



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP No.12658 of 2026
in CWP No.8679 of 2026

CMP No.12663 of 2026
in CWP No.8682 of 2026

CMP No.12778 of 2026
in CWP No.8740 of 2026

Date of decision: 04.06.2026

1. CMP No.12658 of 2026 in CWP No.8679 of 2026

Vandana Kumari & Ors. ...Petitioners/Applicants.

Versus

State of H.P. & Ors. ...Respondents.

2. CMP No.12663 of 2026 in CWP No.8682 of 2026

Sanjay Chauhan. ...Petitioner/Applicant.

Versus

State of H.P. & Ors. ...Respondents.

3. CMP No.12778 of 2026 in CWP No.8740 of 2026

Nandini Sood & Ors. ...Petitioners/Applicants.

Versus

State Election Commission & Ors. ...Respondents.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting? Yes.

For the petitioner(s)/ applicant(s) in all petitions/applications : Mr. Anshul Bansal, Senior Advocate with Ms. Ruma Kaushik, Mr. Vikas Rathore, Mr. Nand Lal Thakur, Mr. Ajay Sipahiya, Mr. Mandeep Chandel, Mr.

Anshul Attri, Mr. Piyush Dhanotia, Mr. Ankit Dhiman, Mr. Udit Shaurya Kaushik, Mr. Tarun Mehta, Mr. Ankit Chandel and Mr. K.K. Chauhan, Advocates.

For
respondent(s)

the : **CWP No.8679 of 2026**

Mr. Anup Rattan, Advocate General along with Mr. Ramakant Sharma, Additional Advocate General and Mr. Raj Negi and Ms. Swati Draik, Deputy Advocates General, for respondents No.1, 2, 4 and 5-State.

Mr. Surinder K. Sharma, Advocate, for respondent No.3- State Election Commission.

Mr. Vivek Sharma, Advocate, for respondent No.6

CWP No.8682 of 2026

Mr. Anup Rattan, Advocate General along with Mr. Ramakant Sharma, Additional Advocate General and Mr. Raj Negi and Ms. Swati Draik, Deputy Advocates General, for respondents No.1 to 5-State.

Mr. Surinder K. Sharma, Advocate, for respondent No.8- State Election Commission.

CWP No.8740 of 2026

Mr. Surinder K. Sharma, Advocate, for respondent No.1- State Election Commission.

Mr. Anup Rattan, Advocate General along with Mr. Ramakant Sharma, Additional Advocate General and Mr. Raj Negi and Ms. Swati Draik, Deputy

Advocates General, for respondents
No.2 to 5-State.

Vivek Singh Thakur, Judge

As agreed, for involvement of adjudication of the common questions of fact and law, these applications are being decided by passing this common order.

2. It has been submitted by learned counsel for petitioners and learned Advocate General that pleadings in petition(s) and reply thereto be considered as pleadings and reply to these applications.

3. Main issue being agitated for passing an interim order and contested to oppose passing of interim order, is that in view of provisions of the Article 243R of the Constitution, as well as the Himachal Pradesh Municipal Corporation Act, 1994 (in short '**MC Act, 1994**') enacted as per mandate of the Constitution and the Himachal Pradesh Municipal Election Rules 2015 (in short '**Election Rules, 2015**'), framed thereunder, as to whether Member of Legislative Assembly (MLA), eligible to be a Ex-officio Member of concerned Municipality is entitled to vote for the election of President and Vice President of respective Municipality.

4. For pressing interim injunction against cast of vote by Ex officio Member in the election of President and Vice President of Municipalities, learned counsel for the petitioners have referred provisions of Article 243R of the Constitution, Sections 2(24), 10, 22, 25, 28, 30, 31, 32, 49 & 304 of MC Act, 1994 and Rule 2(d), 88, 89, 90, 91 & 92 of Election Rules, 2015.

5. Learned Advocate General, to oppose the prayer for interim direction, has also placed reliance upon Article 243R of the Constitution, Section 10(3) of MC Act, 1994 and Rule 89 of the Election Rules, 2015 with submission that in view of aforesaid provisions the Ex officio Members, i.e. MLAs, eligible to be Member of the respective Municipality, are entitled for casting vote to the election of President and Vice President of the Municipalities.

6. To substantiate his contention, learned Advocate General has placed reliance upon following judgments:-

- (a). ***Promila M. vs. State of Karnataka***, decided on 27.11.2015 in ***Writ Petition Nos.37111-37115 of 2015***, reported in ***AIR 2016 (NOC) 332 (KAR)*** [High Court of Karnataka at Bengaluru].
- (b) ***Ramesh Mehta vs. Sanwal Chand Singhvi & Ors., (2004) 5 SCC 409.***

- (c) **Rajkumar Jaiswal vs. State of Rajasthan & Ors.**, decided on 17.05.2018 in **D.B. Civil Writ No.23845 of 2017**, reported in **2018 SCC OnLine Raj 3047** [High Court of Rajasthan] which has been upheld by the Apex Court by dismissing **SLP(C) Diary No.38063 of 2018 (The State of Rajasthan & Ors. vs. Rajkumar Jaiswal)** vide order dated 26.11.2018.
- (d) **Sultan Ali & Anr. vs. Shahjaha & Ors.**, decided on 08.10.2015 in **WA Nos.200299-300/2015**. [High Court of Karnataka] which has been upheld by the Apex Court by dismissing **Special Leave to Appeal No.33975-33976 of 2015 (Shahjaha & Anr. vs. Sultan Ali & Ors.)** vide order dated 27.09.2016.

7. Learned Advocate General has submitted that restraining Ex officio Member, i.e. MLA, casting vote for the election of President and Vice President of the Municipalities would amount to passing of order against the Constitutional mandate as well as validly enacted Municipal Committee Act, 1994 especially Section 10(3) thereof, as it would amount to stay the provisions of the valid enactment without giving purposive interpretation to the said Act, whereas presumptions of constitutional validity in favour of the Act.

He has also submitted that provision of Section 10(3) of MC Act has been assailed after delay of 26 years, and therefore, petitioners are not only disentitled for interim protection, but petitions preferred by them are also liable to be dismissed.

8. To substantiate aforesaid plea, learned Advocate General has also referred ***Dr. Jaya Thakur and others vs. Union of India*** reported in ***(2024) 9 SCC 538***; ***Ashoka Kumar Thakur vs. Union of India and others*** reported in ***(2008) 6 SCC 1*** and ***Himachal Pradesh Marketing Board and others vs. Shankar Trading Co. Pvt. Ltd and others*** reported in ***(1997) 2 SCC 453***.

9. The constitutional validity of Section 10(3), as assailed only in CWP No.8682 of 2026, shall be adjudicated in the main petition, however, for granting or rejecting the interim prayer, we are of the considered opinion that an appropriate order can be passed without touching the constitutional validity of Section 10(3) of the MC Act, 1994, at this stage.

10. From provisions of the Constitution as well as Act and Rules, it is apparent that there are three types of Members of Municipality, first Elected Members, second Ex Officio Members, third Nominated Members under the Article 243 as well as Section

10 of the MC Act, 1994. Nominated Members have been debarred from right to vote, and in the Election Rules also, they have nowhere provided right to cast vote for any purpose whereas Ex Officio Members have been granted right to vote under Section 10(3) of the MC Act, 1994.

11. In Section 10(3) of MC Act, 1994, the voting right has been given to the Ex officio Member of the Municipality (i.e. MLA), but without any clarification or elaboration with regard to occasion for exercising the said right. At first instance, it appears that such voting right is absolute and can be exercised for election of President and Vice-President of Municipality. However, for discussion herein-after with reference of relevant provisions of HPMC Act, 1994 and HPM(Election) Rules, 2015, prima facie it appears that for distinct provisions of HP Act and Rules different than Rajasthan and Karnataka Act/Rules, it is not so in present case.

12. Article 243R(2)(b) provides that State Legislature may, by law, provide the manner of election of Chairperson of the Municipality. Therefore, it is within the jurisdiction and competency of the State Legislature to provide the manner of election of Chairperson of the Municipality.

13. Section 10(3) of the MC Act, 1994, does not provide the manner of election of Chairperson of the Municipality.

14. Rule 2(d) of Election Rules provides that Chairman of Municipality means any Member of Municipality, elected as President by the elected Members.

15. The manner of election of the President is provided in Section 22 of the Act and Chapter IX of Election Rules especially in Rules 89 and 90.

16. Section 22 of the MC Act provides that every Municipal Council or Nagar Panchayat shall elect one of its elected members to be President and another to be Vice President.

17. Rule 88 in Chapter VIII of Election Rules, 2015, provides provision for administration of Oath to the elected Members.

18. Chapter IX of the Election Rules deals with election of President and Vice President.

19. Rule 89 is a substantive provision defining the manner of election of President/Chairman wherein everywhere it has been stated that "Elected Members" amongst themselves, will nominate a candidate for the office of President by an elected Member as

proposer and seconded by another elected Member and elected Members, who have been proposed, shall accept the nomination of becoming a candidate of the office of President and it also provides that quorum for meeting of election shall be $3/4^{\text{th}}$ of total "Elected Members", where there are more than one candidate, as per Rule 88(9) & 88(10), poll shall be held by using Ballot Papers in Form 48.

20. Rule 90 provides the method of voting for election of President. No doubt, in Rule 90, the word has been used as 'Member', instead of 'Elected Member'. However, it is apparent from the scheme of Chapter IX that Rule 89 is a substantive provision and Rule 90 provides the procedure for the poll to the post of President, and therefore, words 'Member' used in Rule 90 has to be read with in context of the provisions of Rule 89 and it has to be construed as that 'Member' referred in Rule 90 is as an Elected Member of the Municipality who as per Rule 88 is Elector in election of President.

21. Rule 91 provides that provision for election of Vice President, in the same manner as provided for the election of President under Rules 89 and 90, which also indicates that Rules

89 & 90 are to be read conjectively, but not in isolation of each other.

22. Rule 92 again fortifies our opinion, which provides that requisition for No Confidence Motion in writing can be made by signing by not less than majority of its total 'Elected Members'.

23. In this regard, Section 25 of MC Act is also relevant to be referred, which also provides that resolution for motion of No Confidence against the President or Vice President, shall be required to be signed by not less than the majority of its 'total Elected Members' and motion of no confidence shall be carried by resolution passed by a majority of 'Elected Members'.

24. The person, who has a right to elect, has a right to remove also, and it is also applicable vice versa. On perusal of all these provisions together, it is evident that the right to remove has been specifically given to majority of 'Elected Members', but not all Members, including the Ex officio Members. Definition of Chairpersons in Rule 2(d) read with provisions of Chapter IX (Rules 89 to 92) also establish election of President and Vice President shall be by the 'Elected Members'. Non-inclusion of Ex officio Member from Elector Members is exclusion of Ex officio Member

from members entitled to elect or remove President or Vice President.

25. Contention of the learned Advocate General that, in case, it is construed that Ex officio Members are not entitled for casting vote to the election of President and Vice President, then this Constitutional and Statutory right given to them would be redundant and it will be in conflict with the Constitution and statutes enacted in consonance with constitutional mandate is ex facie appears to be misconceived as Constitution or Act nowhere specifically or impliedly mandates that the Ex officio Member must be allowed to vote for electing President and/or Vice President.

26. Perusal of Sections 28, 30, 31 & 32 clearly indicates that all Members, including Ex officio Members, are entitled to participate in meetings of Municipalities, as referred in these Sections, and they can cast votes, as specifically provided under Section 32 that, except as otherwise provided by this Act or Rules, all questions which come before any meeting of Municipalities, shall be decided by the majority of votes of the Members present. Here Ex officio Member has a right to vote.

27. In Section 28, 30, 31 & 32, the Legislature has used the word 'Member' only, but not 'Elected Members', and Section 32 also provides that except as otherwise provided right to vote is available to all Members, including Ex officio Members, meaning thereby Rule 88 has to be treated as a provision providing otherwise than as provided under Section 32 of the Act.

28. Section 49 also indicates that there are three types of Committees and in the meetings of those Committees, there may be an occasion where necessity arises to decide the issue on the basis of majority, then also all the Members, including Ex officio Members, are entitled for casting of vote.

29. The judgment passed in ***Pramila M.*** (*supra*) is based on the definition of 'Councilor' provided under Section 2(7) of the Karnataka Municipal Corporation Act, 1976, where it has been provided that Councilor means a Councilor referred to in Section 7. In Section 10 of Karnataka Act for election of Mayor & Deputy Mayor, it was provided that 'Corporation shall' elect one of the elected Councilors, elected to be Mayor and one another elected Councilor as Deputy Mayor, and it was not the provision that the 'elected Councilor' shall elect the Mayor or Deputy Mayor, but the provision was that the 'Corporation shall' elect. In view of these

provisions, it was held that Corporation includes all Members, who are eligible to cast vote, in view of the provisions of the said Act, and therefore, this judgment is not relevant in present case for different provisions of this Act.

30. In **Rajkumar Jaiswal** (*supra*) also, the judgment has been passed on the basis of the provisions of Section 2(1)(b) of the relevant Act, defining eligible Member means elected Members of Municipality, but shall not include nominated Members or Members disqualified, with further reference of Section 2(xxxvi), where Member has been defined as a person, who is lawfully Member of Municipality, which includes elected Members as well Ex officio Members, and further reference to Section 2(Lxxiii), defining 'whole number' or 'total number' used in the Act with reference to Members of Municipalities by giving meaning that total number of Member means all Members, excluding the Nominated Members, whereby Ex officio Members have not been excluded in the relevant provisions, therefore, this judgment is also not relevant here.

31. Case of **Sultan Ali** (*supra*) has been decided on the basis of provisions of the Karnataka Municipal Corporation Act, especially definition of Councilor provided under Section 2(6) of the

relevant Act, wherein it has been provided that once a person became a Member of the Municipal Council, he is a Councillor. Section 52(1) of the said Act confers expressed statutory rights on all Members of the Municipality Council, irrespective whether they elected or nominated to vote on any matter. Therefore, we are of the considered opinion that in the given facts and circumstances and distinct provisions of the H.P. Acts and Rules, this judgment is also not relevant here, particularly keeping in view the specific provisions of the MC Act, 1994 and Election Rules, 2015.

32. Judgment in **Ramesh Mehta** (*supra*), is based upon definition of expression 'whole number of Members' and 'total number of Members'. On the basis of said definitions it has been concluded by the Apex Court that all Members eligible to vote, including the elected Members as well as Ex officio Members, are to be taken into consideration for determining 2/3rd strength, required for moving No Confidence Motion. Therefore, this judgment is also of no help to the respondent-State, keeping in view the specific provisions of the MC Act, 1994 and Election Rules, 2015.

33. In the provisions of H.P. Municipal Act and Rules, not only there is no specific right given to ex-officio members to cast

vote of President and Vice-President of the Municipal Committee but impliedly and expressly ex-officio members have been excluded from the election process of the President and Vice-President as evident from definition of Chairman in Rule 2(d), Rules 88 to 92 of the H.P. Election Rules as well as Sections 22 and 25 of the H.P. Municipal Act.

34. The clarification dated 13.07.2023 issued by Urban Development Department, referring the opinion of Law Department, is also misconceived, as neither Law Department nor Urban Development Department is competent to interpret or clarify the meaning of provisions Election Rules, as Rule 87 specifically provides that in case of any question with respect to interpretation of the Rules, the opinion of the State Election Commission shall be final, and before issuing aforesaid clarification, no opinion of State Election Commission has been obtained.

35. Even otherwise, keeping in view the observations made hereinabove, though *prima facie*, we are of the opinion that for above discussed reason also, the clarification dated 13.07.2023 issued by Urban Development Department is not only self contradictory but is also contrary to and in conflict with the

provisions of the MC Act and Rules and thus, is liable to be quashed and ignored.

36. Resultantly, the operation of clarification dated 13.07.2023 issued by Urban Development Department is stayed.

37. From the above referred provisions of MC Act, 1994, and Election Rules, 2015, we are of the opinion that, *prima facie*, a case is made out in favour of the petitioners for granting interim protection as allowing the Ex officio Members to cast vote to the election of President and Vice President of the Municipalities would amount to breach of provisions of Rules 2(d), 88, 89, 90, 91, 92 of Election Rules as well as Sections 22 and 25 of the MC Act, 1994.

38. The Municipalities are local Self Government Institutions. The Legislative intent is clear that to maintain the supremacy of the mandate of the people with respect to local Self Bodies, and therefore, Ex-officio members have not been included in the eligible members along with elected members of the Municipalities to elect President/Vice-President in the Municipalities as inclusion of EX-officio members as an elector to the office of President/Vice-President would have amounted an interference in

the autonomy of the Local Self Government as well as breach of mandate of people for local self Government.

39. The plea of learned Advocate General is that wherever there is conflict of the Rules with the Act, the Act should prevail, is also not relevant as we have not found any provision of the Rules contrary or in conflict with Constitutional mandate or the provisions of the Act, as the Rules do not take away any right of Ex officio Members to cast their votes, wherever they have right to cast it, but Rules provide manner of election to the post of President or Vice President, which is in consonance with provisions of the HPMC Act as well as mandate of Article 243R(2)(b).

40. In view of above discussion, judgments referred by learned Advocate General, i.e. ***Dr. Jaya Thakur and others vs. Union of India*** reported in ***(2024) 9 SCC 538***; ***Ashoka Kumar Thakur vs. Union of India and others*** reported in ***(2008) 6 SCC 1*** and ***Himachal Pradesh Marketing Board and others vs. Shankar Trading Co. Pvt. Ltd and others*** reported in ***(1997) 2 SCC 453***, are of no help to the respondent-State.

41. Therefore, respondents are directed to conclude the election of President and Vice President of the Municipalities in

Himachal Pradesh by permitting the elected Members to elect President and Vice President according to their wish and majority opinion mandated by people of Municipalities, but without any right of Ex officio Members (Members of the Legislative Assembly) to cast their votes in the said process, however, subject to final outcome of the petition(s).

42. Applications are disposed of in above terms, subject to alteration/modification/vacation on motion.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge

4th June, 2026
(MS/Pardeep/Susheel)