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All Communications should be addressed to the Registrar, Supreme Court by designation, NOT by name
Telegraphic address :- "SUPREMECO"

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SUPREME COURT
INDIA
NEW DELHI

D.No.1495/05/IX/XIII
Dated, this the 21st day of November, 2006.

From: The Registrar(Judicial),
Supreme Court of India,
New Delhi.

To: The Registrar,
High Court of Gujarat
at Ahmedabad.

2. The Secretary,
Gujarat State
Election Commission,
Block No.9, 6th Floor,
New Sachivalaya,
Gandhinagar, Gujarat.

CIVIL APPEAL NO.5756 OF 2005

Kishansing Tomar

..... Appellant

Versus

Municipal Corpn. of the City
of Ahmedabad & Ors.

શ. રજ. વ. નં. ૩૮૭૦
તા. : ૨૧/૧૧/૦૬

... Respondents

Sir,

In continuation of this Registry's letter of even number dated the **2nd November, 2006**. I am directed to transmit herewith for necessary action a certified copy of the Decree dated the **19th October, 2006** of the Supreme Court in the said appeal.

The original record, if any, will follow.

Please acknowledge receipt.

Yours faithfully,
[Signature]
for Registrar(Judicial)

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D.R.
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IN THE SUPREME COURT OF INDIA

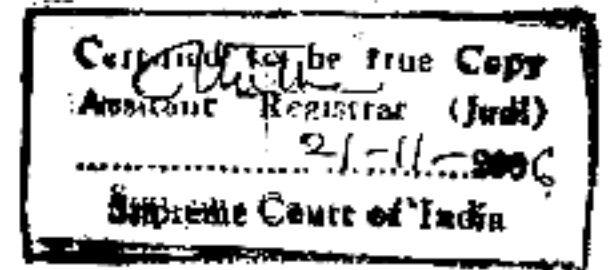
CIVIL APPELLATE JURISDICTION

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CIVIL APPEAL NO. 5756 OF 2005

(Appeal by special leave from the Judgment and Order dated the 8th August, 2005 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No.830 of 2005 in Special Civil Application No.9847 of 2005).

Kishansing Tomar
Chairman,
Standing Committee Ahmedabad
Municipal Corporation,
R/o 33, Keshavbaug Society,
Meghanagar Road,
Ahmedabad, Gujarat.



.... Appellant

Versus

1. Municipal Corporation of the
City of Ahmedabad
Ahmedabad Municipal Corporation,
Dhanapith, Ahmedabad
Gujarat through its Municipal Commissioner
Gujarat State.
2. State of Gujarat
Through its Chief Secretary,
State of Gujarat, Social Welfare Department,
Sachivalaya, Gandhinagar, Gujarat.
3. Gujarat State Election Commissioner,
through its Secretary
Gujarat State Election Commission,
Block No.9, 6th Floor,
New Sachivalaya, Gandhinagar,
Gujarat.

.... Respondents

19TH OCTOBER, 2008

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE C.K. THAKKER
HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

For the Appellant : M/s. Nidhesh Gupta, S.U.K. Sagar,
Ms. Bina Madhavan and Mr. Rahul
Pratap, Advocates.

For Respondent No.1 : Ms. Sumita Hazarika, Advocate.

For Respondent No.2 : Mr. Soli Sorabjee, Senior Advocate.
(Mr. Preetesh Kapur, Ms. Hemantika
Wahi, Mr. Abhishek Mishra and
Ms. Shivangi, Advocates with him)

For Respondent No.3 : M/s. S. Muralidhar and Rutwik
Panda, Advocates.

The Appeal above-mentioned being called on for hearing before this Court on the 7th day of March, 2006. UPON perusing the record and hearing counsel for the parties herein, the Court took time to consider its Judgment and the

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appeal being called on for Judgment on the **19th day of October, 2006**, THIS COURT for the reasons and observations recorded in its Judgment DOTH in disposing of the appeal inter alia PASS the following ORDER:

"It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election Commission would be justified in delaying the process of election after consulting the State Govt. and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality Going by the provisions contained in Article 243-U, it is clear

that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the Municipality for such period.

In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new Municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State governments to recognize the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for the Parliament and State Legislatures. In fact, in

the domains of elections to the Panchayats and the Municipal bodies under the Part IX and Part IX A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.

In terms of Article 243 K and Article 243 ZA (1) the same powers are vested in the State Election Commission as the Election Commission of India under Article 324. The words in the former provisions are in pari materia with the latter provision.

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

From the reading of the said provisions it is clear that the powers of the State Election Commission in respect of *conduct of elections* is no less than that of the Election Commission of India in their respective domains. These powers are, of course, subject to the law made by Parliament or by State Legislatures provided the same do not encroach upon the plenary powers of the said Election Commissions.

The State Election Commissions are to function independent of the concerned State Governments in the matter of their powers of superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections to the Panchayats and Municipalities.

Article 243 K (3) also recognizes the independent status of the State Election Commission. It states that upon a request made in that behalf the Governor shall make available to the State Election Commission "such staff as may be necessary for the discharge of the functions conferred on the

State Election Commission by clause (1). It is accordingly to be noted that in the matter of the conduct of elections, the concerned government shall have to render full assistance and co-operation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted.

Also, for the independent and effective functioning of the State Election Commission, where it feels that it is not receiving the cooperation of the concerned State Government in discharging its constitutional obligation of holding the elections to the Panchayats or Municipalities within the time mandated in the Constitution, it will be open to the State Election Commission to approach the High Courts, in the first instance, and thereafter the Supreme Court for a writ of mandamus or such other appropriate writ directing the concerned State Government to provide all necessary cooperation and assistance to the State Election Commission to enable the latter to fulfill the constitutional mandate.

Taking into account these factors and applying the principles of golden rule of interpretation, the object and purpose of Article 243-U is to be carried out."

As the elections to the Ahmedabad Municipal Corporation have already been held and the new Municipal body constituted, no further direction is required in the matter."

AND THIS COURT DOETH FURTHER ORDER that there shall be no order as to costs of this appeal in this Court;

AND THIS COURT DOETH LASTLY ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Yogesh Kumar Sabharwal, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 19th day of October, 2006.

sd/-
(S. MALKANI)
DEPUTY REGISTRAR

SUPREME COURT

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5756 OF 2005

Kishansing Tomar

..... Appellant

Versus

Municipal Corpn. of the City
of Ahmedabad & Ors.

... Respondents

HIGH COURT OF GUJARAT AT AHMEDABAD
(Letters Patent Appeal No.830 of 2005 in Special
Civil Application No.9847 of 2005)

DECREE DISPOSING OF THE APPEAL
WITH NO ORDER AS TO COSTS.

Dated this the 19th day of October 2006

M/s. Lawyer's Knit & Co.,
Advocates on record for the
Appellant.

Ms. Sumita Hazarika,
Advocate on record for Respondent
No.1.

Mrs. Hemantika Wahi,
Advocate on record for Respondent
No.2.

Mr. Rutwik Panda,
Advocate on record for Respondent
No.3.

DM/15.11.2006

SEALED IN MY PRESENCE