

Balwinder Singh & Ors. Vs. State & Ors.

CWP No. 10251/2026

25.06.2026 Present: Mr. Anshul Bansal, Sr. Advocate with Mr. Anshul Attri, Mr. Ankit Chandel and Mr. Piyush Dhanotia, Advocates, for the petitioners.

Mr. Anup Rattan, Advocate General with Mr. L.N. Sharma, Mr. Y.P.S Dhaulta, Additional Advocates General, with Ms. Menka Raj Chauhan, Deputy Advocate General and Mr. Rajat Choudhary, Assistant Advocate General for respondents.

Notice. Mr. L.N. Sharma, learned Additional Advocate General, accepts notice on behalf of respondents No.1 to 4. Issue notice to respondents No.5 & 6, returnable for **23.07.2026**, on taking steps within three days. Reply by the appearing respondents be filed before the next date.

In addition to ordinary process, petitioners are at liberty to serve respondents No.5 & 6, by way of dasti.

2. Municipal Council Sujampur Tihra comprise of nine councillors. Petitioners-four in number, respondents No.5 & 6, along with three others (not parties to petition), emerged successful in the recently concluded elections for the posts of councillors in the said Municipal Council.

Petitioners have filed this petition with the grievance that during the election of the President and Vice President of Municipal Council Sujampur Tihra, the SDM-cum-Returning Officer, Sujampur Tihra (respondent No.3), did not conduct voting through secret ballot in terms of the applicable

provisions of the Himachal Pradesh Municipal Election Rules, 2015. Instead, votes were obtained by show of hands (voice vote). Therefore, the election of respondents No.5 and 6 as President and Vice President, respectively, is contrary to the provisions of the H.P. Municipal Council Act, 1994, and the rules framed thereunder.

3. Learned Advocate General raises a preliminary objection regarding maintainability of the present writ petition. Learned Advocate General submits that three other councilors and the concerned Member of Legislative Assembly, who had participated in the process have not been impleaded as parties in the petition. Further submission has been made that in terms of Article 243ZG(b) of the Constitution of India, read with Sections 22 & 296 of the H.P. Municipal Act, 1994, the only remedy available to the petitioners is to file an election petition. In support of his contention that the present petition is not maintainable, reliance has also been placed upon the decision rendered by the Hon'ble Apex Court in Writ Petition (Civil) No. 766 of 2026, *Meenakshi Natarajan vs. Election Commission of India & Anr.*, decided on 12.06.2026, wherein, while reiterating the principles laid down in *N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency and Ors.*, (1952) 1 SCC 94, it was held as under:-

“10. The principles laid down in *Ponnuswami* (supra) has been followed by this Court in all election related disputes and whenever an attempt is made to invoke this Court's or the High Court's writ jurisdiction to interject during

the process of conduct of election, on every occasion, the Constitutional Court has rejected such an attempt keeping in view the principle contained in [Article 329\(b\)](#) of the Constitution of India.

11. *In a recent judgment, this Court in the matter of [Poonam vs. Dule Singh & Ors.](#) (2025 INSC 1284), authored by one of us (Atul S. Chandurkar, J.), had an occasion to deal with a similar case concerning non-disclosure of previous conviction under [Section 138](#) of the Negotiable Instruments Act, 1881, by a candidate contesting election for the post of Councillor in a Nagar Parishad, to eventually hold that under the applicable rule, every candidate contesting elections is required to furnish information as prescribed in the format under Rule 24-A(5) of the Madhya Pradesh Nagar Palika Nirvachan Niyam, 1994.*

12. *It is vehemently put forth by Dr. Abhishek Manu Singhvi that in a case of this nature where the illegality in rejection of nomination is glaring and manifest, this Court must step in to curb the injustice, otherwise the very sanctity of the election process would be affected. However, this argument cannot be accepted in view of the law [laid down in Ponnuswami](#) (supra). If this Court accepts such argument to find out such glaring cases, which are required to be interfered with under [Articles 32](#) or [226](#) of the Constitution of India and the other set of cases in which the rejection is not so improper prima facie relegating them to avail the remedy of filing election petition, this Court would be reading some principle which is not provided for under [Article 329](#) of the Constitution of India. We are afraid, any such interpretation, that in some cases this Court can entertain a petition wherein a candidate's nomination paper has been improperly rejected, while leaving some others to avail the remedy of filing an election petition before the election tribunal, should not be encouraged, being in direct conflict with the law [laid down in Ponnuswami](#) (supra).*

4. Countering the above submissions, learned Senior Advocate for the petitioners submits that, under the

provisions of Section 2(15) of the H.P. Municipal Act, 1994, the definition of the term '*Election*' is confined only to the election process commencing on and from the date of notification calling for the election of members and ending with the declaration and notification of the result thereof. The said provision reads as under: -

"2. Definition:- In this Act, unless there is anything repugnant in the subject or context,-

15. "election" mean and includes the entire election process commencing on and from the date of notification calling for such election of members and ending with the date of declaration and notification of results thereof."

Learned Senior Advocate further submits that the election process had concluded with the declaration of the successful candidates as Councillors of the Municipal Council, Sujanpur Tihra. Therefore, the bar imposed under Article 243ZG (b) of the constitution and the settled principles of law as reiterated in *Meenakshi Natarajan*, would not be attracted to the case in hand. Reliance was also placed upon *Virendra Mahajan Vs. State of Madhya Pradesh & Ors.* (1996) AIHC 1079, which held that the election of office bearers of a Municipality cannot be regarded as election to Municipality to attract the bar imposed under Article 243ZG(b) of the Constitution. Relevant portion from the decision highlighted for the petitioners is as under: -

"Point No.(i):

6. Chapter IX-A comprising Articles 243P to 243ZG was incorporation in the Constitution of India by the

Constitution (Seventy Fourth) Amendment Act, 1992. Articles 243G to 243Z deal with constitution and composition of Municipalities, Ward Committees, reservation of seats, duration of municipalities, disqualifications for membership and other matters. Article 243ZA relates to elections to the municipalities. Article 243ZF deals with continuance of existing laws and municipalities. Article 243ZG relates to bar of interference by Courts in electoral matters.

8. According to clause (b) of Article 243ZG of the Constitution, notwithstanding anything in the Constitution, 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. It is necessary to understand the meaning and scope of the expression of the words "election to any municipality" since the bar relates to calling in question only election 'to any municipality'. The words election to any municipality' are found in Article 243ZG(b) and Article 243ZA. According to clause (1) of Article 243ZA of the Constitution, 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. According to clause (2) of Article 243ZA, subject to the provisions of the Constitution, the Legislature of a State may, by law, make provisions with respect to all matters relating to, or in connection with, elections to the Municipalities. Article 243K which occurs in Chapter-IX dealing with elections of the Panchayats states that, 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. The only article which refers to the offices of Chairpersons in the Municipalities is Article 243T(4), which contemplates reservations to Scheduled Castes, Scheduled Tribes and women, in such manner as the Legislature of the State may, by law, provide. Clause (4) of Article 243T refers separately to provision for reservation

*of seats in any municipality and provision for reservation of offices of Chairpersons of Municipalities. It must necessarily follow that election to seats in a Municipality and election of officers of Chairpersons in a Municipality should also be dealt with separately. 'Election to a Municipality can only take in and refer to elections to seats i.e. elections of Councillors to a Municipality. Election of office-bearers of a Municipality cannot be regarded as election to Municipality. There is no question of preparation of electoral roll for the office of President and Vice-President and the State Election Commission has nothing to do with the election to the office of the President and the Vice-President. There is no provision in the Act also vesting any power of superintendence or control with the State Election Commission over the elections to the offices of the President and the Vice-President. **In these circumstances, the words 'election to the Municipalities' in Article 243ZA and Article 243ZG can refer only to election of Councillors to Municipalities and cannot comprehend elections to offices of the Municipalities. Thus, bar under clause (b) of Article 243ZG can relate only to calling in question election of Councillor of a Municipality and not indirect election of President or Vice-President of a Municipality.***

5. Prima facie, there appears to be force in the submissions made for the petitioners regarding maintainability of the writ petition. The issue requires consideration. Apart from the above, learned Senior Advocate for the petitioners has also invited attention to Section 292 of the Municipal Council Act, 1994, which provides for secrecy of voting, as under:-

“292. Secrecy of voting.- (1) No witness or other person shall be required to state for whom he has voted at an election.

(2) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(3) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months, or with fine, or with both.”

Rules 90 and 91 of the H.P. Municipal Election Rules, 2015 prescribe the procedure for voting through ballot papers for election of President & Vice President for Municipal Council. The said provisions read as under:

“90. Method of voting at the election of President.-(1) The procedure of voting at the election of President shall be as under :-

- (a) before issuing the **ballot papers** to the members, the Presiding Officer shall put his signatures on the back of each ballot paper in token of distinguishing mark;*
- (b) the member on receipt of the ballot paper shall make a cross mark (x) against the name of the candidate for whom he intends to vote;*
- (c) after marking cross(x), the member shall fold the ballot paper so as to conceal his vote; and*
- (d) the member shall insert the folded ballot paper into the ballot box kept for the purpose in front of the Presiding Officer.*
- (2) after polling is over, the Presiding Officer shall open the ballot box and shall, in the presence of the members, count the votes.*

Explanation.- For determining whether a vote polled is valid or invalid the provisions of rule 79 shall apply.

- (3) A candidate obtaining largest number of valid votes shall be declared to be elected to fill the office:*

Provided that if, after the counting of votes tie is found to exist between any candidate, the addition of one vote will entitle any of these candidate to be declared elected, that shall forthwith be decided between these candidates by lot, and the candidate on whom the lot falls shall be considered to have received an additional vote and shall be declared to be duly elected.

(4) All ballot papers used for such voting, shall be put in a stout envelope and sealed by the Presiding Officer in full view of the members present there at and the description of the election to which the ballot papers relate shall be inscribed thereon. The Deputy Commissioner shall preserve the envelope, intact either in his office or at such other place as he may specify in writing until the expiry of one year from the date of election subject to any direction to the contrary given by the competent court or Commission or an officer authorized/appointed to hold an enquiry into an election petition under Chapter XVII of the Act.

(5) The Deputy Commissioner shall prepare and forward the return of election in form 49 to the State Government as well as to the Commission for information and record.

(6) The State Government on receipt of the election return under sub-rule (5) shall notify the election of the President as required under sub-section (1) of section 27 of the Act and forward a copy of the same to the Commission.

91. Election of the Vice-President. - *After the election of the President, the Deputy Commissioner or any other officer authorized by him, not below the rank of Sub-Divisional Officer (Civil) shall hold the election to the office of the Vice-President in the same manner as provided for the election of President under rules 89 and 90."*

The grievance raised by the petitioners & emerging issues do require consideration and, in view of the submissions made by for the parties at this stage, CMP No.15107/2026 seeking an interim direction to restrain respondents No.5 and 6 from officiating as President and Vice-

President is disposed of with the order that the election of these respondents as President and Vice-President of the Municipal Council, Sujanpur Tihra, shall abide by the final outcome of the writ petition.

Reply to the writ petition be filed within three weeks.

List on **23.07.2026**.

Jyotsna Rewal Dua
Judge

25th June, 2026 (Rohit)