

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17044 of 2021**

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1. Anju Devi Wife of Ramesh Kumar Resident of Mohalla- Chhota Bariyarpur, Near Hawaii Adda Chowk, P.O.- Motihari Court, P.S.- Chhatauni Motihari, District- East Champaran at Motihari, presently Chief Councilor, Nagar Parishad, Motihari (now up-graded to Nagar Nigam, Motihari), P.O. and P.S.- Motihari, District- East Champaran at Motihari.
2. Anshuman Nandan Singh Son of Late Amrendra Nandan Singh Resident of Nandan House, Ward No. 15, Sheohar, P.O. and P.S.- Sheohar, District- Sheohar, presently Chief Councilor, Nagar Panchayat, Sheohar (now up-graded to Nagar Parishad, Sheohar), P.O. and P.S.- Sheohar, District- Sheohar.
3. Garima Devi Sikaria Wife of Rohit Sikaria Resident of Ward No. 24, Lal Bazar, near Hazarimal, Dharmashala, Bettiah, P.O.- Bettiah, P.S.- Bettiah Town, District- West Champaran at Bettiah, the Ex- Chief Councilor, Nagar Parishad, Bettiah (now up- graded to Nagar Nigam, Bettiah), P.O. and P.S.- Bettiah, District- West Champaran at Bettiah.
4. Tarkeshwar Nath Gupta Son of Late Ram Narayan Prasad Gupta Resident of Mohalla- Gudari Bazar, Ward No. 20, P.O.- Samastipur, P.S.- Samastipur Town, District- Samastipur, presently Chief Councilor, Nagar Parishad, Samastipur (now up-graded to Nagar Nigam, Samastipur), P.O. and P.S.- Samastipur, District- Samastipur.
5. Sharique Rahman Son of Syed Atiqur Rahman Resident of Mohalla- Dharampur, Ward No. 3, P.O.- Samastipur, P.S.- Samastipur Town, District- Samastipur, presently Deputy Chief Councilor, Nagar Parishad, Samastipur (now up-graded to Nagar Nigam, Samastipur), P.O. and P.S.- Samastipur, District- Samastipur.
6. Sunaina Devi Wife of Nirmal Kumar Ray Resident of Mohalla- Laheriaganj, J.N. College, Gate, Ward No. 3, P.O.- Madhubani, P.S.- Madhubani Town, District- Madhubani, Presently Chief Councilor, Nagar Parishad, Madhubani (Now up- graded to Nagar Nigam, Madhubani), P.O. and P.S.- Madhubani, District- Madhubani.
7. Shyam Babu Singh Son of Pawan Kumar Singh Resident of Dhab Mohalla, Ward No. 15, P.O. and P.S.- Rosera, District- Samastipur, presently Chief Councilor, Nagar Panchayat, Rosera (now up- graded to Nagar Parishad, Rosera), P.O. and P.S.- Rosera, District- Samastipur.
8. Biresh Kumar Son of Sri Yugeshwar Paswan Resident of Mohalla- Kanti Kishu Nagar, P.O. and P.S.- Kanti, District- Muzaffarpur, presently Chief Councilor, Nagar Panchayat, Kanti (now up-graded to Nagar Parishad, Kanti), P.O. and P.S.- Kanti, District- Muzaffarpur.
9. Shila Devi Wife of Vijay Kumar Gupta Resident of Mohalla- Deodharpur, P.O. and P.S.- Tikari, District- Gaya, presently Chief Councilor, Nagar Panchayat, Tikari (now up- graded to Nagar Parishad, Tikari), P.O. and P.S.- Tikari, District- Gaya.
10. Raushan Ara Wife of Md. Mozahir Alam Resident of Ward No. 8, Simri Bakhtiyarpur, P.O.- Simri Bakhtiyarpur, P.S. Bakhtiyarpur, District- Saharsa, presently Chief Councilor, Nagar Panchayat, Simri Bakhtiyarpur (now up-



graded to Nagar Parishad, Simri Bakhtiyarpur), P.O. Simri Bakhtiyarpur, P.S.- Bakhtiyarpur, District- Saharsa.

11. Ruby Kumari Wife of Sri Binod Kumar Resident of Mohalla- Dularpur, Ward No. 3, P.O. and P.S. Haveli Kharagpur, District- Munger, presently Chief Councilor, Nagar Panchayat, Haveli Kharagpur (now up-graded to Nagar Parishad, Haveli Kharagpur), P.O. and P.S.- Haveli Kharagpur, District- Munger.

... .. Petitioners

Versus

1. The State of Bihar Through The Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary Urban Development and Housing Department, Government of Bihar, Patna.
3. The Director, Municipal Administration Urban Development and Housing Department, Government of Bihar, Patna.
4. The State Election Commission (Municipality) Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
5. The Secretary The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.

... .. Respondents

with

**Civil Writ Jurisdiction Case No. 17251 of 2021**

1. Belmati Devi Wife of Punyadev Paswan, resident of Village-Hariharpur, P.S.-Bodhgaya, Dist-Gaya, at present Chairman Nagar Panchayat Bodhgaya (Now upgraded Nagar Parishad Bodhgaya).
2. Manorma Devi, Wife of Sanjay Yadav, resident of Village-New Taridih Bhagalpur, P.S.-Bodhgaya, Dist-Gaya, at present Vice Chairman Nagar Panchayat Bodhgaya (Now upgraded Nagar Parishad Bodhgaya).

... .. Petitioners

Versus

1. The State of Bihar through Chief Secretary Govt. of Bihar, Patna.
2. The Addl. Chief Secretary Urban Development and Housing Department, Govt. of Bihar, Patna.
3. The Director Municipal Administration Urban Development and Housing Department, Govt. of Bihar, Patna.
4. The State Election Commission (Municipality) Sone Bhawan Birchand Patel Path, Patna through the State Election Commissioner, Patna.
5. The Secretary the State Election Commission (Municipality) Sone Bhawan Birchand Patel Path, Patna.

... .. Respondents

with

**Civil Writ Jurisdiction Case No. 18237 of 2021**



1. Shambhu Prasad S/o Late Lakhan Lal resident of Station Road, Warisaliganj, P.O. and P.S.- Warisaliganj, District- Nawada.
2. Shambhu Sharma S/o Sita Sharma resident of Bich Bazar, Ward No. 13, Hisua, P.S.- Hisua, District- Nawada.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar at Patna
2. The Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar at Patna.
3. The State Election Commission, Bihar through its Secretary at Sone Bhawan, Birchand Patel Path, Patna.
4. The Secretary, The State Election Commission, Bihar at Sone Bhawan, Birchand Patel Path, Patna.
5. The District Magistrate cum District Election Officer, Nawada
6. The Municipality Administration Directorate, Urban Development and Housing Department, Government of Bihar through its Director at Patna

... .. Respondents

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**Appearance :**

(In Civil Writ Jurisdiction Case No. 17044 of 2021)

For the Petitioners : Mr. S.B.K. Manglam, Advocate  
Mr. Awnish Kumar

For the Respondent State : Mr. Subhash Prasad Singh (GA3)

For State Election Commission : Mr. Girish Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 17251 of 2021)

For the Petitioners : Mr. P.K. Shahi, Sr. Advocate  
Mr. Ashok Kumar, Advocate

For the Respondent State: Mr. Kinkar Kumar, SC9

For the State Election Commission : Mr. Girish Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 18237 of 2021)

For the Petitioners : Mr. Sanjay Singh, Sr. Advocate  
Mr. Aditya Shankar Prasad, Adv  
Mr. Sanchay Srivastava, Advocate  
Mr. Ravi Prakash, Advocate  
Mr. Aalekh Anand, Advocate  
Mr. Rudrank Shivam Singh, Adv  
Mr. Praveen Kumar, Advocate

For the Respondent State : Mr. Subash Prasad Singh ( GA3 )

For the State Election Commission :Mr. Girish Pandey, Advocate

Mr. Sanjeev Nikesh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**and**

**HONOURABLE MR. JUSTICE MADHURESH PRASAD**

**C.A.V. JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)**



**Date : 17-01-2022**

The consequence of constitution of new municipal area within the meaning of Section 2(59) read with Section 6 of the Bihar Municipal Act, 2007 (Act in short) apropos jurisdiction of the local authority over such area immediately before constitution of such area after lapse of six months, by operation of Section 12(8) of the Act is the primordial issue, which these three writ applications involve. Competence of the State Government to designate an 'Administrator' in place of 'Board of Administrators' in exercise of power under Section 12(9) of the Act is another issue, which the petitioners have raised in the present batch of cases.

2. As all these matters involve identical legal issues and are founded on similar set of facts, with the consent of the parties, they have been heard together and are being disposed of by the present common judgment and order.

3. We have heard Mr. P.K.Sahi and Mr. Sanjay Singh, learned Senior Counsel and Mr. S.B.K. Mangalam, learned Counsel for the petitioners, Mr. Subhash Prasad Singh, learned G.A.-3 representing the State of Bihar and Mr. Girish Pandey and Mr. Sanjeev Nikesh, learned counsel for the State Election Commission.



4. Keeping in view the nature of controversy and the submissions, which have been advanced on behalf of the parties, it has been considered apt to notice at the very outset sub-sections (8) and (9) of Section 12 of the Act and Article 243U of the Constitution of India :

Section 12(8) and Section 12(9) of the Act

“12. (8) In a municipal area newly constituted, the local authority having jurisdiction over such area immediately before such area was constituted as a municipal area, shall continue to have jurisdiction and to perform its functions till such time, not exceeding six months from the date of the notification under Section 6, as may be necessary for holding elections.

*(9) If, for any reason, it is not possible to hold the general election of a Municipality before the expiry of the period of five years specified in sub-section (5), the Municipality shall stand dissolved on the expiration of the said period, and all the powers and functions vested in the municipal authorities under this Act or under any other law for the time being in force shall be exercised or performed, as the case may be, by such person or persons to be designated as Administrator or Board of Administrators as the State Government may, by notification, appoint.*



**Article 243-U of the Constitution :**

**Duration of Municipalities, etc.—**(1) Every Municipality, unless sooner 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:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Municipality shall be completed,—

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the



*remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved.”*

(underlined for emphasis)

5. C.W.J.C. No. 17044 of 20201 pertains to constitution of Motihari Nagar Nigam in place of Motihari Nagar Parishad; Sheohar Nagar Parishad in place of Sheohar Nagar Panchayat; Bettiah Nagar Nigam and Samastipur Nagar Nigam in place of Bettiah Nagar Parishad and Samastipur Nagar Parishad and, Madhubani Nagar Nigam in place of Madhubani Nagar Parishad, by way of up-gradation. Similarly, Rosera, Kanti, Pupri, Simri Baktiyarpur and Haveli Kharagpur Nagar Parishads have been constituted in place of Rosera, Kanti, Pupri, Simri Baktiyarpur and Haveli Kharagpur Nagar Panchayats. The notification for constitution of Nagar Parishad/Nagar Nigam by way of up-gradation was issued on 03.03.2021. The petitioners of C.W.J.C. No. 17044 of 2021 claim to be the elected office bearers of different municipalities, which have been upgraded, as noted above, to the larger area municipality by the said notification of the State Government dated 03.03.2021, issued under Section 6 of the Act.

6. The petitioners of C.W.J.C. No. 17251 of 2021 claim to be the elected office bearers of Nagar Panchayat, Bodh Gaya,



which has been upgraded with the constitution of Nagar Parishad, Bodh Gaya, by notification issued on 31.03.2021.

7. Petitioners of C.W.J.C. No. 18237 of 2021 claim to be the elected office bearers of Nagar Panchayat, Warsaliganj and Nagar Panchayat, Hisua, both of which have been upgraded to Nagar Parishad, Warsaliganj and Nagar Parishad, Hisua, by a notification issued on 11.03.2021.

8. The Secretary, State Election Commission, Bihar, Patna, through letter dated 01.09.2021 addressed to the Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, had made a request to appoint Administrators of such upgraded urban areas in respect of which period of six months, from the date of issuance of notification in that regard, had lapsed or was about to lapse in near future. The said communication dated 01.09.2021 is under challenge in all these applications.

9. Subsequently, by a notification dated 29.09.2021 issued by the Directorate of Municipal Administration under the Urban Development and Housing Department, the District Magistrates of the concerned districts have been appointed Administrators to exercise such powers and discharge such duties as are vested in the upgraded Nagar Nigams, viz. Nagar Nigam,



Sasaram; Nagar Nigam, Motihari; Nagar Nigam, Bettiah; Nagar Nigam, Madhubani and, Nagar Nigam Samastipur.

**10.** The petitioners of C.W.J.C. No. 17044 of 2021 have sought amendment in the relief portion of the writ application in order to challenge the said notification dated 29.09.2021 by filing I.A. No. 1 of 2021. Considering the nature of relief originally sought in the writ petition, I.A. No. 1 of 2021 filed in C.W.J.C. No. 17044 of 2021 is allowed. The petitioners are thus permitted to question the legality of the said notification dated 29.09.2021. The averments made in I.A. No. 1 of 2021 in C.W.J.C. No. 17044 of 2021 have been treated to be part of the pleadings in the main writ application.

**11.** Similarly in C.W.J.C. No. 17251 of 2021, I.A. No. 1 of 2021 has been filed for amendment in writ petition seeking quashing of the notification dated 29.09.2021, whereby an Additional Collector, nominated by the District Magistrate of the concerned districts, has been appointed as Administrator for exercise of powers and functions of the upgraded Nagar Parishads including the Bodhgaya Nagar Parishad.

**12.** I.A. No. 1 of 2021 filed in C.W.J.C. No. 17251 of 2021 is allowed, permitting the petitioners to question the legality of the notification dated 29.09.2021. The averments made in I.A.



No. 1 of 2021 in C.W.J.C. No. 17251 of 2021 have been treated to be part of the pleadings in the main writ application.

**13.** Mr. S.B.K. Mangalam, learned counsel appearing on behalf of the petitioners in C.W.J.C. No. 17044 of 2021 has submitted, with reference to the provisions under Section 12(9) of the Act that the said provision confers upon the State Government jurisdiction to designate 'an Administrator' or 'Board of Administrators'. He contends that instead of appointment of an Administrator, the State of Bihar ought to have appointed Board of Administrators, with the existing office bearers of the erstwhile municipal bodies before up-gradation, as members of the Board. He has argued that there is no justification in the State Government's decision to designate 'an Administrator', in place of 'Board of Administrators with existing office bearers of the erstwhile local authority', as the members who were yet to complete five years of their term. He has further submitted that there was no occasion for the State Election Commission to have requested the State Government to appoint an Administrator, which power is exclusively vested in the State Government under the Act.

**14.** He has further argued that the State Election Commission has failed in its duty to conduct the election of newly



constituted urban bodies within six months from the date of notification under Section 6 of the Act enacted to achieve the object behind 74<sup>th</sup> Constitutional Amendment. He has further submitted that in respect of Gram Panchayats, in the absence of election within the stipulated time, the State Government had constituted advisory committees for managing affairs of the Panchayats until constituted by a fresh election, which system ought to have been employed in case of the upgraded municipal areas also. He has relied on Supreme Court's decision in case of *Aswini Kumar Ghose v. Arabinda Bose*, (AIR 1952 SC 369) and *J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P.*, (AIR 1961 SC 1170), to contend that while interpreting statute, the Courts should always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should be given effect to. He contends that the provision has been made for appointment of Board of Administrators in sub-section (9) of Section 12 of the Act, with a definite purpose, which could not have been completely ignored by the State Government. He has reiterated that as the term of the office bearers including the petitioners had not come to an end, they ought to have been made part of Board of Administrators by



the State Government in exercise of power under sub-section (9) of Section 12 of the Act.

**15.** Mr. P.K.Sahi, learned Senior Counsel appearing on behalf of the petitioners in C.W.J.C. No. 17251 of 2021 has, while reiterating what has been argued by Mr. Mangalman, emphasized that in the absence of dissolution of the municipal bodies before their up-gradation., there could have been no occasion for the State Government to invoke the provisions under sub-section (9) of Section 12 of the Act. He has submitted that the sub-section (9) of Section 12 of the Act contemplates a situation where for any reason it is not possible to hold general election of a municipality before the expiry of period of five years as specified in sub-section (5) of Section 12 of the Act. He contends that a municipality stands dissolved, by operation of sub-section (9) of Section 12 of the Act on expiration of the period of five years, which creates a situation, where the State Government is required to designate an Administrator or the Board of Administrators by notification in exercise of the said power under sub-section (9) of Section 12 of the Act. He has contended that lives of the municipal bodies, to which the petitioners were elected, cannot be cut short to any period less than five years for which they were elected.



16. Mr. Sanjay Singh, learned Senior Counsel appearing on behalf of the petitioners in C.W.J.C. No. 18237 of 2021 has laid great emphasis on Article 243U of the Constitution of India and has submitted that every municipality, unless sooner dissolved under any law for the time being in force should be allowed to continue for five years from the date appointed for its first meeting. He has submitted that there is no dissolution of the municipal bodies to which the petitioners were elected before their up-gradation. He has contended that up-gradation of a municipal area cannot *ipso facto* lead to dissolution of a municipal area. He has argued that the provision under Section 12(9) of the Act and that under Article 243U of the Constitution of India should be read in juxtaposition to each other in a manner that the provision under the Act is reconciled with the constitutional mandate under Article 243U of the Constitution of India.

17. To bolster his contention Mr. Sanjay Singh, learned Senior Counsel has relied on Supreme Court's decision in case of ***Kishansing Tomar v. Municipal Corpn., Ahmadabad***, reported in **(2006) 8 SCC 352**.

18. Mr. Subhash Prasad Singh, learned G.A.-3 appearing on behalf of the State of Bihar, while defending the notifications designating/appointing Administrators of the municipal areas in



question has submitted that the State Government has option to either appoint an Administrator or a Board of Administrators, in exercise of power under sub-section (9) of Section 12 of the Act. He has further submitted that in any, event the petitioners' claim to be a part of Board of Administrators has no legal basis nor any justification at all.

**19.** From the above, it can be easily discerned that the summary of the arguments advanced on behalf of the petitioners of these matters, as noted above, is that the petitioners being elected office bearers of erstwhile local bodies before upgradation should have been allowed to be part of Board of Administrators, which ought to have been appointed by the State Government by notification in place of an Administrator as was done in case of Panchayats in the State of Bihar. Additionally, it is the argument of Mr. Sanjay Singh, learned Senior Counsel that by virtue of Article 243U of the Constitution of India, the term of five years of a municipal body cannot be curtailed and is sacrosanct.

**20.** In order to consider rival submissions made on behalf of the parties, as noted above, it would be apt to notice the definition of 'Administrator' in sub-section (2) of Section 2 of the Act, which reads as under : -

*(2) "Administrator" means any officer appointed by the State Government to exercise the*



*powers and perform the duties conferred or imposed on the Municipalities, the Empowered Standing Committee and the Chief Executive Officer, by or under this Act;*

**21.** Apparently, an Administrator is ‘an officer appointed by the State Government’ to exercise powers and performance of duties conferred or imposed on the municipalities, the Empowered Standing Committee and the Chief Executive Officer by or under the Act. It is not the petitioner’s case that they are officers appointed by the State Government. The admitted position is that they are elected representatives and not officers appointed by the State Government. On plain reading of Section 12(9) of the Act, it can be easily inferred that the State Government may by notification appoint ‘such person’ or ‘such persons’ to be designated as an Administrator or Board of Administrators. Expression “such person” or “such persons” therefore can only mean an officer or officers appointed by the State Government and can by no stretch of imagination mean an elected representative or elected representatives. This provision of the Act also does not cast any statutory obligation on the State to appoint (persons) to be designated as an Administrator, or as Board of Administrators. Nothing has been shown to us on behalf of the petitioner to persuade us that the notification issued by the State Government



appointing ‘officers appointed by the State Government as elected representatives of erstwhile local bodies such as the petitioners’ Administrators of different municipal areas is beyond jurisdiction, incompetent, legally infirm or otherwise bad in law. Further, no material has been shown to us to establish any legal right of these petitioners to continue as office bearers/representatives of their respective local bodies, which right can be said to have been infringed by the impugned action of the State Government.

**22.** The submission of Mr. Sanjay Singh, with reference to Article 243U of the Constitution of India, finds answer in the said provision itself read with sub-section (8) of Section 12 of the Act. Clause (1) of Article 243U of the Constitution of India states that every municipality, unless sooner 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. It is significant to note here that constitution of Nagar Parishads/Nagar Nigams in question by the State Government by way of up-gradation in exercise of power under Section 6 of the Act is not under challenge. Sub-section (8) of Section 12 of the Act in no uncertain terms declares that in a municipal area newly constituted, the local authority having jurisdiction over such area immediately before such area was constituted as municipal area shall continue to have



jurisdiction and to perform its functions till such time, not exceeding six months from the date of notification under Section 6 as may be necessary for holding elections. By operation of sub-Section (8) of Section 12 of the Act, the duration of local authorities having jurisdiction over the respective areas, after constitution of a new municipal area upon up-gradation, respectively came to an end on completion of six months from the date of notification under Section 6, as the life could not be extended beyond six months. In our opinion, thus, by operation of sub-section (8) of Section 12 of the Act, the local authority having jurisdiction over the area notified under sub-section (6) stood dissolved by operation of sub-section (8) of Section 12 of the Act.

**23.** At this juncture, it will be useful to notice Article 243U of the Constitution of India, which reads, ‘*Every Municipality, unless sooner dissolved under any law for the time being in force .....*’. The municipalities in question, in our opinion, stood dissolved by operation of sub-section (8) of Section 12 of the Act, which is the ‘law for the time being in force’, within the meaning of Article 243U of the Constitution of India, in respect of the State of Bihar.

**24.** The decision in case of *Kishansing Tomar* (supra), relied upon by Mr. Sanjay Singh, learned Senior Counsel, does not



support his contention that duration of the local authority shall not come to an end even after expiry of six months from the date of constitution of a municipal area by way of up-gradation., despite there being clear provision under sub-section (8) of Section 12 of the Act. In the said case, the appellant before the Supreme Court had approached the High Court of Gujarat seeking direction to the State of Gujarat and Gujarat State Election Commission to take all steps necessary for the purpose of holding elections for constituting the Municipal Corporation of the City of Ahmadabad, before the expiry of duration of the Municipal Corporation constituted pursuant to the elections previously held.

**25.** In the aforesaid background, upon examining the provisions of Article 243U of the Constitution of India and the provisions under the Bombay Provincial Act, the Supreme Court held, in case of ***Kishansing Tomar*** (supra), in paragraph 13 as under : -

*“13. The effect of Article 243-U of the Constitution is to be appreciated in the above background. Under this article, the duration of the municipality is fixed for a term of five years and it is stated that every municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243-U states that election to constitute a*



*municipality shall be completed—(a) before the expiry of its duration specified in clause (1), or (b) before the expiration of a period of six months from the date of its dissolution. Therefore, the constitutional mandate is that election to a municipality shall be completed before the expiry of the five years' period stipulated in clause (1) of Article 243-U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner. A proviso is added to sub-clause (3) of Article 243-U that in case of dissolution, the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the municipality for such period. It is also specified in clause (4) of Article 243-U that a municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued under clause (1) had it not been so dissolved.”*

**26.** It is true, on close reading of sub-section (8) of Section 12 of the Act that six months' duration has been given to the local authorities having jurisdiction over such a municipal area newly constituted, which may be necessary for holding elections.



For certain reasons, the elections could not be held. The petitioners have not raised any grievance in relation to inability to hold the elections of the newly constituted local bodies areas as stipulated in sub-section (8) of Section 12 of the Act. They rather want to continue to be a part of the body Administering the municipal area. In view of the clear language of sub-section (8) of Section 12 of the Act, it is legally impermissible to allow the petitioners to continue any more as the office bearers or representatives of the erstwhile municipal areas, which subsequently come to be upgraded.

**27.** For the discussions noted above, we do not find any merit in the contention that the petitioners should be allowed to continue upon expiry of six months after constitution of the respective municipal areas by way of up-gradation. The challenge to the communication dated 01.09.2021 of the State Election Commission requesting the State Government to appoint Administrator, in the Court's opinion, is completely misconceived. By the said communication, the Election Commission simply informed the State Government that elections for upgraded municipal areas could not be held within time because of the second wave of COVID-19 pandemic and the Panchayat General Elections in the State. It is peculiar to note that the petitioners have



not raised any grievance against failure on the part of the State Election Commission to hold elections within time. There is no pleading on record nor any case has been made out by the petitioners to counter the reasons assigned by the State Election Commission in its communication dated 01.09.2021 for not holding the elections. The petitioners are apparently interested more in continuing as part of the Board of Administrators of the respective municipal bodies, for which they are not eligible as per Section 2(2) of the Act, than holding of the elections of the newly constituted municipal bodies by way of upgradation.

**28.** Be that as it may, the Supreme Court, in case of *Kishansing Tomar* (supra), has observed that there may be man made calamities or natural calamities which could distract the authorities from holding elections of the municipalities, but they are exceptional circumstances. Whether it was an exceptional circumstances which prevented the State Election Commission from holding elections in question is not a subject matter for this Court to consider in the present cases. It is, however, observed that the State Election Commission must ensure early holding of election to the municipal bodies.

**29.** The issue framed in the very opening paragraph of this judgment stands answered accordingly.



**30.** The reliefs, which the petitioners have sought, in our opinion, are not tenable. These writ applications are accordingly dismissed but with the observation as noted above.

**31.** There shall, however, be no order as to costs.

**(Chakradhari Sharan Singh, J)**

**Madhuresh Prasad, J :** I agree.

**(Madhuresh Prasad, J)**

Pawan/-

<b>AFR/NAFR</b>	NAFR
<b>CAV DATE</b>	08.12.2021
<b>Uploading Date</b>	27.01.2022
<b>Transmission Date</b>	N/A

