

ITEM NO.49

COURT NO.1

SECTION XI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).128/2023

(Arising out of impugned final judgment and order dated 27-12-2022 in PIL No. 878/2022 passed by the High Court of Judicature at Allahabad, Lucknow Bench)

STATE OF UTTAR PRADESH

Petitioner(s)

VERSUS

VAIBHAV PANDEY & ANR.

Respondent(s)

(WITH IA No. 1582/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 1585/2023 - EXEMPTION FROM FILING O.T., IA No. 1578/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 04-01-2023 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Petitioner(s) Mr. Tushar Mehta, Solicitor General  
Mr. Sharan Dev Singh Thakur, A.A.G.  
Ms. Ruchira Goel, AOR  
Mr. Shantanu Singh, Adv.  
Mr. Ravi Sehgal, Adv.  
Mr. Siddharth Thakur, Adv.  
Mr. Satwik Misra, Adv.  
Ms. Aarushi Singh, Adv.

For Respondent(s) Ms. Bansuri Swaraj, Adv.  
Mr. Nihar Dharmadhikari, Adv.  
Mr. L.K. Tripathi, Adv.  
Ms. Shreya Chaudhary, Adv.  
Ms. Shumaila Altaf, Adv.  
Ms. Qurratulain, AOR

Mr. Syed Ahmed Saud, Adv.  
Mr. Daanish Ahmed Syed, Adv.  
Mr. Mohd. Parvez Dabas, Adv.  
Mr. Uzmi Jameel Husain, Adv.  
Mr. Aqib Baig, Adv.  
Mr. Mohd. Shahib, Adv.  
M/S. Shakil Ahmad Syed, AOR

Mr. Sanjay Kumar, Adv.  
Mr. Deependra Kumar Pathak, Adv.  
Ms. Sheela Mishra, Adv.  
Mr. Tanveer Ahmad, Adv.  
Mr. Anjani Kumar Mishra, AOR

Mr. Rahul Yadav, Adv.  
Mr. Rashid Azam, Adv.  
Mr. Nasim Anwar, Adv.  
Mr. Jawaid H Khan, Adv.  
Mr. V. Elanchezhiyan, AOR

Mr. Aviral Kashyap, AOR  
Mr. Rajesh Kumar, Adv.  
Mr. Priyam Kaushik, Adv.  
Ms. Vimal Sinha, Adv.  
Mr. Vijay Pratap Singh, Adv.  
Ms. Gitanjali Tripathy, Adv.

Ms. Mona K. Rajvanshi, AOR  
Mr. Anurag Kashyap, Adv.  
Mr. Sharad Nandan Ojha, Adv.  
Mr. Akhand Pratap Singh, Adv.  
Mr. Somdutta Singh, Adv.

**UPON hearing the counsel the Court made the following  
O R D E R**

- 1 Issue notice, returnable in three weeks. Liberty to implead all the PIL petitioners before the High Court.
- 2 Dasti, in addition, is permitted.
- 3 Ms Bansuri Swaraj, Mr Syed Ahmed Saud, Mr Sanjay Kumar, Mr Rahul Yadav, Mr Aviral Kashyap and Ms Mona K Rajvanshi, counsel, appear on caveat.
- 4 In view of the decision of the Constitution Bench in **Dr K Krishna Murthy v Union of India**<sup>1</sup> and of the three-Judge Bench in **Vikas Kishanrao Gawali v State of Maharashtra**<sup>2</sup>, the Government of Uttar Pradesh has issued notification No 4032/9-1-2022-6 Nirva/22 dated 28 December 2022 constituting

1 (2010) 7 SCC 202

2 (2021) 6 SCC 73

the Uttar Pradesh State Local Bodies Dedicated Backward Classes Commission<sup>3</sup>. The terms of reference to the Commission, as set out in paragraphs 3.1 and 3.2 of the notification, are extracted below:

“3.1 To conduct the contemporaneous rigorous empirical inquiry into nature and implications of the backwardness qua local bodies in the State of Uttar Pradesh.

3.2 On the basis of available records, reports, surveys, and other data the Commission, ascertain the proportion of population of backward class of citizens in the total population, local body wise in order to study in light of instructions given by Hon’ble Supreme Court and Hon’ble High Court and to submit the report and recommendations to the Government.”

5 The Solicitor General submits that though the tenure of the newly appointed Commission is six months, the exercise would be completed as expeditiously as possible and on or before 31 March 2023.

6 The High Court, by its impugned judgment dated 27 December 2022, has directed (in operative direction (C)) that:

“(C) It is further directed that until the triple test/conditions as mandated by Hon’ble Supreme Court in K. Krishna Murthy (supra) and Vikas Kishanrao Gawali (supra) is completed in all respects by the State Government, no reservation for Backward Class of citizens shall be provided and since the term of Municipalities has either ended or shall be coming to an end by 31.01.2023 and the process of completion of triple test/conditions being arduous, is likely to take considerable time, it is directed that the State Government/State Election Commission shall notify the elections immediately. While notifying the elections the seats and offices of Chairpersons, except those to be reserved for Scheduled Castes and Scheduled Tribes, shall be notified as for general/open category.

The notification to be issued for elections shall include the reservation for women in terms of the constitutional provisions.”

7 The above direction of the High Court, which mandates the holding of elections to local bodies in Uttar Pradesh without reserving seats for Backward Classes of citizens will result in a violation of the constitutional and statutory requirements of reservation for the OBCs. Democratization of municipalities under Article 243T and the duty to provide representation are not at competing values. *Prima facie*, the high court is not correct in prioritising one over the other and directing the holding of elections without the provision of representation for the Backward Classes. Democratising the municipalities and true representation in the composition of the municipalities under Article 243T are both constitutional mandates. When a constitutional court is called upon to review the decisions of the State in this context, it must ensure that both these values are given full effect so that truly representative and vibrant local bodies contemplated under Part IXA of the Constitution are realised.

8 Hence, the direction needs to be stayed. Pending further orders of this Court, the operation of the above direction namely Direction (C) shall remain stayed.

9 Since the tenure of some of the local bodies in the State of Uttar Pradesh has already expired (as submitted by the Solicitor General) or is expected to expire on or before 31 January 2023, it has been submitted by the petitioner that the arrangement which has been envisaged in direction (D) of the impugned judgment of the High Court may be embodied as an order of this Court until fresh elections are held.

10 For convenience of reference, direction (D) in the impugned judgment is as follows:

“(D) In case, term of Municipal Body comes to an end, till the formation of the elected Body the affairs of such Municipal Body shall be conducted by a three-member Committee headed by the District Magistrate concerned, of which the Executive Officer/Chief Executive

Officer/Municipal Commissioner shall be a member. The third member shall be a District Level Officer to be nominated by the District Magistrate.”

- 11 For the purpose of ensuring that the administrative work of the local bodies is not hampered, the Government would be at liberty to issue a notification for the delegation or, as the case may be, discharge of financial powers in consonance with direction (D) set out above, subject to the condition that no major policy decision shall be taken by the administrative authorities.
- 12 List the Special Leave Petition on 11 April 2023.

**(SANJAY KUMAR-I)**  
**DEPUTY REGISTRAR**

**(SAROJ KUMARI GAUR)**  
**ASSISTANT REGISTRAR**