

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF DECEMBER, 2020

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION NO. 35 OF 2020 (LB-RES-PIL)

BETWEEN:

1. MR. ANAND
SON OF MR. VITTAL DHUMAL
AGED ABOUT 45 YEARS
RESIDING AT GYANG BAWADI ROAD
JAYANAGAR COLONY
VIJAYAPURA - 586 101
2. MR. SAJJADE PEERA
SON OF MR IBRAHIM SAB MUSHRIF
AGED ABOUT 56 YEARS,
RESIDING AT "HAVELLI GALLI"
VIJAYAPURA - 586 101
3. MR. ALTAF ITAGI
SON OF MR. HAMEED SAB ITAGI
AGED ABOUT 41 YEARS
RESIDING AT KHAJA AMEEN DARGA
JAIL ROAD
VIJAYAPURA - 586 101
4. MR. ANIL SURYAVANSHI
SON OF MR. MANOHAR SURYAVANSHI
AGED ABOUT 41 YEARS,
RESIDING AT 'MANOFIRI'

GYANG BAWADI ROAD
NEAR KSTRC DEPOT
VIJAYAPURA - 586 101

5. MR. SYED IDRIS PASHA
SON OF MR S.R. AHMED BAKSHI
AGED ABOUT 48 YEARS
RESIDING AT HARIYALI GALLI
J.M. ROAD
VIJAYAPURA - 586 101

6. MR. MOINUDDIN BILAGI
SON OF MR. MOHAMMED GHOUSE
AGED ABOUT 44 YEARS
RESIDING AT TAJ BANDI ROAD
NEAR KHAJA NAGAR
VIJAYAPURA - 586 101

... PETITIONERS

(BY SHRI DIWAKARA K., ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY
PRINCIPAL SECRETARY
URBAN DEVELOPMENT DEPARTMENT
VIKAS SOUDHA
BENGALURU - 560 001

2. STATE OF KARNATAKA
UNDER SECRETARY
URBAN DEVELOPMENT
VIKAS SOUDHA
BENGALURU - 560 001

3. KARNATAKA STATE ELECTION
COMMISSION
KCCF BUILDING
CUNNINGHAM ROAD

BENGALURU - 560 001
REPRESENTED BY
CHIEF ELECTION COMMISSIONER

- 4 . REGIONAL COMMISSIONER
BELAGAVI REGION
BELGAUM
- 5 . VIJAYAPURA MUNICIPAL
CORPORATION
VIJAYAPURA - 572 101
REPRESENTED BY COMMISSIONER
- 6 . DEPUTY COMMISSIONER
VIJAYAPURA DISTRICT
VIJAYAPURA - 586 301

... RESPONDENTS

(BY SHRI VIKRAM HUILGOL, AGA FOR R1, R2, R4 & R6
SHRI K.N. PHANINDRA, SR. COUNSEL FOR
SMT. VAISHALI HEGDE, ADVOCATE FOR R3 &
R5 - SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 &
227 OF THE CONSTITUTION OF INDIA, PRAYING TO
DIRECT TO THE RESPONDENTS TO QUASH THE
NOTIFICATION DATED 24.07.2019 (ANNEXURE – A) AND
ETC.

THIS PETITION COMING ON FOR ORDERS
THROUGH VIDEO CONFERENCING THIS DAY, **CHIEF**
JUSTICE MADE THE FOLLOWING:

ORDER

Heard the learned counsel appearing for the petitioner, the learned Additional Government Advocate for the first, second, fourth and sixth respondents and the learned senior counsel appearing for the third respondent. The fifth respondent is a formal party considering the reliefs claimed in the petition.

2. This writ petition relates to the general election of the fifth respondent –Vijayapura Municipal Corporation which is constituted under the Karnataka Municipal Corporations Act, 1976 (for short, “the said Act of 1976”). The tenure of the Councilors of the fifth respondent ended on 14th July, 2019. The prayer in this petition is based on the mandate of clause (3) of Article 243U of the Constitution of India (for short, “the Constitution”). The mandate is that an election to constitute a Municipality shall be held before the expiry of its term which is of five years. Therefore, the election in the present case ought to have been completed before 14th July, 2019.

3. It appears that separate notifications were issued by the State Government in exercise of the powers under clauses (a) and (c) of sub-section (1) of Section 21 of the said Act of 1976. It is pointed out that writ petitions were filed before the Kalaburagi Bench challenging the said notifications. The writ petitions, being W.P. No.204314 of 2018 and other connected petitions were disposed of by an order dated 12th November, 2019 on the basis of a statement made by the Additional Government Advocate that the said notifications have been withdrawn and fresh notifications would be issued after taking note of the grievance of the petitioners in the said writ petitions. While disposing of the said writ petitions, a specific direction was issued by the learned Single Judge based on a decision of the Apex Court in the case of **KISHAN SINGH TOMAR V. MUNICIPAL CORPORATION OF THE CITY OF AHMADABAD AND OTHERS**¹ directing that the elections shall be held at the earliest by issuing re-notifications as expeditiously as possible. The prayer in this petition is firstly, for quashing and setting aside the notification dated

¹ (2006) 8 SCC 352

24th July, 2019 by which the Regional Commissioner, Belagavi Division was appointed as an Administrator of the fifth respondent. The second prayer is for a writ of *mandamus* directing the State Government to conduct the general elections of the fifth respondent within a period of six months.

4. There is an affidavit filed on behalf of the State Government of Shri Tushar Giri Nath, in charge Principal Secretary of the Urban Development Department. The affidavit records that the exercise of delimitation of wards has already commenced and in fact, the sixth respondent- Deputy Commissioner has submitted a proposal to the State Government on 7th July, 2020 containing the proposed delimitation. It is stated that on 1st October, 2020, the Hon'ble Minister of Urban Development Department granted approval to the said proposal. However, the State Government has relied on the provisions of the Karnataka Municipal Corporations (Third Amendment) Act, 2020 (for short, "the Amendment Act") which came into force on 3rd July, 2020. Section 2-A added

to Section 21 of the said Act of 1976 added by the Amendment Act provides for constitution of a Delimitation Commission. It is stated that constitution of Delimitation Commission is required to be made in respect of each Municipal Corporation and only thereafter, the process of delimitation of wards can be undertaken.

5. Thus, there is no dispute that the election of the fifth respondent ought to have been concluded before 14th July, 2019. As far as the applicability of the provisions of the Amendment Act to the overdue election of the Municipal Corporation is concerned, the legal position is no longer *res integra*. By the judgment and order dated 4th December, 2020 in W.P. No.10216 of 2020 and other connected matters, this Court, in paragraph 33 thereof held thus:

“33. Considering what we have held in the discussion made above, our conclusions are as under:

(a) We hold that the Karnataka Municipal Corporations (third Amendment) Act, 2020 is valid. But, it will have to be read down by holding that it will not apply to the elections of the Corporations which ought to have been held as per the mandate of Article 243U (3) (a) of the

Constitution before the Amendment Act came into force.

(b) If it is accepted that the overdue elections of the Corporations must be held by giving effect to the provisions of the Amendment Act, the provisions thereof will infringe clause (3) (a) of Article 243U of the Constitution. Hence, the provisions of the said Act of 1976 as amended by the Amendment Act will apply only to the cases of the Municipal Corporations in respect of which the term will expire after 3rd October 2020.”
(underline supplied)

6. Clause 3(a) of Article 243U of the Constitution mandates that the election must be completed before the expiry of the term of a Municipality. In this case, 17 months back, the term of the Corporation has expired. But there is no sign of an election being held. Therefore, the election of the fifth respondent will have to be held as per the said Act of 1976 as it stood prior to the Amendment Act coming into force. Hence, the State Government will have to complete the exercise of issuing a notification in terms of clause (a) of sub-section (1) of Section 21 of the said Act of 1976. As stated in the affidavit of the in charge Principal Secretary of the Urban Development Department, the process is at the final stage inasmuch as the draft proposal for delimitation

has been approved by the Hon'ble Cabinet Minister. Therefore, a reasonable time will have to be granted for issuing a notification under clause (a) of sub-section (1) of Section 21 of the said Act of 1976. A time bound schedule will have to be fixed for the preparation of electoral roll and for issuance of the notification under clause (c) of sub-section (1) of Section 21 of the said Act of 1976. For completing the work of delimitation, we propose to grant time of three weeks from today. For completing the process of issuing the notification under clause (c) of sub-section (1) of Section 21 of the said Act of 1976, we propose to grant a maximum time of two months from the date of the notification under clause (a) of sub-section (1) of Section 21 of the said Act of 1976.

7. The State Election Commission will have to complete the exercise of preparation of electoral roll of the wards within a period of three months from the date on which the notification of the delimitation of the wards is published. The schedule of election shall be announced by the State

Election Commission within a maximum period of 45 days from the date of the publication of the electoral roll.

8. It appears from the order dated 12th November, 2019 passed in W.P. No.204134 of 2018 and other connected matters that the notifications for delimitation and reservation not only pertaining to the fifth respondent were withdrawn, but the notifications in respect of the other Corporations were also withdrawn. It is brought to the notice of the Court that the elections of some of the Corporations/Municipalities in the State are not being held in accordance with the mandate of clause (3) of Article 243U of the Constitution of India. It is the duty of this Court to ensure that the constitutional mandate is followed by the State Election Commission and the State Government. We, therefore, direct the Registrar General to initiate *suo motu* writ petition for the issue of a writ of *mandamus* directing the State Government and the State Election Commission to hold elections to the Municipalities as per the mandate of clause (3) of Article 243U of the Constitution. The State Government and the State Election Commission shall be made parties to the *suo motu* writ petition which shall be

placed before this Court on 17th December, 2020 under the caption of 'Orders' at 10.30 a.m.

9. Hence, we dispose of the petition by passing the following order:

(i) We direct the State Government to complete the process of delimitation of wards and publish a notification as required by clause (a) of sub-section (1) of Section 21 of the said Act of 1976 within a maximum period of three weeks from today;

(ii) We direct the State to finally notify the reservations in terms of clause (c) of sub-section (1) of Section 21 of the said Act of 1976 within a maximum period of two months from the date on which the notification under clause (a) of sub-section (1) of Section 21 of the said Act of 1976 is published;

(iii) We direct the State Election Commission to complete the process of preparation of electoral roll of the wards within a period of three months from the date on which the notification under clause (a) of sub-section (1) of Section 21 of the said Act of 1976 is issued;

(iv) The election program/election schedule shall be published by the State Election Commission within a maximum of forty five (45) days from the date on which the electoral roll of the wards is published;

(v) The Registrar General is directed to initiate a *suo motu* writ petition for the issue of a writ of *mandamus* directing the State Government and the State Election Commission to hold elections of the Municipalities as per the mandate of clause (3) of Article 243U of the Constitution. The State Government and the State Election Commission shall be made parties to the *suo motu* writ petition which shall be placed before this Court on 17th December, 2020 under the caption of 'Orders' at 10.30 a.m.

(vi) The writ petition is disposed of with the above directions.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

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