

ITEM NO.34

COURT NO.2

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).16081/2022

(Arising out of impugned final judgment and order dated 02-09-2022 in CWJC No. 12514/2022 passed by the High Court of Judicature at Patna)

SUNIL KUMAR

Petitioner(s)

VERSUS

THE STATE OF BIHAR & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.135305/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.135306/2022-EXEMPTION FROM FILING O.T. and IA No.135308/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 19-09-2022 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE HIMA KOHLI

For Petitioner(s) Ms. Meenakshi Arora, Sr. Adv.
Mr. Amit Pawan, AOR
Mr. Anand Nandan, Adv.
Ms. Shivangi, Adv.
Mr. Hassan Zubair Waris, Adv.
Mr. Suchit Singh Rawat, Adv.
Mr. Aakarsh, Adv.

For Respondent(s) Mr. Ranjit Kumar, Sr. Adv.
Mr. Abhinav Mukerji, AOR
Mrs. Bihu Sharma, Adv.
Mr. Akshay C. Shrivastava, Adv.

Intervenor Mr. Gopal Sankaranarayanan, Sr. Adv.
Mr. Rahul Shyam Bhandari, AOR
Ms. Priya Dharshni G., Adv.
Ms. Ishita Chowdhury, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 A petition under Article 226 of the Constitution, being CWJC No 12514 of 2022, has been instituted by the petitioner before the High Court of Judicature at Patna to challenge a letter dated 1 April 2022, by which the Government of Bihar in the Urban Development and Housing Department, communicated to the State Election Commission that in view of the advise from the Law Department, there is no hurdle in initiating the process for holding municipal elections. The State Election Commission was, therefore, requested to initiate steps for holding the municipal elections. Besides challenging the communication dated 1 April 2022, the petitioner seeks a direction to the State and its authorities to implement the directions issued by this Court in **Vikas Kishanrao Gawali v State of Maharashtra**¹, the order dated 17 December 2021 in **Manmohan Nagar v The State of Madhya Pradesh & Ors**² and the order dated 19 January 2022 in **Rahul Ramesh Wagh v The State of Maharashtra & Ors**³. The orders of this Court are annexed at Annexures P-2, P-3 and P-4 to the SLP paperbook.

- 2 The provisions of Articles 243D and 243T of the Constitution in relation to the provisions of reservation in local self-government institutions have been considered by the Constitution Bench of this Court in **K Krishna Murthy v Union of India**⁴. In **Vikas Kishanrao Gawali** (supra), a three-Judge Bench has elucidated a three-fold test for compliance:
 - (i) Having a dedicated commission to conduct an empirical inquiry into the nature and implication of backwardness in relation to local bodies;

1 (2021) 6 SCC 73

2 Miscellaneous Application Diary No 31495 of 2021.

3 SLP(C) No 19756 of 2021

4 (2010) 7 SCC 202

- (ii) Specification of the proportion of reservation required in light of the recommendations of the Commission; and
 - (iii) Observance of the limit of 50% on reservations.
- 3 In the order dated 19 January 2022 (Annexure P-4), this Court directed that a similar dispensation shall be followed by all States and Union Territories, if they intend to conduct elections to local government bodies and provide for reservations for the OBC category. The Court observed:
- “We reiterate that similar dispensation be followed including regarding the compliance of triple test by all States or the Union Territories, if they intend to conduct election of local Government and provide for reservation for OBC category. In case, the State or the Union Territory is not in a position to fulfil the triple test requirement and the election to any of its local body cannot be postponed beyond the statutory period, the concerned (State) Election Commission ought to notify proportionate seats as open category seats, and proceed with the elections of the local bodies.”
- 4 In the present case, the Division Bench of the High Court, by an order dated 2 September 2022, called for a response by the State and by the other respondents within two weeks and a rejoinder, if any, within one week thereafter. The writ petition has been directed to be placed on 29 September 2022.
- 5 Subsequent to the order of the High Court dated 2 September 2022, a notification has been issued on 9 September 2022 under which the election process has been initiated. The municipal elections are to be held on 10 October 2022. A notification has been issued on 8 September 2022 in terms of which the Deputy Chief Councilor of Municipalities has been brought within the fold of reservation.

- 6 We have heard Ms Meenakshi Arora, senior counsel appearing on behalf of the petitioner, Mr Gopal Sankaranarayanan, senior counsel appearing on behalf of the intervenor and Mr Ranjit Kumar, senior counsel appearing on behalf of the State of Bihar.
- 7 Since the High Court is seized of the proceedings, we are of the considered view that it would be appropriate if the High Court takes up the petition at an early date.
- 8 Mr Ranjit Kumar states that the counter affidavit before the High Court would be filed during the course of the day. The counsel for the petitioner stated that since the petition involves a question of law, the petitioner does not consider it necessary to file an affidavit in rejoinder.
- 9 In this view of the matter, we permit the petitioner to mention CWJC No 12514 of 2022 before the Bench presided over by learned Chief Justice of the High Court of Judicature at Patna. The learned Chief Justice is requested to take up the petition at an early date considering the urgency. The learned Chief Justice may conveniently take up the petition during the course of the present week ending on 23 September 2022.
- 10 Since the matter has been relegated for decision before the High Court, we clarify that all the rights and contentions of the parties are kept open to be agitated before the High Court.
- 11 The Special Leave Petition is accordingly disposed of.

12 Pending application, including the application for intervention, stands disposed of.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(MONIKA DEY)
COURT MASTER