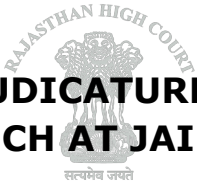




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 19497/2026

CNR: RJHC020940122026 | URN: CW / 40700U / 2026

Vinita Pooniya D/o Rajendra Prasad Pooniya, Aged About 25 Years, Resident Of Ward No. 14, Purana Power House Ke Pichhe, Khattoo, District Sikar, Rajasthan, Presently Elected Councillor From Ward No. 11, Nagar Palika Khatushyamji, District Sikar, Rajasthan.



-----Petitioner

Versus

1. State Of Rajasthan, Through Its Principal Secretary, Local Self Government Department, Government Secretariat, Jaipur, Rajasthan.
2. State Election Commission, Rajasthan, Through Its Chief Election Officer And Secretary, Government Secretariat Campus, Jaipur, Rajasthan.
3. District Election Officer (Municipal), Sikar, District Collector, Collectorate, Sikar, Rajasthan.
4. Returning Officer, Election Of Chairman, Nagar Palika Khatushyamji, (Additional District Magistrate, Sikar), Collectorate, District Sikar, Rajasthan.

-----Respondents

For Petitioner(s)	:	Major R.P. Singh, Sr. Adv. assisted by Mr. Ashish Punia, Mr. Abhiraj Singh Deval, Ms. Anchal Rathore, Mr. Rituraj Bhullar, Ms. Anushka Khandelwal and Mr. Sanwar Chaudhary
For Respondent(s)	:	Mr. Amit Kuri with Mr. Ayush Sharma

JUSTICE ANOOP KUMAR DHAND

Order

24/09/2026



1. The instant petition has been preferred with the following prayer:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(i) direct the respondents to forthwith open the duly sealed ballot box containing the 19 votes cast on 21.09.2026, undertake the counting thereof in accordance with the rules of the Rajasthan Municipalities (Election) Rules, 1994 and declare the result of the election for Chairman, Nagar Palika Khatushyamji in accordance with law;

(ii) quash and set aside any decision/order by which election process of Chairman, Nagar Palika Khatushyamji is stayed or deferred or interfered with in any manner whatsoever and direct the respondents to declare the results of Chairman, Nagar Palika Khatushyamji based on votes cast within the time frame published by the State Election Commission on 21.09.2026 immediately;

(iii) quash and set aside the communication dated 22.09.2026 (Annexure-7), to the extent that contradicts prayer (i) & (ii) wherein proposes to conduct/recommence the election for Chairman, Nagar Palika Khatushyamji on 25.09.2026;

(iv) restrain the respondents from permitting any fresh or additional voting in respect of the election for Chairman, Nagar Palika Khatushyamji after expiry of the polling period of notified by the State Election Commission vide Annexure-1;

(v) pass any other appropriate order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case."

2. By way of filing the instant petition, a prayer has been made for issuing directions to the respondent-authorities to open the duly sealed ballot box containing the 19 votes cast on 21.09.2026 and undertake the counting thereof in accordance with the provisions contained under the Rajasthan Municipalities (Election) Rules, 1994 (for short, 'the Rules of 1994') and declare the result





of election for the post of Chairman, Municipal Board, Khatushyamji, District Sikar, in accordance with law.

3. Learned counsel for the petitioner submits that the elections for the post of Chairman, Municipal Board, Khatushyamji, District Sikar were scheduled to be conducted on 21.09.2026, as per the programme declared by the State Election Commission. Counsel submits that as per the programme declared by the State Election Commission, the election for the post of Chairman, Municipal Board, Khatushyamji, District Sikar were supposed to be held on 21.09.2026 and the time for the voting process was fixed between 10.00 AM to 02.00 PM, and after completion of the voting process, the counting was required to be conducted on the same day, i.e. on 21.09.2026. Counsel submits that in all, the 20 members elected to the Municipal Board, Khatushyamji, District Sikar were supposed to cast their votes, but only 19 members cast their votes within the above stipulated timeline, and one member failed to cast her vote. Counsel submits that the concerned Returning Officer, on his own whim, initially extended the deadline for casting the votes from 02.00 PM to 02:30 PM, thereafter from 02:30 PM to 05.00 PM, and from 05.00 PM to 08.00 PM, from 08.00 PM to 10:30 PM and finally, the deadline for casting the votes was extended from 10:30 PM to 11:30 PM on the fateful day, i.e. on 21.09.2026. Counsel submits that thereafter, the concerned Returning Officer wrote a letter to the Secretary, State Election Commission seeking guidance by giving reference of an FIR registered by the husband of the member who failed to cast her vote. Counsel submits that the aforesaid FIR bearing No.181/2026 was registered with the Police Station Khatu





Shyamji, District Sikar, by the complainant Harlal, wherein it was alleged that his wife was elected from Ward No.10, Municipal Board Khatushyamji, District Sikar, but she was abducted and was unable to cast her vote. Counsel submits that the aforesaid FIR was registered after two hours and thirteen minutes of completion of the voting deadline, as prescribed under the original programme declared by the State Election Commission. Giving reference of the aforesaid FIR, guidance was sought by the concerned Returning Officer from the State Election Commission. Thereafter, the State Election Commission, vide impugned order dated 22.09.2026, directed the Returning Officer to stay the election process for the post of Chairman, Municipal Board, Khatushyamji, District Sikar and complete the same on 25.09.2026. Counsel submits that the aforesaid action on the part of the State Election Commission and Returning Officer in deferring the election process and re-counting the votes is contrary to provisions contained under the Rules of 1994. Counsel submits that a mechanism has been provided for conducting the elections of members and Chairman of the Municipality under the Rules of 1994, particularly Rules 24, 25, 36, 41, 52, 53, 78, 85, 86, 87 and 97 of the Rules of 1994.

4. Counsel submits that in contravention of the aforesaid statutory rules, the State Election Commission as well as the concerned Returning Officer have deferred the election process. The election process is required to be completed strictly in terms of the programme fixed by the State Election Commission, meaning thereby that the result of the election was required to be declared on the basis of the votes cast on the day of election as





per the original programme declared by the State Election Commission, i.e. on 21.09.2026. Counsel submits that under these circumstances, the impugned order passed by the respondent-authorities is not tenable in the eyes of law and the same is liable to be quashed and set aside.

5. Lastly, counsel for the petitioner argued that in case the practice adopted by the respondent-authorities is permitted to continue, the election process would become endless and will not come to its final conclusion. Counsel further submits that the process can be completed on the basis of the votes cast by the persons present at the polling station and willing to cast their votes within the timeline prescribed by the State Election Commission. Any person who was not present at the polling station within the aforesaid fixed timeline cannot be allowed to be defer the election process and cast their vote at a later point of time. Counsel submits that the act of the respondents-authorities, by misinterpreting the applicable provisions of law, falls within the ambit of legal malice.

6. In support of his arguments, counsel for the petitioner has placed reliance upon the judgments passed by the Hon'ble Apex Court in the case of **Kalabharati Advertising versus Hemant Vimalnath Narichania and Ors**, reported in **2010 (9) SCC 437** and **Ravi Yashwant Bhoir versus District Collector, Raigad and Ors**, reported in **2012 (4) SCC 407**.

7. Per contra, learned counsel appearing on behalf of the respondents opposed the arguments raised by the counsel for the petitioner and submitted that in all, the 20 members elected to the Municipal Board, Khatushyamji, District Sikar were supposed



to cast their votes on the polling day. Since one of the members of Ward No.10, Municipal Board Khatushyamji, District Sikar, Smt. Lakshmi Devi was abducted, therefore, she could not participate in the election process and cast her vote. Hence, awaiting her presence, the timeline for casting the votes was extended from 02.00 PM to 02:30 PM in terms of the provisions contained under the Rule 78(6)(xii) read with Rule 80 of the Rules of 1994. Counsel submits that thereafter, the time was further extended from 02:30 PM to 05.00 PM, from 05.00 PM to 08.00 PM, from 08.00 PM to 10:30 PM and finally, from 10:30 PM to 11:30 PM on the date of election, i.e. on 21.09.2026. Counsel submits that the entire aforesaid proceedings were recorded in the note sheet, which bears the signatures of the petitioner. Hence, the petitioner is estopped by her signatures, as she herself put her signatures, accepting the aforesaid view taken by the concerned Returning Officer. Counsel submits that this Court, in the case of **Ram Avtar Saini vs State of Rajasthan and Ors**, while deciding **SB Civil Writ Petition No.19285/2026**, vide order dated 21.09.2026 has taken a view that the newly elected Councilors are entitled to participate in the election process of Chairperson. No authority or individual has the right to deprive the elected members to cast their votes as per their own free will. Counsel submits that the Right to Vote is a statutory right and is a basic tenet of democracy. An individual cannot be deprived of his/her right to vote on the basis of the whims and fancies of another individual, or on account of any political interference or enmity. Counsel further submits that this Court was of the view that since the Chief Election Commissioner was seized of the matter, this Court



restrained itself to interfere with the election process and left it open with the State Election Commission to take a decision in accordance with law. Counsel submits that following the proposition of law as propounded by this Court in the case of **Ram Avtar Saini** (supra), the State Election Commission as well as the Returning Officer deferred the election process for the post of Chairman, Municipal Board Khatushyamji, District Sikar to 25.09.2026 due to the circumstances narrated above, i.e., since one of the elected members was abducted and was unable to cast her vote. Counsel submits that under these circumstances, by exercising the powers contained under Rule 78(6)(xii), the concerned Returning Officer extended the time period for casting the votes, hence, there is no infirmity in the impugned order passed by the respondent-authorities. Counsel submits that under these circumstances, interference of this Court is not warranted and the instant petition is liable to be rejected.

8. Heard and considered the submissions made at the Bar and perused the material available on the record.

9. Perusal of the record indicates that the process for election of Municipalities was initiated by the State Election Commission by issuing a notification dated 19.08.2026, wherein the entire election programme was declared. The public notice was issued on 27.08.2026 for filing of nominations for the election of members to the Municipalities. The last date for submission of nomination for election of members to the Municipalities was fixed as 31.08.2026. The dates for the aforesaid elections was declared in two phases, i.e. 09.09.2026 and 11.09.2026; and the date for counting the votes was fixed as 14.09.2026. On the basis of the





aforesaid election programme, as declared by the State Election Commission, further elections for the post of Chairperson of the Municipal Boards was supposed to be conducted w.e.f. 15.09.2026 by way of issuing public notice. The last date for filing the nomination was 16.09.2026 and the date for election in the entire State of Rajasthan was fixed as 21.09.2026. The time for the voting was fixed between 10.00 AM to 02.00 PM and the date for counting the votes was also fixed for 21.09.2026, immediately after polling.

10. In the instant case also, the polling started at 10.00 AM on the fateful day, i.e. on 21.09.2026. It has been apprised at Bar by both sides that in all, the 20 members elected to the Municipal Board Khatushyamji, District Sikar were supposed to cast their votes on the date fixed for polling as per the aforesaid programme declared by the State Election Commission, i.e. on 21.09.2026. It has also been apprised at Bar that till 02.00 PM on 21.09.2026, only 19 elected members had cast their votes and one of the members was absent.

11. The legislature has framed and enacted the Rules of 1994, and the entire mechanism for conducting municipal elections and declaring the results of the same has been provided therein.

12. Rule 24 of the Rules of 1994 deals with the provisions of polling. Similarly, Rule 25 deals with hours of polling. Rule 36 deals with the provision of voting. Rule 41 deals with the provision of closing of poll. Rule 52 deals with the procedure of postponement of poll in emergencies. Rule 53 deals with the adjournment of poll. Rule 78 deals with the election of Chairperson. Rule 85 deals with the procedure after publication of





list of contesting candidates. Rule 86 deals with the provisions of voting result of election. Rule 97 deals with the power of the State Election Commission for removal of difficulties, in case any difficulty arises in implementation of the Rules of 1994.

13. For ready reference, these rules are reproduced as under:

24. Poll.- In case of a contested election, a poll shall be taken on the date mentioned under rule 10.

25. Hours of poll.- The State Election Commission shall fix the hour at which polling shall commence and the hour at which it shall close.

36. Voting.- (1) Save as hereinafter provided, all voters voting at an election shall do so in person at the polling station provided for them under the rules.
(2) vote shall be given in person and no vote shall be given through a proxy.

41. Closing of poll.- (1) The presiding officer shall close polling station at the hour fixed in that behalf under rule 25 and shall not thereafter admit any voter into the polling station:

Provided that all voters present at the polling station before it is closed shall be allowed to cast their votes.

(2) If any question arises whether a voter was present at the polling station before it was closed, it shall be decided by the presiding officer and his decision shall be final.

52. Postponement of poll in emergencies.- The State Election Commission may, for sufficient cause be recorded in writing, postpone the date or extend the period fixed for polling in case of emergencies such as disturbance of the public peace, natural calamity etc. Where a poll is so postponed, the State Election Commission shall endeavour to conduct the poll as soon as practicable.

53. Adjournment of poll.- (1) If at any election it is not possible to take the poll at any polling station or





the proceedings at any polling station are interrupted or obstructed by riot, violence, disturbance of the public peace, natural calamity, the presiding officer for such polling station may adjourn the poll and shall forthwith inform the returning officer who shall in turn report to the Commission accordingly.

(2) Whenever a poll is adjourned the returning officer shall as-soon as may be with the previous approval of the State Election Commission, notify the date and hours during which and the polling stations at which the poll shall recommence and shall not count the votes cast at any such election until such adjourned poll shall have been completed.

78. Election of Chairperson:- (1) The office of the Chairperson of a Municipality shall be filled by a person chosen by elected members of the Municipality.

Explanation: "Elected member" means a member elected from a ward of the Municipality.

(2) A person shall be eligible for being chosen as, or holding the office of, a Chairperson, if he is qualified and is not disqualified under the provisions of the Act for being chosen as a member of the Municipality.

(3) An elected member shall also be eligible for being chosen as, or holding office, of a Chairperson.

(4) Notwithstanding anything contained in sub-rule (2) and (3), a person shall not be eligible for being chosen as, or for holding office of, a Chairperson, if he is a member of the Parliament or the State legislative Assembly or is a member or Chairperson of a Panchayati Raj Institution.

(5) A person or an elected member, as the case may be, shall not be qualified to be chosen to fill the post of the Chairperson unless,-

(a) in the case of an office of the Chairperson reserved for the Scheduled Castes or Scheduled Tribes or the Backward Classes, such person is a member of any of these Castes or Tribes or Classes, as the case may be;

(b) in the case of an office of the Chairperson reserved for a woman, such person belongs to the female sex; and

(c) in the case of an office of the Chairperson reserved for a woman belonging to the Scheduled Castes or Scheduled Tribes or the Backward Classes,





such person is a member of any of these castes or tribes or classes, as the case may be, and belongs to the female sex.

(6) The provisions of the rule 10 to 23, 56, 71 to 75, 86, 87 and 88 shall apply mutatis mutandis to the election of a Chairperson, subject to following modifications: -

(i) that the nomination paper for the office of a Mayor shall not be valid unless accompanied with a receipt of security deposit of Rs. 30000/- in case of general candidate and Rs. 15000/- in case of woman candidate and candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes;

(ii) that the nomination paper for the office of President shall not be valid unless accompanied with a receipt of security deposit of Rs. 20000/- in case of general candidate and Rs. 10000/- in case of woman candidate and candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes;

(iii) that the nomination paper for the office of Chairman shall not be valid unless accompanied with a receipt of security deposit of Rs. 10000/- in case of general candidate and Rs. 5000/- in case of woman candidate and candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes;

(iv) that a candidate shall not be deemed to be duly nominated for election of the office of a Chairperson unless the nomination paper is subscribed by an elected member as a proposer,

(v) the last date for filing of nominations shall be the second day after the day on which the result of elected members is declared, or if that day is public holiday, the next succeeding day, which is not a public holiday;

(vi) the date for scrutiny of the nomination papers shall be the day next to the last date for the filing of nominations, or if that day is public holiday, the next succeeding day, which is not a public holiday;

(vii) the date for withdrawal of candidature shall be the day next to the date of scrutiny of the nomination papers, or if that day is public holiday, the next succeeding day, which is not a public holiday;

(viii) the symbol shall be allotted to the contesting candidates immediately after the expiry of time fixed for withdrawal of candidature;





(ix) the design and form of the ballot papers shall be specified by the State Election Commission. The particulars on the ballot paper shall be in Hindi in Devnagri script;

(x) the poll shall be taken, if necessary, in the meeting of elected members to be held in the office of the Municipality on the third day after the date for the withdrawal of the candidature or in exceptional circumstances any other later day as may be fixed by the State Election Commission. The votes shall be counted and result shall be declared immediately after the conclusion of the poll;

(xi) the Returning Officer shall affix notice of meeting of elected members on the notice board of the municipality immediately after the expiry of time fixed for withdrawal of candidature stating therein,-

(a) 10.00 AM to 02.00 PM as the hours of poll;

(b) counting of votes shall be made immediately after completion of poll; and

(c) every contesting candidate, whether he is elected member or not, is entitled to attend the meeting to watch the proceedings of poll and counting of votes. However only elected member is entitled to cast his vote in the meeting;

(xii) the Returning Officer may extend time for poll, if necessary or may declare the poll as finally concluded earlier in case all the elected member holding office have voted;

(xiii) a person or elected person after chosen as Chairperson of a Municipality shall hold his office after taking oath before the Collector or his nominee in form prescribed under rule 69;

(xiv) references to Form 1, Form 2, Form 3, Form 4, Form 5, Form 6, Form 7, Form 8, Form 22A and Form 23 shall be construed as including references to Form 1A, Form 2A, Form 3A, Form 4A, Form 5A, Form 6A, Form 7A, Form 8A, Form 22AA and Form 23A respectively; and

(xv) reference to Schedule VI shall be construed as including reference to Form 22A-1.

85. Procedure after publication of list of contesting candidates.- (1) If there is only one candidate, there shall be no poll and the candidate so nominated shall be declared to have been duly





elected as the 1 [ViceChairperson] in the form prescribed in Schedule-V.

(2) If there are two or more of such candidates, an election shall be held by secret ballot and votes of the members present at the meeting shall be taken.

(3) If there is no validly nominated candidate, all proceedings in relation to election shall be commenced afresh.

86. Voting. - (1) The returning officer shall cause such arrangement to be made as will ensure the secrecy of the ballot.

(2) Returning officer will be assisted by Polling Officer to be appointed by District Municipal Election Officer.

(3) The ballot paper shall be in the form prescribed in Schedule- IV and shall be duly authenticated by the seal and signature of the returning officer. The names of the candidates shall be arranged on the ballot paper in the same order in which they appear in the list of contesting candidates. The polling officer shall tick mark the entry in the list of members before issuing ballot paper.

(4) Every member wishing to vote shall place a cross mark on the ballot paper against the name of the candidate whom he wants to vote by means of the instrument supplied for the purpose by the returning officer and by no other instrument.

(5) He shall then fold up the ballot paper so as to conceal his vote and deposit the same in a ballot box placed in the view of the returning officer.

(6) If the voter is illiterate or is unable to place a mark on the ballot paper owing to blindness or other physical infirmity the returning officer or another member chosen by the voter shall record the vote on the ballot paper in accordance with the wishes of the voter and fold it up so as to conceal the vote and the voter shall then himself or with the assistance of the Returning Officer insert the ballot paper into the ballot box.

(7) The ballot box shall be so constructed that the ballot papers can be introduced therein but cannot be withdrawn.

(8) Every person wishing to record his vote shall do in person can be introduced therein but cannot be withdrawn.





97. Removal of difficulties.- If any difficulty arises in the implementation of these rules, the State Election Commission or any authority directed by it, may by an order in writing give directions as may appear necessary to it for the removal of any such difficulty."



14. In terms of the mandate contained under Rules 24 and 25 of the Rules of 1994, the timeline for polling was fixed on 21.09.2026, between 10.00 AM to 02.00 PM. Rule 52 of the Rules of 1994 deals with the provision for postponement of poll in case of emergencies. Rule 52 of the Rules of 1994 states that the State Election Commission may, for sufficient cause to be recorded in writing, postpone the date or extend the period fixed for polling in case of emergencies such as disturbance of the public peace, natural calamity, etc. It further states that where a poll is so postponed, the State Election Commission shall endeavor to conduct the poll as soon as practicable.

15. Similarly, Rule 53 deals with adjournment of poll. It states that if at any election it is not possible to take the poll at any polling station or the proceedings at any polling station are interrupted or obstructed by riot, violence and disturbance of the public peace, natural calamity, the presiding officer for such polling station may adjourn the poll and shall forthwith inform the returning officer, who shall in turn report to the commission accordingly.

16. Sub Rule 2 of Rule 53 says whenever a poll is adjourned the Returning Officer shall as soon as may be with the previous approval of the State Election Commission, notify the date and hours during which and the polling stations at which the poll shall



recommence and shall not count the votes cast at any such election until such adjourned poll shall have been completed.

17. Rule 78(6)(xii) of the Rules of 1994 lays down that the Returning Officer may extend time for poll, if necessary or may declare the poll as finally concluded earlier in case all the elected members holding office have voted.

18. Now the questions that arise for consideration of this Court is whether the Returning Officer and the State Election Commission were right in postponing the polling and counting of the votes from 21.09.2026 to 25.09.2026? Whether such exercise conducted by them is legally permissible in terms of the provisions contained under the Rules of 1994?

19. Hon'ble Apex Court in the case of **N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency and Ors.**, reported in **1952 (1) SCC 94**, has held that once the election process has been initiated upon issuance of election programme by the Election Commission, there can be no interference by the Court in the election process.

20. It has been held by the Apex Court that having regard to the important functions which the legislature has to perform in democratic countries, it has always been recognized to be a matter of primary importance that elections should be concluded as early as possible, according to the time schedule prescribed by the Election Commission, and all controversial matters and all disputes arising out of the elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retracted or protracted.





21. In the instant case, this fact is not in dispute that the polling started at 10.00 AM on the original dated fixed for polling, i.e. on 21.09.2026, and deadline for polling was fixed as 02.00 PM. This fact is not in dispute that prior to expiry of the aforesaid deadline, out of the 20 elected members, only 19 elected members cast their votes and one of the members was absent.

22. It is worthy to mention here that there was no FIR or complaint lodged by anyone to the Returning Officer during the aforesaid period stating that one of the members was abducted and was unable to cast her vote.

23. As per the mandate contained under the Rules of 1994, the counting of votes was required to be conducted immediately after casting of the votes and closing of the polls in terms of the Rules 36 and 41 of the Rules of 1994. The respondent-authorities were not justified in adjourning the election process and deferring the same to a later date, as there existed no such situation as described under Rules 52 and 53 of the Rules of 1994.

24. As per the mandate contained under Rules 52 and 53 of the Rules of 1994, the polling process can be adjourned only in extreme circumstances where the polling is obstructed or interrupted by riots, violence, disturbance of public peace or natural calamity.

25. The instant case does not fall under any of the above circumstances as described under Rules 52 and 53 of the Rules of 1994. As per the mandate contained under Rule 78(6)(xi), the election process was supposed to be completed on the date fixed for polling, i.e. on 21.09.2026, within the time so fixed for the said purpose, i.e. between 10:00 AM to 02:00 PM.





26. With no stretch of imagination, it can be believed that one of the members who was not present at the time of polling was abducted, as there was no such complaint during the aforesaid hours. The FIR was registered after more than two hours of closing of the polling hours. Hence, under these circumstances, the respondent-authorities were duty bound to complete the election process on the basis of the votes cast on the fateful day, i.e. on 21.09.2026 between 10:00 AM to 02:00 PM, without waiting for the person who was absent at the time of polling.

27. In case the absent person, who is an elected member of Ward No.10, Municipal Board Khatushyamji, District Sikar, feels aggrieved and believes that she has been deprived of the opportunity to participate in the election process as she was not present at the time of polling for reasons beyond her control, she is at liberty to assail the election process by way of filing an election petition in terms of the provisions contained under the Rajasthan Municipalities Act, 2009 and the Rules of 1994.

28. Election process is a core tenet of a democratic setup and the election schedule fixed by the Election Commission should not be normally interfered with.

29. This Court is of the considered view that the election schedule fixed by the State Election Commission shall not be postponed under any circumstances, except in case of adverse situations like riots, natural calamity, law and order situation or any other *force majeure* condition, which makes it impossible to hold the election. Mere absence of a voter cannot be treated as an adverse situation.





30. The right to vote is a statutory right. It is to be exercised at the time, place and in the manner prescribed by the Election Commission. If a voter chooses not to remain present or fails to remain present at the time of polling, the election cannot be stalled or re-poll cannot be ordered at his/her instance. If such a plea is accepted, then there would be no end to elections and every election would be liable to be postponed on the ground that one or the other voter could not vote.

31. The concept of re-poll is provided under the Rules of 1994 only when the polling is vitiated by booth capturing, large scale rigging, failure of EVM, riots, violence, disturbance of public peace or natural calamity which affects the free and fair polling. Isolated absence of a single voter does not fall under any of these categories. A voter cannot claim his right to vote after expiry of time fixed for polling.

32. Rules 63 and 68 of the Rules of 1994 provide a complete mechanism for counting of votes and declaration of result. Rule 63 deals with counting of votes, and Rule 68 deals with the declaration of results. The aforesaid Rules are mandatory in nature. The Returning Officer has no option but to count the votes and declare the results, immediately after completion of polling.

33. In the instant case, the polling has already been completed as per the original programme declared by the State Election Commission, i.e. on 21.09.2026 between 10:00 AM to 02:00 PM. Therefore, the Returning Officer is under a statutory obligation to proceed with counting and declare the result as per Rules 63 and 68 of the Rules of 1994.



34. In view of the above, this Court deems it just and proper to dispose of the petition with the following directions:

i) The election schedule fixed by the State Election Commission shall not be postponed under any circumstances, except in case of adverse situations like riots, violence, disturbance of public peace, natural calamity etc.

ii) The absence of a single voter at the time of polling cannot be a ground for re-polling. The impugned order dated 22.09.2026 passed by the respondent-authorities stands quashed and set aside.

iii) The Returning Officer is directed to conduct the counting of votes and declare the results for the post of Chairman, Municipal Board, Khatushyamji, on the basis of the votes cast on 21.09.2026 between 10:00 AM to 02:00 PM, strictly in terms of Rule 63 and 68 of the Rules of 1994, preferably within 24 hours from receipt of certified copy of this order.

iv) The result so declared shall be subject to remedy of election petition, if available to the petitioner under the law.

35. The stay application and all pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

KuD/305

