



2024:CGHC:49176-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WA No. 714 of 2024**

1 - State Of Chhattisgarh Through Its Secretary, Department Of Urban Administration And Rural Development, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nava Raipur, District- Raipur (C.G.). (Respondents No. 1)

2 - The Collector District Gourela Pendra Marwahi, C.G. (Respondents No. 2)

--- **Appellant(s)**

versus

1 - Smt. Priyadarshani Singh Nahrel W/o Shri Yogendra Singh Nahrel Aged About 40 Years R/o Village Marwahi Chichgohna Road Tahsil Marwahi District Gourela Pendra Marwahi Chhattisgarh. At Present Sarpanch Village Panchayat Marwahi Tahsil Marwahi District Gourela Pendra Marwahi C.G. (Writ Petitioner)

2 - Mr. Kishan Singh Thakur S/o Mr. Durgesh Singh Thakur R/o Village Marwahi, Chichgohna Road Tahsil Marwahi District Gourela Pendra Marwahi Chhattisgarh President Nagar Panchayat Marwahi District Gourela Pendra Marwahi, C.G. (Respondent No. 3)

3 - Mr. Chataman Kaiwart S/o Mr. Rupsay R/o Village Lohari Tahsil Marwahi District Gourela Pendra Marwahi Chhattisgarh, Vice President Nagar Panchayat Marwahi, District Gourela Pendra Marwahi, C.G. (Respondent No. 4)

4 - Mrs. Urmila Kol W/o Shiv Prashad R/o Village Lohari Tahsil Marwahi District Gourela Pendra Marwahi Chhattisgarh, Member, Nagar Panchayat Marwahi, District Gourela Pendra Marwahi, C.G. (Respondent No. 5)

5 - Mrs. Santoshi Chandra W/o Mr. Ful Chand R/o Village Marwahi, Tahsil Marwahi District Gourela Pendra Marwahi Chhattisgarh, Member Nagar Panchayat Marwahi, District Gourela Pendra Marwahi, C.G. (Respondent No. 6)

6 - Mr. Girish Rai S/o Mr. Lakhan Lal Rai R/o Village Kumhari, Tahsil Marwahi District Gourela Pendra Marwahi Chhattisgarh, Member Nagar Panchayat Marwahi, District Gourela Pendra Marwahi, C.G. (Respondent No. 7)

7 - Mr. Vijay Singh Baghel S/o Mr. Raghunath Singh R/o Village Lohari, Tahsil Marwahi District Gourela Pendra Marwahi Chhattisgarh, Member Nagar Panchayat Marwahi, District Gourela Pendra Marwahi, C.G. (Respondent No. 8)

8 - Mr. Indrapal Tiwari S/o Mr. Shiv Narayan Tiwari R/o Village Kumhari, Tahsil Marwahi District Gourela Pendra Marwahi Chhattisgarh, Member Nagar Panchayat Marwahi, District Gourela Pendra Marwahi, C.G. (Respondent No. 9)

9 - Mr. Mahendra Chandra S/o Mr. Gendlal Chandra R/o Village Marwahi, Tahsil Marwahi District Gourela Pendra Marwahi Chhattisgarh, Member Nagar Panchayat Marwahi, District Gourela Pendra Marwahi, C.G. (Respondent No. 10)

10 - Mrs. Shila Chandra W/o Mr. Rjendra Chandra R/o Village Marwahi, Tahsil Marwahi District Gourela Pendra Marwahi Chhattisgarh, Member Nagar Panchayat Marwahi, District Gourela Pendra Marwahi, C.G. (Respondent No. 11)

--- Respondent(s)

For Appellant(s)/ State	: Mr. Prafull N Bharat, Advocate General assisted by Mr. Shashank Thakur, Deputy Advocate General
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For Respondent (Writ Petitioner)	: Mr. Anand Mohan Tiwari, Advocate
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WA No. 712 of 2024

1 - State Of Chhattisgarh Through Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Atal Nagar Nava Raipur, District Raipur, Chhattisgarh. (Respondents No. 1)

2 - State Of Chhattisgarh, Through Its Secretary, Department Of Panchayat And Rural Development, Mahanadi Bhawan, Mantralaya, Atal Nagar Nava Raipur, District Raipur, Chhattisgarh. (Respondents No. 2)

3 - The Collector, District Manendragarh Chirimiri Bharatpur, Chhattisgarh. (Respondents No. 3)

---Appellant(s)

Versus

1 - Jayamaniya Baiga W/o Shyam Sundar, Aged About 48 Years By Caste Baiga, R/o Village Janakpur, Tehsil Bharatpur, District Manendragarh Chirimiri

Bharatpur, Chhattisgarh. (Writ Petitioner)

2 - Nagar Panchayat Janakpur, Through Its Chief Municipal Officer, Nagar Panchayat Janakpur, Tehsil Janakpur, District Manendragarh Chirmiri Bharatpur, Chhattisgrh. (Respondent No. 4)

3 - Shri Ashok Singh S/o Not Known, President, Nagar Panchayat Janakpur, District Manendragarh Chirmiri Bharatpur, Chhattisgarh. (Respondent No. 5)

4 - Smt. Kusum Baiga, W/o Not Known, Vice President, Nagar Panchayat Janakpur, District Manendragarh Chirmiri Bharatpur, Chhattisgarh. (Respondent No. 6)

5 - Shri Rajesh Mishra, S/o Not Known, Member, Nagar Panchayat Janakpur, District Manendragarh Chirmiri Bharatpur, Chhattisgarh. (Respondent No. 7)

6 - Smt. Seema Tigga, S/o Not Known, Member, Nagar Panchayat Janakpur, District Manendragarh Chirmiri Bharatpur, Chhattisgarh. (Respondent No. 8)

7 - Mohd. Sultan Khan S/o Not Known, Member, Nagar Panchayat Janakpur, District Manendragarh Chirmiri Bharatpur, Chhattisgarh. (Respondent No. 9)

8 - Smt. Neera Baiga, W/o Not Known, Member, Nagar Panchayat Janakpur, District Manendragarh Chirmiri Bharatpur, Chhattisgarh. (Respondent No. 10)

9 - Smt. Shanti Yadav, W/o Not Known, Member, Nagar Panchayat Janakpur, District Manendragarh Chirmiri Bharatpur, Chhattisgarh. (Respondent No. 11)

10 - Shri Mahesh Ahirwar, S/o Not Known, Member, Nagar Panchayat Janakpur, District Manendragarh Chirmiri Bharatpur, Chhattisgarh. (Respondent No. 12)

--- **Respondent(s)**

For Appellant(s) : Mr. Prafull N Bharat, Advocate General
assisted by Mr. Shashank Thakur,
Deputy Advocate General

For Respondent (Writ Petitioner) : Mr. Parag Kotecha, Advocate.

WA No. 723 of 2024

1 - State Of Chhattisgarh Through Its Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.

2 - State Of Chhattisgarh Through Its Secretary, Department Of Panchayat And Rural Development, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.

3 - The Collector Gariyaband, District Gariyaband Chhattisgarh.

---**Appellant(s)**

Versus

1 - Domeswar Yadav S/o Chetan Ram Aged About 44 Years R/o Village

Kopra, Gram Panchayat Kopra, Janpad Panchayat Fingeshwar, District Gariyaband Chhattisgarh.

2 - Smt. Kewara Sahu W/o Uttam Sahu Aged About 44 Years Post Panch, R/o Village Kopra, Gram Panchayat Kopra, Janpad Panchayat Fingeshwar, District Gariyaband Chhattisgarh.

3 - Rajesh Yadav S/o Tikam Yadav Aged About 40 Years Post Sarpanch, R/o Village Kopra, Gram Panchayat Kopra, Janpad Panchayat Fingeshwar, District Gariyaband Chhattisgarh.

4 - Bhuwan Patel S/o Rekhram Aged About 56 Years Post Panch, R/o Village Kopra, Gram Panchayat Kopra, Janpad Panchayat Fingeshwar, District Gariyaband Chhattisgarh.

5 - Govardhan Sahu S/o Agatram Aged About 37 Years Post Panch, R/o Village Kopra, Gram Panchayat Kopra, Janpad Panchayat Fingeshwar, District Gariyaband Chhattisgarh.

6 - Yamini Sahu W/o Suresh Kumar Aged About 32 Years Post Panch, R/o Village Kopra, Gram Panchayat Kopra, Janpad Panchayat Fingeshwar, District Gariyaband Chhattisgarh.

7 - Roshani Sahu W/o Nehru Ram Aged About 41 Years Post Panch, R/o Village Kopra, Gram Panchayat Kopra, Janpad Panchayat Fingeshwar, District Gariyaband Chhattisgarh.

8 - Sushila Sahu W/o Meghram Sahu Aged About 67 Years Post Panch, R/o Village Kopra, Gram Panchayat Kopra, Janpad Panchayat Fingeshwar, District Gariyaband Chhattisgarh.

9 - Bhana Yadav S/o Narayan Yadav Aged About 40 Years Post Panch, R/o Village Kopra, Gram Panchayat Kopra, Janpad Panchayat Fingeshwar, District Gariyaband Chhattisgarh.

10 - Kamlesh Tarak S/o Shyam Tarak Aged About 40 Years Post Panch, R/o Village Kopra, Gram Panchayat Kopra, Janpad Panchayat Fingeshwar, District Gariyaband Chhattisgarh.

11 - Yogeshwari Sahu W/o Bhanu Pratap Sahu Aged About 37 Years Post Panch, R/o Village Kopra, Gram Panchayat Kopra, Janpad Panchayat Fingeshwar, District Gariyaband Chhattisgarh.

12 - Nagar Panchayat Kopra Through Its Chief Municipal Officer, Tehsil Rajim, District Gariyaband Chhattisgarh.

13 - Nageshwar Sahu President, Resident Of Village Kopra, Tehsil Rajim, District Gariyaband Chhattisgarh.

14 - Smt. Bharati Sahu Vice President, Resident Of Village Kopra, Tehsil

Rajim, District Gariyaband Chhattisgarh.

15 - Nandu Ram Sinha Member Resident Of Village Kopra, Tehsil Rajim, District Gariyaband Chhattisgarh.

16 - Laxmi Narayan Patel Member, Resident Of Village Kopra, Tehsil Rajim, District Gariyaband Chhattisgarh.

17 - Meghsingh Sahu Member Resident Of Village Kopra, Tehsil Rajim, District Gariyaband Chhattisgarh.

18 - Chatur Sahu Member, Resident Of Village Kopra, Tehsil Rajim, District Gariyaband Chhattisgarh.

19 - Khileshwar Goswami Member, Resident Of Village Kopra, Tehsil Rajim, District Gariyaband Chhattisgarh.

20 - Smt. Rekha Kosare Member, Resident Of Village Kopra, Tehsil Rajim, District Gariyaband Chhattisgarh.

21 - Himalaya Soni Member, Resident Of Village Kopra, Tehsil Rajim, District Gariyaband Chhattisgarh.

22 - Jethu Dhruw Member, Resident Of Village Kopra, Tehsil Rajim, District Gariyaband Chhattisgarh.

23 - Smt. Neera Tarak Member, Resident Of Village Kopra, Tehsil Rajim, District Gariyaband Chhattisgarh.

--- **Respondent(s)**

For Appellant(s)/ State : Mr. Prafull N Bharat, Advocate General assisted by Mr. Shashank Thakur, Deputy Advocate General

For Respondent (Writ Petitioner) : Mr. Rajnish Singh Baghel, Advocate

WA No. 733 of 2024

1 - State Of Chhattisgarh Through Its Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan Mantralaya, Atal Nagar, Nava Raipur District Raipur (C.G.)

2 - The Collector Sarangarh Bilaigarh District Sarangarh Bilaigarh (C.G.)

3 - Sub Divisional Officer (Revenue) /presiding Officer, Sarsiwa, District Sarangarh Bilaigarh (C.G.)

---**Appellant(s)**

Versus

1 - Nitesh Kumar Banjare S/o Khikran Banjare Aged About 37 Years Resident Of Sarsiwa, District Sarangarh Bilaigarh (C.G.)

2 - Nagar Panchayat Sarsiwa Through Its Chief Municipal Officer, Nagar Panchayat Sarsiwa District Sarangarh Bilaigarh (C.G.)

3 - Kartikeshwar Yadav S/o Maheshwar Yadav, Presently President Nagar,

Panchayat Sarsiwa, District Sarangarh Bilaigarh (C.G.)

4 - Sayatri Bai Sahu W/o Golo Sahu Presently Vice President, Nagar Panchayat Sarsiwa District Sarangarh Bilaigarh (C.G.)

5 - Nirmala Sahu W/o Tamradhwaj Sahu Presently Member, Nagar Panchayat Sarsiwa District Sarangarh Bilaigarh (C.G.)

6 - Shivratri Kesharwani S/o Kedarnath Kesharwani Presently Member, Nagar Panchayat Sarsiwa, District Sarangarh Bilaigarh (C.G.)

7 - Koushal Agrawal S/o Suwalal Agrawal, Presently Member Nagar Panchayat Sarsiwa District Sarangarh Bilaigarh (C.G.)

8 - Somesh Banjare S/o Babulal Banjare, Presently Member, Nagar Panchayat Sarsiwa, District Sarangarh Bilaigarh (C.G.)

9 - Narayan Sahu S/o Ghanshyam Sahu, Presently Member Nagar Panchayat Sarsiwa District Sarangarh Bilaigarh (C.G.)

10 - Resham Lal Kurre S/o Bharat Lal Kurre, Presently Member Nagar Panchayat Sarsiwa, District Sarangarh Bilaigarh (C.G.)

11 - Pradeep Sharma S/o Sudarshan Sharma, Presently Member, Nagar Panchayat Sarsiwa, District Sarangarh Bilaigarh (C.G.)

12 - Khikram Bharadwaj S/o Doulat Bhardwaj, Presently Member, Nagar Panchayat Sarsiwa, District Sarangarh Bilaigarh (C.G.)

13 - Ghasi Yadav S/o Nanhu Yadav, Presently Member Nagar Panchayat Sarsiwa, District Sarangarh Bilaigarh (C.G.)

--- Respondent(s)

For Appellant(s)/ State : Mr. Prafull N Bharat, Advocate General assisted by Mr. Shashank Thakur, Deputy Advocate General

For Respondent (Writ Petitioner) : Mr. Anand Mohan Tiwari, Advocate, holding the brief of Mr. Shailendra Dubey, Advocate

WA No. 734 of 2024

1 - State Of Chhattisgarh Through The Secretary, Urban Administration And Rural Development, Mahanadi Bhawan Mantralaya, Atal Nagar, Nava Raipur, Distt. Raipur (C.G.) (Res. No. 1)

2 - State Of Chhattisgarh Through Its Secretary, Department Of Panchayat And Rural Development Department, Mahanadi Bhawan Mantralaya, Atal Nagar, Nava Raipur, Distt. Raipur (C.G.) (Res. No. 2)

3 - The Collector Sarangarh, Distt. Sarangarh-Bilaigarh (C.G.) (Res. No. 3)

---Appellant(s)

Versus

1 - Mahendra Kumar Shirvas S/o Late Shri Bharatlal Shrivastava Aged About 49

Years R/o Village Pawani, Police Station- Bilaigarh, Distt. Sarangarh-Bilaigarh (C.G.) (Writ Petitioner)

2 - Chief Municipal Officer Nagar Panchayat Pawani, Distt. Sarangarh-Bilaigarh (C.G.) (Res. No. 4)

3 - Loknath Sahu S/o Shri Ramkrishna Sahu Nominated President, Nagar Panchayat Pawai, Distt. Sarangarh-Bilaigarh (C.G.) (Res. No. 5)

--- **Respondent(s)**

For Appellant(s)/ State : Mr. Prafull N Bharat, Advocate General
assisted by Mr. Shashank Thakur,
Deputy Advocate General

For Respondent (Writ Petitioner) : Mr. Sunil Sahu, Advocate

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Amitendra Kishore Prasad, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

12/12/2024

1. Since all these appeals arise out of order dated 28.08.2024 passed by the learned Single Judge in WPC No. 3459/2024 and other connected matters, they are being considered and decided by this common judgment.
2. WA No. 714/2024, 712/2024, 723/2024, 733/2024, 734/2024 arise out order passed by the learned Single Judge in WPC No. 3464/2024, WPC No. 3594/2024, WPC No. 3572/2024, WPC No. 3459/2024 and WPC No. 3484/2024, respectively.
3. The writ petitioners namely Nitesh Kumar Banjare {WPC No. 3459/2024}, Mahendra Kumar Shrivastava {WPC No. 3484/2024}, Domeswar Yadav & 10 others {WPC No. 3572/2024}, and Jaymaniya Baiga {WPC No. 3594/2024} had filed the writ petition being aggrieved by the Notification dated 27.06.2024 issued by the State Government by which different Committees were constituted to execute functions of

different newly constituted Nagar Panchayats under the provisions of the Chhattisgarh Municipalities Act, 1961 (*for short, the Act of 1961*).

4. The facts, in brief, as has been discussed by the learned Single Judge in its order dated 28.08.2024 is that the Gram Panchayats were upgraded to Nagar Panchayats. The writ petitioners were the elected members of their respective Gram Panchayats. In sum and substance, contention of the writ petitioners in respective writ petitions was that in view of second proviso to Section 5(1) of the Act of 1961, it was the concerned Gram Panchayat, who was having jurisdiction over transitional area, to be continued to function until a duly elected Nagar Panchayat is constituted under the Act of 1961. Constitution of duly elected Nagar Panchayat means, members of concerned Nagar Panchayat, elected in the elections held in accordance with the provisions of the Act of 1961 and the rules framed thereunder. Notification dated 27.6.2024 constituting the Committee in exercise of powers under Section 16(1) of the Act of 1961 was in contradiction with second proviso to Section 5(1) of the Act of 1961.
5. The learned Single Judge, after hearing the parties, allowed the petitions and the Notification dated 27.06.2024 for constitution of a Committee of Nagar Panchayat Sakri, Sarsiwa, Janakpur, Kopra and Pawani, were quashed. So far as the notification related to Nagar Panchayat Marwahi {WPC No. 3464/2024} was also quashed however, it was directed that since Nagar Panchayat Marwahi was constituted by merging three Gram Panchayats, namely Lohari, Marwahi and Kumhari, the State Government was directed to reconstitute the Committee keeping in mind the second proviso to Section 5(1) of the Act of 1961.
6. Mr. Prafull N Bharat, learned Advocate General, assisted by Mr.

Shashank Thakur, learned Deputy Advocate General for the State/ appellants would submit that the main grievance of the writ petitioners was that their name was not included in the new Committee constituted under Section 16(1) of the Act, 1961, therefore, it deserved to be quashed. The second ground raised by the writ petitioners was that, by virtue of second proviso contained under Section 5 of the Act, 1961 (which exclusively deals with the transitional area), the State had no authority to constitute a Committee under Section 16(1) of the Act of 1961 and therefore the main Notification dated 27.06.2024 was illegal and bad in law. The State had filed a detailed reply to the writ petitions. The restriction under second provisions of Section 5 of the Act of 1961, is applicable only with respect to the "transitional area". It is pertinent to mention here that, the transitional area has been defined under Section 5 (b) of the Act of 1961 itself which means an area in transition from rural area to urban area. A bare perusal of the Section 5, particularly 5 (a) and 5 (b) of the Act of 1961 would clearly establish that, transitional area only refers to an area in transition from rural area to urban area and the period of transitional area would only mean the period from the date State Government notified its intention to upgrade Gram Panchayat to a Nagar Panchayat till the final gazette notification was issued i.e. the date when Nagar Panchayat came into existence. The proviso states that *when an area is notified to be a transitional area, the Gram Panchayat having jurisdiction over such area shall continue to function until a duly elected Nagar Panchayat is constituted under this Act.* Therefore, the grounds which have been raised by the writ petitioners and the reliefs which have been sought by the writ petitioners in their respective writ petitions are not sustainable in the eyes of law.

7. Mr. Bharat further submits that the Hon'ble Single Bench has grossly

erred in allowing and disposing of the writ petitions preferred by the writ petitioners on facts as well as in law. From bare perusal of the order impugned, it is revealed that the case was decided without considering the reply filed on behalf of the appellants/State, as there was specific stand of the appellants on record. The reasons assigned by the learned Single Judge is grossly contrary to the provisions contained under Section 5(a) and 5(b) of the Act, 1961 wherein, the word "Transitional Area" has been categorically defined and it had committed grave error by placing reliance on the second provision of Section 5 of the Act, 1961. Further, the learned Single Judge has erroneously placed reliance and is laying foundation of its judgment by applying the doctrine of harmonious construction of provisions of law. The learned Single Judge has applied the provision contained under second proviso which only deals specifically with respect to "Transitional Area" and has overlooked the mandatory provisions contained in entirety in Section 5 of the Act of 1961 and the specific provisions under Section 7 of the Act of 1961. Under Section 16 of the Act of 1961, the State is obliged to constitute a Committee under Section 16(1) of the Act of 1961 after notifying the Nagar Panchayat. While while applying the rules of harmonious construction, it should be taken into consideration /account that, when the provisions of two statues are irreconcilable, one must decide which provision must be given effect to. Reliance has been placed by Mr. Bharat on the decision of the Apex Court in ***Commissioner of Income Tax v. M/s. Hindustan Bulk Carriers***", reported in 2003 (3) SCC 57, wherein the Hon'ble Supreme Court has specified the parameters for applicability of doctrine of harmonious construction while deciding a dispute. The learned Single Judge has erred in laying foundation to its impugned order by placing its reliance on misinterpretation of law and

has failed to achieve the main purpose of legislation and has rendered/reduced the entire legislation provided under the Act of 1961 to be futile. The learned Single Judge has also placed its reliance on the clarification dated 20.03.2003 which is a circular issued by the State Government regarding which it is submitted by the appellants that the said circular dated 20.03.2003 is in conflict and contrary to the mandatory provisions of law contained under the Act of 1961 and therefore, it cannot take place of the provisions contained under the Act of 1961. This aspect has also been dealt with under Section 346 of the Act of 1961.

8. On the other hand, Mr. Anand Mohan Tiwari, Mr. Parag Kotecha, Mr. Rajnish Singh Baghel, Mr. Sunil Sahu, learned counsel appearing for the private respondents/writ petitioners would submit that the order passed by the learned Single Judge is just and proper and no interference is warranted. The learned Single Judge has dealt with all the aspects of the matter and came to the conclusion that the Notification dated 27.06.2024 deserved to be quashed. As such, all these appeals filed by the State/appellant deserve to be dismissed.
9. Mr. Tiwari, learned counsel for the writ petitioners {in WA No. 714/2024 and 733/2024} submits that it is well settled law that function of a Government in establishing Nagar Panchayat or Corporation is neither executive nor administrative. It is a legislative process. The writ petitioners who are the elected members of Gram Panchayat should have been at least allowed to continue till the completion of their tenure. The rights of the elected persons have been taken care of by the legislature and Section 16 of the Act of 1961 would not be applicable to the facts of the case as per the impugned judgment and he would

support the reasons assigned by the learned Single Judge while allowing the writ petitions.

- 10.** Mr. Baghel, learned counsel for the writ petitioner {in WA No. 723/2024} has drawn attention of this Court to Section 346 of the Act of 1961 which deals with powers to remove difficulties. He further submits that a circular was issued in the year 2003, which states that constitution of Committee under Section 16 of the Act of 1961 would be for Municipal Council, whereas for Nagar Panchayats, earlier elected village Panchayat will perform the function of Council. He further submits that Section 5A of the Act of 1961 is not applicable to the facts of the case as it deals with the situation when an area is to be included or excluded from the existing municipal area. Mr. Baghel further submits that Article 243-E of the Constitution of India states that the duration of Panchayats would be for a period of full five years and the same cannot be dissolved before that and in the cases in hand, in some Gram Panchayats, the tenure of 5 years would come to an end in the month of January, 2025 or February, 2025. It is also submitted that the conduct of the appellant/State is also not consistent as in some cases, the old body of the gram panchayats are allowed to function whereas in some case, the new Committees have been formed which is looking after the affairs of the newly constituted Nagar Panchayats. So far as Nagar Panchayat, Janakpur is concerned, the State has implemented the order passed by the learned Single Judge and in the present cases, they are opposing by filing the aforesaid appeals.
- 11.** In response to the above submission with regard to Article 243-E of the Constitution of India made by Mr. Baghel, Mr. Bharat submits that this ground was neither pressed by the learned counsel nor considered by

the learned Single Judge in the impugned judgment, and as such, they are precluded from pressing the same before this Court in the appeal. The submission with regard to the inconsistency in the conduct of the State has also been vehemently opposed by learned Advocate General.

12. Mr. Sunil Sahu, learned counsel for the respondent/writ petitioner {in WA No. 734/2024} submits that relying on the decision dated 28.08.2024, another writ petition being WPC No. 3983/2024 was allowed vide order dated 05.09.2024. He further submits that the writ petitioner is the elected Sarpanch of Gram Panchayat Pawani and the term of election is for 5 years, he has not completed his term and the Gram Panchayat is upgraded as Nagar Panchayat without passing any order of removal of the writ petitioner who is an elected person has been replaced by constituting the Committee dated 27.06.2024. In case of Nagar Panchayat the provision contained under section 16 (1) of the Act 1961 is not applicable as the same is made for Municipal Council in light of the circular dated 20.03.2003 there is clear instruction that in case of Nagar Panchayat, the elected body Gram Panchayat will be continue to function for Nagar Panchayat till completion of term. The authority is duty bound to follow the provisions contained under Article 243-E of the Constitution of India which reads as under :-

"243E. Duration of Panchayats, etc. (1) *Every Panchayat, 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.*

(2) *No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat 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 Panchayat 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 Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved."

- 13.** Mr. Sahu further submits that at the time of constitution of the Committee and appointment of the members of the Committee the State Government has not seen or verified the fact whether the said persons who were nominated as President, Vice President as well as members of the Committee were qualified to be elected as Councillors or not disqualified as mentioned under Article 243V of the Constitution of India and without any application of the mind and without verification of qualification as well as disqualification, the Committee were constituted by nominating the persons of their choice. Writ appeal filed by the private respondent-Shyamlal Sahu, has already been dismissed as withdrawn vide order dated 30.09.2024 passed in WA No. 623/2024 with liberty to file the review and thereafter, the review preferred has also been dismissed on 28.11.2024 in MCC No. 1101/2024.
- 14.** Mr. Kotecha, learned counsel appearing for the writ petitioner {in WA No. 712/2024} submits that in his case, the old body of the Gram Panchayat is continuing with the functions of the Nagar Panchayat, however, when this Court asked as to whether he is having any documentary proof in his regard, he submits that his submission is based on the oral instructions of his client.

15. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
16. These appeals relate to five different Gram Panchayats which have been upgraded to Nagar Panchayat. The same reads as under:

Gram Panchayat	Upgraded to Nagar Panchayat	Notification calling objections was published on	Notification regarding formation of Nagar Panchayat published on	Constitution of Committee under Section 16(1) of the Act of 1961 notified on (impugned before the learned Single Judge)
Marwahi, Lohari and Kumhari	Marwahi	18.08.2020	27.09.2023	27.06.2024
Janakpur	Janakpur	21.08.2023	27.09.2023	27.06.2024
Kopra	Kopra	24.08.2023	06.10.2023	27.06.2024
Sarsiwa	Sarsiwa	11.04.2023	27.09.2023	27.06.2024
Pawni	Pawni	01.06.2023	06.10.2023	27.06.2024

17. The appellant/State has filed its return in WPC No. 3464/2024 wherein it has adopted the return filed in WPC No. 3459/2024 wherein the stand of the appellant/State was that the impugned Notification dated 27.06.2024 was issued in pursuance of Section 16(1) of the Act of 1961 which empowers the State Government to constitute a Committee by notification consisting of President, Vice President and such members as it may deem fit. Such committee shall be deemed to be Council for the purpose of this Act.

18. A bare reading of provisions contained under Section 16 of the Act of 1961 would disclose that once an area is declared to be a Municipality by Provisions of the Act, 1961, the State Government is mandatorily required to notify and constitute a committee consisting of President, Vice President and any such members for the purpose of the Act. In similar fashion Section 7(a), (b) and (c) when read together clearly establishes that the immediate effect of establishment of Municipality would be cessation of Panchayat from the date of such establishment of Municipality. It further provides that the panchayat funds and other property of the panchayat including all rights and powers which vested in the panchayat prior to such notification shall vest in the Committee. Hence, the State Government is obliged to notify the committee constituted when an area is declared to be Municipality for the first time under this Act. The word "Municipality" would include "Nagar Panchayat" as provided under Section 3(18) of the Act of 1961. Similarly, word "Council" also includes and means "Nagar Panchayat as provided under Section 3(8). Hence, there is not any iota of doubt that after declaring a Panchayat for the first time as a Nagar Panchayat, the State Government was obliged to constitute a committee by notification consisting of President, Vice President and any such members. Further, the Committee so notified/ constituted shall be deemed to be a Council for the purposes of the Act, i.e., it would assume powers of Nagar Panchayat. Further, from bare perusal of Section 5 of the Act of 1961, which provides for constitution of Municipal Council and Nagar Panchayats, when an area is intended to be constituted from rural to urban area, i.e. from Village Panchayat to Nagar Panchayat, the said area would be referred to as "Transitional Area". In other words "Transitional Area" is referred to as area of village Panchayat which is

intended to be constituted/included as Nagar Panchayat and would include a period from the date of notification of intention of the Government to declare a village Panchayat as Nagar Panchayat till the date of final notification after expiration of period of objection as prescribed under Section 5(A) of the Act of 1961.

19. The learned Single Judge has discussed Section 5 of the Act of 1961 at paragraph 19 of its order and observed that it would be the Gram Panchayat who would continue to function as Nagar Panchayat until a duly elected Nagar Panchayat is constituted. Further, in paragraph 20, reliance has been placed on the decision of the Supreme Court in ***Rajendra Prasad Yadav & Others v. State of M.P. & Others*** {(1997) 6 SCC 678} to hold that the provisions in the statute have to be harmoniously read so that all the provisions under the Act of 1961 can be given effect to so that the object of enacting the provision is achieved. Further, in paragraph 20, reliance has been placed on the circular issued by the Governor which is in the form of executive instructions dated 20.03.2003, which states that the constitution of Committee under Section 16 of the Act of 1961 would be for Municipal Council, whereas for Nagar Panchayats, earlier elected village Panchayat will perform the function of Council, and as such, the learned Single Judge has held that the State Government, in exercise of the powers under sub-section (1) of Section 16 of the Act of 1961, can constitute a Committee for Municipal Council and not for Nagar Panchayats.
20. Section 5 of the Act of 1961 is in respect of constitution of Municipal Council and Nagar Panchayats. Section 5A is in regard to power of Governor to include or exclude certain areas from the limits of municipal area. Sub-section (3) states that once the prescribed period for

submission of objection in writing to the Collector is over and the Governor has considered the objection under sub-section (2), the Governor may by notification include within or exclude from the limits of the municipal area, any specified area. As soon as this exercise is done, and an area is notified to be a Municipal Council or Nagar Panchayat, then Section 7 of the Act of 1961 comes into play.

21. Section 7 of the Act of 1961 reads as under:

“7. Effect of establishing Municipality for local area which ceases to be Town Area or Panchayat. - When any local area ceases to be a Town Area under the Bhopal State Town Area Act, 1954 (XIV of 1954) or a Panchayat under the Panchayat Law and immediately following such cessation a Municipality is established under Section 5 for such area, then, as from the date of establishment of the Municipality (hereinafter in this Section referred to as the specified date) the following consequences shall ensue, namely:-

(a) the Town Area Committee or the Panchayat, as the case may be, shall cease to exist;

(b) there shall be constituted a committee in accordance with the provision of Section 16 to exercise the power of the Council pending its constitution;

xxx

xxx

xxx”

22. From reading of the above, it is apparent that once an area ceases to be town area or panchayat, a duty is cast upon the State Government to constitute a committee in accordance with the provisions of Section 16 to exercise the powers of the Council pending its constitution. Section 16 of the Act of 1961 reads as under:

“16. Exercise of powers of Council pending its constitution- (1) When an area is declared to be a Municipality for the first time under this Act, the State Government shall, by notification, constitute a Committee consisting of a President, a Vice- President and such number of members as it may deem fit and such Committee shall be deemed to be a Council for the purpose of this Act:

Provided that no person shall be appointed as President or Vice President or member of such a Committee who is ineligible to hold such office in the Council under this Act.

(2) A Committee constituted under sub-section (1) shall continue to function until a Council is constituted under this Act or until the expiration of six months from the date of its constitution whichever is earlier.....”

- 23.** The learned Single Judge has relied upon the second proviso to Section 5 which states that when an area is notified to be a transitional area, the Gram Panchayat having jurisdiction over such area shall continue to function until a duly elected Nagar Panchayat is constituted under this Act. However, the learned Single Judge has lost sight of the fact that the above arrangement is for the transitional period and not after the notification of Section 5 of the Act of 1961 by which the Nagar Panchayat or the Municipal Council has come into existence. The meaning of any Section of an Act has to be derived from the intention of the legislature and from the facts and circumstances of the present cases, it appears that the intention of the legislature was that for a limited period i.e. till the transitional phase, the body elected earlier would continue to function but as soon as the notification under Section 5 is issued, Section 7 and 16 of the Act of 1961 would come into play and the State Government would be bound to constitute a Committee.
- 24.** Reliance placed by learned counsel for the writ petitioners on the circular dated 20.03.2003 is of no assistance to the writ petitioners as it is well settled that any executive instructions cannot override the statute or statutory rules. In **Lalit Mohan Deb v. Union of India** {(1973) 3 SCC 862}, the Apex Court has observed that the executive instructions have to be in conformity with the rules and not inconsistent therewith. In **State of Orissa & Others v. Prasana Kumar Sahoo** {(2007) 15 SCC 129},

the Apex Court has reiterated that a purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions.

25. Further, in ***State of Kerala v. K. Prasad*** {(2007) 7 SCC 140}, it has been observed by the Apex Court as under:

“10...It needs little emphasis that the Rules are meant to be and have to be complied with and enforced scrupulously. Waiver or even relaxation of any rule, unless such power exists under the rules, is bound to provide scope for discrimination, arbitrariness and favouritism, which is totally opposed to the rule of law and our constitutional values. It goes without saying that even an executive order is required to be made strictly in consonance with the rules. Therefore, when an executive order is called in question, while exercising the power of judicial review the court is required to see whether the Government has departed from such rules and if so, the action, of the Government is liable to be struck down.”

26. In view of the above discussion, we are in disagreement with the observations and findings arrived at by the learned Single Judge and as such, the order dated 28.08.2024 passed by the learned Single Judge in WPC No. 3459/2024 and connected writ petitions, are quashed and the appeals filed by the appellant/State are **allowed**. Consequently, the writ petitions filed by the writ petitioners viz. WPC No. 3459/2024, 3484/2024, 3464/2024, 3572/2024 and 3594/2024, stand **dismissed**.

Sd/-
(Amitendra Kishore Prasad)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE