
(2015) 4 CALLT 451

Calcutta High Court

Case No: Writ Petition No. 6063(W) of 2015

Pranoy Roy

APPELLANT

Vs

State of West Bengal
and Others

RESPONDENT

Date of Decision: April 16, 2015

Acts Referred:

Bihar Municipal Act, 2007 - Section 21(3), 27#Constitution of India, 1950 - Article 124(2), 14, 172, 174, 19#Contract Labour (Regulation and Abolition) Act, 1970 - Section 10, 3(1)#Government of Union Territories Act, 1963 - Section 5#Hindu Minority and Guardianship Act, 1956 - Section 6(a)#Penal Code, 1860 (IPC) - Section 124A#Prisons Act, 1894 - Section 30(2), 30(d)#Representation of the People Act, 1951 - Section 100, 100(1)(d)(iv), 14, 15, 30#West Bengal Municipal Election Act, 1994 - Section 36, 36(3)

Citation: (2015) 4 CALLT 451

Hon'ble Judges: Manjula Chellur, C.J; Joymalya Bagchi, J

Bench: Division Bench

Advocate: Anindya Kumar Mitra, Joydip Kar, A. Mitra, A. Chakraborty, A. Kankari and S. Sengupta, for the Appellant; Jayanta Kumar Mitra, Ld. Advocate General, Abhratosh Majumdar, Subhobrata Dutta and T.M. Siddiqui, Advocates for the Respondent

Final Decision: Disposed off

Judgement

Dr. Manjula Chellur, C.J

The grievances ventilated in this Writ Petition by the Writ petitioner, in brief, are set out hereunder:--

2. By end of July 2013, term of 17 Civic Bodies in the State of West Bengal came to an end. But the State declined to hold elections citing some

reason or the other. Aggrieved by this, the Election Commission approached this Court seeking directions to issue notification for holding elections

in respect of 17 Municipalities. Meanwhile, tenure of State Election Commissioner ended which again contributed for the delay to hold elections in

time as some time was taken for appointment of the new State Election Commissioner. W.P. No. 18019 of 2014 already filed was prosecuted by

the new Election Commissioner. On 10.9.2014, submissions were made on behalf of the State Election Commission that steps will be taken by the

parties to the Writ Petition in accordance with law for holding elections to 10 Municipalities referred to in the above order. So far as other

Municipalities, it was submitted that holding election was not possible on account of constitution/re-constitution of Municipalities as well as

extension of Municipal Corporation of Asansol. This was not objected to by the State Election Commission is the complaint of the present writ

petitioner.

3. Out of 121 Municipal bodies and 6 Municipal Corporations, tenure of 17 Municipal Bodies had already expired and tenure of 83 Municipal

Bodies is due to expire by June 2015. It is the grievance of the petitioner that the dates of holding elections to the Municipalities have to be

announced by a notification to be published in the Gazette by the order of the State Election Commissioner and not simply by an order of the

Secretary to the West Bengal State Election Commission.

4. In the above background, the writ petition is filed challenging provisions of Section 8 of West Bengal State Election Commission Act of 1994

(hereinafter referred to as Act VIII of 1994), and Section 36(3) of West Bengal Municipal Election Act of 1994, (hereinafter referred to as Act

XXXIV of 1994). It is contended that these two Sections are ultra vires to the provisions of Constitution, especially Article 243(K) and Article

243(ZA). The writ petition was presented on 3.3.2015 which came up before the Bench on 13.3.2015. No interim order was sought. On

20.3.2015, learned Government Advocate submitted, on account of process of merger of Municipalities, election process was not taken in respect

of Asansol, Jamuria, Kulti, Ranigunj, Rajarhat, Gopalpur, Bidhannagar and Bally. Hence we directed the State to place affidavit-in-opposition on record.

5. The matter came up again on 23.3.2015 and adjourned till 24.3.2015. On 24.3.2015 the writ petitioner filed supplementary affidavit along with

the notification dated 16.3.2015 and 18.3.2015 wherein they had sought for quashing the said notifications. On 24.3.2015 affidavit-in-opposition

was directed to be filed by 3.4.2015 and reply if any by 6.4.2015 so that the main writ petition could be disposed of on merits. The matter was

heard on merits extensively on behalf of the petitioner, the Government, the State Election Commission and private respondents.

6. The petitioner has approached this Court seeking following reliefs:--

a) Declare Section 8 of the West Bengal State Commission Act, 1994 as being ultra vires of Article 14, 19(1)(g) and 21 and 243-K, read with

Article 243-ZA of the Constitution of India and/or unconstitutional and/or null and void;

b) Declare Section 36(3) of the West Bengal Municipal Elections Act, 1994 as being ultra vires of Article 14, 19, 21 and 243-ZA, of the

Constitution of India and/or unconstitutional and/or null and void;

c) Declare that the superintendence, direction, control and conduct of all elections to the Municipalities in the State of West Bengal are vested in

the State Election Commission appointed by the Governor of the State;

d) Writ or writs in the nature of Mandamus do issue commanding and directing the respondent No. 2 to complete constitution/reconstitution of six

municipalities recorded in the order dated 10th September, 2014 and extension of Asansol Municipal Corporation as mentioned in W.P. No.

18019(W) of 2014 before conducting the ensuing municipal election;

e) A writ or writs in the nature of Mandamus do issue commanding and directing the respondent No. 2 to show cause as to why he should not be

directed to issue notification declaring the dates of polling in respect of the municipalities whose tenure has either expired or is due to expire within

a period of six months from date of its dissolution and on failure to show cause or to show sufficient cause, the Rule to be made herein be made

absolute.

f) A writ or writs in the nature of Mandamus do issue commanding the respondents and each one of them to show cause as to why the impugned

Order dated 26.2.2015 should not be quashed and or set aside and on failure to show cause or to show sufficient cause the rule to be made herein

be made absolute;

g) A writ or writs in the nature of Certiorari do issue commanding the respondents and each one of them to produce records relating to the matter

including the impugned Order dated 26.2.2015 for being quashed and or set aside;

h) A writ of Mandamus do issue commanding the Respondents to show cause as to why they should not be called upon to ensure the presence of

Central Observers and Central Armed Forces personnel to ensure free and fair Municipal election when duly scheduled to be held and on failure

to show cause or to show sufficient cause rule to be made herein be made absolute;

i) Rule NISI in terms of the prayers above;

j) The respondent Nos. 1, 2 and 3 be restrained from giving effect or further effect to the Order dated 26.2.2015.

k) The respondent Nos. 1, 2 and 3 be restrained from holding any elections of the Kolkata Municipal Corporation on 18th April, 2015 and all

other 92 Municipalities in West Bengal on 25th April, 2015 or on any other date without first issuing a notification by the State Election

Commission fixing the date of the Municipal Elections;

l) Mandatory orders be passed directing the respondent Nos. 1 and 4 to ensure and provide all such assistance that may be required by the State

Election Commission and to ensure presence of Central Observers or Central Armed Forces to ensure free and fair elections when elections are

scheduled to be held;

m) The Respondents be directed to hold the elections to all the Municipal Bodies in the State of West Bengal and not to pick and choose in

respect of 93 Municipal Bodies;

n) Ad-interim Order in terms of prayers (a) to (m) above;

o) Necessary directions be given as to the costs of and incidental to the application;

p) Such further or other order or orders be made and/or direction or directions be given as to this Hon"ble court may seem fit and proper.

7. Learned Senior Counsel Mr. Aninda Mitra arguing for the writ petitioner submits that elections have to be held in accordance with the mandate

envisaged under the Constitution of India, the respective State legislations, the West Bengal State Municipal Act of 1994 and also the West Bengal

State Election Commission Act of 1994. He submitted that the procedure and process of election applicable to the elections to the local bodies

have to be on par with and the mandate as provided in the Constitution so far as Assembly and Parliament elections. He also refers to the

provisions of Article 243(U), Article 243(K), Article 243(ZA), Article 324, Article 327 and Article 329 of the Constitution. He places emphasis

on Sections 14 and 15 of Representation of the People Act of 1951 (for short, referred to as R.P Act of 1951 while challenging Section 8 of Act

VIII of 1994 and also Section 36(3) of Act XXXIV of 1994. Substantial argument of learned Senior Counsel, Mr. Mitra is focused on the issue of

supremacy and primacy of the Election Commission in the process of elections. According to him, the process of election is not restricted to mere

conduct of elections so far as powers of the Election Commission but it extends even to command to hold elections for other Municipalities whose

term either has come to an end or going to end. He refers to the plenary powers of the Election Commission and contends that it cannot be

interfered with or lowered or intervened by any other Constitutional authority. He refers to Section 5(1) and 5(2) of the Act VIII of 1994 with

reference to the preamble of the said enactment. By referring to these provisions, he emphasizes that the word "consultation" referred to in these

provisions clearly indicate the consultation process must be initiated at the instance of the State Election Commission and the State has no

supremacy over the Election Commission except suggesting its convenience or inconvenience so far as dates and hours of poll etc. According to

him, ultimately the Central theme is, the Election Commission is supreme and not the State and the same must be remembered at all times. He

emphasizes that in case of conflict, the opinion of Election Commission, being supreme and independent will alone prevail over the opinion of the

State. According to him, reading of provisions of Section 8 of Act VIII of 1994 does not indicate such independent and supreme exercise of

power as mandated by the Constitution. Therefore, Section 8 ultra vires the provisions of Article 243(ZA) and philosophy of the democratic set up

envisaged under the Constitution apart from contra to Section 5 of the Act VIII of 1994.

8. He also refers to tenure of Municipality as envisaged under Article 243(U) to contend that the obligation of the Election Commission is to ensure

that elections are conducted in time in accordance with mandate under Article 243(U) before the expiry of the tenure of the local bodies.

Therefore, the reason not to hold elections to certain Municipalities as submitted before the learned Single Judge in the earlier round of litigation

which was acceded to by the Election Commission would clearly indicate State exercising supremacy over the Election Commission. In this

context he submits, the administrative convenience or decision cannot override the Constitutional mandate when tenure of the local bodies has

come to an end, i.e., intervening with the Constitutional mandate to hold elections prior to expiry of the tenure of the local bodies. He took us

through the correspondence between the State and the Election Commission in the present case to substantiate his contention that the final decision

was not that of the Election Commission but the administrative decision was the final call, therefore, the entire exercise of the State taking cue from

the provisions of Section 8 of Act VIII of 1994, is nothing but consequence of exercising power not vested with the State as envisaged under the

Constitution. Apart from the correspondence between the Election Commission and the State, the very understanding of the provisions of the State

enactment as reflected in the affidavit-in-opposition of the State as well as the Election Commission, according to him, makes it clear that the

provisions under Section 8 of Act VIII of 1994 is contra to the obligations conferred on the Election Commission as envisaged under the

Constitution. Therefore, reading of Section 8 in any manner other than in the manner it is drafted would lead to changing the very structure of the

statute.

9. Learned Senior Counsel, Mr. Mitra further contended that neither the explanation nor reading down the provisions of Section 8 of Act VIII of

1994 along with Section 36 of Act XXXIV of 1994 would save the provisions. Meddling with legislation is impermissible and the said provision is

nothing but interfering with the structure of the legislation. Further contends, if Election notification issued is bad for the above reasons, no impasse

is created since Article 243(U) read with Article 324 and Section 5 of Act VIII of 1994 clearly envisage how the elections have to be conducted

in tune with the provisions of Constitution. Election Commission can hold elections for the local bodies whose term has come to an end and going

to come to an end. To substantiate these arguments, several decisions were referred which would be discussed later.

10. Supporting arguments of Mr. Mitra, Mr. Kapoor, learned Senior Counsel arguing for respondent No. 7 emphasizes on the word "conduct"

referred to under Article 243(ZA) and Article 324 of the Constitution and submits that "conduct" of elections cannot be read in a manner to

minimize the power or the meaning envisaged under the Constitution of India as conduct of elections is a comprehensive exercise of power by the

Election Commission suggesting supreme control of the entire process. Therefore, according to him, imperatively the power to initiate, conduct and

complete the election process rests with the Election Commission since Election Commission alone is the supreme apex body over the subject

matter and its magnitude and altitude cannot be restricted unless it suffers from arbitrariness. Therefore, Election Commission is not subservient to

any other authority and it is an independent and separate Constitutional creation under the Constitution vested with the responsibilities of

conducting free and fair elections in the country.

11. According to learned Senior Counsel Mr. Kapoor, the exercise adopted in the present case under the guise of so-called consultation process

is nothing but the primacy of the State and the Election Commission has mechanically surrendered to the supremacy of the State which is evident

from the proceedings in W.P. 18019 of 2014. So far as the word "consultation process" he refers to several decisions and according to him, the

Election Commission is the consultee who has to do delicate balancing, delicate duty and pious obligation while discharging his duties to the people

of this country. Therefore, origin of power as envisaged in the State statute under Section 8 of the Act VIII of 1994 at any cost cannot be in

consonance with the mandate under the Constitution of India. In the light of Constitution positioning the Election Commission as the supreme and

independent authority, it would suggest who takes the final call. Therefore, it is not open to contend on behalf of the State that it has drawn power

from Section 8 of the Act VIII of 1994.

12. So far as reading down provisions of Section 8, according to him, would lead to distortion of the meaning contemplated under the Constitution

ultimately resulting in new structure of the State legislation. Hence, the entire gambit of provisions clearly emphasizes on the supremacy and the

primacy of the Election Commission who has to be the initiator of the process till its logical conclusion and not the State, is the stand. Several

citations are relied upon in support of his arguments, which would be referred to later. According to him, the affidavit-in-opposition filed by the

State does not explain the origin of power of the State under Section 8 of the Act VIII of 1994 in consonance with the provisions of the

Constitution. He further contends, affidavit of the Election Commission exposes abdication of its power subjecting itself to the dictation of the State

Government. According to him, if any action is done during pendency of the proceedings, it cannot benefit the wrong doer as law is paramount and

the Constitution is above everything.

13. As against this, learned Advocate General and Senior Counsel, Sri Jayanta Kumar Mitra commences his arguments with the statement that

Election process envisaged under the provisions of the Constitution and the State enactment starts only after issuance of notification under Section

8 of the Act VIII of 1994. Therefore, the action of the State till fixing the date of election as envisaged under Section 8 is justified as State alone

can decide the date of election as well as hours during which the poll has to be conducted. According to him, this is the clear position by reading

Section 14 of the Representation of the People Act where President is empowered to notify the date of election as recommended by the Election

Commission. In the consultation process there would be deliberations, suggestions, adjustments depending upon the convenience of the

administrative machinery but ultimately, the President would be notifying in the Gazette the decision of the State so far as dates of election. Hence

the entire election process indicate the State having supreme power to decide the date and the hours of polling and once the date is declared, the

Election Commission till conclusion is in charge of the entire process. According to him, State cannot ignore the opinion of Election Commission

under Section 8 of the State Act but primacy is with the State so far as fixing the date/dates of election. He refers to earlier litigation between

Election Commission and the State to support his submission that one has to be practical depending upon the factual situation while fixing the

date/dates of elections. Therefore, the order pertaining to the earlier litigation in no way reflects the primacy or the supremacy of the State except

suggesting the consultation process between the two constitutional authorities. However, according to him, at any cost, opinion of the Election

Commission cannot be ignored by the State while fixing the date/dates of elections. He further contends that prayers in the writ petition are not

infraction of Section 8 of the Act VIII of 1994 since reply is not filed to the affidavit-in-opposition by the writ petitioner. He challenges the locus

standi of the writ petitioner contending that so far as the petitioner, he is not the resident of any of the Municipalities which are not going for

elections rather he belongs to Municipality going for election.

14. So far as election to the local bodies pending for re-constitution of areas, according to him, re-constitution of Municipality is justified which

would avoid public money being wasted for the purpose of conducting elections once re-constitution is made.

15. By way of alternative submission, so far as striking down provisions of law, according to him, the Courts have to be very cautious and alert

while deciding vires of provisions of law as presumption of the legislation is constitutional. If it cannot be saved at all, then alone the statute has to

be struck down. He contends that after thorough examination of correspondence, Court has to decide whether there was dictation by one

authority to the other or it is mere consultation process which has led to the decision so far as fixing the date/dates of elections. In support of

contention with regard to re-constitution of the Municipalities, he contends that it is with an object to give better facilities to its people and further to

generate more revenue to the Corporations when larger municipality was sought to be made. Therefore, there is no mala fides or any motive in not

conducting election to some of the local bodies. According to him, when large number of local bodies are going for elections, there cannot be any

mala fide or ill motive so far as non-conduct of election in six or seven Municipalities.

16. As against this, in reply learned Senior Counsel, Sri. A. Mitra argues that if the argument of learned Advocate General that election process

commences only after notification under Section 8 of the Act VIII of 1994 is accepted then there is no role for Election Commission to do

anything. According to him, the process of election includes initiation of election process by fixing date/dates of election and the same rests with

Election Commission. Further, there cannot be distribution of powers so far as conduct of elections, i.e., vesting the State with the power of fixing

the date and hours of polling and rest of the election process to the Election Commission. With this reply, he further contends that if Section 8 of

the Act VIII of 1994 were to be held ultra vires of the Constitution, the consequences of the same automatically would result in election process

being illegal, therefore, there is no need to challenge the notification issued under Section 8 of the Act VIII of 1994. Whenever tenure of

municipalities is coming to an end, before expiry of their tenure elections have to be held strictly in compliance with the provisions of the

Constitution in order to have free and fair elections.

17. With the above arguments and material at our command, now we proceed to analyze the controversies raised.

One has to understand the powers and functions of the State Election Commission and the Election Commission of India as provided under the

Constitution and also the State enactments. Under Chapter IX A of the Constitution of India, by virtue of 74th Amendment, how municipalities

have to be constituted, composition of municipalities, constitution and composition of wards committees, reservation of seats, duration of

municipalities, disqualification for membership, powers, authority and responsibilities of municipalities to impose taxes and elections to the

municipalities are enunciated.

18. Articles 324, 327 and 329 are with reference to elections to the Parliament and the Assemblies. Articles 243K, 243U, 243ZA and 243ZG are

relevant for the purpose of present controversy to know how the State Election Commission is constituted and its functions with reference to

elections to the local bodies. Section 14 and 15 of the Representation of the People Act of 1951 is nothing but an enactment made by parliament

as envisaged under Article 327 of the Constitution. Similarly, State enactments, the Act VIII of 1994 and the Act XXXIV of 1994 are the

legislations made by the State in terms of sub-Article 2 of Article 243ZA.

19. Article 243ZA(1), Article 324(1) and Section 5 of the Act VIII of 1994 are almost in pari materia similar. Section 14 of RP Act of 1951 and

Section 8 of Act VIII of 1994 of the State are similarly worded.

20. The above provisions are reproduced hereinafter for proper understanding of the controversies raised in the above matter:

Provisions relating to Municipalities under the Constitution of India and the State Laws:

243K. Elections to the Panchayats. - (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of,

all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the

Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election

Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a

High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such

staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in

connection with, elections to the Panchayats.

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.

243ZA. Elections to the Municipalities-

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be

vested in the State Election Commission referred to in Article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in

connection with, elections to the Municipalities.

243ZG. Bar to interference by courts in electoral matters-

Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be

made under Article 243Z shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is

provided for by or under any law made by the Legislature of a State.

STATE ENACTMENT - ACT VIII OF 1994

5. Elections to the Municipalities.--(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all

elections to the Municipalities shall vest in the Commission:

Provided that the electoral roll for the time being in force for the election of Members to the West Bengal Legislative Assembly may, at the

discretion of the State Election Commissioner, be adopted as the electoral roll for election of members, by whatever name called, to a Municipality

to such extent and in such manner as the State Election Commissioner thinks fit.

[(2) Subject to the provisions of sub-section (1), all matters relating to, or in connection with, elections to the Municipalities shall be regulated in

accordance with the provisions of the West Bengal Municipal Elections Act, 1994 (West Ben. Act XXXIV of 1994), and the rules made

thereunder, in so far as they are not inconsistent with the provisions of this Act or the rules made thereunder.]

8. Fixing date and time for poll.-The State Government shall, in consultation with the Commission, by notification, fix the date or dates on which,

and the hours during which, the poll will be taken:

Provided that the poll on any day shall continue for a period of not less than eight hours without interruption.

Section 36 of ACT XXXIV of 1994 of State:

36. Notification for general election to a Municipality.--(1) The first general election to a Municipality, newly constituted, shall be held not later

than six months from the date of notification constituting the Municipality.

(2) A general election shall be held for the purpose of constituting a new Municipality on the expiration of the duration of the existing Municipality

or on its dissolution and completed before the expiry of the duration of the Municipality.

(3) For the purpose as aforesaid, the State Government shall, subject to the provisions of section 8 of the West Bengal State Election Commission

Act, 1994, by one or more notifications published in the Official Gazette on such date or dates as may be determined, call upon the Municipality to

elect members in accordance with the provisions of this Act and the rules and the orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing Municipality, no such notification shall be issued at

any time earlier than six months prior to the date on which the duration of such Municipality would expire:

Provided further that when a Municipality has been dissolved, elections to constitute the Municipality shall be completed before the expiry of six

months from the date of its dissolution:

Provided also that where the period for which such dissolved Municipality would have continued is less than six months, it shall not be necessary to

hold any elections to constitute such Municipality for such period.

PROVISIONS RELATING TO ELECTIONS TO PARLIAMENT and ASSEMBLIES ETC UNDER THE CONSTITUTION OF INDIA

324. Superintendence, direction and control of elections to be vested in an Election Commission

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the

Legislature of every State and of elections to the offices of President and Vice President held under this Constitution shall be vested in a

Commission (referred to in this Constitution as the Election Commission)

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the

President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the

provisions of any law made in that behalf by Parliament, be made by the President

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and

thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after

consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the

performance of the functions conferred on the Commission by clause (1)

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the

Regional Commissioners shall be such as the President may by rule determine; Provided that the Chief Election Commissioner shall not be

removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief

Election Commissioner shall not be varied to his disadvantage after his appointment: Provided further that any other Election Commissioner or a

Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or

to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1)

327. Power of Parliament to make provision with respect to elections to Legislatures

Subject to the provisions of this constitution, Parliament may from time to time by law made provision with respect to all matters relating to, or in

connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of

electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

329. Bar to interference by courts in electoral matters [Notwithstanding anything in this Constitution]

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be

made under Article 327 or Article 328, shall not be called in question in any court;

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an

election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Provisions under Representation of the People Act of 1951

14. Notification for general election to the House of the People.--(1) A general election shall be held for the purpose of constituting a new House

of the People on the expiration of the duration of the existing House or on its dissolution.

(2) For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be

recommended by the Election Commission, call upon all Parliamentary constituencies to elect members in accordance with the provisions of this

Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing House of the People, no such notification shall be

issued at any time earlier than six months prior to the date on which the duration of that House would expire under the provisions of clause (2) of

article 83.

15. Notification for general election to a State Legislative Assembly.--(1) A general election shall be held for the purpose of constituting a new

Legislative Assembly on the expiration of the duration of the existing Assembly or on its dissolution.

(2) For the said purpose, [the Governor or Administrator, as the case may be], shall by one or more notifications published in the Official Gazette

of the State on such date or dates as may be recommended by the Election Commission, call upon all Assembly constituencies in the State to elect

members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing Legislative Assembly, no such notification shall be

issued at any time earlier than six months prior to the date on which the duration of that Assembly would expire under the provisions of clause (1),

of article 172 [or under the provisions of section 5 of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be.]

21. In terms of Article 243U, the term of every municipality is for five years unless it is dissolved for any reason under any law before the expiry of

the term. So far as election to constitute a municipality, if not dissolved, it has to be held before expiry of its duration specified in Clause (i) in terms

of sub-Article 3(a).

22. Under sub-Article (2) of 243ZA, the legislature of a State is empowered to make legislation with respect to all matters relating to or all matters

pertaining to or in connection with elections to the municipalities. This is, however, subject to the provisions of the Constitution.

23. Articles 324(1) vests the Election Commission with powers of the superintendence, direction and control of the preparation of the electoral

rolls as also the conduct of elections so far as Parliament and Assemblies of the States.

24. Article 327 is similar to Article 243ZA(2). Under Article 327 Parliament is empowered to make provisions pertaining to all matters in respect

of elections to either the House of Parliament or the House of Legislature.

25. The Representation of the People Act of 1951 (for short hereinafter referred to as "The RP Act of 1951) is an Act made by the Parliament in

so far as conduct of elections to the Parliament and the Legislature, etc. Section 14 and Section 15 of this RP Act of 1951 refers to notification for

General Election to the Parliament and Election to a State Legislative Assembly respectively.

26. Coming to the controversies raised before us, admittedly, tenure of some of the Municipalities in the State of West Bengal came to an end in

the year 2014 and all others are coming to an end by end of June, 2015.

27. The controversies are categorized as under:

1. Locus standi of the petitioner and the maintainability of the writ petition in view of the Constitutional bar under Article 243-ZG of the

Constitution.

2a. Whether, supremacy to fix the date or dates on which the elections will be held and the hours of Poll as well vest with the State or the Election

Commission?

2b. Is Section 8 of the West Bengal State Election Commission Act, 1994 and Section 36(3) of the West Bengal Municipal Election Act of 1994,

ultra vires the provisions of the Constitution.

3. Whether postponement of elections to 7 urban local bodies on the ground of restructuring/reconstitution is justified, while conducting elections to

other municipalities, when duration of all the municipalities either has expired or is going to expire by June, 2015 ?

4. Whether decision to hold elections on 18th April, 2015 for Kolkata Municipal Corporation and 25th April, 2015 for other local bodies

excluding some is ultra vires the Constitutional Scheme as envisaged in Part IXA of the Constitution.

1. Locus Standi and Maintainability

28. It has been argued that the petition is not maintainable in view of Article 243-ZG of the Constitution, which bars interference by Court except

by way of an election petition, after the issuance of election process. It has also been argued that the petitioner who is not an electorate of any of

the seven excluded urban local bodies where election is not being held cannot be permitted to challenge such decision in a public interest litigation.

Firstly, the petition was filed on 03-03-2015, inter alia, challenging the vires of section 8 of the Act VIII of 1994 and section 36(3) of the Act

XXXIV of 1994. It was moved on 13.03.2015 when the election process had not commenced by the issuance of notification, under section 8 of

the Act VIII of 1994 and section 36(3) of the Act of XXXIV of 1994. Admittedly, such notifications were issued on 16th March, 2015 and 18th

March, 2015 respectively.

29. In Manda Jaganath Vs. K.S. Rathnam and Others, AIR 2004 SC 3600 : (2004) 5 JT 8 : (2004) 4 SCALE 600 : (2004) 7 SCC 492 : (2004)

1 SCR 204 Supp : (2004) AIRSCW 3499 : (2004) 3 Supreme 460 , writ petitioner approached High Court by filing a writ petition questioning

the action of Returning Officer in rejecting his Form-B and treating him as an independent candidate. Returning Officer rejected this Form as the

writ petitioner did not fill up the relevant columns of the Form though he claimed the status of Official Candidate of a political party. Maintainability

of the Writ petition was questioned on the ground that the controversy involved could be agitated only in an election petition and not in a writ

petition under Article 226 of the Constitution. High Court opined that the reasoning of the Returning Officer was not acceptable even at the

Interlocutory stage as the irregularities were too technical and trivial. It also further opined that allotment of symbol by Returning Officer at the time

of scrutiny of nomination papers was not one of the grounds on which election petition could be filed under R.P Act of 1951. In the appeal before

the Apex Court, it was held that the controversy should be agitated by an aggrieved party in an election petition only under R.P Act against any

election. This opinion was in the light of non-obstante clause in Article 329, therefore, Article 226 stands pushed out where the dispute takes the

form of challenging an election except in special situations.

30. Anugrah Narain Singh and Another Vs. State of U.P. and Others, (1996) 7 AD 477 : (1996) 8 JT 733 : (1996) 7 SCALE 56 : (1996) 6

SCC 303 : (1996) 5 SCR 719 Supp , was also relied upon to contend the Bar under Article 243ZG of the Constitution so far as judicial review of

election process, once publication of notification for holding election was issued.

31. In Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, (1985) 2 SCALE 384 : (1985) 4 SCC 689 : (1985) 1 SCR

493 Supp : (1986) 1 UJ 104 the Apex Court held that the High Court had acted within its jurisdiction in entertaining a writ petition relating to

election as the writ petitioner had questioned the vires of the laws of election. The Court, however, hastened to observe that no interim order ought

to have been passed stultifying the election process in view of the express bar under Article 329(b) of the Constitution. The Court, inter alia,

observed as follows:

.....though the High Court did not lack the jurisdiction to entertain the writ petition and to issue appropriate directions therein, no High Court in

the exercise of its powers under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of

postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked.

32. In Anugrah Narain Singh and Another Vs. State of U.P. and Others, (1996) 7 AD 477 : (1996) 8 JT 733 : (1996) 7 SCALE 56 : (1996) 6

SCC 303 : (1996) 5 SCR 719 Supp [paragraph 17] , the Apex Court while dealing with the municipal elections held that the ratio in Lakshmi

Charan Sen and Ors. (supra) shall apply with full force in respect of municipal elections.

33. As the writ petition had been filed prior to initiation of the election process challenging the vires of laws of election, namely, section 8 of the Act

VIII of 1994 and section 36(3) of the Act XXXIV of 1994, it is opined that the writ petition is maintainable.

34. With regard to the other issue as to whether the writ petitioner who is not a resident of the urban local bodies where election is not being held,

we hold that as ""free and fair elections"" is the basic structure of the Constitution and every citizen has an abiding interest in the proper functioning of

democratic process in the Republic, this pro bono publico litigation ought not to be jettisoned on the ground of locus standi alone. One cannot but

refer to the inspirational jurisprudence voiced by Justice Krishna Iyer, in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner*,

New Delhi and Others, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 of the said report, wherein the learned Judge described

election disputes as ""collective litigation"" and observed that the judicial branch has the sensitive responsibility to ""call to order lawless behaviour"". It

may be apposite to quote in extenso the aforesaid observations.

15. Two prefatory points need to be mentioned as some reference was made to them at the bar. Firstly, an election dispute is not like an ordinary

lis between private parties. The entire electorate is vicariously, not inertly, before the court. (See *Inamati Mallappa Basappa Vs. Desai Basavaraj*

Ayyappa and Others, AIR 1958 SC 698 : (1959) 1 SCR 611). We may, perhaps, call this species of cases collective litigation where judicial

activism assures justice to the constituency, guardians the purity of the system and decides the rights of the candidates. In this class of cases, where

the common law tradition is partly departed from, the danger that the active judge may become, to some extent, the prisoner of his own prejudices

exists; and so, notwithstanding his powers of initiative, the parties' role in the formulation of the issues and in the presentation of evidence and

argument should be substantially maintained and care has to be taken that the circle does not become a vicious one, as pointed out by J.A.

Jolowicz in. "Public Interest Parties and the Active Role of the Judge in Civil Litigation" (ss. p. 276). Therefore, it is essential that courts,

adjudicating upon election controversies, must play a verily active role, conscious all the time that every decision rendered by the Judge transcends

private rights and defends the constituency and the democracy of the country.

16. Secondly, the pregnant problem of power and its responsible exercise is one of the perennial riddles of many a modern constitutional order.

Similarly, the periodical process of free and fair elections, uninfluenced by the caprice, cowardice or partisanship of hierarchical authority holding it

and unintimidated by the thirst, tantrum or vandalism of strong-arm tactics, exacts the embarrassing price of vigilant monitoring. Democracy digs its

grave where passions, tensions and violence, on an overpowering spree, upset results of peaceful polls, and the law of elections is guilty of sharp

practice if it hastens to legitimate the fruits of lawlessness. The judicial branch has a sensitive responsibility here to call to order lawless behaviour.

Forensic non-action may boomerang, for the court and the law are functionally the bodyguards of the People against bumptious power, official or

other.

In the light of the above observations, accordingly, we hold that the writ petition in its present form is maintainable.

2a. SUPREMACY OF THE ELECTION COMMISSION IN THE MATTER OF FIXING DATE OR DATES AND HOURS OF POLL IN

MUNICIPAL ELECTIONS

2b. Is Section 8 of the Act VIII of 1994 and Section 36(3) of the Act XXXIV of 1994 ultra vires the Constitution

35. Part-IX A was inserted in the Constitution to achieve Gandhian ideal of local self-government with the object of regulating proper working of

local bodies since in many States, local bodies were not functioning properly and timely elections were not held resulting in nominated bodies to go

on and on for long periods. At times, elections were delayed unnecessarily or postponed with uncertainty in spite of elected bodies were not in

existence. Many a time there was no justification in such postponement and most of the time, it was at the whims and fancies of the political

executive. To combat with these inadequacies, the above Chapter was introduced in the Constitution and the provisions are mandatory.

36. In Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and Others, AIR 2007 SC 269 : (2006) 9 JT 320 : (2006) 10

SCALE 438 : (2006) 8 SCC 352 : (2006) 7 SCR 454 Supp) Article 243U fell for interpretation where the Apex Court held that mandate of

Article 243U was imperative and cannot be deviated from, except for acts of God e.g. natural calamities or man-made calamities like rioting,

break down of law and order. The Apex Court held as follows: -

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 or 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) 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.

14. So, in any case, the duration of the Municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the

Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new Municipality is constituted in time and

elections to the Municipality are conducted before the expiry of its duration of five years as specified in Clause (1) of Article 243-U.

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19.it is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election

could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years"

period as stipulated in Clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time,

the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the

election before the expiration of the duration of five years" period as stipulated in Clause (5) and not yield to situations that may be created by

vested interests to postpone elections from being held within the stipulated time.

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21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could

distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election

Commission would be justified in delaying the process of election after consulting the State Govt. and other authorities. But that should be an

exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article

243-U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all

respects. It is only when the Municipality is dissolved for any other reason and 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 elections for constituting the Municipality for such period.

37. Holding of municipal election within the time stipulated is therefore a Constitutional imperative which must be adhered to at all times except

under exceptional circumstances, as indicated hereinbefore.

38. This 74th Amendment Act, 1992 also envisaged the creation of a State Election Commission for the purpose of superintendence, direction,

control of the preparation of the electoral rolls and the conduct of all elections to the Panchayats as well as Municipalities under Part IX and IXA

of the Constitution.

39. As stated above, Article 243K in Part IX of the Constitution envisaged the creation of State Election Commission.

40. Article 243-ZA empowered the aforesaid State Election Commission constituted under Article 243-K to exercise superintendence, direction

and control over the conduct of elections to municipalities.

41. In *Kishansing Tomar (supra)* the Apex Court held that powers of the State Election Commission are same as that of the Election Commission

of India under Article 324 of the Constitution. It held as follows:--

23. In terms of Article 243K and Article 243ZA(1) the same powers are vested in the State Election Commission as the Election Commission of

India under Article 324. The words in the former provisions are in pari materia with the latter provision.

24. The words, "superintendence, direction and control" as well as "conduct of elections" have been held in the ""broadest of terms"" by this Court

in several decisions including *Ref. by President, AIR 2003 SC 87 : (2002) 8 SCC 237* and *Mohinder Singh Gill and Another Vs. The Chief*

Election Commissioner, New Delhi and Others, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 and the question is whether this is

equally relevant in respect of the powers of the State Election Commission as well.

25. From the reading of the said provisions it is clear that the powers of the State Election Commission in respect of conduct of elections is no less

than that of the Election Commission of India in their respective domains. These powers are, of course, subject to the law made by Parliament or

by State Legislatures provided the same do not encroach upon the plenary powers of the said Election Commissions.

(emphasis supplied)

42. The federal structure of the Constitution including the legislative competence of the State Legislatures was preserved, however, subject to the

supremacy of the Election Commission as provided in the Constitutional Scheme.

43. The Court further held that the State Election Commission is an independent Constitutional Body and is not subservient to the State

Government. The Governments were directed to render full assistance and cooperation to the State Commission and respect the latter's

assessment of the needs in order to ensure that free and fair elections are conducted. The Election Commission was also empowered to approach

the Constitutional Courts in the event the State Government failed to render necessary cooperation and assistance to the Commission to fulfill the

Constitutional mandate. The Court held as follows: -

26. The State Election Commissions are to function independent of the concerned State Governments in the matter of their powers of

superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections to the Panchayats and

Municipalities.

27. Article 243K(3) also recognizes the independent status of the State Election Commission. It states that upon a request made in that behalf the

Governor shall make available to the State Election Commission "such staff as may be necessary for the discharge of the functions conferred on the

State Election Commission by clause (1). It is accordingly to be noted that in the matter of the conduct of elections, the concerned government

shall have to render full assistance and co-operation to the State Election Commission and respect the latter's assessment of the needs in order to

ensure that free and fair elections are conducted.

28. Also, for the independent and effective functioning of the State Election Commission, where it feels that it is not receiving the cooperation of the

concerned State Government in discharging its constitutional obligation of holding the elections to the Panchayats or Municipalities within the time

mandated in the Constitution, it will be open to the State Election Commission to approach the High Courts, in the first instance, and thereafter the

Supreme Court for a writ of mandamus or such other appropriate writ directing the concerned State Government to provide all necessary

cooperation and assistance to the State Election Commission to enable the latter to fulfill the constitutional mandate.

44. As the State Election Commission has the same powers as the Election Commission of India under Article 324 of the Constitution, it would be

appropriate to refer to the authorities interpreting the wide plenitude of the powers of the Election Commission in matters relating to election. In

Mohinder Singh Gill (supra), the Apex Court held that the words ""superintendence, direction and control"" as well as ""conduct of all elections"" are

to be interpreted in the broadest terms. The Court further held Article 324 was a residual jurisdiction and repository of all powers in the Election

Commission to supplement laws of election.

45. In Election Commission of India Vs. State of Tamil Nadu and Others, (1995) 3 SCC 379 Supp the Apex Court held as follows:

5. The Election Commission of India is a high constitutional authority charged with the function and the duty of ensuring free and fair elections and

of the purity of the electoral process. It has all the incidental and ancillary powers to effectuate the constitutional objective and purpose. The

plenitude of the Commission's powers corresponds to the high constitutional functions it has to discharge. In an exercise of the magnitude involved

in ensuring free and fair elections in the vastness of our country, there are bound to be differences of perception as to the law and order situation in

any particular constituency at any given time and as to the remedial requirements. Then again, there may be intrinsic limitations on the resources of

the Central Government to meet in full the demands of the Election Commission. There may again be honest differences of opinion in the

assessment of the magnitude of the security machinery. There must, in the very nature of the complexities and imponderables inherent in such

situations, be a harmonious functioning of the Election Commission and the Governments, both State and Central. If there are mutually

irreconcilable view points, there must be a mechanism to resolve them. The assessment of the Election Commission as to the state of law and order

and the nature and adequacy of the machinery to deal with situations so as to ensure free and fair elections must, prima facie, prevail. But, there

may be limitations of resources. Situation of this kind should be resolved by mutual discussion and should not be blown up into public

confrontations. This is not good for a healthy democracy, The Election Commission of India and the Union Government should find a mutually

acceptable coordinating machinery for resolution of differences.

46. In Election Commission, Ref. by President, AIR 2003 SC 87 : (2002) 8 SCC 237 the Apex Court held as follows:

80. So far as the framing of the schedule or calendar for election of the Legislative Assembly is concerned, the same is in the exclusive domain of

the Election Commission, which is not subject to any law framed by Parliament.

Parliament is empowered to frame law as regards conduct of

elections but conducting elections is the sole responsibility of the Election Commission.

As a matter of law, the plenary powers of the Election

Commission cannot be taken away by law framed by Parliament. If Parliament makes any such law, it would be repugnant to Article 324. Holding

periodic, free and fair elections by the Election Commission are part of the basic structure and the same was reiterated in Indira Nehru Gandhi v.

Raj Narain which runs as under: (SCC p. 87, para 198)

198. This Court in the case of Kesavananda Bharati held by majority that the power of amendment of the Constitution contained in Article 368

does not permit altering the basic structure of the Constitution. All the seven Judges who constituted the majority were also agreed that democratic

set-up was part of the basic structure of the Constitution. Democracy postulates that there should be periodical elections, so that people may be in

a position either to re-elect the old representatives or, if they so choose, to change the representatives and elect in their place other representatives.

Democracy further contemplates that the elections should be free and fair, so that the voters may be in a position to vote for candidates of their

choice. Democracy can indeed function only upon the faith that elections are free and fair and not rigged and manipulated, that they are effective

instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of defence to mass opinion.

81. The same is also evident from Sections 14 and 15 of the Representation of the People Act, 1951 which provide that the President or the

Governor shall fix the date or dates for holding elections on the recommendation of the Election Commission. It is, therefore, manifest that fixing

schedule for elections either for the House of the People or Legislative Assembly is in the exclusive domain of the Election Commission.

47. At paragraph 106 Balakrishnan, J.(as His Lordship then was) concurring with the majority opinion held as follows :

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(ii).....Can the Election Commission of India frame a schedule for the elections to an Assembly on the premise that any infraction of the mandate

of Article 174 would be remedied by a resort to Article 356 by the President?

The framing of schedule for election for the new Legislative Assembly shall start immediately on dissolution of the Assembly and the Election

Commission shall endeavour to see that the new Legislative Assembly meets at least within a period of six months of the dissolution. Article 356

regarding declaration of state of emergency in the State has no relevance to the fixation of the election schedule.

(iii) Is the Election Commission of India under a duty to carry out the mandate of Article 174 of the Constitution, by drawing upon all the requisite

resources of the Union and the State to ensure free and fair elections?

The Election Commission is under a constitutional duty to conduct the election at the earliest on completion of the term of the Legislative Assembly

on dissolution or otherwise. If there is any impediment in conducting free and fair election as per the schedule envisaged by the Election

Commission, it can draw upon all the requisite resources of the Union and the State within its command to ensure free and fair election, though

Article 174 has no application in the discharge of such constitutional obligation by the Election Commission. It is the duty of the Election

Commission to see that the election is done in a free and fair manner to keep the democratic form of government vibrant and active.

48. Similar view has been expressed in *Kanhiya Lal Omar Vs. R.K. Trivedi and Others*, AIR 1986 SC 111 : (1985) 2 SCALE 1370 : (1985) 4

SCC 628 : (1985) 3 SCR 1 Supp : (1985) 17 UJ 969

16. Even if for any reason, it is held that any of the provisions contained in the Symbols Order are not traceable to the Act or the Rules, the power

of the Commission under Article 324(1) of the Constitution which is plenary in character can encompass all such provisions, Article 324 of the

Constitution operates in areas left unoccupied by legislation and the words "superintendence", "direction" and "control" as well as "conduct of all

elections" are the broadest terms which would include the power to make all such provisions. (See *Mohinder Singh Gill and Another Vs. The*

Chief Election Commissioner, New Delhi and Others, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 , and *A.C. Jose Vs. Sivan*

Pillai and Others, AIR 1984 SC 921 : (1984) 1 SCALE 454 : (1984) 2 SCC 656 : (1984) 3 SCR 74 : (1984) 16 UJ 558 .)

49. It may also be relevant to refer Bhim Singh, President J and K Panthers Party Vs. Election Commissioner of India and Another, (1996) 5 AD

54 : (1996) 5 JT 569 : (1996) 3 SCALE 481 : (1996) 4 SCC 188 : (1996) 1 SCR 15 Supp wherein the Apex Court held as follows:--

14. There can be little doubt that the aforesaid provisions read together require close consultation between the Union of India and the Election

Commission in the matter of fixing the election programme. It is clearly both impossible and undesirable that any outer limit should be placed in

Section 30(d) for the date of the poll. The fixation of the date of the poll would depend upon a variety of circumstances, all of which have to be

taken into account by the Election Commission acting in consultation with the Government of India, which would have the necessary material in this

behalf. We do not, therefore, find Section 30(d) arbitrary or unconstitutional.

50. In Ashok Shankarrao Chavan Vs. Dr. Madhavrao Kinhalkar and Others, (2014) AIRSCW 4127 : (2014) 7 JT 77 : (2014) 2 RCR(Civil)

1009 : (2014) 6 SCALE 200 : (2014) 7 SCC 99 , the Apex Court held that the powers of the Election Commission are to be liberally interpreted.

51. The aforesaid ratio of the decision while interpreting Article 324 in the light of sections 14 and 15 of the Representation of the People Act,

1951, leave no manner of doubt that the powers of ""superintendence, direction and control"" of the Election Commission in the matter of elections

extend to fixing of dates of such elections also. Therefore, it is difficult to accept the submission on behalf of the State that as the ""election process

commences from the date of election notification, the issue of fixation of dates of election being a pre-notification exercise cannot be a premise

over which Election Commission can exercise dominance. To accept such proposition would be to denude the Election Commission of its plenary

power to ensure that the elections are held within the stipulated time as mandate by the Constitution. Such narrow interpretation of the powers by

the Election Commission was neither envisaged nor warranted under the Constitutional Scheme. If fixation of the date of election is left to the

domain of the State Government, there is possibility of delay and uncertainty in conducting elections to the municipalities which ultimately, may

result in choosing some local bodies to hold elections and delay others at whims and fancies of political executive.

52. Reference has been made on behalf of the State to paragraph 92 in Mohinder Singh Gill's case to argue that as election process commences

from the election notification, the plenary powers of the Election Commission commences from such date and not prior to.

We are unable to accept such argument.

Interpretation of the word ""election"" in Mohinder Singh Gill's case is nothing but an exercise which commences from the presidential notification

and culminating in the final declaration of the returned candidate. It is to be understood in relation to the extent of ban imposed on litigative

challenge to such electoral steps taken by Election Commission under Article 329B of the Constitution of India and not to restrict or limit the

widest amplitude of the powers of the Election Commission under Article 324 of the Constitution. On the other hand, in the self-same report,

Article 324 of the Constitution was interpreted in the broadest terms and held to vest the Election Commission with all residual powers in the

matter of election.

53. Judged from this angle, it would be wholly unwarranted and, in fact, unconstitutional to hold that the State Election Commission does not have

primacy in the matter of fixing of dates of elections to municipalities on the premise that the ""electoral process"" commences only after the issuance

of election notification as argued on behalf of the State. State Election Commission is an independent Constitutional Body entrusted with the

solemn duty to ensure that the Constitutional mandate of holding timely elections to Municipalities are undertaken within Constitutional framework

as envisaged under Article 243-U of the Constitution. To enable the Commission to perform such Constitutional duty it must be held that the

Commission has the supremacy to advise the State Government to fix dates for holding municipal elections within the time stipulated under Article

243-U of the Constitution. Such opinion of the Commission shall bar the stamp of primacy and the State would be under a Constitutional

obligation to honour the same. Failure on behalf of the State, without reasonable cause, would amount to breach of Constitutional duty which

needless to mention is remediable in Constitutional Courts at the behest of the Commission.

54. Section 8 of the Act VIII of 1994 and section 36(3) of the Act XXXIV of 1994 are already set out above.

55. So far as understanding of the stand of the State and the Election Commission, it is reflected in the affidavit in opposition filed by them.

According to petitioners, contention of the State and the Commission that State alone is empowered to exercise the powers under Section 8 of the

Act VIII of 1994 is contra to the provisions of the Constitution. Sub-Article (2) of Article 243-ZA empowers the State to make provisions in

respect of all the matters pertaining to elections of the Municipalities subject to the provisions of the Constitution. The supremacy and primacy

under Section 8 cannot be with the State and it has to be with the State Election Commission not only as envisaged under Article 243-ZA but also

under Section 5 of the Act VIII of 1994 is the stand of the petitioners and also private respondents. Correspondence between the State and the

Commission is placed on record to substantiate the factual position.

56. To appreciate the stand of the parties, ""Who is empowered to do what"", under the Constitution as well as State Legislations and the RP Act of

1951, one has to first understand when exactly the commencement of election process and the conclusion of the same occurs.

57. All the parties to the writ petition categorically admit "consultation process" is involved in fixing the date or dates of election. Whether initiation

of the process should be at the instance of the State or Election Commission, Whether final call in case of difference of opinion should be with the

State or the Election Commission and what happens if there is difference of opinion or dispute in fixing the dates of election? Here comes the

question of supremacy or primacy and which constitutional authority should exercise this power?

58. With the above position of law by plethora of decisions, is it possible to appreciate the stand of the State and also the Election Commission

that by virtue of Section 8 of the State Election Commission Act, 1994 the State has primacy in choosing the dates of election? According to them,

Section 8 has vested the State with the supremacy in the matter of fixing the date and polling hours of election and the only requirement is

consultation with the Election Commission. It was argued that even under Section 14 of the RP Act of 1951, it provides that the President shall by

one or more notifications published in the Gazette of India indicate the dates of election and such date or dates as may be recommended by the

Election Commission. Therefore, according to them, language used in Section 8 of the State Act, and Sub-Section 2 of Section 14 of the RP Act

is one and the same. Therefore, Union of India and the State are empowered to fix the date of election and polling hours and once the notification

contemplated under Section 8 is issued, entire process of election thereafter vests with the Election Commission. Every step from start to finish of

the total process constitutes election and not merely the conclusion or culmination.

59. It has been argued by the petitioner that the word ""in consultation"" in the aforesaid provisions do not mean ""concurrence"". Therefore discretion

is left in the State Government to decide the dates of election to municipalities as well as hours of poll ignoring the opinion of the Commission.

60. In support of this argument that ""consultation"" is not ""concurrence"" reference has been made to L and T Mc. Neil Ltd. etc. Vs. Government of

Tamil Nadu, AIR 2001 SC 844 : (2001) 88 FLR 1030 : (2001) 2 JT 484 : (2001) 1 SCALE 425 : (2001) 3 SCC 170 : (2001) 1 SCR 701 :

(2001) 1 UJ 693 : (2001) AIRSCW 525 : (2001) 1 Supreme 414 , High Court of Judicature for Rajasthan Vs. P.P. Singh and Another, AIR

2003 SC 1029 : (2003) 1 JT 403 : (2003) 1 SCALE 445 : (2003) 4 SCC 239 : (2003) 1 SCR 593 : (2003) 1 UJ 460 : (2003) AIRSCW 5027 :

(2003) AIRSCW 539 : (2003) 6 Supreme 701 : (2003) 1 Supreme 909 . With regard to meaning and purport of the word ""consultation

reference has also been made to 1993(1) SUPPL. SCC 730 (para 26). (Indian Administrative Services (IAS)(S.C.S)Association v. Union of

India.

61. It has been argued by the respondent No. 7 that as the State is a ""consultor"", the final decision does not lie with the State. Reliance has been

placed on Dr. Ram Tawakya Singh Vs. State of Bihar and Others, (2013) 9 AD 441 : (2013) 11 JT 470 : (2013) 10 SCALE 462 : (2013) 4

SCT 779 .

62. It has been further argued that the clear meaning of the aforesaid statutory provisions run contrary to the Constitutional mandate under Article

243-ZA of the Constitution and denies the supremacy of the State Election Commission in the matter of fixation of dates of election and hours of

poll. There is no scope for reading down the provisions as it is not within the domain of the Court to rewrite statutory provisions. In this regard,

reference has been placed on 1993(1) SUPPL. SCC 730 (paras 7 to 9).

63. It has further been argued that declaring the aforesaid provisions ultra vires would not create a Constitutional impasse as residual powers are

vested in the Election Commission under Article 243-ZA and appropriate directions may be given by the Court to fill up the void as held in Union

of India (UOI) Vs. Association for Democratic Reforms and Another, AIR 2002 SC 2112 : (2002) 4 JT 501 : (2002) 4 SCALE 297 : (2001) 4

SCALE 110 : (2002) 5 SCC 294 : (2002) 3 SCR 696 .

64. We are unable to agree that the word ""consultation"" can never mean ""concurrence"". The words in a Statute are to be interpreted depending

upon the context in which the said word is used and also the object it seeks to achieve. Instances are replete where the word ""consultation"" has

been interpreted to mean not only concurrence but supremacy of the opinion of the consultee in the consultative process. In State of Gujarat and

Another Vs. Hon"ble Mr. Justice R.A. Mehta (Retd.) and Others, (2013) 1 AD 325 : AIR 2013 SC 693 : (2013) 1 JT 276 : (2013) 1

RCR(Civil) 610 : (2013) 1 SCALE 7 : (2013) 3 SCC 1 : (2013) 1 SCC(L&S) 490 : (2013) AIRSCW 671 : (2013) 1 Supreme 33 while

interpreting the provisions of the Gujarat Lokayukta Act, 1986 the Apex Court referred to various meaning of the word ""consultation"" in its

contextual aspect and held as follows :--

32. Thus, in view of the above, the meaning of ""consultation"" varies from case to case, depending upon its fact situation and the context of the

statute as well as the object it seeks to achieve. Thus, no straitjacket formula can be laid down in this regard. Ordinarily, consultation means a free

and fair discussion on a particular subject, revealing all material that the parties possess in relation to each other and then arriving at a decision.

However, in a situation where one of the consultees has primacy of opinion under the statute, either specifically contained in a statutory provision,

or by way of implication, consultation may mean concurrence. The court must examine the fact situation in a given case to determine whether the

process of consultation as required under the particular situation did in fact stand complete.

65. After analyzing the word ""consultation"" in the context of the aforesaid Statute the Apex Court held that the opinion of the consultee, namely,

Chief Justice of the High Court would have supremacy in the matter of appointment of the Lokayukta. On the other hand, in Mr. Justice

Chandrashekaraiah (Retd.) Vs. Janekere C. Krishna and Others etc., (2013) 2 AD 265 : AIR 2013 SC 726 : (2013) 2 JT 65 : (2013) 2 JT 105 :

(2013) 1 SCALE 255 : (2013) 3 SCC 117 : (2013) 1 SCC(L&S) 826 : (2013) AIRSCW 706 : (2013) 1 Supreme 161 another Bench of the

Apex Court while interpreting the provisions of the Karnataka Lokayukta Act 1994 held that the provisions of the Act gave supremacy of opinion

to the Chief Minister who in turn was required to consult various consultees. It would not be out of place to note that the prayer for review of the

ratio in R.A. Mehta (supra) was turned down by the Apex Court, inter alia, holding that as the statutory provisions of both the legislations, namely,

Gujarat Lokayukta Act and Karnataka Lokayukta Act were different and therefore the supremacy of opinion of the consultees in respective cases

could not have been the same.

66. Hence, it is clear that the meaning of the word ""consultation"" when occurring in a particular Statute would derive its meaning from the context

the same is used in the said Statute, its legislative intent and by a harmonious construction with other provisions of the Statute.

67. It is beyond controversy that in order to uphold the basic structure of the Constitution, namely, ""independence of judiciary"" and ""rule of law

the word ""consultation"" for the purposes of appointment of a person to a judicial post or to any post which discharges function akin to judicial

functions has been interpreted to mean that supremacy of opinion in the consultative process is to be vested either with the High Court or the Chief

Justice of the High Court or the Collegium of the Supreme Court or the Chief Justice of India, as the case may be.

68. For example, in Chandra Mohan Vs. State of Uttar Pradesh and Others, (1967) 14 FLR 386 : (1967) 1 LLJ 412 : (1967) 1 SCR 77 while

interpreting Article 233 to 236 of the Constitution, the Apex Court held the word ""consultation"" in Article 233 by the Governor with the High

Court in the matter of appointment of District Judge was mandatory in character and could not be ignored.

69. In Chandramouleshwar Prasad Vs. The Patna High Court and Others, AIR 1970 SC 370 : (1969) 3 SCC 56 : (1970) 2 SCR 666 the Apex

Court again held that consultation with the High Court under Article 233 of the Constitution was mandatory in the matter of appointment/promotion

to the post of District Judge.

70. In *Samsher Singh Vs. State of Punjab and Another*, AIR 1974 SC 2192 : (1974) 2 LLJ 465 : (1974) 2 SCC 831 : (1975) 1 SCR 814 :

(1975) 1 SLJ 1 , Krishna Iyer, J. highlighting the independence of judiciary held as follows

[it] is a cardinal principle of the Constitution and has been relied on to justify the deviation, is guarded by the relevant article making consultation

with the Chief Justice of India obligatory.

71. In *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, AIR 1977 SC 2328 : (1977) LabIC 1857 : (1977) 4 SCC 193 :

(1978) 1 SCR 423 the Apex Court held that no decision with regard to transfer of a High Court Judge under Article 222 of the Constitution can

be taken without obtaining the views of the Chief Justice of India.

72. In *Supreme Court Advocates-on-Record Association and another Vs. Union of India*, AIR 1994 SC 268 : (1993) 5 JT 497 : (1993) 4 SCC

441 : (1993) 2 SCR 659 Supp while interpreting Article 124(2) and 217 of the Constitution of India the Apex Court held that the opinion of the

Chief Justice of India had supremacy in the process of consultation. Supremacy in the opinion of Chief Justice of India was in fact held to be

supremacy of the opinion of Chief Justice of India formed collectively after taking into account the views of senior colleagues who are required to

be consulted by him for formation of the opinion.

73. Similar views with regard to the supremacy of the Chief Justice of India in the appointment of personnel in quasi-judicial tribunals have been

repeatedly reiterated by the Apex Court [*Union of India (UOI) and Others Vs. Kali Dass Batish and Another*, AIR 2006 SC 789 : (2006) 108

FLR 746 : (2006) 1 JT 170 : (2006) 1 SCALE 190 : (2006) 1 SCC 779 : (2006) SCC(L&S) 225 : (2006) 1 SCR 261 : (2006) 2 SLJ 201 :

(2006) AIRSCW 227 : (2006) 1 Supreme 187 (under the Administrative Tribunals Act, 1985), *N. Kannadasan Vs. Ajoy Khose and Others*,

(2009) 7 JT 601 : (2009) 8 SCALE 351 : (2009) 7 SCC 104 : (2009) 7 SCR 668 (under the Consumer Protection Act, 1986].

In the latter decision the Court held the word ""consultation"" may mean differently in different situations depending on the nature and purpose of the Statute.

74. In the present case we are concerned with the issue of consultation of the State Election Commission in the matter of fixation of dates of poll in

municipal election. Like independence of judiciary, as discussed aforesaid, ""free and fair elections"" is a basic structure of the Constitution. [Indira

Nehru Gandhi v. Raj Narai, (1975) Supl. (1) SCC 1 (para198)]

75. Holding of timely election is a Constitutional mandate under Article 243-U. It is therefore a Constitutional duty of the State Election

Commission constituted under Article 243-K of the Constitution to ensure such Constitutional mandate. The word ""consultation"" used in section 8

of the Act VIII of 1994 and section 36(3) of the Act XXXIV of 1994, therefore, is to be interpreted in this context so as to achieve the aforesaid

Constitutional objective.

76. Interpreted from this angle the word ""consultation"" in the aforesaid statutory provisions cannot but mean supremacy of opinion of the State

Election Commission in the matter of fixing of dates for municipal elections.

77. Contextual interpretation is not unknown to law and assumes paramount importance when a challenge is thrown to the vires of the law. It is

trite law that there is presumption as to Constitutionality of any law. The legislative intent of the consultative process envisaged in section 8 of the

Act VIII of 1994 and section 36(3) of the Act XXXIV of 1994 is to be seen in the backdrop of the entire legislation and the Constitutional

Scheme engrafted in part IXA of the Constitution. Section 5 of the Act VIII of 1994, in fact, reiterates the words of Article 243-ZA of the

Constitution bestowing the supremacy of the State Election Commission in the matter of superintendence, direction and control of preparation of

electoral rolls and conduct of election. As discussed earlier, conduct of election in the perspective of Article 243-ZA and section 5 of the State

Legislature cannot be restrictively interpreted to mean that the State Election Commission has a supremacy only after issuance of election

notification and not in the consultative process for fixing the dates of election as the same is a pre-notification exercise. Its powers must be

interpreted in the widest terms so as to provide the Commission with sufficient tooth and claw to ensure discharge of its Constitutional duty of

holding free and fair elections within the time stipulated under Article 243-U of the Constitution. The consultative process referred to in section 8 of

the Act VIII of 1994 of the State Law must derive its meaning by harmoniously construing it with other provisions of the Statute, i.e. section 5 of

the Act VIII of 1994 and Part IX-A of the Constitution.

78. Judged from this angle, there is no escape from the conclusion that consultative process in section 8 and section 36(3) of the State laws confer

supremacy in the opinion of the consultee, namely, the State Election Commission and not the consultor, namely, the State Government. The State

Election Commission is vested with all powers to exercise its independent Constitutional duty and ensure that the State Government acts on its

advice in the course of consultative process so that the Constitutional duty to hold free, fair and timely elections to municipalities is ensured. Any

other interpretation would expose the aforesaid provisions to vice of unconstitutionality.

79. Such interpretation of the aforesaid statutory provisions do not require any rewriting of the Statute as was suggested by the learned Counsel

appearing on behalf of the petitioner and respondent No. 7. On the other hand, the words in the aforesaid Statutory provisions yield to a

harmonious construction with other provisions of the Statute and the Constitutional ideals of Part IX-A of the Constitution without rewriting them if

expressing ""consultation with the Commission"" is interpreted to mean primacy opinion of the Commission in such consultative process.

80. In L and T Mc Neil (supra) the Court was dealing with the issue of consultation in the matter of issuance of notification under section 10 of

Contract Labour (Regulation and Abolition) Act to prohibit contract labour in certain activities. In such statutory context, the Court held

consultation"" with various stakeholders did not mean ""concurrence"" with them for the purpose of issuing notification. Similarly, in High Court of

Judicature of Rajasthan (supra) the Court held a full Court meeting wherein quorum was attained as per rules would amount to ""consultation

although all Judges were not present. In I.A.S. (SCs) Association (supra) a general consultation with the States with regard to the draft amendment

of the service rules of I.A.S. was considered to be sufficient. In Ram Tawakya Singh (supra) the decision of the consultor was held to be vitiated

due to lack of consultation with the consultee although the consultor may have the final say in the matter. The aforesaid authorities do not militate

against the proposition discussed earlier, namely, the word ""consultation"" when used by the legislature would derive its meaning from the context in

which it is used, its legislative intent and object it seeks to achieve. In fact, in I.A.S. (SCs) Association (Supra) the Court echoed this principle

sufficiently as follows:--

26. The result of the above discussion leads to the following conclusions:

(1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and

points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be

consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. The object of

the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.

(2) When the offending action affects fundamental rights or to effectuate built-in insulation, as fair procedure, consultation is mandatory and non-

consultation renders the action ultra vires or invalid or void.

(3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.

(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or

person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the

general scheme or outlines of the actions proposed to be taken be put to notice of the authority or the persons to be consulted; have the views or

objections, take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders

or take decision thereon. In such circumstances it amounts to an action ""after consultation"".

(6) No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay

down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances

whether the action is ""after consultation""; ""was in fact consulted"" or was it a ""sufficient consultation"".

(7) Where any action is legislative in character, the consultation envisages like one under Section 3(1) of the Act, that the Central Government is to

intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central

Government or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the

proposed one in draft bill or rules. The revised draft bill or rules, amendments or additions in the altered or modified form need not again be

communicated to all the concerned State Governments nor have prior fresh consultation. Rules or Regulations being legislative in character, would

tacitly receive the approval of the State Governments through the people's representatives when laid on the floor of each House of Parliament. The

Act or the Rule made at the final shape is not rendered void or ultra vires or invalid for non-consultation.

81. It is an accepted mode of construction that when two views are possible one which saves the legislation from unconstitutionality is to be resorted to.

82. In Government of A.P. v. Laxmi Devi, AIR 1962 SC 955, the Apex Court held that every effort must be taken to uphold validity of a Statute

as invalidating a Statute is a grave step. The Statute may be read down to save it from unconstitutionality.

83. While upholding the Constitutional validity in Hindu Women's Rights to Property Act, 1937, In Re: Hindu Women's Rights to Property Act,

1937AIR 1941 72 (Federal Court) , the Federal Court held the general meaning of the word ""property"" is to be given a restricted meaning to save

the Act from being ultra vires the powers of the Central Legislature. The Federal Court at Page 75 of the report, held as follows:--

.....If that word (property) necessarily and inevitably comprises all forms of property, including agricultural land, then clearly the Act went beyond

the powers of the legislature; but when a legislature with limited and restricted powers makes use of a word of such wide and general import, the

presumption must surely be that it is using it with reference to that kind of property with respect to which it is competent to legislate and to no

other.

84. In Kedar Nath Singh Vs. State of Bihar, AIR 1962 SC 955 : (1962) 2 SCR 769 Supp the Supreme Court while interpreting the ingredients of

the offence of sedition under section 124A IPC held the provisions of the Section are limited in their application ""to acts involving intention or

tendency to create disorder, or disturbance of law and order, or incitement to violence"" , failing which the penal provision shall fall foul of the

Constitutional regime of ""freedom of speech and expression"" under Article 19(1)(a) and 19(2) of the Constitution.

85. In Sunil Batra Vs. Delhi Administration and Others etc., AIR 1980 SC 1579 : (1980) CriLJ 1099 : (1978) CriLJ 1741 : (1980) 3 SCC 488 :

(1978) 4 SCC 494 : (1980) SCC(Cri) 580 : (1979) SCC(Cri) 155 : (1980) 2 SCR 557 : (1979) 1 SCR 392 the Court upheld the validity of

section 30(2) of the Prisons Act which provided for solitary confinement of a prisoner under sentence of death by construing it narrowly so as to

avoid the same being declared ultra vires Article 14, 19 and 21 of the Constitution.

86. In New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar, AIR 1963 SC 1207 : (1963) 2 SCR 459 Supp : (1963) 14 STC 316

the wide definition of the word ""sale"" in Bihar Sales Tax Act, 1947 was given a restricted construction so as to bring the law within the legislative

competence of the State Legislature.

87. In Ms. Githa Hariharan and Another Vs. Reserve Bank of India and Another, AIR 1999 SC 1149 : (1999) 95 CompCas 913 : (1999) 1

CTC 481 : (1999) 1 DMC 337 : (1999) 236 ITR 380 : (1999) 1 JT 524 : (1999) 1 SCALE 490 : (1999) 2 SCC 228 : (1999) 1 SCR 669 :

(1999) 2 UJ 916 : (1999) AIRSCW 811 : (1999) 2 Supreme 123 the Court while interpreting section 6(a) of Hindu Minority and Guardianship

Act, 1956 which provided that the natural guarding of a minor would be ""the father and after him, the mother"" held the word ""after him"" were to be

construed not to mean ""only after the lifetime of the father"" but to mean ""in the absence of"", as the former construction would make the section

unconstitutional being violative of the principles of gender equality.

88. In Afjal Imam Vs. State of Bihar and Others, (2011) 5 JT 19 : (2011) 4 SCALE 815 : (2011) 5 SCC 729 : (2011) 2 UJ 1316 the Apex

Court was called upon to interpret section 27 of the Bihar Municipal Act, 2007 which provided that members of the empowered Standing

Committee would continue to hold office for the entire term of the municipal body notwithstanding the removal of the Mayor who had nominated

them to such office. Rejecting the literal meaning of the words used in section 27 of the aforesaid Act as the same would bring it in conflict with the

other provisions of the Act, namely, section 21(3) thereof and Article 14 of the Constitution. The Apex Court held as follows:--

49. Apart from the aforesaid resultant administrative difficulty, if a literal interpretation of Section 27 is followed along with adding words in Section

21(3) as pointed out above, the newly elected Mayor will not be treated dissimilarly for no justifiable distinction. In that case, as against the earlier

elected Mayor he will not be permitted to have his nominees on the Empowered Standing Committee. A literal interpretation of Section 27 of the

Act will clearly bring it in conflict with Section 21(3) of the Act, and will also be violative of Article 14 of the Constitution of India as held by the

Constitution Bench of this Court way back in State of W.B. v. Anwar Ali Sarkar.

89. In Namit Sharma Vs. Union of India (UOI), (2013) 1 ABR 10 : (2012) 9 JT 209 : (2012) 9 JT 166 : (2012) 4 RCR(Civil) 903 : (2012) 8

SCALE 593 : (2013) 1 SCC 745 the Apex Court at paragraph 20 held that if two views are possible, one making the Statute Constitutional and

the other making it unconstitutional, former view must prevail and the Court must make to uphold the Constitutional validity of a Statute.

90. In Subramanian Swamy and Others Vs. Raju Thr. Member Juvenile Justice Board and Another, AIR 2014 SC 1649 : (2014) AIRSCW 2021

: (2014) 4 JT 328 : (2014) 4 SCALE 305 : (2014) 8 SCC 390 the Court held as follows: -

61. Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is

clear. The fundamental principle of the ""reading down"" doctrine can be summarized as follows. Courts must read the legislation literally in the first

instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an

unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative

exercise, the Act may be read down to save it from unconstitutionality. The above is a fairly well established and well accepted principle of

interpretation which having been reiterated by this Court time and again would obviate the necessity of any recall of the huge number of precedents

available except, perhaps, the view of Sawant, J. (majority view) in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Others* which

succinctly sums up the position is, therefore, extracted below.

255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for

saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are

possible--one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring

from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second

situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the

legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the

provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting

is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike

it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its

distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the

statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its

jurisdiction to do so.

91. The Supreme Court in the case of *Zaveribhai Amaldas v. State of Bombay* in 1954 AIR 752 was dealing with the construction of a Statute so

far as the punishment under the laws enacted by Centre and State, if differs as the subject come under the concurrent list, which should prevail

over the other. It was held that under Article 254(1) of the Constitution whether the Act of parliament prevails against the law of the State, no

question of repeal arises as the principle which is applicable is rule of implied repeal. Therefore, in the present case, the words used under Section

8 if read along with Section 5 of the State Act VIII of 1994 along with Article 324(1) and Article 243ZA, it implies the so called "supremacy" of

the State as supremacy of the Commission. Argument of the State and the Election Commission is incorrect.

92. When the word ""consultation"" in the State Legislation is interpreted to mean supremacy in the opinion of the State Election Commission, the

word fixation of date by the State Government as per such opinion loses its discretionary import and becomes a ministerial act akin to exercise of

powers by titular heads under sections 14 and 15 of the Representation of the People Act, 1951.

93. The aforesaid statutory provision when read in this context is saved from the vice of the unconstitutionality.

3. Whether postponement of elections to 7 urban local bodies on the ground of restructuring/reconstitution is justified, while conducting elections to

other municipalities, when duration of all the municipalities either have expired or is going to expire by June, 2015 ?

94. No municipality could go beyond the term of five years from the date of its first meeting. An obligation is cast on the Election Commission and

other Constitutional Authorities to carry out the said mandate. Even in case of premature dissolution of Assembly or the local body in the light of

the provisions stated above, the Election Commission concerned is required to take immediate steps for holding elections. Similarly, if the term of

the local body or other houses proceeds smoothly without interruption of dissolution before the expiry of the body, elections have to be held

before the end of term. Election Commission is not allowed to surrender to situations that may be created by persons having vested interest with

the collateral purpose to postpone elections. Unless the circumstances are exceptional, there is no justification in delaying the process of election

once the term of the local body fixed under the Statute comes to an end. The powers of the State Election Commission in respect of conduct of

elections is no less than that of the Election Commission of India in their respective fields, however, subject to the law made by the Parliament or

the State Legislature, provided the same do not encroach upon the plenary powers of the Election Commissions. The Election Commissions are

required to function independently from the Governments concerned, so far as their powers envisaged under the Constitution and other relevant

Statutes. Elections cannot be postponed unless in exceptional circumstances like natural calamities, act of God i.e., earthquakes, floods, etc., or

manmade calamities like riots etc.

95. When duration of municipality is fixed under Article 243U of the Constitution, any violation to the said mandate cannot be allowed. The first

and foremost duty of the Election Commission is to hold free and fair election at the earliest. No efforts should be spared by the Election

Commission to hold timely elections. Ordinarily, Law and Order or Public Disorder cannot be the reasons for postponing the elections.

96. There is no limitation on the powers of the Election Commission to frame schedule for the purpose of holding elections. There cannot be any

law either by Parliament or by State, which would be repugnant to the provisions of the Constitution. Free and fair elections by the Election

Commission are part of the basic structure of Constitution. Periodical elections in a Democratic set up is very important as the people would be in

a position either to re-elect the people's representatives or they choose to change the representatives. Therefore, Election Commission is an

important constitutional authority vested with the functional duty of ensuring free and fair elections, so also purity of the electoral process. In order

to ensure this fairness and transparency, it has all the incidental and ancillary powers to effectuate the constitutional objectives and purpose.

Whenever an occasion arises where a constituency or a local body have gone unrepresented or ignored, such situation is very grave. Election

Commissions should not have any hesitation in fixing the dates for the polls since the power and duty of fixing the date/dates and hours of polling

are clearly with that of the Election Commission.

97. Having regard to the clear enunciation of law in this regard, the State Commission has no authority to ignore conduct of elections when expiry

of the term of local body is staring at it. Commissions are under a constitutional obligation to hold elections without giving any lame excuses. It is

also well settled that delimitation and the like causes as arisen in this case i.e., reconstitution/restructuring of certain municipalities which are not

going for elections, cannot be grounds not to hold elections as holding municipal elections as enunciated under Constitution is mandatory.

98. Coming to the issue of the decision of the Commission to accept the proposal of the State not to hold elections for seven local urban bodies on

the ground that restructuring of the said urban local bodies have been proposed it appears that even the initial step for restructuring were taken

much after the Commission had initiated the consultative process for holding elections to the said bodies. It may be apposite to note that as early as

on 6th February, 2015 the Commission had recommended election to the said seven excluded urban local bodies along with other urban local

bodies to be held by the end of April, 2015.

99. It is also pertinent to note that some out of seven excluded urban local bodies, namely, Bally, Rajarhat, Gopalpur and Kulti have ended their

tenures in June, 2014. It is only after the receipt of proposal for election from the Commission, the State Government issued draft notifications

under the relevant Statutes for restructuring the seven urban local bodies between 18th February, 2015 and 31st March, 2015. Commission

however reiterated its proposal to initiate election process for the said seven excluded urban local bodies along with other municipalities by its

communication dated 23rd February, 2015. Thereafter, for reasons best known to the Commission, the latter appears to have given up its

insistence for holding election to the aforesaid seven excluded urban local bodies. In fact, in its affidavit before this Court the Commission

expressed its readiness and willingness to hold elections in those urban local bodies and averred that preparatory steps have already been taken in

that regard.

100. Reliance has been strongly placed on behalf of the State in *The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and*

Others, AIR 2003 SC 1659 : (2003) 5 JT 509 : (2003) 9 SCC 731 : (2003) 1 SCR 1112 : (2003) AIRSCW 1061 : (2003) 2 Supreme 72 to

argue that upgradation of municipal bodies is a good ground to postpone elections to such bodies. In the said report, draft notifications had been

issued for upgradation of the municipal council to municipal corporation on the basis of growth in population. Such process was challenged in the

High Court and by an interim order although hearing of objections to the draft notifications were allowed to be considered but the State was

restrained from issuing final notification for upgradation. At that stage election notification was issued and election process was duly completed.

The Apex Court upheld the notification for upgradation and consequentially quashed the election. Accordingly, it is argued that Constitutional

mandate under Article 243-U was not applicable to a municipality which is undergoing process of upgradation.

101. The aforesaid case is factually distinguishable from the present one. Out of seven urban bodies, some have already completed their tenure in

June, 2014 and draft notification in the instant case was issued on 18th February, 2015 much after some of the aforesaid urban local bodies had

completed their tenures. In Jalgaon case, draft notifications were issued prior to expiry of the tenure of the said municipal Council. That apart, in

Jalgaon case the process of upgradation of the local body had attained final stage as the objections to the draft notifications had already been heard

and final notification could not be issued due to injunction passed by the Court when the election notification was issued for election to the

municipal Council proposed to be upgraded.

102. In the present case, the issue is just the reverse. Draft notifications were issued for restructuring of the local bodies only after the proposal

was made by the Election Commission for holding election for such bodies along with other local bodies in the State (some of whose tenures had

expired in June, 2014).

103. It is therefore clear that in the instant case draft notifications had been issued after the proposal of the Election Commission to hold elections

to the seven excluded urban local bodies and such exercise ought not to have hindered the Constitutional mandate of holding elections to the said

local bodies as proposed by the Commission.

104. It is pertinent to note that the Commission in its affidavit has unequivocally stated that they are ready and willing to proceed with the election

to the seven excluded urban local bodies. In *Kishansing Tomar (supra)* (Constitutional Bench) it has been emphatically asserted that election to a

local body ought not to be postponed except for natural or manmade calamities like rioting etc. Restructuring of municipality cannot be an instance

of such exceptional circumstance as elucidated in *Kishansing Tomar (supra)*.

105. It appears in the instant case that decision to restructure municipalities had not even been initiated during the existence of tenure of some of

the aforesaid urban local bodies. They were initiated only after the proposal for holding election was communicated to the Government by the

Commission. Under such circumstances, it cannot be held that the decision to restructure/reconstitute the aforesaid seven urban local bodies was a

cogent reason not to hold election to such municipalities.

106. In Re. Special Reference 1 of 2002 (supra) the Apex Court at paragraph 152 while interpreting the powers of Election Commission under

Article 324 held that it is the duty of the Election Commission to lift the veil and scuttle any effort on behalf of the caretaker Government to create

manmade situations and thereby stall the election process.

107. In the present situation, it was incumbent on the Commission to exert its supremacy and ensure that elections to the seven excluded urban

local bodies be also held. The decision of the Commission not to hold such election on the excuse of restructuring of the said urban local bodies

which was undertaken belatedly by the Government which appears to be an afterthought in the factual matrix of the case is unjust, unreasonable

and runs contrary to the Constitutional ethos engrafted in part IXA of the Constitution.

108. We are conscious of the Constitutional bar engrafted under Article 243-ZG of the Constitution.

The same is *pari materia* under Article 329 of the Constitution of India.

109. A plain reading of the said provision shows that no Court shall entertain a challenge to the validity of any law relating to delimitation of

constituencies or allotment of seats in such constituencies made or purported to be made under Article 243-ZA of the Constitution of India and no

election to any municipality shall be called in question except by way of election petition.

The bar under the aforesaid provisions therefore is a

challenge to the validity of any law providing for delimitation of constituencies or allotment of seats therein or to holding of any election to a

municipality. Illegal decision on the part of the Commission not to hold election is, therefore, not exempted from judicial scrutiny by operation of

the aforesaid Constitutional embargo.

110. Similar is the view expressed by the Apex Court in *Mohinder Singh Gill* (supra).

While interpreting the blanket ban under Article 329-(b) of

the Constitution the Apex Court, *inter alia*, held as follows:

32. On the assumption, but leaving the question of the validity of the direction for re-poll open for determination by the Election Tribunal, we hold

that a writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step in ""election"" and is therefore barred by

Article 329(b). If no re-poll had been directed the legal perspective would have been very different. The mere cancellation would have then

thwarted the course of the election and different considerations would have come into play We need not chase a hypothetical case.

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34. This dilemma does not arise in the wider view we take of Section 100(1)(d)(iv) of the Act. Sri Rao's attack on the order impugned is in

substance based on alleged non-compliance with a provision of the Constitution viz. Article 324 but is neatly covered by the widely-worded,

residual catch-all clause of Section 100. Knowing the supreme significance of speedy elections in our system the framers of the Constitution have,

by implication postponed all election disputes to election petitions and tribunals. In harmony with this scheme Section 100 of the Act has been

designedly drafted to embrace all conceivable infirmities which may be urged. To make the project fool-proof Section 100(1)(d)(iv) has been

added to absolve everything left over. The Court has in earlier rulings pointed out that Section 100 is exhaustive of all grievances regarding an

election. But what is banned is not anything whatsoever done or directed by the Commissioner but everything he does or directs in furtherance of

the election, not contrarywise. For example, after the President notifies the nation on the holding of elections under Section 15 and the

Commissioner publishes the calendar for the poll under Section 30, if the latter orders Returning Officers to accept only one nomination or only

those which come from one party as distinguished from other parties or independents, is that order immune from immediate attack. We think not.

Because the Commissioner is preventing an election, not promoting it and the Court's review of that order will facilitate the flow, not stop the

stream. Election, wide or narrow be its connotation, means choice from a possible plurality, monolithic politics not being our genius or reality, and if

that concept is crippled by the Commissioner's act, he holds no election at all.

35. A poll is part--a vital part--of the election but with the end of the poll the whole election is not over. Ballots have to be assembled, scrutinised,

counted, recount claims considered and result declared. The declaration determines the election. The conduct of the election thus ripens into the

elector's choice only when processed, screened and sanctified, every escalatory step up to the formalized finish being unified in purpose, forward

in movement, fair and free in its temper, Article 329(b) halts judicial intervention during this period, provided the act possesses the pre requisites of

election"" in its semantic sweep. That is to say, immunity is conferred only if the Act impeached is done for the apparent object of furthering a free

and fair election and the protective armour drops down if the act challenged is either unrelated to or thwarts or taints the course of the election.

111. Applying the aforesaid ratio to the factual matrix of the present case it appears that the Constitutional ban under Article 243-ZG cannot take

away the jurisdiction of the Court to examine the validity of the decision of the Commission not to hold elections to the excluded seven urban local

bodies on the belated plea that steps are being taken by the Government for restructuring them, as aforesaid.

112. As discussed earlier, it appears that the steps for restructuring is an afterthought and was hurriedly initiated by the Government when the

proposal for holding election to the seven urban local bodies was made by the Commission. Hence, we hold that the decision of the Commission

not to hold elections to the seven urban local bodies as illegal and accordingly, is set aside.

4. Whether decision to hold elections on 18th April, 2015 for Kolkata Municipal Corporation and 25th April, 2015 for other local bodies

excluding some is ultra vires the Constitutional Scheme as envisaged in Part IXA of the Constitution.

113. It appears from the pleadings and annexures thereto that the consultative process in the instant case was initiated by the State Election

Commission pursuant to submissions recorded by this Court on 10th September, 2014 in W.P. No. 10819 (W) of 2014. In the said order this

Court had noted the submission on behalf of the State Election Commission that a decision has been taken for resolving the dispute under

reference on the basis of ""consultation"" and ""....necessary steps will be taken by the parties in accordance with law for holding the elections to 10

municipalities, namely, Mal, Kaliaganj, Islampur, Gangarampur, Rajpur-Sonarpur, Uluberia, Dankuni, Egra, Santhia, Haringhata by 31st January,

2015.

114. Pursuant to such order, on 18th September, 2014 State Election Commission wrote to the State Government to hold elections in the

aforesaid ten municipalities in the 3rd week of January, 2015 and complete the election process by the end of January, 2015. After repeated

reminders on 4th December, 2014 the State Government wrote to the Election Commission that as the tenure of 81 other civic bodies were to end

on June, 2015 all elections may be held together by the end of April, 2015 as holding of piecemeal elections was against the interest of continued

developmental work"" and other administrative functions.

115. By letter dated 11th December, 2014 the Commission communicated to the government the legal opinion that the Government ought not to

disregard the aforesaid order of this Court. The Government, in turn, informed the Commission that they had filed an application for modification of

the aforesaid order dated 10.09.2014 passed by this Court. On 13th January, 2015 the State Election Commission proposed 26th April as date

for holding elections for 91 municipal bodies and directed the Government to issue notification in 3/4th week of March, 2015. On 6th February,

2015 the State Election Commission also requested the Government to hold elections for the seven excluded municipalities along with other

municipalities in April, 2015. Government, in turn, by communication dated 13th February, 2015 proposed 18th April, 2015 for holding municipal

election for Kolkata Municipal Corporation and 25th April, 2015 for holding election to 91 urban bodies, except seven urban local bodies in view

of the proposed restructuring of the said urban local bodies.

116. In response thereto, the State Election Commission reiterated its stance that all the urban local bodies whose terms have expired in June,

2014 and those whose term would expire in June, 2015 ought to go for elections simultaneously. However, on 4th March, 2015 the State Election

Commission communicated tentative schedule for conduct of municipal polls for Kolkata Municipal Corporation and 91 other urban local bodies

on 18th April, 2015 and 25th April, 2015 respectively, except seven urban local bodies which were proposed to be re-constructed. By

communication dated 10th March, 2015 the Government recorded its agreement to the aforesaid tentative schedule proposed by the State

Election Commission and the election notifications for the Kolkata Municipal Corporation and 91 other urban local bodies were issued under

section 8 of the Act VIII of 1994 and section 36(3) of the Act XXXIV of 1994 on 16th March, 2015 for Kolkata Municipal Corporation and

18th March, 2015 for 91 other urban local bodies. On the self-same dates, Election Commission also issued notifications under section 37 of the

Act XXXIV of 1994 declaring the schedule for holding elections to Kolkata Municipal Corporation and 91 other urban local bodies respectively.

117. It has been argued that there was no real consultation process and the State Election Commission had mechanically accepted the dates

proposed by the State Government. Hence the fixing of the dates was unconstitutional and contrary to the provisions of Article 243-ZA of the

Constitution of India.

118. We find from the aforesaid narrative that the consultative process had been initiated at the behest of the State Election Commission in

September, 2014 with regard to ten urban local bodies pursuant to the submissions recorded by this Court in its order dated 10th September,

2014 in WP No. 18019 (W) of 2014. Thereafter on the suggestion of the Government that other 81 urban local bodies were to complete their

tenure in June, 2015 and it would be administratively convenient to hold the elections simultaneously, the Election Commission had recommended

26th April, 2015 as the date for holding elections to all urban local bodies whose tenures have expired or were to expire by June, 2015 including

the excluded seven urban local bodies wherein restructuring has been proposed. The State Government however proposed 18th April, 2015 for

election to Kolkata Municipal Corporation and 25th April, 2015 for election to 91 other urban local bodies except seven urban local bodies where

restructuring was commenced by issuing draft notifications on and from 18th February, 2015.

119. It appears that the Commission accepted such proposal although by communication dated 23rd February, 2015 it reiterated that the

aforesaid seven excluded urban local bodies should also go for election.

120. Pursuant thereto, election notifications were issued on 16th March, 2015 and 25th March, 2015 for the elections to Kolkata Municipal

Corporation and other 91 urban local bodies respectively.

121. The aforesaid factual matrix shows that there was a consultative process which was undertaken by the Election Commission as well as State

Government.

122. It is natural that in a consultative process there will be proposals and counter proposals and finally a consensus is to be achieved. For healthy

functioning of a Constitutional democracy, high Constitutional authorities like the State Election Commission as well as the State Government are

expected to operate in a harmonious manner and strive to achieve a consensus. Conflicts and/or differences of opinion ought to be resolved

through discussion, deliberation and dialogue. All efforts must be undertaken so as to avoid any conflict or Constitutional impasse.

123. It is true that in such consultative process where timely holding of free and fair elections to local bodies is a Constitutional imperative, the

supremacy has to be reserved with the Commission. In case of an unavoidable conflict, no doubt the opinion of the Commission shall prevail.

However, that does not mean that the Commission shall act as a ""Constitutional tyrant"" ignoring the logistic, administrative and other conveniences

of the State within Constitutional parameters inasmuch as it is the duty of the State to provide adequate staff and other logistic support for holding

of elections to the urban local bodies as envisaged under Article 243-K(3) of the Constitution.

124. In this perspective, the decision of the Commission to accept the proposal of the State for staggering the dates for holding municipal election

on 18th April, 2015 for Kolkata Municipal Corporation and on 25th April, 2015 for other urban local bodies cannot be said to be an act of

submission to the dictates of the State but is to be construed as a consensus arrived at between the two Constitutional authorities through the

consultative process for effective discharge of their Constitutional duty of holding free and fair elections.

125. That apart, the decision of the Commission to hold elections on 18th April, 2015 and 25th April, 2015 respectively cannot be called into

question in view of the express bar contained under Article 243-ZG of the Constitution of India. It is one thing to hold that a petition challenging

vires of the laws of election instituted prior to the issuance of the election notification is maintainable but grant of reliefs therein is to be judged in the

light of the bar under Article 243-ZG of the Constitution.

126. While dealing with Article 329(b) (pari materia to Article 243-ZG(b)) the Apex Court in M.S. Gill (supra) held that the blanket ban under

Article 329(b) bars grant of relief in the matter of anything done by the Commission in furtherance of the election. Hence, decision of the

Commission to hold municipal elections on two dates as proposed by the State Government cannot be subject matter of adjudication once the

election notification had been issued. Reference in this regard may also be made to Boddula Krishnaiah and another Vs. State Election

Commissioner, A.P. and others, (1996) 4 AD 128 : AIR 1996 SC 1595 : (1996) 4 JT 156 : (1996) 3 SCALE 301 : (1996) 3 SCC 416 : (1996)

3 SCR 687 wherein the Apex Court held as follows:--

11. Thus, it would be clear that once an election process has been set in motion, though the High Court may entertain or may have already

entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the

proceedings or to conduct the election process afresh, in particular when election has already been held in which the voters were allegedly

prevented from exercising their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for redressal.

127. Hence, we are of the view that as the Commission was ad idem with the State with the proposal of staggering the municipal elections on two

dates instead of one (as originally proposed by the Commission), it cannot be said that the Constitutional entities were at variance to each other on

such proposal affecting the Constitutional scheme as envisaged in part IXA of the Constitution. More so, no relief in respect of such decision of the

Commission in furtherance of the election process can be granted in view of the express bar engrafted under Article 243-ZG of the Constitution of

India.

Conclusion :

128. In the light of the aforesaid discussion and reasoning, it may be summarized as follows: -

1) The State Election Commission constituted under Article 243-K of the Constitution shall have primacy in the matter of fixing of date/dates and

hours of polls in municipal bodies under section 8 of Act VIII of 1994 and section 36(3) of Act XXXIV of 1994.

2) In view of the fact that the expression ""in consultation with the Commission"" occurring in section 8 of the Act VIII of 1994 and section 36(3) of

the Act XXXIV of 1994 have been read down to ""primacy of opinion of the Commission"" in such consultative process, the aforesaid provisions

cannot be said to be ultra vires the Constitution or any part thereof.

3) As the State election Commission was ad idem with the proposal of the State Government to hold municipal polls on 18th April, 2015 for

Kolkata Municipal Corporation and on 25th April, 2015 for other urban local bodies and the same was a product of consultative process between

the two constitutional entities, such decision cannot be said to be contrary to the Constitutional ethos of Part IX-A of the Constitution. More so,

the decision being in furtherance of the election process cannot be called into question in view of the Constitutional bar under Article 243-ZG of

the Constitution.

4) Decision of Commission, not to hold elections to the seven urban local bodies which have been excluded on the plea of

restructuring/reconstituting process being undertaken, is illegal and accordingly set aside. Commission is directed to forthwith initiate steps for

holding elections to the seven excluded urban local bodies. The entire election process be completed within two months from date in accordance

with the procedure contemplated. Needless to mention, in such consultative process, the opinion of the Commission shall be given primacy and

shall prevail in case of conflict.

Accordingly, the writ petition is disposed of

Joymalya Bagchi, J.

I agree.