

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**WRIT PETITION (PIL) NO. 103 of 2020**

Pradeep Bhatt

.....Petitioner.

Vs.

State of Uttarakhand and others.

.....Respondents.

Sri Vikas Bahuguna, learned counsel for the petitioner.  
Sri Pradeep Joshi, learned Standing Counsel for the State of Uttarakhand.  
Sri Sanjay Bhatt, learned Standing Counsel for the State Election Commission.

Dated: 26<sup>th</sup> June, 2020

**Coram: Hon'ble Ramesh Ranganathan, C.J.  
Hon'ble R.C. Khulbe, J.**

**Ramesh Ranganathan, C.J. (Oral)**

**CLMA Amendment Application NO. 4096 of 2020**

The Amendment Application is ordered.

**CLMA Interim Relief Application No. 4174 of 2020**

2. By way of Interim Application No. 4174 of 2020, the petitioner seeks an interim order restraining the State Government, from spending the budget of District Planning, pending further orders in this writ petition.

3. Writ Petition (PIL) No. 103 of 2020 was filed to declare the provisions of "The Uttarakhand District Planning Committee (Amendment) Act, 2020" as *ultravires* the Constitution of India; to issue a writ of mandamus directing the respondents to conduct elections i.e. voting / counting of the District Planning Committee in the State of Uttarakhand, except District Haridwar, within two weeks; to issue a writ of certiorari to quash the order passed by respondents 2 and 3 dated 18.03.2018; and to issue a writ of mandamus directing respondents 2 and 3 to decide the petitioner's representation dated 04.06.2020.

4. The Uttarakhand District Planning Committee Act, 2007 was notified in the gazette on 16.07.2007. Section 2(b) thereof defines a

‘Committee’ to mean the ‘District Planning Committee’ constituted under Section 3 of the Act. Section 3(1) requires a District Planning Committee to be constituted in every district to consolidate the plans prepared by the Panchayats and Municipalities in the district, and to prepare a draft development plan for the district as a whole. Section 3(2) requires the Committee, in preparing the draft development plan to (a) have regard to (i) matters of common interest between the Panchayats and Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation, and (ii) the extent and type of available financial or other recourses; and (b) consult such institutions and organisations as the Governor may, by order, specify. Section 4 relates to ‘Composition of District Planning Committee’ and Section 9 to the ‘Functions of the Committee’. Section 12 requires the Committee, i.e. the District Planning Committee to finalize the draft development plan for the district. Section 13(1) stipulates that, for the purpose of implementation of the district plan, the State Government may, subject to the District Plan outlay ceiling, make district-wise provisions for money in its annual financial statement and, after due appropriation thereof, to allocate in a lump-sum to the district.

5. It is only after the draft development plan for the district is finalized by the District Planning Committee, constituted in terms of Section 3(1) of the 2007 Act, would the question of implementing such a plan, in terms of Section 13(1) of the said Act, arise.

8. Section 8 relates to ‘Election of the members of the District Planning Committee’ and, thereunder, the State Election Commission shall have superintendence, direction and control of the preparation of electoral rolls of, and the conduct of, elections of the members of the Committee in such manner as may be prescribed.

9. The complaint in the writ petition is that the State Election Commission is not holding elections for constitution of the District Planning Committees.

10. While the reasons for such elections not being held, as also the challenge to the validity of the ordinance, must necessarily await the counter-affidavits of the respondents, the limited question which we are required to consider, in the present Interim Relief Application, is the validity of the order passed by the State Government on 16.06.2020 in terms of which, for the Financial Year 2020-21, amounts were sanctioned, with the approval of the Governor, to each of the 13 districts, and power was conferred on the District Magistrates to utilize the sanctioned amounts.

11. Section 8-A was inserted into the 2007 Act by the Uttarakhand District Planning Committee (Amendment) Ordinance, 2020, which was notified on 12.06.2020. Section 8-A, as inserted by the 2020 Ordinance, reads thus:

**“8-A. Approval and application of District Plan in inevitable circumstances:**

Notwithstanding anything contained in this Act or any other Act when in opinion of the State Election Commission such emergency circumstances exist, that it is not feasible to conduct election then till such circumstances exists proposed district plan after approval of State Government may be approved and applied, in concerned District by District Magistrate of concerned district.”

12. Section 8-A enables the State Government to approve the proposed district plan and, after its approval, for the said plan to be applied in the concerned district by the District Magistrate concerned. Unlike Sections 3(2) and 12 of the 2007 Act, in terms of which a draft of the district plan is required to be prepared and finalized by the District Planning Committee, Section 8-A confers power on the State Government to approve the proposed district plan, and to empower the District Magistrates to apply these plans in their respective districts.

13. In view of the non-obstante clause in Section 8-A, the provisions therein will apply notwithstanding any other provisions of the 2007 Act or of any other Act. Section 8-A is, however, hedged by the pre-condition that the State Election Commission should form an opinion that emergency circumstances exist rendering it non-feasible to conduct elections. It is only on such an opinion being formed by the State Election Commission, and its being communicated to the State Government, would it be open to the State Government thereafter, till such emergency circumstances as opined by the State Election Commission continue to exist, to approve the proposed district plan, and to allocate funds for its implementation in the district.

14. When the matter came-up before us yesterday, we had asked Sri Sanjay Bhatt, learned Standing Counsel for the State Election Commission, to ascertain whether the State Election Commission had formed and communicated any such opinion to the State Government.

15. Today Sri Sanjay Bhatt, learned Standing Counsel for the State Election Commission, would submit that no such opinion was formed by the State Election Commission, much less sent to the State Government in terms of Section 8-A of the 2020 Ordinance, after the said Ordinance came into force on 12.06.2020.

16. As, in terms of Section 8-A of the 2007 Act inserted by the 2020 Ordinance, the pre-condition for exercise of power thereunder by the State Government is the formation of opinion by the State Election Commission, and the impugned order dated 16.06.2020 was issued even without seeking the opinion of the State Election Commission, there shall be an interim order restraining the State Government from spending the budget, allotted in terms of the district plan, pending further orders.

17. It is made clear that the order now passed by us shall not disable the State Government from seeking the opinion of the State

Election Commission and, in case the latter opines that emergency circumstances exist rendering it not feasible to conduct election, to take appropriate action, thereafter, in terms of Section 8-A of the Ordinance.

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18. Admit.

19. Both Sri Pradeep Joshi, learned Standing Counsel appearing for the State Government and Sri Sanjay Bhatt, learned Standing Counsel for the State Election Commission, seek three weeks' time to file their respective counter-affidavits.

20. Post after three weeks.

21. Let a certified copy of this order be furnished to the learned counsel for the parties, on payment of the prescribed charges, by 27.06.2020.

**(R.C. Khulbe, J.)**

26.06.2020

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**(Ramesh Ranganathan, C.J.)**

26.06.2020