



HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 23749 of 2026

Arvind Rathore

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)

: Imtiaz Husain

Counsel for Respondent(s)

: C.S.C., Satendra Kumar Singh

Court No. - 73

HON'BLE SIDDHARTH NANDAN, J.

1. Heard Shri Pawan Kumar Shukla, Advocate holding brief of Shri Imtiaz Husain, learned counsel for the petitioner, Shri Satendra Kumar Singh, learned counsel appearing on behalf of respondent no.4 and learned Additional Chief Standing Counsel on behalf of respondent nos.1 to 3.

2. By way of the present writ petition the following prayer has been made:

"I. A writ, order or direction in the nature of certiorari quashing the impugned order dated 25.05.2026 passed by Respondent No. 2 as well as consequential order dated 26.05.2026 passed by Respondent No. 3 (contained as Annexure No. 01 & 02 to the writ petition).

II. A writ, order or direction in the nature of mandamus directing the Respondent No. 4 to place on record a detailed and time-bound schedule for completion of the entire three tier Panchayat election process in the mandatory compliance of Article 243E and 243K of the Constitution of India."

3. Learned counsel for the petitioner submits that the impugned orders have been passed under Section 12(3-A) of the Act, 1947 which was subject matter of challenge in **Pram Lal Patel vs. State of U.P. reported in 2000 LawSuit ALL 290**, wherein a Division Bench of this Court found the said provision to be in violation of Section 243E and 243K. For ready reference paragraphs-29, 31, 34, 36 and 37 are reproduced below:

"29. According to [Article 243E](#), of the Constitution of India, the term of the panchayat is of a fixed tenure, i.e., five years from the date appointed for its first meeting and no longer unless sooner

dissolved under any law for the time being in force. In case of dissolution of the panchayat, the election of the panchayat must be held before the expiration of period of six months from the date of its dissolution, provided that where remainder for the period for which dissolution of panchayat would be constituted, is less than 6 months, it shall not be necessary to hold any elections under that Article for constituting the panchayat.

31. The constitutional flat contained in [Article 243E](#) is to the extent that every panchayat unless 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. The mandate is absolute. No panchayat can function for more than a period of five years. The words "shall and no longer" are of paramount importance. [Article 243E](#), leaves no option, by providing that an election to constitute the next panchayat shall be completed before the expiry of his duration specified in clause (1). A perusal of the said Article shows that word "shall" has been used, meaning thereby : that election must be held before the expiration of the term of the panchayat as specified in clause (1). The words "no longer" unequivocally mandates that fresh elections to constitute the next panchayat at any cost must be completed before expiry of the duration of five years of ongoing panchayat.

34. The State cannot claim any superior power in respect of the matters mentioned in Entry 5, of List II, which the Constitution does not permit. The exercise of the powers under Entry of List II, shall be subject to the provisions of Part IX, of the Constitution. After the constitutional amendments were made and Chapter IX, was substituted, the powers of the State Legislature has been circumscribed in respect of the matters falling under Chapter IX. The State Legislature cannot trench upon the field of [Article 243E](#) or [Article 243K](#), of the Constitution by deferring the elections of the panchayat beyond five years and usurping the power of State Election Commissioner.

36. What we have understood from the argument of learned Advocate General, is that as the Constitution remained silent with regard to unforeseen situations in which the elections cannot be held, the State Legislature which is vested with the power to make a law under [Article 243C](#), of the Constitution, to compose the panchayat, can fill up the gap by either issuing an Ordinance to defer the election. We are of the view that the contention is misconceived inasmuch as. Section 3, of the impugned Ordinance which seeks to substitute sub-section (3), in Section 12BB, of the U. P. Panchayat Raj Act, not only trench upon the field of [Article 243K](#), of the Constitution but also more or less nullify the powers of the State Election Commission. Under [Article 243K\(1\)](#) of the

Constitution, superintendence, direction and control of the preparation of electoral rolls and the conduction of all elections all to the panchayats is vested in the State Election Commission consisting of State Election Commissioner to be appointed by the Governor. Matters regarding issuance of the notification for the election appointing date or dates of the general election or by-election of the Pradhan or Up-Pradhan or members of the Gram Panchayat falls within the scope and ambit of the superintendence, directions and control of the State Election Commissioner, who is appointed by the Governor of the State under [Article 243K\(1\)](#), of the Constitution. By means of the substitution of clause (3), in Section 12BB of the U. P. Panchayat Raj Act, the State Government has taken upon itself, the task of issuing notification for the election appointing date or dates for the general election or by-election of the Pradhan or Up-Pradhan, or members of the Gram Panchayat with the consultation of the Election Commissioner. The edict of [Article 243K](#), is unambiguous and clear. All such powers are vested to the State Election Commissioner. The State Government cannot enact a law, which is inconsistent with any provisions of the Constitution much less [Article 243K](#), which encroaches upon the field, which is occupied by the State Election Commissioner.

37. In effect, the entire Ordinance suffers from repugnancy to the Constitutional provisions contained in [Articles 243E](#) and [243K](#) of the Constitution. Any attempt on the part of the State Government to nullify the effect of any provision of the Constitution deserves depreciation. If the State Government does not abide by the Constitutional mandate, by issuing an Ordinance, which is not in consonance with any provision of the Constitution of India, the State Government is to be squarely blamed for the delay, if any, in holding the election. We are definitely of the view that the entire Ordinance is ultra vires to the provision of [Articles 243E](#) and [243K](#), of the Constitution of India. The view which we have taken is fortified by the pronouncement of a Division Bench of Karnataka High Court in Professor B. K. Chandra-shekhar and another v. State of Karnataka. AIR 1999 Karn 461."

4. Learned Additional Chief Standing Counsel has submitted that similar controversy is engaging the attention in P.I.L. No.559 of 2026 (Ashish Kumar Singh vs. State of U.P. and others), wherein also the stand taken by the State was that since the Government of U.P. has appointed an O.B.C. Commission for determining the reservation aspects relating to the O.B.C. category; until the said exercise is completed the election of Gram Pradhan and Members of Gram Panchayat, cannot be held, as decision on the reservations would be part of the said elections. It is surprising that the

Government of U.P. had appointed O.B.C. Commission in pursuance of the certain directions of the Apex Court in **Writ-C No.981 of 2019 (Vikas Kishan Rao Gavli vs. State of Maharashtra)**, but till date the O.B.C. Commission has not been submitted its report.

5. Learned counsel appearing on behalf of State Election Commission submits that the electoral roll has already been published on 10.06.2026; and as such they are in a position to hold the elections and the State Government has to provide the necessary logistics for holding the elections; but due to the aforesaid stand of the State Government, there is an impediment in holding the elections.

6. From the perusal of the impugned orders dated 25.05.2026 and 26.05.2026, it is evident that the said orders have been passed in purported exercise of powers under Section 12(3-A) of the Act, 1947, which has been held to be unconstitutional and therefore these orders are apparently nonest.

7. In view of the aforesaid, learned counsel for the petitioner is permitted to implead the O.B.C. Commission as a party and considering the aforesaid, the orders impugned are nonest, the Pradhans cannot be permitted to continue as an administrator. However, as a last opportunity to the State Government, they are permitted to file a detailed affidavit bringing on record the report of the O.B.C. Commission, if any, and other details, clearly disclosing the time frame, in which, the elections shall be held, failing which respondent no.2 shall be present before the Court on the next date fixed. In the personal affidavit to be filed by the respondent no.2, he shall give explanation, as to under what circumstances, he has issued the impugned orders, when the provisions mentioned in the impugned order, has already been held to be unconstitutional by a Division Bench of this Court, failing which it can be construed that a prima facie contempt has been committed by him, with regard to the decision of Division Bench of this Court.

8. List this case on 13.07.2026 at 02:00 PM.

(Siddharth Nandan,J.)

June 25, 2026/S.Prakash