HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 3848/2026

Bharat Kumar Choudhary S/o Sh. Ota Ram Ji Choudhary, Aged About 47 Years, R/o Juni Mohilo Ka Baas, Khudala-Falna, Bali, Pali.

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Local Self Department, Government Of Rajasthan, Secretariat, Jaipur.
2. The Commissioner And Secretary, Local Self Department, Government Of Rajasthan, Secretariat, Jaipur.
3. The Director, Local Bodies, Jaipur.
4. The District Collector, Pali.
5. The Sub Divisional Officer, Bali, District Pali.

----Respondents

For Petitioner(s)	:	Mr. Divik Mathur
For Respondent(s)	:	Mr. Rajesh Panwar, AAG & Sr. Adv. Assisted by Mr. Monal Chugh

HON'BLE MR. JUSTICE SANJEET PUROHIT

Order

Reportable

Reserved on : 26.05.2026

Pronounced on : 11.06.2026

1. The matter has come up for consideration of an application filed under Article 226(3) of the Constitution of India seeking vacation of the interim order dated 29.04.2026, whereby a co-ordinate Bench of this Court stayed the operation of the impugned order dated 07.02.2026.

1.1 Learned counsel for petitioner submitted that the application for vacation of stay substantially contains the submissions / objections raised in the preliminary reply seeking dismissal of writ petition and, therefore, prayed for final disposal of the writ petition at this stage.

1.2 Considering the paucity of time, final hearing of the writ petition is not feasible at present.

1.3 Learned counsel for the respondents, however, urged that the application for vacation of stay (I.A. No. 01/2026) be heard and decided.

1.4 Accordingly, with the consent of the parties, arguments were heard on the application seeking vacation of the interim stay order.

2. Before considering the merits of the application, it is apposite to note the proceedings pertaining to present writ petition that it was initially listed on 27.03.2026, upon consideration of submissions of petitioner, direction was given to supply copy of writ petition to learned counsel for the respondent-Department.

On 06.04.2026, counsel for respondent Nos. 1 to 3 appeared and service upon respondent Nos. 4 and 5 was dispensed with and three weeks time was granted to respondents to file their reply.

2.1 When the matter was next taken up on 29.04.2026, neither any reply had been filed nor did any counsel appeared for the respondents. Accordingly, the co-ordinate Bench after hearing the petitioner, stayed the operation of the impugned order dated 07.02.2026.

2.2 Thereafter, the respondents filed a preliminary reply to the writ petition along with the present application seeking vacation of the interim order.

3. This Court finds that prior to passing the interim order dated 29.04.2026, the co-ordinate Bench had ensured due service of writ petition upon the respondent - Department and had also granted adequate opportunity for filing reply as well as for hearing. However, on the said date, none appeared on behalf of the respondents and after considering the submissions of petitioner, the co-ordinate Bench passed the interim order dated 29.04.2026.

4. In these circumstances, the question which first arises for consideration is whether present application for vacation of interim order filed under Article 226(3) of the Constitution of India is maintainable or nor? To deal with said question, it is necessary to first refer to Article 226(3), which is reproduced herein below for ready reference:

> "**Article – 226 : Power of High Courts to issue certain writs.**
> *(1) …*
> *(2) …*
> *(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without —*
> *(a)* ***furnishing to such party copies of such petition and all documents in support of the plea for such interim order****; and*

(b) ***giving such party an opportunity of being heard****, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated."*

... emphasis supplied

4.1 Article 226(3) of the Constitution of India in clear and unambiguous terms, contemplates two cumulative conditions precedent for invocation of the remedy of vacation of an interim order, namely: **(a)** where such interim order has been passed without furnishing copy of the writ petition and documents to the affected party; and **(b)** where the order has been passed without giving such party an opportunity of being heard.

4.2 In the present case, indisputedly prior to passing of interim order dated 29.04.2026, due service of the writ petition and all relevant documents was already furnished to the respondent–Department, pursuant to order dated 27.03.2026. It is also an admitted factual position that sufficient time had been granted to the respondents to file their reply and advance submissions.

4.3 However, on the date when the interim order came to be passed, none appeared on behalf of the respondents, to avail the opportunity which was granted through earlier orders.

The respondents, however, would argue that the interim order being an ex parte order, is liable to be treated as having been passed without giving opportunity of hearing, therefore application of vacation of interim order under Article 226(3) is maintainable.

5. The question which thus arises is regarding the true import of the expression **"without giving such party an opportunity of being heard"** occurring in clause (b) of Article 226(3), and whether the said argument would be available to a party who despite due notice and opportunity, chooses not to appear.

5.1 In the considered opinion of this Court, the expression **"without giving such party an opportunity of being heard"** cannot be equated or construed as **"actual availing of such opportunity or participation in hearing"**. The intent behind the said Article is to ensure grant of an effective opportunity to be heard and the same cannot be made dependent upon availing of such opportunity by the concerned party at his convenience or sweet will. Once such opportunity is duly given by the Court, the constitutional requirement stands satisfied, and a party cannot, by its own absence or default, render the interim order amenable / vulnerable under Article 226(3).

5.2 The provision cannot be construed to enable a party, who has been duly served and given with adequate opportunity but has chosen not to participate, to subsequently contend that no opportunity of hearing was granted. Acceptance of such a contention would amount to permitting a party to take advantage of its own default and would render the judicial process susceptible to abuse, by allowing deliberate abstention from proceedings followed by a plea that an ex-parte order was passed prejudicial to his interest.

5.3 This Court is, therefore, of the considered view that the distinction between "**giving of opportunity**" and "**availing of opportunity**" is fundamental to the constitutional scheme under Article 226. Where opportunity has been duly granted and the party chooses not to avail the same, it cannot be permitted to invoke Article 226(3) on the premise that the order is vitiated for want of grant of opportunity of hearing.

5.4 This Court is of the firm view that the interim order 29.04.2026 though ex-parte is deemed in law to have been passed after bi-party hearing as the copies of writ petition and documents were furnished to the respondents and opportunity of being heard was also given, however, the same was conspicuously not availed by the respondents.

5.5 This Court is of the view that if such application is allowed to sustain and the provisions of the said Article are interpreted in such manner, the same would frustrate the object sought to be achieved by the said Article.

The same would lead to a situation wherein the respondents after supply of copy of writ petition and after putting appearance before the Court, would intentionally absent themselves from Court proceedings and in case, an interim order is granted by the Court, would contend and argue that the said interim order was passed in absence of the counsel for respondents and therefore, the opportunity of being heard was not given to them.

5.6 The above view expressed by this Court also gets support from the observation made by Hon'ble High Court of Gujarat in the case of ***Vinayakrao S. Desai Versus Interlink Petroleum Ltd. & Ors*** reported in ***2001 SCC OnLine Guj 647*** wherein the Hon'ble High Court was pleased to hold as under :-

> *"**18.** … In case, the respondent party does not appear on 18-1-2000, even after service of notice on 24-12-1999 and filing of appearance on 27-12-1999, such order even in the nature of ex parte will be deemed in law to have passed after bi-parte hearing. As an opportunity of hearing was given to the respondent party, it would be immaterial whether it is availed or not.* ***Where an opportunity of hearing has been afforded to the respondent party as required under Art. 226(3) whether he avails that opportunity of being heard or not, he cannot say that he was not afforded an opportunity of hearing on 18-1-2000 as the order dated 16-12-1999 will merge in the order passed on 18-1-2000.*** *The arguments were available to the respondent party on 18-1-2000 for vacating the interim or ad-interim order that the petition itself was not maintainable in law, the relief sought in the petition cannot be allowed and the writ of certiorari cannot be issued, the petition was not presented and heard as per Rules of the Court due to non-compliance of certain Rules of the Court and*

no prima facie case is made out for grant of interim or ad-interim orders. ***As the respondent party has not availed the opportunity of hearing, it cannot be said that the interim order was passed without affording an opportunity of being heard****."*

emphasis supplied

5.7 In view of discussion made herein above, this Court is of the considered opinion that looking to facts of present case, the instant application filed by the respondents under Article 226(3) for vacation of interim order is not maintainable, as conditions for maintaining such an application under Article 226(3) of the Constitution of India are not satisfied in present case. Thus, the application for vacation of interim order is hereby **rejected** as non-maintainable.

6. *A fortiori*, since the arguments of both sides on stay petition are concluded, this Court deems it appropriate to decide the stay petition filed by the petitioner finally at this stage.

7. Learned counsel for petitioner Mr. Divik Mathur, while briefly adverting to facts of the case, submitted that Municipal Board, Khudala Falna was constituted for statutory term of 2020–2025 and its tenure expired in January, 2025. Upon expiry of term of Municipal Board, State Government vide notification dated 23.01.2026, appointed District Collector, Pali as Administrator of Municipal Board Khudala Falna, District Pali, which continues to remain in force and, consequently, all powers and functions of Municipality stood vested in the said Administrator. Learned counsel for petitioner contended that appointment of

Administrator was made in exercise of powers under Section 322(3)(b) of the Municipalities Act, 2009 (hereinafter, referred to as, 'Act of 2009'), which provides for appointment of Administrator upon dissolution of a Municipality under Section 322(1) or under any other provision of Act of 2009.

7.1 However, despite subsistence of notification of appointment of Administrator, State Government has issued an administrative order dated 07.02.2026, purportedly in exercise of powers under Section 326 of Act of 2009 and has delegated the powers under Rule 7 of the Rajasthan Municipalities (Budget and Accounts) Rules, 1963 (hereinafter referred to as, 'Rules of 1963') and Rule 14 of the Rajasthan Municipalities (Purchase of Materials and Contracts) Rules, 1974 (hereinafter referred to as, 'Rules of 1974') to Commissioner / Executive Officer ("EO") of the concerned Municipal Body.

It is submitted that by virtue of said order, financial powers of Municipal Board (of Chairman / Financial Committee) as envisaged under aforesaid Rules, which were earlier jointly available with Administrator and EO have been delegated to a single authority, i.e., Commissioner/EO of concerned Municipality.

7.2 While referring to Rule 7 Rules of 1963, it is contended that as a result of impugned order the authority to sign cheques would be centralised to one authority i.e. Commissioner / EO. For ready reference, Rule 7 of the Rules of 1963 is reproduced hereunder:

"**7. Cheques to be signed by the Chairman and Executive Officer.—**

> Money shall not be paid from the Municipal Fund except as provided in Rule 73. **All cheques shall be signed by the Chairman or the Administrator, as the case may be, and the Executive Officer**:
>
> Provided that all such cheques, to the limit of the amount for which the Executive Officer is authorised to incur expenditure under the provisions of the Rajasthan Municipalities (Purchase of Material and Contract) Rules, 1974, shall be signed by him alone."

7.3 It is contended that a plain reading of Rule 7 of the Rules of 1963 makes it clear that municipal accounts are to be operated and cheques are to be issued jointly by the Chairman / Administrator, as the case may be, and the Executive Officer. The proviso only carves out a limited exception permitting the Executive Officer to singly sign cheques within its own prescribed financial limits. It is, therefore, urged that beyond such limits, the statute mandates joint operation and does not permit exclusive exercise of financial powers by the Executive Officer.

7.4 It is further contended that object behind Rule 7 is to provide an inbuilt mechanism of financial checks and balances to prevent concentration of authority in a single functionary. The legislative intent is to ensure collective decision-making in financial matters. However, the impugned administrative order, by conferring exclusive authority upon the Executive Officer has effectively diluted the requirement of joint authorization.

7.5 Learned counsel for petitioner submitted that order impugned has been passed while invoking Section 326, which provides for delegation of powers only of the State Government.

However, in the preset case, the powers sought to be delegated are the powers of municipalities, which are now vested in Administrator due to its dissolution and such powers not being the powers of State Government can not be validly delegated under Section 326. Hence the order impugned is wholly without jurisdiction.

7.6 It was also contended that once an Administrator is appointed under Section 322 of Act of 2009, the powers and functions of Municipality stand vested in such Administrator by virtue of order of said order of appointment. The same, under any circumstances, cannot be further delegated in exercise of powers under Section 326 of Act of 2009 or under any other provision of Act of 2009.

7.7 It is further argued that Administrator is appointed in exercise of powers of Section 322 of the Act of 2009 and Section 326 of Act of 2009 expressly excludes delegation of any powers relating to matters falling under Section 322 of Act of 2009.

7.8 It is contended that all financial activities of the Municipalities including financial arrangements are continuing as per the provisions of Act of 2009 and the Rules made thereunder and the same are being done jointly by Administrator and EO thus, there was no justification available with State Government to delegate financial powers to a single authority by an administrative order.

7.9 It is contended that order impugned is wholly without jurisdiction, against the mandate of law and resulted in undermining and compromising the aspect of fairness, transparency and accountability, thus, the interim order was rightly passed by this Court. Learned counsel for petitioner prayed to allow the stay petition.

8. *Per contra*, learned Additional Advocate General cum Senior Advocate, Mr. Rajesh Panwar, raised preliminary objection regarding maintainability of writ petition on the ground of petitioner's *locus standi*. It is contended that petitioner is merely a former Councillor, whose tenure has already expired and having, no legal right to question the order impugned whereby certain powers of Administrator have been delegated to Executive Officer.

8.1 Learned AAG further contended that the appointment of an Administrator upon expiry of term of a Municipal Board is not made under Section 322 of Act of 2009, rather, the same is made under Section 320 of the Act of 2009, therefore, contention of petitioner is based on erroneous understanding of statutory scheme.

In support of said contention, reliance has been placed upon judgment dated 25.05.2025 passed by coordinate Bench of this Court in **S.B. Civil Writ Petition No. 2707/2025 (Madhu Kanwar v. State of Rajasthan).**

8.2 It is further submitted that since Administrator has been appointed in exercise of powers under Section 320 of Act of 2009, the State Government is fully competent to delegate such the powers to Executive Officer and the same would not fall within exception carved out under Section 326 of the Act. Consequently, the challenge founded upon alleged exception / bar contained in Section 326 regarding Section 322 is wholly misconceived.

8.3 Learned AAG further submitted that the impugned order has been issued to facilitate smooth and efficient financial administration of Municipal Bodies. It is argued that since the District Collector, Pali has been appointed as Administrator of several Municipal Bodies, it would be administratively cumbersome to require the said District Collector to personally sign every cheque pertaining to every municipal transaction. Therefore, any delay in processing, the payments relating to municipal works would adversely affect public administration and also public interest, thus, impugned administrative order is absolutely justified.

8.4 Lastly, it has been contended that the impugned administrative order is merely a temporary administrative arrangement intended to operate during interregnum period till the constitution of duly elected Municipal Board. The said order neither possesses legislative character nor has effect of overriding, violating or nullifying any statutory provision. Rather, the same has been issued solely to ensure uninterrupted and efficient functioning of municipal administration. Learned counsel submitted that petitioner's contention regarding absence of checks and balances is wholly misconceived. The notification appointing the Administrator continues to remain in force and the said Administrator retains supervisory control over affairs of the Municipal Boards.

9. This Court has bestowed its thoughtful consideration to rival submissions advanced on behalf of parties and has carefully examined statutory provisions governing the controversy.

10. Insofar as contention of petitioner regarding appointment of Administrator under Section 322 of the Act of 2009 and consequent exclusion of Section 322 under Section 326 of Act of 2009 is concerned, the same merits acceptance. Section 322 contemplates a situation where a Municipality is dissolved under sub-section (1) thereof on account of incompetence, persistent default, abuse of powers, **or for any other reason contemplated by statute,** and empowers State Government to appoint an Administrator under sub-section (3) of Section 322, for exercise of powers and discharge of functions of Municipality. Section 326, while conferring power of delegation upon State Government, expressly excludes matters falling under Section 322 from the ambit of such delegation. Consequently, the powers exercisable by State Government under Section 322 cannot be delegated by resorting to Section 326 of the Act of 2009.

10.1 At the same time, this Court is unable to accept contention advanced on behalf of respondents regarding applicability of Section 320 of Act of 2009 in present case. A bare reading of Section 320 makes it evident that said provision operates in a distinct field as it applies in situations where a new Municipality is constituted and an officer is appointed by State Government to discharge municipal functions during transitional period until Municipality is duly established and assumes office. The present case does not fall within four corners of the said Section as the Municipal Board in the instant matter, had not been newly constituted rather dissolved after completion of its statutory tenure, whereafter an Administrator was appointed to manage its affairs. Therefore, the respondents cannot seek refuge under Section 320 of the Act of 2009 for sustaining the impugned order.

10.2 The reliance placed by respondents on judgment passed in the case of ***Madhu Kanwar*** (supra) is wholly misplaced as its facts clearly shows that it pertained to a situation where elections had already been conducted but an officer was appointed under Section 320 of Act of 2009, for a limited duration until Municipality became fully functional. In view of distinguishable factual matrix, judgment in the case of ***Madhu Kanwar*** (supra) has no application in the present case.

10.3 Delving further, this Court finds that respondents have failed to *prima facie* show the source of authority under which, after appointment of Administrator and vesting of all powers and functions of Municipality in such Administrator, certain powers, particularly financial powers, could have been divested from Administrator and delegated to Executive Officer.

The language of Rule 7 of Rules of 1963 is clear, unambiguous and admits no exception. The said Rule specifically provides that only cheques relating to expenditure falling within prescribed financial limits of Executive Officer, may be signed by him alone. In respect of amounts exceeding such limits, cheques are required to be jointly signed by Chairperson and Executive

Officer or, where powers of Municipality are vested under administrator then by Administrator and Executive Officer. Thus, beyond prescribed financial competence of Executive Officer, the statutory mandate unequivocally requires joint authorization for signing of cheques.

10.4 This Court is unable to decipher any statutory provision or mechanism which empowers the State Government to divest the Chairperson or Administrator of such financial authority and vest the same exclusively in Executive Officer. If argument advanced on behalf of respondents is accepted, it would logically follow that even during continuation of tenure of duly elected Municipal Board, the State Government could, by an administrative order, delegate financial powers of Chairperson to Executive Officer. Such an interpretation would undermine the democratic and autonomous character of local self-government institutions envisaged under constitutional scheme thus, the same cannot be countenanced.

10.5 This Court is also not persuaded by contention that impugned administrative order deserves to be sustained merely because it is described as a temporary or stop-gap arrangement. If an administrative action is found to be *prima facie* inconsistent with statutory framework and contrary to constitutional spirit underlying local self-governance, the same cannot be permitted to operate merely because it is projected as a temporary measure.

10.6 This Court further finds that Section 326 of the Act of 2009 authorizes delegation only for a specified period. The impugned order, however, prescribes no definite duration and permits the delegation to operate until a newly elected Municipal Board assumes office. Such an eventuality is uncertain and incapable of precise determination. The statutory requirement of a "specified period" postulates a definite and ascertainable tenure, and cannot be equated with an indefinite arrangement dependent upon the occurrence of a future contingency.

10.7 This Court also notices that impugned administrative order is entirely non-speaking insofar as reasons necessitating such delegation are concerned. It is only during the course of arguments that the learned counsel for respondents sought to justify order on grounds of administrative convenience and smooth functioning of Municipal Bodies.

This explanation does not, at this stage, command acceptance. The respondents have failed to explain as to why a system that has admittedly been functioning since the expiry of tenure of Municipal Board, could not continue until fresh elections are held. In several Municipal Bodies, the tenure of elected representatives had expired long back, before issuance of impugned order, while in the present case, the tenure expired in January, 2026. During this entire period, financial affairs of the municipal bodies were being administered through joint signatures of the Administrator and Executive Officer. No material whatsoever has been placed on record to indicate that continuation of existing arrangement had become impracticable or unworkable.

As a matter of fact, nothing has been brought before this Court to show that municipal financial administration had reached a state of paralysis or that disposal of financial matters had become impossible in the absence of arrangement introduced through impugned administrative order.

In the absence of any such compelling circumstances, there appears to be no justification for bypassing statutory mechanism.

11. In response to the preliminary objection raised by the learned counsel for the respondents with respect to *locus standi* of the petitioner, the learned counsel for the petitioner has placed reliance on following judgments :

a. **Vishnu Kumar Saini vs. State of Rajasthan** (S.B. Civil Writ Petition No. 5992/2024).

b. **Bindra Ban vs. Shyam Sundar & Ors.** reported in **MANU PH 0026/1959**.

c. **K.V. Aggarwal vs. State of Rajasthan** (D.B. Civil Writ Petition No. 5789/2020).

d. **Kamlesh Kumar Meena vs. State of Rajasthan & Ors**. (S.B. Civil Writ Petition No. 4166/2024)

e. **Bhika Ram vs. State of Rajasthan** (S.L.P. Civil No. 27965/2025)

f. **Fertilizer Corporation Kumgar Union vs. Union of India** reported in **1981 1 SCC 568.**

g. **Union of India vs. Rakesh Kumar** reported in **2001 4 SCC 309.**

12. Learned counsel for the petitioner while placing reliance upon judgment passed by Co-ordinate Bench of this Court, Bench at Jaipur in the case of **Vishnu Kumar Saini** (supra) vehemently contended that the present writ petition is very much maintainable at the instance of the petitioner who is a relater and the petitioner need not have any special or private interest.

13. Since the objection regarding *locus standi* of the petitioner involves a corresponding and debatable core legal issue regarding maintainability of writ petition in the nature of *quo warranto* where the powers have been vested in an authority having no competence or jurisdiction to exercise the same, this Court deems it appropriate to consider and decide the same at the time of final hearing of writ petition.

14. This Court has also examined the controversy in the broader constitutional backdrop of democratic urban governance. Chapter IX-A of the Constitution envisages institutions of local self-government as democratically elected bodies, and Article 243-U mandates timely conduct of elections before expiry of its term to ensure continuity of such democratic governance.

It is not in dispute that the tenure of almost all Municipal Bodies in the State has expired and fresh elections have yet to be conducted. Consequently, municipal powers presently stand vested in Administrators appointed under Section 322 of the Act of 2009. At the same time, the statutory scheme consciously provides for financial administration through joint action of the Administrator, who exercises municipal powers, and the Executive Officer, who forms part of the executive machinery of the State.

Such an arrangement ensures accountability and institutional checks and balances in municipal financial affairs.

By the impugned administrative order, the State Government has vested these financial powers exclusively in the Executive Officer, thereby dispensing with the requirement of joint authorization contemplated under the statutory framework. Significantly, the respondents have failed to point out any provision of law authorizing the State Government to further delegate municipal powers vested in the Administrator to any other officer.

This Court is also unable to discern any justification for altering a mechanism expressly provided by the legislature. Once the statute prescribes a particular manner for disposal of financial matters, the same cannot be substituted through an executive order merely on grounds of administrative convenience. Administrative convenience can neither override statutory provisions nor be permitted to dilute the constitutional and legislative scheme governing local self-government.

In view of above, this Court finds no ground to interfere with the interim order dated 29.04.2026. The stay petition deserves to be and is hereby allowed. Interim order dated 29.04.2026 is made absolute till final disposal of the writ petition.

Accordingly, the stay petition stands **allowed**.

15. Admit.

Since the respondents are already represented through counsel representing respondent department. Notices need not be issued.

16. Having regard to nature of controversy involved and urgency shown by the learned counsel for the respondents, the matter is directed to be listed for "final disposal" in first week of August, 2026.

17. Needless to observe that the findings and observations recorded herein are purely prima facie in nature and have been made only for the purpose of deciding the present stay application. The same shall not prejudice the rights and contentions of either party at the stage of final adjudication of the writ petition.

(SANJEET PUROHIT),J

shashikant/-