
**Anugrah Narayan Singh Vs State of U.P. and Others
Hari Nath Vs
State of U.P. and Others**

Writ - C No"s. - 65013 and 69796 of 2011

Court: Allahabad High Court

Date of Decision: Dec. 13, 2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 21 Rule 1, Order 21 Rule 106, Order 21 Rule 2, 36, 37#Constitution of India, 1950 " Article 156, 172, 172(1), 179, 243#Uttar Pradesh Municipal Corporation Act, 1959 " Section 15, 15(1), 15(3), 8(4)#Uttar Pradesh Municipalities Act, 1916 " Section 10A(4)

Citation: (2011) 12 AHC CK 0181

Hon'ble Judges: Sunita Agarwal, J; Ashok Bhushan, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Hon"ble Ashok Bhushan, J.

We have heard Sri Ravi Kiran Jain and Sri U.N. Sharma, learned Senior Advocates appearing for the

petitioner in writ petition No. 65013 of 2011, Sri Niraj Tripathi, Learned Counsel for the petitioner in writ petition No. 67991 of 2011 and Sri

Vivek Singh, Learned Counsel for the petitioner in writ petition No. 69796 of 2011. Sri S.G. Hasnain, learned Additional Advocate General has

appeared for the State respondents in the aforesaid writ petitions.

2. Writ petition No. 65013 of 2011 has been filed by the petitioner on 14.11.2011, who is a sitting, Member of Legislative Assembly from

constituency Allahabad North praying for the following reliefs:

(a) issue a writ, order or direction holding the provision of Section 8(4) of the U.P. Municipal Corporation Act, 1959 as inserted by Section 4 of

the U.P. Urban Local Self- Government Laws (Amendment) Act, 2005 being U.P. Act No. 23 of 2005 as ultra vires Article 243 and Part IX-A

of the Constitution of India.

(b) issue a writ, order or direction in the nature of Mandamus commanding the respondent not to interfere in discharging of duties of elected Nagar

Nigam Allahabad till its reconstitution as per Article 243Q of the Constitution of India.

(c) issue a writ, order or direction in the nature of prohibition restraining the respondent no. 1 from appointing an Administrator upon Nagar

Nigam, Allahabad in purported exercise of the powers u/s 8(4) of the U.P. Municipal Corporation Act, 1959.

(d) issue any other writ, order or direction as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

3. Writ petition No. 67991 of 2011 has been filed by the petitioner on 24.11.2011 for a writ of mandamus directing the respondents not to

interfere in the working of the petitioner as Mayor of the Municipal Corporation, Aligarh in view of Section 15(3) of the Municipal Corporation,

Act, 1959 (hereinafter referred to as ""1959 Act"") until his successor assumes office.

4. Writ petition No. 69796 of 2011 has been filed by the petitioner on 1.12.2011, praying for quashing the order dated 16.11.2011 passed by the

District Magistrate in pursuance of the order of the State Government dated 16.11.2011, appointing Administrator in exercise of power under

sub-section (4) of Section 10A of U.P. Municipalities Act, 1916.

5. In first two writ petitions, the challenge is to the provisions of Section 8(4) of 1959 Act. The facts of writ petition No. 65013 of 2011 need to

be noted in some detail for considering the submissions, which have been pressed by Sri Ravi Kiran Jain, learned Senior Advocate in support of

the Stay Application filed in the writ petition. Before we proceed to consider the submissions of Sri Jain, advanced in support of the Stay

Application filed in the first writ petition, it is relevant to note details of two writ petitions, in which orders were passed by this Court pertaining to

the Municipal Corporation/Municipalities. The writ petition No. 53557 of 2011 Ajeet Jaiswal Vs. State of U.P. was filed in this Court seeking a

direction for holding elections of the Municipalities/Municipal Corporation in the State of U.P. It was claimed in the writ petition that tenure of the

municipal board/municipal Corporation is coming to an end between November, 2011 and December, 2011 hence, the elections be directed to be

held before expiry of the term as mandated by the Constitutional provisions of Article 243-U of the Constitution of India. The Division Bench of

this Court disposed of the aforesaid writ petition on 19.10.2011, directing for issuance of election notifications before 31.10.2011 as per census

2011. By subsequent order dated 15.11.2011, the Division Bench issued an order on the application filed for review/modifications in writ petition

No. 53557 of 2011 clarifying the earlier order dated 19.10.2011 that in case of any practical difficulty in respect of census data of 2011, the

electoral process can be proceeded on the basis of census data of 2001. Further direction was issued for notifying the elections by 16.11.2011.

6. Writ petition No. 11226 of 2011 Sandeep Alias Sandeep Mehrotra Vs. State of U.P. and others was also filed before the Lucknow Bench of

this Court praying for quashing the orders of appointment of Administrators in the municipalities under the Municipal Corporation as well as for

declaring Section 8(4) of the 1959 Act as ultra vires. The Division Bench on 15.11.2011 directed the State Government to notify the elections of

the Municipal Corporation /Municipal Board within two weeks.

7. Writ petition No. 11226 of 2011 Sandeep Alias Sandeep Mehrotra Vs. State of U.P. and others in which Lucknow Bench of this Court passed

an order dated 15.11.2011, was finally decided by judgment and order dated 5.12.2011. The Division Bench vide judgment and order dated

5.12.2011 declared the U.P. Amendment Act No. 23 of 2005 as ultra-vires. Direction was also issued to the State of U.P. to complete all

necessary formalities and to issue a notification of elections on or before 19.12.2011 and to submit a compliance report to the Court.

8. Sri Ravi Kiran Jain, learned Senior Advocate appearing for the petitioner in first writ petition, submits that in view of the judgment of the

Lucknow Bench of this Court dated 5.12.2011, declaring the U.P. Amendment Act No. 23 of 2005 as ultra vires, the prayer of the petitioner

made in the writ petition to the same effect need not be considered. He however, submits that no elections having been held of the Municipal

Corporation/ Municipal Board before expiry of the term, this Court may grant an interim relief to the petitioner to the effect that elected body of

Nagar Nigam, Allahabad be allowed to continue during the pendency of the writ petition. Sri Jain submits that Municipal Corporation having been

not dissolved which still continues, the same body be allowed to continue till the fresh elections are held. He submits that Article 243-U of the

Constitution of India has to be interpreted in a manner which is in consonance with the harmonious constructions. In view of the judgment of the

Lucknow Bench of this Court dated 5.12.2011 as noticed above, Sri Jain submits that the interim relief to the above extent be granted to protect

the interest of the petitioner and the Corporation. In support of his submissions, he placed reliance on the judgments of the apex Court reported in

Sultana Begum Vs. Prem Chand Jain, Jagdish Singh Vs. Lt. Governor Delhi and others, Shri Kihota Hollohon Vs. Mr. Zachilhu and others, Shri

Kihota Hollohon vs. Mr. Zachilhu and Others.

9. Sri Neeraj Tripathi, Learned Counsel for the petitioner in writ petition No. 67991 of 2011 submits that provisions of Section 8(4) of 1959 Act

having been struck down by this Court, the petitioner who is Mayor of the Municipal Corporation is entitled to continue till his successor assumes

office by virtue of section 15(3) of 1959 Act.

10. Sri Vivek Singh, Learned Counsel for the petitioner in third writ petition submits that a direction be issued to quash the order dated

16.11.2011 by which Administrators were appointed.

11. Sri S.G. Hasnain, learned Additional Advocate General refuting the submissions of Learned Counsel for the petitioner contends that the term

of the Municipal Corporation having come to an end, they cannot be allowed to continue beyond their tenure. He further submits that provisions of

Article 243-U of the Constitution of India cannot be interpreted in a manner as contended by Sri Ravi Kiran Jain, learned Senior Advocate

appearing for the petitioner. He submits that the Division Bench judgment of the Lucknow Bench of this Court dated 5.12.2011 in Sandeep Alias

Sandeep Mehrotra Vs. State of U.P. and others (supra) is per incuriam being contrary to the binding Division Bench judgment of this Court

reported in (2006) 1 UPLBEC 874 Anugrah Narain Singh Vs. State of U.P. And others. He submits that provision of section 8(4) of 1959 Act

were challenged in earlier writ petition filed by Anugrah Narain Singh, which was upheld by the above judgment hence, the Division Bench of the

Lucknow Bench of this Court in Sandeep Alias Sandeep Mehrotra Vs. State of U.P. And others (supra) could not have taken contrary view of

declaring the amendment as ultra-vires. He submits that there is no occasion for continuing the municipal board/municipal Corporation whose term

has come to an end which arguments were considered and rejected by the Division Bench in (2006) 1UPLBEC 874 as well as the Division Bench

judgment of this Court in Sandeep Alias Sandeep Mehrotra Vs. State of U.P. And others supra. Replying the submissions of Learned Counsel for

the petitioner in second writ petition, it is contended by Sri Hasnain that by virtue of section 8(4), section 15(3) cannot be utilized and in a sense it

has become redundant and has to be ignored.

12. In view of the submissions of Learned Counsel for the parties as noticed above, we are of the view that these writ petitions raise important

issues which need to be considered elaborately hence, it is necessary to call for affidavits from contesting parties for finally adjudicating the issues

raised. However, the prayer pressed by Learned Counsel for the petitioner to grant an interim order directing the respondents to permit the

municipal Corporation/municipal board to continue till fresh elections are held also needs to be considered which has been very strongly pressed

by Sri Jain, learned Senior Advocate for the petitioner in the first writ petition.

13. We thus, proceed to consider the submissions pressed by Learned Counsel for the petitioner for interim relief. Sri Jain referring to the

constitutional scheme as delineated in the Constitution of India, contended that with regard to Parliament and the Legislative Assembly, unless

sooner dissolved, the tenure of five years is contemplated, the provisions of Article 243-U of the Constitution of India does not contemplate

dissolution of municipal Corporation/municipal board hence, a distinction has to be drawn between the Parliament, Legislative Assembly and the

Municipal Board, and when the elections are not held within the time prescribed under the Constitution, the Municipality has to be treated to

continue till fresh elections are held. Articles 83(2), 172(1) have been relied by Learned Counsel for the petitioner which are quoted as below:

83 (2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer

and the expiration of the said period of five years shall operate as a dissolution of the House:

172. Duration of State Legislatures.- (1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the

date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly;

14. Article 243-U, which provides for duration of municipalities and is relevant in the present case is as follows:

243U. 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.

15. The submission pressed by Learned Counsel for the petitioner is that Article 243U contemplates completion of the elections of the municipality

before expiry of the duration as specified in clause (1) and when no elections have been held, the tenure of the municipality has to be treated to

continue since it cannot be treated to be dissolved till the fresh elections are held. A perusal of Article 83(2) and 172(1) indicates that the tenure of

the House of the People is five years from the date appointed for its first meeting and no longer and similarly the duration of the municipality is five

years from the date appointed for its first meeting and no longer. The use of word ""no longer"" is couched in negative form which provides for

injunction of its non continuance after expiry of five years. In Sultana Begum's case (supra), the apex Court, while considering the principal of

harmonious construction in interpreting a statute laid down following in paragraph s 10 to 15:

10. Part II of the Code of Civil Procedure, comprising of Sections 36 to 74, as also the whole of Order XXI consisting of Rules 1 to 106, deal

with the execution of decree. Section 47, as also Order XXI Rule 2 are, therefore, part of the same legal or statutory system dealing with the same

subject, namely, execution of decree. That being so, the rule of interpretation requires that while interpreting two inconsistent, or, obviously

repugnant provisions of an Act, the courts should make an effort to so interpret the provisions as to harmonies them so that the purpose of the Act

may be given effect to and both the provisions may be allowed to operate without rendering either of them otiose.

11. The statute has to be read as a whole to find out the real intention of the legislature.

12. In *Canada Sugar Refining Company vs. R.* (1898) AC 735, Lord Davy observed:-

Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a

consistent enactment of the whole statute or series of statutes relating to the subject-matter.

13. this Court has adopted the same rule in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others, Gammon India Ltd. and Others Vs.*

Union of India (UOI) and Others, Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another, V. Tulasamma and Others

Vs. Sesha Reddy (Dead) by Lrs., Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, Commissioner of Income Tax,

Central, Calcutta Vs. National Taj Traders, The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, and The

J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others,

14. This rule of construction which is also spoken of as *""ex visceribus actus""* helps in avoiding any inconsistency either within a Section or between

two different Section or provisions of the same statute.

15. On a conspectus of the case law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two Sections of the Act and to construe the provisions which appear to be in

conflict with each other in such a manner as to harmonies them.

(2) The provisions of one Section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it

impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with

each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of *""harmonious*

construction.

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a *""dead letter""* or *""useless lumber""* is not

harmonious construction.

(5) To harmonies is not to destroy any statutory provision or to render it otiose.

16. Similarly in *Jagdish Singh Vs. Lt. Governor, Delhi and others* (supra) following was laid down in paragraph 7:

7. ...It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so

that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made

hereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent

and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot

be used to defeat another rule in the same rules unless it is impossible to effect harmonization between them. The well-known principle of

harmonious construction is that effect should be given to all the provisions, and therefore, this Court had held in several cases that a construction

that reduces one of the provisions to a "dead letter" is not a harmonious construction as one part is being destroyed and consequently court should

avoid such a construction.

17. In both the aforesaid cases, the apex Court laid down that while interpreting two inconsistent or repugnant provisions of an Act, the courts

should make an effort to so interpret the provisions as to harmonize them so that the purpose of the Act may be given effect to and both the

provisions may be allowed to operate without rendering either of them otiose and a construction that reduces one of the provisions to a "dead

letter" is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction. In case, the

submission of Sri Jain is accepted, there shall be no meaning of the specified tenure provided in Article 243-U and the words "'no longer'". In event

the elections are not held within the period prescribed, providing continuance of the earlier elected body shall defeat the very object for which fixed

tenure was provided for municipal board. The Apex Court had occasion to consider the provisions of part IX A of the Constitution of India in the

context of elections of the Gujarat Municipal Corporation of Ahmedabad reported in AIR 2007 Supreme Court 269 Kishansingh Tomar Vs.

Municipal Corporation of the City of Ahmedabad & Ors. Following was laid down in paragraph 21:

In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new

Municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue,

the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State governments to recognize the

significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same

manner in which it follows the directions of the Election Commission of India during the elections for the Parliament and State Legislatures. In fact,

in the domain of elections to the Panchayats and the Municipal bodies under the Part IX and Part IX A for the conduct of the elections to these

bodies they enjoy the same status as the Election Commission of India.

18. There cannot be any dispute that holding of elections before expiry of the term as provided under Article 243-U of the Constitution of India is

mandatory constitutional requirement, which has to be complied with but the fact that in a circumstance, when election is not held within the time

prescribed, the earlier body should be allowed to continue, cannot be said to be appropriate construction of the constitutional provisions. In this

context, it is relevant to note that submission to the effect that in event of non holding of elections, elected body should be allowed to continue, was

specifically considered by both the Division Benches in (2006) 1 UPLBEC 874, Anugrah Narain Singh Vs. State of U.P. And others as well as

Sandeep alias Sandeep Mehrotra (supra). In Anugrah Narain Singh's case (supra), the Division Bench repelled the above submissions in

paragraphs 35 and 36 which are quoted below:

35. From the plain reading of the aforesaid provision we find that every Municipality unless sooner dissolved shall continue for five years from the

date appointed for its first meeting and no longer. The period of five years starts from the date appointed for its first meeting and moment the

period of five years comes to an end the duration of that Municipality will also come to an end. The Parliament had used the words ""no longer"" in

clause (1) of Article 243-U of the Constitution of India to which some meaning has to be assigned. The natural meaning which can be ascribed to

the said phrase is that the duration of the Municipality cannot extend even for a single second beyond the stipulated five years" period from the

date appointed for its first meeting. The words ""no longer"" has been used in the negative sense and, in view of decision of the Apex Court referred

to above it is mandatory and therefore, in any event the duration cannot extend beyond the stipulated period. The plea that sub-clause (a) of clause

(3) of Article 243-U be read as proviso to clause (1) of Article 243-U of the Constitution of India and that the term of a Municipality shall continue

till the election to constitute a new Municipality has been completed is wholly misconceived and is liable to be rejected.

36. It appears that the framers of the Constitution wherever they wanted that holder of the elected office should continue till his successor takes

charge, have made specific provision in this regard in the Constitution itself. Reference may be invited to clause (c) of the proviso of Article 56(1)

of the Constitution of India which says that the President shall, notwithstanding the expiration of his term, continue to hold office until his successor

enters upon his office. Likewise, in the case of Vice President, clause (c) of the proviso to Article 67 of the Constitution of India provides that the

Vice- President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. Likewise, the

proviso to Article 156, which deals with the term of office of governor provides that a Governor shall, notwithstanding the expiration of his term

continue to hold office until his successor enters upon his office. The second proviso to Article 94, which deals with vacation and resignation of,

and removal from, the office of Speaker and Deputy Speaker of the House of People provides that whenever the House of the People is

dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

Likewise in respect of vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker of an Assembly, the second

proviso to Article 179 of the Constitution of India provides that whenever the Assembly is dissolved, the Speaker shall not vacate his office until

immediately before the first meeting of the Assembly after the dissolution. No such provision has been made in Article 243-U(1) of the Constitution

of India and, therefore, necessary corollary is that the framers of the Constitution did not want that the elected Municipality should be allowed to

continue to hold the office till new elected body assumes charge.

19. In Sandeep alias Sandeep Mehrotra (supra), the Division Bench also rejected the above submissions permitting the elected body whose term

had come to an end, to continue in the event election is not held within the period prescribed and held that permitting the elected body, whose term

had expired to continue, shall be defeating the very object for which the constitution provisions were enacted providing for periodical elections in

paragraphs 59 and 60, which are quoted below:

59. Shri Ravi Kiran Jain, learned Senior Counsel while comparing the tenure of legislative assembly and Parliament under the constitutional

provisions contained in Articles 83, 172 with 243-E and 243-U has submitted that there is specific provision with regard to dissolution of the

Assembly but in Art. 243-U, there is no such provision. Hence, the Municipal and Corporation Members shall continue to remain in office till the

next body comes on seat. He further submits that under service law and as per Article 309 of the Constitution, the duty of the municipality cannot

be assigned to administrator.

60. So far as the assignment of duty is concerned, we are of the view that the administrator could not be appointed since the impugned amendment

lacks legislative competence. However, with regard to continuance of Municipality and Corporation till the next election, we do not agree to

accept the said argument. According to own argument of Shri Ravi Kiran Jain, under Article 83, the Council of State has not been subjected to

dissolution but such provision does not exist in Article 243-U.

However, Shri Jain has relied upon the case reported in a case of Canadian Supreme Court(Canada Sugar Refining Company vs. R. (1989) AC

735 and the judgment of Hon"ble Supreme Court in Gammon India Ltd. and Others Vs. Union of India (UOI) and Others, and some other cases

as given in paragraphs 47, 48 and 49 of the writ petition with submission that Article 243-U should be read with reference to the context and

harmonious consideration should be given so that the Municipality should run till fresh incumbent by next election joins.

Acceptance of the argument of Mr. Jain would amount to supplying cautious omission or applying the principle of reading down. We have referred

number of cases in later part of the judgment with regard to settled proposition of law that harmonious construction does not mean to supply

words, supply cautious omission in case the language of the statute or the Constitution is clear.

Accordingly, the submission of Shri Jain with regard to continuance of Municipality or Municipal Corporation till newly elected members resume

works seems to be not sustainable.

20. Both the Division Benches as noticed above, having rejected the same submissions raised by Sri Jain, who per chance was also counsel for the

petitioner in the aforesaid case, we are not persuaded to accept the above submission or to issue any interim order directing the respondents to

permit continuance of the municipalities/corporations whose tenure has come to an end. There cannot be any dispute to the proposition laid down

by the apex Court in Shri Kihota Hallohan (supra) that the Court can grant interim orders even when there is challenge to vires of a

constitutional/statutory provision, but in the writ petition, no prima-facie case has been made out to grant an interim relief to allow the elected body

of Municipal Corporation whose tenure has come to an end to continue till fresh elections are held. Thus, the prayer for interim relief made by

Learned Counsel for the petitioner in first writ petition is refused.

21. Now comes to submissions made by Sri Neeraj Tripathi in second writ petition. Section 15 of the 1959 Act is as follows:

15. Terms of Mayor. - (1) Except as otherwise provided in this Act,

(a) the term of office of a Mayor shall be coterminous with the term of the Corporation;

(b) [* * *]

(2) The term of office of a Mayor or an elected to fill a casual vacancy shall be the remainder of the term of office of his predecessor.

(3) A mayor shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor assumes office as

Mayor as the case may be.

22. It is relevant to notice that the provisions of section 15(1)(a) provides that term of office of a Mayor shall be coterminous with the term of the

Corporation, whereas section 15(3) provides that a Mayor unless he resigns or ceased to be qualified or becomes disqualified, continue in office

until his successor assumes office as Mayor. Section 15(1)(a) as well as section 15(3) both are part of the same section, have to be given meaning.

Section 15(3) clearly stipulates continuance of Mayor in the office until his successor assumes office. As noticed in the Division Bench judgment in

the case of Anugrah Narain Singh's (supra), there are several constitutional provisions which provide holders of elected office to continue till his

successor assumes office. Article 56(1) proviso(c) similarly Article 67 clause (c) as well as article 156 are the provisions to the same effect. Sri

S.G. Hasnain submits that after insertion of sub-section (4) in section 8 by U.P. Act No. 23 of 2005, the provisions of section 15(3) has become

redundant and has to be ignored. It is relevant to note that section 8(4) was inserted by U.P. Act No. 23 of 2005 and several amendments have

been made in section 15 after 2005 vide U.P. Act No. 49 of 2007. Legislature has amended Section 15 including section 15(3) by U.P. Act No.

49 of 2007. Had the said provisions become redundant, the same ought to have been deleted hence, even though the term of Mayor has come to

an end with the term of the Corporation, by virtue of section 15(3), he is entitled to continue till his successor assumes office. As noticed above,

section 8(4) which has been inserted by U.P. Act No. 23 of 2005 has already been held to be ultra-vires by judgment of the Lucknow Bench of

this Court on 5.12.2011 in the case of Sandeep alias Sandeep Mehrotra (supra) hence, at present it is not necessary for us to consider the

apparent conflict between Section 8(4) and Section 15(3).

23. Submissions of learned Additional Advocate General that the judgment of the Division Bench in Sandeep alias Sandeep Mehrotra be held to

be per incuriam or reference be made to the larger Bench, shall be considered after hearing Learned Counsel for the parties elaborately on the

above issue, after exchange of the affidavits.

24. In view of the foregoing discussions, the prayer as pressed by Sri Ravi Kiran Jain, learned senior Advocate that the elected body of the

Municipal Corporation should be allowed to continue till the fresh elections are held, cannot be granted and is hereby refused. Hence, the interim

prayer as pressed in writ petition No. 65013 of 2011 is refused.

25. In writ petition No. 67991 of 2011, an interim mandamus is issued directing the respondents to permit the petitioner to continue in his office of

Mayor till his successor is elected as provided by section 15(3) of 1959 Act, more so when the provisions of section 8(4) of 1959 Act have

already been struck down by the Division Bench in Sandeep alias Sandeep Mehrotra case (supra) within two weeks from the date copy of the

order is provided before respondents No. 1 and 3 or to show cause within the same period. The prayer for interim relief in writ petition No.

69796 of 2011 shall be considered after exchange of affidavits.

26. We however, clarify that this order shall not in any manner affect the directions issued by this Court in the aforesaid two writ petitions, directing

the State Government and State Election Commission to hold elections of the municipalities in accordance with law.

27. The respondents are allowed a week's time to file counter affidavit. List these writ petitions on 21.12.2011.