

CASE NO.:
Appeal (civil) 9444 of 2003

PETITIONER:
Suresh Seth

RESPONDENT:
Commissioner, Indore Municipal Corporation and others

DATE OF JUDGMENT: 06/10/2005

BENCH:
CJI R.C. Lahoti, G.P. Mathur & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T

G.P. Mathur, J.

This appeal, by special leave, has been filed challenging the judgment and order dated 7.5.2003 of High Court of Madhya Pradesh by which the Civil Revision filed by Bhanu Kumar Jain was dismissed.

2. The election for the Office of Mayor, Municipal Corporation of Indore, was notified on 25.11.1999. The election was held on 27.12.1999 and the result was declared on 3.1.2000 wherein Shri Kailash Vijayvargiya, respondent No. 3, was elected as Mayor. One Bhanu Kumar Jain filed an election petition challenging the election of Shri Kailash Vijayvargiya as Mayor on several grounds and the principal ground taken was that he being a sitting member of the Legislative Assembly, was disqualified for holding the Office of Mayor of a corporation under the M.P. Municipal Corporation Act, 1956. The election petition was dismissed by the XII Additional District Judge, Indore, by the judgment and order dated 11.4.2002. Bhanu Kumar Jain then filed a civil revision under Section 441-F of the M.P. Municipal Corporation Act, 1956 in the High Court, which was also dismissed by the judgment and order dated 7.5.2003, which is the subject-matter of challenge in the present appeal.

3. The term of a Mayor under the M.P. Municipal Corporation Act, 1956 is five years and it is fairly admitted by learned counsel for the appellant that the term of Shri Kailash Vijayvargiya has already come to an end. In these circumstances, no effective relief can be granted in the present appeal and the same has become infructuous by passage of time.

4. Learned counsel for the appellant has submitted that a direction be issued that an election petition challenging the election of a returned candidate should be decided expeditiously by the trial court and the revision petition preferred in the High Court should also be disposed of as expeditiously as possible. The appellant has not filed copy of the order sheet of the trial court or of the High Court, which could give some indication as to who is responsible for the delay in the final disposal of the matter. Even the judgment of the trial court has not been filed along with the special leave petition. In absence of complete material having been placed on record, it will not be proper for us to issue any direction in this regard.

5. Learned counsel for the appellant has also submitted that this Court should issue directions for an appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely that of a member of the Legislative Assembly and also of Mayor of a Municipal Corporation. In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this

regard can be issued by the court. That apart this Court cannot issue any direction to the Legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In *Supreme Court Employees Welfare Association vs. Union of India* (1989) 4 SCC 187 (para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in *State of J & K vs. A.R. Zakki* 1992 Supp. (1) SCC 548. In *A.K. Roy vs. Union of India* (1982) 1 SCC 271, it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature. Therefore, the submission made by the learned counsel for the appellant cannot be accepted.

6. The appeal is accordingly dismissed. No costs.