

IN THE HIGH COURT OF JUDICATURE, ANDHRA
PRADESH
AT HYDERABAD

-
(Special Original Jurisdiction)

-
TUESDAY, THE TWENTIETH DAY OF JUNE

TWO THOUSAND AND SIX

-
P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA

* * *

W.P.No. 10965 OF 2006

Between:

N.Sekhar

..Petitioner

And

The Government of Andhra Pradesh, rep. by its
Principal Secretary (P.R.&R.D.),

S a i f a b a d , Hyderabad

and

four

others

..Respondents

W.P.NO.10091 of 2006

Between:

Nuthalapati Sambasiva Rao and another.

...Petitioner.

And

The Election Commissioner,

Panchayat Raj Department,

Andhra Pradesh, Hyderabad, and others.

..Respondents.

W.P.No. 10094 OF 2006

Between:

1. Kolluri Ankaiah and 30 others. ..

Petitioners

And

The Government of Andhra Pradesh, rep. by its
Secretary, Panchayat Raj Dept., Secretariat,
Hyderabad and five others

..Respondents

W.P.No. 10257 OF 2006

Between:

Gonugunta Venkateswarlu and another

..Petitioners

And

State Election Commission, Andhra Pradesh,
And others

..Respondents

-

W.P.No. 10325 OF 2006

Between:

Chagamreddy Narasa Reddy and another

..Petitioners

And

State Election Commission,
Andhra Pradesh, rep. by its
Secretary, Secunderabad and four others

..Respondents

W. P. NO.10334/2006

Between:

Akki Pulla Reddy and 7 others. ..

Petitioners

And

The Government of Andhra Pradesh,
represented by its Chief Electoral
Officer & Special Chief Secretary,

Secretariat, Hyderabad and four
Others. ..
Respondents

W. P. NO.10385/2006

Between:
Madhavarapu Sanjeeva Rao and
another. ..

Petitioners

And

The Collector, Adilabad, Adilabad
District and three others. ..

Respondents

W. P.NO.10386/2006

Between:
Madhavarapu Venugopal Rao
and another. ..

Petitioners

And

The Collector, Adilabad, Adilabad
District and three others. ..

Respondents

W. P. NO.10387/2006

Between:
Bonagiri Niranjan Gupta
and another. ..

Petitioners

And

The Collector, Adilabad, Adilabad
District and three others. ..

Respondents

W. P. NO.10436/2006

Between:

Mamillapalli Mallikarjuna Rao
and four others. ..
Petitioners

And
The Government of Andhra Pradesh,
represented by its Secretary,
Panchayat Raj Department,
Secretariat, Hyderabad and five
others. ..
Respondents

W. P. NO.10446/2006

Between:
Tippa Reddy Krishna Reddy and
another. ..
Petitioners

And
State Election Commission, Andhra
Pradessh, represented by its
Secretary, Secunderabad and four others
.. Respondents

W. P. NO.10452/2006

Between:
Yerrabiki Venkat Rao and another.
.. Petitioners

And
The Election Registration Officer-cum-
Revenue Divisional Officer,
Narsaraopet, Guntur District and
four others. ..
Respondents

-
W.P.No. 10554 OF 2006

Between:
Sandu Vara Prasada and 26 others. ..

Petitioner
And
The District Collector, Guntur and three others
..Respondents

-
W. P. NO.10642/2006

Between:
Akkineni Ravi and another. ..
Petitioners
And
The State Election Commissioner,
A.P. Hyderabad and 3 others. ..
Respondents

-
W. P. NO.10710 OF 2006

Between:-
Kanchumati Tirupalu. ..
Petitioner
And
The Chief Electoral Officer, General
Administration (Elections) Department,
Government of Andhra Pradesh,
Secretariat, A.P. Hyderabad and four others
..Respondents

W. P. No.10711 of 2006

Between:-
Smt.ltham Aruna ..Petitioner
And
The Chief Electoral Officer,
General Admn.(Elections) Dept.
Govt.of Andhra Pradesh,
Hyderabad & Ors. ...
Respondents

W.P.NO.10712 of 2006

Between:-

Sri Garikapati Narasimha Rao ..

Petitioner

And

The Chief Electoral Officer,

General Admn.(Elections) Department

Govt.of Andhra Pradesh,

Hyderabad & Others.

Respondents

WP.NO.10715 of 2006

Between:-

Palagirichiragari Yogeswara Reddy

and another. ..

..Petitioners

And

The Chief Electoral Officer,

General Admn (Elections) Department

Govt. of Andhra Pradesh

Hyderabad & Others ...

Respondents

W.P. No.10716 of 2006

Between:-

Ch. Rama Brahmam

..Petitioners

And

The Chief Electoral Officer,

General Administration (Elections) Department,

Government of Andhra Pradesh,

Secretariat, A.P., Hyderabad & others.

..Respondents

W.P. No.10790 of 2006

Between:-

Anubrolu Ramakrishna & others

..Petitioners

And

The District Collector and District Election Officer,
Prakasam District, Ongole & others.

..Respondents

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W.P. No.10807 of 2006

Between:-

K. Shankaraiah

..Petitioners

And

The Joint Secretary to Government,
Government of A.P., Secretariat Buildings,
Hyderabad & others.

..Respondents

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W.P. No.10962 of 2006

Between:-

Shaik Masthanvali

..Petitioners

And

The Government of Andhra Pradesh,
Rep., by its Principal Secretary (P.R & R.D.),
Saifabad, Hyderabad & others.

..Respondents

-

W.P. No.10967 of 2006

Between:-

M. Veera Reddy

..Petitioners

And

The Government of Andhra Pradesh,
Rep., by its Principal Secretary (P.R & R.D.),
Saifabad, Hyderabad & others.

..Respondents

-

W.P. No.10968 of 2006

Between:-

G. Rameshbabu

..Petitioners

And

The Government of Andhra Pradesh,
Rep., by its Principal Secretary (P.R & R.D.),
Saifabad, Hyderabad & others.

..Respondents

W.P. No.10969 of 2006

Between:-

K. Raghavaiah

..Petitioners

And

The Government of Andhra Pradesh,
Rep., by its Principal Secretary (P.R & R.D.),
Saifabad, Hyderabad & others.

..Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

**W.P.Nos. 10965, 10091, 10094,10257, 10325, 10334,
10385,10386, 10387, 10436, 10446, 10452, 10554,
10642, 10710,10711,10712,10715,10716,10790,10807,
10962, 10967,10968 and10969 of 2006**

COMMON ORDER:-

INTRODUCTION:

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1. Indian democracy despite the constitutional measures, the other legislative measures and the reforms, suffers from several ills. The Apex Court on several occasions had cautioned the constitutional functionaries and other wings in this regard. It is needless to say that these instances being too numerous, this court is not inclined to elaborate the same. Be that as it may, the democratic features as basic features had been well emphasized in ***A.K.Gopalan Vs. The State of Madras***^[1], ***Keshavananda Bharathi Sripadagalvaru Vs. state of Kerala***^[2], and also in ***Union of India Vs. Association for Democratic Reforms***^[3]. In ***Union of India Vs. Naveen Jindal***^[4] the Apex Court observed that the beauty of the Indian Constitution is that the entire structure of the country is based thereupon. It is the very pillar upon which the democracy of India stands. In ***Dattreya and others Vs. Mahaveer and others***^[5] it was observed that fair play is the basic principle seeking relief under Article 226 of the Constitution of India. In ***Thigarajan and others Vs. Sri Venugopalswamy B. Koil and others***^[6] it was observed that it is the obligation of the courts of law to further clear intendment of the legislation and not to frustrate it by

excluding the same. These batch of writ petitions were filed prior to the Election Notification dated 10-06-2006 questioning the validity of the voters list on different grounds, statutory like the A.P.Panchayat Raj Act, 1994 (hereinafter in short referred to as 'the Act'), the G.O.Ms.No. 254, the supersession thereof and also the several constitutional provisions governing the field in this regard and further pointing out the constitutional or the statutory vacuum created, serious gap even in subordinate Legislation, in relation to the drawing up of the voters list and how the gross root democracy is ultimately affected by virtue of the same.

SHORT BACKGROUND OF THESE LITIGATIONS:

2. As already referred to supra, these writ petitions were filed prior to the issuance of election notification aforesaid but however, these are being disposed of subsequent to the issuance of the notification. At the outset it may be stated that several other writ petitions inclusive of these writ petitions came up before the learned single judge and in the said batch on 01-06-2006 the learned single Judge had made the following order while posting the writ petitions for admission on 19-06-2006.

“Having regard to the facts and circumstances of the case, the following directions are given:

- I. The Commissioner of Panchayat Raj shall undertake an exhaustive review on the

reorganization of MPTCs in various Mandals in the State and take necessary steps to ensure that:

- a) Whether the number of MPTCs in a Mandal remains unaltered, the existing set up is not disturbed.
- b) Whether the number of MPTCs in a Mandal has increased on account of rise in population, the reorganization of the MPTCs must be such that the MPTCs where the highest growth of population has been recorded are reorganized; and the others are not touched.
- c) No village which is not contiguous to other villages in an MPTC are allotted or attached to it, i.e. Territorial contiguity must be ensured; and
- d) Perfect balance is mentioned as regards the number of villages in each MPTC in the Mandal.

If such exercise warrants any rearrangement or reorganization of MPTCs., it shall be open to the Commissioner to issue necessary directions before the election notification is issued. The complaints and representations received in this regard shall be taken into account. Necessary instructions shall also be issued to the District Collectors.

The State Election Commissioner shall issue necessary directions to the District Collectors as well as the Electoral Registration Officers in the State.

- a) to ensure that the sanctity of the voters' list published in February,2006 is maintained in the matter of utilizing the same for the Panchayat Raj Elections:
- b) to ascertain whether the deletion or addition of names subsequent to the publication of the list in February,2006, is preceded by necessary exercise contemplated under Sections 21 and 22 of the R.P. Act, by undertaking proper verification:
- c) to bestow specific attention to situations where large scale additions and deletions of voters has taken place in the list published under Rule 5 of A.P. Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules,2000, contained in G.O.M.No.254 ,dated 04-08-2000. It shall be open to the aggrieved individuals as well as the public representatives to bring the instances of deletions and inclusions to the notice of the concerned Electoral Registration Officers, who in turn shall undertake proper exercise before a final list is published under Rule 6.
The exercises indicated above shall be undertaken expeditiously and completed before the Election Notification is issued.”

3. These matters were carried by way of writ appeals, writ appeal No. 568 of 2006 and batch and the learned Division Bench by order dated 9-6-2006 made the following Order:-

“Hence, the appeals are allowed. The order of the learned Single Judge is set-aside. In order to facilitate early consideration of the prayer of the writ

petitioners, we direct that-

- 1) the respondents in the writ petition should file counter-affidavits latest by 13-6-2006 after supplying advanced copies to the counsel for the petitioners.
- 2) The petitioners shall be free to file rejoinder affidavits, if any, on or before 15-6-2006.
- 3) All the writ petitions be listed before the Single Bench on 16-6-2006.
- 4) The Single Bench shall be free to hear the arguments on the main petitions and decide the same.
- 5) The petitioners shall also be at liberty to make a request for adjudication for their prayer for stay.
- 6) By way of abundant caution, it is clarified that the order passed in these appeals shall not operate as an impediment in the consideration of the writ petitioners' prayer for stay. At the same time, we make it clear that the respondents shall be free to take all legally permissible objections to the grant of interim relief.

While disposing of the appeals in the manner indicated above, we deem it proper to recapitulate the statement of the learned Advocate General that all those who have filed objections against the wrongful deletion of their names from the voters list and have succeeded in persuading the competent authority to accept their plea, shall be entitled to cast their vote in the forthcoming election irrespective of the fact that their names are not reflected in the electoral roll. However, it is made clear that this direction would be operative qua the orders passed till the date of notification of election and not

thereafter.

On the oral request made by the learned counsel for the petitioners, we clarify that the election, if any, held before the final adjudication of the writ petitions would be subject to the result of the writ petitions.”

4. Suffice it to state at this stage that the Division Bench was concerned with the way the matters were disposed of by making a common order by the learned single Judge without appreciating the factual matrix in every case. It is no doubt true that the Division Bench also while disposing of these matters made certain other observations relating to the other aspects incidentally which are being argued in elaboration before this court inasmuch as with the above directions, the matters were sent back to this court for the purpose of fresh disposal.

5. All these matters are coming up before this court at the stage of admission. At the outset it may be stated that as directed by the Division Bench in almost all these matters counter affidavits had been filed. As can be seen from the material available on record, in certain of the matters the concerned M.R.Os though not impleaded as parties the non-parties had sworn to the counter affidavits, may for the reason that the facts are within the knowledge of those concerned Mandal Revenue Offices. In some of the matters the Mandal Revenue Officers also are made

as parties . In certain matters, the concerned Joint Secretary had sworn to the counter affidavits. On careful scrutiny of the counter affidavits filed in almost in all these matters, substantially the stand taken by the Government appears to be one and the same, though on facts certain different explanations were given by the concerned officers who had sworn to these counter affidavits, the details of the same would be dealt with at the appropriate stage. This exercise is being taken by this court especially in the light of the directions made by the Division Bench inasmuch as each matter to be looked into and to be decided on facts. The respective pleadings of the parties and the contentions are as hereunder:

PLEADINGS OF THE RESPECTIVE PARTIES:

W.P.NO. 10965 OF 2006

6. Initially the writ petition was filed praying for relief of Writ of Mandamus declaring the action of the respondents in deleting the names of the valid voters and refusing to include the eligible voters while refusing to exclude the ineligible voters from the voters list of Nadendla Gram Panchayat prepared by the authorities and not passing any orders on the appeals preferred by the affected parties by the concerned authorities as illegal, unjust, arbitrary, discriminatory thereby violative of Article 14 of the Constitution of India and also contrary to the provisions

of the A.P.Panchayat Raj Act,1994 and the Rules made thereunder particularly the Rules issued in G.O.Ms.No.254 dated 4-8-2000 and consequentially direct the respondents to include the eligible voters and exclude the ineligible voters from the voters list of Nadendla Gram Panchayat before issuing the election notification and pass such other suitable orders.

7. W.P.M.P.No.14946 of 2006 was filed praying for amendment of the prayer as hereunder:

“ For the reasons stated in the accompanying affidavit it is prayed that this Hon’ble Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents in deleting the names of the valid voters and refusing to include the eligible voters, while refusing to exclude the ineligible voters from the voters list of Nadendla Gram Panchayat and the consequential notification issued on 10/6/2006 as illegal, unjust, arbitrary, discriminatory thereby violative of Article 14 of the Constitution of India and also in violation of Article 243K of the Constitution of India and Sections 11,12 and 201 of the A.P.Panchayat Raj Act, 1994 and further declare that the electoral rolls prepared under the said Rules as illegal, unconstitutional and contrary to the provisions of the Act and void ab initio, if necessary declare Rules 2 and 5 of the Andhra Pradesh Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules,2000 issued in

G.O.Ms.No.254 dated 4/8/2000 as unconstitutional for violating the constitutional mandate contained in Article 243 K and Sections 11,12 and 201 of the A. P. Panchayat Raj Act and consequentially direct the respondents to prepare fresh electoral rolls for holding Panchayat elections in accordance with the Constitution of India and the provisions of the A.P.Panchayat Raj Act,1994 and held elections only after that exercise is completed and pas such other order or orders as are deemed fit and proper in the circumstances of the case.”

8. This application wherein the amendment was prayed for is resisted by the State Election Commission and also by the Government by filing respective counter affidavits. The chronology of events in short already had been narrated supra. It is not in controversy that all these writ petitions were filed prior to issuance of the notification and in fact in several of the affidavits filed in support of these writ petitions, specific stand had been taken that there is likelihood of issuance of the notification and hence early disposal of the matters would be essential. It is pertinent to note that the Division Bench made the order on 9-6-2006 and the election notification was issued on 10-6-2006. The facts in detail had been narrated in the affidavit filed in support of WPMP No. 14964 of 2006. This court is of the considered opinion that in the light of the submissions which had been advanced at length by the counsel on

record, even in the absence of the prayer, these aspects may have to be gone into by this court. In the light of the same, inasmuch as the parties on record are not taken by surprise at all, the amendment which is prayed for, may have to be allowed and accordingly W.P.M.P. No. 14946 of 2006 is hereby ordered. Inasmuch as all these matters are coming up for admission and counter affidavits had been filed, by the respective parties, elaborate submissions were made by all the counsel on record, this court is of the considered opinion that the writ petitions can be finally disposed of. Accordingly in all these writ petitions Rule Nisi is issued.

9. The petitioner in the writ petition No.10965 of 2006 had pleaded that he belongs to Nadendla Gram Panchayat and his name is in the voters list of Nadendla Gram Panchayat and he belongs to Telugu Desam Party and he is contesting as a ward member in the forthcoming elections of the Gram Panchayat. It was further pleaded that the respondent authorities issued the voters list while deleting the eligible voters, included ineligible voters and also refusing to include the eligible voters. It is stated that in view of the same, his chance of the success in the forthcoming election to the Gram Panchayat had been taken away by the respondent authorities. The petitioner also had given particulars

stating that the respondent authorities in the month of January,2006 published the voters list of the Gram Panchayat while deleting 508 names of the eligible voters and they have also included roughly about 350 new voters for which the concerned authorities asked the residents of the Gram Panchayat to submit the objections if any. Accordingly, he field objections. However, the respondent authorities did not consider the same and published the final voters list on 15/5/2006. It was also pleaded that the respondent authorities had deleted 269 names of valid voters from the list without assigning any reasons whatsoever and the particulars or the details relating to the same also had been narrated. Apart from these factual aspects, the provision of the Act aforesaid and also the concerned Rules in G.O.Ms.Nos.255 and 899 also had been referred to. Further an affidavit in detail narrating several other factual details and other irregularities and illegalities in relation to exclusion, inclusion and deletion etc., of the voters had been filed in W.P.M.P.No.14946 of 2006. No doubt, this is subsequent affidavit, which had been filed while praying for the amendment of the prayer. Initially counter affidavits were filed denying the stand taken by the writ petitioner and also subsequent thereto counter affidavits were filed. In the

counter affidavit filed by the State Election Commission several of the aspects justifying the stand taken by the State Election Commission had been elaborated and narrated and same would be dealt with at the proper stage since virtually these contentions made being common in almost in all the writ petitions.

10. In the counter affidavit filed by the Mandal Revenue Officer, Nandendla who is a non-party to the writ petition, it was pleaded at Paragraph No. 2 that the Election Commission of India issued a direction relating to Electoral Rolls for the summary revision for the year 2006. The programme is detailed below: -

S.No.	Stage of Revision	Period
1.	Preparatory work-removal of discrepancies If any, found during validation checks of the Existing database and integration and consoli- dation of all the supplements of electoral rolls.	Upto 1-11-2005
2.	Draft publication of rolls 1.11.2005(Saturday)	
3.	Period of for filing of claims and objections.	5.11.2005 to 5.12.2005 due to 4.12.2005 is public holiday
4.	Special campaign dates for receiving claims ,13.11.2005 and objections at all designated locations.	12.11.2005 26.11.2005 & 27.11.2005
5.	Disposal of claims and objections	9.1.2006
6.	Preparation and printing of supplement of Addition, deletions & corrections	6.2.2006
7.	Final publication of Electoral Rolls	13.2.2006

As per the programme, the claims and objections in form Nos. 6,7 and 8 were received from 5.11.2005 to 1.12.2005 from 10.30 A.M. to 5.00 P.M., on 4.12.2005 though it was a public holiday, and also prefer on 5-12-2005. All the claims and objections have to be disposed off on 9-1-2006. The final publication of Electoral rolls has to be published on 13-2-2006.”

11. In the counter affidavit Rule 20 and 23 of the Registration of Electoral Rules 1960 made under the R.P. Act had also been referred. It was further pleaded at Para 5 that :-

“ In fact they were got verified following the norms. Out of 848 claims for inclusions (Form 6) 242 were accepted and the remaining 606 were rejected. So also out of 1259 Form 7 claims for deletions, 250 were accepted and the remaining 1009 were rejected. Thus final orders on the total applications claims received for conclusion and deletion in the Electoral Rolls were passed and finally published on 25.2.2006 as per the schedule ordered. Therefore, the allegation leveled against respondents are not true.”

12. It was further pleaded that after final publication of draft rolls on 25.2.2006 the writ petitioner filed appeals before the Collector, Guntur (i.e.,) District Election Authority in respect of inclusions and deletions and as a matter of fact, during the process of summary revision of Electoral Rolls pertaining to Nadendla Gram Panchayat, 848 claims

for inclusion in Form No.6 and 1259 in Form No.7 for deletion were received. It was further pleaded that questioning the order of deletion passed by the Electoral Registration Officer in Form 7 appeals were filed. The relevant portion reads as hereunder:-

“ a total number of 250 appeals have been filed before the District Election Authority and apart from this other 20 applications were also filed. So all together a total of 270 (250 + 20) appeals were filed and it is further submitted that there is no appeal filed against the orders passed in Form 6. The appellants were issued notices on their appeals and 6 senior officers were deputed for enquiry. Based on their enquiry after due service of notices, the appeals were disposed by an individual order on each appeal. Out of 270 appeals filed for inclusion 71 are allowed and 199 were rejected.”

13. It was also further pleaded that however, in cases wherein fresh cases filed before the appellate authority, endorsements were issued to the concerned to file before the electoral registration officer under continuous updation process pursuant to which the petitioner has filed 203 Form 6 applications under continuous updation before the Electoral Registration Officer. Out of said 203 claims, 43 were accepted and 160 were rejected. On account of this (71 appeals + 43 continuous updation) 114 claims accepted for inclusions.

Supplement list of inclusions was got printed and sent to the District Panchayat Officer for being annexed to the concerned electoral rolls. It was also further pleaded that the allegations made in the affidavit filed in support of the writ petition are not true and correct and the authorities had followed the procedure and the voters list prepared in accordance with law and hence, the writ petitions are liable to be dismissed.

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W.P.No.10091 of 2006

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14. The petitioners filed the present writ petition praying for the relief of writ of mandamus declaring the inaction of the respondents in considering the objections dated 11-05-2006 raised by the petitioners with regard to the voters list of Gollapudi Gram Panchayat, Vijayawada Rural Mandal, Krishna District, published on 08-05-2006 as illegal and void and pass such other suitable orders.

15. It is stated that the voters list of Gollapudi Gram Panchayat was published on 13-02-2006 and the revised voters list was published on 08-05-2006. It is also stated that the petitioners made representations to the respondents regarding the objections in relation to the voters list. Several factual details were narrated in the

affidavit filed in support of the writ petition and the relevant material also was placed to substantiate the stand taken in the affidavit filed in support of the writ petition. Both voters' lists were filed for the purpose of appreciation.

16. In the counter-affidavit filed by the Joint Secretary to the Government, Panchayat Raj Department, it is stated that the Election Commission of India issued a direction relating to the Electoral Rolls for summary revision for the year 2006 and the programme is detailed below.

Sl.No.	Stage of Revision	Period.
1.	Preparatory work-Removal of discrepancies if any found during validation checks of the existing database and integration and consolidation of all the supplements of electoral rolls.	Up to 01-11-2005
2.	Draft Publication of Rolls.	01-11-2005 (Saturday)
3.	Period for filing of claims and objections.	05-11-2005 to 05-12-05 due to 04-12-2005 is public holiday.
4.	Spl. Campaign dates for receiving claims and objections at all designated locations.	12-11-2005 13-11-2005 26-11-2005 and 27-11-05
5.	Disposal of claims and objections	09-01-2006

6.	Preparation and printing of supplements of additions, deletions and corrections.	06-02-2006
7.	Final Publication of Electoral rolls.	13-02-2006

As per the programme, the claims and objections in form Nos.6,7 and 8 were received from 05-11-2005 to 04-12-2005 from 10-30 AM to 5-00 PM. On 04-12-2005 though it is a public holiday and also prefer on 05-12-2005. All the claims and objections have to be disposed off on 09-01-2006. The final publication of Electoral Rolls has to be published on 13-02-2006. In reply, in paras 3,4 and 5 of the counter-affidavit, the Gram Panchayat Wards, MPTC Wards, the voters' strength and how the electoral rolls were prepared and other details had been explained. Ultimately, the stand was taken that the final list published is strictly as per the instructions issued by the State Election Commission in Letter No.194/SEC-B2/2006, dated 18-03-2006.

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W.P. No.10554 of 2006:

17. The writ petition is filed praying for directions declaring the inaction of the 2nd respondent in not disposing of the applications filed by the petitioners for

inclusion of their names in the revised electoral roll of Karmapudipadu Gramapanchayat as arbitrary, illegal and unconstitutional and consequently direct the 2nd respondent to consider and dispose of the applications filed by the petitioners seeking inclusion of their names in the revised electoral roll and pass such other suitable orders.

18. It was stated by the petitioners that they are permanent residents of Karampudipadu village of Vatticherukuru Mandal of Guntur District and they are agriculturalists and further it is pleaded that the election to the Gram Panchayat in the State had taken place in the year 2001 and the elections are due this year and likely to be held in the month of July-August and the notification is going to be issued in the first week of June. Certain other details relating to preparation of voters list and the relevant provisions of R.P.Act, 1950 and also the Registration of Electoral Rules, 1960 had been referred to apart from the different provisions of the Act. It was also stated that insofar as the Assembly Constituency of Prathipadu is concerned the electoral list had been revised in the year 2006 by taking the date as 1-1-2006 and it was published on 25-2-2006 and the names of the petitioners had been omitted from that list without any valid

reasons. It was further pleaded that the petitioners filed applications in the prescribed form and though they are bound to act in accordance with law, the same were not disposed of and certain other further allegations had been made in this regard. The Mandal Revenue Officer, Vatticherukuru Mandal is a non-party to the writ petition, may be because she had knowledge about the facts, had sworn to the counter affidavit. It was pleaded in the counter at paras 3 to 8 as hereunder:-

“ It is submitted that the Election Commission of India issued schedule for Special Summary Revision, 2006 in its Lr.No.23/AP/2005 (SpL SR) dt. 14-10-2005 which was communicated by the Chief Electoral Officer and E.O. Special Chief Secretary to Government, A.P., Hyderabad vide. Govt. Memo No.2511/Elecs.E/A2/2005-20 dt.15-10-2005 as follows, fixing the schedule from 1-11-2005 to 10-2-2006 for receiving of Forms of 6,7 & 8:

<u>DATE:</u>	<u>FUNCTIONS</u>
1-11-2005	: Preparatory work like removal of discrepancies etc.
5.11.2005	: Draft publication OF electoral Rolls
5.11.2005 to 4.12.2005:	Period of filing claims and objection
12.11.2005, 13.11.2005, 26.11.2005 & 27-11-2005:	Special Campaign Date
9-1-2006	Disposal of claims and objections

6.2.2006 Preparation and printing of
supplements of
inclusions and deletions
10-2-2006 Final Publication

After publication of final list, if any person is aggrieved they have to prefer appeal before the District Collector who is appellate authority U/S.23 of Representation of Peoples Act,1950.

It is submitted that during special summary revision 2006 totally 169 claims in Form-6 have been filed in respect of Karampudipadu Village and they all were thoroughly enquired by the team specially deployed for the purpose by touching door to door and out of 169 claim in Form-6, 91 claims were found genuine and accepted and accordingly included in the electoral rolls of Karampudipadu vide Polling Station No.107 and the rest of the claims i.e.78 in number were rejected due to various reasons like under aged/not residing at the addresses given in Form No.6.

It is further submitted that some of the claimants, whose claims in Form-6 were rejected, aggrieved by this, 8 persons have filed appeals before the Collector, Guntur. These appeal were also enquired by the team deployed for the purpose and all the appeals for inclusion as voters were rejected on the ground like under aged, not residing at the addresses furnished in the Form 6. With regard to the Writ Petitioner No.11, she has filed appeal even without filing her

claim during the Special Summary Revision,2006 and therefore her appeal was rejected and she has been given an endorsement to file her claim afresh for taking action.

It is submitted that out of 27 Writ Petitioners, the 8th petitioner and the 10th petitioner are one and the same. 16 Writ petitioner vide Item Nos 1 to 3,13 to 17,19,21 to 27 have filed claims during the Special Summary Revision,2006, out of which one Petitioner at Item No.19 has been accepted and included in the Electoral Roll and the rest 15 were rejected for the reasons like under aged/non resident in the door number furnished in the claim etc. With regard to Item Nos 5,8 and 9, claims in Form 7 for deletions were accepted and their names were deleted. Further, the names of the Writ Petitioners vide Item Nos.4,6,7 and 12 were deleted on suo moto enquiry. The Writ Petitioner vide Item No.11 has not filed any claim during Special Summary Revision,2006, but she has filed an appeal before the Collector, Guntur and it was rejected as it does not come under appeal and she was given in endorsement asking her to file fresh claim for enquiry and to take appropriate action. The Writ Petitioners vide Item Nos.18 and 20 have filed Writs even without filing their claims. It is further submitted that out of the 27 Writ Petitioners, 8 Petitioners vide Item Nos. 4 to 9,11 and 12 have filed appeals before the Collector, Guntur and all the appeals were rejected for the reasons like under aged/non residents in the door nos. furnished in their claims

and petitioner vide item No.11 had filed her claim directly to the Collector during the appeals time, her request was rejected and she was given an endorsement to file her claim afresh.

It is further submitted that from the above mentioned facts, it is clear that the objections of the petitioners have been considered in accordance with law.

It is submitted that the contention of the petitioner that there is inaction on the part of the Revenue Divisional Officer, Guntur for not disposing the applications filed by them for inclusion of their names in the revised Electoral Roll for Karampuipadu Village Grama Panchayat is illegal and it is totally misconceived one. In fact, the second Respondent and Revenue Divisional Officer, Guntur has considered all the objections and disposed off the same on merits. The petitioners without verifying the true facts approached this Hon'ble Court and misrepresented before the Hon'ble High Court, it is further submitted that the Statement showing the Objections considered by the 2nd Respondent are filed herewith as material papers.”

19. In substance, the stand taken is that the authorities acted in accordance with law and procedure and hence the writ petition is liable to be dismissed.

W.P.No.10094 of 2006:

20. The writ petition is filed by the petitioners

praying the following relief:-

“For the reasons stated in the accompanying affidavit, the petitioner prays that this Hon’ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus or any other appropriate writ, order or direction (a) declaring the action of the respondents in deleting the names of the petitioners herein from the electoral roll and inclusion of the names of the persons who are not eligible as illegal, arbitrary, void, unconstitutional without any power or authority or jurisdiction against the principles of natural justice and contrary to the Section 11 of the A.P.Panchayat Raj Act and Rules relating to preparation and publication of Electoral rolls for our Gram Panchayat and consequently direct the respondents to continue the names of the petitioners in the Electoral rolls of Jillellamudi Gram Panchayat, Kandukuru Mandal, Prakasam District and allow them to participate in the election and to cast their voters and also direct the respondents to delete the names of the persons who are not eligible and entitled to be included in the voter list. Electoral rolls and not to allow them to participate and cast their votes in the coming election, (b) To direct the respondents to enquiry about the irregularities committed in deleting the names of the petitioners from the Electoral rolls and inclusion of the names of ineligible persons in the voters list of Jillellamudi Gram Panchayat and take appropriate action against them according to law, if they found that

they have committed irregularities, in the interest of justice and pass such other order or order as this Hon'ble Court may deem fit and proper in the interest of justice.”

21. The petitioners had pleaded relating to the different provisions of the Act and the Rules made thereunder and the procedure to be followed in relation thereto. The main grievance ventilated is that they are the natives of Jillellamudi Village and permanent residents of the said village and all of them having houses and agricultural lands and voters identity cards had already been issued to the deponent and also to the petitioners 2 to 10, 14 to 16 and 19 to 28. The R.D.O. Kandukur published the voters list on 13-2-2006 and to their surprise their names were not found in the said list and the names of several persons who are not eligible had been included. Before deleting their names from the Electoral rolls, they have neither issued any show cause notice nor given any opportunity of hearing and their names were deleted illegally and without following the procedure prescribed under law. The procedure which is to be followed also had been narrated in detail. In the affidavit filed in support of the writ petition it was specifically stated that the respondents had not followed the procedure and it was further stated that they received notices on 28-3-2006

asking them to attend on 1-4-2006 at 10.30 am in Mandal Revenue Office with necessary evidence for enquiry but he had not conducted any enquiry on that day and postponed the same stating that the enquiry will be conducted in the village and he will inform the date fixed by him to them through Panchayat Secretary or any other Officer . But till today, he neither informed the enquiry date nor conducted any enquiry. He is not conducting enquiry yielding to the pressure brought by the present local MLA and political leaders who belong to the ruling party. In the appeals filed by them they have not received any notice from the appellate authority till today. Along with the appeals they had also produced necessary evidence i.e. copies of the identity cards, ration cards etc and they had also produced the said evidence before the enquiry officer on 1-4-2006. It was also stated that the notice of final publication of electoral rolls was issued on 13.2.2006 in which it was stated that the list of amendments to the Draft Electoral Roll had been prepared with reference to 1.1.2006 as qualifying date and the said list is available for inspection at the office of Electoral Registration Officer, Revenue Divisional Officer, Kandukur and also at the office of M.R.O., the Assistant Electoral Registration Officer. Other details in relation thereto also had been narrated and in the pleadings

specific political pressure in relation thereto had been specified. Along with the material papers both the voters list had been placed before the court to demonstrate the serious illegalities or irregularities committed by the authorities.

22. In the counter affidavit filed which is sworn to by the concerned Mandal Revenue Officer of Kandukuru Mandal, who is being no doubt respondent No.5 in the writ petition, it was pleaded as hereunder:-

“ It is submitted that the Election Commission of India issued a direction relation to Electoral Rolls for the Summary Revision for the year 2006. The programme is ad detailed below:

Sl.No.	State of Revision	Period
1.	Preparatory work – Removal of discrepancies if any, found during validation checks of the existing database in integration and consolidation of all the Supplements of electoral rolls.	Upto 1-11-2005
2.	Draft Publication of rolls	1-11-2005 (Saturday)
3.	Period for filing of claims and objections	5-11-2005 to 2-2005 due to 4-12-2005 is public holiday
4.	Special campaign dates for receiving claims and objections at all designated locations	12-11-2005, 13-11-2005, 26-11-2005 and 27-11-2005
5.	Disposal of claims and objections	9-1-2006
6.	Preparation and printing of supplements of additions, deletions and corrections	6-2-2006

7.	Final Publication of Electoral rolls	13-2-2006
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As per the programme, the claims and objections in form Nos. 6,7 and 8 were received from 5-11-2005 to 4-12-2005 from 10.30 A.M. to 5.00 P.M. on 4-12-2005 though it is a public holidays and also prefer on 5-12-2005. All the claims and objections have to be disposed off on 9-1-2006. The final publication of Electoral rolls has to be published on 13-2-2006.”

23. In the counter affidavit as usual Rule 20 and 23 of Registration of Electoral Rules 1960 under the R.P. Act had been referred to and further how procedure had been followed in this regard had been narrated in detail. No doubt the political pressure had been specifically denied. It was pleaded in the counter while denying the allegations as hereunder:-

“ In reply to the averments made in Para 3 of the petitioners’ affidavit it is submitted that the villagers of Jillamudi village have filed form No.7 objections under Rule 13(2) and 26 of Registration of Electoral Roll Rules 1960 before the E.R.O. Kandukur for deletion of the names of the petitioners as they are residing at Hyderabad, Kanigiri and Nellore District. Notices under Form 13 and 14 were issued to the Writ Petitioners and to other persons in respect of whom objections were made so as to enable them to attend for enquiry at Mandal Parihada Elementary School,

Jillellamudu village at 1.00 AM on 23rd of December,2005 and the said notices were received by them.

The Mandal Revenue Officer, who was appointed as Assistant-Electoral Registration Officer has conducted enquiry on 23-12-2005 and after enquiry he has recommended for deletion of the names of 35 persons including writ petitioners. For kind perusal of this Hon'ble Court I am enclosing the copy of enquiry officer report dated 10-01-2006.

On receipt of enquiry report from the Assistant Electoral Registration Officer, Kandukur, the Electoral Registration Officer, Kandukur has published the Electoral rolls, 2006 for Jillellamudu village on 13-02-2006. As such there is no irregularity or illegality was committed by the Electoral Registration Officer as alleged by the petitioner.

In reply to Para 4 of the affidavit, it is submitted that during the course of enquiry in the village on 23-12-2005, the writ petitioners were present and during enquiry the local Panchayat Secretary of the concerned village stated that the petitioners are not residents of the Jillellamudi village as such the names of the Writ Petitioners and other persons were deleted as per rules. Therefore claim of the Writ Petitioners for inclusion of their names in the voters list are not tenable, in view of the enquiry made on 23-12-2005. It is further submitted that some of the petitioners herein filed form 7 for deletion of about 10 names from the voters list and all that 10

applications were accepted after conducting enquiry which is evident from the enquiry report dated 10.01.2006. Therefore, the contentions of the petitioners that their applications were not considered is false.

In reply to Para 5 to 7 of the affidavit, it is submitted that the Writ Petition have filed individual appeals before the District Election Officer, i.e., District Collector upon which a notice was issued to all the individuals to attend enquiry on 1.4.2006 at 10.30 Am in the Mandal Revenue Office with necessary evidence for enquiry. Accordingly the petitioners herein attended the enquiry which was conducted by Special Deputy Collector, Velugonda Project Unit III, Tumbam, Prakasam District who was authorized by the District Election Officer in this behalf. After making a thorough enquiry the enquiry officer rejected 39 appeals filed by the Writ Petitioners and others by order of on 4.4.2006 on the ground that they are non-residents of Jillellamudi village.

It is further submitted that in para 6 of the Writ Petition affidavit contended by the petitioners is that there is no enquiry conducted on 1.4.2006, but in the very same paragraph the petitioners categorically stated that they have produced the evidence before the enquiry officer on 1-4-2006 which falsify the claim of the petitioners that no enquiry was conducted on 1-4-2006. From the above, it is clear that their claim has been considered and appropriate orders has been passed and the same has been communicated to the Writ Petitioners.”

24. In the light of the stand, it was prayed that the writ petition deserves for dismissal.

W.P.No. 10257 of 2006:

25. This writ petition is filed by the petitioners praying for writ of Mandamus declaring the action of the respondents 1 and 2 in not hearing and disposing of the appeal or as the case may be the complaint filed before them by the petitioners against the electoral rolls published by the Fifth Respondent, District Panchayat Officer, as illegal, mala fide and violative of the statutory duty and further declare the electoral rolls prepared and published by the Fifth Respondent as illegal and contrary to the provisions of the Section 11 of Andhra Pradesh Panchayat Raj Act, 1994 and Rules made thereunder and pass such other suitable orders.

26. It is pleaded that they are residents of Illavara, Kondapi Mandal, Prakasam District and the voters and had given particulars and details in relation thereto. The petitioners also pleaded the different relevant provisions of the Act, aforesaid Sections 201 (2) 11, 12 and 268 and also referred G.O.Ms.No.880 PR RD & R (Election-1) Department dated 3.12.1994, G.O.Ms.No. 899, PR, RD & R (Election-I) Department dated 10-12-

1994, G.O.Ms.No. 923, PR, RD & R (Election-1) Department, dated 28.12.1994 and had narrated the deletion of 566 votes in the year 2004 and illegal additions were made suo motu by the respondents without following any procedure whatsoever with a view to favour a certain candidate. Therefore, the voters of the petitioners' village including the petitioners became alert during the preparation of the electoral rolls in the year 2005. It is stated that the electoral rolls of the Ilavara Gram Panchayat consists of 1939 voters, adding 139 new names. About 70 persons belonging to a particular group were deleted in the year 2005 and new names of 78 ineligible persons were added at the instance of a Political group in the year 2005. It is stated that during the revision of electoral rolls in the year 2006, 315 persons whose names were illegally and suo moto removed by the officers without notice and without following the procedure on the eve of the Assembly Elections in the year 2004 . They made their applications for inclusion of their names in the voters list , in the prescribed form in January,2006 . The relevant material papers also were furnished. It is also stated that respondents without conducting any enquiry and without affording opportunity and without notice published draft electoral rolls as final electoral rolls. Petitioners and number of other voters of

the village had submitted their objections in the prescribed form to the second respondent through the third respondent against a number of illegal entries made in the draft electoral rolls within time before publication of the same by the fifth respondent. A number of dead persons were also included in the draft electoral list. Several allegations relating to the mala fides had also been specified and several of the irregularities and illegalities in detail had been pointed out. In Para 10 of the affidavit filed in support of the writ petition it was further stated that all the 121 applicants were included in the voters list and entries in the draft voters lists including the petitioners had personally appeared before the Assistant Mandal Revenue Officer deputed by third respondent for enquiry, but no persons whose names are illegally added and whose names submitted objections in the prescribed form appeared before and this shows bogus nature of these voters. It is also further stated that in view of the illegalities which had been committed specified in detail, the villagers conducted dharnas before the office of the M.R.O. on 28-03-2006 . It is also stated that as against all these acts of M.R.O. and the District Collector complained to the State Election Commissioner and also these aspects were reported to the District

Collector concerned but absolutely there is no action. In the said circumstances, the present writ petition is filed praying for the relief as aforesaid.

27. In the counter affidavit filed on behalf of the respondents 2 to 4 which had been sworn by the Mandal Revenue Officer, Kondepi Mandal, after narrating the programme Rules 20 and 23 of Registration of Electoral Rules 1960 had been also referred. It was further pleaded in Para 3 of the counter affidavit as hereunder:

“ As per the Orders of the Government, Draft Electoral Rolls were published by the 2nd Respondent for filing claims and objections with reference to 1-1-2006 as qualifying date of Summary Revision of Electoral Roll on 5-11-2005 in 119 Kondepi Assembly Constituency. After completion of Summary Revision of Electoral Rolls, the voters list of Illavara comprising polling stations 52,53,54 in 119 Kondepi Assembly Constituency. After publication of voters list finally, the voters who have not enrolled as voters in the voters list, they may prefer appeal before the 2nd Respondent for inclusion of their names in the voters list. The Petitioner by names Gonugunta Venkateswarlu was registered as voter of Illavara and Bodapati Chinnamma was registered as voter of Illavara village. The Petitioners have not filed appeals before the 2nd Respondent. Without approaching the 2nd Respondent, the Petitioners filed Writ Petition

before this Hon'ble Court.”

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W.P.No. 10325 of 2006:

28. The writ petition is filed by the petitioner praying for relief of writ of Mandamus declaring the action of the respondents 1 and 2 is not hearing and disposing of the appeal or other case may be, the complaint filed by the petitioners against the electoral roll, 2006 published by the Fifth Respondent, District Panchayat Officer as illegal and violative of the statutory duty and further declare the electoral roll prepared and published by the Fifth Respondent as illegal and contrary to the provisions of Section 11 of Andhra Pradesh Panchayat Raj Act 1994 and Rules made thereunder and pass such other orders.

29. Petitioners had stated all the details in different statutory provisions under the Act and also certain rules and had narrated that they are permanent residents of Tatiakulapalem, Kondapi Mandal, Prakasam District and they are voters of Chinakandlagunta, at Serial No.348 and 731 of voters list , 2006 and the first petitioner is proposing to contest the elections and he filed objections to the voters list in the prescribed manner. The second

respondent is Sarpanch of the Village who filed appeal against illegal entries in the voters list published by the fifth respondent. It was pleaded in Para 7 of the affidavit filed in support of the writ petition that the electoral rolls prepared for the assembly election in the year 1999 contained 1525 voters. In the year 2004, 350 voters names were deleted and 75 illegal additions were made suo motu by the respondent, without following any procedure. Several of the details and several of the objections made in relation thereto had been narrated at length. The total inaction on the part of the authorities in hearing and disposing of the appeal or complaint also had been referred in detail at Para 11. Further details had been narrated at Para 9 and 10. Virtually these allegations are on similar lines as in writ petition No.10257 of 2006.

30. Counter affidavit is filed more or less on similar lines as filed in the prior writ petitions.

W. P. No.10334 of 2006

31. The petitioners filed the present Writ Petition praying for a writ, order or direction particularly one in the nature of Writ of Mandamus declaring the action of the respondents in deleting the names of the petitioners from voters list without conducting proper enquiry and without considering objections raised by the petitioners as arbitrary, illegal and

consequently direct the respondents to permit the petitioners to participate and cast the vote in the elections by including the names of the petitioners in the voters list of Allinagaram Gram Panchayat, Komorolu Mandal, Prakasam District forthwith and pass such other suitable orders.

32. It is stated that the first petitioner had been elected as Sarpanch in 1988 and the 5th respondent deleted the names of the petitioners in the voters list in April, 2006. It is also stated that the petitioner made a representation to the District Collector, Prakasam District on 30.4.2006. Several other factual details had been narrated, how the irregularities had been committed in this regard. A copy of the representation also had been enclosed.

33. The counter affidavit is filed by the Mandal Revenue Officer, Komarole, wherein just like in the other counter affidavits the direction relating to Electoral Rolls for the summary Revision for the year 2006 had been referred to and further the Rules, Rules 20 and 23 of the Registration of Electoral Rules, 1966 also had been referred to. It was further pleaded relating to paras 2 to 5, that Polling Station No.136 is located in Komarole Mandal in Allinagaram village of 123 Giddalur Assembly Constituency. Originally the name of Akki Pullareddy is

included in P.S.No.136 as SI.No.87 and he was also issued Photo Identity Card with No.A.P.27/123/42/0041, but, recent updation of electoral rolls taken up under Special Summary Revision 2006. Villagers of Allinagaram filed form No.7 requesting to delete the name of Akki Pullareddy and Smt.Akki Sarada from the electoral roll of P.S.No.136. The enquiry staff who enquired the matter has reported that the above persons are non-residents in Allinagaram village and they are residing at Giddalur. On the report of the enquiry team, their names were deleted from electoral roll and published in the village, as per Statutory Rules on Publication of Electoral Roll. It is also stated that the aggrieved party had preferred appeal before the Election Commission and the Election Commissioner had called for enquiry report on receipt of claim from Election Commissioner, Hyderabad. The Collector, Prakasam has appointed Special Officer for enquiry in this matter. The Special Deputy Collector (Land Acquisition), Pula Subbaiah, Velugonda Project, Unit-II, Markapur, who enquired into the matter, had reported that the petitioners are not residing in Allinagaram and recommended for rejection of claims and accordingly their claims were rejected.

W. P. NO.10385 of 2006

34. The writ petitioners prayed for a Writ of Mandamus

declaring the action of the respondents in deleting the names of the petitioners from the voters list-2006 pertaining to Polling Center No.106, Metpally, Asifabad Sub-Division and Assembly Constituency, Adilabad District as illegal and arbitrary and consequently issue a direction to the respondents to include the names of the petitioners in voters list-2006 pertaining to Polling Centre No.106, Metpally, Asifabad Sub-Division and Assembly Constituency, Adilabad District and pass such other suitable orders.

35. The petitioners pleaded that the petitioners and their family members are permanent residents of Gram Panchayat Metpally, Bheemini Mandal, Adilabad District, and since time immemorial and from the times of their forefathers, they are permanent residents of the village and they had given the particulars and their serial numbers in the voters list. It is also stated that the first petitioner is the Vice Sarpanch of the village Metpally. It is also further stated that one of his family members are preparing for contesting in coming Panchayat elections. It is further stated that as the matter stood thus, the respondents had published the revised voters list-2006 of P.S.No.106 Metpally, under which the said Gram Panchayat falls, and to their surprise and dismay their names find no place in

the voters list though they had not changed their residence nor migrated to any other place. Certain other allegations were made that due to political rivalry these things had happened. They had also produced the relevant material as material papers to substantiate their stand.

36. The Joint Secretary, Panchayat Raj and Rural Development Department, Government of Andhra Pradesh had sworn to the counter affidavit, whereunder the material allegations were denied. It was also pleaded that the petitioners are actually residents of Jankapur village of Bheemini Mandal and had not filed 6-A claim well within the scheduled time limit when voters lists of P.S.No.s.151 and 152 of Metpally Polling Station were under preparation for which 1.1.2006 was the qualifying date. It was also further pleaded that their names were actually deleted from voters list in the Summary Revision-2006 at serial Nos.440 and 439 from P.S.No.118 of Jankapur village of 244 Asifabad Constituency. It was also pleaded that in the local enquiry it was established that both of them are not residing at Metpally village, but residing at Jankapur village and the Panchayat Secretary, Metpally village and Mandal Revenue Inspector, Bheemini Mandal, who have conducted local enquiry, reported that they are not residing at Metpally in the house numbers

shown in form-VI. It is further stated that the respondents had considered all the objections and disposed of in accordance with the Rules made in GO.Ms.No.877, dated 3.12.1994. Hence it was prayed that the Writ Petition be dismissed.

W. P. NO.10386 of 2006

37. The Writ Petition is filed questioning the deletion of names of the petitioners in the voters list-2006 pertaining to Polling enter No.118, Jankapur, Asifabad Sub-Division and Assembly Constituency, Adilabad District. It was stated that the petitioners and their family members are permanent residents of Gram Panchayat Jankapur, Bheemini Mandal, Adilabad District since time immemorial from their fore-fathers and in the last Assembly elections also they cast their voters in the specified polling center and one of the family members are preparing to contest in the coming Panchayat elections. It was further stated that the respondents had published the revised voters list of PS.No.118, Jankapur and to their surprise their names do not find a place in the voters list though they had not changed their residence or migrated to any other place. Certain other aspects were also pleaded that due to some political rivalry at the instance of politicians, this was done.

38. The 4th respondent-Mandal Revenue Officer,

Bheemini Mandal, Adilabad District, had sworn to the counter affidavit denying the allegations. In the counter affidavit, the election programme had been narrated in detail and also Rules 20 and 23 of the Registration Electors Rules, 1960 also had been referred to. It was further pleaded that Madhavapu Venugopal Rao, /o. Sanjeev Rao and Madhavarapu Malati, w/o. Venugopal Rao are actually the residents of Mancherial town of Adilabad and they had not filed the 60A claim well within the scheduled time limit when voters lists of P.S.No.118 of Jankapur village was under preparation, for which 1.1.2006 was the qualifying date. It was further pleaded that their names were actually deleted from voters list in the summary Revision-2005 at sl.Nos.438 and 437 from P.S.No.118 of Jankapur village of 244-asifabad Constituency as they were not residing at Jankapur village. It was also stated that the petitioner had not filed Form-VI application within time of summary Revision of voters list for the year 2006. Further they submitted the claim on 24.4.2006 to the Revenue Divisional Officer, Asifabad for inclusion of their names in P.S.No.118 of Jankapur of 244-Asifabad Constituency. It was further stated that in the local enquiry conducted by Enquiry Officer/Mandal Revenue Inspector, Bheemini Mandal, it was revealed that both of them are actually residing at

Mancherial town but not at house numbers mentioned of Jankapur village. It was further submitted that a report was also sent to Revenue Divisional Officer, Asifabad in the 6-A claim vide Ref.No.B/1049/05, dated 2.6.2006 for both the petitioners, for taking necessary action. Other allegations were, no doubt, denied.

W. P. NO.10387 of 2006

39. The two writ petitioners had questioned the deletion of their names from the voters list-2006 and almost similar allegations as referred to in the prior two Writ Petitions had been repeated even in the affidavit filed in support of the present Writ Petition. It was stated that the petitioners and their family members are permanent residents of Wadal Gram Panchayat, Laxmipur, Bheemini Mandal, Adilabad District since time immemorial from their fore-fathers. It is also stated that as permanent residents of the village, their names had been in the village Wadal Gram Panchayat, Laxmipur, which was under Polling Center Nos.116 and 117, Asifabad Assembly Constituency, Adilabad District. In the last Assembly elections also they cast their voters in the above polling center. It was further stated that the second petitioner was a ward member of Ward No.5 of Gram Panchayat Laxmipur and further it was stated that one of their family members are preparing to contest in the

coming Panchayat elections. Certain other allegations relating to political rivalry and the other aspects also had been pleaded.

40. The counter affidavit is filed by the Mandal Revenue Officer, Bheemini Mandal, Adilabad District, 4th respondent in the Writ Petition, wherein virtually the similar stand had been taken referring to the election programme and the other particulars and also the Rules and further it was stated that the petitioners had not filed their claim under Form 6-A, which had been got examined by the 4th respondent and submitted a report to the Revenue Divisional Officer, Asifabad, stating that the claim of the petitioners being genuine, their names may be included in the voters list of Vadal village in Laxmipur Gram Panchayat for No.244 Asifabad Assembly Constituency. It was further stated that the Revenue Divisional Officer had passed an order for inclusion of the names of the petitioners in the voters list and the same had been included also. This is the stand taken by the 4th respondent in the counter affidavit.

W. P. NO.10436 of 2006

41. The Writ Petition is filed by five petitioners questioning the deletion of their names from the electoral rolls of Polinenipalem Gram Panchayat as arbitrary, illegal

and also praying for appropriate directions.

42. It was pleaded by the petitioners that they are the natives and permanent residents of Polinenipalem village and they are the voters of Polinenipalem Gram Panchayat since more than decade and they have been casting their votes in various elections conducted by the Government. It is stated that they are having their own houses and agricultural lands in the said village. It is further stated that voters identity cards were also issued to them. While so, the Revenue Divisional Officer, Kandukur, published the voters list on 13.2.2006 and to their surprise their names were not found in the said list. It is stated that before deleting their names from the electoral roll, they had not been issued any show cause notice or an opportunity of hearing was being given to them. It is also stated that due to certain political reasons, without following the procedure prescribed under law and without conducting any enquiry, their names were deleted illegally. Several other details also had been specified in the affidavit filed in support of the Writ Petition. The relevant provisions under the Act also had been referred to. The procedure to be followed in relation to the preparation of voters list also had been explained. It was further stated that notice of final publication of electoral roll was issued on 13.2.2006, in which it was stated that the list of amendments to the Draft

Electoral Roll had been prepared with reference to 1.1.2006 as qualifying date and the said list is available for inspection at the office of Electoral Registration Officer, Revenue Divisional Officer, Kandukur and also at the office of Mandal Revenue Officer, the Assistant Electoral Registration Officer. It was pleaded that as on the qualifying date their names were there in the electoral roll and no authority has got any power or jurisdiction to delete their names from the list subsequently. It was also stated that the petitioners filed the appeals within time and the final list was published on 8.5.2006 even without disposing of the appeals filed by them and so far till today the petitioners had neither received any notice fixing the date of hearing in the appeals or rejecting the appeals. The relevant material in detail had been placed before the Court.

43. The Mandal Revenue Officer, Kandukur, had sworn to the counter affidavit, wherein the direction issued by the Election Commission of India relating to electoral rolls for the year 2005 and the Rules 20 and 23 of Registration of Electors Rules, 1960 also had been referred to. It was also further pleaded in paras 3 to 5, which reads as hereunder:

“In reply to Para No.3 of the affidavit it is submitted that the villagers of Polinenipalem (v)

have filed Form No.7 objections under Rules 13(2) and 26 of Registration of Electoral Roll Rules, 1960 before the E.R.O. Kandukur for deletion of the names of petitioners as they are residing at Kandukur, Hyderabad and Bangalore. Notices under Form 13 and 14 were issued to the writ petitioner and to the persons in respect of whom objections were made so as to enable them to attend for enquiry at Mandal Parishad Electoral School, Polinenipalem village at 11 AM on any of the 3 dates from 23rd December, 2005.

The A.E.R.O. who was appointed as Enquiry Officer, Voletivaripalem has conducted enquiry for 3 days on 21.12.2005, 22.12.2005 and 23.12.2005. After enquiry he has recommended for deletion of the names of 5 writ petitioners observing the following defects:

1. Sri Mamillapalli Mallikarjuna Rao, S/o. Ramulu.

He is not ordinary resident of Polinenipalem (V). He has not attended for enquiry as he is said to be residing at Kandukur.

2. Sri Mamillapalli Srinivasulu, S/o. Narasimham

He is not ordinary resident of Polinenipalem (V). He has not attended for enquiry as he is said to be residing at Hyderabad.

3. Smt.Somineni Madhava Rao, W/o. Malakondaiah.

She is not ordinary resident of

Polinenipalem (V). She has not attended for enquiry as she is said to be residing at Bangalore.

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4. Smt.Mamillapalli Jyothi, W/o. Mallikarjuna Rao.

She is not ordinary resident of Polinenipalem (V). She has not attended for enquiry as she is said to be residing at Kandukur.

5. Smt. Somineni Nirmala, W/o. Madhava Rao.

She is not ordinary resident of Polinenipalem (V). She has not attended for enquiry as she is said to be residing at Bangalore.

On receipt of enquiry reports from the Assistant Electoral Registration Officer, Voletivanipalem, the Electoral Registration Officer, Kandukur, has newly published the Electoral Rolls, 2006 of Polinenipalem (V) on 13.2.2006. As such there is nothing wrong in publication of electoral rolls as contended in the affidavit filed by the writ petitioners.

In reply to Para No.4 of the affidavit it is submitted that during the course of enquiry in the village on 21.12.2005, 22.12.2005 and 23.12.2005, the writ petitioners were not present in the village and not attended for enquiry though notices were issued before the time of enquiry. The names of the writ petitioners were deleted as per Rules. The claim of the writ petitioners for inclusion of their names in the voters list is not tenable.

In reply to para Nos.5 to 8 of the affidavit, it is submitted that the writ petitioners have filed individual appeals before the District Election Officer, Prakasam on 27.2.2006. The District Election Officer, Prakasam issued enquiry notices to the writ petitioners to attend for enquiry on 2.3.2006 at 4.15 PM in Polinenipalem village. During the course of enquiry in the village, the writ petitioners have not attended for enquiry in the village. Accordingly, the appeal petitions of the writ petitioners were rejected”.

44. A reply affidavit was filed again reiterating the stand taken in the affidavit filed in support of the writ petition and it was also further pleaded in the reply affidavit that the petitioners are not aware about the directions said to have been issued by Election Commission of India relating to Electoral Roll for summary Revision for the year 2006. Several other facts had been denied and several factual details further had been explained in paragraphs 3 to 12 of the reply affidavit.

45. In the affidavit filed in support of the implead application, the proposed party who came on record in WPMP.No.13340/2006, had narrated the procedure and also stated that the first writ petitioner is a practicing Advocate at Kandukur and writ petitioners 3 and 5 are husband and wife and they are residing at Bangalore and the other particulars also had been given and ultimately

had taken a stand that the deletion is justified.

W. P. NO.10446 of 2006

46. Two of the writ petitioners, aggrieved of the action in not hearing and disposing of the appeal or the complaint filed by the petitioners against the electoral roll published by the 5th respondent, filed the present Writ Petition.

47. It is stated that the petitioners are permanent residents of Nennurupadu Gram Panchayat, Kondepeti Mandal and they are voters at serial Nos.932 and 63 of the voters list, 2006 in the Nennurupadu Gram Panchayat. It is also stated that they are proposing to contest the elections to be held for Panchayat Raj Institutions this year and filed objections to the voters list in the prescribed manner. The 2nd petitioner is the present Sarpanch and he filed appeal before the 2nd respondent. The inaction had been question. Several details in this regard had been explained at length and the factual details had been well narrated at paragraphs 7 to 12. The relevant material in relation to the allegations which had been made in the affidavit filed in support of the writ petition also had been placed before the Court.

48. The Joint Secretary to Government of Andhra Pradesh, Panchayat Raj Department, had sworn to the

counter affidavit, wherein all the allegations were denied and further stated that after completion of publication of electoral rolls during special summary revision on 1.1.2006 certain appeals have been filed before the District Election authority and District Collector, Prakasam District for inclusions and deletions as per the guidelines given by the Election Commission of India. It is clearly mentioned in the Circular as follows:

“However reiterated that claims and objections under Section 22 or 23 in Representations of Peoples Act, 1950 presented in bulk by any individual/organizations or political party should be refused”.

However if individual application relating to the members of the same household i.e., same family are presented together they may be accepted. Hence, petitioners from Nennurupadu villages of Kondempi Mandal have filed bulk applications through single person. Hence, the District Collector and District Election Authority, Prakasam District, Ongole, has rejected the bulk appeals as they are non-residents or the above villages. However, the appeals pertaining to the above villages has got enquired by the Special Officer (Revenue Divisional Officer), Ongole. It is stated that the Government had given an opportunity to the public to file claims and objections before the Electoral Registration Officer and Revenue Divisional Officer, Kandukur, upto the date of Notification of Election to the local bodies”.

The details of the claims also had been referred to. In the facts and circumstances, it was stated that this is not a case warranting any interference under Article 226 of the Constitution of India.

W. P. NO.10452 of 2006

49. The writ petitioners, two in number, prayed for declaration of the action of the respondents in confirming the voters list without contrary to the procedure contemplated under Rule 6 of A.P. Panchayat Raj Rules, 2000 and Rule 20 of the Registration of Electoral Rules, 1960, as illegal, arbitrary and consequently direct the 1st respondent to pass orders on the objections filed by the petitioners and pass such other suitable orders.

50. The main grievance of the petitioners is that they along with certain other villagers made a representation to respondents 1 and 3 pointing out the names of more than 60 members, who are not residents of their village, and without conducting any proper enquiry, the respondents are proposing to issue Notification for conducting elections for Mandal Parishads. Therefore, the present Writ Petition was filed.

51. The Mandal Revenue Officer, Nuzendla Mandal, had sworn to the counter affidavit taking substantially the self-stand taken by the other Mandal Revenue Officers

referring to the directions, the procedure, the programme followed, the concerned Rules, and further it was stated that no enquiry was conducted is not correct and in fact a detailed enquiry had been conducted by the Revenue Divisional Officer in Mukalakur village on 27.5.2006 with the assistance of the Mandal Revenue Officer, Nuzendla Mandal, Guntur District. It was also further stated that during the enquiry it was found that out of 60 names, 26 were found to be genuine voters on the ground that 26 voters are ordinary residents of the village and 32 were ineligible on the ground that they are not ordinary residents and under age. The other action taken in this regard also had been referred to in the counter affidavit.

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W. P. NO.10642 of 2006

52. The petitioners, aggrieved by the deletion of their names from the voters list, had prayed for appropriate reliefs in the present Writ Petition.

53. The first petitioner had pleaded in the affidavit that he is a resident of Pothureddipalli village since his childhood and he got married with the 2nd petitioner in 1996 and his father has got a house in the village and he is staying with his wife in the said house and also he has been owning the land and he was enrolled as voter when he attained 18th year in the Parliament and State

Assembly elections as well as in the Panchayat voters lists of the village and after his marriage, his wife, the 2nd petitioner, also had been included in the voters list. It is further stated that the first petitioner also is a Panchayat member and Upa Sarpanch of Pothureddipalli village Panchayat. It is specifically pleaded that to ruin his political career in the ensuing Panchayat elections, some influential opposite party people, out of vengeance against him, clandestinely and with ulterior motive got their names deleted. They had narrated several other factual details and also had placed before this Court the relevant material, the voters lists in which their names do find a place.

54. The counter affidavit was sworn to by the Mandal Revenue Officer, Nuzvid, wherein the allegations in substance had been denied. It was also further pleaded at paragraphs 4 and 5, which reads as hereunder:

“In reply to the averments made in paras 3(ii) and (ii) of the petitioner’s affidavit it is submitted that the contention of the petitioners that some influential people clandestinely succumbed the officials with an ulterior and oblique motive to delete the names of the petitioners from the voters list is not correct. It is submitted that during the course of electoral summary revision in the year 2005, one Akkineni Vara Prakasa Rao, son of Surya Narayana of Pothureddipalli

village has filed two claims in Form-7 before the Mandal Revenue Officer, Nuzvid, claiming that the petitioners herein have not been residing in Pothureddipalli village for the last 2 years and that they are residing in Nuzvid town in the upstairs quarters of Tobacco shop of Vallabhaneni Mohan Rao besides Sangam Complex situated on Nuzvid to Hanuman Junction road. Accordingly, the Mandal Revenue Officer, Nuzvid, got conducted an enquiry by the Village Secretary and Revenue Inspector into Pothureddipalli village. The Village Secretary and Revenue Inspector have conducted a detailed enquiry in Pothureddipalli village and submitted a report to the Mandal Revenue Officer, Nuzvid stating that the petitioners are not residing in the village from 2 years and residing at Nuzvid along with family members. After receipt of the report from the Village Secretary and Revenue Inspector, the Mandal Revenue Officer, Nuzvid, deleted the names of the petitioners from the voters list of Pothureddipalli village. Thereafter final publication of voters list of Pothureddipalli village was made on 13.2.2006. Aggrieved by the said orders, appeals were filed by the petitioners herein before the District Collector, Krishna and the District Collector vide his proceedings No.Rc.H1 6321/2005, dated 6.4.2006 has appointed the District Manager, DIC., Vijayawada as an Inquiry Officer. Accordingly the District Manager has conducted an enquiry in Pothureddipalli village

and his enquiries also revealed that the petitioners are not residing in Pothureddipalli village. The District Manager has submitted a report to the District Collector stating that the petitioners are not residing in the village and recommended to reject the appeals. Accordingly the appeals filed by the petitioners have been rejected by the District Collector, Krishna District at Machilipatnam on 22.4.2006.

It is respectfully submitted that under the Statutory Rules and Orders of Registration of Electors Rules, 1960, a summary enquiry was conducted openly in Pothureddipalli village into the objection petition filed in this regard. The claim of the petitioners herein is that they have not afforded reasonable opportunity of being heard does not stand to reason as they have not been residing in the village for the last 2 years which was found correct by the Mandal Revenue Officer and Electoral Registration Officer who got enquired into the objection petition and also by the Inquiry Officer appointed by the District Collector, Krishna on the appeals filed by the petitioners herein and hence the petitioners herein are not entitled for grant of any relief”.

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W. P. NO.10710 of 2006

55. The petitioner, aggrieved by the action of the respondents in not taking steps to delete the bogus voters from the electoral roll of Marellavaripalem village, Kammavaripalem Gram Panchayat, Nuzendla Mandal,

Guntur District, and also the non-disposal of the appeals thereof, filed the present Writ Petition.

56. The writ petitioner had stated that he is a voter and elected as territorial constituency member of Marellavaripalem Water Users Association and after giving several details, he had narrated that in the village, the authorities illegally included about 270 bogus voters and the said persons are not residents of his village and they are not having houses, lands or ration cards and out of them some persons left the village several years ago and settled some where else. The petitioner also had referred to the relevant statutory provisions and placed the relevant prior voters lists by way of material papers.

57. The 5th respondent-Mandal Revenue Officer, Nuzendla Mandal, had sworn to the counter affidavit. More or less on similar lines referring to the directions of the Election Commission and the dates and also the procedure to be followed etc., referred to supra, had been pleaded herein also. It was also pleaded in the counter affidavit at paragraph 2 as hereunder:

“In reply to paras 2 to 5 of the affidavit it is not true to state that the sole petitioner Kanchumati Tirupalu has submitted 100 applications in Form VII for deletion of their names from the voters list. Actually he has submitted 125 applications. It is further submitted that with

regard to the applications submitted by the petitioner, the authorities issued notice to the applicants under Rule 19 of Registration of Election Rules, 1960 for conducting enquiry. The petitioner presented himself and failed to produce any evidence either documentary or oral except self-explanatory statement. The authorities conducted detailed enquiry and submitted report stating that they are ordinary residents of Marellavaripalem village of Nuzendla Mandal, and they being the voters of other villages with respective serial Nos. & P.S. Nos. their claims were allowed. On the basis of they being non-residents of the village. Hence the appeal of the petitioner to the extent of those persons is allowed and accordingly their names were deleted from the voters list. So only 12 voters were deleted out of 125 voters from the voters list. It is not true to allege that the respondents had not followed the proceedings for preparing the electoral list u/ss. 22, 23 of the Representation of the Peoples Act, 1950. It is further that M.Medarmetla Srinivasa Rao (as mentioned in the writ petition) has not preferred appeal under Rule 23 on 80 applications under Form No.VII to delete the non-residents, under age names in the voters list. The contention of Mr.Medarmetla Srinivasa Rao that they filed 252 appeals under Rule 23 to delete the names of bogus votes from the electoral rolls doesn't arise. Out of 245 applications, 12 were allowed and the remaining 233 as they were

the residents of the village, their names were retained in the voters list on the basis of the enquiry report submitted by the Special Deputy Collector, L.A. Unit, Pulichintala, Guntur District”.

W.P.No.10711 of 2006

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58. The writ petitioner aggrieved of the action of the respondents in not taking steps to include the genuine voters even though applications in Form No.VI were submitted in the month of November 2005 by the individual claimants and not deleting the bogus voters had been called-in-question.

59. It was stated that the petitioner was elected as sarpanch of Gollamudi Gram Panchayat in the year 2001 and the State Government announced to conduct elections to the local bodies recently and at para nos. 4, 5, 6, 7 and 8 several details had been narrated relating to the individual claimants and also the voters list and the irregularities and illegalities relating to the inclusion and exclusion in relation thereto.

60. In the counter-affidavit filed by the fifth respondent, the Mandal Revenue Officer, Nandigama Mandal, Krishna district, virtually similar stand had been taken relating to the directions issued by the Election Commission and the relevant dates and also the relevant rules.

61. It was also further pleaded at para nos. 2 to 7 as hereunder:-

In reply to para 2 and 3 of the affidavit, it is submitted that there are 251 Form-VI applications for inclusions is received and after thorough door-to-door verification, there are 82 Form-VI accepted and w received 122 Form-VII applications, 71 applications are accepted for deletion and 65 non-resident voters and 13 death cases are deleted from the voters list. We have done as contemplated under section 22, 23 of the Representation of People's Act, 1950 and Registration of Electoral Rules, 1960.

In reply to para 4 of the affidavit, it is submitted that there are 251 Form-VI applications for inclusions is received and after thorough door-to-door verification, there are 82 Form-VI accepted and we received 122 Form-VII applications, 71 applications are accepted for deletion and 65 non-resident voters and 13 death cases are deleted from the voters list. We have done as contemplated under section 22, 23 of the Representation of People's Act, 1950 and Registration of Electoral Rules, 1960.

In reply to Para 5 of the affidavit, it is submitted that the fifth respondent is acted as per the provisions of Section 22, 23 of the Representation of People's Act, 1950 and Registration of Electoral Rules, 1960 while preparing the voter's list in the village. Those who have exercised their franchise in the Assembly Elections in the year 2004 are not ordinary residence of the village in the month of

November, 2005 and after thorough verification and evidence available at the time of enquiry Form-VI claims are considered and included in the voters list in the month of December, 2005. After thorough door-to-door enquiry made by the Enquiry Officer Form-VII applications are accepted and deleted from voters list. The applications received under appeal are verified and submitted to the Collector, Krishna, the third respondent hearing for taking further action in the matter.

In reply to Para 6 of the affidavit, it is submitted that on the appeals filed by the individuals, the third respondent appointed the Mandal Revenue Inspector, Jaggaiahpet as Enquiry Officer. During his enquiry he affixed Form-XII notices to the individuals door numbers appeared in the voters list and also Form-XIII to the objectors and given opportunity under the Registration of Electoral Rolls, 1960. It shows that the Enquiry Officer is not under the influence of the local ruling party leaders. Only after door-to-door thorough verification, the Enquiry Officer recommended for inclusion and deletions as per rules. In this regard, it is ascertain from the Office of the fourth respondent about the submission of 44 Form-VII applications, which are not received by them. It is also not correct as submitted in the petitioner's affidavit.

In reply to Para 7 of the affidavit, it is submitted that one Smt.Chopparla Rama Devi. W/o. Sambasiva Rao, name is not found at serial no.14 as well as 18. Instead of Chopparla Rama

Devi, w/o. Sambasiva Rao at serial no./14 as well as 18 the name of other individuals i.e., Tulasamma Chittbomma and Meerabi Shaik are found respectively. li) Instead of Berothula Satvathi w/o. Veera Babu, the name of the other individual, i.e., Rajeswari Yarranmneni are found at serial no.99. This women voter's list of the Gollamudi village is ended with serial no.729, whereas, the petitioner mentioned some names against serial nos.820, 821, 877 are not run in the original voter's list as ended with serial no.729 and serial nos.1161, 1166, 1184, 1186, 977, 978 are not found in the men's voter list and the original voter's list ended with serial no.755. The another instance is the name Shaik John Saida, s/o. Mastan mentioned by petitioner at serial nos.656 and 657 are not there. Sri Katarapu Atcha Rao and Katarapu Rama Rao names are found at serial nos. 656 and 657 respectively. Hari Sujatha d/o. Nageswara Rao name mentioned by petitioner in serial no.217 as well as 220 is not there we found the name of Battina Savitri and Chaava Rosamma at serial nos. 217 and 220 respectively.

In reply to para 8 of the affidavit it is submitted that the petitioner pointed out about death cases in the petitioner's affidavit are also not correct. Serial no.3 Katarapu Rajamma w/o. Brahmaiah, sl.no.235 Mecherla Mahalakshamma w/o. Pitchaiah, Smt.Valaparla Swamma w/o. China Issaque, Shiak B:eebi w/o.Ameen Saheb, Ramulamma w/o. Muttaiah, Guravamma W/o. Pentaiah are not found in death

register maintained by the competent authority in the year 2003, 2004 and 2005 as mentioned by petitioner. Hence, the names are not deleted under suo moto deletions. However, the pleadings will be considered at forth enquiry.

W.P.No.10712 of 2006

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62. The writ petitioner had questioned the action of the respondents in not taking steps to include the genuine voters even though applications in Form-VI were submitted in the month of November 2005 by the individual claimants and further action of the respondents in not taking steps to delete the double-entries, tender age votes and also Government Employees' votes in the revised voters list, in spite of being brought to the notice of the respondents being illegal, arbitrary and violative of Section 22, 23 of the Representation of the Peoples Act, 1950 and Registration of Electors Rules, 1960.

63. It is stated that the petitioner is voter of Abburu village and President of Water Users Association, Abburu village, Sathanapalli Rural Mandal, Guntur District. Several of the relevant provisions viz., Representation of Peoples Act, 1950 and also Registration of Electors Rules, 1960 and A.P. Panchayat Raj Act, 1994 referred to supra had been narrated in detail. It was also stated that the fifth respondent for extraneous consideration and due to

political pressure of the ruling party leaders on suo moto without application of mind and without notice to individual removed 137 votes though they are eligible and genuine voters. It is stated that they have exercised their franchise in 2004 General Elections and they were issued electoral identity cards. After seeing the draft voters list on 09-3-2006, 137 individuals again submitted applications in Form-VI to the Revenue Divisional Officer, Guntur for inclusion of new votes. But the inaction in relation thereto had been narrated thereto. The details relating to the tender age votes and also in relation to other eligible votes had been specified in detail at paras 8 and 9 of the affidavit filed in support of the writ petition.

64. In the counter-affidavit filed by the fifth respondent, the Mandal Revenue Officer, Sattinapalli, Guntur district, virtually similar stand had been taken relating to the directions issued by the Election Commission and the relevant dates and relevant rules and also other aspects had been taken.

65. In the counter-affidavit substantial allegations made in the affidavit filed in support of the writ petition were denied. It was also further pleaded at para nos.4 to 10 as hereunder:-

In reply to para 4 of the affidavit it is submitted that the total number of claims under

Form-VI are 765 and in Form-VII there are 189 claims. These claims have been filed at the time of special summery revision of electoral roll, 2006 at designated centers. RDO Guntur formed teams for enquiry of inclusions and objections on 6-12-2005. The teams enquired in Abbur village and verified all claims and accepted 305 claims for inclusions irrespective of political affiliation. The enquiry officers enquired properly and visited door-to-door and identified genuine voters. The enquiry officers were deputed from other mandals for the purpose of enquiry. They does not know the political affiliations of the applicants. Many of Form-VII objections were verified and rejected as the claims were not filed in proper. However, 120 votes were found non-residents and they were deleted from voter list under Rule 21-A suo moto enquiry. This indicates the legitimate performance of duty by the officials.

In reply to para 5 of the affidavit it is submitted that before conducting the enquiry beat of tom-tom was done in the village and notices were issued to the objectors, who have filed Form-VII claims before the RDO Guntur. Notices were also issued to the petitioner for attending the enquiry. All eligible voters attended before enquiry officers.

In reply to para 6 of the affidavit, it is submitted that the Collector is the appellant authority on inclusion and deletion of voters in the voters list. No appeals were filed before the appellate authority. As per the guidelines issued by the Election Commission of India, Form-VI and

Form-VII were filed before the RDO Guntur under continuous updation of votes. Instructions of the RDO Guntur all the staff of MRO Office Sattenapalli visited Abbur village and verified all claims. Notices also issued to the applicants under continuous updation forms prescribed by the Election Commission of India.

In reply to para 7 of the affidavit, it is submitted that all the double entries and dead voters were deleted from voters list.

In reply to para 8 of the affidavit it is submitted that all the allegations in para 8 regarding the deletion of votes of tender aged children, it is submitted that the authority have suo moto deleted the tender aged voters, dead voters and repeated voters. The petitioner filed the above writ petitions before the publication of the final list under the apprehension that the claims will not be examined. The respondents have examined all the claims and allowed the genuine and rejected the bogus.

In reply to para 9 of the affidavit, it is submitted that with regard to certain votes said to be not residing at Abbur village, the notices under Form-XII are issued at their address. They attended before Enquiry Officer and proved to be genuine voters. The objection failed to prove the allegations.

In reply to para 10 and 11 of the affidavit, it is submitted that all the double entries and dead voters are deleted from voters list.

W.P.No.10715 of 2006

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66. Two writ petitioners filed this writ petition questioning the action of the respondents in not including the names of the petitioners even though applications in Form-VI were submitted by the petitioners alongwith proof in order to substantiate their right to enrol as voters in the electoral rolls of Thallapaka village of Rajampet Mandal, Kadapa district being illegal, arbitrary and violative of Article 14 and 21 of the Constitution of India.

67. In the affidavit filed in support of the writ petition several details had been pleaded. The preparation of voters list and the irregularities in relation thereto had been pointed out. It is stated that the petitioners are residents and also voters of Thallapaka village and they intended to contest the ensuing MPTC elections. The details relating to the representations made in relation to the inclusion of their names and also inaction on the part of the concerned in not including their names due to political pressure in fact had been narrated at length at para 4 of the affidavit filed in support of the writ petition.

68. As usually the Joint Secretary to Government, PR & RD Department, Hyderabad filed counter-affidavit denying the allegations made in the affidavit filed in support of the writ petition and referred to the procedure to be followed in this regard and the relevant rules in relation thereto and

also further pleaded at para nos. 3 and 4 as hereunder:-

In reply to para no.3 of the affidavit, it is submitted that it is true that the respondents have prepared revised electoral rolls. The contention of the petitioners that the respondents have not followed the procedure at the time of preparation of revised electoral rolls is not correct. In fact the respondents have followed the due procedure under Registration of Electoral Rules 1960 and also the provisions of AP Panchayat Raj Act.

In reply to the averments made in para 4 and 5 of the petitioner's affidavit, it is submitted that the respondents have conducted detailed enquiry in Tallapaka village for preparation of revised electoral rolls. During enquiry, it is found that the petitioners are not residing in the village in the address given. Hence, the names of the petitioners have been deleted from the voters list of Tallapaka village. The respondents have followed the due procedure. Therefore, the contention of the petitioners that the respondents have not followed the due procedure is not correct. It is respectfully submitted that in the month of February 2006 final publication has taken place in the village. At the time of final publication, the petitioners have not made any representation to the respondent authorities. The petitioners have now made a representation to the Mandal Revenue Officer, Rajampeta for inclusion of their names and submitted Form-VI. On the representation made by the petitioners, the respondents have conducted enquiry again and it is found that the petitioners are residing in

their address. Hence, the names of the petitioners are being included in the voters list. ? There is no appeal pending either before the District Collector or before the Revenue Divisional Officer, Rajampet.

WP.No.10716 of 2006

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69. The writ petition is filed questioning the action on the part of the respondents in not taking steps to include the genuine voters even though applications in Form-VI was submitted by individual claimant and not deleting the bogus voters, though applications in Form-VGII was submitted to the respondents and for other incidental reliefs.

70. It is stated that the petitioner is the Ex-Sarpanch of Thorragudipadu Panchayat voter of the said village, Nandigama Mandal, Krishna district. In the affidavit filed in support of the writ petition, several other aspects in relation to the conduct of elections had been narrated. It was also further pleaded that objections filed and the same were not considered and it was further stated at para 7 of the affidavit filed in support of the writ petition that after seeing the draft voters list of village, he had brought to the notice of respondent relating to non-residents of the villagers in the voters and some of the instances had been specified

at para 7 of the affidavit filed in support of the writ petition as hereunder:

I submit that after seeing the draft voters list of our village, I brought to the notice of the respondents regarding the non-residents of the village in the voters list. Some instances are mentioned herewith for kind perusal of this Hon'ble court and for consideration. For example; I) Cherukuri /Ramesh, s/o. Satyanarayana, his name is found at serial no.57, in fact he is the resident of Damulgu (v); ii) Anuradha Popuri, w/o. Naresh her name is found at serial no.197, in fact she is the resident of Muppala (v), iii) Poppuri Naresh, s/o. Narasimha Rao, his name is found at serial no.595 in fact he is the resident of Muppala (v); iv) /gudimetla Pitchamma, w/o. Appaiah, her name is found at serial no.221, in fact she never lived in our village, v) Tummala Nageswara Rao, s/o. Radhakrishna, his name is found at serial no.936, in fact he is the resident of Damulur (v).

71. Several other factual details had been furnished in the affidavit filed in support of the writ petition.

72. The fifth respondent Mandal Revenue Officer, Nandigama, Krishna district filed counter-affidavit more or less on similar lines denying the allegations made in the affidavit filed in support of the writ petition and further pleaded at paras 2 to 5 as hereunder:-

In reply to para 2 and 3 of the affidavit, it is submitted that it is submitted that there are 90

Form-VI applications for inclusions is received and after thorough door-to-door verification, there are 120 Form-VI accepted and we have not received any applications in Form-VII, 67 non-residents voters and 25 death cases are deleted from the voters list. The contemplated work has done under section 22 and 23 of the Representation of People's Act 1950 and Registration of Electoral Rules, 1960.

In reply to para 4 of the affidavit, it is submitted that it is not correct to state that the petitioner submitted Form-VI claims to the fourth respondent. 190 Form-VI applications in question are received in the office of the fourth respondent. 190 Form-VI applications for inclusions were received and after thorough door-to-door verification, the fifth respondent accepted 120 Form-VI. Hence, the procedure contemplated under section 22 and 23 of the Representation of People's Act, 1950 and Registration of Electoral Rules, 1960 are followed.

In reply to para 5 and 6 of the affidavit, it is further submitted that it is no application under Form-VII has been received in the office of the fourth respondent, hence, the petitioner's submission is not correct. I submit that strictly rules and procedure as contemplated under section 22 and 23 of the Representation of People's Act 1950 and Registration of Electoral Rules, 1960 in the month of February, 2006 at the time of Final Publication followed.

In reply to paras 7 and 8 of the affidavit, it is submitted that the petitioner in his petition-affidavit

the following information about the non-residents in the voter's list is not correct. 1. Cherukuri Ramesh, s/o. Satyanarayana and Sri Tummala Nageswara Rao, s/o. Radha Krishna, names are found in voters list, because the voter list is common for both villages i.e., Damuluru and Torragudipadu for Assembly Constituency Voters list. 2 Smt. Anuradha Popuri, w/o. Popuri Naresh, her name is found at serial no.197 and her husband Sri Popuri Naresh s/o. Narasimha Rao is found at Sl.no.595, they are resident of Torragudipadu village of Nandigama Mandal, but not resident of Muppalla village of Chandarlapadu Mandal and these names are not found in the above voters list of Mupala village. Smt.Gudimetla Pitchamma w/o. Pitchaiah her name is found at sl.no.221, she is not resident of Torragudipadu village and Form-VII is filed against her in the continuous updating of voters list and her name also will be deleted from the voters list after due enquiry.

73. For the reasons stated above the respondents herein have considered all the objections and disposed off. The writ petition is filed by the petitioner without giving the names of 35 claimants who were said to have submitted Form-VI applications and Form-VII applications of their children. The writ petition is filed with false information with ulterior motive. Hence, the writ petition is liable to be dismissed.

W.P.No.10790 of 2006

74. 53 writ petitioners residents of Kurravanipalem village filed the present writ petition questioning the action of the respondents in not receiving the claims of petitioners for inclusion of their names in voters list of Kurravanipalem village and Gram Panchayat being prepared for the forthcoming Gram Panchayat Elections on several grounds.

75. It is stated that the petitioners are all permanent residents of Kurravanipalem village and have their own houses and also their own livelihood from the time of their forefathers and they have been living in the same village from generations together.

76. It is also stated that to their surprise they found their names missing in the present voters list and they approached the respondents with a request to receive their claims for inclusion of their names in the voters list. Several factual details had been narrated in relation thereto.

77. The Mandal Revenue Officer, Korisapadu, Prakasam district, the fourth respondent filed counter-affidavit enclosing several of the material papers along with the counter-affidavit. Virtually she had taken the self-

same stand taken by the other Mandal Revenue Officers relating to the directions issued by the Election Commission and the relevant dates and relevant rules and also other aspects said to be governing the field. In the counter-affidavit further details had been narrated and particulars were furnished at para 2 of the counter-affidavit and it was stated that only 22 petitions out of 53 preferred their claims and the same had been considered and rejected and hence the writ petition is liable to be dismissed.

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W.P.No.10807 of 2006

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78. In this writ petition four petitioners had questioned the deletion of the names of the petitioners without considering their objections or disposing of the appeals in accordance with the procedure.

79. It is stated that the petitioners are permanent residents of Deval Tirumalapur village and Gram Panchayath, Pedda Kothapalli Mandal, Mahbubnagar district and their names have been in the voters list of the said Gram Panchayat published prior to voters list of 2004 and also at serial nos. 152, 156, 2 and 135 respectively of the voters list of 2004. They had narrated several details as to how they have exercised their franchise and the

relevant provisions of the Act had been referred to and had complained how injustice had been done to them which is not being rectified.

80. The Mandal Revenue Officer, Pedda Kothapali sworn to the counter-affidavit wherein virtually similar stand had been taken relating to the directions issued by the Election Commission and the relevant dates and relevant rules and also other aspects had been taken.

81. Further at para no.4 of the counter-affidavit, it was pleaded as hereunder:-

In reply to the averments made in Paras 2 to 8 of the petitioners' affidavit it is submitted that the Revenue Divisional Officer, Nagarkurnool vide reference No.J/262/06 dated 26-05-2006 while communicating copy of the representation made by the Villagers of Deval Thirumalapur has directed Mandal Revenue Officer, Peddakothapally to cause enquiry into the contents of the petition and submit detailed report. In their petition the Villagers of Deval Thirumalapur village of Peddakothapalli Mandal of Mahabubnagar district while furnishing the names of 163 villagers whose names are not enrolled in the electoral rolls of polling station Nos.16 and 17 of Deval Thirumalapur have represented to register their names in the concerned voters list as their request was denied by the Revenue Authorities earlier. The matter has been got enquired into in Deval Thirumalapur village conducting door to door enumeration. The

discrete enquiries in respect of all 163 claims have been conducted. Out of which two claimant names have been enrolled in the voters list of polling station No.17 of Deval Thirumalapur village leaving a balance of 161 claims. During enquiry it is found that 32 claims are genuine one and these claims deserve to be included in the electoral rolls of Deval Thirumalapur village and the remaining 129 claims are not considered for inclusion in the voters list due to the reasons shown in the table filed as material papers for kind perusal of this Hon'ble Court.

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82. The petitioner filed the writ petition questioning the deletion of the names of the valid voters while refusing the appeals preferred by the affected parties.

83. It is stated that the petitioner is contesting as ward member in the forthcoming elections of the Gram Panchayat. It is stated that the respondents-authorities issued voters list while deleting the eligible voters and including ineligible voters. The details relating to the conduct of elections had been narrated at para 4 of the affidavit filed in support of the writ petition/ Further details had been narrated at para 7 of the affidavit.

84. The counter-affidavit filed by the Mandal Revenue Officer, Guntur, who is not a party to the writ petition on

behalf of respondents 1 to 4 had sworn to the counter-affidavit wherein virtually self same stand substantially denying the allegations made and also further stating as hereunder:-

In reply to Para 4 of the affidavit, it is submitted that after final publication of draft rolls on 25-02-2006 the writ petitioner filed appeals before the Collector, Guntur (ie) District Election Authority in respect of inclusions & deletions as given below:

Before final publication (ie) during summary revision claims received for inclusion & deletion and orders passed by the Electoral Registration Officer (Revenue Divisional Officer, Narasaraopet.)

Total claims in Form-6 for inclusion received		: 758
345	Accepted	:
413	Rejected	:

758	Total	:

Total claims in Form 7 for deletion received		: 480
224	Accepted	:
256	Rejected	:

480	Total	:

On filing of appeals by the petitioners, receipts were given to them and 6 senior officers

were deputed for appeal enquiries and based on their enquiry after due serving of notices, the appeals were disposed through an individual order to each petitioner. However, in cases where in fresh cases were filed before the appellate authority, endorsements were issued to the concerned to file to the Electoral Registration Officer (ERO) under continuous updation.

As against the above orders appeals were filed before the District Election Authority (Collector, Guntur) as shown below:-

Total appeals filed for inclusion	: 166
Accepted	: 109(list enclosed)
Rejected	: 057

	166

On account of accepting 109 appeals for inclusion of voters, a supplement list was got printed and sent to the District Panchayat Officer, Guntur for adding the same in the Electoral Roll of concerned polling station.

Total no. of Form 7 directly filed to the appellant authority for deletion 443.

On verification of Form 7 filed, it was observed that these applications were filed first time before the appellate authority and these are not covered under appeals, and not on the orders of deletions by the Electoral Registration Officer. Therefore, they cannot be considered as appeals in the absence of any order by the court below

i.e., Electoral Registration Officer. The concerned was advised to file Form-7 for deletions before the Revenue Divisional Officer, Narasaraopet in the process of continuous updation of Electoral Rolls.

Accordingly, 345 Form-7 applications were filed under continuous updation to the Electoral registration Officer. After due verification.

Attestor

Deponent

196 cases were accepted.

149 cases were rejected.

345

On account of 196 deletions accepted, a supplement list of deletions was got prepared and sent to the District Panchayat Officer, Guntur for placing in the concerned part of Electoral Roll of Solasa village. (List enclosed.)

Therefore, it is submitted that there is no truth in the allegation that final orders were not passed on the appeals filed, in spite of enquiry held in April, 2006.

This allegation is invented for a wrongful gain and for the convenience of filing this writ petition.

In reply to Para 5 of the affidavit, it is submitted that the procedure prescribed for preparation of Electoral Rolls, their publication, consideration of claims in Form-6 for inclusions and in Form-7 for deletions, was strictly followed as per the instructions of the Election Commission from time to time.

In reply to Para 6 of the affidavit, it is submitted that only after due verification of 480 Form-7 applications received for deletions, 224 cases were deleted from the Electoral Roll of Solasa village for valid reasons as detailed below after issuing necessary notice.

1.	Non Residents	:	221
2.	Death Cases	:	003

	Total	:	224

With regard to appeals filed before the Collector, it is submitted that along, on verification of record it is observed that only 166 appeals were filed as against 224 cases deleted. In this regard, 109 appeals were allowed as they are ordinary residents of that village and 57 cases were rejected due to reasons like non residents, under aged etc.,

In reply to Para 7 of the affidavit, it is submitted that it is submitted that these 199 names are not covered under appeals for inclusion, However on verification of the 197 names which are said to be eligible but refused for inclusion, the reasons for such refusal are furnished below and as per the Electoral Registration Officers enquiry under Summary revision.

<u>Serial Number in the list furnished</u>	<u>Reasons for refusal</u>
1,3,5,6,7,9,10,11,12,14,15,21,22,23,24, 26,30,35,36,37,39,40,41,44,50,53,54,57, 59,61,62,64,65,66,67,68,69,70,71,72,73,	115 cases

are under
74,75,76,77,79,85,88,89,90,92,94,95,96,
age.
98,99,104,105,108,110,111,112,113,114,116,
117,118,119,122,123,124,125,126,127,128,
129,130,132,133,134,135,136,137,138,139,
140,141,142,143,144,145,146,148,149,152,
153,154,160,163,165,166,167,168,169,170,
171,173,174,175,180,184,190,194,195.

2,4,8,13,16,18,19,20,25,27,28,
29,31,32,33,34,38,42,43,45,46,47,48,49,
51,52,55,56,58,60,63,78,80,81,82,83,84,
86,87,91,93,97,100,101,102,103,106,107,
cases are non-
109,115,120,121,131,147,150,151,155,
residents.
156,157,158,159,161,162,164,172,176,177,
178, 179,181,182,183,185,186,187,188,189,
191,192,193,196,197.

82

In reply to Para 8 of the affidavit, it is submitted that as regards the allegation saying that 345 ineligible voters were included, it is submitted that in the process of Continuous Updation out of 345 names 196 names were considered as ineligible voters and their names were ordered to be deleted from the voters' list. Accordingly supplement list is got prepared and it was already sent to the District Panchayat Officer, Guntur for placing in the concerned Electoral Roll of the polling station.

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85. The writ petitioner aggrieved of the deletion of valid

voters while refusing to exclude the ineligible voters from the voters list of Solasa Gram Panchayat, Yadlapadu Mandal, Guntur district, had filed the writ petition.

86. The petitioner is the sarpanch of the said Gram Panchayat and it is stated that he is contesting as sarpanch in the forthcoming Election. It is specifically stated that while publishing the voters list of the Gram Panchayat 224 names of the eligible voters had been deleted and they have also included 345 new voters and the objections filed in relation thereto and the appeal filed in relation thereto and the inaction thereof had been narrated in detail. In para 4 of the affidavit filed in support of the writ petition, relevant provisions also had been specified at length in the affidavit.

87. The counter-affidavit is filed denying the allegations made in the affidavit filed in support of the petition.

88. In reply to Para 5 of the affidavit, it is submitted that the procedure prescribed for preparation of Electoral Rolls, their publication, consideration of claims in Form – 6 for inclusions and in Form – 7 for deletions, was strictly followed as per the instructions of the Election Commission from time to time.

89. In reply to Para 6 of the affidavit, it is submitted that only after due verification of 480 Form – 7 applications received for deletions 224, cases were deleted from the

Electoral Roll of Solasa village for valid reasons as detailed below after issuing necessary notice.

- | | | | |
|----|---------------|---|-----|
| 1. | Non Residents | : | 221 |
| 2. | Death Cases | : | 003 |

Total : 224

90. With regard to appeals filed before the Collector, it is submitted that along on verification of record, it is observed that only 166 appeals were filed as against 224 cases deleted. In this regard, 109 appeals were allowed as they are ordinary residents of that village and 57 cases were rejected due to reasons like non-residents, under aged, etc.

91. In reply to Para 7 of the affidavit, it is submitted that it is submitted that these 199 names are not covered under appeals for inclusion. However, on verification of the 197 names which are said to be eligible but refused for inclusion, the reasons for such refusal are furnished below and as per the Electoral Registration Officers enquiry under Summary revision.

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-
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Serial Number in the list furnished
for refusal

Reasons

1, 3, 5, 6, 7, 9, 10, 11, 12, 14, 15, 21, 22, 23, 24,
26, 30, 35, 36, 37, 39, 40, 41, 44, 50, 53, 54, 57,
59, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73,

74, 75, 76, 77, 79, 85, 88, 89, 90, 92, 94, 95, 96, 115 cases are under age.
98, 99, 104, 105, 108, 110, 111, 112, 113, 114, 116, 117, 118, 119, 122, 123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 148, 149, 152, 153, 154, 160, 163, 165, 166, 167, 168, 169, 170, 171, 173, 174, 175, 180, 184, 190, 194, 195.

2, 4, 8, 13, 16, 18, 19, 20, 25, 27, 28, 29, 31, 32, 33, 34, 38, 42, 43, 45, 46, 47, 48, 49, 51, 52, 55, 56, 58, 60, 63, 78, 80, 81, 82, 83, 84, 86, 87, 91, 82 cases are non- residents.
93, 97, 100, 101, 102, 103, 106, 107, 109, 115, 120, 121, 131, 147, 150, 151, 155, 156, 157, 158, 159, 161, 162, 164, 172, 176, 177, 178, 179, 181, 182, 183, 185, 186, 187, 188, 189, 191, 192, 193, 196, 197

92. In reply to Para 8 of the affidavit, it is submitted that as regard the allegation saying that 345 ineligible voters were included, it is submitted that in the process of Continuous Updation out of 345 names 196 names were considered as ineligible voters and their names were ordered to be deleted from the voters' list. Accordingly, supplement list is got prepared and it was already sent to the District Panchayath Officer, Guntur for placing in the concerned Electoral Roll of the polling station.

93. The writ petitioner has simply alleged that 88 names of voters who belongs to other constituency were included in the voters list of Solasa village. But he has not furnished the details of such 88 voters. Therefore, it could not be

verified. It is therefore, to be construed as a vague allegation.

94. It is submitted that the petitioner has not made out any case warranting the interference of this Hon'ble Court under Article 226 of the Constitution of India and hence, the writ petition may be dismissed.

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95. The writ petitioner is questioning the action of the respondents in deleting the names of the valid voters and refusing to include the eligible voters while refusing to exclude the ineligible voters from the voters list of Jaladi Gram Panchayat, Yadlapadu Mandal, Guntur district prepared by the authorities and not passing any orders on the appeals preferred by the affected parties by the concerned authorities.

96. It is stated that the petitioner is the Ex-Sarpanch of Jaladi Gram Panchayat, Yadlapadu Mandal, Guntur district and he is contesting as sarpanch in the forthcoming elections. It is also stated that in the voters list 84 names of the eligible voters had been deleted and they had been included roughly about 110 new voters and the objections and appeals filed in relation thereto and several other factual aspects had been narrated in detail at para nos. 4 to 7 of the affidavit filed in support of the writ

petition.

97. The Mandal Revenue Officer, Edlapadu Mandal filed the counter denying the allegations made in the affidavit filed in support of the writ petition and further taking self same stand as referred to hereunder:-

“In reply to paras 2 to 4 it is not correct to say that eligible voters were not included and so also ineligible voters were not deleted and that on the appeals preferred by the affected parties, no orders were passed. As a matter of fact during the process of summary revision of Electoral Rolls pertaining to Jaladi gram Panchayat.

447 claims for inclusion in Form No.6 were received.

218 in Form No.7 for deletion were received.

They were got verified following the procedure. Out of 47 claims for inclusions 176 were accepted and the remaining 271 were rejected. So also pertaining to deletions, out of 218 claims received 127 were accepted and the remaining 91 were rejected. Thus final orders were passed in all applications/claims received for inclusion and deletion and the Electoral Rolls were finally published on 25-02-2006 as per the schedule ordered. Therefore, the allegation leveled against respondents are not genuine.

It is submitted that after final publication of draft rolls on 25-2-2006 the writ petitioner filed appeals before the Collector, Guntur (ie) District Election

Authority in respect of inclusions & deletions as given below.

1. Before final publication (ie) during summary revision claims received for inclusion & deletion and orders passed by the Electoral Registration Officer (Revenue Division Officer, Narasaraopet).

Total claims in Form-6 for inclusion received	:447
Accepted	:176
Rejected	
:271	
Total	-----
	447

Total claims in Form 7 for deletion received	
:218	
Accepted	:127
Rejected	: 91

Total	:218

On filing of appeals by the petitioners, receipts were given to them and 6 senior officers were deputed for appeal enquiries and based on their enquiry after due serving of notices, the appeals were disposed through an individual order to each petitioner. However, in cases where in fresh cases were filed before the appellant authority, endorsements were issued to the concerned to file to the Electoral Registration Officer (ERO) under continuous updation.

It is submitted that against the orders of the Electoral Registration Officer (E.R.O) rejections 271 Form (6) applications/appeals were filed before the District Election Authority but not 84 as stated by the Petitioner.

Total appeals filed for inclusion		
:81		
	Accepted	: 9
	Rejected	: 72

	Total	: 81

On account of accepting 9 appeals for inclusion of voters, a supplement list was got printed and sent to the District Panchayat Officer, Guntur for adding the same in the Electoral Roll of concerned polling station. The rejected 72 cases are due to reasons like non-residents.

Total forms 7 directly filed to the appellant authority for deletion was 240 and not 110 as mentioned in the writ.

On verification of Form No.7 presented for deletion before appellant authority, it was observed that these applications were filed first time before the appellate authority and these are not against the orders of deletions by the Electoral Registration Officer. Therefore, they can't be considered as appeals in the absence of any order i.e., Electoral Registration Officer.

The concerned was advised to file Form-7 for deletions before the Revenue Divisional Officer, Narasaraopet in the process of continuous updation of Electoral Rolls.

They have not filed any applications in Form-7 for deletion before the Revenue Divisional Officer i.e., Electoral Registration Officer as advised by the District Collector, Guntur on 15-05-2006. There are nearly 20 days time for them to file Form-7 before E.R.O. but they did not do so. However, the writ petitioner has furnished a

list of 240 names deletion from the finally published electoral roll. Therefore, the status of 240 voters has been now got verified. The following is the result of verification.

a) Found to be deleted from the electoral roll :47

Non-resident -- :32

Minors -- :13

Died -- :2

Total -- :47

b) The objection of the writ petition for deletion is not genuine. Because, 193 normal residents and eligible to be a voter

:193

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:240

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As such a supplement for deletion of 47 voters has been got prepared and sent to the District Panchayat Officer, Guntur to place the same in the final electoral roll of Jaladi village.

In reply to para 5 of the affidavit it is submitted that the procedure prescribed for preparation of Electoral Rolls, their publication, consideration of claims in Form-6 for inclusions and in Form-7 for deletions, was strictly followed as per the instructions of Election Commission from time to time.

In reply to para 6 of the affidavit it is submitted that during the period of summary revision 218 applications in Form No.7 for deletion were filed. After due verification issuing necessary notices out of 218 cases, 127 cases were accepted and ordered for deletion and 91

cases were rejected due to reasons like ordinary resident nature.

Aggrieved against the deletion of 127 voters, 81 Form-6 were filed before the Collector, Guntur during the period allowed for filing appeals. After due verification of 81 Form-6 cases, appeals, only 9 cases were accepted and the remaining 72 cases were rejected. Therefore, the allegations that 84 eligible voters were deleted without assigning any reason is not correct/valid.

It is further submitted though the writ petitioner assert that he has furnished the list of such 84 eligible voters deleted, the list received with the writ petitioner contain only 49 names but not 84 names.

In reply to para 7 of the affidavit it is submitted that as regards the list of 22 names furnished with this writ petition alleging them as minors. I submit that on verification with school records only 13 are found minors and not eligible to be voters and the remaining 9 are not minor. But these 13 names are one and the same and were bound in the fresh cases of directly filed Form 7 claims to the appellant authority 240 list furnished with this writ. Its verification result is explained in Para 4 above.

With regards to allegation that 88 voters alleged to be voters of some other constituency were included in the Electoral Rolls of Jaladi village, it is submitted to verify the correctness of the allegation, the writ petitioner has not filed the details of other constituency in which were

included. Hence, this allegation is only a vague allegation and action could not be taken.

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98. This writ petition is filed by the petitioner questioning the deletion of valid voters while refusing to exclude the ineligible voters from the voters list of Kondaveedu Gram Panchayat.

99. The list had been furnished as material paper to demonstrate the illegalities and also to substantiate the stand taken by them in the affidavit filed in support of the writ petition.

100. It was stated that in the voters list published 50 eligible voters had been deleted and about 103 new voters had been included and the objections and appeals filed in relation thereto and the non-conducting of enquiry and non-passing of final orders in violation thereof and several other aspects had been narrated at length.

101. The Mandal Revenue Officer, Edlapadu Mandal, a non-party to the writ petition had sworn to the affidavit more or less on similar lines narrating the procedure which had been followed and the rules governing the field as understood by them and also further pleaded as hereunder:-

“In reply to paras 2 to 4 it is not correct to

say that eligible voters were not included and so also ineligible voters were not deleted and that on the appeals preferred by the effected parties, no orders were passed. As a matter of fact during the process of summary revision of Electoral Rolls pertaining to Jaladi gram Panchayat.

447 claims for inclusion in Form No.6 were received.

218 in Form No.7 for deletion were received.

They were got verified following the procedure. Out of 47 claims for inclusions 176 were accepted and the remaining 271 were rejected. So also pertaining to deletions, out of 218 claims received 127 were accepted and the remaining 91 were rejected. Thus final orders were passed in all applications/claims received for inclusion and deletion and the Electoral Rolls were finally published on 25-02-2006 as per the schedule ordered. Therefore, the allegation leveled against respondents are not genuine.

It is submitted that after final publication of draft rolls on 25-2-2006 the writ petitioner filed appeals before the Collector, Guntur (ie) District Election Authority in respect of inclusions & deletions as given below.

1. Before final publication (ie) during summary revision claims received for inclusion & deletion and orders passed by the Electoral Registration Officer (Revenue Division Officer, Narasaraopet).

Total claims in Form-6 for inclusion received	:447	
Accepted		:176
Rejected		
:271		

Total		:447

Total claims in Form 7 for deletion received	:218
Accepted	:127
Rejected	: 91

Total	:218

On filing of appeals by the petitioners, receipts were given to them and 6 senior officers were deputed for appeal enquiries and based on their enquiry after due serving of notices, the appeals were disposed through an individual order to each petitioner. However, in cases where in fresh cases were filed before the appellant authority, endorsements were issued to the concerned to file to the Electoral Registration Officer (ERO) under continuous updation.

It is submitted that against the orders of the Electoral Registration Officer (E.R.O) rejections 271 Form (6) applications/appeals were filed before the District Election Authority but not 84 as stated by the Petitioner.

Total appeals filed for inclusion	
:81	
Accepted	: 9
Rejected	:72

Total	:81

On account of accepting 9 appeals for inclusion of voters, a supplement list was got printed and sent to the District Panchayat Officer, Guntur for adding the same in the Electoral Roll of concerned polling station. The rejected 72 cases

are due to reasons like non-residents.

Total forms 7 directly filed to the appellant authority for deletion was 240 and not 110 as mentioned in the writ.

On verification of Form No.7 presented for deletion before appellant authority, it was observed that these applications were filed first time before the appellate authority and these are not against the orders of deletions by the Electoral Registration Officer. Therefore, they can't be considered as appeals in the absence of any order i.e., Electoral Registration Officer.

The concerned was advised to file Form-7 for deletions before the Revenue Divisional Officer, Narasaraopet in the process of continuous updation of Electoral Rolls.

They have not filed any applications in Form-7 for deletion before the Revenue Divisional Officer i.e., Electoral Registration Officer as advised by the District Collector, Guntur on 15-05-2006. There are nearly 20 days time for them to file Form-7 before E.R.O. but they did not do so. However, the writ petitioner has furnished a list of 240 names deletion from the finally published electoral roll. Therefore, the status of 240 voters has been now got verified. The following is the result of verification.

a) Found to be deleted from the electoral roll	:47
<u>Non-resident --</u>	<u>:32</u>
<u>Minors</u>	<u>:13</u>

Died -- :2

Total--

:47

b) The objection of the writ petition for deletion is not genuine. Because, 193 normal residents and eligible to be a voter

:193

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:240

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As such a supplement for deletion of 47 voters has been got prepared and sent to the District Panchayat Officer, Guntur to place the same in the final electoral roll of Jaladi village.

In reply to para 5 of the affidavit it is submitted that the procedure prescribed for preparation of Electoral Rolls, their publication, consideration of claims in Form-6 for inclusions and in Form-7 for deletions, was strictly followed as per the instructions of Election Commission from time to time.

In reply to para 6 of the affidavit it is submitted that during the period of summary revision 218 applications in Form No.7 for deletion were filed. After due verification issuing necessary notices out of 218 cases, 127 cases were accepted and ordered for deletion and 91 cases were rejected due to reasons like ordinary resident nature.

Aggrieved against the deletion of 127 voters, 81 Form-6 were filed before the Collector, Guntur during the period allowed for filing appeals. After due verification of 81 Form-6 cases, appeals, only 9 cases were accepted and

the remaining 72 cases were rejected. Therefore, the allegations that 84 eligible voters were deleted without assigning any reason is not correct/valid.

It is further submitted though the writ petitioner assert that he has furnished the list of such 84 eligible voters deleted, the list received with the writ petitioner contain only 49 names but not 84 names.

In reply to para 7 of the affidavit it is submitted that as regards the list of 22 names furnished with this writ petition alleging them as minors. I submit that on verification with school records only 13 are found minors and not eligible to be voters and the remaining 9 are not minor. But these 13 names are one and the same and were bound in the fresh cases of directly filed Form 7 claims to the appellant authority 240 list furnished with this writ. Its verification result is explained in Para 4 above.

With regards to allegation that 88 voters alleged to be voters of some other constituency were included in the Electoral Rolls of Jaladi village, it is submitted to verify the correctness of the allegation, the writ petitioner has not filed the details of other constituency in which were included. Hence, this allegation is only a vague allegation and action could not be taken.

CONTENTIONS OF THE COUNSEL ON RECORD:

102. Heard Sri S.Ramchander Rao, learned senior

counsel representing the petitioner in certain of the writ petitions, Sri Naresh Byrapaneni, Sri Rajender Prasad, Sri Durga Prasad, Ms. D.Radha Rani, Ms.Aruna, Sri B.Srinivas , Sri Nimmagadda Satyanarayana , Sri K.Ravinder, Sri Sai Reddy, Sri Vedula Srinivas and several other counsel representing different petitioners in the batch of writ petitions and the learned Government Pleader for Panchayat Raj Sri Prabhakar and Sri Nuti Rammohan Rao, the counsel representing the State Election Commission and Sri Brahma Reddy and Sri Subba Reddy for impleading respondents. Several other Counsel like Dyamani, Tuhin Kumar etc., also addressed the Court and though these Writ Petitions were filed at the earliest point of time, till today no counter affidavits are filed and hence such are not disposed of.

103. Contentions of Sri S.Ramachander Rao and other counsel on record representing the writ petitioners.

104. Sri S. Ramchander Rao, learned senior counsel while making elaborate submissions had pointed out to the material available on record and the voters list and irregularities and illegalities committed in relation thereto. The learned counsel also pointed out to Article 243-K of the Constitution of India and the Constitutional duties and the obligation to be discharged by the State Election Commissioner and how the State Election Commission

had failed in the present batch of cases to carry on with the constitutional duties and obligations. The learned senior counsel also further pointed out to the language employed in Sections 11 and 12 of the Act and also had drawn the attention of this Court to Section 200 and 201 of the Act. While further elaborating his submissions, the learned senior counsel also pointed out to Rules 2 and 5 of G.O.Ms.No.254 and would comment that these Rules are bad being contrary to Article 243-K of the Constitution of India. The learned senior counsel also further pointed out to G.O.Ms.No.72 and introduction of Rule 3 A and also the aspect of Draft Rules and G.O.Ms.No.254 superseding all the prior G.Os by virtue of which, the Rules relating to the procedure to be followed in the case of electoral rolls completely dispelled. The learned senior counsel had drawn the attention of this court to Section 2(11) and Section 2 (30) of the Act and would explain that in the absence of any notification notifying election authority and in the absence of prescribed Rules as specified in Section 2 (30) of the Act vacuum is created and the gross root democracy cannot be protected unless this Court as Constitutional Court come to the rescue of the petitioners. The learned senior counsel also explained in elaboration about Article 243 O of the Constitution of

India and would maintain that bar is not operative in relation to the exercise of the jurisdiction of this court under Article 226 of the Constitution of the India. The learned counsel also pointed out how the D.P.O. cannot be authorized as to the preparation of the voters list and how the constitutional functionary, the State Election Commission had failed to discharge its duties and obligations in this arena. The learned senior counsel would maintain that when there is no authority function as election authority and then at least the direction of the State Election Commission to the District Panchayat Officer in this regard to be there and in the absence of the same, the same cannot be interfered that the D.P.O. carried on with these activities only in pursuance of the directions of the Election Commission. The learned senior counsel also would explain the decision of the Full Bench of this Court in ***Fakhruddin and others V. The Government of A.P. and others*** ^[7] case which would be referred to infra and how the said decision holds the field. The learned counsel also further elaborating his submissions had pointed out that the Election Commission had totally failed in discharging its constitutional duties and the obligations and the very spirit of 73rd Amendment to the Constitution of India was not kept alive because of the

lapse and failure on the part of the State Election Commission in this regard. The learned senior counsel also would maintain that in the facts and circumstances either the Representation of Peoples Act, hereinafter referred to as R.P.Act or the Rules made thereunder can be brought in, in this regard. Submissions at length were made in relation to the invalidity of the electoral lists and how the further proceedings cannot be proceeded with. The Act itself is a self contained code and voters lists of General Elections are different from these elections. The senior counsel also explained how the writ petitioners approached the court at the earliest point of time and how certain directions were issued by the learned Single Judge and how the matters were carried by way of writ appeals and what actually had transpired before the Division Bench and also the peculiar stand taken by the State Election Commission before the Division Bench and slightly contrary stand which is being taken before this court. On the aspect of the powers of judicial review, the scope and ambit of Article 226 of the Constitution of India and the bar said to have been imposed by Article 243-O, several decisions were cited by the learned senior counsel, apart from the decision in **Fakhruddin's** case (7 supra).

105. Sri Naresh Byrapaneni, the learned counsel

representing the writ petitioners in certain of the matters had placed the lists before the court and had demonstrated the irregularities committed by comparing the entries made in the lists. The learned counsel in substance adopted the arguments of the learned senior counsel Sri S. Ramchandra Rao and further had taken this court through the respective pleadings of the parties and the material available on record and would contend that in the light of the attitude of the Officers concerned, without rectification of the electoral rolls list if elections are proceeded with, the petitioners would put to serious prejudice.

106. Sri Rajender Prasad, the learned counsel in substance adopted the arguments of the learned senior counsel and also had taken this court through different provisions of R.P. Act and also the rules framed thereunder and the procedure to be followed and further specifically contended that Section 32 of the R.P. Act provides for punishment of the breach in the official duty. The learned counsel also pointed out to certain of the material papers relied upon by the State Election Commission before the Division Bench and had pointed out that except by indicating certain correspondence nothing serious had been contended by the State

Election Commission. The learned counsel also pointed out that the first petitioner is an Advocate and a responsible person and how the objections were raised and how the voters list had been tampered had been well explained. In this context Sri Brahamma Reddy , the learned counsel representing some of the impleading petitioners as respondents would maintain that proper enquiry was conducted in accordance with procedure and the voters list had been drawn and absolutely there was no partisan attitude whatsoever since both the contesting political parties in fact, in a way are aggrieved or suffered and hence the authorities cannot be found fault.

107. Sri Durga Prasad, the learned counsel representing certain of the petitioners would maintain that the appeals though filed were not disposed of. At any rate the orders were not communicated. Even otherwise, the learned counsel would submit that inasmuch as there is no procedure at all, now by virtue of the supersession of prior G.Os, legislative bankruptcy, and sub legislative bankruptcy had been created resulting in a big vacuum and on this ground alone the writ petitions are to be allowed. The learned Counsel also made elaborate submissions taking this Court through the provisions of the Representation of the People Act, 1950 and also the Rules framed thereunder and would maintain that at least

that procedure had not been properly followed.

108. Smt. D.Radha Rani, had pointed out to the stand taken in the affidavit in support of the writ petition and the stand taken in the counter affidavit and would submit that the deletion of important person definitely would go to show that this was thought of only to have a political gain and nothing more.

109. Smt. Aruna, the learned counsel in substance had adopted the submissions made by the learned senior counsel.

110. Sri Nimmagadda Satyanarayana, Sri Ravinder Kumar, Sri B.Srinivas, Sri Nagender Reddy, Sri Sai Reddy and several other counsel like Sri Tuhin Kumar, Sesharajyam and Sri Narahari Babu, Sri Rajendra Babu, Shoba Krishna, Sri Venu Gopal Rao, Sri Venkateshwar Rao appearing for the impleading applicants. Sri Subba Reddy appearing for certain impleading applicants and several other counsel also virtually raised similar contentions the counsel representing implead applicants, supporting the stand taken by the Government and the counsel representing the petitioners by and large in substance adopting the submissions made by the learned senior counsel.

111. It may be noted here itself that certain of the writ

petitions which were filed even prior to the notification were not included in the batch of writ petitions which were disposed of by the learned Single Judge and which were carried by way of writ appeals. Likewise, certain of the writ petitions were moved just prior to the issuance of the notification and certain of the writ petitions were filed even subsequent to the issuance of the notification. It is needless to say that inasmuch as common questions are involved and though almost all the writ petitioners were heard, inasmuch as in pursuance of the directions of the Division Bench, counter affidavits were filed in this batch only, these are being disposed of.

Contentions of G.P. for Panchayat Raj:

112. The learned Government Pleader for Panchayat Raj had taken this Court through the counter affidavits filed in all these matters and had explained the qualifying date and also explained the Rules of 1960, Rule 20 and 23 in particular and different provisions of the Act and also G.O.Ms. No.254 and had explained the role of D.P.O. is very limited. Learned Government Pleader further explained in detail how the procedure had been methodically followed and how the appeals were disposed of and orders were communicated to certain people and how objections were considered and disposed of and how by virtue of Section 11 of the Act, the

procedure under the Representation of the Peoples Act and the Rules had been followed. The learned counsel also in substance adopted certain submissions made by the counsel for State Election Commission in relation to the stand taken regarding the preparation of the voters list. The learned Government Pleader for Panchayat Raj also would maintain that this Court to be slow in interfering with election since the process of election had been commenced by issuance of election notification on 10-06-2006.

Contentions of Sri Prabhakar Rao:

113. Sri Prabhakar Rao, the learned counsel representing the State Election Commission had explained that after the order was made by the Division Bench on 9-6-2006 the election notification was duly issued on 10-6-2006. The learned counsel also pointed out to the Election Tribunal Rules and would contend that under Rule 12 the alternative remedy by way of election petition is available and hence this Court cannot postpone the elections by interfering with the election process after the issuance of the election notification. The learned counsel also placed strong reliance on Article 243-O and explained the bar of the jurisdiction. The learned counsel further explained Article 243 K of the Constitution of India

and would in all fairness maintain that the provision ordains some constitutional duties to be followed by the Election Commission. Further, the learned counsel would maintain that in the facts and circumstances of the case, the State Election Commission had discharged duties, functions in accordance with the provision of the Constitution and also provisions of the Statute governing the field. The counsel also explained that the view expressed in **Fakhruddin's** case (7 supra) cannot be said to be binding on this court in the light of the several other decisions of the Apex Court and also in the light of the view expressed by another learned Single Judge of this court and also in the light of the view expressed in **N.P. Ponnuswami V. Returning Officer, Namakkal, Salem District**^[8] case. The learned counsel also further explained the scope and ambit of the jurisdiction to interfere in election matters especially in the light of the view expressed in **Mohinder Singh Gill v. New Delhi Chief Election Commissioner**^[9] Case.

114. Sri Nuti Rammohan Rao, the learned counsel representing the State Election Commission made elaborate submissions but however, in the light of the stand taken by the writ petitioners at Para 10 of the Affidavit filed along with the application, praying for

amendment of relief in W.P.No. 10965 of 2006 since this court entertained a doubt relating to what stand in fact had been taken by the State Election Commission before the Division Bench, the Counsel made an attempt to clarify the same. The learned counsel further made certain submissions in addition to submission made by Sri Prabhakar Rao. Sri Nuti Rammohan Rao had taken this court through Sections 22 and 23 of the R.P. Act 1950 and also contends that on a careful analysis of Section 11 of the Act absolutely there is no abdication of powers and the State Election Commission though an independent body vested with certain powers and though these are wide powers, the some are regulated by the statutory exercise as can be culled out and reflected from Article 243 K (4) of the Constitution of India. The learned counsel also compared the provisions under Article 243-K of the Constitution of India with Article 324 and would maintain that virtually these provisions are in para materia . The learned counsel also made further elaborate submissions in relation to the Election Commission of India and how the same Rules are to be made applicable in relation to the State Election Commission also. The learned counsel placed reliance on certain decisions and further explained the scope and ambit of Articles 324 to 329 of the Constitution of India and also further explained about the

legislative wisdom exercised in adopting the electoral list under the R.P. Act 1950 and also further explained the legislative practice falling back upon the analogous statute. The counsel also would further maintain that in the light of the peculiar facts and circumstances, it cannot be live in the mouth of the petitioners to contend that there is legislative vacuum or subordinate legislative vacuum for absence of Rules covering this field.

115. PRECEDENTS:-

State of West Bengal v. Ashish Kumar ^[10]

Pundlik v. State of Maharashtra ^[11]

Manda Jaganath VS. K.S.Ratnam ^[12]

Election Commission of India VS. Shivaji ^[13]

Tyagarajan & others Vs. Sri Vengugopala Swamy B.Koil (6 supra)

Union of India Vs. Association for Democratic Reforms (3 supra)

A.C.Jose Vs. Shivam Pillai ^[14]

Keshavannanda Bharati Vs. State of Kerala (2 supra)

Union of India Vs. Naveen Jindal (4 supra)

Dattreya Vs. Mahaveer & others (5 supra)

Megaraj Kotari Vs. Delimitation Commission [\[15\]](#)

President of India Vs. In R.E. Presidential poll [\[16\]](#)

**State of U.P. Vs. Pradhan Sangh Kshetriya
Samiti** [\[17\]](#)

**Lakshmicharan Sen, Election Commissioner
Vs. K.M.Hasan** [\[18\]](#)

Bar Council of Delhi Vs. Surjeet Singh [\[19\]](#)

S.R. Bommai Vs. Union of India [\[20\]](#)

L.Chandra Kumar Vs. Union of India [\[21\]](#)

Ramesh Birch Vs. Union of India [\[22\]](#)

State of M.P. Vs. Mahalakshmi Fabrics Mills [\[23\]](#)

**Lingala Kondal Rao Vs. Vootukuri Narayana
Rao** [\[24\]](#)

Narender Kumar Vs. Union of India [\[25\]](#)

**Chief Commissioner of Ajmer Vs. Radheshayam
Dani** [\[26\]](#)

**N.P.Poonuswamy Vs. Returning Officer, Salem
District** (8 supra)

**Mohinder Singh Gill Vs. Chief Election
Commissioner** (9 supra)

***P.M.Mastanaiah Vs. Delimitation Commr.New
Delhi*** [\[27\]](#)

***Pradhan Sangh Kshetra Samithi, Jabalpur, vs.
State
of U.P.*** [\[28\]](#)

Ramchander Rao Vs. State of A.P. [\[29\]](#)

Anugrah Narain Singh Vs. State of U.P. [\[30\]](#)

***State of U.P. Vs. Pradhan Sangh Kshetra
Samithi*** [\[31\]](#)

***Boddula Krishnaiah Vs. State Election
Commissioner*** [\[32\]](#)

***Vadodara District Cooperatie Sugar Cane
Producers Limited Vs. Chandra Kanth Bhai*** [\[33\]](#)

***Sant Sadguru Janardhan Swamy (Moingiri
Maharaj) Sahakari Dugdha Utpadak Samstha Vs.
State of Maharastra*** [\[34\]](#)

***Kalla Ramakrishna Vs. State Election
Commission,Hyderabad.*** [\[35\]](#)

***Smt. S.K.Kasim Bee V. The State Election
Commissioner, Hyderabad (1996 (1) A.L.T., 76)***

***Chinna Narsappa v. Venkat Reddy (1996 (2) ALT
593)***

S.Fakruddin Vs. The Government of A.P. (7 supra)

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STATUTORY PROVISIONS :-

**116. THE ANDHRA PRADESH PANCHAYAT RAJ ACT,
1994**

“Section 11 - Preparation and publication of electoral roll for a Gram Panchayat:-

(1) The electoral roll for Gram Panchayat shall be prepared by the person authorized by the State Election Commissioner in such manner by reference to such qualifying date as may be prescribed and the electoral roll for the Gram Panchayat shall come into force immediately (upon its publication) in accordance with the rules made by the Government in this behalf. The electoral roll for the Gram Panchayat shall consist of such part of the electoral roll or the Assembly Constituency published under the Representation of the People Act, 1950, (Central Act 43 of 1950) as revised or amended under the said Act, up to the qualifying date, as relates to the village or any portion thereof:

(Provided that any amendment, transposition or deletion of any entries in the electoral roll, or any inclusion of names in the electoral roll of the Assembly Constituencies concerned, made by the electoral Registration Officer under Section 22 or

Section 23, as the case may be, of the Representation of the People Act, 1950, up to the date of election notification, for any election held under this Act, shall be carried out in the electoral roll of the Gram Panchayat and any such names included shall be added to the part relating to the last Ward)

Explanation:- Where in the case of any Assembly Constituency there is no distinct part of the electoral roll relating to the village, all persons whose names are entered in such roll under the registration area comprising the village and whose addresses as entered are situated in the village shall be entitled too be included in the electoral roll for the Gram Panchayat prepared for the purposes of this Act.

(2) The electoral roll for a Gram Panchayat—

(a) shall be prepared and published in the prescribed manner

by reference to the qualifying date:-

- (i) before each ordinary election; and
- (ii) before each casual election to fill a casual vacancy in the office of the Sarpanch and member of a Gram Panchayat; and

(b) shall be prepared and published in any year, in the prescribed manner, by reference to the qualifying date, if so directed by the State Election Commission:

Provided that if the electoral roll is not prepared and published as aforesaid, the validity or continued

operation of the said electoral roll, shall not thereby be affected).

(3) (The electoral roll) published under sub-section (1) shall be the electoral roll for the Gram Panchayat and it shall remain in force till a fresh electoral roll for the Gram Panchayat is published under this section.

(4) The electoral roll for the Gram Panchayat shall be divided into as many parts as there are wards so that each part consists of the voters residing in the concerned ward and for this purpose the electoral roll may be rearranged if such rearrangement is found necessary.

(5) Every person whose name appears in the part of the electoral roll relating to a ward shall subject to the other provisions of this Act, be entitled to vote at any election which takes place in that ward while the electoral roll remains in force and no person whose name does not appear in such part of the electoral roll shall vote at any such election.

(6) No person shall vote at an election under this Act in more than one ward or more than once in the same ward and if he does so, all his votes shall be invalid.

Explanation:- In this section, the expression "Assembly Constituency" shall mean a constituency provided by law for the purpose of elections to the Andhra Pradesh Legislative Assembly.

Section 12 - *Rearrangement and republication of electoral rolls:-*

Where, after the electoral roll for the gram panchayat has been published under sub-section (1) of Section 11, the village is divided into wards for the first time

or the division of the village into ward is altered or the limits of the village are varied, the person authorized by the State Election Commissioner in this behalf shall in order to give effect to the division of the village into wards or to the alteration of the wards, or to the variation of the limits, as the case may be; authorize a re-arrangement and republication of the electoral roll for the gram panchayat or any part of such roll in such manner, as the State Election Commissioner may direct.

Section 200 - Constitution of State Election

Commission:-

(1) There shall be constituted a State Election Commission for the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of elections to, all the Panchayat Raj Institutions governed by this Act.

(2) The said Election Commission shall consist of a State Election Commissioner. The Governor on the recommendation of the Government shall appoint a person, who is holding or who has held an office not less in rank than that of a Principal Secretary to Government, as State Election Commissioner.

(3) The conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a

High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

Section 201-Powers and functions of the State Election Commissioner:-

(1) All elections to the Panchayat Raj Institutions shall be held under the supervision and control of the State Election Commission and for this purpose it shall have power to give such directions as it may deem necessary to the Commissioner, District Collector or any officer or servant of the Government and the Panchayat Raj Institutions so as to ensure efficient conduct of the elections under this Act.

(2) The preparation of election rolls for the conduct of all elections under the Act shall be done under the supervision and control of the State Election Commission.

(3) For the purposes of this section the Government shall provide the State Election Commission with such staff as may be necessary.

(4) On the request of the State Election Commission the State Government shall place at the disposal of the Commission such staff of the State Government, Gram Panchayats, Mandal Parishads and Zilla Parishads for the purpose of conduct of elections under this Act.

(5) The State Election Commissioner may, subject to control and revision, delegate his powers to such officers as he may deem necessary.

Section 268 - Power of Government to make rules for purposes of this Act:-

(1) The Government shall in addition to the rule making powers, conferred on them by any other provisions of this Act, have power to make rules generally to carry out all or any of the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the government may make rules-

- (i) as to all matters under this Act, relating to electoral rolls or the conduct of elections, not expressly provided for in this Act, including deposits to be made by candidates standing for election and the conditions under which such deposits may be forfeited, and the conduct of inquiries and the decision of disputes relating to electoral rolls or elections;
- (ii) for the classification of backward classes into four categories on the basis of the extent of their social and educational backwardness, for purpose of reservation of seats and offices under this Act in their favour and to provide that, as far as practicable, the seats and offices reserved in favour of backward classes of citizens are equitably distributed among all categories;
- (iii) as to the interpellation of the Sarpanch, President or Chairman by the members of the gram panchayat, Mandal Parishad or as the case may be of the Zilla Parishad and the moving of resolutions at meeting of a gram panchayat, Mandal Parishad or the Zilla Parishad;

- (iv) as to the delegation of any function of a gram panchayat, Mandal Parishad or Zilla Parishad respectively to the Sarpanch, President or Chairman or any member or officer of the gram panchayat, Mandal Parishad or Zilla Parishad or any employee of the State or Central Government;
- (v) as to the transfer of allotments entered in the sanctioned budget of a gram panchayat, Mandal Parishad or Zilla Parishad from one head to another;
- (vi) as to the estimates of receipts and expenditure, returns, statements and reports to be submitted by gram panchayat, Mandal Parishad or Zilla Parishad;
- (vii) as to the accounts to be kept by gram panchayat, Mandal Parishads or Zilla Parishads the audit and publication of such accounts and the conditions under which rate payers may appear, before auditor, inspect book and accounts, and take exceptions to items entered or omitted;
- (viii) as to the preparation of plans and estimates for works and the powers of gram panchayat, Mandal Parishad or Zilla Parishad and of servants of the State or Central Government to accord professional or administrative sanction to estimates;
- (ix) as to the powers of auditors to disallow and surcharge items, appeals against order of disallowance or surcharge and the recovery of sums disallowed or surcharged;
- (x) as to the powers of auditors, inspecting and

superintending officers and officers authorized to hold inquiries to summon and examine witnesses and to compel the production of documents and all other matters connected with audit, inspection and superintendence.

- (xi) as to the conditions on which property may be acquired by a gram Panchayat, Mandal parishad or Zilla Parishad or on which property vested in or belonging to a gram panchayat, Mandal parishad or Zilla Parishad may be transferred by sale, mortgage, lease, exchange or otherwise;
- (xii) as to the conditions on which and the mode in which contracts may be made by or on behalf of gram panchayat, Mandal Parishad or Zilla Parishad;
- (xiii) as to the assessment and realization of taxes under this Act and the revision of and appeals against assessment;
- (xiv) as to the acceptance in lieu of any tax or other amount due to a gram panchayat under this Act, of any service byway of cartage or otherwise;
- (xv) as to the form and contents of licences, permissions and notices granted or issued under this Act, the manner of their issue or the method of their service, and the modifications, suspension or cancellation thereof;
- (xvi) as to the powers of executive authorities to call for information on any matter, to summon and examine witnesses, and to compel the production of document;
- (xvii) as to the regulation or registration of building

- and the use of sites for building;
- (xviii) for the determination of any claim to trees growing on public roads or other property vesting in or belonging to gram panchayats or on porambokes or on lands, the use of which is regulated by them under Section 102, and for the presumptions to be drawn in regards the ownership of such trees;
 - (xix) as to the provisions of cattle sheds by the gram panchayat wherein owners of cattle may stall cattle and as to the fees leviable in respect thereof;
 - (xx) as to the disposal of household and farm yard waste in the village, the acquisition of land by the gram panchayat for laying out plots, for digging pits in which such waste may be thrown, the assignment of any of those plots to persons in the village and the conditions subject to which such assignment may be made, including the rent to be charged;
 - (xxi) as to the duties to be discharged by village officers in relation to gram panchayats and their executive authorities;
 - (xxii) for regulating the sharing between local authorities in the state, of the proceeds of any tax or income levied or obtained under this or any other Act;
 - (xxiii) as to the accounts to be kept by owners, occupiers and farmer, private markets and the audit and inspection of such accounts;
 - (xxiv) as to the manner of publication of any notification or notices to the public under this Act;

- (xxv) for the use of the facsimiles of the signatures of the executive authorities and officers of gram panchayats, Mandal Parishads or Zilla Parishads;
 - (xxvi) regarding proceedings of gram panchayats and their committees; and
 - (xxvii) relating to assessment, levy and collection of taxes and the lodging of moneys received by the Gram Panchayat, Mandal Parishad or Zilla Parishad and payment of moneys from their Funds.
- (3) All rules made under this Act shall be published in the Andhra Pradesh Gazette.
- (4) Every rule made under the Act shall immediately after it is made, be laid before the Legislative Assembly of the State if it is in session, and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiration of the session in which it is so laid or the session immediately following the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity or anything previously done under that rule.

117. **CONSTITUTIONAL PROVISIONS :-**

Article 243-K. (1) The Superintendence, direction and

control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commissioner, 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).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

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Article 243-O:- Notwithstanding anything in this

Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

Article 324:- (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution... shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as

the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine.

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment.

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President or the Governor... of a State, shall, when so requested by the Election Commission, make available

to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

Article 325:- There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion race, caste, sex or any of them.

Article 326:- The election to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

Article-327:- Subject to the provisions of this Constitution, Parliament may from time to time by law make provision

with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

Article-328:- Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the house or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

Article 329:- Notwithstanding anything in this Constitution.. (a) the validity of any law relating to the delimitation of constituencies, or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may

be provided for by or under any law made by the appropriate Legislature.

Article-14:- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

118. **RULES :-**

G.O.Ms.No.898, PRRD & R (Elecs-I) Department dated 10-12-1994 reads as hereunder:-

In exercise of the powers conferred by sub-section (1) and clause (1) of sub-section (2) of Section 268 read with Section 11 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act No.13 of 1994), the Governor of Andhra Pradesh hereby designates and appoints the Officers specified in column (1) of the Table below to perform the powers and functions of the Officers specified in the corresponding entry in column (2) thereof, within their jurisdiction.

TABLE

(1)	(2)
1. District Collector	District Electoral Officer
1. Revenue Divisional Officer/ Sub-Collector/Assistant Collector	Appellate Officer

3. Mandal Revenue Officer	Electoral Registration Officer in respect of the Gram Panchayats under his jurisdiction.
4. Extention Officer (Panchayats) Extention officers (Rural Development) Mandal/Parishad Educational Officer, Women and Child Welfare Officer, Agriculture Officer and also Divisional Panchayat Officer where the Extension Officer (Panchayats) are not sufficient in number	Assistant Electoral Registration Officer

G.O.Ms.254, PRRD & Respondent (Elects)

Department Dated 4-8-2000 reads as hereunder:-

“ In exercise of the powers conferred by clause (i) sub-section (2) of Section 268, read with Section 11, sub-section (2) of Section 151 and sub-Section (2) of Section 179 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act.No.13 of 1994), and in supersession of the rules issued in G.O.Ms.No.879, PRRD & (Elecs.I) Department, dated 3.12.1994 G.O.Ms.No.898, PRRD & R (Elecs.I) Department, dated 10.12.1994, G.O.Ms.No.913,PRRD & R(Elecs.I) Department, dated 21.12.1994, and G.O.Ms.No.923, PRRD &

R (Elecs,I) Department, dated 28-12-1994 , the Governor of Andhra Pradesh hereby makes the following Rules relating to preparation and publication of electoral rolls under the said Act, for a Gram Panchayat, Mandal Parishad and Zilla Parishad, or any portion thereof.

1. Short Title:- These rules may be called the Andhra Pradesh Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules,2000
2. Preparation of Gram Panchayat Electoral roll:- (1) The electoral roll of a Gram Panchayat, hereinafter referred to as “ the electoral roll”, shall be such part of the current electoral roll of the Andhra Pradesh Legislative Assembly Constituency, prepared and published under the Representation of the People Act, 1950 (Central Act 43 of 1950) as relates to the village, which shall be prepared by the District Panchayat Officer, taking into account the various amendments issued to the said electoral roll of the Assembly Constituency, from time to time, as they relate to the village, up to the date of election notification.

(2) There shall be a separate electoral roll for each Gram Panchayat.
3. Electoral roll for election to the Office of Sarpanch:- For the purpose of election of Member and Sarpanch of Gram Panchayat, the roll prepared under Rule 2 shall be the electoral roll.
4. Form and language of the roll:- (1) The roll shall be prepared in the format specified by the State Election Commission, by order

(2) The roll shall be prepared in such language or languages in which the roll of the Andhra Pradesh Legislative Assembly Constituency , within which the Gram Panchayat is situated, is prepared.

5. Publication of copies of rolls:- (1) As soon as the roll is prepared in accordance with these rules, the District Panchayat Officer shall, make arrangements to print or cyclostyle or writ in manuscript as many copies of the roll as may be directed by the State Election Commission, from time to time. He shall publish the same for inspection by general public:

(a) On the notice board kept in the Office of the District Panchayat Officer

(b) On the notice board kept in the Office of the Gram Panchayat; and

(c) At three conspicuous places in the concerned village.

(2) The electoral roll published under sub-rule (1) shall indicate the ward division made under sub-section (4) of Section 11 or as the case may be, under Section 12, of the Andhra Pradesh Panchayat Raj Act, 1994 (Act 13 of 1994), hereinafter in these rules referred to as "the Act".

(3) Upon such publication under this rule, the roll shall be the electoral roll of the Gram panchayat and shall remain in force till a fresh electoral roll is prepared and published.

6. Procedure for lodging claims and objections:- All omissions of names in any part of the roll or objections to any entry in the roll, at any point of time

after its publication under Rule 5, shall be settled only after a suitable amendment to the relevant entry in the electoral roll of the Legislative Assembly Constituency, based on which the Gram Panchayat roll was prepared. Anybody wishing to prefer a claim for inclusion or deletion of any name in the roll or any objection in respect of any entry in the roll so published, shall submit a proper claim or objection under the provisions of the Registration of Electors Rules, 1960 made under the Representation of the People Act, 1950 (Central Act.43 of 1950), to the Electoral Registration Officer of the concerned Legislative Assembly Constituency . Subject to the provisions of section 11 of the Act, and based on the orders of the Electoral Registration Officer of the Assembly Constituency on such claims and objections, the District Panchayat Officer shall carry out consequential amendments in the Gram Panchayat electoral roll. In case of any clerical or printing error or both, or when the entries deviate from the particulars of the Assembly Electoral roll, the District Panchayat Officer may cause such errors rectified , so as to bring it in conformity with the particulars of the Assembly Electoral roll concerned. However, the District Panchayat Officer shall not resort to suo motu revision of the rolls by way of deletions or additions or modifications.

7. Electoral roll of a Mandal Parishad:- (1) For purposes of preparation and publication of electoral roll for the election to the office of members of Mandal Parishad the provisions of sections 11 and 12 of the Andhra Pradesh Panchayat Raj Act, 1994 shall apply mutatis mutandis.

(2) The electoral roll for the Gram Panchayat prepared and published under rule 2 shall be arranged Territorial Constituency-wise of the Mandal Parishad by the Mandal Parishad Development Officer and it shall be divided into convenient parts which shall be numbered conveniently. The part of the electoral roll shall be arranged Gram Panchayat wise in alphabetical order for each Mandal Parishad Territorial Constituency for the purpose of conducting elections of Mandal Parishad Territorial Constituency.

(3) A copy of such electoral roll in respect of each territorial Constituency of Mandal Parishad shall be kept open for inspection in the office of the Mandal Parishad concerned.

8. Electoral roll of a Zilla Parishad:- (1) For purposes of preparation and publication of electoral roll for the election of member of Zilla Parishad, the provisions of Sections 11 and 12 shall apply mutatis mutandis.

(2) The electoral roll for the Gram Panchayat prepared and published under rule 2 shall be arranged for each Mandal which is a Territorial Constituency of the Zilla Parishad by the Chief Executive Authority, Zilla Parishad concerned, and it shall be divided into convenient parts which shall be numbered conveniently. The part of the electoral roll shall be arranged Gram Panchayat-wise in alphabetical order for each Zilla Parishad Territorial Constituency, for the purpose of conducting elections of Zilla Parishad Territorial Constituency.

(3) A copy of such electoral roll in respect of

each Territorial Constituency of Zilla Parishad shall be kept open for inspection in the office of the Zilla Parishad concerned.

9. Transitional Provision:- Notwithstanding anything in these rules, the electoral rolls of Gram Panchayats prepared and finally published, with reference to 1st January, 2000 as the qualifying date, in pursuance of Notification No.738/SEC-BI/1999-2000, Dt. the 7th January,2000 of the State Election Commission, shall continue to be in force, until fresh electoral rolls are prepared and published, subject to the condition that any additions or deletions made by the Electoral Registration Officer under the Representation of the People Act, 1950 (Central Act 43 of 1950) in the electoral roll of the Legislative Assembly Constituency, as relates to the concerned Gram Panchayat, between the date of the notification of the State Election Commission referred to above, and the date of election notification, for any election held under this Act shall be added or deleted as the case may be, in the electoral rolls already prepared as above. Any additions shall, however, be added to the last ward of the Gram Panchayat concerned.”

G.O.Ms.No.923 ,PR,RD & R (Elecs-I) Department,

Dated 28-12-1994 read as hereunder:

“In exercise of the powers conferred by sub-section (1) and clause (i) of sub-section (2) of Section 268 read with sub-section (2) of Section

151 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act No.13 of 1994) , the Governor of Andhra Pradesh hereby makes the following rule:

Rule

For purposes of preparation and publication of electoral roll for the election to the office of member of Mandal Parishad, the provisions of Sections 11 and 12 shall apply *mutatis mutandis*.

The electoral roll for the Gram Panchayat prepared and published under the said provisions of the Andhra Pradesh Panchayat Raj Act, 1994 shall be arranged Territorial Constituency-wise of the Mandal Parishad by the Mandal Parishad Development Officer and it shall be divided into convenient parts which shall be numbered conveniently. The part of the electoral roll shall be arranged Gram Panchayat-wise in alphabetical order for a Territorial Constituency for purpose of conducting elections of Mandal parishad.

A copy of such electoral roll in respect of each territorial constituency of Mandal Parishad shall be kept open for inspection in the office of the Mandal Parishad of the district.

NOTIFICATION-II

In exercise of the powers conferred by sub-section (1) and clause (i) of sub-section (2) of Section 268 read with sub-section (2) of Section 179 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act No.13 of 1994) , the Governor of Andhra Pradesh hereby makes the following rule.

Rule

For purposes of preparation and publication of

electoral roll for the election to the office of member of Zilla Parishad, the provisions of Sections 11 and 12 shall apply *mutatis muntandis*.

The electoral roll for the Gram Panchayat prepared and published under the said provisions of the Andhra Pradesh Panchayat Raj Act, 1994 shall be arranged for each Mandal which is territorial constituency of the Zilla Parishad by the Chief Executive Authority, Zilla Parishad concerned and it shall be divided into convenient parts which shall be numbered conveniently. The part of the electoral roll shall be arranged Gram Panchayat-wise in alphabetical order for a territorial constituency for purpose of conducting elections of Zilla Parishad.

A copy of such electoral roll in respect of each territorial constituency of Zilla Parishad shall be kept open for inspection in the office of the Zilla Parishad of the district.”

VIEWS OF THIS COURT

119. The factual matrix in these batch of Writ Petitions as reflected from the affidavits filed in support of the Writ Petitions, the counter affidavits, the reply affidavits in a couple of matters and also the stand taken by certain of the implead petitioners in their affidavits filed along with the applications had been narrated supra. On an overall appreciation of the grievances ventilated by the writ petitioners in these different Writ Petitions, the essential

grievances would boil down to the extent of complaining the exclusion of voters already in the Voters' List, the inclusion of certain voters who are not eligible to be the voters, deletion of voters, the non-consideration of the objections, the non-consideration of the appeals, the non-communication of the orders, the non-disposal of the representations and several other like grounds. In substance, in all these counter affidavits the stand taken by the concerned M.R.Os., or the Joint Secretary, except in one, it is stated that the inclusion was recommended, in all other matters, substantially, the allegations made in the affidavit filed in support of the Writ Petitions were denied and further stand had been taken that either the representations were not made within time in accordance with law or the objections were not raised properly as per the Rules or in fact the objections had been considered and the enquiry was conducted, or in the case of appeals, the appeals in fact had been considered and disposed of and no doubt it is doubtful whether the orders made on appeals had been duly communicated to the concerned or not. It is no doubt true that these are all factual controversies and in substance in almost in all the counter affidavits it had been stated that in the light of Rules 20 and 23 of the Electoral Rules, 1960, the Rules framed under Representation of Peoples Act, 1950 the matters

had been considered. The further stand taken is that in the light of the clear language of Section 11 of the Act aforesaid, this process which had been adopted cannot be found fault and hence inasmuch as the election notification already had been issued on 10-6-2006, the further proceedings cannot be stopped especially in the light of the constitutional bar imposed by Article 243-O being operative. As already referred to supra, several decisions were cited by the Counsel representing the parties. Inasmuch as in the first Writ Petition W.P.No.10965/2006 the relief portion was amended and in the light of the elaborate affidavit filed in support of the said Writ Petition wherein several other additional factual details had been narrated, the counter affidavit filed by the State Election Commission in the said matter, in view of the fact that the same narrates several details, the said counter affidavit and contents thereof, being appropriate, is being dealt with at this juncture. As far as the powers, duties and the constitutional obligations cast upon the Election Commission of India and also the State Election Commission in the light of the language of Article 324 being in Pari Materia with Article 243-K of the Constitution of India, submissions at length were made. The contents of different representations which had been filed in

material papers said to have been made to the State Election Commission need not be dealt with in elaboration inasmuch as the substance of the grievances ventilated appear to be fairly one and the same by and large. However, before taking up the further discussion in relation to the stand taken by the State Election Commission in the counter affidavit, it may be relevant to have a look at the proceedings dated 16-5-2006 and 22-5-2006 addressed to the concerned Collectors and the said proceedings read as hereunder:-

16-05-2006

In the reference cited the State Election Commission has directed the preparation and publication of electoral rolls of all the Gram Panchayats in the State. Under Section 11 of the APPR Act, 1994, electoral roll for the Gram Panchayat shall consist of such part of the electoral roll for the Assembly Constituency. The provision is very clear that there should be no deviation in any respect from the Assembly electoral roll. The only thing is that part of the electoral roll of the Assembly Constituency which relates to the concerned Gram Panchayat will be published.

While so the State Election Commission is receiving a number of complaint from the general public and political parties that the electoral roll prepared and published for the Gram Panchayat contain certain deviations from the entries found in the electoral roll of the

Assembly Constituency. All the Collectors are requested to ensure that the entries in the electoral roll of the Assembly Constituency are truly and correctly reflected in the electoral roll published for the concerned Gram Panchayat and that there are no deviations in it. This is very necessary as it might effect the validity of the electoral roll and consequently the election held following the same.

Any deviations from these instructions will be viewed seriously and action will be taken against the officers who are responsible therefor.

22-05-2006

In the notification first cited publication of electoral rolls has been ordered and they have been published on 8-5-2006. Subsequently, a press note has been issued in the reference second cited (copy enclosed) that all orders of inclusions, deletions or corrections in the electoral roll of the Assembly Constituency till the date of issue of election notification will duly carried out in the electoral roll of the Gram Panchayat concerned. In the reference third cited the attention of the District administration has been brought to the complaint received from the public that there are certain deviations from the Assembly electoral roll, while publishing the Gram Panchayat electoral roll. Further, all the entries in the Assembly electoral roll should be truly and correctly brought out

and there should be no deviations. In spite of this, the Commission received a complaint from the Telugu Desam Party in the reference third cited (copy enclosed).

The District Collectors/Chief Executive Officers of Zilla Parishads/District Panchayat Officers are requested to thoroughly check the electoral rolls of the Gram Panchayats already published and ensure that the entries in the Assembly electoral rolls are truly and correctly reflected in the Gram Panchayat electoral rolls.

They are requested to ensure that –

- a) the entries in the electoral roll of the Gram Panchayat shall not deviate from the entries in the Assembly electoral roll concerned;
- b) in case of any clerical or printing error or both or when entries in Gram Panchayat electoral roll deviate from the particulars of Assembly electoral roll, the District Panchayat Officer may cause such error rectified so as to bring it in conformity with the particulars of the Assembly electoral roll concerned under rule 6 of the APPR (Preparation and publication of electoral rolls) Rules, 2000;
- c) where any representation or complaint referred by State Election Commission or received directly by Collector or District Panchayat Officer from any political party or individual alleging occurrence of deviations, clerical or printing error in the Gram Panchayat

electoral rolls they shall be enquired into and corrections shall be made, wherever necessary, after obtaining clearance from the State Election Commission. This item of work should be attended to on priority basis as elections to Panchayat Raj bodies are to be held shortly; and

- d) after publication of Gram Panchayat electoral rolls, any inclusion, deletion or correction ordered by the Electoral Registration Officer of the Assembly Constituency concerned upto the date of election notification shall be carried out in the electoral roll of the Gram Panchayat concerned by the District Panchayat Officer. Inclusions, if any, ordered shall be added at the end to the part relating to the last ward and the deletion shall be carried out at the appropriate placed.

The above instructions should be strictly implemented and any negligence or laxity will be viewed seriously and the State Election Commissioner will particularly review this aspect in the Regional Conferences the schedule of which was already communicated.

120. Can it be said that by what had been referred to supra, the Constitutional imperative ordained by Article 243-K of the Constitution of India is satisfied? This Court has no hesitation to say that the answer to be in the

negative. At this juncture before further proceeding with the discussion, it may be appropriate to have a look at the decision of the Apex Court in **A.C.Jose V. Sivan Pillai** (14 supra) wherein the Apex Court while dealing with the powers, duties and the Constitutional obligations of the Election Commission of India observed:-

“To sum up, therefore, the legal and constitutional position is as follows:-

- (a) when there is no Parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections,
- (b) where there is an Act and express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In the other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Art.324.
- (c) where the Act or the Rules are silent, the Commission has no doubt plenary powers under Art.324 to give any direction in respect of the conduct of election. And
- (d) where a particular direction by the Commission is submitted to the Government for approval, as required by the Rules, it is not open to the Commission to go ahead with implementation of it at its own sweet will even

if the approval of the Government is not given.

121. Specific stand was taken by the A.P.State Election Commission (hereinafter, in short referred to as 'Commission' for the purpose of convenience) in the counter affidavit filed in W.P.No.10965/2006 as hereunder. Inasmuch as this appears to be the general stand taken by the Commission, the same is being dealt with at this stage. It is stated that under Article 243-K of the Constitution of India, the Commission is charged with the responsibility of superintendence, direction and control over the preparation of the electoral rolls and conduct of elections to Panchayats. It is stated that Article 243-K is in *pari materia* with Article 324 of the Constitution of India which deals with the powers and functions of the Election Commission of India and both these Commissions are constitutional bodies dealing with elections. While the Election Commission of India has powers among others to prepare the electoral rolls for the Assembly and Parliamentary constituencies, the Commission has similar powers in regard to the preparation of the electoral rolls for the Panchayats at all levels. Ever since the establishment of the Commission as a constitutional body under the 73rd Amendment to the Constitution of India, the Election Commission of India and the Commission have been

interacting with each other with regard to the election matters. The interaction mainly related to bringing about some sort of uniformity in the election process to the Parliament and Assembly Constituencies and also to the Panchayats at all levels. In order to bring about such uniformity the Election Commission of India has been conducting annual conferences with all State Election Commissioners to interact on common problems. It is also further stated that in the conference held on 18-4-2000 at New Delhi to discuss such common issues, both the Election Commission of India and the State Election Commissioners considered the issue of having common electoral rolls for the Assembly and Panchayats at all levels. It was ultimately agreed that the Assembly electoral rolls can be adopted for the elections to Panchayats also at all levels and the Election Commission of India agreed to give all assistance for the same. The minutes of the said meeting had been produced before this Court as Annexure No.1. It is also further pleaded that when the above decision was taken by all the State Election Commissioners, the practice in Andhra Pradesh was to publish that part of the electoral roll of the Assembly Constituency as it relates to the Gram Panchayat as a draft electoral roll, call for objections thereon. Any claims for inclusions and exclusions used to be disposed of by

the District Panchayat Officer who is authorized to prepare the electoral roll. It was also further pleaded that on account of this, the electoral roll of the Assembly constituency and the electoral roll of the Panchayat used to be different. The Commission wanted to give up this unsatisfactory procedure and recommended to the Government to amend Section 11 suitably so as to adopt the Assembly electoral roll in toto for the purposes of Panchayat elections. The Government accordingly enacted the Andhra Pradesh Panchayat Raj (3rd amendment) Act, 2000 and amended Section 11 as suggested by the Commission. With this amendment, the publication of that part of the electoral roll as it relates to the panchayats as draft electoral roll and authorizing the District Panchayat Officers to directly carry out additions and deletions was given up. Thereafter, that part of the electoral roll of the Assembly Constituency as it relates to the Gram Panchayat is being published by the DPO and if any person has claims and objections, he can approach the Electoral Registration Officer under submissions 22 and 23 of the Representation of People Act, 1950 and thereupon whatever additions or deletions are made by the Electoral Registration Officers in the Assembly electoral roll up to the date of the Panchayat election

notification, the same will be carried out in the Panchayat electoral roll as well. It is stated that to this effect the rules were framed in G.O.Ms.No.254, Panchayat Raj Department, dated 4-8-2000. It is also stated that this procedure is being followed in States of Assam, Tamilnadu, West Bengal, Goa, Madhya Pradesh, Orissa and Rajasthan as on 18-4-2000 when the conference of State Election Commissioners agreed to adopt the electoral roll. Thereafter, Andhra Pradesh and several other States are following the same procedure. It is also further stated that under Section 11 of the Act, the electoral roll for Gram Panchayat shall be prepared by the person authorized by the Commission and accordingly the Commission in its letter No.194/SEC-B2/2006, dated 18-3-2006, which had been filed as annexure – II along with counter affidavit, authorized the District Panchayat Officers to prepare and publish electoral rolls of the Gram Panchayats. In the same letter, the Commission has given detailed instructions for the preparation of the Gram Panchayat, Mandal Parishad and Zilla Parishad electoral rolls. Thus, the specific stand taken by the Commission is that inasmuch as by virtue of the amending Legislation, this procedure had been adopted and the present electoral list drawn is in accordance with law. Further stand was taken by the Commission that under clause (4)

of Article 243-K of the Constitution of India, the Legislature of the State may, by law, make provision with respect of all matters in respect to or in connection with elections to the Panchayats. The Law made amending Section 11 of the Act adopting the Assembly electoral roll for the purpose of panchayat elections also is a law which is supported by clause (4) of Article 243-K of the Constitution of India. In the counter affidavit, **A.C.Jose** case (14 supra) already referred to supra also had been specified and further stand was taken that when the Parliament or the State Legislature made a valid Law under clause (4) of Article 243-K of the Constitution of India relating to or in connection with the elections, the Commission shall act in conformity with it and not in violation of such provision. When the amending Act is mandated that the Assembly electoral roll in toto to be adopted for Panchayat elections also, the Commission has no right to make additions or deletions unilaterally. Sections 11, 12 and 201 of the Act should all be regarded as laws made in pursuance of clause (4) of Article 243-K. The rules framed in G.O.Ms.No.254, Panchayat Raj, dated 4-8-2000, in pursuance of those sections are perfectly valid. The attach to Rules 2 and 5 hence are untenable. Since the Commission is bound by those laws and the rules made in

G.O.Ms.No.254, Panchayat Raj, dated 4-8-2000, the contention that the Commission abdicated its powers under Article 243-K has no force. Further stand had been taken relating to electoral rolls of Nadendla Gram Panchayat as prepared by the District Panchayat Officer are under the rules and it was stated that the same had been prepared in accordance with law. Relating to the other factual controversies, which had been raised in the affidavit filed, which in a way is an additional affidavit, pleading certain additional facts in support of amending application praying for the relief to be amended in view of the subsequent events, substantially the same had been denied. So in substance, the stand taken by the Commission is to the effect that present electoral lists drawn are in accordance with the amended Section 11 of the Act and this Legislation was made in pursuance of Article 243-K of the Constitution of India and hence the Commission had acted within the bounds and the same cannot be found fault.

122. The relevant constitutional provisions, the statutory provisions, the rules which were being framed by issuance of G.Os., from time to time, how they had been superseded and the ultimate rules at present holding the field, certain of the rules which are relevant, already had been referred to supra. The decisions on which the

reliance was placed by the Counsel representing the parties also in substance had been specified supra.

123. The Constitution Bench of the Apex Court in ***Chief Commissioner of Ajmer's case (26 supra)*** while dealing with validity or otherwise of the electoral list of a Municipal Committee observed as hereunder:-

“ Before the amendment of S. 30, sub-s. (2) of the Regulation by Act LXV of 1950 there were in existence sub-ss. (2) and (3) of that section which prescribed the qualifications for being enrolled as electors of the Municipality. They were, however, substituted by the amended S. 30, sub-s. (2) set out hereinabove. It thus substituted for the qualifications which had till then been considered requisite for such enrolment all the qualifications which were required for being registered in the electoral roll for the Parliamentary Constituency. That, however, was a provision prescribing the qualifications for, the purpose of such enrolment and the object of the amendment was to adopt the electoral roll for the Parliamentary Constituency as the basis for the electoral roll of the Municipality. It did not eliminate the further steps in the matter of the revision of such electoral roll as also the adjudication of claims to be enrolled therein and objections to such enrolments. The amendment did not obviate the necessity of taking these further steps in spite of the electoral roll for the Parliamentary Constituency

being treated as the electoral roll of the Municipality. By thus treating the electoral roll for the Parliamentary Constituency as the basis for the electoral roll of the Municipality, the trouble and expenses involved in the preparation of the electoral roll for the Municipality were saved but the Municipality was not absolved from the obligation of providing for the revision of such electoral roll as well as the adjudication of claims to be enrolled therein and objections to such enrolment.

It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned. It was in our opinion, therefore, necessary for the Chief Commissioner to frame rules in this behalf, and in so far as the rules which were thus framed

omitted these provisions they were defective.

It was urged that the expression "the final printed roll for the Parliamentary Constituency" predicated that the electoral roll for the Parliamentary Constituency had been finalised after going through the whole procedure in accordance with the provisions of the Representation of the People Act, 1950 (XLIII of 1950) and, therefore, there was no necessity for making any further provision of that nature in the matter of the electoral roll of the Municipality. This contention is unsound for the simple reason that by using this phraseology the whole of the procedure laid down in the Representation of the People Act, 1950 (XLIII of 1950) is not bodily incorporated in the Ajmer-Merwara Municipalities Regulation, 1925 (VI of 1925). Neither the Regulation nor the rules which have been framed by the Chief Commissioner in exercise of the powers conferred under S. 43 of the Regulation make any mention of any such incorporation nor is it possible to urge that, merely because the electoral roll for the Parliamentary Constituency was treated as the basis for the electoral roll of the Municipality, these provisions were bodily incorporated in the Rules. If Rr. 7 and 9 above referred to were intended to form a complete code for the finalisation of the electoral roll of the Municipality they did not serve the intended purpose and were either inconsistent with the provisions of S. 30, sub-s. (2) of the Regulation or were defective in so far as they failed to

provide the proper procedure for taking of the steps hereinabove indicated for finalising the electoral roll of the Municipality. If that was the true position the electoral roll of the Municipality which had been authenticated and published by the Chief Commissioner on 8/08/1955, was certainly not an electoral roll prepared in accordance with law on the basis of which the elections and poll to the Ajmer Municipal Committee could be held either on 9/09/1955, or at any time thereafter.

In the view which we hold, it is not necessary to consider whether, in the event of an inconsistency between S. 30, sub-s. (2) of the Regulation and the Rules framed by the Chief Commissioner in exercise of the power conferred under S. 43 of the Regulation, the section would prevail or the Rules. Suffice it to say that the electoral roll of the Ajmer Municipality which was authenticated and published by the Chief Commissioner on 8/08/1955 was not in conformity with the provisions of S. 3 sub-s. (2) and the relevant provisions of the regulation and could not form the basis of any valid elections to be held to the Ajmer Municipal Committee.”

The ‘2’ Judge Bench of the Apex Court in ***Pundlik v. State of Maharashtra (11 supra)*** while dealing with a fact situation, no doubt, slightly in a different context in relation to Maharashtra Cooperative Societies observed as hereunder:-

“ On merits, it is true that the High Court of Bombay has in several cases held that preparation of voters' list is an integral process of election and a court would not interfere at that stage. In this connection, our attention has been invited by the learned counsel to Dhondiba Parshuram lakde and Others v. Someshwar Sahkari sakhar Karkhana Ltd. and Others, someshwar Sahkari Sakhar Karkhana ltd. v. Srinivas Patil, Collector and shivnaryan Amarchand Paliwal v. Vasantrao Vithalrao Gurjar. Strong reliance was placed on Sant Sadguru janardan Swami. It was contended by the respondents that preparation of electoral roll is an interim stage in the process of election of the specified society and the court should not stay or interfere with the said election process.

We are unable to uphold the contention. In Sant Sadguru Janardan Swami, this court had an occasion to consider the relevant provisions of the Act and the Rules. Referring to Section 144 X of the Act, the court observed that preparation of list of voters is one of the stages of election. It is true that according to this Court, normally the High Court would not interfere in exercise of powers under Article 226 of the constitution at the stage of preparation of list of voters but such action must be in accordance with law.

In our considered opinion, the ratio laid down in Sant Sadguru Janardhan Swami does not apply to the facts of the case. In that case,

objections against publication of provisional electoral roll of the society were filed which were considered by the Collector and disposed of. Final electoral roll was published on July 2, 1999. Election programme was drawn by him on October 21, 1999. Thereafter, the petitioner filed a petition under Article 226 of the Constitution in the High Court. A prayer was made in the petition that the order passed by the collector on October 21, 1999 was required to be set aside. Obviously, therefore, the election process was already in motion and prayer of the petitioner was for quashing of Schedule for holding election. In the light of the factual position before the court, the petition was dismissed and it was held that the only remedy available to the aggrieved petitioner was to file election petition after the election is over in accordance with Rule 81 of the Rules.

The Court stated "in view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the

appellants to challenge the election of the returned candidate, if aggrieved by means of an election petition before the Election Tribunal. "

In the instant case, respondent Sangh had taken immediate action on receiving the fax message from respondent no. 2 - collector. As per the said communication by the Collector, an action could be taken for change of representative of respondent sangh latest by June 10, 2005. A meeting was, therefore, convened by issuing an agenda to that effect by respondent Sangh on June 2,2005. The meeting was accordingly convened on June 9,2005 and a resolution was passed being Resolution no. 7 wherein it was decided that instead of respondent no. 7, the appellant would represent respondent Sangh in the election of laha Sangh. Since the action was taken strictly in conformity with the provisions of rule 5 of the Rules as also the communication of respondent no. 2 - Collector dated may 30, 2005, respondent no. 2 ought to have effected the change. The ground put forward for rejecting the resolution was not correct inasmuch as in the agenda notice issued by respondent - Sangh dated June 2, 2005, subject no. 7 had clearly been mentioned and in pursuance of the said agenda notice, a meeting of the Managing committee of respondent - Sangh was convened and a decision was taken. The grievance of the appellant, therefore, was justified that by not

effecting the change and by ignoring the resolution passed by the managing Committee of respondent Sangh the Collector has acted contrary to law.

In our opinion, the learned counsel for the appellant is also right in submitting that if the order passed by respondent no. 2 is upheld, the provisions of sub-rule (2) of rule 5 will become nugatory and otiose. When the rule making authority conferred power on the Sangh to change the name of its representative/delegate by expressly permitting the change of representative/delegate and intimating the said fact to the collector, such right cannot be taken away or interfered with. Since the last date as per the communication of the respondent no. 2 - Collector was June 10, 2005, the action of respondent - Sangh was within the four corners of Rule 5 (2). The High court was, therefore, in error in not allowing the petition and granting the relief to the appellant.

We are also supported in taking this view by a recent three-Judge Bench decision in Ahmednagar Zilla S. D. V. and P. Sangh Ltd. and Another v. State of Maharashtra and others. In that case, election roll was prepared on the basis of bye laws which were held to be illegal. When the action was challenged it was contended that the court could not interfere with the list of voters prepared in accordance with the provisions of the Rules and the only remedy available to the aggrieved party was to

file election petition after the election was over. Reliance was placed on Sant Sadguru Janardan swami. The Court, however, distinguished sant Sadguru Janardan Swami and held that where the voters' list had been prepared on the basis of non-existent Rules, it would be illegal and the court could interfere under Article 226 of the Constitution.

In the case on hand, the respondent - sangh was within its authority conferred under the Rules to take an appropriate decision for change of its representative/ (2004)1 SCC 133 delegate within the stipulated period and such action had been taken by respondent sangh. The action of respondent no. 2 - collector in not effecting change was clearly in violation of Rule 5 (2) and could be challenged by filing a petition under Article 226 of the Constitution. In our opinion, the respondent no. 2 - Collector was duty bound to effect change of representative/delegate of respondent - Sangh.

124. Certain submissions were made in relation to this decision on the ground that inasmuch as this decision had not dealt with the constitutional bar and the Larger Bench had taken a different view, this decision need not be followed. In ***Manda Jaganath V. K.S.Rathnam (12 supra)*** it was held that the word 'election' has been judicially defined by various authorities of this Court to mean any and every act taken by the competent authority

after the publication of the election notification. Strong reliance was placed on a decision in ***Ponnuswami's case (8 supra)*** wherein it was held that the law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one which they are going on by invoking the extraordinary jurisdiction of the High Court under Art.226 of the Constitution and another after they have been completed by means of an election petition. This was quoted with approval in ***Mohinder Singh Gille's case (9 supra)***. Part IX of the Constitution the Panchayats was introduced by the Constitutional 73rd Amendment Act 1992 and Articles 243 to 243-O of the Constitution of India had been introduced. It is not as though the question relating to the bar imposed by Article 243-O of the Constitution of India whether applicable to the powers of judicial review to be exercised by the Constitutional Courts is falling for consideration for the first time. Several of the decisions were cited by the Counsel representing the parties. In ***ELECTION COMMISSION OF INDIA v. SHIVAJI (13 supra)*** where election notification was challenged relating to the inclusion of certain Z.Ps. in notified constituency, it was held that the remedy is by way of election petition. Strong reliance was placed on a decision of the learned

Judge of this Court in ***RAMACHANDRA RAO v. STATE OF A.P.(29 supra)*** wherein the learned Judge of this Court while dealing with the division of Municipality into territorial Constituencies called wards or allotment of seats to such wards or notification issued specifying the Offices of Chair Persons of Municipalities reserved to persons belonging to ST, SC and/or BCs at para 148 observed as hereunder:-

“In a democratic polity governed by rule of law and a written Constitution, every constitutional authority even while exercising power conferred under the Constitution should conduct one-self with utmost sense of respect to other Constitutional Authorities. For the fear of criticism nothing should be done in haste, for any action of a constitutional authority would be a ‘history in the making’ and it is just not a routine administrative action which is usually consigned to archives. No constitutional authority should assume that the written word in the Constitution is final and that any action would preempt this Court from prohibiting the ‘doing of a constitutional act’. There are large areas of ‘silence’ in the Constitution, including Part IXA of the Constitution. I am compelled to make these observations because on instruction from the Commission, its Counsel Sri V.V.Prabhakar Rao, submitted before this Court on 11-2-2000 at the closing hours of the Court proceedings, that the Commission is likely to issue a notification any day though

everybody concerned with Municipal elections were aware by that time that this Court is seized of the matter and that with the assistance and co-operation of all the learned Counsel was hearing the cases finally. The voters' lists in Municipalities were published on 27-1-2000, Commissioner of Municipal Administration issued Circular of guidelines for reservation on 20-1-2000, Government issued notifications under Chairpersons Rules, Mayor Rules, Ward Rules and Corporation Ward Rules on 5-2-2000 reserving offices and wards. When the authorities are completing all these steps, citizens approached this Court. These facts are 'res ipsa loquitur' that the action of the Commission in calling upon voters of Municipalities to elect representatives is not without hurry. But 'Rule of Law' and 'Democracy leave no alternative to the Court but to allow the' elections to be concluded according to time schedule so as not to retard or protract them and all disputes should be postponed till after the elections are over."

The learned Judge referred to the decision of ***Ponnuswami's case (8 supra)*** and also placed reliance on ***MEGHRAJ v. DELIMITATION COMMISSION (15 supra)***); ***IN RE PRESIDENTIAL ELECTION, 1974 (16 supra)***; ***P.MASTANAIAH v. DELIMITATION COMMR., NEW DELHI (27 supra)***; ***BASUDEV KHADANGA v. UNION OF INDIA*** ^[36]; ***STATE OF U.P. v. PRADHAN***

SANGH KSHETRA SAMITI (17 supra); PRADHAN SANGH KSHETRA SAMITI, JABALPUR v. STATE OF U.P. (28 supra); ANUGRAH NARAIN SINGH v. STATE OF U.P. (30 supra); LAKSHMI CHARAN SEN v. A.K.M.HASSAN UZZAMAN (18 supra) etc.

125. Further, strong reliance was placed on the decision of the Division Bench in **Smt. S.K.KHASIM BEE v. THE STATE ELECTION COMMISSIONER, HYDERABAD**^[37] and also **CHINNA NARSAPPA v. VENKAT REDDY**^[38].

126. Submissions at length were made attacking the view expressed by the '5' Judge Bench of this Court in **Fakruddin's case (7 supra)**. It may be appropriate to have a look at the relevant portions of this Judgment. The '5' Judge Bench of this Court while dealing G.O.Ms.No.755 dated 30-11-1994, Rules, provisions of the Act as amended by Act 5 of 1995 and Article 243-K of the Constitution of India held as hereunder:-

“The issue how and when extraordinary jurisdiction under Article 226 should be exercised by the Courts has come for consideration in recent Judgments of the apex Court and its pronouncements on it are available to guide us. Patanjali Sastri, C.J., who presided the Bench which pronounced the Judgment in B.P.Ponnuswami (AIR 1952 S.C.,

64) separately spoke about the duty of the constitutional Courts in *The State of Madras v. V.G. Row* (AIR 1952 S.C., 196) in the context of the challenge to the validity of Criminal Law Amendment Act (1908) (as amended in Madras by Madras Act 11 of 1950) in these words:

“Before proceeding to consider this question, we think it right to point out, what is sometimes overlooked, that our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution, unlike in America where the Supreme Court has assured extensive powers of reviewing legislative acts under cover of the widely interpreted ‘due process’ clause in the Fifth and Fourteenth Amendments. If, then, the Courts in this country face upto such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader’s spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the ‘fundamental rights’, as to which this Court has been assigned the role of a sentinel on the ‘quivive’. While the Court naturally attaches great weight to the legislative Judgments, it cannot desert its own duty to determine finally the constitutionality of an impugned statute. We have ventured on these obvious remarks because it appears to

have been suggested in some quarters that the Courts in the new set up are out to seek clashes with the legislatures in the country.”

Though in the minority Judgment of the Supreme Court in the course of noticing the evolution of law in this behalf, the Supreme Court has adverted to the above passage and commented in the case of *Kihota Hollohon v. Zachilhu* (AIR 1993 S.C., 412) in these words:

“More recently, Patanjali Shastri, C.J., while comparing the role of this Court in the Constitutional scheme with that of the U.S. Supreme Court, pointed out in the *State of Madras V.V.G.Row*, 195w2 SCR 597 (AIR 1952 SC.196) that the duty of this flows from express provisions in our Constitution while such power in the U.S. Supreme Court has been assumed by the interpretative process giving a wide meaning to the ‘due process’ clause. Sastry C.J., at p.605 (of SCR) : at (p.199 of AIR), spoke thus:.....

We are in respectful agreement with the above statement of Sastry, C.J., and wish to add that even though such an obvious statement may have been necessary soon after the Constitution came into force and may not be a necessary reminder four decades later at this juncture, yet it appears apposite in the present context to clear the lingering doubts in some minds. We have no

hesitation in adding further that while we have no desire to clutch at jurisdiction, at the same time we would not be deterred in the performance of this Constitutional duty whenever the need arises.”

Majority view in *Kihota's case* (AIR 1993 S.C., 412) as to the scope of the judicial review and in answer to the question whether the Constitution (52nd Amendment) Act 1985 insofar as it sought to introduce the 10th Schedule was destructive of the basic structure of the Constitution as it was violative of the fundamental principles of Parliamentary democracy, a basic feature of the Indian Constitutionalism and the question whether under the Indian Constitutional scheme, there is any immunity from constitutional correctives against a legislative perceived political evil of unprincipled defections induced by the lure of office and monetary inducements is stated after an indepth study in these words:

“In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under paragraph 6, the scope of judicial review under Articles 136 and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and

perversity.”

The Court said so on the face of the express language in paragraph 7 of the 10th Schedule of the Constitution introduced by the Constitution (52nd Amendment) Act, 1985 which provides: “bar of jurisdiction of Courts: Notwithstanding anything in this Constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a Member of a House under this Schedule”.

We must record in fairness to the learned Advocate-General that he has expressed his agreement with the view that the provisions as to the exclusion of the jurisdiction of the Court introduced from time to time by the Constitution Amendments including Article 243-O with which we are concerned bar the ordinary jurisdiction of the Court and not the extraordinary jurisdiction of the High Courts and the Supreme Court under Articles 226, 32 or 136 of the Constitution of India. Learned Counsel for the Union of India has however drawn out attention to the Judgment of the Supreme Court in *S.T.Muthusami V. K.Natarajan* (AIR 1988 S.C., 6161) to emphasise and reiterate what has always been the refrain of those who support the bar to the jurisdiction of the Constitutional Courts that as in respect of matters falling under Article 329 of the Constitution, so in respect of matters falling under Article 243-O thereof the bar applies to the High Court’s jurisdiction under Article 226 of

the Constitution. The pronouncement of the Supreme Court in the said case however is not based on any examination of the issue whether by the Constitution Amendment the Court's power under Article 226 of the Constitution can be taken away. We have on the other hand a clear statement in the Judgment of the Supreme Court in the case of Lakshmi Charan Sen vs. A.K.M.Hassan Uzzaman (AIR 1985 S.C., 1233) "The High Court acted within its jurisdiction in entertaining the Writ Petition and in issuing a Rule Nisi upon it, since the petition questioned the vires of the laws of election". The Court however in this Judgment observed "though the High Court did not lack the jurisdiction to entertain the Writ Petition and to issue appropriate directions therein, no High Court in the exercise of its powers under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything or direct anything to be done which will postpone that process indefinitely by creating a situation in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution. India is

an oasis of democracy, a fact of contemporary history which demands of the Courts the use of wise statemanship in the exercise of their extraordinary powers under the Constitution. The High Courts must observe a self-imposed limitation on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to Legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are a part of the process of 'election' within the meaning of Article 329 (b) of the Constitution. Although in the interim order of the Court, the above observations give us the Court's thinking in this behalf also as the Court reiterated the same in these words:

“The Order dated March 30, 1982 which we will presently reproduce, contains our reasons in support of this conclusion. Very often, the exercise of jurisdiction, especially the writ jurisdiction involves questions of propriety rather than of power. The fact that the Court has the power to do a certain thing does not mean that it must exercise that power regardless of the consequences.”

The preponderance of the judicial opinion and the view of the Supreme Court as expressed in various pronouncements leave no doubt in our

mind notwithstanding the bar that the bar is to the ordinary jurisdiction of the Courts and not to the extraordinary jurisdiction under Article 226 of the Constitution and Article 136 thereof. It is not necessary for us therefore to pronounce that Article 243 (O) is unconstitutional; simply it does not take away the power of this Court under Article 226 of the Constitution to examine the validity of any law relating to the elections including the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243-K of the Constitution. As respect challenge to the election or any intermediary stage in case there is an alternative effective and independent mechanism provided the Court shall abstain to interfere except on jurisdictional errors i.e., when infirmity is based on violation of constitutional mandate, mala fides, non-compliance with Rules of natural justice and perversity. It will be so for the reason of prudence as well as deference to the legislation by the Parliament in exercise of its constituent power.

Exercise of franchise of the citizens is the main stay of a democratic system. The Constitution of India has contemplated elections to the House of the People and the Legislative Assemblies of States to be on the basis of adult suffrage, that is to say, by the vote of every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by

or under any law made by the appropriate Legislature and is not otherwise disqualified under the Constitution or any law made by the appropriate legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice. The Constitution has retained adult suffrage for Panchayats and the Act has left no doubt about it by providing for the adaptation of the electoral roll of the Assembly Constituency. In Section 9 of the Act which provides for reservation of seats of members of Gram Panchayats and in which by an amendment by Andhra Pradesh Act No.5 of 1995 sub-Section (1-A) has been introduced, a reference is made to Section 7 for the purpose of fixing the number of seats for reserved categories. Sub-Section (1-A) of this Section has introduced the limit of reservation for the Backward Classes at 34% of the total number of offices of the members of Gram Panchayats in the State and provided that the number of seats allocated to each Gram Panchayat shall be allotted by rotation to different wards in the Gram Panchayats. Total strength of a Gram Panchayat is determinable on the basis of the population and the reservations for Scheduled Castes and Scheduled Tribes as well as Backward Classes have to be and we are informed are based on the population of such classes of people in the State. If population is left from reckoning and a territorial constituency is reserved in which adults eligible to vote are not falling in any reserved category, there can

be no election at all. Lottery might lead to such uncertainty and in any case it cannot work, except in a situation where representation in a ward or territorial constituency of different communities is almost matching. We are inclined for the said reasons to agree with the learned Counsel for the petitioners and hold that lorry is not an appropriate system. Learned Advocate-General has drawn our attention to a Judgment of the Madhya Pradesh High Court in Mukund Das vs. State (AIR 1992 M.P., 177) wherein some words appear to give the impression that a Bench of the Madhya Pradesh Court accepted that lottery can be a proper method to allot to a reserved category a particular Ward or Panchayat. A close examination, however, of the facts of the case and the law laid down by the Court shows that it approved of lottery in a situation where the population of males and females in different villages had been found to be practically equal in the ratio of 1:1 and, "with a view to give women the due representation for the earlier time consuming process of determining percentage of women in each Ward, lot system was applied by rotation". No exception can be taken to the principle laid down in the said Judgment. The time consuming process was not resorted to because the population of male and female almost equally matched and it hardly mattered which ward was reserved for women.

State Election Commissioner has chosen

to file an affidavit after the conclusion of the hearing of the cases and after his Counsel was heard in full by the Court, in which he has stated certain things which give the impression that he has acted as a desperate litigant who fears the verdict of the Court and adopts methods to somehow escape the inevitable. It deserve no mention in our Judgment and we would have ignored it completely had it not come from a person holding a constitutional authority. We however, reject the affidavit and record our disapproval to the method which the Courts have repeatedly deprecated. A constitutional authority should have the patience of Lord Krishna and the forbearance of Jesus Christ. He should be above suspicion like Ceasor's wife. We have no intentions to issue sermons but to remind ourselves that when occasions demand the Court should remind themselves of their duty and show the stick to those who defy its authority."

The learned Judge of this Court in ***Ramchandra Rao's case (29 supra)*** while dealing with the aforesaid Larger Bench decision observed at para 68 as hereunder:-

"the learned Counsel for the petitioners placed reliance on the Judgment of the Full Bench of five Judges of this Court in Fakruddin case (1995 (2) ALT 439). The Full Bench held that 'notwithstanding the bar as to jurisdiction of Court in regard to Panchayat elections that bar is to the ordinary jurisdiction of the Courts and not to

the extraordinary jurisdiction under Art.226 of the Constitution and Art.243-O (of Part IX of the Constitution) simply does not take away the power of High Court under Art.226, but as respects challenge to the election or any intermediary stage in case there is an alternative, effective and independent mechanism is available, the High Court shall abstain to interfere except on jurisdictional errors. Fakruddin case (1995 (2) ALT 439) also pointed out that the jurisdictional infirmity and error as including violation of Constitutional mandate, mala fides, non-compliance with rules of natural justice and preversity. The learned Advocate General has read out the order dated 8-4-1997 in Civil Appeal Nos.9345 – 9380 of 1995 (against the Judgment of the Full Bench in Fakruddin case (1995 (2) ALT 439) and would submit that in view of the order of the Supreme Court, the Judgment of the Full Bench does not preclude this Court again to examine the contentions of the Government regarding the bar of jurisdiction under Art.226 in the light of the specific Judgment of the Supreme Court dealing with Art.243-O (a) of Part IX of the Constitution. The order of the Supreme Court is as follows:

“It is agreed that the elections are over. The results have been declared. The successful candidates have taken the oath of office. In view of the subsequent event it is not proper for this Court to consider the matters in detail at this stage. It is open to the aggrieved parties, if so advised, to take

appropriate proceedings before appropriate forum wherein all the questions raised herein can be raised. If any proceedings are initiated, the appropriate forum will decide the matter as expeditiously as possible unfettered by the Judgment of the High Court. The appeals are dismissed accordingly.”

The view expressed in ***Fakruddin's case (7 supra)***, it is stated may have to be held as not good law relating to the maintainability of the Writ Petitions especially after the issuance of election notification in the light of the undernoted decisions which were strongly relied upon by the learned Counsel representing the respondents:-

ANUGRAH NARAIN SINGH v. STATE OF UTTAR PRADESH (30 supra); STATE OF U.P. v. PRADHAN SANGH KSHETRA SAMITI (35 supra); MOHINDER SINGH GILL v. CHIEF ELECTION COMMISSIONER NEW DELHI (9 supra); N.P. PONNUSWAMI v. RETURNING OFFICER, NAMAKKAL, SALEM DISTRICT (8 supra); BODDULA KRISHNAIAH v. STATE ELECTION COMMISSIONER, A.P. (32 supra); VADODARA DISTRICT COOPERATIVE SUGAR CANE PRODUCERS LIMITED VS. CHANDRA KANTH BHAJI (33 supra); SANT SADGURU

**JANARDAN SWAMY (MOINGIRI MAHARAJ)
SAHAKARI DUGDHA UTPADAK SANSTHA v.
STATE OF MAHARASHTRA (34 supra);
LAKSHMICHARAN SEN, ELECTION
COMMISSIONER VS. K.M.HASAN (18 supra).**

It is needless to say that *Mohinder Singh Gills' case (9 supra)* is a matter which arose under the Representation of Peoples Act wherein the Apex Court held as hereunder:-

“It is submitted by Mr. Rao that a Ponnuswami (AIR 1952 SC 64) (supra) the question was of improper rejection of nomination paper which is clearly covered by Section 100 (1) (c) of the Act. Counsel submits that the only ground which can be said to be raised in the election petition, in the present case, is Section 100 (1) (d) (iv), namely, non-compliance with the provision of the Constitution or of the Representation of the People Act, 1951, or of any rules or orders made under that Act. According to counsel, there is no non-compliance with Art. 324 of the Constitution as the Election Commission has no power whatsoever to pass the impugned order under Article 324 of the Constitution. That, according to him, is not "non-compliance with the provisions of the Constitution" within the meaning of Section 100 (1) (d) (iv). We are unable to accept this submission for the reasons already given. The Election Commission has passed the order professedly under Art. 324 and Section 153

of the Act. We have already held that the order is within the scope and ambit of Art. 324 of the Constitution. It, therefore, necessarily follows that if there is any illegality in the exercise of the power under Article 324 or under any provision of the Act, there is no reason why Section 100 (1) (d) (iv) should not be attracted to it. If exercise of a power is competent either under the provisions of the Constitution or under any other provision of law, any infirmity in the exercise of that power is, in truth and substance, on account of non-compliance with the provisions of law, since law, demands of exercise of power by its repository, as in a faithful trust, in a proper, regular, fair and reasonable manner. (See also *Durga Shanker Metha v. Thakur Raghuraj Singh* (1955) 1 SCR 267 : (AIR 1954 SC 520))

The above being the legal position, Art. 329 (b) rules out the maintainability of the writ application. Article 329 (b) provides that:

"notwithstanding anything in this Constitution..... no election to either house of Parliament.....shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.'

It is undisputed that an election can be challenged only under the provisions of the Act. Indeed Section 80 of the Act provides that "no election shall be called in question except by an election petition presented in accordance with the provisions of" Part VI of the Act. We find that that

all the substantial reliefs which the appellants seek in the writ application, including the declaration of the election to be void and the declaration of appellant No. 1 to be duly elected, can be claimed in the election petition. It will be within the power of the High Court, as the election court, to give all appropriate reliefs to do complete justice between the parties. In doing so it will be open to the High Court to pass any ancillary or consequential order to enable it to grant the necessary relief provided under the Act. The writ application is therefore barred under Art. 329 (b) of the Constitution and the High Court rightly dismissed it on that ground...”

In ***STATE OF U.P. AND OTHERS v. PRADHAN SANGH KSHETRA SAMITI AND OTHERS (31 supra)***

the ‘2’ Judge Bench of the Apex Court held as hereunder:-

“What is more objectionable in the approach of the High Court is that although clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the Courts in electoral matters including the questioning of the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in this connection, refer to a decision of this Court in *Meghraj Kothari V. Delimitation Commission (1967) 1 SCR 400 = AIR*

1967 S.C., 669). In that case a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved for the Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of Sections 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any Court of law. There was a very good reason for such a provision because if the orders made under Sections 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from Court to Court. Although an order under Section 8 or Section 9 of the Delimitation Commission Act and published under Section 10 (1) of that Act is not part of an Act of Parliament, its effect is the same. Section 10(4) of that Act puts such an order in the same position as a law made by Parliament itself which could only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-O in place of Article 327 and submissions 2 (kk), 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that

neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged nor the Court could have objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31-8-1994.

Before us, again, in order to prove its bona fides, the State Government voluntarily offered to hear the respondents with regard to their grievances and for that purpose to cancel the notification dated 26-11-1994 and reschedule the election process without prejudice to their contentions in the appeal. By our interim order dated 9-2-1995, we permitted the State Government to cancel its notification dated 26-11-1994, to hear the respondents with regard to their said grievances and to reschedule the election process. That order of 9-2-1955 is reproduced below:

“Pending the decision, we direct as follows:

The Governor may adopt the Notification issued by the Director of Panchayat Raj under Section 3 read with Section 11-F of the Uttar Pradesh Panchayat Raj Act, 1947 between 2-8-1994 and 5-8-1994 as his own proposals for the

purpose of specifying villages and constituting Gram Sabha and Panchayat areas under the Act. The Governor may thereafter or simultaneously issue a fresh notice inviting objections to the said proposals. He will give at least 10 days' clear time for lodging objections. He may also nominate officers to hear the said objections. After the objections are disposed of final notification or notifications will be issued by the Governor.

The notice inviting objections must be prominently displayed at least in the offices of all the Block Development Officers throughout the period fixed for filing the objections. In addition, wide publicity to such notice should be given on TV, Radio and in newspapers having wide circulation in the areas concerned.

It would not be necessary to give oral hearing to the objector unless the officer concerned considers it necessary to do so.

After the final notification/s is/are issued, the State Election Commissioner may proceed with the conduct of the elections.”

We understand that the grievances of the people in the areas have since been heard and the process of election is underway according to the revised schedule.”

Yet another '2' Judge Bench in ***Sant Sadguru Janardan Swamy's case (34 supra)*** observed as hereunder:-

“Claims and objections to provisional list of voters.- (1) When any provisional list of voters is published for inviting claims and objections, any omission or error in respect of the name or address or other particulars in the list may be brought to the notice of the Collector by any member of Society concerned who is a voter or any delegate authorised to vote on behalf of such Society. (2) Every person making a claim or raising an objection shall do so by a separate petition, which shall be presented to the Collector on or before the 31st July, during office hours. (3) Every claim or objection shall be preferred in writing and state the grounds on which the claim is based or the objection is raised, as the case may be. (4) xxx xxx (5) Notwithstanding anything contained in sub-rule (4) any person who is a member of the Society as on the 30th day of June of the year immediately preceding the year in which such election is due or on such subsequent date as may be fixed by the Collector under sub-rule (1) of Rule 4 and whose name is not included in the final list of voters prepared by the Collector under sub-rule (4) and who is desirous of being registered as a voter may apply in writing to the Collector in Form A within a period of fifteen days from the date of display of the final list of voters under Rule 7. (6) Every such application received by the Collector shall be forwarded by him within three days of the date of receipt by him to the District Deputy Registrar for enquiry. The District Deputy

Registrar shall cause an enquiry to be made into the application and submit his report to the Collector along with his recommendations within seven days from the date of receipt of the application by him from the Collector. (7) The Collector shall after considering the application and the report of the District Deputy Registrar give his decision in writing to the person concerned, before the first date fixed for making nominations. If the Collector decides that the name of the applicant should be registered as a voter, he shall accordingly modify the list finalised by him earlier under sub-rule (4) and the list so modified shall then be treated as the final list of voters. (7) Final list of voters.-Copies of the final list of voters of every Society shall be displayed on the notice board of offices of the Collector, the District Deputy Registrar and the Society. (8) Power to Collector to alter dates for list of voters - NOTWITHSTANDING anything contained in the foregoing rules, the Collector may, in the case of all or any of the societies of the categories mentioned in clauses (i), (v), (vi) and (vii) of sub-section (1) of Section 73g in consultation with the Registrar, and in the case of all or any of the societies of the categories mentioned in other clauses of sub-section (1) of Section 73g in consultation with the District Deputy Registrar, by general or special order, alter all or any of the dates prescribed therein and appoint such revised dates as he deems fit. (8) Appointment of Returning Officers. THE

Collector shall whenever necessary appoint a Returning Officer for one or more constituencies of a Society as specified in its bye-laws; provided that, in case where no other person is appointed as a Returning Officer, the Collector himself shall be deemed to be the Returning Officer and shall perform all the functions of a Returning Officer under these rules. "7. In the light of the aforesaid provisions of Chapter XIA of the Act and the Rules, we will examine as to whether preparation of electoral rolls is an intermediate stage in the process of election. The provisions referred to above shows that Chapter XIA was enacted and the rules were framed specially to deal with the election of the specified societies under Section 73g of the Act. Section 144x provides that various stages of election shall also include preparation of the list of voters. Once the statute provides that the preparation of the voters' list shall be part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified Society. This matter can be examined from another angle. A perusal of the Rules discloses that the preparation of provisional list of voters, filing of objection against the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of

specified societies are complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the scheme of the Act and Rules, the preparation of voters' list must be held to be part of the election process for constituting Managing Committee of a specified Society. In *Someshwar Sahakari Sakhar Karkhana Ltd. Someshwarnagar v. Shrinivas Patil, Collector, Pune*, 1992 Maha. L J 833, it was held that in the scheme of the provisions of the Act and the Rules, the preparation of the list of voters for election to the Managing Committee of a specified Society is an intermediate stage in the process of the election. Similar view was taken in *Shivnarayan Amarchand Paliwal v. . Vasantrao Vithalrao Gurjar*, 1992 Mah LJ 1052. However, in *Karbhari Maruti Agawan v. State of Maharashtra* 1994 Mah L J 1527, although it was held that the preparation of the list of voters is an intermediate stage in the process of election, but that does not debar the High Court to entertain a petition under Article 226 of the Constitution challenging the validity of the electoral roll. It appears that the consistent view of the Bombay High Court on the interpretation of Chapter XIA of the Act and the Rules framed thereunder is that the preparation of electoral roll is an intermediate stage of the election

process of the specified societies. This being the consistent view of the High Court on the interpretation of provisions of a State Act, the same is not required to be disturbed unless it is shown that such a view of the High Court is palpably wrong or ceased to be good law in view of amendment in the Act or any subsequent declaration of law. We are, therefore, of the view that the preparation of the electoral roll for election of the specified Society under Chapter XIA and the Rules framed thereunder, is an intermediate stage in the process of election for constituting Managing Committee of a specified Society.

If the contention of the appellant is that if there was a breach of rule or certain mandatory provisions of the rules were not complied with while preparing of the electoral roll, the same could be challenged under Rule 81 (d) (iv) of the Rules by means of an election petition. In view that, the preparation of electoral roll is part of the election process and if there is any breach of the rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election by means of an election petition before the tribunal.”

Likewise yet another ‘2’ Judge Bench in ***Anugrah Narain***

Singh’s case (30 supra) observed as hereunder:-

“In our view the argument advanced on behalf of the State must be upheld. It is true that Article 243-P(g) has defined ‘population’ to mean

“population as ascertained by the last preceding census of which the relevant figures have been published”. The delimitation of constituencies and also preparation of electoral rolls will have to be done on the basis of the figures available from the last census which was taken in 1991. Reservation of seats for Scheduled Castes and Scheduled Tribes is mandatory under Article 243-T of the Constitution. This must also be done on the basis of the available figures from the census. Clause (6) of Article 243-T of the Constitution has made it permissible for the State Government to reserve seats for other Backward Classes. The census of 1991 has not enumerated the number of persons belonging to Backward Classes. Therefore, in order to reserve seats for citizens belonging to Backward Classes, their number will have to be found out. Clause (6) of Article 243-T has impliedly empowered the State Government to ascertain the Backward Classes and the number of people belonging to such classes. Otherwise, the provisions of clause (6) of Article 243-T will become otiose and meaningless. Merely because, such an enumeration of people belonging to Backward Classes was made, does not mean that the figures enumerated by the last census were discarded. The latest available census figures had to be the basis for delimitation of the constituencies, preparation of electoral rolls and also for reservation of seats for Scheduled Castes, Scheduled Tribes and women. But census figures are not available for persons

belonging to Backward Classes. The next census will be in the year 2001. There is no way to reserve seats for Backward Classes in the meantime except by making a survey of the number of persons belonging to such classes for the purpose of giving them assured representation in the municipal bodies. To do this exercise is not to do away with the last available census figures but to find out what was not to be found by the last census. Had such counting been done in the census, then it would not have been open to the State Government to embark upon a survey of its own. The State Government here had only two choices. It would say that there will be no reservation for people belonging to Backward Classes because, the census figures of such people are not available or it could make a survey and count the number of people belonging to the Backward Classes and reserve seats for them in the municipal bodies. The State Government has taken the latter course. This is in consonance with the provisions of clause (6) of Article 243-T. Therefore, the survey made by the State Government for finding out the number of persons belonging to Backward Classes was not in any way contrary to or in conflict with any of the provisions of the Constitution.

Moreover, the U.P. Act of 1959 was amended to make it consistent with the provisions of Part IX-A of the Constitution. 'Population' was defined in Section 2 (53-A) to mean "population as ascertained at the last preceding census of which the relevant figures

have been published”. This is identical to the definition given in Article 243-P(g). Section 32 which deals with delimitation, inter alia, provides that the State Government shall by order determine the number of seats to be reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and for women. Section 7 lays down that in every Corporation, seats shall be reserved for Scheduled Castes, Scheduled Tribes and Backward Classes. There is a second proviso to Section 7 which lays down that if the figures of Backward Classes are not available, their population may be determined by carrying out a survey in the manner prescribed by the rules. These provisions come within the ambit of the phrase “any law relating to the delimitation of the constituencies or allotment of seats to such constituencies”. The validity of this law cannot be challenged because of the protection given by Article 243-ZG of the Constitution. Therefore, the question whether the survey made by the State Government to ascertain the figures of persons belonging to Backward Classes was lawful or not cannot be raised in any Court.”

However strong reliance was placed on a decision of ‘3’ Judge Bench in ***Boddula Krishnaiah’s case (32 supra)*** wherein the following views had been expressed by the Apex Court:-

“ Article 243 (o) of the Constitution envisages bar on interference by Courts in election matters. Notwithstanding anything

contained in the Constitution, under sub-clause (b) "no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State". Thus there is a constitutional bar on interference with the election process except by an election petition, presented to an Election Tribunal as may be made by or under law by the competent Legislature and in the manner provided thereunder. Power of the Court granting stay of the election process is no longer *res integra*.

In *N. P. Punnuswami v. Returning Officer, Namakkal Constituency*, 1952 SCR 218 : (AIR 1952 SC 64), a Constitution Bench of this Court had held that having regard to the important functions which the Legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of election should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. In conformity with the principle, the scheme of the election law is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which under the law by which elections are governed would have the

effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special Tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress.

The same principle was laid down in *Lakshmi Charan Sen v. A. K. M. Hassan Uzzaman*, (1985) Supp (1) SCR 493 : (AIR 1985 SC 1233). In this case where the election process was set in motion the High Court granted ad interim injunctions of the further proceedings of the election to the State Legislature. A Constitution Bench of this Court had held thus (Para 28 of AIR) :-"the High Court acted within its jurisdiction in entertaining the writ petition and in issuing a Rule Nisi upon it, since the petition questioned the vires of the laws of election. But, it was not justified in passing the interim orders dated February 12 and 19, 1982 and in confirming those orders by its judgment dated 25/02/1982. Firstly, the High Court had no material before it to warrant the passing of those orders. The allegations in the writ petition are of a vague and general nature, on the basis of which no relief could be granted. Secondly, though the High Court did not lack the jurisdiction to entertain the writ petition and to issue appropriate directions therein, no High Court in the exercise of its power under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonable imminent and in

relation to which its writ jurisdiction is invoked. The High Courts must observe a self-imposed limitation on their power to act under Article 226, by refusing to pass orders or giving directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are a part of the process of 'election' within the meaning of Article 329 (b) of the Constitution. "at page 497 it was further held that : "even assuming, that the preparation and publication of electoral rolls are not a part of the process of 'election' within the meaning of Article 329 (b), the High Court ought not to have passed the impugned interim orders, whereby it not only assumed control over the election process but, as a result of which, the election to the Legislative Assembly stood the risk of being postponed indefinitely. "

The same principle was reiterated when the election to the Gram Panchayat was sought to be stalled in *State of U. P. v. Pradhan, Sangh Kshetra samiti*, (1995) Supp (2) SCC 305 : (1995 AIR SCW 2303). The Court observed thus : "what is more objectionable in the approach of the High Court is that although Clause (a) of Article 243 (o) of the Constitution enacts a bar on the interference by the Courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or

the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any Panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in this connection, refer to a decision of this Court in *Meghraj Kothari v. Delimitation Commission*, (1967) 1 SCR 400 : AIR 1967 SC 669. In that case, a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved for the Schedule Castes. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of Sections 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any Court of law. There was a very good reason for such a provision because if the orders made under Sections 8 and 9 were not to be treated as final, the results would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from Court to Court. Although an order under Section 8 or Section 9 of the Delimitation Commission Act and published under Section 10 (4) of that Act puts such an order in the same position as a law made by parliament itself which could be made by it under Article 327. If we read Articles 243-C, 243-K and

243-O in place of Article 327 and Sections 2 (kk), 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the Panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged nor the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31-8-1994.”

Apart from the decisions already referred to supra, **Chief Commissioner of Ajmer's case (26 supra) and Pundlik's case (11 supra)** to further substantiate their contentions in relation to the **Fakruddin's case (7 supra)** further strong reliance was placed on **BAR COUNCIL OF DELHI v. SURJEET SINGH (19 supra); RAMGULAM SHRI BAIJNATH PRASAD v. THE COLELCTOR, DISTRICT GUNA AND OTHERS^[39]; and KANGLU BAULA KOTWAL AND ANOTEHER v. CHIEF EXECUTIVE OFFICER, JANPAD SABHA, DURG AND OTHERS^[40]** .

127. Before further proceeding with the discussion, it may also be relevant to appreciate the decision of the Full Bench of this Court (of a strength of '3' Judges) in ***KALLA RAMAKRISHNA v. STATE ELECTION COMMISSION, HYDERABAD (35 supra)*** wherein the Full Bench while dealing with improper rejection of nomination papers held as hereunder:-

“The negative language used in Article 243-0(b) is pari material same as in Article 329(b), namely, no election shall be called in question except by an election petition presented to such an authority and in such manner as provided for by any law made by the Legislature of a State. The same negative language is used in Section 233 of A.P. Panchayat Raj Act, 1994, which contemplates, that any election conducted under the Act can be questioned by way of an election petition in accordance with the rules as may be made in that behalf. Even Tribunal's Rules, 1995 provide the procedure to challenge such election, which includes rejection of the nomination as per the various decisions as referred to above. The rejection of the nomination even as per the ratio in Manda Jagannath's case (supra), where an exception seems to have been carved out, as referred to above, will not have the effect of stalling or stopping the progress of the election where this Court can interfere with such an order.

We are, therefore of the considered view that the Supreme Court right from Ponnuswami's case (supra) has consistently laid down the law

that election covers the entire process i.e., from the issue of the notification under the relevant legislation to the declaration of the result. Having regard to the important functions which the Legislatures have to perform in democratic countries, it had always been recognized to be a matter of first importance that elections should be concluded as early as possible according to the time schedule and all controversial matters and all disputes arising out of elections should be postponed till the elections are over. The person interested in questioning the elections has to wait till the election is over and institute a petition in accordance with the law calling in question the election of the successful candidate. Any matter, which has the effect of vitiating an election, should be brought up only at appropriate stage in an appropriate manner before a Special Tribunal constituted for the purpose and should not be brought up at an intermediate stage before any Court. In other words, in election matters, only one remedy is available, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. High Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers.”

128. The ‘3’ Judge Bench of the Apex Court while dealing with ***Bar Council of India Delhi Election Rules***

1968 (19 *supra*) held as hereunder:-

“ We, therefore, hold that the impugned proviso to R. 3 (1) to the Delhi Bar Council Election Rules is ultra vires and invalid and the electoral roll prepared by the Delhi Bar Council on the basis of the same resulting in the exclusion of the names of about 2,000 advocates from the said roll was not valid in law. We are further of the opinion that the whole election was invalid on that account and it could be challenged as such in a writ petition. It was not a case of challenging the preparation of the electoral roll on the factual basis of wrong exclusion of a few names. For the said purpose R. 4 occurring in Chapter I of the Bar Council of India Rules could come into play. But here, because of the invalidity of the Rules itself, the preparation of the electoral roll was completely vitiated-a matter which cannot be put within the narrow limit of the said rule.

The illegal preparation of the electoral roll by the Delhi Bar Council on the basis of the invalid proviso to R. 3 (j) goes to the very root of the matter and no election held on the basis of such an infirmity can be upheld. There is no question of the result being materially affected in such a case.

Mudholkar, J. , delivering the leading and the majority judgment of a Full Bench of the Nagpur High Court in *Kanglu Baula Kotwal v. Chief Executive Officer, Janpad Sabha, Durg* (AIR 1955 Nag 49), rejected the plea of estoppel to challenge the election at page 58, para 25 in these terms:-"as regards the petitioners who were

also candidates at the elections but were defeated, the learned counsel said that those who took their chances at the elections and failed should not now be allowed to challenge elections of their opponents on the ground that the electoral polls were defective. The plea is in substance one of estoppel. There can be no question of any estoppel, because it cannot be said that the position of the other side has in any way altered by reason of something done or not done by the petitioners. "we are of the view that neither the principle of estoppel not the principle of approbation and reprobation can be pressed into service in this case.

In Chief Commissioner, Ajmer v. Radhey Shyam Dani, (1957) SCR 68: (AIR 1957 SC 304) the respondent before the Supreme Court had filed a writ petition in the Court of Chief Commissioner of Ajmer challenging the validity of the notification directing the holding of the election of the Ajmer Municipality and the electoral roll. This challenge was made before the election was held. Since the electoral roll prepared was found to be invalid as it was prepared in accordance with some invalid rules, a Constitution Bench of this Court upheld the decision of the Chief Commissioner. At page 75, Bahgwati J. , speaking for the Court said:-"it is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the

parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned. It was in our opinion, therefore, necessary for the Chief Commissioner to frame rules in this behalf, and in so far as the rules which were thus framed omitted these provisions they were defective. "finally at pages 76 and 77 it was said:-"if Rules 7 and 9 above referred to were intended to form a complete Code for the finalisation of the electoral roll of the Municipality they did not serve the intended purpose and were either inconsistent with the provisions of S. 30, sub-sec. (2), of the Regulation or were defective in so far as they failed to provide the proper procedure for taking of the steps hereinabove indicated for finalising the electoral roll of the Municipality. If that was the true position the electoral roll of the Municipality which had been authenticated and published by the Chief Commissioner on Aug. 8, 1955, was certainly not an electoral roll prepared in accordance with law on the basis of which the elections and poll to the Ajmer Municipal Committee could be held either on 9/09/1955, or

at any time thereafter. "in the instant case the electoral roll was prepared on the basis of a rule which has been found to be void and ultra vires. That being so, even though the contesting respondents came to challenge the election after it was held, they could do so because of the gravity of the infraction of the law in the preparation of the electoral roll. Dani's case (supra) was followed by the Patna High Court in two decisions. In Parmeshwar Mahaseth v. State of Bihar, AIR 1958 Pat 149 and Umakant Singh v. Bindra Chaudhary AIR 1965 Pat 459. After quoting a passage at page 153 from Dani's case Kanhaiya Singh J. said in Parmeshwar Mahaseth's case at the same page in para 14 thus:-"it was urged by the learned Government Advocate that the election cannot be disputed except by an election petition, as laid down in R. 62 of the Election Rules. He submitted that petitioner 9 had already filed an election petition after the presentation of this writ application. This contention is not valid. What is challenged here is not the election of a particular candidate, but the validity of the entire election, because of the violation of the essential provisions of the Election Rules and the Act. I think, R. 62 provides for a case where a person challenges the election of a particular candidate, I would overrule the objection. "in Umakant's case the Court quoted the passage from Dani's case from page 461 and finally expressed the view in para 12 at page 462 in these terms:-"mr. Shankar Kumar appearing for respondents 6 and 7 submitted that the election

ought to have been challenged by following the machinery provided in Rule 148 of the Rules, and this Court, in exercise of its power under Art. 226 of the Constitution, should not interfere with the election when a special machinery was provided for challenging it. I am unable to accept this argument. It is the well settled view of the Court that if the entire election is challenged as having been under statutes or statutory rules which are invalid or by committing illegalities which make the entire election void, it can be quashed by grant of a writ in the nature of certiorari. "

The Division Bench of the Madhya Pradesh High Court in ***Ramgulam's case (39 supra)*** held that the remedy under Article 226 of the Constitution of India is an extraordinary remedy and no election can be allowed to be maintained on the basis of electoral roll which is not prepared in accordance with law. In fact, the Division Bench of the Madhya Pradesh High Court relied on a decision in ***HAFIZ MOHAMMAD ANWARKHAN v. STATE OF M.P.*** ^[41] and also the decision of the Full Bench of the Nagpur High Court in ***KANGLU BAULA KOTWAL's case (40 supra)***

129. It is not in serious controversy that by virtue of the introduction of the Constitutional Amendments 73rd and 74th, the status of these local bodies in a way had been

elevated. It is also needless to say that the Constitution to be live to carry out the cherished aspirations of the people of the democracy and the Courts are expected to rise to the occasion in keeping up such aspirations. The well-known principles in relation to the interpretation of the Constitutional provisions need no repetition at the hands of this Court in the light of the judicial journey from A.K.Gopalan to Bihar Assembly Dissolution. Before dealing with, the statute law and the subordinate legislations governing the field, further it may not be out of context if this Court refers to the view expressed by the Full Bench of this Court in ***Sakinala Harinath V. State of A.P.*** ^[42] wherein the Full Bench of this Court declared Article 323-A (2) of the Constitution of India as unconstitutional to the extent it empowers Parliament to exclude the jurisdiction of the High Courts under Article 226 of the Constitution of India. This decision in a way was quoted with approval which was the subject matter of ***CHANDRA KUMAR v. UNION OF INDIA (21 supra)*** at p.1136 wherein it was held as hereunder:-

We may now apply ourselves to analysing the decision which has been impugned in one of the matters before us, C. A. No. 169 of 1994. The judgment, Sakinala Harinath, v. State of A. P., (1994(1) APLJ (HC) 1), rendered by a full Bench of the Andhra Pradesh High Court, has declared

Article 323A (2)(d) of the Constitution to be unconstitutional to the extent it empowers Parliament to exclude the jurisdiction of the High Courts under Article 226 of the Constitution; additionally, Section 28 of the act has also been held to be unconstitutional to the extent it divests the High Courts of jurisdiction under Article 226 in relation to service matters.

The judgment of the Court, delivered by M. N. Rao, J. has, in an elaborate manner, viewed the central issues before us against the backdrop of several landmark decisions delivered by Constitution Benches of this Court as also the leading authorities in comparative constitutional law. The judgment has embarked on a wide-ranging quest, extending to the American, Australian and British jurisdictions, to ascertain the true import of the concepts of 'judicial power', 'judicial review' and other related aspects. The judgment has also analysed a contention based on Article 371D of the Constitution, but, since that aspect is not relevant to the main controversy before us, we shall avoid its discussion.

The judgment of the Andhra Pradesh High Court has, after analysing various provisions of our Constitution, held that under our constitutional scheme the Supreme Court and the High Court are the sole repositories of the power of judicial review. Such a power, being inclusive of the power to pronounce upon the validity of statutes, actions taken and orders passed by individuals and bodies falling within the ambit of the expression "State" in Article 12 of the

Constitution, has only been entrusted to the constitutional courts, i.e., High Courts and this Courts. For this proposition support has been drawn from the rulings of this Court in *Kasavananda Bharati v. State of Kerala*. (1973) 4 SCC 225: (AIR 1973 SC 1461), Special Reference No. 1 of 1964, (1965) 1 SCR 413 : (AIR 1965 SC 745), *Indira Nehru Gandhi v. Raj Narain*, 1975 (Supp) SCC 1 : (AIR 1975 SC 2291). *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625 : (AIR 1980 SC 1789), *Kihoto Hollohan v. Zachillu*, 1992 Supp (2) SCC 651 and certain other decisions, all of which have been extensively analysed and profusely quoted from.

130. The well settled basic structure and the power of judicial review to be exercised by the Constitutional Courts cannot be undermined or whittled down in the light of the view expressed in ***Chandra Kumar's*** case (21 supra). It is definitely doubtful to accept with such contention of imposing an absolute bar or embargo on the powers of this Court by virtue of Article 243-O of the Constitution of India. If this interpretation to be accepted then the hands of the Constitutional Courts would be tied and the real grievance also cannot be remedied. This Court is making it very clear that it is one thing to say that the Constitutional Courts have no power at all and it is yet another thing to say whether in a particular given case such powers to be exercised either under Article 226 or Article 32 of the

Constitution of India, as the case may be. In the light of the same, though in the light of the matter in ***Fakruddin's case (7 supra)*** having been carried away to the Apex Court certain observations were made by the learned Judge of this Court, this Court is of the considered opinion that as far as the bar said to have been imposed under Article 243-O of the Constitution of India, the Constitutional Court is concerned, this Court is in total agreement with the views expressed in ***Fakruddin's case(7 supra)***. If Article 243-O of the Constitution of India to be interpreted in such a way, as contended by the respondents, as barring the jurisdiction of Constitutional Courts and in relation to exercising powers of judicial review, this Court is afraid that the same may have to be held to be invalid as offending basic structure theory in the light of ***Kesavananda's case (2 supra)***. Such interpretation may lead to absurdity. It is needless to say that ***Kesavananda's case (2 supra)*** and ***Chandrakumar's case (21 supra)*** are binding decisions on this Court.

131. In evaluating the broad scheme, spectrum and the constitutional provisions commencing from Preamble this is the only irresistible conclusion at which this Court can arrive at, no other alternative conclusion is possible.

132. Now the next question would be whether in these

batch of cases inasmuch as after the filing of the cases and after an order was made by the Division Bench, just subsequent thereto Election notification was issued on 10-6-2006, this Court can exempt all the aspects or throw out these Writ Petitions at the threshold in the light of the objections which had been taken in the respective counter affidavits. It is needless to say that the present discussion will be more concerned with the Statute Law and the Subordinate Legislation.

133. The A.P. Panchayat Raj Act, 1994 (referred to as 'Act' as already specified supra) is an Act to provide for the constitution of Gram Panchayats, Mandal Parishads and Zilla Parishads and for matters connected therewith or incidental thereto. Section 2 of the Act deals with Definitions. Section 2 (11) of the Act defines 'election authority' as in this Act unless the context otherwise requires "election authority" means such authority not being a member or office bearer of any local authority as may, by notification, be appointed by the State Election Commissioner. Section 2 (30) of the Act defines "prescribed" as "prescribed" means prescribed by the Government by rules made under this Act. These provisions, in fact, already had been referred to supra. Section 11 of the Act already had been specified above. The opening portion reads as hereunder:-

“The electoral roll for Gram Panchayat shall be prepared by the person authorised by the State Election Commissioner in such manner by reference to such qualifying date as may be prescribed..”

Strong reliance was placed on the proviso and the other part of sub-Section (1) of Section 11 so as to defend the action of the Commission at present in adopting the electoral list drawn in accordance with Section 22 and 23 of the R.P.Act 1950 and also the procedure to be followed in accordance with Rules 20 and 23 of the Electoral Registration Rules of 1960 framed thereunder to make it clear. The stand taken by both the Government and the Commission appear to be that no doubt by virtue of the supersession of all the prior G.Os., G.O.No.254 in relation to this field and in the light of the amended provision, they are entitled to fall back the procedure as contemplated by the provisions of the R.P.Act and the rules framed thereunder. Hence, there is absolutely no illegality and this action of drawing the electoral list cannot be found fault at all. Section 200 of the Act deals with Constitution of State Election Commission, Section 201 deals with Powers and functions of the State Election Commissioner and sub-Section (3) may be relevant wherein it is specified that for the purposes of this section the Government shall provide the State Election Commission with such staff as may be

necessary. It may not be out of context if this Court refers to the proviso of Section 200 (3) wherein it is specified that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. This safeguard conferred on the constitutional functionary would clearly go to show that the Election Commissioner as a constitutional functionary is entitled to discharge his duties and also carry on the constitutional obligations. It is needless to say that the provisions of the Constitution are to be interpreted in accordance with the settled principles and it is needless to say that the Legislation if any referred to under Section 11 (1) though if it is taken to be perfected by virtue of Article 243-K (4) of the Constitution of India either these provisions are to be harmoniously construed and in the event of this Court coming to the conclusion that the constitutional obligations are the imperatives cannot be carried if such interpretation is to be given, such interpretation in favour of in accordance with the provisions of the constitution to be upheld. It is needless to say that this is yet another settled principle of interpretation. Section 268 of the Act deals with the Power of Government to make rules for the purpose of this Act.

Sub-Section (2)(i) of the Act specifies in particular and without prejudice to the generality of the foregoing power, the Government may make rules as to all matters under this Act relating to electoral rolls or the conduct of elections, not expressly provided for in this Act, including deposits to be made by candidates standing for election and the conditions under which such deposits may be forfeited, and the conduct of inquiries and the decision of disputes relating to electoral rolls or elections. Section 268 clause xxiv specifies as to the manner of publication of any notification or notices to the public under this Act. It is true that the Act under Section 268 had used the word “may”. The relevant portion of G.O.Ms.No.898 which had been already specified supra may be extracted hereunder for the purpose of convenience:-

In exercise of the powers conferred by sub-section (1) and clause (1) of sub-section (2) of Section 268 read with Section 11 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act No.13 of 1994), the Governor of Andhra Pradesh hereby designates and appoints the Officers specified in column (1) of the Table below to perform the powers and functions of the Officers specified in the corresponding entry in column (2) thereof, within their jurisdiction.

TABLE

(1)	(2)
1. District Collector	District Electoral Officer
2. Revenue Divisional Officer/ Sub-Collector/Assistant Collector	Appellate Officer
3. Mandal Revenue Officer	Electoral Registration Officer in respect of the Gram Panchayats under his jurisdiction.
5. Extention Officer (Panchayats) Extention officers (Rural Development) Mandal/Parishad Educational Officer, Women and Child Welfare Officer, Agriculture Officer and also Divisional Panchayat Officer where the Extension Officer (Panchayats) are not sufficient in number	Assistant Electoral Registration Officer

134. The commencing portion of G.O.Ms.No.254 itself reads as hereunder:-

“In exercise of the powers conferred by clause (i) of sub-section (2) of Section 268, read

with Section 11, sub-section (2) of Section 151 and sub-section (2) of Section 179 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act No.13 of 1994), and in supersession of the rules issued in G.O.Ms.No.879, PRRD & R (Elecs.I) Department, dated 3-12-1994 G.O.Ms.No.898, PRRD & R (Elecs.I) Department, dated 10-12-1994, G.O.Ms.No.913, PRRD & R (Elecs.I) Department, dated 21-12-1994, and G.O.Ms.No.923, PRRD & R (Elecs.I) Department, dated 28-12-1994, the Governor of Andhra Pradesh hereby makes the following Rules relating to preparation and publication of electoral rolls under the said Act, for a Gram Panchayat, Mandal Parishad and Zilla Parishad, or any portion thereof.”

135. Rule 2 and Rule 5, already had been referred to supra, the validity of these Rules also had been incidentally questioned if need be held to be invalid. Section 3 (51) of General Clauses Act 1867 defines rules which already had been specified supra. On a careful analysis of the provisions of the Act except the amending provision which had been pointed out in Section 11, the adoption of the Rules otherwise had not been specified anywhere else and the rule making power in this regard appears to be explicit and clear. In **RAMESH BIRCH v. UNION OF India (22 supra)** it was held that if a power to extend or apply laws to a territory is validly conferred on the executive it can be exercised only when

there is a vacuum, complete absence of laws on a given subject but it cannot be exercised when it brings about express or implied repeal or when it is in conflict with or repugnant to an existing law. In **CONSTITUTION OF INDIA AND DELHI LAWS ACT 1912 ETC. v. UNION OF**

INDIA ^[43] it was held at para 243 as hereunder:-

“ The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the frame work of that policy.

"So long as a policy is laid down and a standard established by statute no constitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the legislation is to apply." (Vide 'A. L. A. Schechter Poultry Corp. v. United States', 295 US 495)..."

136. The Full Bench decision in **KANGLU BAULA v. CHIEF EXECUTIVE OFFICER (40 supra)** observed as hereunder:-

“I will assume for the purposes of these cases that it is open to the petitioners to file an election petition though I doubt whether in view of

the rules made under S.182 (2)(ix) it is possible for the petitioners to obtain the relief they now seek in the election petition. In support of the argument that a remedy by way of a writ is excluded reference was made by – Shri Hazarnavis to ‘Reg V. Miles’ (1895) 72 LT 502 (C); ‘Commr. For Local Govt. Lands & Settlement V. Abdulhusein’, AIR 1931 PC 132 (D), and ‘Ryots of Garabandho v. Zemindar of Parlakimedi’ AIR 1943 PROCEDURE 164 (E). These cases merely lay down that issue of a writ of mandamus or ‘certiorari’ is in the discretion of the Court and where another remedy is open the Courts should not, ordinarily, interfere but not that they cannot interfere. Again, it cannot be disputed that the powers of this Court under Art. 226 are untrammelled by a law made by the Legislature and even though S.22 of the Local Government Act says that elections can be challenged only by way of an election petition before a Tribunal which is derived from the Constitution can in no way be affected. The proposition is so obvious that no authority is needed to support it. But as a different view has been expressed in some cases, it would be well to refer to the decision of the Supreme Court in – ‘Raj Krushna v. Binod’, AIR 1954 S.C., 202 (F), which arose out of a case under the Representation of the People Act, 1951.

No doubt, this Court has held in several cases that where another remedy which is equally convenient is open to a person it would not ordinarily interfere. But neither this Court nor

the Supreme Court has held that the existence of another remedy is, in every case, a bar to the exercise of the powers of a High Court under Art.226. On the other hand, the view is well settled that there is no such bar and that the Court can interfere if the circumstances of the case demand interference. In the present cases there are substantial grounds for interference. In the first place, the point which has been raised is of a fundamental character and affects a large number of election disputes. In such a case it would avoid conflict of decisions and consequent uncertainty of law or the legal position if an authoritative decision is given by the highest tribunal in this State. Secondly, these very questions were argued before this Court at least on two previous occasions on which two different views were taken and it is necessary for this Court to express itself again and say finally which of the two views is correct. Finally, I may point out that though the respondents had raised a preliminary objection as to the tenability of the petitions we heard Counsel on the merits of the petitions for several days. The time spent on this case will have been wholly wasted if we were to say now, in all solemnity, that another remedy being open to the petitioners we would not interfere though we are in fact satisfied that their grievance is correct.”

137. In ***State of West Bengal's case (10 supra)*** the Apex Court while dealing with the provisions of the West

Bengal Land Reforms and Tenancy Tribunal Act 1997 held that the provisions of the Act is ultra vires and declaration that Article 223 B (2) (d) cannot take away the power of the High Court and other safeguards to decide dispute in relation to Acts specified in the impugned Act. The Single Judge struck down the provisions of the Act Section 6, 7 and 8 and declaring Section 9 of the Act as ultra vires of the constitution offending the basic structure and the Apex Court also held that the learned Single Judge was justified in rejecting the contention that the Tribunal is not a Tribunal within the meaning of Article 323 B (2)(d) of the Constitution of India.

138. Article 243-K (ii) proviso specifies that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be valid to his disadvantage after his appointment. This constitutional protection and also the status conferred by the Act would clearly go to show that both the provisions of the Constitution of India and also the provisions of the relevant statute expect the Commission to act in an independent manner. Can it be said that the drawing of the electoral lists by the D.P.O. unconcerned with the Commission be in conformity with Article 243-K of the Constitution of India?

In the considered opinion of this Court the answer cannot be in affirmative but to be in negative. Article 243-K (i) specifically says the superintendence direction and control of the preparation of the electoral rolls fall and conduct of elections to the panchayats shall be vested in State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. It is needless to say that the language is imperative and mandatory and what is ordained by the constitutional provision, the constitutional functionary is bound to follow.

139. Can it be said that the device adopted in the light of the amended provision Section 11 of the Act, the constitutional obligation under Article 243-K be discharged? The vacuum created is one resulting in serious illegality, such illegality touching the very foundation and root of elections to the Panchayat Raj Institutions. It is not a mere curable irregularity. Even otherwise, the legislative protection which is being advanced also cannot hold water for the reason that Article 243-K (4) in the opening words specifies "subject to the provisions of the Constitution". It is also pertinent to note that in Article 243-K (4) the words employed are "the legislature of a State may" "by law" would make it clear that this is neither a constitutional imperative nor a

constitutional mandate when carefully compared with the language employed in Article 243-K (1) of the Constitution. Hence, at any rate, an ordinary legislative measure cannot override the constitutional mandate under Article 243-K (1) of the Constitution of India. The construction and the interpretation of the constitutional provisions and the ordinary legislations being well settled, the same need not be repeated again by this Court.

140. The conditional legislation and the delegated legislation and the parameters in relation thereto being well settled need not be repeated again. The same can be challenged on the premise Article 14 of the Constitution of India; ***I.E. NEWSPAPERS (BOMBAY) P. LTD. v. UNION OF INDIA***^[44]; ***STATE OF U.P. v. RENUSAGAR POWER CO.***^[45]; ***SITARAM SUGAR COMPANY LIMITED : U.P. STATE SUGAR CORPORATION LIMITED v. UNION OF INDIA***^[46]; ***STATE OF M.P. VS. MAHALAKSHMI FABRICS MILLS (23 supra) and SECRETARY OF MINISTRY OF CHEMICALS AND FERTILIZERS GOVERNMENT OF INDIA v. CIPLA LIMITED***^[47].

141. In ***S.R. BOMMAI AND OTHERS v. UNION OF INDIA (20 supra)*** it was observed that where a

proclamation under Article 356 of the Constitution is questioned, the Court will no doubt start with a presumption that it was validly issued but it will not and it should not hesitate to interfere if the invalidity or unconstitutionality of the proclamation is clearly made out. Refusal to interfere in such a case would amount to abdication of the duty cast upon the Court, the Supreme Court and the High Courts by the Constitution of India. The under-noted decisions commencing from ***KESHAVANANDA BHARATI (2 supra); CHANDRA KUMAR (21 supra); RAMESHWAR PRASAD & OTHERS v. UNION OF INDIA AND ANOTHER (48 infra); KANGLU BAULA v. CHIEF EXECUTIVE OFFICER (40 supra); CHIEF COMMISSIONER OF AJMER VS. RADHESHAYAM DANI (26 supra); BAR COUNCIL OF DELHI VS. SURJEET SINGH (19 supra); PUNDLIK V. STATE OF MAHARASHTRA (11 supra); S. FAKRUDDIN v. GOVERNMENT OF A.P. (7 supra); RAMGULAM SHRI BAIJNATH PRASAD v. THE COLLECTOR, DISTRICT GUNA AND OTHERS (39 supra)*** lend support to the views being expressed by this Court in this regard.

142. Whether these actions are in accordance with Constitutional imperatives? The answer cannot be in affirmative for the reason that the vacuum created in this

area is an illegality and not a curable irregularity, an illegality touching the very foundation of the gross root democracy. Article 243-K (4) of the Constitution of India the opening words “subject to the provisions of this Constitution” would assume lot of importance. Article 243-K (1) of the Constitution of India specifically mandates the superintendence, direction and control in relation to the preparation of electoral rolls be vested with the State Election Commission. The proviso to Article 243-K (2) relating to the removal of the State Election Commissioner is a Constitutional safe-guard which shows the authority with which the Commission is conferred with, being an independent Constitutional functionary. Section 11 as amended even if to be considered, cannot override the Constitutional mandate ordained by Article 243-K(1) of the Constitution of India. As already referred to supra, a clear vacuum is created in this arena. The construction and interpretation of Constitutional provisions and ordinary Legislation being well settled, the same need not be repeated again by this Court.

143. In ***RAMESHWAR PRASAD & OTHERS v. UNION OF INDIA AND ANOTHER***^[48] while dealing with the Constitutional validity and proclamation dated 23-5-2005 ordering dissolution of Bihar Legislative Assembly while

moulding the relief holding the relief proclamation of dissolution as invalid in the given set of facts, status quo ante was refused to be restored.

144. The Division Bench of this Court in ***SADHANAPALLI BHEEMARAJU AND OTHERS v. SECRETARY, A.P. LEGISLATIVE ASSEMBLY, HYDERABAD AND OTHERS***^[49] observed as hereunder:-

“Sri E.Manohar, learned senior Counsel seeks to place reliance upon a recent Judgment of the Apex Court in *Manda Jaganath v. K.S.Rathnam and others* (2004) 7 SCC 492). The Apex Court while considering its earlier Judgments in *Ponnuswamy’s case* (AIR 1952 S.C., 64) and *M.S.Gill’s case* (1978) 1 S.C.C. 405) has sought to add a few more dimensions to the areas in respect whereof the jurisdiction of the High Courts under Article 226 of the Constitution of India could be availed. In para 18, the Apex Court held thus:

“Of course, what is stated by this Court hereinabove is not exhaustive of a Returning Officer’s possible erroneous actions which are amenable to correction in the writ jurisdiction of the Courts. But the fact remains that such errors should have the effect of interfering in the free flow of the scheduled election or hinder the progress of the election which is the paramount consideration. If by an erroneous order

conduct of the election is not hindered then the Courts under Article 226 of the Constitution should not interfere with the orders of the Returning Officers, remedy for which lies in an election petition only.”

That was a case where the nomination filed by the first respondent was beset with certain omissions and scoring off. The Form-B submitted by the first respondent was blank in columns 2 to 7 and scrtch line indicating scoring of the requirement of the columns was noticed. In view of the same, following the guidelines of the Election Commission of India, the Returning Officer rejected Form-B filed by the first respondent while accepting his nomination as an independent candidate and therefore he did not allot him the symbol reserved for the candidates of Telangana Rashtra Samithi of which party the first respondent claimed to be a candidate. Under those circumstances, the Apex Court was of the clear view that by not allotting a symbol claimed by the first respondent, the Returning Officer had not stalled or stopped the progress of the election and the first respondent was treated as an independent candidate and permitted to contest with the symbol assigned to him as an independent candidate and consequently there had been no question of stalling of the election. Therefore, his grievance as to such non-allotment of the symbol will have to be agitated in an election petition. Thus, from the conspectus of the Judgments of the Apex Court referred to supra, it is obvious that if the process of election

by omissions and commissions of the parties is prevented and not promoted in order to facilitate its flow, Article 226 of the Constitution of India can be invoked, inasmuch as such erroneous actions or omissions or erroneous should have the effect of interference with free flow of the scheduled election, which is the paramount consideration. If by such erroneous orders, the conduct of the election is not hindered, then the Courts under Article 226 of the Constitution of India should not interfere with the orders of the Returning Officers, remedy for which lies in an election petition only. Like wise, if it is clear case of playing fraud on the Constitution the jurisdiction of the High Court can be invoked. Thus, the jurisdiction under Article 226 of the Constitution of India has been carved out in respect of specified areas which cannot be illustrated in exhaustive manner but which have the effect of interfering with free flow of the schedule election or hindering the progress of the election.”

In ***C.MALLA REDDY v. ELECTION COMMISSION OF INDIA, NEW DELHI AND OTHERS***^[50] it was held as hereunder:-

“After notice, affidavit in reply has been filed by the Assistant Chief Electoral Officer, A.P.Secretariat stating that the rolls for every constituency will be revised under sub-section (2) of Section 21 of the Representation of the People Act, 1950 either intensively or summarily or partly intensively or partly summarily. In an intensive revision, a fresh roll is prepared on the basis of

information collected by enumerators who visit every house hold and after inviting claims and objections on the data so collected. In a summary revision, the existing electoral rolls are published in draft for the purpose of General citizens to verify whether their names appear in the roll and they are allowed to file their claims for inclusion or objections for deletion of names, as the case may be, before the final publication is made. The procedure that is adopted for inclusion/delition of names under Rule 12 of the Registration of Electors Rules, 1960 is that 30 days time or such shorter time as may be fixed, is allowed to lodge claims and objections in the prescribed forms from the date of publication of rolls in draft. A summary revision of electoral rolls with respect to 1-1-2004 as qualifying date was carried out in Andhra Pradesh last year and there was lot of advertisement through various media. The public were requested to see that they file their claims for inclusion of names in electoral rolls, if their names were not found in the rolls. The citizens were allowed to file their claims, if their names do not appear in the roll so that their names are included in the roll even till the last date of nomination at any election and not deprived of their franchise. It is also stated that if the name of any person still does not find place in the rolls, he/she can file claim application in accordance with law.

In writ jurisdiction, we are not inclined to go into the allegations of negligence which were made in the writ affidavit by the petitioners, in

view of the reply affidavit filed by the respondent denying the same. We cannot record any finding on the aspect of negligence on the part of the respondent officials on the disputed questions of fact and we relegate the petitioners of their remedy of filing a civil suit, if the petitioners have still any grievance. Since the name of petitioner No.1 has been duly entered in the electoral rolls, it will be for petitioner No.2 if his name has not been entered in the electoral rolls, to submit appropriate claim in which appropriate orders be passed by the respondents within a period of 30 days from the date of receipt of the claim. We do not find, on the face of it dereliction on the part of the respondent since nothing is shown by the petitioner that they followed the mandatory requirements of law in submitting their applications.”

145. ***ELUCHURI THULISAMMA v. ELCHURI SAMRAJYAM***^[51] and ***SANGAM BALAKRISHNAIAH v. STATE ELECTION COMMISSIONER***^[52] may be referred to in relation to certain of the distinguishing features in relation to the electoral rolls of general elections and Panchayat Raj Institutions being different and certain of the distinguishing features in between the R.P.Act and the Act in question.

146. The aspect of the outside authority and subordinate Legislation and how the same to be in conformity with the

provisions of the Constitution had been considered in elaboration both in **MANEKA GANDHI v. UNION OF INDIA**^[53] and **NARENDER KUMAR VS. UNION OF INDIA (25 supra)**. The procedural requirement of preparation of Voters' List in the light of the constitutional imperatives or mandate ordained by Article 243-K of the Constitution of India either to be watered down or to be upheld, is the principal question in controversy which had been elaborated by the Counsel representing the parties. The commission wants to fall back on the Legislation of R.P.Act 1950 and the Rules of 1960, in the light of some conference, or some decision which had been taken. The importance of the local bodies and the panchayat raj institutions need not be re-emphasized by this Court in the context of gross root democracy. It is the duty of this court to safeguard and see the smooth functioning of these democratic institutions to maintain good governance and good administration. It is also the duty of this court that the functionaries, constitutional or otherwise function within the bounds and also in accordance with constitutional mandates imperatives and observe the directives and to act in accordance with the provisions of a given statute governing the field. The working and the functioning of the democratic institutions would depend upon healthy

elections to be conducted on proper, valid voters' list, there cannot be two opinions relating to this fundamental concept which can be well traced from the decision of the Constitution Bench in ***Chief Commissioner of Ajmer Vs. Radheshyam Dani (26 supra)***. It is also needless to say that the citizens right to exercise franchise to participate in election, to contest election, are valuable rights/democratic rights. It is true that if the defect pointed out is just a mere irregularity the same may be pardoned on the strength of the Precedent Law and permit the election to go on, on the ground that during the pendency of the Writ Petitions, the election notification already had been issued. There cannot be any two opinions that when once the election process starts normally this Court while exercising powers under Article 226 of the Constitution of India not to interfere or not to intervene and the same to be taken to its logical end. It is also true that the election notification once issued should not to be normally disturbed. On a careful analysis of almost all the decisions on which strong reliance was placed by the respondents which had been repeatedly reiterated and cautioned by the Apex Court that normally the intervention of the Courts at that stage would not be justified. It is true that normally this Court cannot interfere with the election notification. On a careful analysis of the constitutional provisions, the

statutory provisions and the rules governing the field, despite the specific constitutional imperative ordained by Article 243-K of the Constitution of India, as can be seen from the stand taken by the commission and also some correspondence which had been placed before this Court, the role played by the commission appears to be very minimal or very nominal. It is also to be pointed out that there is not even a specific direction by the commission to the concerned D.P.Os., to draft the electoral rolls. Though strong reliance was placed on The Representation of the People Act, 1950 and Rules 20 and 23 of Rules 1960 can it be said that by virtue of operation of Section 11, the subordinate legislation vacuum created by virtue of supersession on all the prior G.Os., in G.O.Ms.No.254 had been cured? This is an illegality touching the very root of the matter or just mere an irregularity to be ignored so as not to disturb the further election process. This Court again is inclined to fall back on the decision of the Larger Bench of this Court in ***Fakruddin's case (7 supra)*** this Court is of the considered opinion that despite the fact that the matter was carried to the Apex Court, the views expressed by the Larger Bench are binding on this Court. The supersession of all the prior G.Os., by virtue of G.O.No.254 had created a subordinate legislative

vacuum, which cannot be filled up by substitution of yet another legislation or yet another subordinate legislation to be brought in, so as to cure, the mere decision taken at some conference said to have been held cannot be an answer and cannot over-ride the constitutional mandate. Apart from this aspect of the matter, it was also pointed out that the commission had not issued any notification relating to the election authority and there is no election authority as ordained by Section 2(11) of the Act. This stand taken by the Writ Petitioners is not seriously controverted or disputed. The further stand taken by the writ petitioners that absolutely there is no acceptable material placed before this Court to see that at least any minimum control had been exercised by the commission while directing the District Panchayat Officers in drawing the list, the same had not been established. It is also clear from the analysis that the electoral rolls under the Act are different from the electoral rolls from general elections though adoption may be adopted, when an act is prescribed to be done by the Law in a particular way the same to be done in accordance with the same. No authority need be cited in this regard.

147. This Court is thoroughly satisfied that these are cases where the violation of the basic structure doctrine is clearly attracted. Even if it is to be taken that the

Precedent Law governing the field is a bit balancing, in such a case equity requires substantial justice to be done in the facts of the given case. When the constitutional functionary is not carrying out constitutional imperatives, this Constitutional Court cannot be a silent spectator or observer.

148. Balancing all the legal rights, exercise of the powers under equity jurisdiction, doing substantial justice in public interest in a public law remedy are a few aspects to be taken into consideration while deciding such matters. It is no doubt true that the respondents are duty bound to conduct elections as ordained by the provisions of the constitution and equally they are duty bound to follow the constitutional imperatives. It is needless to say that ***Mohinder Singh Gill's case (9 supra)*** is concerned with repoll, ***Ponnuswami's case (8 supra)*** with the rejection of nomination, these are of all at a later stage, this is a case where the very foundation for conducting the elections to the gross root democracy is being totally shattered and hence the parties cannot be driven to the alternative remedy by way of election petition especially in the light of the nature of the relief prayed for and the contentions advanced and in view of the fact that the matters were pending before this Court even prior to the issuance of

notification and after the order was made by the Division Bench the notification impugned in fact was issued. Injustice found in any manner to be rectified and remedied in exercise of power of judicial review by the Constitutional Court. Certain submissions were made in relation to how the electoral rolls are different relating general elections and the elections relating to the local bodies. Reliance was placed on ***SANGAM BALAKRISHNAIAH v. STATE ELECTION COMMISSIONER (52 supra); and ELUCHURI THULISAMMA v. ELCHURI SAMRAJYAM (51 supra)***. Further reliance was placed on ***C.MALLA REDDY v. ELECTION COMMISSION OF INDIA, NEW DELHI AND OTHERS (50 supra)***.

149. Here is a case where the mighty State Government and the commission on one side and the aggrieved voters on the other side are fighting this litigation. Democracy being the basic structure of the Constitution, it is inclusive of this little democracy, the local body institutions when the very drawing up of the electoral lists are not in accordance with law and the petitioners approached the Court at the earliest point of time, making several serious allegations which are well reflected from the factual matrix instead of remedying or rectifying when certain directions were issued, carrying the matters by way of Writ Appeal and just subsequent thereto after an order is made, issuing the

election notification and contending before this Court that inasmuch as that election notification had been issued the Constitutional Court is powerless by virtue of a bar these contentions are totally untenable. This Court is not inclined to accept such submissions. At any rate, such bar is not operative to already pending matters. It is needless to say that the Constitutional Courts are bound by the provisions of the Constitution and they are expected to uphold the Constitution in the light of the clear view expressed by the Constitution Bench in **Chief Commissioner of Ajmer Vs. Radheshyam Dani (26 supra)** and also the view expressed by the Division Bench of the Apex Court in **Vadodara's case (33 supra)** and further in the light of the views expressed by the Larger Bench in **Fakruddin's case (7 supra)**. The facts of these batch of cases appear to be novel in a way distinguishable in several aspects, even in the light of the valley of authorities cited by the parties. Judicial wing is the last resort to a common man. The fundamental constitutional principles cannot be ignored. Judicial review by the Constitutional Courts being basic structure it cannot be said that the ordinary bar can be stretched too far that too far in relation to already pending litigations. If it is to be interpreted as a bar such provision may have to be struck

down as offending the basic structure of the Constitution. Electoral lists being the life of democracy, democracy itself being basic structure, when at the earliest point of time the aggrieved parties had invoked the jurisdiction of the Constitutional Courts, definitely, this plea of bar raised by the Commission, is an unsustainable stand. The failure on the part of the Commission to carry out constitutional imperatives, obligations or duties tantamount to fraud on the Constitutional provisions and mockery of democracy. This cannot be permitted by a Constitutional Court. The vacuum being a grave illegality it is not a curable one. Constitutional Courts are duty bound to safeguard these valuable rights of the general electorate and the respondents cannot be permitted to play in Courts as clearly reflected from the events. The valley of complaints, representations placed before the Court are sufficient to establish the general stand taken by the petitioners. The events of these batch of cases also may have to be kept in mind. This Court cautions that if the Constitutional Courts are unable to protect the democratic institutions, the same may result in chaos and the same may not be in public interest. In a way this Court is left with no other option except to arrive at a conclusion that the Election Notification issued cannot be sustained in Law. The next question would be in the light of the view expressed by the

Apex Court in ***Rameshwar Prasad's case (48 supra)*** inasmuch as stand had been taken that the election process already had been commenced, would it be justifiable to interfere or not to interfere in view of the advanced stage of election process, on facts the majority in ***Rameshwar Prasad's case (48 supra)*** came to that conclusion, the facts in the present case are clearly distinguishable. These all are batch of Writ Petitions which were moved long prior to the issuance of Election Notification. It is also brought to my notice that several other Writ Petitions which had been filed even prior to the issuance of Notification in which no specific direction had been issued, they were not carried by way of Writ Appeals and also they are pending before this Court, so the large scale illegalities writ at large had been complained by several of the responsible persons holding the responsible offices like Sarpanch etc., as can be seen from different affidavits filed in different Writ Petitions, these complaints cannot be brushed aside or thrown into the dust bin. In the like way, this Court as Constitutional Court had been taken note of all the factual aspects also involved in these matters as directed by the Division Bench and on appreciation of the whole factual matrix and also the binding precedents, this Court is inclined to make the

following directions.

CONCLUSION:-

150. In view of the fact that by virtue of supersession made in G.O.Ms.No.254 constitutional, legislative and subordinate legislation vacuum had been created the validity or otherwise of the said Rules need not be gone into and hence the said question is left open. However, a Writ of Mandamus as prayed for is issued quashing the consequential notification issued on 10-6-2006 which is long subsequent to filing of the Writ Petitions and just one day after the passing of the order by the Division Bench, as illegal, arbitrary, discriminatory and being violative of Article 14 of the Constitution of India and also violative of Article 243-K of the Constitution of India and Sections 11, 12, 201 of the A.P. Panchayat Raj Act 1994 and consequently this Court also declares that all the electoral lists drawn in this regard are not in accordance with the provisions of the Constitution, the statutory provisions, or the subordinate Legislations inasmuch as they suffer from the Constitutional bankruptcy, Legislative bankruptcy and subordinate legislative bankruptcy as well and further direct the respondents to prepare fresh electoral lists in accordance with the provisions of the Constitution and also the provisions of the A.P. Panchayat Raj Act 1994, if need be, by filling the requisite subordinate legislation as

well.

151. In the light of the directions issued by this Court in W.P.No.10965/2006 the other ancillary questions, which had been raised in the batch of Writ Petitions, need not be gone into and in terms of the directions issued in W.P.No.10965/2006 all other Writ Petitions are hereby disposed of. Before parting with this batch of cases, this Court records the appreciation for the able assistance rendered by all the Counsel on record. No order as to costs.

P.S.NARAYANA

JUSTICE

20th June, 2006

Note: L.R. Copy to be marked (Yes/No)

STP/SSR/ISL/SMR

[1] 1950 S.C.R., 88

[2] AIR 1973 S.C., 1461

[3] AIR 2002 S.C., 2112

[4] (2004) 2 SCC., 510

[5] (2004) 10 S.C.C., 655

- [6] (2004) 5 S.C.C., 762
- [7] AIR 1996 A.P., 37=1995 (2) ALD 589= 1995 (2) ALT.439
- [8] AIR 1952 S.C., 64
- [9] AIR 1978 S.C., 851=(1978) 1 S.C.C, 405
- [10] 2005 (5) SCJ 207
- [11] (2005) 7 S.C.C., 181
- [12] AIR 2004 S.C., 3600
- [13] AIR 1988 S.C., 61
- [14] AIR 1984 S.C., 921
- [15] AIR 1967 S.C., 669
- [16] AIR 1974 S.C., 1682
- [17] AIR 1995 S.C., 1512
- [18] AIR 1985 S.C., 1233
- [19] AIR 1980 S.C., 1612
- [20] AIR 1994 S.C., 1918
- [21] AIR 1997 S.C., 1125
- [22] AIR 1990 S.C., 560
- [23] AIR 1995 S.C., 2213
- [24] AIR 2003 S.C., 2077
- [25] AIR 1960 S.C., 430
- [26] AIR 1957 S.C., 304
- [27] AIR 1969 A.P., 1
- [28] AIR 1985 All.162
- [29] 2000 (2) ALT 655
- [30] 1996 (6) S.C.C., 303
- [31] 1995 Supp (2) S.C.C., 305
- [32] (1996) 3 S.C.C., 416
- [33] (2005) 11 S.C.C., 523
- [34] (2001) 8 S.C.C., 509
- [35] (2004) 6 A.L.D., 587
- [36] AIR 1973 Orissa 136
- [37] 1996 (1) ALT 76
- [38] 1996 (2) ALT 593
- [39] AIR 1975 M.P., 145

- [\[40\]](#) AIR 1955 Nagpur 49
- [\[41\]](#) AIR 1967 M.P., 257
- [\[42\]](#) 2004 (1) APLJ (HC) 1
- [\[43\]](#) AIR 1951 S.C., 332
- [\[44\]](#) AIR 1986 S.C., 515
- [\[45\]](#) AIR 1988 S.C., 1737
- [\[46\]](#) AIR 1990 S.C., 1277
- [\[47\]](#) AIR 2003 S.C., 3078
- [\[48\]](#) AIR 2006 S.C., 980
- [\[49\]](#) 2005 (3) ALT.578
- [\[50\]](#) 2005 (2) ALT 484
- [\[51\]](#) 2004 (2) ALT 586
- [\[52\]](#) 2005 (1) ALT 754
- [\[53\]](#) AIR 1978 S.C., 597