

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

(1) D.B. Civil Writ Petition (PIL) No. 19007/2019

Satish Kumar Sharma Son of Shri R.K. Sharma, Aged About 44
Years, Resident Of 13, Gatore Road, Brahmpuri, Jaipur.

----Petitioner

Versus

1. State of Rajasthan, Through Secretary to the Government
of Rajasthan, Department of Local Self Government,
Secretariat, Jaipur.

2. The Director and Joint Secretary, Department of Local
Self Government, Government of Rajasthan, Jaipur.

3. Municipal Corporation, Jaipur, through its Commissioner
State Election Commission, through Chief Electoral
Officer, Room No.1139, Ground Floor, Main Block,
Secretariat, Jaipur.

----Respondents

Connected With

(2) D.B. Civil Writ Petition No. 18880/2019

Suresh Kumar Tiwari S/o Sh. Radhey Shyam Tiwari, Aged About
51 Years, R/o House No. 800, Baba Harishchandra Marg,
Chandpole Bazar, Jaipur.

----Petitioner

Versus

1. The State of Rajasthan, Through Chief Secretary,
Government Secretariat, Bhagwan Das Road, Jaipur.

2. The State Election Commission, Second Floor,
Development Block, Secretariat, Jaipur-302005 through
its Secretary.

3. The Jaipur Municipal Corporation, through its Mayor,
Deendayal Upadhayay Bhawan, Tonk Road, Jaipur.

----Respondents

For Petitioner(s) : Shri R.D. Rastogi, Sr. Advocate with
Shri Anand Sharma, Shri C.S. Sinha,
Shri Devesh Yadav, Shri Anees
Khandelwal & Ms. Ritu Pathak in CW
No.19007/19.

Ms. Gyamlani Neha, Shri Lokesh Jangid & Shri Yash Kochar on behalf of Shri Bharat Vyas in CW No.18880/19

For Respondent(s) : Shri M.S. Singhvi, Advocate General assisted by Shri Darsh Pareek & Shri Siddhant Jain for State.
Shri R.B. Mathur with Shri Nikhil Simlote, Shri Ankit Popli, Ms. Tanvi Sahai and Shri Prateek Kedawat for Rajasthan State Election Commission.



HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

Judgment

Judgment Reserved on :: 21/11/2019

Judgment Pronounced on :: 3/12/2019

(PER HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL):

D.B. Civil Writ Petition (PIL) No.19007/2019 has been filed challenging validity of the notifications dated 5.11.2019 and 18.10.2019, whereby the Municipal Corporation, Jaipur has been splitted into two Municipal Corporations namely; Jaipur Heritage and Jaipur Greater, mainly on the premise that it has been done only to avoid its election with a further relief to have elections of the Municipal Corporation, Jaipur within the time prescribed i.e. prior to 25.11.2019 or immediately thereafter in accordance with notifications dated 10.6.2019, 29.7.2019 and 14.8.2019.

In the D.B. Civil Writ Petition No.18880/2019, in addition to aforesaid relief, a further relief has been sought seeking quashment of the notification dated 18.10.2019 being ultra vires; but, during the course of arguments, learned counsel appearing for the petitioner did not press this relief; thus, essentially in both the writ petitions, the relief prayed for is almost identical i.e. the

elections of the Municipal Corporation, Jaipur be conducted within the stipulated period i.e. prior to 25.11.2019 in the letter and spirit of Article 243U of the Constitution of India as term of the existing Municipal Corporation, Jaipur is coming to expire on 25.11.2019. Therefore, both the writ petitions are being decided vide this common order.

Facts in brief as emerge from both the writ petitions are that the Municipal Corporation, Jaipur was constituted on 26.11.2014 in pursuance of the elections held in the year 2014. Vide notification no.1523 dated 10.6.2019 (Annexure-2), the State Government, exercising its powers under Sections 6(1) and 9 of the Rajasthan Municipalities Act, 2009 (for brevity, 'the Act of 2009'), prescribed criteria for fixation of number of seats in different municipalities. For the Municipal Corporations with population above 15 lacs, the number of seats prescribed was 150. This notification rescinded the earlier notification dated 22.8.1994 whereby the number of seats for Municipal Corporation, Jaipur was fixed as 91. Vide notification dated even (Annexure-3), elections for 44 municipalities were proposed to be conducted in November, 2019 in view that life of these 44 municipalities was coming to an end in the month of November itself. Thereafter, vide order dated 10.6.2019 (Annexure-4) the State Government re-determined the number of Wards in various municipal bodies whereby, the number of Wards in Municipal Corporation, Jaipur was increased from 91 to 150, which was in tune with the notification no.1523 dated even. Notification dated 29.7.2019 (Annexure-5) provided for classification of reserve seats in various municipalities including the Municipal Corporation, Jaipur. Vide



order dated 14.8.2019 (Annexure-6) issued under Sections 6 and 10 of the Act of 2009 read with Rule 3 of the Rajasthan Municipal (Elections) Rules, 1994, the State Government agreeing with the comments of Chief Municipal Officer, approved the draft order of Ward formation as proposed by the Chief Municipal Corporation. This order also provided for 150 Wards for the Municipal Corporation, Jaipur. Thereafter, the State Government came with notification dated 18.10.2019 (Annexure-7); impugned herein, whereby rescinding the notification no.2446 dated 14.8.2019, the Municipal Corporation, Jaipur was splitted into two new Municipal Corporations namely; Municipal Corporation, Jaipur Heritage and Municipal Corporation, Greater Jaipur. Along with Municipal Corporation Jaipur, the Municipal Corporations of Jodhpur as well as Kota were bifurcated too. Barring the Municipal Corporations, Jaipur, Jodhpur and Kota, vide notification dated 31.10.2019 (Annexure-8), the State Government notified elections in 49 municipal bodies including 6 new municipal bodies to be conducted in the month of November as the life of existing municipalities was coming to an end in that very month. Thereafter, vide notification dated 5.11.2019 (Annexure-9) issued in continuation of the earlier notifications dated 10.6.2019, 18.10.2019 and 29.7.2019, for the Municipal Corporation, Jaipur Heritage & Municipal Corporation, Greater Jaipur, the Wards/Seats were determined and were classified as per reservation for various categories.

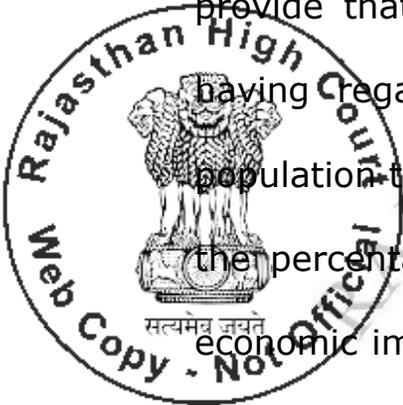
Shri R.D. Rastogi, learned senior counsel for the petitioner challenging the validity of the notification dated 18.10.2019 and 5.11.2019 and consequent postponement of the elections for the



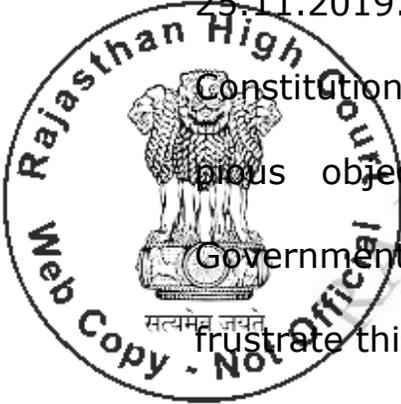
Municipal Corporation, Jaipur, contended that the notification dated 18.10.2019 is in violation of mandate of Article 243Q of the Constitution of India as the two new municipalities namely; Municipal Corporation, Jaipur Heritage and Municipal Corporation, Jaipur Greater have been constituted without having due regard to the provisions of Article 243Q(2), which in no uncertain terms provide that a municipality can be constituted by the Governor having regard to the population of the area, density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit. It was contended that before issuing the notification impugned, the aforesaid factors germane for constitution of a municipality, were not taken into consideration. It was canvassed that no survey of population, population density, geographical limits and requirement of the concerned area was carried out at all prior to splitting the Municipal Corporation, Jaipur.

Validity of the Notification impugned was also assailed submitting that it is not in conformity with the provisions of Article 243Q as it has not been issued by the Governor. Referring to the provisions of Article 166 of the Constitution of India, it was contended that notification does not reveal having been issued by the Governor in the manner prescribed.

Laying challenge to the notification dated 18.10.2019, it was argued by Shri Rastogi that it results in violation of mandate of Article 243U of Part-IXA of the Constitution of India which provides duration of every municipality to be 5 years from the date appointed for its first meeting and no longer. It further mandates



election to constitute a municipality to be completed before the expiry of its duration specified i.e. 5 years from the date of its first meeting. It was, therefore, submitted that since the life of existing Municipal Corporation, Jaipur is going to expire on 25.11.2019, in terms of the constitutional mandate, it was obligatory upon the respondents to have carried out the election process on or before 25.11.2019. It was submitted that Chapter IX-A in the Constitution of India was inserted vide 74th amendment with a primum object to have regular elections for the Local Self Government and the instant notification has been issued to frustrate this object and mandate.



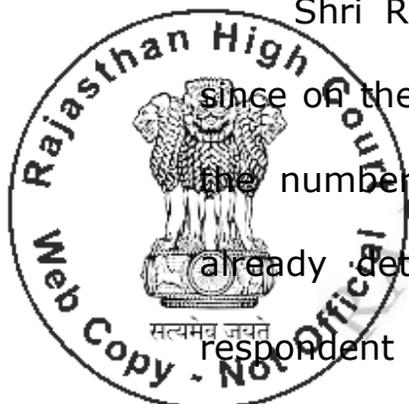
It was submitted that had the intention of the State Government been bona fide, powers under Section 3 of the Act of 2009 could have been exercised at appropriate time i.e. 6 months prior to 25.11.2019 i.e. commensurate with the life of existing Municipal Corporation, Jaipur when it was coming to an end so that the elections of the newly constituted Corporations could have taken place in time. It was submitted that once the process of re-determination of seats, de-limitation and classification of Wards as per reservation was over, the issuance of notification dated 18.10.2019 is nothing but deliberate and malicious action on the part of the State Government to flout the constitutional mandate. It was argued by Shri Rastogi that when the stage was set for election of Municipal Corporation, Jaipur, the State Government taking a volte-face, came with the notification impugned to avoid election. It was contended by Shri Rastogi that only in order to avoid ensuing election for the Municipal Corporation, Jaipur; with a malafide intention and in colourable exercise of powers, the

existing Municipal Corporation, Jaipur has been splitted into two Municipal Corporations vide notification dated 18.10.2019. It was further submitted that a municipality being a body having perpetual succession, cannot be allowed to run in vacuum, which would be the position obtaining in the present case as the direct result of the notification dated 18.10.2019.

Shri R.D. Rastogi, learned senior counsel has argued that since on the strength of the Census carried out in the year 2011, the number of seats in the Municipal Corporation, Jaipur was already determined as 91; in absence of fresh Census, the respondent no.1 could not have re-determined the number of seats to 250. It was further contended that the State Government could have done so on the basis of new Census which is going to be conducted very soon i.e. in the year 2021; but, the State Government has deliberately done it just before the life of the existing Municipal Corporation, Jaipur was coming to an end in November, 2019 with ill motive.

The notification dated 18.10.2019 was also alleged to be suffering from the vice of non-application of mind by the respondent no.1 inasmuch vide order no.2195 dated 10.6.2019, the number of wards for the Municipal Corporation, Jaipur was already re-determined to 150 from 91; whereas, the notification takes cognizance of 91 Wards only.

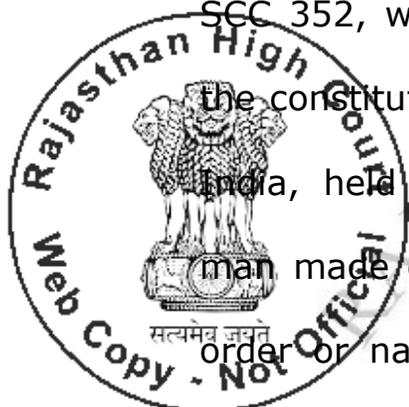
Advancing his arguments further, Shri Rastogi submitted that the notification dated 18.10.2019 is bereft of any reason for splitting the existing Municipal Corporation, Jaipur and the reasons enumerated in its reply by the respondent are afterthought. It was also contended that the State Election Commission has failed to



discharge its constitutional obligation by not having timely election for Municipal Corporation, Jaipur.

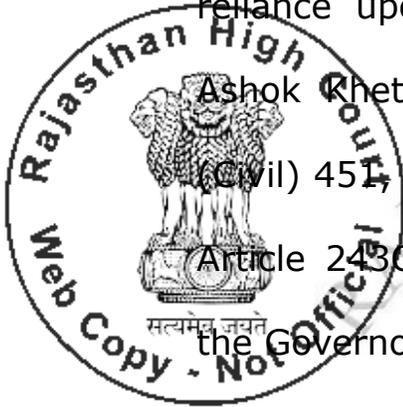
To buttress his submissions, learned senior counsel for the petitioner Shri Rastogi has relied upon Constitution Bench judgement of the Hon'ble Apex Court in Kishan Singh Tomar vs. Municipal Corporation of the City of Ahmedabad and Ors.-(2006) 8 SCC 352, wherein the Hon'ble Apex Court has, after considering the constitutional provisions under Chapter IX-A of Constitution of India, held that barring exceptional circumstances, like certain man made calamities, such as rioting or break down of law and order or natural calamities which could obstruct the authorities from holding elections, under no other circumstance, the authorities would be justified in delaying the process of election. It was held that the entire Chapter in the Constitution was inserted to ensure no delay in the constitution of new municipality over 5 years and to avoid the mischief of delaying the process of election. Relying on the ratio of K.S. Tomar's case, it was submitted that there cannot be any hiatus between life of a municipal body coming to an end and constitution of new municipal body. It was submitted that the aforesaid ratio was approved by the Hon'ble Apex Court in K.B. Nagur, M.D. vs. Union of India-AIR 2012 SC 1774. Reliance is also placed on the judgement of coordinate bench of this Court in Pata Ram Bheel vs. State of Rajasthan & Ors-(2005) 1 WLC 322.

Shri R.D. Rastogi learned senior counsel referred the judgement of Hon'ble Apex Court in Champalal vs. State of Rajasthan & Ors.-AIR 2018 SC 2352 to stress that Article 243Q(2) obligates the Governor to have due regard to the various factors



mentioned therein before constituting new municipality. It was submitted that in this case, the Hon'ble Apex Court quashed the notification as it was based on population only.

To fortify his submission that notification impugned dated 18.10.2019 deserves to be struck down as it has not been issued by the Governor; learned counsel for the petitioner has placed reliance upon judgement of coordinate bench of this Court in *Ashok Khetoliya vs. State of Rajasthan & Anr.-2015 (43) RCR (Civil) 451*, wherein it has been held that notification issued under Article 243Q(2) having not been issued under the signatures of the Governor, deserved to be quashed.



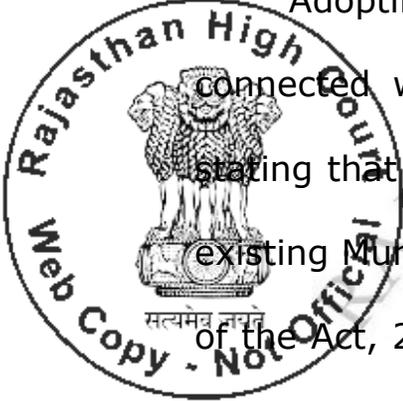
Judgement of the Hon'ble Supreme Court of India in the case of *State of Punjab & Anr. Vs. Gurdial Singh and Ors.-AIR 1980 SC 319* has been relied upon by Shri Rastogi to establish existence of legal malice in issuing notification dated 18.10.2019, wherein it was held that an action can be said to be suffering from legal malice, where the true object is to reach an end different from the one for which power is entrusted, goaded with extraneous considerations, good or bad, but irrelevant to the entrustment.

Learned counsel for the petitioner has relied upon the judgment rendered by Constitution Bench of Hon'ble Supreme Court in *Mohinder Singh Gill & Anr. Vs. the Chief Election Commissioner, New Delhi & Ors.-(1978) 1 SCC 405* to canvass that an administrative order can be sustained in a Court of law only on the reasons specified therein and the reasons cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

Learned counsel appearing for the petitioner in D.B. Civil Writ Petition No.18880/19, Ms. Gyamlani Neha, as observed earlier, did not press challenge to vires of the notification dated 18.10.2019 and confined her submissions for necessary directions to the respondents to form duly elected Municipal Corporation, Jaipur on or before 25.11.2019.

Adopting the submissions raised by Shri Rastogi in the connected writ petition, Ms. Neha has raised additional ground stating that the Government does not have any power to split the existing Municipal Corporation, Jaipur into two parts vide Section 3 of the Act, 2009. Referring Section 6(3) of the Act of 2009, it was submitted that since it provides for establishment of `a' Municipal Corporation for every larger urban area, there could not be two Municipal Corporations or more for a larger urban area like Jaipur because legislature in its wisdom has used the expression "A Municipal Corporation".

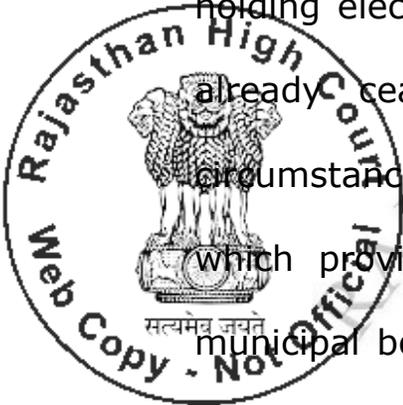
E-converso, the learned Advocate General, Shri M.S. Singhvi appearing for respondent nos.1 to 3, supported the notifications dated 18.10.2019 and 5.11.2019 and submitted that the same are perfectly in consonance with the constitutional scheme laid down vide Chapter-IXA of the Constitution of India as well as scheme of the Act of 2009. It was submitted that notification vide Article 243Q(2) of the Constitution of India by the Governor taking into consideration the factors enumerated therein was required only where a municipality was constituted in terms of Article 243Q(1) and not otherwise. It was further submitted that the petitioners cannot be permitted to raise this objection in absence of necessary pleadings in this regard. Shri Singhvi argued that the



notification dated 18.10.2019 has, as is apparent on its face, been issued under the authority of the Governor negating violation of constitutional mandate under Chapter IX-A of the Constitution of India or Chapter-II of the Act of 2009, it was submitted that since the Municipal Corporation, Jaipur no more exists with the advent of the notification dated 18.10.2019, there was no question of holding election on or before 25.11.2019 for the body which has already ceased to exist. It was submitted that in these circumstances, the judgement of Kishan Singh Tomar (supra), which provided for mandatory elections for the same type of municipal body before the expiry of the life of existing municipal body, has no application in the present case.

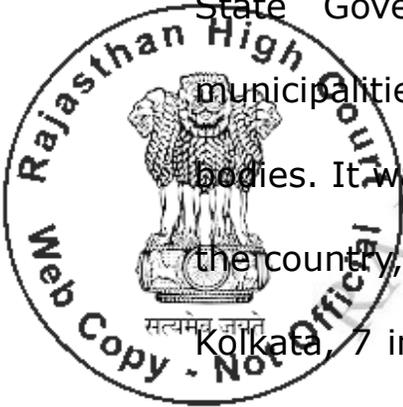
Learned Advocate General submitted that Section 320 of the Act of 2009 takes care of such exigency where a new municipality is created and as is the situation obtaining in the present case. Its provision permits holding of election within 6 months of creation of new municipality. It was canvassed that the notification dated 18.10.2019 is based on policy decision of the State Government to have more than one Municipal Corporations at all those places where the population exceeds, as per the last census, 10 lacs. It was submitted that in absence of any challenge to the competence of the State Government to split a municipality under Chapter-II of the Act of 2009, the petitioners cannot be permitted to challenge the notification dated 18.10.2019.

Refuting the allegations of malice in law/colourable exercise of powers by the respondent-State in splitting the Municipal Corporation, Jaipur, it was submitted that the writ petitions are bereft of any factual foundation in this regard. It was contended



that the municipalities are required to serve the cause of people while discharging its functions specified in Part-IXA read with Twelfth Schedule of the Constitution of India. It was submitted that looking to the number of increase of Wards, the increase in the encroachments, increase in number of cases and in order to manage the municipalities effectively and more efficiently, the State Government took a conscious decision to split the municipalities of Jaipur, Jodhpur and Kota into two municipal bodies. It was contended that in many of the larger urban areas in the country, there are multiple Municipal Corporations such as 4 in Kolkata, 7 in Mumbai with 13 Municipal Councils also, 9 Municipal Corporations in urban Bengaluru with 5 Municipalities in rural Bengaluru. It was submitted that splitting of a municipality is purely an administrative action and this Hon'ble Court may not like to sit on the decision taken vide notification dated 18.10.2019 after due consideration of the relevant factors, as an appellate authority.

It was contended that the writ petitions suffer from delay inasmuch as challenging the notification dated 18.10.2019 splitting the Municipal Corporation, Jaipur into two municipal bodies; the writ petition has been filed on or about 8.11.2019. It was canvassed by Shri Singhvi that splitting of a municipality has nothing to do with census and power of the State Government vide Section 3 of the Act of 2009 is totally independent of the Census. Relying upon Article 367 of the Constitution of India read with Section 14 of the General Clauses Act, 1897, it was submitted that the words used in an enactment in singular shall include plural and vice versa. Thus, the contention of the petitioner that



there cannot be more than one municipal body for a larger urban area, is not tenable.

Lastly it was submitted that this Court has limited scope of judicial review where the State Government has acted in exercise of its administrative power in accordance with policy decision and where the exercise has been undertaken in larger public interest.

It was, therefore, prayed that both the writ petitions be dismissed.

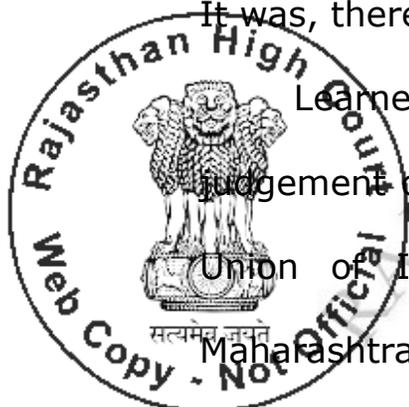
Learned Advocate General has placed reliance upon the judgement of Hon'ble Supreme Court of India in Manoj Nandu vs.

Union of India & Ors.-(2014) 9 SCC 1 and the State of Maharashtra & Ors. Vs. Jalgaon Municipal Council & Ors.-(2003) 9

SCC 731 to submit that sometimes hiatus is an unavoidable event under the circumstances obtaining as per the constitutional scheme as well as the relevant statute. Shri Singhvi has contended that the aforesaid dictum has been approved in the judgement of Pranoy Roy Vs. State of West Bengal & Ors.-(2015) 16 SCC 248 by the Hon'ble Apex Court after considering the case of Jal Gaon Municipal Council & Ors. (supra).

The judgement of Hon'ble Apex Court rendered in the Government of Maharashtra & Ors. Vs. Deokar's Distillery-(2003) 5 SCC 669 has been relied upon by Shri Singhvi to buttress his submission that challenge to the notification dated 18.10.2019 without challenging the provisions of Section 3 of the Act of 2009 is not sustainable.

For repelling the submission raised by the petitioner as to malice in law in issuing the notification dated 18.10.2019, the learned Advocate General has placed reliance upon the judgements of Hon'ble Apex Court in Ratnagiri Gas and Power



Private Ltd. Vs. R.D.S. Projects Ltd.-(2013) 1 SCC 524 as well as Mutha Associates & Ors. vs. State of Maharashtra & Ors.-(2013) 14 SCC 304.

The judgement reported in (1988) 4 SCC 364, J.R. Raghupathi & Ors. vs. State of A.P. has been relied upon to support the argument that the scope of judicial review is limited where the State Government has passed an order/notification in exercise of its administrative power bonafidely based on relevant considerations.

Shri R.B. Mathur, the learned counsel appearing for the State Election Commission has stated that the Commission in furtherance of the notification dated 10.6.2019, has already carried out the necessary exercise and was ready to conduct elections for the Municipal Corporation, Jaipur; but for issuance of notification dated 18.10.2019. It was submitted that now since the Municipal Corporation, Jaipur has ceased to exist, election could not be held for this body. It was submitted that once the State Government completes its statutory obligation of determination of the new Wards for the two municipal bodies with de-limitation and classification of seats as per reservation, it would start the work of preparing electoral rolls of the Wards and the process of election will ensue. It was canvassed that neither delay, nor any fault can be attributed on the part of Election Commission in not conducting elections in time for the Municipal Corporation, Jaipur, which is no more in existence.

The State Government as well as the State Election Commission has submitted their respective additional affidavits. The State Government has, in its affidavit dated 21.11.2019,

submitted that it would complete the process of de-limitation as well as constitution of Wards after disposal of the objections and approval of the proposals by 5.1.2020 and the approved list would be made available to the State Election Commission on that very day i.e. 5.1.2020. The State Election Commission in its affidavit dated even has submitted that it would require total 96 working days for completing the election process for the newly constituted Municipal Corporations from the date it receives the approved list from the State Government.

We have heard the learned counsels for the respective parties and perused the record.

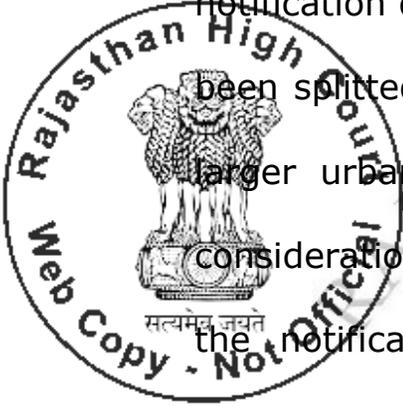
Contention of the learned counsels for the petitioners that notification dated 18.10.2019 is in violation of mandate of Article 243Q(2) of the Constitution of India on the premise; firstly, that it has not been issued by the Governor and; secondly, the factors stipulated therein for constitution of a municipality have been given complete go bye before issuing the notification impugned inasmuch as there was no survey or data collection; in our considered view, are wholly misplaced inasmuch as Article 243Q(2) of the Constitution of India has no application in the present case.

Article 243Q(2) provides as under:

(2) In this article, a transitional area, a smaller urban area or a larger urban area means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

A perusal of the aforesaid provision leaves no room for doubt that its compliance is necessary only where "an area" has to be declared as an area of any of 3 enumerated categories thereunder. Since, Jaipur has already been declared as a 'larger urban area' more than 20 years ago, no public notification by the Governor was required in the present case under Article 243Q(2). Vide notification dated 20.8.2019, the Municipal Corporation, Jaipur has been splitted into two Municipal Corporations and there is no new larger urban area as envisaged vide Article 243Q(2) requiring consideration of the factors mentioned therein before issuance of the notification. The notification dated 18.10.2019 has been issued under the authority of the Governor and this Court does not find any violation of the provisions contained under Article 166 of the Constitution of India too. Even otherwise also, a perusal of the writ petitions reveals that the petitioners have not laid down any factual foundation alleging the notification impugned having been issued in violation of the provisions of Article 166 of the Constitution of India. There is a presumption as to validity and legality of the notification issued by the competent authority unless person challenging the same proves otherwise. In these writ petitions, the petitioners have miserably failed to show that the notification dated 18.10.2019 has been issued by incompetent authority.

The reliance placed by the learned counsel for the petitioners on the judgement of the Hon'ble Apex Court in Champalal's case (supra) is misconceived inasmuch as that case pertained to the upgradation of a Gram Panchayat as Nagar Palika (municipality), which necessarily required compliance of the provisions contained



under Article 243Q(2) of the Constitution of India. Similarly, the coordinate bench of this Court was also dealing with a similar situation in Ashok Khetoliya's case (supra) wherein, validity of the notification declaring Gram Panchayat Roopwas as Municipal Board was under challenge. As is evident from the material on record, no such exigency existed in the present case. Therefore, challenge by the petitioners to the validity of the notification dated 20.11.2019 on the touchstone of Article 234Q(2) fails.

We are not impressed with the contention raised by the petitioners as to the notification dated 18.10.2019 being in violation of mandate of Article 243U(3) of the Constitution of India. Since, with the advent of the notification dated 18.10.2019, the Municipal Corporation, Jaipur has ceased to exist and in its place two new Municipal Corporations have come into vogue, neither the provisions of Article 243U(3), nor Section 11(2) of the Act of 2009 can be pressed into service to declare the notification impugned herein bad in the eye of the law. These provisions have application where elections are to be held for the same type of municipal body.

We have no quarrel with the proposition laid down by Constitution Bench of the Hon'ble Apex Court in Kishan Singh Tomar's case (supra) wherein the Hon'ble Supreme Court was dealing with election in same municipal body; but in our humble view the same has no applicability in the facts of the present case where very existence of the Municipal Corporation, Jaipur has come to an end and in its place two new Municipal Corporations have come into existence.



It is trite that judgements of Courts cannot be interpreted as Statutes or Euclid's formula. Ratio decidendi of a judgement has to be understood and interpreted in the facts of that particular case. We find support from a larger bench judgement of the Hon'ble Apex Court in M/s. Amar Nath Om Prakash & Ors. vs. State of Punjab & Ors.-(1985) 1 SCC 345 wherein, it was held as under:

"We consider it proper to say, as we have already said in other cases, that judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."



In circumstances where new municipalities have been created, Section 320 of the Act of 2009 holds the field and the State Government can hold the election within six months from the date of creation of new municipality. The validity of Section 320 of the Act of 2009 is not under challenge in these writ petitions and hence the State Government is well within its competence to have elections for these two newly created Municipal Corporations i.e. Municipal Corporation, Jaipur Heritage and Municipal Corporation, Greater Jaipur within a period of six months from the date of their creation. Here, we can refer the judgement of the Hon'ble Apex Court in State of Maharashtra & Ors. vs. Jalgaon Municipal Council & Ors.-(2003) 9 SCC 731, wherein also in place of Municipal Council, Municipal Corporation for the municipal area Jalgaon was constituted just two months

prior when term of the Municipal Council was coming to an end. It was held by the Hon'ble Apex Court that some times, hiatus is an unavoidable event which must take place in the process of conversion of Municipal Council into a Municipal Corporation. It was further held that in such circumstances, the provisions of Article 243U cannot be resorted to and use of the expression "a municipality" in sub-article (3) of the Article 243U in the context and in the setting in which it is employed, suggests and means the duration of the same type of municipality coming to an end and the same type of successor municipality taking over as a consequence of term of the previous municipality coming to an end.



In similar circumstances, the Hon'ble Apex Court in the case of Pranoy Roy Vs. State of West Bengal & Ors.-(2015) 16 SCC 248 has refused to interfere where the elections to the municipal bodies could not be held in time on account of re-constitution of such bodies.

A constitution bench of the Hon'ble Apex Court in Special Reference No.1 of 2002 in Gujarat Assembly Election matter-(2002) 8 SCC 237 has observed as under:

"The impossibility of holding the election is not a factor against the Election Commission. The maxim of law impotentia excusat legem is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is

disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him."

In the present case, the erstwhile Municipal Corporation, Jaipur has ceased to exist with the advent of the notification dated 18.10.2019 and hence its election could not have been held.

Offshoot of the aforesaid discussion is that the contention of the learned counsel for the petitioners that notification dated 18.10.2019 deserves to be quashed as it would result into violation of constitutional as well as statutory mandate, to have election in time to avoid hiatus, is liable to be rejected.

The submission of the learned senior counsel Shri R.D. Rastogi, that the notification dated 18.10.2019 smacks of malice in law and has been issued in colourable exercise of power with ill will to postpone the election inasmuch as it has been issued once the complete process of re-determination and de-limitation of Wards and their classification as per reservation was over only to delay the process of election and should have been issued, had the intention of the State Government been bonafide, six months prior to 25.11.2019 when life of the Municipal Corporation, Jaipur was coming to an end, cannot be accepted and deserves to be rejected. Section 3 of the Act of 2009 empowers the State Government to split up a municipality into two or more municipalities by way of notification in the official gazette with no restriction as to the point of time when this power can be exercised. We are conscious of this court's limitations in limiting, restricting or bracketing powers of the State Government to issue notification under Section 3 of the Act of 2009 within any specified



or narrow time frame. If contention of the petitioners is accepted; then in all circumstances, the authority of the State Government to exercise its power under Section 3, would be restricted to be used just six months prior to life of a municipal body coming to an end i.e. commensurate with the life of a municipal body. Such a situation was never warranted under the scheme of the Act of 2009, which admittedly is Chapter-IXA of the Constitution of India compliant and this Court cannot read such restriction in Section 3 of the Act which has not been intended by the legislature.

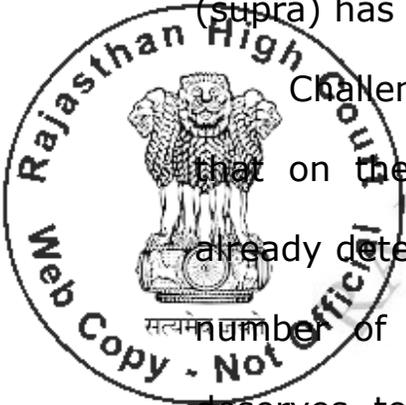
Even otherwise also, the allegations of the petitioners with regard to malice in law in issuing the notification dated 18.10.2019 in colourable exercise of its authority are bald, vague and bereft of any particulars. From mere allegation that the notification was issued with sole intent to delay the elections, we are not persuaded to gather any malice-in-law on the part of respondent no.1. It also borns out from the record that barring these three municipalities which have been bifurcated, election in rest 43 municipal bodies whose term was expiring in November, 2019 with 6 newly created municipal bodies have already been held in due time. The State Government has issued the notification dated 18.10.2019, taking a conscious decision in exercise of its administrative power in accordance with the policy decision in larger public interest to have two Municipal Corporations in all such larger urban areas having population of more than 10 lacs, as per last Census. Resultantly, not only the Municipal Corporation Jaipur; but, the Municipal Corporations of Jodhpur as well as Kota were also splitted into two Municipal Corporations and this decision was backed by the reasoning of the increase in the number of Wards, the increase in encroachments,



in number of cases and in order to manage the municipalities more effectively and efficiently. In these circumstances, this Court does not find the notification dated 18.10.2019 to be suffering from the vice of malice in law or having been issued in colourable exercise of power by the respondent no.1. The ratio of the judgement of the Hon'ble Apex Court in Mohinder Singh Gill's (supra) has no applicability in the present case.

Challenge to the notification dated 18.10.2019 contending that on the basis of Census-2011, the number of Wards was already determined to 91 and now in absence of fresh Census, the number of Wards could not have been re-determined to 250 deserves to be rejected for the reason that determination of Wards as per the scheme of the Act of 2009 is independent of the population. Even otherwise also, the petitioner in D.B. Civil Writ Petition (PIL) No.19007/2019 himself has prayed for carrying out the elections in accordance with notifications dated 10.6.2019, 29.7.2019 and 14.8.2019 wherein, the number of Wards in Municipal Corporation, Jaipur were re-determined to 150 from 91 on the basis of same Census-2011. In the aforesaid circumstances, the petitioners cannot be permitted to blow hot and cold in the same breath and their contention deserves to be rejected.

The notification dated 18.10.2019 has also been challenged on the premise that it takes cognizance of 91 Wards only; whereas much earlier to it, vide notification dated 10.6.1999 and vide order dated even, the number of Wards was re-determined to 150 from 91 and thus suffer from non-application of mind. This contention of the petitioners cannot be accepted in view of the provisions of Section 3(1)(iii). The State Government conscious of the fact that



the members representing the area included into newly constituted municipality shall be deemed to be members of said municipality and such new municipality shall continue unless dissolved sooner until original municipality would have continued, has mentioned 91 Wards in the notification dated 18.10.2019.

Indisputably, before the advent of the notification dated

18.10.2019, the Municipal Corporation, Jaipur comprised of 91

Wards, the notification dated 18.10.2019 takes cognizance of 91

Wards only.

Since, the Municipal Corporation, Jaipur has ceased to exist

with the advent of notification dated 18.10.2019 and two new

municipalities were created, we do not find the State Election

Commission to be defaulter for not holding timely election for

Municipal Corporation, Jaipur.

We have perused the additional affidavits dated 21.11.2019

and have found that the respondents have undertaken to

complete the process of election for the newly constituted

Municipal Corporation, Jaipur Heritage as well as Municipal

Corporation, Jaipur Greater within the prescribed period i.e. six

months from the date the two new Municipal Corporations have

come into existence. We expect the authorities to complete

the election process within 6 months from 18.10.2019 so as to

comply with the constitutional mandate enshrined under Chapter-

IXA as well as Section 320 of the Act of 2009.

We don't find any force in both the writ petitions which are hereby dismissed.

(MAHENDAR KUMAR GOYAL),J

(INDRAJIT MAHANTY),CJ

RAVI SHARMA /48-49