into consideration the certain vested interests. Whereas, this is not the fact situation obtaining in the instant case as the elections have been postponed for reasons that are genuine and bonafide and not even doubted by the petitioner.

46. No doubt, the submission of the learned Advocate General appears to be attractive, however, in light of the Constitution Bench judgment of the Hon'ble Supreme Court in ***Kishansing Tomar's*** case (supra), we are unable to accede to his submission. The Hon'ble Supreme Court has in ***Kishansing Tomar's*** case (supra) in no uncertain terms makes it clear that it is only in case of certain activities such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the municipality, but they are exceptional circumstances and under no (*sic* other) circumstances would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. It has further clarified that even this should be an exceptional circumstance and should not be a regular feature to extend the duration of the municipality. Not only this, it has thereafter unequivocally held that going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects.

47. Reference in this regard can conveniently be made to para 21 of the report which though already stands

extracted above, but we still deem it proper to reproduce the same herein also and the same reads thus:

> *"21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election Commission would be justified in delaying the process of election after consulting the State Govt. and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the Municipality for such period."*

48. Notably, the judgment rendered in ***Kishansing Tomar's*** case (supra) was subject matter of consideration before three Judges of the Hon'ble Supreme Court in ***K.B.Nagur, M.D. (Ayurvedic)*** vs**. *Union of India (2012) 4 SCC 483*** and the ratio laid down therein (***Kishansing Tomar's)*** case (supra) was culled out in the following manner:

" 33. In Kishansing Tomar (supra), this Court while dealing with the question of revision of electoral rolls by the State Election Commission, noticed that the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in Clause (9) of Article 243-U of the Constitution and not yield to situations that may be created by vested interests to postpone elections beyond the stipulated time. The State Election Commission shall take steps to prepare the electoral rolls, by following due process of law, but that too, should be done in a timely manner and in no circumstances, shall the elections be delayed so as to cause gross violation of the mandatory provisions contained in Article 243U of the Constitution.

34. Further, while drawing a distinction between severe man-made calamities such as rioting, breakdown of law and order or natural calamities, which could distract the authorities from holding elections to the Municipality and other reasons for delay, this Court noted that the former are exceptional circumstances and under no other circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. This Court laid significant emphasis on the independence of the State Election Commission and expected all other authorities to fully cooperate, and in default, granted liberty to the State Election Commission to approach the High Court and/or the Supreme Court, as the case may be for relief/directions. However, no final or time-bound directions were issued, in the petition above-referred, because election to the Ahmedabad Municipal Corporation in that case had already been

held in the meanwhile."

(underlining supplied by us).

49. The aforesaid exposition of law culled out from the decision in ***Kishansing Tomar's*** case (supra) makes it evidently clear that while drawing a distinction between certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality and other reasons for delay, the Hon'ble Supreme Court had noted that former are exceptional circumstances and under no other circumstance would the Election Commission be justified in delaying the process of election.

50. Indubitably, the exercise of special revision of electoral rolls as is being undertaken by respondent No.1 does not fall within the former category so as to entitle it to postpone the elections. The provisions contained in Article 243U of the Constitution, makes it absolutely clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects.

51. Once the ratio of the aforesaid judgment is absolutely clear, then judicial comity, discipline, concomitance, pragmatism, poignantly point, per force to observe constitutional propriety and adhere to the decision

rendered by the Hon'ble Supreme Court in ***Kishansing Tomar's*** case (supra).

52. Judicial discipline requires decorum known to law which warrants that appellate directions should be followed in the hierarchical system of court which exists in this country. It is necessary for each lower tier to accept loyally the decisions of the higher tier. After all, the judicial system only works if someone is allowed to have the last word, and if that last word once spoken is loyally accepted. Therefore, we cannot deduce any other ratio of what was decided in ***Kishansing Tomar's*** case (supra) in view of the judgment subsequently rendered by the Hon'ble Supreme Court in ***K.B.Nagur's*** case (supra).

53. The exercise now being undertaken by respondent No.1 for revision of the electoral rolls cannot rest the process of election and should have been done timely. For it is incumbent upon respondent No.1 and other respondents to carry out the mandate of the Constitution and to see and ensure that a new Municipality is constituted in time and election to the Municipality are conducted before the expiry of its duration of five years as specified in Clause (1) of Article 243 (4). The revision of electoral rolls was required to be carried out in time by the respondents and if they have not been carried out within the time frame, then

the election has to be conducted on the basis of the existing electoral rolls.

54. In view of the above discussion, the action of the respondents in postponing the election, even though presumed to be bonafide, cannot be countenanced or upheld as the same is contrary to the Constitutional mandate of Article 243U as interpreted by the Constitution Bench of the Hon'ble Supreme Court in ***Kishansing Tomar's*** case (supra) and thereafter re-affirmed in ***K.B.Nagur's*** case (supra). Accordingly, the order passed by respondent No.1 on 9.5.2017 (Annexure P-2) is quashed and set-aside.

55. However, even after coming to the aforesaid conclusion we cannot accede to the third prayer made by the petitioner for constituting a duly elected Municipal Corporation on or before 4.6.2017 in view of the provisions contained in the Municipal Corporation Election Rules, 2012, more particularly Rule 33 thereof which provides for the election programme.

56. It is more than settled that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. Situations without precedent demand remedies without precedent. The extra-ordinary situation may call for extra-ordinary response and situational demands.

57. Therefore, in the peculiar facts and circumstances of the case we feel that the following directions shall subserve the ends of justice:

(i) The respondent No.1 shall forthwith and no later than 24 hours of the receipt of this judgment frame a programme for general elections of the Municipal Corporation and take all consequential action so as to ensure that the elections are held no later than 18.6.2017, even if this calls for some deviation of Rule 33 (supra).

(ii) The respondents shall ensure that the new body of duly elected representatives of the Corporation is constituted latest by 19.6.2017.

(iii) The election shall be conducted on the basis of the final electoral rolls published on 05.05.2017 subject to the proviso as contained in Rule 25 of the Himachal Pradesh Municipal Corporation Election Rules, 2012, which reads thus:

> ***"25. Correction of entries in Electoral rolls****.- If the* ***Electoral Registration Officer*** *on an application in* ***Form-6*** *or in* ***Form-18*** *made to him, or on his own motion, is, satisfied, after such inquiry as he thinks fit, that any entry in the Electoral roll –*

(a) is erroneous or defective in any particular;

(b) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident or is otherwise not entitled to be registered in that Election roll, he shall amend or delete the entry:

Provided that before taking any action on any ground under clause (a) or clause (b), the Electoral Registration Officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him:

*Provided further that an application under this rule at any time after the publication of the election programme under **rule 33** shall be made to the **Electoral Registration Officer** not later than 8 days before the last date fixed for the filing of nomination papers."*

(iv) The elected and nominated body of the existing Municipal Corporation shall not be permitted to be in office after 4.6.2017 and it shall further be the duty and responsibility of the State Government to put in place a proper mechanism so as to ensure that the working of the Corporation does not suffer on account of implementation of this judgment.

However, before parting, it is made clear that this judgment shall not be treated as a precedent.

58. The petition is disposed of in the aforesaid terms. The parties are left to bear their own costs. Pending application(s) if any, stands disposed of.

An authenticated copy of this judgment be supplied to respondent No.1 forthwith by the Court Master.

Tarlok Singh Chauhan),
Judge

(Chander Bhusan Barowalia)
Judge

29th May, 2017
(GR)