

* THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

+ W.P. Nos.33408, 33607 & 35675 of 2016

% 9.12.2016

S.K.Pushpalatha W/o K.Prakash Sridhar,
R/o D.No.14-508, New Kayanikattu Street,
Chittoor, Chittoor District. petitioner

and

\$ The State of Andhra Pradesh, rep.by its
Principal Secretary, Municipal Administration
And Urban Development Department,
Secretariat Building, Saifabad, Hyderabad
and others.

... Respondents

!Counsel for the petitioner : Sri P. Veera Reddy, senior counsel for Sri
Karri Murali Krishna (WP 33607 of
2016.)
Sri P Keshava Rao (WP 33408 of 2016)
Sri P Vinayaka Swamy (WP 35675 of 2016)

Counsel for the Respondents: G.P. for Municipal Administration,
G.P. for Revenue
Sri V.V.Prabhakara Rao
Sri S D Goud

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> Head Note:

? Cases referred:

AIR 1992 AP 351
(2001) 3 SCC 565
(1984) 2 SCC 656
(2006) 8 SCC 352
2002(8)SCC 237
(1978) 1 SC 405 = AIR 1978 SC 851
AIR 1952 SC 64 : 1952 SCR 218

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION Nos.33408, 33607 & 35675 of 2016

WP 33408 of 2016

Between :

S.K.Pushpalatha W/o K.Prakash Sridhar,
R/o D.No.14-508, New Kayanikattu Street,
Chittoor, Chittoor District.

And

The State of Andhra Pradesh, rep.by its
Principal Secretary, Municipal Administration
And Urban Development Department,
Secretariat Building, Saifabad, Hyderabad
and others.

.... Respondents

JUDGMENT PRONOUNCED ON : 9.12.2016

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : Yes
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : Yes
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : Yes
See fair Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NOS.33408, 33607 & 35675 of 2016

COMMON ORDER:

Heard Sri P.Veera Reddy, learned senior counsel holding for Sri Karri Murali Krishna, counsel on record for petitioner in WP No.33607 of 2016; Sri P.Keshava Rao, learned counsel for petitioner in WP No.33408, 2016, Sri P.Vinayaka Swamy, learned counsel for petitioner in WP No.33408 of 2016, learned Government Pleader for Municipal Administration (AP) for respondents 1 & 2 in WP Nos.33408 of 2016, for respondent No.1 in WP Nos.35675 and 33607 of 2016; Sri V.V.Prabhakar Rao, learned counsel for respondents 2 and 3 in WP Nos.33607 & 35675 of 2016 and for respondent no.5 in WP No.33408 of 2016; Sri S.D.Gowd, learned counsel for respondent No.4 in all the writ petitions; learned Government Pleader for Revenue (AP) for respondent no.5 in WP Nos.33607 and 35675 of 2016 and also for respondent no.3 in WP No.33408 of 2016.

2. Since in all three writ petitions, the subject of controversy is conduct of election to post of Mayor in Chittoor Municipal Corporation, all the writ petitions are disposed of by this common order.

3. W.P.Nos.33408 and 33607 of 2016 are filed aggrieved by inaction of respondents in conducting election to the office of the Mayor of Chittoor Municipal Corporation in the vacancy that arose on 17.11.2015 and conducting election to the two vacant wards before holding election to the post of Mayor. In W.P.No.35675 of 2016, petitioner opposes conduct of election to the post of Mayor

before conducting elections to the vacant Ward Nos.33 and 37. In other words, petitioner in W.P.No.35675 of 2016 opposes the claim of the petitioners in the first two writ petitions. Petitioner in W.P.No.33408 of 2016 is elected as Corporator for 35th Division of Chittoor Municipal Corporation. Petitioner in W.P.No.33607 of 2016 is elected as Corporator to Ward No.47. Petitioner in W.P.No.35675 of 2016 is aspiring to contest one of the two vacant Wards.

4. Chittoor Municipal Corporation consists of 50 Wards/ Divisions. Election to the Ward Members of Municipal Corporation was held in May, 2014. Elections to the Mayor and Deputy Mayor were held on 03.07.2014. The post of Mayor in Chittoor Municipal Corporation was reserved to a woman belonging to Backward Class community. In the election held on 3.7.2004, Smt. K.Anuradha, a person belonging to Backward Class and Corporator of 33 Ward, was elected as Mayor, and Sri R.Subramanyam, Corporator, was elected as Deputy Mayor. Mayor and her husband were killed in her office on 17.11.2015. On account of death of Smt. K.Anuradha, vacancy in the post of Mayor as well as Corporator to 33 Ward was created. There was a vacancy in 37 Ward also. The Chittoor Municipal Corporation is governed by the Greater Hyderabad Municipal Corporation Act, 1955 (for short the Act, 1955).

5. Learned Senior Counsel Sri Veera Reddy contended that conduct of elections to the posts of Mayor and Deputy Mayor are governed by 'Andhra Pradesh Municipal Corporations (Conduct of Election of Mayor and Deputy Mayor) Rules, 2005' (for short Rules, 2005), notified vide G.O.Ms.No.762 Municipal

Administration and Urban Development (Ele.II) Department, dated 19.08.2005. In terms of the proviso to Rule 8 of the Rules 2005, every casual vacancy in the office of Mayor should be filled up immediately, there is unexplained delay and no justification in not conducting election even after one year. He would submit that the said action of the State Election Commission amounts to arbitrary exercise of power in violation of statutory mandate.

5.1. He would further submit that the stand of the respondent-Election Commission that it has taken decision to conduct election to vacant Ward Members first before conducting election to Mayor is *ex facie* illegal. He would submit that by placing reliance on self-made executive instructions to defer conduct of election of Mayor is not valid when statute mandate conducting of such election as expeditiously as possible.

5.2. He would further submit that conducting elections to the post of Mayor is a simple procedure. It only requires convening of special meeting of Corporation with three day notice, whereas detailed procedure is envisaged for conducting of election to Ward members. The facts narrated in the counter affidavit would also disclose that there is a long drawn process before election to Ward members is conducted. Thus, when the process is simple, there is no justification to delay in conducting of elections for more than one year. When the statute does not require the full composition of elected ward members, it is illegal to defer the election of Mayor on the ground that there are two vacancies of Ward Members.

5.3. He would further submit that State Election Commission being a creature of the statute, it must work within four corners of the statutory mandate and cannot go beyond.

5.4. He would further submit that by its actions, the very object of reserving of Mayor in favour of the Backward Class community is defeated. The Deputy Mayor, who is holding the post of Mayor does not belong to Backward Class community and for more than one year, Backward Class community (woman) member is deprived of opportunity of becoming Mayor.

5.5. In support of his submissions, Sri P.Veera Reddy, relied on **S.PRASADA RAJU Vs STATE OF ANDHRA PRADESH¹** and **STATE OF PUNJAB AND OTHERS Vs BHAJAN SINGH²**.

6. Sri P.Kesava Rao would submit that the legislative intent is clearly discernible by the scheme of the Act and Rules. There is absolutely no nexus between filling up of vacancies of ward members and Mayor. Thus, delay in conducting elections to the post of Mayor, which requires minimal procedure and very short time for conducting the election process, on the ground that there are two vacancies of Ward Members is contrary to the scheme of Act and Rules. The inordinate delay in conducting election to the post of Mayor and now further postponing on the ground that a schedule for conducting election to the post of Ward Members is drawn is not valid.

6.1. He would submit that only requirement to conduct election to Mayor is availability of a quorum as prescribed. Statute even

¹ AIR 1992 AP 351

² (2001) 3 SCC 565

dispenses with quorum in a given situation. Since there are only two vacancies and there are 48 Ward Members and other members of Electoral College, not conducting elections to the post of Mayor and linking such election to filling vacancies of ward members is nothing but arbitrary exercise of power and authority.

6.2. He would submit that Section 90 of Act, 1955 mandates conducting of election for vacancy in Mayor forthwith. On account of unjustified delay in conducting election to the post of Mayor, Deputy Mayor, who does not belong to Backward Class community and is not a woman, *de facto* functioning as Mayor for more than one year, defeating the very object of the scheme of the Act.

7. Sri Vinayaka Swamy, learned counsel for petitioner in W.P.No.35675 of 2016 would submit that, petitioner is aspirant to the post of 33rd Ward Member, which is reserved for Backward Class (Woman). All Ward Members are entitled to contest to the election of Mayor. As per Section 7 (2) vacancy of Ward Member has to be filled up within three months whereas for more than one year it is not filled up. If only election to two vacant Ward Members was held as per said provision, this Ward Member would also become eligible. Thus, for the lapses of State Election Commission, aspirant like this petitioner, cannot be deprived such opportunity and petitioners in W.P.Nos. 33408 and 33607 of 2016 cannot take advantage of lapses of State Election Commission.

7.1. Learned counsel opposes the prayer of petitioners in W.P.Nos.33408 and 33607 of 2016. According to learned counsel only after all vacancies of Ward Members are filled up, election to Mayor should be held. He supports the State Election Commission

decision to schedule election of Mayor after the election of Ward Members. He would further submit that, since there was delay in conducting election of Ward Members and Mayor and now election schedule is drawn up for the posts of two vacant Ward Members, in all fairness the said process should not be interfered.

8. By referring to various provisions of the Act and Rules 2005, Sri Prabhakar Rao submitted that though Act and Rules mandate filling up of vacancy of a Ward Member, post of Mayor or Deputy Mayor, the Act and Rules are silent as to which vacancy should be filled first. Insofar as Ward member is concerned, ordinarily within four months elections should be conducted, whereas in case of Mayor, ordinarily elections to be conducted within six months. Since the Act and the Rules made there under are silent on various aspects, Election Commission has earlier notified guidelines for smooth conducting of elections. After establishment of separate State Election Commission to the State of Andhra Pradesh, these guidelines are further reviewed and circular instructions were notified on 14.09.2016. Election Commission decided that if there are two or more vacancies of Ward members in a Corporation, in addition to vacancy of Mayor, the Election Commission would first fill up the vacancies of Ward members before filling up of the vacancy of Mayor or Deputy Mayor, as the case may be. However, if there is only one vacancy of Ward member, the Commission would proceed to conduct election to the post of Mayor or Deputy Mayor immediately without first conducting elections to Ward member. These circular instructions are only intended to guide the Election Commission to conduct elections properly and are made since the Act and the Rules do not cover these issues.

8.2. By placing reliance on para-12 of **A.C.JOSE Vs. SIVEN PILLAI**³, where Supreme Court summed up its conclusions, particularly (a) and (b), learned standing counsel would submit that the State Election Commission is competent to lay down guidelines as has been made. Those two sub-paras read as under:

“12. To sum up, therefore, the legal and constitutional positions 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 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.”

8.3. He would submit that State Election Commission, which was in existence prior to bifurcation of State of Andhra Pradesh, was included in the Tenth Schedule of A.P. Reorganization Act, 2014 and was functioning as State Election Commission for both the States. Only in January, 2016, separate State Election Commission was constituted for the State of Andhra Pradesh. On 30.1.2016, the Election Commissioner was appointed and he assumed charge on 1.4.2016. Immediately after he assumed charge, the process of conducting elections to various positions in local bodies was initiated in right earnest. There has been continuous correspondence with various authorities on various aspects of conducting elections; has drawn detailed time schedule for filling up of various vacancies in the local bodies. With reference to Chitoor Municipal Corporation, after due deliberations with the Principal Secretary, Municipal Administration

³ (1984) 2 SCC 656

Department, Election Commission has drawn up detailed schedule and as per the schedule now drawn, the commission decided to first conduct election to two Ward members and soon thereafter to conduct election to the post of Mayor. He would submit that there is no illegality in adopting such procedure.

8.4. Neither the Act nor the Rules, 2005 prescribe particular order in which election of Mayor/Deputy Mayor and Ward Members should be conducted. They only prescribe procedure and time frame to conduct elections. When a contingency of this nature arises, it is left to the discretion of the State Election Commission to adopt its own procedure.

9. The relevant facts are not in dispute. The respondent Corporation is divided into 50 Wards and each Ward is being represented by a Councillor. The election to the Council was held in May, 2014. The post of Mayor of this Corporation is reserved for women belonging to Backward Classes. In a special meeting held on 03.07.2014, Smt. K.Anuradha was elected as Mayor. Vacancy in the post of Mayor arose on 17.11.2015 due to death of incumbent. The responsibilities of Mayor are now discharged by the Deputy Mayor. The contention of petitioners in WP Nos. 33408 and 33607 of 2016 is two pronged, (a) inordinate and unjustified delay in holding the election to the post of Mayor; and (b) deferring the election of Mayor till the election to council posts are held. Petitioners allege that inordinate delay in conducting election to the post of Mayor is illegal, defeats the very object of the constitution of a democratic institution and conduct of election to

the post of Mayor cannot be linked to conduct of election to the Ward members. On the contrary, petitioner in W.P.No.35675 of 2016 contends that all councillors have right to participate in the election of Mayor and, therefore, election to the post of Mayor can be held only after election to vacant Ward Members are held. Stand of Election Commission is, it is within the powers of Election Commission to prescribe its own procedure to conduct election to ward members and Mayor. It has formulated guidelines on various aspects of conducting elections to various posts in local bodies and these guidelines are valid, in the absence of statutory prescription.

10. The point for consideration in these writ petitions is, can State Election Commission delay conducting of election to the post of Mayor and defer such election till the elections to two existing vacancies of Ward Members are held?.

11. There are plethora of precedents which through light on scope of power, be that of Election Commission of India or State Election Commissions in conduct of elections. It is useful to refer to few of them.

11.1.1. In **Kishan Singh Tomar Vs. Municipal Corporation of the City of Ahmedabad**⁴, the issue agitated was that as per the relevant provisions, process to conduct election to municipal corporation should be initiated six months in advance to completion of tenure of existing body where as no such process was initiated and there was an attempt to delay the process. After

⁴ (2006) 8 SCC 352

considering various Articles in Part IX-A of the Constitution, Supreme Court observed:

“12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Seventy Fourth Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections **had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities.** These views were expressed by the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before the Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a Constitutional status to such bodies and to ensure regular and fair conduct of elections...

(emphasis supplied)

11.1.2. After referring to opinion of *Justice Pasayat* in the matter of ‘**special reference No.1 of 2002’ (Gujarat Assembly Election Matter)**⁵, Supreme Court held:

“19. **From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time.** The Election Commission shall try to complete the election before the expiration of the duration of five years’ period as stipulated in Clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of the duration of five years’ period as stipulated in Clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

(emphasis supplied)

11.1.3. Supreme Court further held:

“21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election Commission would be justified in delaying the process of election after consulting the State Govt. and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the Municipality for such period.

⁵ 2002(8)SCC 237

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

.....

27. Article 243 K (3) also recognizes the independent status of the State Election Commission. It states that upon a request made in that behalf the Governor shall make available to the State Election Commission "such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1). It is accordingly to be noted that in the matter of the conduct of elections, the concerned government shall have to render full assistance and co-operation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted.

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

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

11.2.1. At this stage, apropos to refer to the observations of *Pasayat, J* in **the matter of special reference No.1 of 2002**. He said:

"126. The old articles of the *suprema lex* meet new challenges of life, the old legal pillars suffer new stresses. So we have to adopt the law and develop its latent capabilities if novel situations, as here, are encountered. That is why in the reasoning we have adopted and the perspective we have projected, not literal nor lexical but liberal and visional is our interpretation of the articles of the Constitution and the provisions of the Act. Lord Denning's words are instructive:

"Law does not stand still. It moves continually. Once this is recognized, then the task of the Judge is put on a higher plane. He

must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect — thinking of the structure as a whole, building for society a system of law which is strong, durable and just. It is on his work that civilized society itself depends.”

11.2.2. After discussing various provisions of the Constitution, it was held:

“.....The general powers of superintendence, direction and control of the elections vested in the Commission under Article 324(1) naturally are subject to any law made either under Article 327 or under Article 328 of the Constitution. The word “election” in Article 324 is used in a wide sense so as to include the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the result of the process. **Article 324 of the Constitution operates in areas left unoccupied by legislation and the words “superintendence”, “direction” and “control” as well as “conduct of all elections” are the broadest terms which would include the power to make all such provisions.** (See *Mohinder Singh Gill v. Chief Election Commr.* [(1978) 1 SCC 405 : AIR 1978 SC 851] , *A.C. Jose v. Sivan Pillai* [(1984) 2 SCC 656] and *Kanhiya Lal Omar v. R.K. Trivedi* [(1985) 4 SCC 628 : AIR 1986 SC 111] .)

128. Democracy is a basic feature of the Constitution. Whether any particular brand or system of government by itself, has this attribute of a basic feature, as long as the essential characteristics that entitle a system of government to be called democratic are otherwise satisfied is not necessary to be gone into. Election conducted at regular, prescribed intervals is essential to the democratic system envisaged in the Constitution. So is the need to protect and sustain the purity of the electoral process. That may take within it the quality, efficacy and adequacy of the machinery for resolution of electoral disputes.

.....
"151. The impossibility of holding the election is not a factor against the Election Commission. The maxim of law *impotentia excusat legem* is intimately connected with another maxim of law *lex no cogit ad impossibilia*. *Impotentia excusat legem* is that when there is a necessary or invincible disability to perform the mandatory part of the law that *impotentia* excuses. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him." Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See *Broom's Legal Maxims*, 10th Ed., at pp 1962-63 and *Craies on Statue Law*, 6th Edn., p. 268.) These aspects were highlighted by this Court in Special Reference No. 1 of 1974. Situations may be created by interested persons to see that elections do not take place and the caretaker Government continues in office. This certainly would be against the scheme of the Constitution and the basic structure to that extent shall be corroded."

11.3. In **Mohinder Singh Gill Vs. Chief Election Commission**⁶, Justice V.R.Krishna Iyer observed on the scope of powers of Election Commission of India. He said:

“92 (b). Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice insofar as conformance to such canons can reasonably and realistically be required of it as fairplay-in-action in a most important area of the constitutional order viz. elections.”

11.4. At this Stage, it is also pertinent to note observations of Supreme Court in **A.C.Jose**. While relying on the analysis of powers of Election Commission made by Supreme Court in **N.P.Ponnuswami Vs. Returning Officer, Namakkol Constituency**⁷, Supreme Court said:

“20. We fully endorse and follow the above observations of the Constitution Bench, which lay down the correct law on the subject and we have nothing further to add to the approach made by this Court in the case referred to above. On the other hand, our view that Articles 324 to 329 have to be construed harmoniously flows as a logical corollary from the ratio in *Ponnuswami case* [AIR 1952 SC 64].....

21.....*Indeed, if we were to accept the contention of the respondents it would convert the Commission into an absolute despot in the field of election so as to give directions regarding the mode and manner of elections bypassing the provisions of the Act and the Rules purporting to exercise powers under cover of Art.324. If the Commission is armed with such unlimited and arbitrary powers and if it ever happens that the person manning the Commission shares or is wedded to a particular ideology, he could by giving odd directions cause a political havoc or bring about a constitutional crisis, setting at naught the integrity and independence of the electoral process, so important and indispensable to the democratic system.*”

11.5. The pungent opening remarks of Supreme Court in **BHAJAN SINGH** speaks volume of how democratic process should be made sacrosanct:

⁶ (1978) 1 SC 405 = AIR 1978 SC 851

⁷ AIR 1952 SC 64 : 1952 SCR 218

“2. Election process was scuttled and the democratic values throttled by a bureaucrat who happened to be the Principal Secretary of the Local Government Department (hereinafter referred to as “the said Secretary”) of the State of Punjab at the relevant time. Flouting all norms, violating statutory provisions and showing scant respect for the principles of law, the said Secretary deprived Respondent 1, the elected representative of the people, to perform his duties firstly as member and then as the President of the Municipality, obviously to oblige his political opponents who incidentally happened to belong to the ruling parties (Shiromani Akali Dal and BJP) in the State of Punjab. Inaction attributable to the said Secretary in performance of his statutory obligations and instead ill-action taken by him is a matter of concern not only for Respondent 1 but all those who believe in the rule of law and the preservation, development and conservation of democratic institutions with their values in the country. There is no gainsaying that free, fair, fearless and impartial elections are the guarantee of a democratic polity. For conducting, holding and completing the democratic process, not only a potential law based upon requirements of the society tested on the touchstone of experience of the times, but also an independent, impartial apparatus for implementing and giving effect to the results of the election is the sine qua non for ensuring the compliance of statutory provisions and thereby strengthening the belief of the common man in the rule of law, assured to be given to the people of this country. ***Any attempt made to weaken the system, particularly when its intention is likely to affect the socio-political fabric of the society, if not checked and curtailed, may result in consequences which could not be else but disastrous to the system. No person, much less a civil servant, can be permitted to frustrate the will of the people expressed at the elections, by his acts of omission and commission. The law relating to the elections is the creation of the statute which has to be given effect to strictly in accordance with the will of the legislature.***

(emphasis supplied)

11.6. In **S.Prasada Raju**, this Court held as under:

“2. The writ petitions came to be filed on the verge of the expiry of the term of the period for which the elections were held and in the wake of the Government's proposal to man the above said local authorities in the entire State of Andhra Pradesh through governmental officers by appointing them as Special Officers or Persons-in-charge, by whatever name called. In the main writ petitions, the prayer is to hold elections and pending the same, to continue the petitioners in offices for which they were elected in a democratic ‘manner’. Such a provision is contained in the relevant statutes under which the petitioners were elected: The said provisions were enabling provisions empowering the government to extend the term of the present incumbents whose term expires and that is a power to be exercised by application of mind. It may be that, extension can be refused on adverse reports and also on some other valid grounds. ***It is pertinent to mention that ours is a representative democracy and not a monarchical democracy. Ours is the largest democracy in the world and the very essence of democracy is to have the elected representatives at several levels, be it in discharge of sovereign functions, governance of local self governments or even the co-operative societies. In the governance of these functions, the basic concept is to have elected representatives and in fact, this is a basic feature of the Indian Constitution. The democracy has as its first article of faith, free election of representatives at intervals with a general freedom of expression. In a democratic society of ours, the people and not the Government possess absolute sovereignty. Rule of law cannot be fully realised unless legislative or local bodies are established in accordance with the will of the people. In order to maintain adequately the***

rule of law, the Government should adhere to the democratic representation.

(emphasis supplied)

12. The principles deducible from the precedent decisions are as under:

- i) The democratic institutions should be made functional and constitutional and statutory mandate must be fully complied.
- ii) It is the primary responsibility of Election Commission to conduct free and fair election within the time line prescribed. Not holding election on time should be only in extraordinary and unforeseen circumstances not visualised by the Statute.
- iii) Election Commission has to work within the four corners of statutory provision. The discretion vested in Election Commission operates only in the field not specified/visualised by the Statute and to give effect to the Constitutional mandate. The mandate of the Constitution is to ensure effective functioning of the democratic institutions.
- iv) Whenever attempt is made to scuttle the democratic process and / or functioning of democratic institution is crippled by official apathy, deliberate or otherwise, Court must intervene.
- v) Election Commission is responsible to the Rule of law and shall act *bona fide*. No attempt should be made to

weaken the system, more so, when it is likely to affect the socio-political fabric of the society.

- vi) The law relating to the elections is the creation of the Statute which has to be given effect strictly in accordance with the will of the legislature.

12.1. While analysing the issue that is posed for consideration of this Court, I am guided by the words of wisdom of the indomitable spirit of *Justice V.R. Krishna Iyer* in **Mohinder Singh Gill**. He has referred to the observations of one of the stalwarts of the Indian Judiciary, *Chief Justice Hidayatullah* and jurist *Lord Denning* and said:

“16. Secondly, the pregnant problem of power and its responsible exercise is one of the perennial riddles of many a modern constitutional order. Similarly, the periodical process of free and fair elections, uninfluenced by the caprice, cowardice or partisanship of hierarchical authority holding it and unintimidated by the trust, tantrum or vandalism of strongarm tactics, exacts the embarrassing price of vigilant monitoring. Democracy digs its grave where passions, tensions and violence, on an overpowering spree, upset results of peaceful polls, and the law of elections is guilty of sharp practice if it hastens to legitimate the fruits of lawlessness. **The judicial branch has a sensitive responsibility here to call to order lawless behaviour. Forensic non-action may boomerang, for the court and the law are functionally the bodyguards of the people against bumptious power, official or other.**

.....

18. The juridical aspect of these triple questions alone can attract judicial jurisdiction. However, even if we confine ourselves to legal problematics, eschewing the political overtones, the words of Justice Holmes will haunt the Court: “We are quiet here, but it is the quiet of a storm centre.” The judicature must, however, be illumined in its approach by a legal — sociological guideline and a principled-pragmatic insight in resolving with jural tools and techniques, “the various crises of human affairs” as they reach the forensic stage and seek dispute-resolution in terms of the rule of law. Justice Cardozo felicitously set the perspective:

“The great generalities of the Constitution have a content and significance that vary from age to age.”

Chief Justice Hidayatullah perceptively articulated the insight:

“One must, of course, take note of the synthesized authoritative content or the moral meaning of the underlying principle of the prescriptions of law, but not ignore the historic evolution of the law itself or how it was connected in its changing moods with social requirements of a particular age. [Judicial Methods, B.N. Rau Memorial Lecture] ”

19. The old articles of the supreme lex meet new challenges of life, the old legal pillars suffer new stresses. So we have to adopt the law and develop its latent capabilities if novel situations, as here, are encountered. That is why in the reasoning we have adopted and the perspective we have projected, not literal nor lexical but liberal and visional is our interpretation of the articles of the Constitution and the provisions of the Act. Lord Denning's words are instructive:

“Law does not stand still. It moves continually. **Once this is recognised, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect — thinking of the structure as a whole building for society a system of law which is strong, durable and just. It is on his work that civilised society itself depends.**”

(THE INVULNERABLE BARRIER OF ARTICLE 329(b))

(emphasis supplied)

13.1. Guided by the above principles, it is necessary to analyze the objective of introduction of Part IX-A to the Constitution, relevant provisions of Greater Hyderabad Municipal Corporation Act, 1955 (Act, 1955) and the A.P.Municipal Corporations (Conduct of Election of Mayor and Deputy Mayor) Rules, 2005 (Rules, 2005).

13.2.1. It is apt to note the statement of objects and reasons for introducing Part IX-A to the Constitution. The relevant paragraph read as under:

**STATEMENT OF OBJECTS AND REASONS
(74th Amendment to Constitution)**

In many States local bodies have become weak and ineffective on account of a variety of reasons, **including the failure to hold regular elections**, prolonged supersessions and inadequate devolution of powers and functions. **As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.**

2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution particularly for-

(i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to-

(a) the functions and taxation powers; and

(b) arrangements for revenue sharing;

(ii) Ensuring regular conduct of elections;

(iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.

3. Accordingly, it is proposed to add a new part relating to the Urban Local Bodies in the Constitution to provide for-

.....

(c) Election of Chairpersons of a Municipality in the manner specified in the State law;

...

(e) reservation of seats in every Municipality-

(i) for Scheduled Castes and Scheduled Tribes in proportion to their population of which not less than one-third shall be for women;

(ii) for women which shall not less than one-third of the total number of seats;

(iii) in favour of backward class of citizens if so provided by the Legislature of the State;

(iv) for Scheduled Castes, Scheduled Tribes and women in the office of Chairpersons as may be specified in the State law;

.....

(1) determining the taxes which may be assigned to the Municipalities;

(2) Sharing of taxes between the State and Municipalities;

(3) grants-in-aid to the Municipalities from the Consolidated Fund of the State;

(k) making of law by a State Legislature with respect to elections to the Municipalities to be conducted under the superintendence, direction and control of the chief electoral officer of the State;"

13.3.1. As a consequence to the 74th amendment Act, the Greater Hyderabad Municipal Corporation Act, is amended and relevant

provisions are introduced to bring the functioning of municipal bodies in tune with constitutional mandate.

13.3.2. The relevant provisions of Act, 1955 are Sections 2 (15a), 5, 7, 90 and 91 of the Act, 1955. They read as under:

13.3.3. **Section 2 - Definitions :**

(15-a) '**election authority**' means such officer or authority as may be appointed by the State Election Commission to exercise such powers and to perform such functions in connection with the conduct of elections to the Municipal Corporations.

13.3.4. **Section 5 - Composition of Corporation:**

(1) Subject to the provisions of sub-section (2) the Corporation shall consist of such number of elected members as may be notified from time to time by the Government in the Andhra Pradesh Gazette, in accordance with such principles as may be prescribed.

[(1-A) Every member of the Legislative Assembly of the State and every Member of the House of the People representing a constituency of which the Corporation or a portion thereof forms part and every member of the council of State registered as an elector within the area of the Municipal Corporation and every Member of the Legislative Council of the State registered as an elector within the area of the Municipal Corporation as on the date of filling of nomination for becoming Member of Legislative Council or on the date of nomination by the Governor, as the case may be shall be ex-officio Member of the Corporation.

Provided that a Member of the Legislative Assembly or a Member of the House of the People representing a constituency which comprises a portion of the Corporation and a part of any Municipality or Municipalities, or of one such Municipalities, which he chooses and he shall also have the right to take part in the proceedings of any meetings of the other Municipal Councils or Corporation, as the case may be, within constituency, but shall not be entitled to vote at any such meeting.

(1-B) In addition to the members referred to in sub-section (1) and (1-A) three persons having special knowledge or experience in Municipal Administration of whom one shall be woman, be co-opted as members of the Corporation in the prescribed manner by the members of the Corporation from among the persons who are registered voters in the Corporation and who are not less than twenty-one years of age:

Provided that the members co-opted under this sub-section shall have the right to speak in and otherwise to take part in the meetings of the Corporation but shall not have right to vote.

(1-C) Two persons belonging to the minorities of whom one shall be woman be co-opted as members of the Corporation in prescribed manner by the members of the Corporation specified in sub-sections (1) and (1-A) from among the persons who are registered voters in the Corporation and who are not less than twenty-one years of age:

Provided that the members co-opted under this sub-section shall have the right to speak in and otherwise to take part in the meetings of the Corporation but shall not have right to vote.

(1-D) No person shall be member in more than one of the categories specified in sub-sections (1), (1-A), (1-B) and (1-C). A person who is or becomes a member of the Corporation in more than one such category shall, by notice in writing signed by him and delivered to the Commissioner, within fifteen days from the date on which he so becomes a member, intimate in which one of the said categories he wishes to serve, and thereupon he shall cease to be the member in the other category. In default of such intimation within the aforesaid period, his membership in the Corporation in the category acquired earlier shall, and his membership acquired later in the other category shall not, cease at the expiration of such period. The intimation given under this sub-section shall be final and irrevocable.

(2) In the Corporation out of the total strength of elected members, the Government shall, subject to the rules as may be prescribed, by notification, reserve,-

(a) such number of seats to the Scheduled Castes and Scheduled Tribes as may be determined by them, subject to the condition that the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election to the Corporation, as the population of the Scheduled Castes, as the case may be, the Scheduled Tribes in the Corporation bears to the total population of the Corporation; and such seats may be allotted by rotation by different wards in the Corporation;

(b) one third of the seats for the members belonging to the Backward Classes, and such seats may be allotted by rotation to different wards in the Corporation;

(c) not less than one-third of the total number of seats reserved under clauses (a) and (b) for women belonging to the Scheduled Castes, Scheduled Tribes or as the case may be, the Backward Classes;

(d) not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes) of the total number of seats to be filled by direct election to the Corporation shall be reserved for women and such seats may be allotted by rotation to different Wards in a Corporation.

13.3.5. **Section 7 - Election when to be held:--**

Every general election requisite for the purpose of this Act shall be held in the manner prescribed, within three months before the day for retirement of the (members) as specified in Section 6.

(2) Every casual vacancy in the office of an elected member of a Municipal Corporation shall be reported by the Commissioner to the State Election Commission within fifteen days from the date of occurrence of such vacancy and shall be filled within four months from that date.

(3) A member elected in a casual vacancy shall enter upon office forthwith but shall hold office only so long as a the member in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

(4) No casual election shall be held to a Municipal Corporation within six months before the date on which the term of office of its members expires by efflux of time.

13.3.6. **Section 90 - Election of Mayor and Deputy Mayor:-**

(1) The elected members referred to in sub-section (1) as well as ex-officio members referred to in sub-section (1-A) of Section 5 of this Act, shall elect one of its elected Members to be its Mayor and another to be its Deputy Mayor at the first meeting of the

Corporation after the ordinary elections by show of hands on party basis duly obeying the party whip given by such functionary of the recognized political party, in the manner prescribed. At an election held for that purpose, if Mayor or Deputy Mayor is not elected, fresh election shall be held on the next day. The names of the Mayor and the Deputy Mayor so elected shall be published in the prescribed manner. Any casual vacancy in the said offices shall be filled, in the same manner at a casual election and a person elected as Mayor or the Deputy Mayor in any such vacancy shall enter upon office forthwith and hold office only so long as the person in whose place he is elected would have been entitled to hold office, if the vacancy had not occurred:

Provided that a member voting under this sub-section in disobedience of the party whip shall cease to hold office in the manner prescribed and the vacancy caused by such cessation shall be filled as a casual vacancy.

(2) The Mayor or the Deputy Mayor as the case may be, shall be deemed to have assumed office on his being declared as such and shall hold office in accordance with the provisions of this Act and as long as he continues to be an elected member, unless resigned or removed from such office by no-confidence motion or for any other reason in accordance with the provisions of this Act.

13.3.7. **Section 91 - Deputy when to act as Mayor :-**

(1) When the office of the Mayor is vacant his functions shall devolve on the Deputy Mayor until a new Mayor is elected.

(2) If the Mayor leaves the City for more than fifteen days or is incapacitated, his functions shall devolve on the Deputy Mayor until the Mayor returns to the City or recovers from his incapacity as the case may be.

13.4. Part-II of the Rules, 2005 deals with election of Mayor and Deputy Mayor of Municipal Corporation. Part-III deals with casual vacancies. Relevant Rules are Rules 4, 5 and 8. They read as under:

13.4.1. **Rule 4: Convening of Special Meeting for Election of Mayor:-**

(1) A special meeting of the members of Municipal Corporation specified in sub-sections (1) and (1A) of Section 5 of the Act shall be held in the office of the Municipal Corporation or at any other convenient place within the jurisdiction of the Municipal Corporation by the District Collector or Joint Collector authorised by the Election Authority in this behalf in Form I, for the election of Mayor and Deputy Mayor in the manner laid down hereafter.

(2) Notice of the date and hour of such meeting shall be given in Form-II to the members specified in sub-sections (1) and (1A) of Section 5 of the Act at least three clear days in advance of the date of the meeting fixed for the election of the Mayor and Deputy Mayor by the District Collector or the Joint Collector authorised by the Election Authority.

13.4.2. Rule. 5. Quorum :-

No meeting for the conduct of election of Mayor or Deputy Mayor shall be held unless there be present at the meeting at least **one-half of the number of members then on the Corporation, who are entitled to vote** at the election within one hour from the time appointed for the meeting.

Provided that where at an election held for the purpose, the Mayor or Deputy Mayor is not elected, a fresh election shall be held on the next day whether or not it is a public holiday for the Corporation concerned and where the Mayor or Deputy Mayor could not be elected on the next day also, the matter shall be reported to the State Election Commission for fixing another date for holding election.

Provided further, that where the Election of Mayor or Deputy Mayor could not be conducted in the first two special meetings, convened for the purpose of want of quorum, the Mayor or Deputy Mayor shall be elected in the subsequent meeting/meetings convened for the purpose from among the members present without insisting for quorum.

13.4.3. Rule 8. Procedure for filling casual vacancies: -

The Rules in Part-II shall apply for filling up a casual vacancy in the office of the Mayor and Deputy Mayor.

Provided that every casual vacancy shall be filled up within a period of six months from the date of occurrence of such vacancy.

14.1.1. It is discernible from the statement of objects and reasons to bring about 74th amendment to the Constitution and insertion of Part IX-A to the Constitution dealing exclusively with the local bodies, that it intends to strengthen the democratic institutions at the grassroots level; make those institutions more inclusive; to have wider representation to all sections of the society; to involve more and more women as representatives of people in various institutions and in the governance of these institutions; to ensure that the functioning of those institutions is not crippled at the whims and fancies of party in power. Conduct of elections in a free and fair manner by an independent autonomous body is also integral part of the entire scheme. The SEC is given constitutional backing. It is the primary responsibility of the SEC to conduct free and fair elections and ensure local bodies function like democratic

institutions; should ensure that vacancies are not kept unfilled for a long time.

14.1.2. As noted above one of the avowed objectives of Part IX-A of the Constitution is empowerment of women belonging to all sections of the society. Thus, this part envisages reservation for women in all sections of the society. At the heart of this objective is that involvement of women would strengthen the democratic process at the grassroots level.

14.1.3. The provisions of Act, 1955 give effect to these objectives.

14.2. In the process of application of reservation to various social groups, including women, the post of Mayor of this Corporation is reserved for women belonging to Backward class.

14.3.1. On a plain reading of Section 5 of Act,1955, it is apparent that membership of municipal corporation comprises (1) elected ward members; (2) Members of Legislative Assembly, Members of Parliament (Lok Sabha), Members of Parliament (Rajya Sabha) and Members of Legislative Council; (3) Co-opted members.

14.3.2. Reservation in the form of Schedule Caste, Schedule Tribe, Backward Class and women is extended to Wards, Mayor and Deputy Mayor.

14.3.3. Section 90 prescribes Electoral College and procedure of election to Mayor.

14.3.4. Electoral college to elect Mayor and Deputy Mayor comprises of elected Ward Members and Members of Legislative

Assembly, Members of Parliament (Lok Sabha), Members of Parliament (Rajya Sabha) and Members of Legislative Council.

14.4.1. Procedure of election of Mayor is simple. The elected members mentioned in Section 5 (1) and members mentioned in Section 5 (1-A) may elect Mayor in the first meeting held after general election.

14.4.2. On a combined reading of Section 90 and Rule 8 of the Rules, 2005, it is clear that same procedure as applicable to election of Mayor after general election would apply to fill casual vacancy.

14.5.1. Rules, 2005 prescribe procedure of conducting election of the post of Mayor.

14.5.2. According to Rule 4, with three clear days advance notice to members comprising Electoral College a special meeting of council shall be convened to elect the Mayor. As per Rule 5, quorum to hold election is one half of the Electoral College members then in the office and who are entitled to vote. If on the day of special meeting, quorum is not available, such meeting should be held on the immediate next day. Even on the second day also quorum is not available, matter should be reported to Election Commission. In the subsequent meeting convened for the purpose, Mayor can be elected from among the members present without insisting for quorum.

14.5.3. It is also significant to notice the words used in Rule 5, i.e., '**one half of the members then on the corporation**'. In Sections 5,6,7 and 90, the word '**Elected**' is used. Literal meaning

of word **'Elected'** is, **'chosen by popular vote', 'the condition of having been chosen or selected'**. Use of word **'Elected'** in the above provisions, signify completion of election process and election of a person as ward member.

14.5.4. In **N.P. Ponnuswami**, Supreme Court dealt with the meaning of word **'Election'** as used in Article 329 (b). Supreme Court said ".....the most important question for determination is the meaning to be given to the word "election" in Article 329(b). *That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected.*" (emphasis supplied)

14.5.5. The sentence **'one half of the members then in the corporation'** read with the word **'Elected'** used in Sections 5,6,7 & 90 of GHMC Act clearly point out, leading to no ambiguity that only existing members mentioned in Sections 5 (1) and 5(1-A), who were already elected and who have not earned disqualification to participate in the election, would comprise Electoral College. Thus, Statute does not require full representation of all Ward Members.

14.5.6. It is implicit that vacant wards are not counted. A vacancy in a ward can be for any reason, such as due to death, resignation, disqualification or not holding election/countermanding the election for valid reason. Thus, the statutory prescription and legislative intent is explicit and clear that election of Mayor in the

first instance or to a casual vacancy is not dependant on filling of all wards seats or other members of Electoral College.

14.5.7. It is also appropriate to further note that Electoral College comprises of Ward members, Members of Legislative Assembly, Members of Parliament (Lok Sabha), Members of Parliament (Rajya Sabha) and Members of Legislative Council. If the stand of the State Election Commission is taken to its logical conclusion, no election of Mayor can be held even if posts mentioned in Section 5 (1-A) are vacant. Further, if the intendment of State Election Commission is not to hold election of Mayor if there is more than one vacancy, the same should also be extended to vacancies of members covered by Section 5 (1-A). Thus, there is no justification by the SEC in confining only to Ward Members in its circular dated 14-09-2016, when Electoral College is wider.

14.5.8. Municipal Corporation is also a democratically elected body like State Legislative Assembly and Indian Parliament. Majority of members of State Legislative Assembly and Indian Parliament elect a person as Chief Minister and Prime Minister, as the case may be. Even to elect a Chief Minister or Prime Minister, the quorum counted is from among the serving members as on the date of election and no such election/ re-election is deferred on the ground of existence of some vacancies of Members of Legislative Assembly or Members of Parliament. So also election to President and Vice President are held based on the quorum available in the Electoral College when elections are held and not postponed till the vacancies are filled up. Vacancies in State Legislature/ Council or

Parliament can be for similar reasons as applicable to Municipal Council.

14.5.9. The provisions in Sections 5, 6, 7 & 90 of Act, 1955 clearly point out that the State Election Commission cannot wait till all the vacancies of Ward Members or posts mentioned in Section 5 (1-A) are filled. Such a course also may lead to uncertainty. That is not the intendment of the Act and the Rules. It would defeat the very object of the statutory scheme. The scheme of Part IX-A of the Constitution, relevant provision of Act, 1955 and Rules 2005 is to avoid such uncertainty and to ensure that functioning of these democratic institutions is not crippled and that socio-political fabric of the society is not affected. The law relating to the elections is the creation of the statute which has to be given effect strictly in accordance with the will of the legislature. It cannot be said that legislature was unaware of arising of vacancies in the Electoral College for various reasons.

15.1. At this stage, it is useful to extract relevant paragraphs of Circular No.1145/SEC/B1/2003 dated 29.10.2003 and Circular No.124/SEC-B1/2016 dated 14.9.2016.

15.2. Paragraphs 2 and 3 of Circular dated 29.10.2003 read as under:

“2. A no-confidence motion cannot be moved against the President of a Mandal Parishad in the first two years of his tenure. Now that the two year period has already expired, vacancies arising out of no-confidence motion are being reported in good number, apart from the normal casual vacancies. But now that the vacancies in the office of President are arising in increased numbers, certain norms have to be evolved with regard to filling up of casual vacancies in the office of MPTC Members before filling the casual vacancy in the office of President. It is, however, necessary to take note in this context that sometimes there is scope to manipulate the postponement of casual election to the office of President by resorting to a series of resignations to the office of the Member of MPTC and claiming that unless those vacancies are filled up, the vacancy in the office of President should not be filled up. In order to provide for tackling

such situations, the State Election Commission prescribes the following norms, namely:-

(a) Any vacancy in the office of MPTC Member existing on the date on which the casual vacancy in the office of President arose should be filled before the casual vacancy in the office of President is filled.

(b) Any vacancy in the office of MPTC member arising on account of death between the date when the casual vacancy in the office of President occurred and the date when the election notification to fill the said casual vacancy is issued, should also be filled before the casual election to the office of President is held.

(c) The casual election to the office of President need not be postponed for reasons of vacancies in the office of MPTC members arising due to resignation after the casual vacancy in the office of President arises.

(d) Where the office of President is reserved for a particular category and an MPTC member from that category will not be available for contest unless that casual vacancy is filled, then the election to the office of President should be postponed until that casual vacancy in the office of MPTC Member is filled and this norm shall be an exception to the foregoing norms.

3. The above guidelines will apply *mutatis-mutandis* for filling up casual vacancies in the office of Vice-President, Mandal Parishad and Chairman/Vice-Chairman of Zilla Parishad, Chairman/Vice-Chairman of Municipality/Nagar Panchayat and Mayor/Deputy Mayor of Municipal Corporation.”

15.3. Circular dated 14.09.2016 is in modification of earlier Circular dated 29.10.2003. Relevant paragraphs read as under:

“In majority of these local bodies having vacancies in indirectly elected offices, six months time stipulated in the relevant Acts to fill up such vacancies was already over and incharge Chairpersons are continuing to discharge the functions of Chairpersons in these local bodies. Leaders of political parties and common public have been approaching the Commission to notify elections to these vacancies. It is not appropriate to continue incharge arrangements in the post of Chairpersons of local bodies for a long time affecting the smooth operation of democracy at grass-root level and every endeavour shall be made to conduct election to appoint a regular Chairperson.

Under the circumstances, the State Election Commission reviewed the circular instructions issued earlier in the reference cited, which were not supported by any statutory base, and frames the following guidelines to conduct indirect elections to the local bodies curtailing continuation of alternate arrangements for longer periods.

1. To withhold elections to the vacancies in indirectly elected offices reserved for SC and ST particularly where there are vacancies in directly elected offices reserved for the same category (SC or ST) till the completion of direct election so as to protect the interests of the SC and ST to contest and get elected for those reserved seats/offices in local bodies.

2. To notify elections to indirectly elected offices in other local bodies which have only one casual vacancy of elected member in their respective local bodies.

These guidelines shall come into force with immediate effect. The Commission will take stock of the situation after six months of implementation of the above revised guidelines and make suitable changes, if any, that may be required in order to see that the spirit of the Constitution and the statute to conduct timely elections to vacancies in local bodies is upheld. ”

16. By relying on the two circulars extracted above, Mr Prabhakar Rao argued vehemently that election to post of Mayor cannot be held until election to two councilor posts is held. The stand of State Election Commission is based on the assumption that when to hold election to vacant post of Mayor is not prescribed in the Act and the Rules 2005 and therefore it is permissible to State Election Commission to prescribe its own procedure and that State Election Commission can defer conducting of election of Mayor till election to ward members is held. I am afraid such an argument cannot be countenanced for the reasons assigned above. There is no ambiguity in the statutory framework for the State Election Commission to assume so and to assume such discretion. The precedent decisions referred to above hold that when field is covered by Statutory provisions, State Election Commission cannot exercise discretion contrary to such provisions.

17. I also do not see any justification in classifying an election to the post of Mayor based on number of vacancies. It is not explained how one or more vacancies have different consequence on the Electoral College. As noted above, as per Section 90 read with Rules 2005, attendance of 50 % of the electoral college of elected members is sufficient to hold the election of Mayor. Admittedly, when there are 50 Wards and Members of Parliament, Members of Assembly and Members of Legislative council also

compose of Electoral College even two or little more would not affect the composition of Electoral College. Rules also envisage that if 50% quorum is not available in two meetings convened to elect Mayor, without insisting for quorum and with available members of Electoral College, election to the post of Mayor can be conducted.

18. It is significant to note that election of Mayor shall have to be held in the first meeting after the general election to council. At that stage, it is possible that few wards are not being represented and all or few persons mentioned in Section 5(1-A) are not available. On that ground, election of Mayor cannot be postponed. Procedure to elect Mayor for the first time after the general election is applicable to casual vacancy also. This court is informed that meetings of the council were held after the death of incumbent Mayor but election of Mayor was not held. These circulars on which heavy reliance is placed to justify the stand of SEC have no force of law. They are contrary to mandate of the constitution, Act-1955 and Rules, 2005. Thus, not holding the special sitting of council to fill the casual vacancy in the post of Mayor soon after vacancy arose and differing such election to an event after the election of Ward Members is ex-facie illegal, contrary to statutory prescription and against the democratic process.

19. The conduct of Election Commission also needs to be critically analysed. Vacancy of Mayor arose on 17.11.2015. As required by Section 7 (2), it appears the vacancy was notified to State Election Commission. The State Election Commission was functioning as combined State Election Commission for both states

prior to establishment of separate State Election Commission in the State of Andhra Pradesh. Even after establishment of A.P. State Election Commission and joining of Election Commissioner, no immediate action was taken. As noted above, as per Section 90 and Rules 4 and 5 of Rules, 2005, it is a very simple procedure and require bare minimum time to conduct election of Mayor. It does not involve State Government, unlike when election to Ward Member is held, as that is linked to revision of electoral rolls and provision of State machinery to conduct elections etc. On the contrary, to conduct election of Mayor, what is required is only appointment of Election Authority by the Election Commission to conduct special session of the council. There was no break down of law and order. There was no natural calamity or act of God which justify its action of not conducting election for such a long time. Thus, reasons assigned for delay in holding election to the post of Mayor are not germane to valid exercise of power and authority. At any rate, State Election Commission cannot postpone the event to a date posterior to holding election to ward members merely on the ground that the time of six months had already expired.

20. By causing inordinate delay in conducting election to Mayor, the very scheme and object of Part IX-A of the Constitution of India, the Greater Hyderabad Municipal Corporation Act and the Rules 2005 is defeated. The post of Mayor in Chittoor Municipal Corporation is to be occupied by a women belonging to Backward Class. Whereas, for more than one year, it is held by a male, who does not belong to Backward Class. Discharge of functions of Mayor by a Deputy Mayor is only a stop gap arrangement to attend

to unforeseen contingency. Such temporary arrangements have to be replaced by regular Mayor without broking delay. To understand the provision in Section 91, it has to be read in consonance with Sections 7 and 90 and Rules 4, 5 and 8 of the Rules 2005 and on cumulative reading of these provisions the conclusion is irresistible that it is only *ad hoc* arrangement for a short period. For more than one year, the constitutional scheme of a woman acting as Mayor of Chittoor Municipal Corporation is denied and a backward class woman is denied of opportunity to hold such high office.

21. For the reasons afore stated W.P.Nos 33408 and 33607 of 2016 are allowed and W.P.No. 35675 of 2016 is dismissed and the State Election Commission is directed to forthwith hold election to the post of Mayor of Chittoor Municipal Corporation without linking up holding of such election to the election of vacant Ward Members of Chittoor Municipal Corporation.

Miscellaneous petitions if any pending in these writ petitions, shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date:09.12.2016
Kkm/tvk

Note: L.R copy to be marked-YES

HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NOs.33408, 33607 & 35675 of 2016

Date:09.12.2016

Kkm/tvk