

IN THE HIGH COURT OF BOMBAY AT GOA**PUBLIC INTEREST LITIGATION WP NO. 9 OF 2017**

ROHAN SHIRODKAR,
aged 27 years, son of late
Ravindra Shirodkar, Lawyer,
residing at Lamgao,
Bicholim, Goa Mobile
No.9545560863
PAN NO.
CHJPS0023D, Email ID :
rohanshirodkar3@gmail.com.

..... PETITIONER.

V/s.

1. State of Goa,
through its Chief Secretary,
having Office at Secretariat,
Porvorim, Goa.

2. Goa State Election Commission,
through the Commissioner,
having its Office next to Joggers Park,
near BSNL Tower,
Altinho, Panaji, Goa.

3. The Director of Panchayats,
Government of Goa,
having its Office at
Junta House, Goa.

..... RESPONDENTS.

Mr. Y. V. Nadkarni, and Mr. N. Noronha, Advocates for the
petitioner.

Mr. D. Lawande, Advocate General with Mr. D. Shirodkar,
Additional Govt. Advocate for the respondents No.1 & 3.

Mr. S. N. Joshi and Mr. N. Aguiar, Advocates for the respondent

No.2.

**CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date : - 03/05/2017.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard MR Y. V. Nadkarni, learned Counsel appearing for the petitioner, Mr. D. Lawande, learned Advocate General appearing for the respondents No.1 & 3 and Mr. S. N. Joshi, learned Counsel appearing for the respondent No.2

2. Rule. Learned Counsel appearing for the respondents waive service. Heard forthwith, with the consent of the learned Counsel.

3. The above PIL Writ Petition filed by the petitioner, *inter alia*, seeks for a writ of mandamus or any other writ directing the respondents to take steps to hold the elections for 185 Village Panchayats in the State of Goa, in terms of law, within the time specified in the relevant provisions of law.

4. Briefly, it is the contention of the petitioner that the

elections of 185 Village Panchayats in the State of Goa were held on 16th May, 2012. It is further pointed out that in terms of Article 243E of the Constitution of India, the elections for the new Panchayats have to be held within 5 years of such Panchayats. It is pointed out that the first meetings of all the 185 Village Panchayats were held on 27th May, 2012 and, as such, according to the petitioner, the elections are to be conducted on or before 27th May, 2017. It is further pointed out that the petitioner learnt from the news paper reports that the elections to the Village Panchayats are likely to be held somewhere on 25th June, 2017 which is contrary to the mandate provided in the Constitution and, as such, the petitioner has filed the above petition seeking a direction to the respondents to take all steps to complete the election process within the time stipulated in Article 243E of the Constitution.

5. The respondents have filed their reply, *inter alia*, contending that somewhere on 4th January, 2017, the State Election Commissioner-respondent No.2 herein sent a letter to the respondent No.3-Director of Panchayats, *inter alia*, calling upon

the respondent No.3 to complete the delimitation and reservation of Wards of the Panchayats to enable the respondent No.2 to proceed to hold the elections and that such process has to be completed on or before 10th February, 2017. It is further contended that in the meanwhile, on 4th January, 2017, the Notification was issued for holding the General Assembly Elections to the State of Goa and in view of the Election Code of Conduct in operation, the respondent No.1 could not take steps to complete the delimitation of the Wards as called upon by the respondent No.2. The respondent No.1, at para 8 of its reply has pointed out the specific reasons which necessitated postponing of the elections, which are now scheduled on 17th June, 2017. In the said reply, the respondent No.1 has, *inter alia*, contended that in view of the Election Code of Conduct which was in operation, they could not take steps to start the work of delimitation. It is further pointed out that the officials of the State Government were preoccupied with the General Assembly Election to the State and as such, there was no sufficient staff to proceed with the work of delimitation of Wards. It is also pointed out that in view of the Judgment of the Apex Court, suspending sale of liquor within 500

metres from the National and State Highways, the Officials of the State Government were also occupied in identifying such structures at the sites. It is further submitted that it is only after the Election Code of Conduct was lifted in March, 2017 that the respondent could take step to start the work of delimitation of the Wards. It is also pointed out that in view of the ensuing Summer Vacation of the Schools, many of the teachers proceed on vacations and, as such, the elections could not be held within the time prescribed.

6. The respondent No.2 has also filed a reply, *inter alia*, contending that the work of delimitation of the Wards is in the hands of respondent No.1. It is further pointed out that only after the filing of the above writ petition, the respondent No.2 learnt that the election date was being fixed as on 17th June, 2017 by the State Government. It is also pointed out that way back in January, 2017, respondent No.2 called upon the respondent No.1 to start the work of delimitation and complete the same on or before 10th February, 2017. It is also pointed out that, thereafter, a reminder was sent to the respondent No.1 somewhere in April, 2017 to

ascertain whether delimitation has been completed, but, there was no reply to that effect from the respondent No.1. It is also stated that in the reply, it is stated that the respondent No.2 is prepared to conduct the elections in terms of the mandate of the Constitution, but no effective measures could be taken in that connection as the respondent No.1 has not proceeded to expeditiously complete the work of delimitation. It is further pointed out that respondent No.2 shall proceed to hold the elections immediately after the delimitation process is completed by the respondent No.1.

7. Mr. Y.V. Nadkarni, learned Advocate appearing for the petitioner has taken us through the provisions of Article 243E of the Constitution of India to point out that it is mandatory on the part of the respondents to complete the election process of the Village Panchayats within 5 years of the date of the first meeting of the Panchayats. It is further submitted that in such circumstances, the term of 185 Village Panchayats in the State of Goa expires on 27th May, 2017 and, as such, according to him, there will be no local Panchayats in place after the said date to perform and conduct the functions in the respective Panchayats.

It is further pointed out that the respondent No.1 has arbitrarily chosen to fix the date on 17th June, 2017, without any application of mind and in breach of the mandatory provisions to complete the election process on or before 27th May, 2017. The learned Counsel further submits that in the year 2007, when the State Government was delaying taking measures of delimitation of the Wards, the respondent No.2 had approached this Court seeking directions to enable the completion of the election process within the time stipulated under the Constitution. The learned Counsel further points out that such petition was disposed of by this Court directing the State Government to forward the reasons for extension to be examined by the respondent No.2. It is further pointed out that the respondent No.2 had, in fact, accepted the reasons and postponed the election process which was challenged before this Court in a Writ Petition which came to be disposed of by the Division Bench of this Court on 13/2/2007 in Writ Petition No. 13/2007 in the case of ***Joseph Siqueira and ors. vs. State of Goa and ors.***, wherein this Court had taken a view that elections have to be conducted forthwith, within the time stipulated under the Constitution and accordingly, issued directions to complete the

process by 7th May, 2007. The learned Counsel further points out that another Division Bench of this Court in the Judgment dated 18.02.2008, reported in **2008(1) Bom.C.r. 788** in the case of ***Naresh Krishna Gaunekar and ors. Vs. Ste of Goa and ors.***, has taken a similar view and directed the State Government to complete the election process forthwith, within the time stipulated therein. The learned Counsel further submits that despite of such directions, the respondent No.1 has arbitrarily and without any justifiable or cogent reasons proceeded to fix the elections beyond the time prescribed. The learned Counsel has relied upon a Judgment of the Apex Court reported in (2006) 8 SCC 352, in the case of ***Kishansing Tomar vs. Municipal Corporation of the City of Ahmedabad and ors.***, as well as the Judgment of the Apex Court reported in (2012) 4 SCC 482 in the case of ***K.B. Nagur v. Union of India and ors.*** The learned Counsel has, thereafter taken us through the reasons disclosed in the affidavit in reply to point out that such excuses were not accepted by the Apex Court, to be the reasons to extend the time as provided under the Constitution. The learned Counsel further points out that in the meanwhile, in view of the Amendment to Rule 10 of the Goa Panchayat Rules,

1996, the time limit prescribed to complete the election process is 22 days. The learned Counsel further states that in the last elections held in 2012, the Panchayat Elections were held in May 2012, though the General Elections to the Assembly were held in march, 2012. The learned Counsel, as such, points out that the petitioner is entitled to the reliefs sought in the above petition.

8. On the other hand, Mr. D. Lawande, learned Advocate General appearing for the respondents No.1 and 3 has pointed out that there can be no quarrel to the proposition that provisions of Article 243E of the Constitution of India are mandatory, but, however, according to the learned Advocate General, the Judgment of the Apex Court in ***Kishansing Tomar*** (supra) has culled out an exception which allows the elections to be held beyond the time stipulated. It is further pointed out that in the present case, there are justifiable and cogent reasons to hold the elections on 17th June, 2017. The learned Advocate General has, thereafter, taken us through para 8 of the reply filed by the respondent No.1 to point out that the respondent No.1 has clearly explained the reasons which necessitated the holding of elections beyond the time

stipulated. It is further pointed out that in terms of the Panchayat Raj Act, the State Government has to conduct the delimitation of the Wards and reservation of seats for the reserved category and, as such, according to him as the Election Code of Conduct was in place, such an exercise could not be completed. It is further pointed out that the respondent No.1 did not have the requisite staff to proceed with the work of delimitation before the elections to the General Assembly were completed and, as such, according to him, this itself is a justifiable ground to postpone the elections which were otherwise supposed to be held on or before 27th May, 2017. It is further pointed out that the respondents have also taken a policy decision to ensure that there are no allegations as far as the functions of the Panchayats and decided to appoint respective Sarpanchas of the concerned Panchayats as Administrators. It is further contended that in view of the vacations, school teachers will not be available for election duties and, as such, according to him, it is most appropriate in the circumstances of the case to hold the elections on 17th June, 2017, as fixed by respondent No.1. It is further pointed out that the process of delimitation is

expected to be completed on or before 5th May, 2017 and the report shall be submitted to the State Election Commission. It is further pointed out that it is for the respondent No.1 to notify the date of election and, as such, according to him, the respondent No.1 has fixed the date of election on 17th June, 2017, after examining all the circumstances and relevant considerations to arrive at such a decision. It is further pointed out that as the Election Code of Conduct was in place, no policy decision could be taken during such period. It is only after March, 2017 when the new Assembly was constituted that the respondent No.1 took steps and further decisions on holding the Panchayat Elections for the subject Village Panchayats of 185 villages. The learned Advocate General has further pointed out that as such, there is no reason for interference in the decision taken by the respondent No.1 to fix the elections on 17th June, 2017. The learned Advocate General further points out that looking into the totality of the circumstances and the convenience of the voters, and in order to ensure that the voters can freely exercise their franchise, the date has been fixed on 17th June, 2017. It is further pointed out that the respondents do not

have the requisite infrastructure and staff to conduct the elections before the date fixed by the State Government. The learned Advocate General has further pointed out that the petitioner is not entitled for any relief in the above petition as, unless the delimitation is completed by the respondent No.1, the concerned Villagers will not be able to know the Wards to which they belong to exercise their franchise. The learned Advocate General, as such, points out that the petition be rejected. The learned Advocate General has relied upon a Judgment of this Court in ***Writ Petition No.936/2015*** dated 4th January, 2016 in the case of ***Atanasio Monseratte and ors. Vs. State of Goa and ors.*** to point out that in the said Judgment 10 days time was given to issue the notification of delimitation and for reservation of seats.

The learned Advocate General has also relied upon a Judgment of this Court reported in 2016 (3) AIR Bom.R. 560, in the case of ***Pant Nagar Mahatma Phule Co-operative Housing Society Limited an others vs. State of Maharashtra and ors.***

9. Mr. S.N. Joshi, learned Counsel appearing for the respondent No.2 has, however, pointed out that the conduct of

elections by the State Election Commission would start only if the delimitation of Wards is completed by the State Government. The learned Counsel further points out that though under the Constitution the work of delimitation has to be otherwise conducted by the State Election Commission, but, however, in view of the provisions of the Goa Panchayat Raj Act, which came into force from 1994, the work of reservation of seats and delimitation is assigned to the State Government. It is further pointed out that as such, on 4th January, 2017, the respondent No.2 addressed a letter to the respondent No.1 to proceed with the delimitation of the Wards on or before 10th February, 2017 to enable the State Election Commission to complete the election process within the time provided under the Constitution. It is further pointed out that despite of a reminder to the Chief Secretary, there was no positive measure taken to complete the delimitation process expeditiously. It is further submitted that as the delimitation process has not been completed by the State Government, the respondent No.2 was not in a position to start the election process and to complete the same on or before 27th May,

2017. It is further pointed out that in such circumstances, the respondent No.2 has not started the election process by issuing a notification to hold the elections within the time prescribed. The learned Counsel, thereafter, submits that as per the instructions of the respondent No.2, once the delimitation process is completed by the State Government, the State Election Commission would require 33 days to complete the election process which are inclusive of 5 days for issuing the notification of the voters' list and other formalities required under the Statute. The learned Counsel further submits that the respondent No.2, otherwise, is in position to complete the election process within the time stipulated under the Constitution. The learned Counsel, as such, submits that the petition be disposed of accordingly.

10. We have considered the rival contentions and with the assistance of the learned Counsel, we have also gone through the records. We are constrained to record that this is the third occasion that this Court has been called upon to examine the validity of the decision in not complying with the mandatory provisions of Article 243E of the Constitution. Earlier when the elections were

conducted for the same 185 Village Panchayats way back in the year 2007, this Court had clearly taken a view that the provisions of Article 243E of the Constitution are mandatory and there is no acceptable reason for extension or postponement of the Panchayat Elections. This Court, however, considering that the matter was being disposed off only after the term had elapsed, had clearly observed that the elections were to be conducted forthwith and without any further delay.

11. By 73rd amendment, Part IX under the head, inter alias, “*Panchayats*” has been inserted into the Constitution. Articles 243E, 243K, 243N of the Constitution of India are, *inter alia*, the relevant provisions. Article 243E(1) of the Constitution provides for the term of every Panchayat which, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Article 243E (3) provides that an election to constitute a Panchayat shall be completed before the expiry of its duration specified in clause (1), meaning thereby before the expiry of the term of 5 years, the election of the Panchayat must be held. Article

243E provides that the power to hold elections of the Panchayats shall be vested in the State Election Commissioner-respondent No.2 herein to be appointed by the Government.

Sub-Article (iv) of Article 243K provides that subject to the provisions of this Constitution, the Legislature of the State may, by law, make provision in respect of all matters relating to, or in connection with, elections to the Panchayats, meaning thereby the State Legislature can make law on the subject, otherwise than provided under the Constitution.

Article 243N provides for a non-obstante clause to nullify any provision of law relating to Panchayats made by the State Legislature which is inconsistent with the provisions of this part of the Constitution after the expiry of the period of one year from the date of the commencement. Taking note of the said provision, it can be said that since the mandate of the Constitution under Article 243E(3) is to hold elections of the Panchayats before the expiry of the term of 5 years, the State Election Commissioner-respondent No.2 herein is required to ensure that the process of holding elections of the Members of the Panchayats is initiated well in advance, prior to the expiry of the statutory term of 5 years

of the respective Panchayats. This can also be gathered from Rule 10 of the Goa Panchayat Rules which provides that the election process has to be completed within 22 days as stipulated therein. In such circumstances, since the time limit stipulated under the provisions of Article 243E(3) is mandatory and peremptory, the State Election Commission-respondent No.2 must start taking all necessary steps and a heavy responsibility is cast on the shoulders of the respondent No.2 which even requires the Commission to request, remind, caution and alert the State Government and other Authorities for taking timely action to see that all preliminary steps are taken with utmost expedition, so that the respondent No.2 can then commence the elections within the time limit stipulated under the Constitutional provision. We have to keep in mind that being the largest democracy in the world, it was paradoxical that there was no constitutional sanction or protection to the democratic institutions at the grass-root level represented by the Panchayats, Municipalities, etc.. Whenever any structure is erected, the foundations which bear the most weight have to be strongest. The democracy is also a basic structure of our Constitution and for it to survive the democratic institutions, at the grass-root level have to

be strongest. The democracy must become a way of life and the people participate in the establishment of such democratic institutions. It has, therefore, been felt that a constitutional sanction is as indispensable to democracy at the grass-root level as it is to the democracy at the State and National levels. In order to achieve the said objective, the provisions of Part IX and Part IX-A recognize that the elections are required to be regularly held and the only time that an unelected body can exist is when it is superseded. Even then, it is incumbent to hold the elections within six months of the supersessions. In the case of ***Kishansing Tomar*** (supra), when the question to examine whether the action of postponement of election was justified, it was directed by the Apex Court that the time-frame must be strictly followed and elections must be completed before the expiry of its term. For this purpose, it is incumbent upon the State Election Commission to propose the election programme so as to complete the election process within the time stipulated. In the said Judgment of ***Kishansing Tomar*** (supra), the Apex Court has observed that in fact Article 243ZA provides that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct

of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K. Taking note of the said observations of the Apex Court, it is clear that in the matter of conduct of the elections of the Village Panchayats, the State Government shall have to render assistance and cooperation to the State Election Commission, also in respect of the assessment of the needs in order to ensure that free and fair elections are conducted. It is to be noted that the provision of Article 243U for the Municipalities is having the same language as Article 243E(3) for the duration of the Panchayats. It is noted that if the State Election Commission feels that it was not receiving co-operation from the State Government for discharging its constitutional obligation, it would be open to the State Election Commission to approach the High Court in the first instance and thereafter, the Apex Court for a writ of mandamus or other appropriate writ directing the State Government concerned to provide necessary co-operation and assistance to the State Election Commission to fulfill its constitutional mandate.

12. Following the observations of the Apex Court and the principles as laid down therein, it is clear that the mandate to hold elections within the time stipulated under Article 243E can be postponed only in case of man-made calamities, such as rioting or breakdown of law and order, or natural calamities and in no other circumstances. In the present case, taking note of the reasons as brought to our notice by the learned Advocate General in the reply filed by the respondent No.1, we find that such reasons do not fit in any of the situations as specified by the Apex Court in the said Judgment.

13. As stated herein below, similar grounds to postpone the elections were not accepted by this Court in the case of ***Naresh Krishna Gaunekar and ors*** (supra), when the Panchayat elections were sought to be postponed despite of the mandate recognized and guaranteed under Article 243E(3) of the Constitution. The delimitation which is a ground for postponement in the present petition, was also taken in the said case which came to be rejected by this Court whilst passing the said Judgment. Despite of the said two Judgments passed by this Court, it is very surprising that

the respondent No.1 has proceeded to once again advance the same reasons to postpone the elections which, otherwise, had to take place in terms of the Constitution on or before 27th May, 2017.

14. The Apex Court in the case of ***Kishansing Tomar*** (supra) has examined similar reasons which were provided by the concerned Authorities in delaying conducting the Municipal Elections in terms of Article 243-U of the Constitution of India which are *pari materia* to the provisions of Article 243-E of the Constitution of India. The Apex Court has observed at paras 19, 21 and 22 thus :

“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.

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 (*sic* other) circumstance would the Election Commission 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 [243U](#), 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.

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.”

15. This Court in *Naresh Krishna Gaunekar (supra)* has observed at paras 18 and 20 thus :

“18. Before we advert to the contentions urged by learned Counsel for the parties, we would like to look into the judgment of the Supreme Court in Kishansing Tomars case (supra), which learned Counsel for both the sides, relied upon heavily in support of their contentions. The Supreme Court in that case was dealing with an appeal arising from the judgments of the High Court passed by the learned Single Judge in the writ petition and of the Division Bench in the LPA. The appellant, who was the writ petitioner before the High Court, apprehended that the authorities may delay the process of election to constitute the new municipal body and, therefore, filed the said writ petition. The State Election Commission, in their reply affidavit, submitted that the State Government had issued

notification on 8.6.2005 determining the wards for the City of Ahmadabad by which total number of wards had been increased from 43 to 45 and in view thereof, the increase in the number of wards the Commission was required to proceed with the exercise of delimitation of the wards of the city of Ahmadabad and that the Commission had issued circular requiring the collectors and the designated officers to furnish details and to make proposal for delimitation of the wards. It was also stated by the commission in their reply that it was required to consult the political parties to carry out delimitation of the wards and it would take atleast six months time for completing the process of elections and the Commission could act only after the State Government issued notification. Similar arguments, as advanced by the learned Advocate General in the present writ petition justifying first attempt to postpone the elections of PMC in September, 2006, were advanced before the learned Single Judge in that case, who accepted the time frame suggested by the State Election Commission and directed to complete the process of election by 31.12.2005. The order of the learned Single Judge was carried in LPA. The Division Bench of the High Court refused to interfere with the said order. It is against these orders, an appeal was preferred before the Supreme Court. The Election Commission before the Supreme Court contended that every effort was made by the Election Commission to

conduct elections before the stipulated time, but due to unavoidable circumstances, elections could not be held and the preparation of electoral roll and the increase in the number of wards had caused delay in elections and under such circumstances delay was justified in conducting the elections. It is against this backdrop, the Supreme Court after considering the provisions of Articles 243-U, 243-ZA and 243S and 243-T, so also the statement of object and reasons in the constitution amendment bill relating to urban local bodies, in paragraph 13 held thus :

“13 -

20. This Court had an occasion to deal with almost similar situation in respect of holding of Panchayats elections in (Joseph Siqueira and ors Vs. The State of Goa and ors)⁶, 2007(1) Goa.L.R. 401. The Division Bench of this Court resisted the attempt on the part of the State of Goa and the State Election Commission to postpone the holding of Panchayats elections by relying upon the judgment of the Supreme Court in the case of Kishansing Tomar case (supra). In the said case, reasons similar to ones cited in the present case were urged on behalf of the State Government and the State Election Commission. Thus, it is clear that under no other circumstances, could the authorities defer or delay the elections and breach the constitutional mandate of Article 243-U of the Constitution, except the

circumstance over which the persons in the helm of affairs have no control like acts of God.”

Despite of the observations recorded by this Court and rejecting the reasons to defer holding of elections as the process of delimitation, is not complete, the respondents in the present case have chosen to delay holding of the elections to the concerned Panchayats beyond the time provided under Article 243-E of the Constitution of India. The contention of the learned Advocate General that on account of the Election Code of Conduct for the General Assembly Elections then in force, the delimitation process could not be started, cannot be accepted. The learned Counsel appearing for the respondent No.2, in fact, states that there is no impediment to proceed with the delimitation process during such period. In such circumstances, the reasons rendered by the respondent No.1 that on account of Election of Code of Conduct which was in operation the delimitation process could not be completed, cannot be accepted.

16. The next contention of the learned Advocate General that the respondent No.1 did not have requisite staff to perform

such functions, we find that this is an aspect for the respondent No.1 to examine about the staff requirement to perform the functions which are duly provided under the Constitution. There cannot be any excuse to perform the Constitutional duties on the specious ground that the staff was not available on account of the General Assembly Elections held on 4/2/2017.

17. The next contention of the learned Advocate General that on account of School Vacations, and as the school premises would be required as Polling Booths in the concerned Villages, the elections could not be held in time, we find that it would be more appropriate to hold the elections during the School Vacations rather than after the reopening of the schools on 5th June, 2017. When the time limits to hold such elections are specifically provided under Article 243-E of the Constitution, as already pointed out herein above, the mandatory provisions to hold the elections within time specified therein have to be strictly complied with.

18. Another aspect which is required to be noted is that the respondent No.2 has stated that the respondent No.2 realised that the election date was fixed by the respondent No.1 only after the reply was filed by the respondent No.1 in the above writ petition. In fact, in case the respondent No.1 had any justifiable and cogent reasons to postpone the elections in terms of the Statute and the Constitution, it was expected that such reasons were submitted to the respondent No.2 to enable the respondent No.2 to take a decision with that regard. This is essentially in the context of the observations of this Court in the case of ***Joseph Sequeira and ors*** (supra). In that case, when the State Government wanted to seek postponement of the elections, directions were issued to the State Government to submit the reasons before the State Election Commission to enable them to take a decision with that regard. The respondent No.2 no doubt has a Constitutional mandate to ensure that the elections are completed within the time provided under the Constitution, but it cannot explain as to how the respondent No.2 addressed letters to the respondent No.1 and the Chief Secretary, without taking any

positive steps to ensure that the elections are conducted within the time as provided under Article 243-E of the Constitution. We have to note that the State Election Commission is a Constitutional authority, entrusted with the function of conducting elections to the Village Panchayats, Zilla Panchayats, Municipalities, etc.. The State Election Commission is also obliged to start the election process well in advance, as pointed out herein above.

19. In the background of the aforesaid facts and circumstances, in the present case, we shall now proceed to examine what would be an appropriate period for holding the Panchayat elections which otherwise had to be held before 27th May, 2017. The learned Advocate General, during the course of hearing, has pointed out that the elections are intended to be held on 17th June, 2017, as the Schools would be opening after summer vacation on 5th June, 2017 and the School premises will be required for holding such elections. On the other hand, the learned Counsel appearing for the respondent No.2, upon instructions states that 33 days are required to complete the election process,

after the delimitation process is completed by the respondent No.1. The learned Advocate General, upon instructions, has submitted that the delimitation process will be completed by 5th May, 2017. Mr. Nadkarni, learned Counsel appearing for the petitioner, however, points out that in terms of the Amendment to Rule 10 of the Goa Panchayat Rules, 1996, time prescribed to complete the election process is 22 days and, as such, directions can be issued to complete the election process within the time stipulated in the Constitution. We have already found that there are no justifiable reasons disclosed by the respondents to postpone the elections and that the reasons shown by the respondents do not fit into the exception as stipulated in the Judgment of the Apex Court in the case of ***Kishansing Tomar*** (supra). In such circumstances, we find that the elections for the subject Village Panchayats have to be conducted as expeditiously as possible.

20. Considering the overall facts and circumstances as stated herein above and taking note of the time period as disclosed by the learned Advocate General, as well as the learned Counsel

appearing for the respondent No.2, we pass the following:

O R D E R

(I) We accept the statement of the learned Advocate General that the delimitation process would be completed by 5th May, 2017;

(II) We direct the respondent No.2 and the concerned Authorities to complete the election process on or before 12th June, 2017.

(III) Rule is made absolute in the above terms.

Parties to act on a copy of this Judgment, duly authenticated by the Registrar (Judicial) of this Court.

NUTAN D. SARDESSAI, J.

F.M. REIS, J.

ssm.