

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION Nos.27036, 27174, 27198, 27219, 27232, 27245, 27246, 27250, 27252, 27258, 27265, 27269, 27277, 27287, 27289, 27290, 27291, 27311, 27366, 27378, 27391, 27396, 27437, 27438, 27439, 27478, 27492, 27514, 27534, 27586, 27588, 27596, 27598, 27606, 27608, 27628, 27657, 27675, 27693, 27713, 27716, 27719, 27720, 27747, 27753, 27789, 27800, 27826, 27856, 27902, 28007, 28152, 28625 and 31605 of 2018.

COMMON ORDER :

In this batch of Writ Petitions, the action of the State of Telangana in issuing Government Order Nos.46 to 75 Panchayat Raj and Rural development (Pts.III) Department on 1.8.2018 appointing Gazetted and non-Gazetted Officers working in the State Government services as Special Officers to run the administration of the Gram Panchayats w.e.f 2.8.2018 where the term of the Members and Sarpanchs expired on 1.8.2018, is challenged.

THE BACK GROUND FACTS

2. In the composite and undivided State of Andhra Pradesh, the last ordinary elections to the Gram Panchayats were held in June/July, 2013. These elections were conducted under the A.P. Panchayat Raj Act, 1994. The term of the Sarpanchs and Ward Members ended on 1.8.2018.

3. On 13-07-2018, a Memo No.7033/Pts.III/A2/2018 was issued by the State of Telangana through it's Principal Secretary to Government, Panchayat Raj and Rural Development (pts.III) Department requesting the District Collectors in the State of

Telangana to furnish proposals for appointing Special Officers for continuation and for smooth administration of the Gram Panchayats after 01-08-2018 and until assumption of offices by the elected bodies to the Gram Panchayats.

4. On 01-08-2018, Government Orders Nos.46 to 75 PR & RD (Pts.III) Department were issued by the State of Telangana invoking power under sub-Section (3) of Section 136 of the Telangana Panchayat Raj Act,2018 (for short 'the 2018 Act') appointing several Gazetted and non-Gazetted Officers in the service of the State of Telangana as Special Officers to the Gram Panchayats in the State of Telangana w.e.f. 02-08-2018, where the term of the Gram Panchayats will expire on 01-08-2018, till the date of assumption of office of the Members and Sarpanchs of Gram Panchayats elected in accordance with due process. The said Government Orders directed the Special Officers so appointed to take charge of the office immediately after expiry of the term of the elected Members and Sarpanchs of the Gram Panchayats on the after noon of 01-08-2018.

THE CHALLENGE IN THE WRIT PETITIONS

5. W.P.No.27036 of 2018 was filed on 31.7.2018 by the Telangana Sarpanchs Association, a body registered on 26-07-2004 under the A.P. (Telangana Area) Public Societies Registration Act, 1950 with registration No.563 of 2004.

6. It has challenged proceedings dt.13-07-2018 in Memo No.7033/Pts.III/A2/2018 of the State of Telangana issued through it's Principal Secretary to Government, Panchayat Raj and Rural development (pts.III) Department requesting the District Collectors in the State of Telangana to furnish proposals for appointing Special Officers for continuation and for smooth administration of the Gram Panchayats after 01-08-2018 and until assumption of offices by the elected bodies to the Gram Panchayats. Petitioner seeks a declaration that this Memo is without jurisdiction, violative of Article 243-E and Article 14 of the Constitution of India and the provisions of the 2018 Act. It also seeks a consequential direction to the respondents to (a) conduct election of all the Gram Panchayats in the State of Telangana as expeditiously as possible and (b) also a direction to the State of Telangana represented by its Principal Secretary, Panchayat Raj Department, Secretariat, Hyderabad (1st respondent) to appoint the existing elected Sarpanchs of all the Gram Panchayats in the State of Telangana as persons-in-charge for the day to day administration of the Gram Panchayats till the elections are held. The State Election Commission of State of Telangana represented by its Election Commissioner, Hyderabad is impleaded as 2nd respondent in this Writ Petition.

7. In the other Writ Petitions, the petitioners, who are ex-Sarpanchs of Gram Panchayats in the State of Telangana, assail the various Government Orders issued on 01.08.2018 appointing Special

Officers for the Gram Panchayats in the State of Telangana and seek to set aside the said Government Orders. They also seek a consequential direction to the respondents to continue them as persons-in-charge of the said Gram Panchayats till elections are held to them.

THE RELEVANT STATUTORY PROVISIONS

8. Before dealing with the contentions of the parties, it is necessary to note the provisions of the relevant statutes.

9. Section 13 of the A.P.Panchayat Raj Act,1994 provided that the term of office of the Members elected shall be five years from the date appointed by the Commissioner for the first meeting of the Gram Panchayat after the ordinary elections.

10. Under sub-Section (3) of Section 14 of the said Act, the term of office of the Sarpanch, who is elected at an ordinary election, is fixed as five years from the date appointed by the Election authority for the first meeting of the Gram Panchayat after the ordinary election.

11. The five year term of the Sarpanchs and the Ward Members of the Gram Panchayats commenced w.e.f.2.8.2013 and expired on 1.8.2018.

12. After the State of Telangana was created under the A.P. Reorganization Act, 2014, w.e.f. 02-06-2014, the A.P.Panchayat Raj Act, 1994 was renamed as the Telangana Panchayat Raj Act, 1994.

13. The State of Telangana enacted in March, 2018 the Telangana Panchayat Raj Act, 2018 repealing the Telangana Panchayat Raj Act, 1994. This Act came into operation from 18-04-2018.

14. Under the 2018 Act, the State of Telangana notified 12751 Gram Panchayats in Schedule-VII against the then existing strength of 8690.

15. Under Section 14 of the 2018 Act, the term of office of the Members elected at ordinary elections is five years from the date appointed by the Commissioner for the first meeting of the Gram Panchayat after the ordinary elections.

16. Under sub-Section (3) of Section 15, the term of office of the Sarpanch, who is elected at an ordinary election, is fixed at five years from the date appointed by the Commissioner for the first meeting of the Gram Panchayat after the ordinary election.

17. Section 8 provided that all Members of the Gram Panchayats shall be elected by the registered voters in the ward by the method of secret ballot and in accordance with such Rules as may be prescribed in that behalf. The Telangana Panchayat Raj (Conduct of Election) Rules, 2018 were also framed vide G.O.Ms.No.28 Panchayat Raj and Rural Development (Pts.III) Department dt.19-05-2018.

18. Section 9 deals with reservation of seats of Members of Gram Panchayat and Section 17 dealt with reservation of offices of

Sarpanchs to Scheduled Tribes, Scheduled Castes, Backward Classes and Women.

19. Section 13 directs the Government to identify all the Backward Class voters in the State and further directs that this activity shall be conducted as per the schedule issued by the Government which shall not be more than 15 days.

20. Section 201 of the Act states that such reservation to Members of Backward Classes in the State should be done taking the population figures of the Backward Classes, gathered in the Socio-Economic Survey conducted by the Telangana Backward Classes Cooperative Finance Corporation Limited, Hyderabad.

21. Section 136 deals with appointment of Special Officers. To the extent it is relevant, it states :

“(1) Notwithstanding anything in this Act, when a local area is notified as a village under section 3, for the first time, the District Collector shall appoint a Special Officer to exercise the powers and perform the functions of the Gram Panchayat and its Sarpanch until the members and Sarpanch thereof who are duly elected assume office.

(2) xxx xxxxx xxx

(3) The Government, or as the case may be, an officer authorized by the Government, shall appoint a special officer or a person-in-charge or a committee of persons-in-charge to a Gram Panchayat, if for any reason, the process of election to such Gram Panchayat is not completed.

(4) The special officer or person-in-charge or the Committee of persons-in-charge, appointed under sub-section (3) shall exercise

the powers and perform the functions of the Gram Panchayat and its Sarpanch until the members and Sarpanch elected thereof assume office.”

CONTENTIONS OF COUNSEL FOR PETITIONERS

22. It is the contention of the Sri P.Venugopal, Senior Counsel, Sri T.Venkat Reddy, Sri C.Ramachandra Raju, Sri Prabhakar Chikkudu, Sri Penjuri Venugopal, Smt. Rachna Reddy and other counsel, who appeared for the petitioners in this batch of cases that the State Government and the State Election Commission were fully aware that the term of office of the Members and Sarpanchs of the Gram Panchayats in the State of Telangana would expire on 01-08-2018, but the process was not initiated to conduct elections in the State before the said date, and without assigning any reason, the impugned Government Orders were issued by it appointing Government employees as Special Officers invoking sub-Section (3) of Section 136 of the Act without even specifying when it intends to hold elections to the posts of Members and Sarpanchs in the Gram Panchayats in the State. According to them, the State cannot decide or withhold elections to Gram panchayats as per it's whims and fancies.

23. They contend that this action of the State in not holding elections before 1.8.2018 when the terms of the Members and Sarpanchs of Gram Panchayats ended, *and* it's lack of any interest/initiative to hold elections in the near future, violates Article 14 of the Constitution of India.

24. They contend that the State Government cannot take advantage of its own wrong in not initiating steps for conduct of elections to the Gram Panchayats much before the expiry of their term, and it cannot be allowed to run the administration in Gram Panchayats through State Government employees, who are under its thumb, and who will do as per the bidding of the State, after expiry of the term of Sarpanchs.

25. According to the Counsel for petitioners, Gram Panchayats have to work as vibrant democratic units of self-government as per the Constitution of India and by willfully failing to hold regular elections, the State cannot defeat this constitutional purpose by running them through nominated persons under its control.

26. They place reliance on Article 243-E of the Constitution of India contained in Part-IX of the Constitution introduced by Constitution (73rd Amendment) Act, 1992 and contend that it is mandatory for the State to complete an election to constitute a Panchayat *before the expiry of its duration of five years*, and the State cannot sit idly till the term expires, and then appoint its employees as Special Officers for an indefinite period of time and thereby violate the democratic spirit of the Constitution.

27. According to the petitioners, Part IX of the Constitution dealing with Panchayats does not envisage appointment of Special Officers at all, and any provision to that effect in the Act, is therefore not valid.

28. Alternatively, petitioners' counsel contended that Section 136 of the 2018 Act would apply only in a situation where a local area is notified as a village for the first time and does not extend to already existing Gram Panchayats. So they contend that the impugned Government Orders as well as the preceding Memo dt.13-07-2018 of the State Government are without jurisdiction.

29. They contend that even if sub-Section (3) of Section 136 of the Act is attracted, since the impugned Government Orders do not assign any reasons for appointing Special Officers, which the said provision itself requires, they cannot be sustained and have to be set aside.

30. In any event, learned counsel for petitioners contend that the State cannot exercise power under Section 136 of the Act for ulterior purposes since it is only a trustee of the power conferred on it and is bound to exercise such power reasonably, fairly and in a non-discriminatory manner. According to them, the issuance of the Government Orders in exercise of power purportedly under Section 136 of the Act, is *mala fide*, and not in public interest and the State cannot be allowed to control the administration in the Gram Panchayats through its nominated officials excluding self-government by the local population.

31. They contend that by appointing Special Officers, the State cannot defeat the legitimate expectation/aspirations of the residents of

the Gram Panchayats to get elected as Members and Sarpanchs and allow its nominees to run the administration of the Gram Panchayats.

32. Learned counsel state that by not conducting elections, the State created a vacuum in the administration of Gram Panchayats and thus committed a Constitutional impropriety and further also committed another wrong, by filling up the vacuum with its employees. The State, according to them, has to maintain *status quo* prevailing as on the date of expiry of the term of the Gram Panchayats and continue the ex-Sarpanchs as persons-in-charge till elections are held because the Act does not disqualify the ex-Sarpanchs from being appointed as persons-in-charge after the term expires.

33. They contend that the petitioners, who are elected persons, are aware of the difficulties of the people in the Gram Panchayat, and they ought to have been allowed to run the administration, even without any cheque signing power, till the elections are held in accordance with law. They contend that in the interest of fairness and equity, the State should choose them to run the administration of the Gram Panchayats till the elections are held.

34. They also contend that the Special Officers appointed by the State have no administrative experience or knowledge of the day-to-day affairs of the Gram Panchayats, that they are not able to spare time for attending to their additional responsibility as Special Officers,

and this has resulted in hardship to the residents of the Gram Panchayats whose day-to-day problems have remained unaddressed.

35. Counsel for petitioners pointed out that in case of Cooperative Societies in the State of Telangana, when the terms of their Managing Committees expired, the State Government had issued G.O.Ms.No.12 Agriculture & Coopn. (Coop-II) dt.31-01-2018. In the said G.O.Ms.No.12, a decision was taken by the Government to direct the Registrar of Cooperative Societies to order for appointment of Persons In-charge Committees under Section 32 (7) (A) of Telangana Co-operative Societies Act, 1964 to all Primary Agricultural Cooperative Societies by appointing the elected Members of the existing Managing Committees as persons-in-charge for a period of six months or till elections are conducted whichever is earlier *except where the Managing Committees are deemed to be not fit or not suitable for running the affairs of the society in the interest of the society*; and in case of societies where Managing Committees were performing poorly or where President/Managing Committee attracted disqualification under the provisions of the Act, the Registrar could appoint an Official person or persons to manage the affairs of such societies under Section 32 (7) (A) of the Act. Petitioners contend that not extending similar benefit to ex-Sarpanchs of Gram Panchayats is discriminatory.

36. According to them, the State ought to have considered the Sarpanchs who had worked without any blemish for the previous five

years for appointment as persons-in-charge of the Gram Panchayats, in the interest of better administration of the Gram Panchayats and the ex-Sarpanchs could function as “care taker” administrators till regular elections are held. They contend that when there can be a *care taker Prime Minister* when Parliament is dissolved pending holding of elections, and a *care taker Chief Minister* when the State Legislatures are dissolved pending holding of elections, there can also be a care taker Sarpanch/person-in-charge for a Gram Panchayat.

37. Learned counsel for petitioners placed reliance on **Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad and others¹**, **Nimmaka Jaya Raj Vs. The Government of Andhra Pradesh, represented by its Principal Secretary, General Administration Department, Secretariat, Hyderabad and others²**, **State Election Commission Vs. State of Andhra Pradesh and another³**, **Union of India and another Vs. International Trading Co. and another⁴**, **Karnataka Live Band Restaurants Association Vs. State of Karnataka and others⁵**.

CONTENTIONS OF GOVERNMENT PLEADER FOR PANCHAYAT RAJ

38. Ms. Jyoti Kiran, learned Government Pleader for Panchayat Raj, appearing for respondents refuted the above contentions.

¹ (2006) 8 SCC 352

² Order dt.04-09-2012 in PIL Nos.149 and 150 of 2012 (DB)

³ 2000(3) ALD 456 (DB)

⁴ (2003) 5 SCC 437

⁵ (2018) 4 SCC 372

39. It is contended that the Government had issued G.O.Nos.46 to 75 PR & RD (Pts.III) Department dt.01-08-2018 appointing Special Officers in each Gram Panchayat in the State on the expiry of the term of the Gram Panchayats by 01-08-2018. Before the expiry of the term of the Gram Panchayat, the State Election Commission, Hyderabad had issued tentative notification issuing schedule for conduct of 1st ordinary election to the Gram Panchayats as per the provisions of the 2018 Act, and in pursuance of the notification of the State Election Commission, the Government communicated the schedule to all the Gram Panchayats for preparation and conduct of elections for the respective Gram Panchayats in the State, apart from releasing election related budget towards the expenditure to be incurred in the first ordinary election to the Gram Panchayats.

40. It is contended that under the 2018 Act, total 12751 Gram Panchayats were notified in Schedule-VII of the Act against the existing Gram Panchayats of 8690. Under the Act, most of the existing Gram Panchayats were bifurcated and 306 Gram Panchayats merged/upgraded as Municipal Corporation and other Municipalities; therefore, most of the Gram Panchayats' territorial jurisdictions got drastically changed; thereby the Sarpanchs and the Members of Gram Panchayats elected under AP Panchayat Raj Act, 1994 for the Gram Panchayats existed therein are not in a position to continue as Sarpanchs to the territorial jurisdiction for which they are elected; and

that is why they cannot be appointed as persons - in- charge or as Special officers.

41. It is contended that, two Writ Petitions were filed before this Court challenging the reservations of the offices of Sarpanchs of Gram Panchayats for Backward Classes on the ground that the reservations were not made in accordance with the procedure contemplated under the 2018 Act, that the said Writ Petitions were heard by this Court and following interim orders were passed:

Interim order in W.P.No.20477 of 2018 dt.26-06-2018

“... ..Since it is an admitted fact that at any moment Notification for holding the elections to the Gram Panchayats under the Telangana Panchayat Raj Act, 2018 is likely to be issued, and there could be difficulty for the Court to do anything after such a notification is issued, if the respondents are found later to have not acted properly in matter of reservation of Offices of Sarpanchs for Backward Classes, and since it is not disputed that the legal position set out above still holds good, and to ensure that the process of reservation for Backward Classes communities is done in accordance with the aforesaid decisions, I deem it appropriate to direct the respondents to scrupulously follow the method of identification of Backward Class voters and population laid down in said decisions including the publication of the results of the survey done by respondent Nos.5 and 6, invite objections thereto and then take further steps in the matter before issuing the Election Notification for the ensuing elections for the Gram Panchayats in the State of Telangana.”
(emphasis supplied)

Interim order in W.P.No.21651 of 2018 dt.09-07-2018

“There will be an interim order that the upper ceiling limit of vertical reservations in favour of SCs/STs/OBs should not be breached in the context of the Local Self Government in the State of Telangana, subject of course to the exception that safeguards could be made to protect the interests of the Scheduled Tribes in the matter of their representation in Panchayats located in the Scheduled areas. It is also directed. This interlocutory order is issued without prejudice to the eligibility of the respondents to place their pleadings on record in respect of all reliefs sought for in this Writ Petition.”

42. It is contended that in pursuance of the orders of this Court, the State Cabinet meeting was held on 11-07-2018 and a decision was taken to conduct enumeration of Backward Class population; and in the said meeting, a Cabinet sub-Committee has been constituted to take up enumeration of Backward Class population; in the meanwhile the term of the Gram Panchayats expired pending the enumeration of Backward Class population; and the Government is not in a position to hold elections pending the process of enumeration of the Backward Class population.

43. It is stated that in this back ground, the Government called for proposals from respective District Collectors of the State, except the Hyderabad District, for appointment of Special Officers vide Memo No.7033/Pts.III/A2/2018 dt.13-07-2018, and in pursuance of the said Memo, all the District Collectors submitted their proposals for

appointment of Special Officers to respective Gram Panchayats; and after examining all the proposals, the Government issued orders G.O.Ms.No.46 to 75 PR &RD (Pts.III) dt.01-08-2018 for (District-wise) appointing Special Officers invoking the powers under sub-Section (3) of Section 136 of the Act appointing the Special Officers to the respective Gram Panchayats to conduct the affairs of the Gram Panchayats pending elections and to facilitate the elections to be held. It is contended that in pursuance of the said G.Os., all the Special Officers appointed assumed their charge and are continuing as such and the affairs of the Gram Panchayats are being effectively managed so far.

44. It is contended that the voters expressed their will in favour of the petitioners as Sarpanchs for their Gram Panchayats only for (5) years and not more. Therefore, the Sarpanchs elected for the said fixed term have no right whatsoever to continue for more than the fixed term. It is contended that the intention of the Constitution, as carried under the provisions of the AP Panchayat Raj Act,1994, is clear and categorical and that the petitioners have no right whatsoever to continue as Sarpanchs even for a single day more than the term for which they have been elected.

45. It is contended that the constitutional provisions as envisaged under Article 243(E) do not permit the persons to be continued as Person-in-charge to the respective Gram Panchayats. Even as per the provisions of Section 136 of the Act, it is mandatory to appoint

Special Officers to the newly formed Gram Panchayats by virtue of constitution of Gram Panchayats under the Act.

46. It is further contended that the stand of the petitioners that the Special Officers appointed have absolutely no knowledge about the ground realities of the village and it would create problem to the residents of the village, is absolutely untenable and baseless and is a misapprehension.

47. It is stated that the Special Officers are the Officers of the State having knowledge and experience on over all administration of the State and that they can discharge their functions effectively to meet the situations arising from time to time; and that the appointment of the Special Officers is a temporary and stop gap arrangement till the ordinary elections are held and in view of the exigency.

48. It is stated that there is no illegality or irregularity committed by the 1st respondent State in issuing the impugned G.Os. appointing Special Officers for the respective Gram Panchayats for the smooth administration of the affairs of the Gram Panchayats in the State till the elected bodies assume charge of the Gram Panchayats.

49. Learned Government Pleader contended that this batch of Writ Petitions ought to be heard along with the W.P.Nos.20477 and 21651 of 2018 wherein interim orders had been granted by this Court, as stated above.

50. The Government Pleader also stated that the inability of the State to complete the process of election to the Gram Panchayats before the expiry of their term is not the subject matter of the Writ Petitions and it is unnecessary to go into the said issue.

51. The Government Pleader also placed on record a D.O. letter No.0042/Peshi/TSCBC/2018 dt.04-10-2018 of the Chairman of the Telangana State Commission for Backward classes addressed to Secretary to Government (FAC), Backward Classes Welfare Department, Government of Telangana, stating that enumeration of social, educational, economical and political representation of backward classes would take 11-14 months with the cooperation of all Government Departments and Agencies, that the Supreme Court had directed not to use teaching staff on working days to avoid hampering of studies of students, and therefore services of all Government employees, agencies and volunteers should be utilized in this work on holidays. The Government Pleader therefore contends that at least for the next 14 months, it would not be possible to complete the enumeration of Backward Classes in the State of Telangana and consequently, ordinary elections to the Gram Panchayats cannot be held and Special Officers would be continued.

52. She further contended that Section 136 of the new Telangana Panchayat Raj Act, 2018 is in *pari materia* with Section 143 of the A.P. Panchayat Raj Act, 1994 and that if the State Government did not identify the seats/offices reserved for S.Cs., S.Ts., B.Cs. and

Women, the Election Commission cannot proceed with conduct of elections to the Gram Panchayats.

53. Lastly she contended that the State Assembly has been dissolved on 6th September 2018, that election of Members of the Legislative Assembly are scheduled to be held shortly, and so in the near future, it is not possible for the State machinery to hold elections to the Gram Panchayats.

STAND OF STATE ELECTION COMMISSION OF STATE OF TELANGANA:

54. The State Election Commission of the State of Telangana which is a party only in W.P.No.27036 of 2018 and in W.P.No.31605 of 2018 also filed a counter affidavit in the said Writ Petitions.

55. It admitted that Article 243 E of the Constitution provides for duration of Panchayats and that every Panchayat shall continue for five years from the date appointed for its first meeting and no longer; and clause (3) of Article 243 E mandates that an election to constitute a Panchayat shall be completed before the expiry of its duration specified in clause (1) therein.

56. It is also admitted that sub Section (2) of Section 14 of the Telangana Panchayat Raj Act, 2018 stipulates that ordinary elections to Gram Panchayats shall be conducted by the State Election Commission within three months prior to the expiry of its term.

57. While stating that the five year term of the Gram Panchayats commenced w.e.f. 02-08-2013 and expired on 01-08-2018, it is contended that the State Election Commission initiated the process for conducting elections to Gram Panchayats by addressing letters to the State Government in March 2017 itself; that electoral rolls for Gram Panchayats were published on 17-05-2018; that series of meetings were held with District Collectors, Commissioners, Superintendents of Police and other stakeholders; all preparatory arrangements for holding elections were completed by it and it was awaiting finalization of reservations, a step that falls in the domain of the State Government as per Sections 9 and 17 of the Act. It is stated that the Commission requested the State Government through letter No.363/TSEC-PR/2018 dt.20-06-2018 to finalize the reservations and also concur with the proposed election schedule as per sub Section (6) of Section 197.

58. It is contended that the election could not be conducted specifically because the State Government and their officers including the Commissioner, Panchayat Raj failed to complete the finalization of reservations and also failed to confirm the election schedule proposed by the Commission under sub Section (6) of Section 197 of the Act.

59. It is stated that in view of the above, the Commission cannot be accused of failing to discharge its duties.

The Points for consideration:

60. Having regard to the above pleadings and contentions, the following are the points for consideration arising in these cases:

- a) *Whether this Court is entitled to go into the question of inability of the State Government/State Election Commission to hold elections to Gram Panchayats in the State of Telangana before expiry of their term as per Art.243-E (3) (a) of the Constitution of India?*
- b) *If yes, whether there is a duty cast upon the State Government/State Election Commission to hold elections to Gram Panchayats in the State of Telangana before expiry of their term?*
- c) *Whether the State Government and the State Election Commission have bonafide reasons for not conducting elections to the Gram Panchayats before the expiry of the term of their Members and Sarpanchs on 01-08-2018?*
- d) *Whether the action of the State of Telangana in appointing Special Officers to the Gram Panchayats after expiry of the term of their Members and Sapanchs on 01-08-2018 vide proceedings dt.13-07-2018 in Memo No.7033/Pts.III/A2/2018 and G.Os. 46 to 75 dt.01-08-2018 is valid?*
- e) *Whether the ex-sarpanches are entitled to be appointed as person-in-charge to run the administration of the Gram panchayats till elections are held?*
- f) *To what relief?*

Point (a):

61. The main contention advanced by the learned Government Pleader for Panchayat Raj is that the question about the inability/failure of the State of Telangana to conduct elections to the Gram Panchayats before 01-08-2018 does not arise for consideration in this batch of Writ Petitions and therefore cannot be gone into by this Court.

62. The counsel for the Writ Petitioners refuted the said contention. In para-10 of the affidavit filed in support of W.P.No.27789 of 2018, a specific contention is raised by the petitioner therein that under the Constitution, there is a Constitutional obligation cast on the State to conduct elections well within the time and that the State of Telangana failed to do so. Reliance is placed on Article 243 E (3) (a) in support of the said plea.

63. In W.P.No.28007 of 2018 also, in para-13 of the affidavit filed by petitioners, it is alleged that there is a duty cast on the State to conduct the elections six months advance, but it has slept over the matter. It is also alleged that failure of the State to conduct elections cannot enable the State to issue the impugned G.Os.

64. Identical plea is also raised in para-12 of W.P.No.28625 of 2018.

65. In para-4 of the affidavit in W.P.No.31605 of 2018 also, it is alleged that the State of Telangana and the State Election Commission

failed to discharge their duty to carry out the constitutional mandate under Article 243 E to conduct elections to Gram Panchayats before the expiry of the term.

66. Thus, the question of failure of the State Government and the State Election Commission of the State of Telangana to hold elections to the Members and Sarpanchs of Gram Panchayats in the said State, has been specifically raised by the petitioners and in W.P.No.27036 of 2018 a direction was also sought to direct conduct of elections as soon as possible.

67. It is not in dispute that inability/failure by the State Government and the State Election Commission to hold elections to Gram Panchayats before the expiry of the term of their Sarpanchs and Members, is the reason for appointment of Special Officers under the impugned G.Os.

68. So, in my opinion, the issue of appointment of Special Officers to the Gram Panchayats after 01-08-2018 under the impugned Government Orders issued by the State of Telangana is intrinsically linked with its failure and also the failure of the State Election Commission to hold elections before the expiry of the term of Members and Sarpanchs of Gram Panchayats on 01-08-2018.

69. Therefore, the question whether the State Government and the State Election Commission had a genuine cause for not holding elections to the Gram Panchayats in the State of Telangana before

01-08-2018 is also required to be gone into while adjudicating these Writ Petitions. Point (a) is answered accordingly in favour of the Writ Petitioners and against the State of Telangana.

Point (b):

70. Now I will consider the question whether there is a duty cast upon the State Government/State Election Commission to hold elections to Gram Panchayats in the State of Telangana before expiry of their term.

71. Though Panchayat Raj institutions had been in existence for a long time, they had not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersession, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and Women, inadequate devolution of powers and lack of financial resources.

72. Article 40 of the Constitution enshrines a Directive Principle of State policy that the State shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government.

73. With this object and for the aforesaid reason, the Constitution (73rd Amendment) Act, 1992 was passed by the Parliament. Parliament felt that '*there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayat Raj*

institutions to impart certainty, continuity and strength to them’.

Part-IX thus came to be introduced in the Constitution of India with the underlying purpose to create “*democratic decentralization*” for ensuring that traditionally marginalized groups should progressively gain foothold in local self government⁶.

74. In Part IX, Article 243-C deals with composition of Panchayats, Article 243-D deals with reservation of seats and Article 243-E deals with duration of Panchayats.

75. Since Article 243-E is being relied upon, the same requires to be considered and is extracted as under:

“Article 243-E:- Duration of Panchayats, etc:

(1) *Every Panchayat, 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.*

(2).....

(3) An election to constitute a Panchayat shall be completed –

(a) before the expiry of its duration specified in clause (1);

(b) *before the expiration of a period of six months from the date of its dissolution;*

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.”

76. Thus as per Clause (1) of Article 243-E, the duration of every Panchayat, unless sooner dissolved, is five years from the date

⁶ Union of India Vs. Rakesh Kumar....(2010) 4 S.C.C. 50 para 39

appointed for its first meeting *and no longer*. Under sub clause (a) of Clause (3) of Article 243-E, the election to constitute a Panchayat *shall be completed before the expiry of its duration* specified in clause (1) of Article 243-E.

ARTICLE 243-E(3)(a) OF CONSTITUTION IS MANDATORY :

77. In the year 1995, in an unreported decision dt.12-08-1997 in W.P.(Civil).No.719 of 1995, the Supreme Court held that various clauses of Article 243 are to be followed in letter and spirit; the concerned States cannot be permitted to withhold elections of Panchayats *except in case of genuine supervening difficulties to hold such elections* e.g., unforeseen natural calamities in the State like flood, earthquake etc. or extremely urgent situation prevailing in the State for which election of the Panchayats cannot be held within the time frame. The Supreme Court observed:

“It will be unfortunate if the concerned States remain insensitive to the constitutional mandate of holding election of Panchayats in time and by unjustified action, allows old bodies to continue in the office of the Panchayats. We hope and trust that the State Government will be alive and sensitive to the duties and responsibilities flowing from the mandates of the Constitution in holding Panchayat elections.”

78. A Division Bench of this Court in the year 2000 in **State Election Commission** (3 supra) following this decision of the Supreme Court, held that holding of elections to Panchayat Raj bodies before expiry of their term as mandated by Article 243-E is mandatory and not directory.

79. Similar view was expressed by another Division Bench in 2012 in **Nimmaka Jayaraj** (2 supra). It reiterated:

“58. On the issue of conducting elections before the expiry of term of the local bodies, it is incumbent upon the State Election Commission and the concerned authorities to carry out the mandate of the Constitution and to see that new bodies are constituted in time and elections are conducted before the expiry of their duration of five years as specified in Article 243E of the Constitution. It is true that there may be certain exceptional circumstances like natural calamities which could distract the authorities from holding elections, but the Election Commission is not justified in delaying the process of election. We are of the firm opinion that Article 243E of the Constitution is mandatory and the said provision was inserted to see that there should not be any delay in the constitution of new Panchayats.”

80. This legal position is not disputed by the Government Pleader for Panchayat Raj or the counsel for the State Election Commission.

81. They also do not dispute that under clause (1) of Article 243-K, the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in the State Election Commission consisting of a State Election Commissioner to be appointed by the Governor; and under clause (3) of Article 243-K, the Governor shall, when so requested by the State Election Commission, make available to it such staff as may be necessary for the discharge of the functions conferred on it by clause (1).

82. Dealing with the question of timely holding of Municipal Elections for which analogous provisions in Article 243U and 243ZA

are contained in Part IX A of the Constitution inserted by the Constitution (74th Amendment) Act, 1992 which came into force on 01-06-1993, a Constitution Bench of the Supreme Court in **Kishansing Tomar** (1 supra) held that the five year term fixed for Municipalities in Article 243-U is mandatory and that it was incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new Municipality is constituted in time and elections to it are conducted *before the expiry of its duration* of five years. The Supreme Court opined that *the State Election Commission shall not put forward any excuse raised on unreasonable grounds that the election could not be completed in time and that it should not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.* It also stated that all State Governments should recognize the significance of the State Election Commission which is a constitutional body and abide by its directions. It held that the Government concern shall have to render full assistance and cooperation 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. It went further and also said that *for the independent and effective functioning of the State Election Commission, where it feels that it is not receiving the Cooperation of the State Government concerned 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 State Government concerned to provide all necessary cooperation and assistance to the State Election Commission to enable the latter to fulfill the constitutional mandate.

83. In view of the above decisions, I hold that Clause (3)(a) of Article 243-E which directs that an election to constitute a Panchayat shall be completed before the expiry of its duration specified in Clause (1) of Article 243-E, i.e., five years from the date appointed for its first meeting, is mandatory and there is a duty cast upon the State Government and the State Election Commission to conduct elections to the Panchayats before the said term expires. Point (b) is answered accordingly against the respondents and in favour of the petitioners.

Point (c) :

84. I will now consider the question whether the State Government of Telangana and its State Election Commission have *bona fide* reasons for not taking steps for conducting elections to the Gram Panchayats before the expiry of the term of their Members and Sarpanchs on 01-08-2018.

85. In other words, whether there are any genuine supervening difficulties existing which prevented the holding of such elections to the Gram Panchayats before 01.08.2018 (as held in order dt.12.08.1997 in W.P. (Civil). No.719 of 1995 of the Supreme Court

which was followed in **State Election Commission** (3 supra) and **Nimmaka Jayaraj** (2 supra).)

86. In those decisions, by way of illustration the Supreme court and this Court mentioned that unforeseen natural calamities like flood / earthquake, etc., should exist in the State or there should be extremely urgent situation prevailing in it because of which the election of the Panchayats cannot be held within the time frame.

87. It is not the case of the State of Telangana or its State Election Commission that such a situation existed in the State prior to 01.08.2018 which prevented them from holding elections to the Gram Panchayats before the expiry of their term.

88. As already noted, under Clause (1) of Article 243-K, the State Election Commission is conferred by the Constitution, the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats. Clause (3) of Article 243-K requires the Governor of the State of Telangana, when so requested by the State Election Commission, to make available to it such staff as may be necessary for the discharge of the functions conferred on it by Clause (1) of Article 243-K.

89. In the counter filed by the State Election Commission it stated that it initiated the process for conducting elections to Gram Panchayats by addressing letters to the State Government in March, 2017 itself. It published the electoral rolls for Gram Panchayats on

17.05.2018 also. According to it, series of meetings were held with District Collectors, Commissioners / Superintendents of Police and other stakeholders, that all preparatory arrangements for holding elections are completed by it and it was awaiting finalization of the reservations, a step that falls in the domain of the State Government under Sections 9 and 17 of the Telangana Panchayat Raj Act, 2018. It also requested the State Government through letter No.363 / TSEC-PR/2018, dt.20.06.2018, to finalize the reservations and also concur with the proposed election schedule as per Section 197(6) of the said Act. It contended that elections could not be conducted specifically because the State Government and its Officers including the Commissioner, Panchayat Raj failed to complete the finalization of reservations and also failed to confirm the election schedule proposed by it.

STATE ELECTION COMMISSION DID NOT TAKE APPROPRIATE ACTION.

90. If the State Election Commission felt that it was not receiving the cooperation of the State Government in discharging its constitutional obligation of holding the elections to the panchayats within the time mandated in the Constitution, as an independent body, it ought to have filed a Writ Petition seeking a Writ of Mandamus or other appropriate Writ directing the State Government to provide all necessary cooperation and assistance to it to enable it to fulfill the constitutional mandate.

91. Its inaction in this regard either on account of indifference or lack of independence has resulted in the present situation and it cannot therefore claim that it did not fail in the discharge of its duties under the Constitution or under the 2018 Act.

STATE GOVERNMENT'S INACTION NOT *BONA FIDE*

92. Coming to the State Government, it cannot claim ignorance of the factual and legal position that (a) the term of the Members and Sarpanchs of the Gram Panchayats would end on 01.08.2018 and (b) that there should be identification of all the Backward Class voters under Section 13, that under Section 9 seats (wards) of Members and under Section 17 Offices of Sarpanchs of Gram Panchayats in the State require to be reserved for Backward Classes, Scheduled Castes, Scheduled Tribes and Women *in the manner* indicated in the Act, *before* the elections are held. It is undeniable that this process is time-consuming and so ought to be initiated sufficiently in advance in order for it to be completed before the term of the Members and Sarpanchs ended on 01.08.2018. This was not done by the State Government.

93. There is no explanation in the Counter affidavit what prevented it to commence this exercise of identifying the Backward class voters or make reservations for Backward Classes, Scheduled Castes, Scheduled Tribes and Women for wards and Sarpanchs in the State and complete the exercise *in the manner* indicated in the Act, *before* the elections are held even by June, 2018.

94. W.P.No.20477 of 2018 was no doubt filed seeking direction to the State of Telangana, the State Election Commission and others not to issue any election notification till enumeration of persons belonging to Backward Class Communities Ward-wise and allotment of the seats to be reserved for B.C. Category amongst the sub-groups (A, B, C, D and E) is done as per known verifiable transparent scientific process known to law.

95. On 26.06.2018, in I.A.No.1 of 2018 in the said Writ Petition this Court noted that whatever data was collected by the Directorate of Economics and Statistics and the Telangana Backward Classes Co-operative Finance Corporation Limited (from whose socio-economic survey, the population figure of the backward classes is to be gathered) had not been published and objections thereto were not invited. It relied upon the Full Bench judgment of this Court in **G. Satyanarayana Reddy v. State of Andhra Pradesh**⁷ that there shall be proper publication of the data collected for the purpose of determining the reservations for Backward Classes and unpublished data or record cannot be made the statutory basis for reservations, which principle was also reiterated in **Nimmaka Jaya Raj** (2 supra); and then granted an interim direction to them to scrupulously follow the method of identification of backward classes voters and population, publish the results of the survey done by the Directorate of Economics and Statistics and the Telangana Backward Classes

⁷ (1987) 1 ALT 665 (FB)

Co-operative Finance Corporation Limited, invite objections thereto and then take further steps in the matter before issuing the election notification.

96. Later, a Division Bench of this Court on 09.07.2018 in WP.No.21651 of 2018 granted interim direction that upper ceiling limit of vertical reservations in favour of S.Cs., S.Ts, O.B.Cs should not be breached while deciding their representation in the Panchayats other than those located in the Scheduled Areas.

97. It is only thereafter, according to the counter-affidavit filed by the State Government, that the Cabinet met on 11.07.2018 and decided conduct enumeration of Backward Class population as per Law.

98. Had the State Government woken up to this responsibility in March, 2017 itself, this process would have been completed long before 01.08.2018, the date when the terms of the Ward Members and Sarpanchs expired.

99. In my opinion, the State's inaction in not conducting the elections before 1.8.2018 has no valid or legally acceptable reason, and there was no genuine supervening difficulty for it to cooperate with the State Election Commission and complete the process of elections before 1.8.2018. So point (c) is answered accordingly in favor of the petitioners and against the respondents.

Point (d):

100. I will now consider the issue whether the action of the State of Telangana in appointing Special Officers to the Gram Panchayats after expiry of the term of their Members and Sapanchs on 01-08-2018 vide proceedings dt.13-07-2018 in Memo No.7033/Pts.III/A2/2018 and G.Os. 46 to 75 dt.01-08-2018, is valid.

STATE GOVERNMENT NOT INCLINED TO HOLD ELECTIONS IN NEAR FUTURE

101. It may be that the Telangana Panchayat Raj Act, 1994 was repealed by the State Legislature and it enacted the Telangana Panchayat Raj Act, 2018 which came into force on 18-04-2018 and that under Section 3 of the said Act, the number of Gram Panchayats were increased from 8690 to 12751 and 306 Gram Panchayats were also merged/upgraded into Municipal Corporations and Municipalities.

102. Any perceived difficulty caused by the said event would not fall within the category of “supervening difficulty” justifying the inaction of the State Government to commence the process to conduct elections before 01-08-2018.

103. What progress has been made in regard to enumeration of Backward classes after interim order dt.26-6-2018 was passed in WP.No.20477 of 2018 is not stated in the counter filed by 1st respondent.

104. Also, the counter affidavit of the State Government is silent as to when the enumeration of the Backward classes would be completed and when the elections would be held. So the Court asked the Government Pleader to ascertain these details.

105. The Government Pleader then filed D.O. letter No.0042/Peshi/TSCBC/2018 dt.04.10.2018 of the Chairman of the Telangana State Commission for Backward Classes. The said letter states that enumeration for the purpose of reservations for Backward Classes in the elections to Panchayat Raj bodies would take 11 to 14 months more to complete.

106. If this stand is accepted, the enumeration of Backward Classes can be finished only between August, 2019 and December, 2019. If the contention is accepted, till the said process is done, elections would not be held and till then the Special Officers appointed by the State under the impugned G.O.s would continue to administer the Gram Panchayats in the State.

107. Sec.13 of the 2018 Act states that identification of the Backward class voters shall be conducted as per the schedule issued by the Government *which shall not be more than 15 days*. How the said Commission or the State can take a plea that enumeration would take such a long time of 11-14 months when Sec.13 grants only 15 days for the said purpose, is not explained.

108. So the stand of the State that 11-14 months more would be needed to complete the enumeration of the voters, is far fetched and is liable to be rejected for it would frustrate the letter and spirit of Art.243-E(3) (a) of the Constitution.

109. In my opinion, the State Government or its bodies such as Telangana State Commission for Backward Classes, Directorate of Economics and Statistics and Telangana Backward Classes Co-operative Finance Corporation Limited cannot be allowed to carry out the process of enumeration of backward class voters in *ultra slow motion and delay the process of conducting elections for long*, thereby rendering the mandatory provisions of Article 243-E (3)(a) practically otiose and nugatory.

110. It is settled law that the sweep of Article 14 of the Constitution of India is wide and every State action, irrespective of field of activity, has to be tested on the touchstone of Article 14 of the Constitution of India. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heart-beat of fair play⁸. Article 14 requires State action to be fair, reasonable, non-discriminatory, transparent, and non-capricious. It should conform to the norms which are rational, informed with reasons and guided by public interest⁹.

⁸ Union of India Vs. International Trading Co. (2003) 5 SCC 437 para-15 page 445

⁹ In Re: Natural Resources Allocation Special Reference No.1 of 2012.... (2012) 10 SCC 1 at para- 107 page-83 (5 Judges)

111. In my opinion, the inaction of the State Government in enumerating the Backward Classes as per Section 13 of the Act much before 01-08-2018, and even after this Court granted interim orders in W.P.No.20477 of 2018 on 26-06-2018 and in W.P.No.21651 of 2018 on 09-07-2018 (more than 3 months ago), is an act of clear non-cooperation with the State Election Commission which is mandated to conduct elections by Article 243-K of the Constitution to the Panchayats within 5 years from the earlier election to the Gram Panchayats in the State of Telangana, and is arbitrary, unreasonable and fails the test of Article 14 of the Constitution of India.

112. The further plea of the Government Pleader that there was a dissolution of the State Legislative Assembly on 06.09.2018 because of which elections to the State Legislative Assembly are required to be held shortly, and this would also make it difficult for the State Government to hold elections to the Gram Panchayats in the State in the near future, is equally without merit.

113. Having failed in its constitutional obligation to assist the State Election Commission to complete the process of elections for Gram Panchayats before 01.08.2018, it cannot take advantage of the premature dissolution of the State Legislative Assembly, to delay further the holding of elections to the Gram Panchayats.

114. In my considered opinion, the State cannot be allowed to take advantage of its own wrong.

115. In **Kusheshwar Prasad Singh v. State of Bihar**¹⁰, the Supreme court had declared that where an obligation is cast on a person and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. It held:

“ 13. The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.

*14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in **Mrutunjay Pani v. Narmada Bala Sasmal**¹¹ wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim **commodum ex injuria sua nemo habere debet** (no party can take undue advantage of his own wrong).*

*15. In **Union of India v. Major General Madan Lal Yadav**¹² the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142,*

¹⁰ (2007) 11 SCC 447

¹¹ AIR 1961 SC 1353

¹² (1996) 4 SCC 127

para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated:

"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".

116. In fact, in the **State Election Commission case** (3 supra), this Court held that holding of periodical and regular elections to the democratic bodies within the time frame is one of the facets of democracy, which is the Basic Structure of the Constitution of India and any attempt made to make these bodies defunct by not holding elections within the time frame is to be declared unconstitutional.

117. The stand of the State shows that it has not shown the required regard to the mandate of Art.243-E (3) (a) or the legal precedents holding it to be mandatory. Thus it's inaction before 01.08.2018 and its delay after 01.08.2018 in conducting of elections to Gram Panchayats is not bona fide and has to be termed as unconstitutional. The State cannot be permitted to administer the Gram Panchayats by it's officials for an unreasonable time defeating the Constitutional principle of 'local self government' of the Gram Panchayats.

118. Though learned counsel for the petitioners had contended that the Section 136 in the 2018 Act which enables appointment of Special Officers/Persons-in-charge for Gram Panchayats is not valid since Part –IX of the Constitution does not permit it, I do not agree with the said contention since such appointments may have to be made in the event of natural calamities or extremely urgent situations which prevent the holding of elections for Gram Panchayats, before the expiry of their term.

119. Another contention advanced was that under sub-Section (1) of Section 136 of the Act, Special Officers can be appointed only when the Gram Panchayat is first created and that there is no provision to appoint Special Officers for existing Gram Panchayats. This is not correct since sub-Section (3) of Section 136 of the Act empowers the State to appoint Special Officers/Persons-in-charge for existing Gram Panchayats also.

120. However, the State also cannot be allowed to make use of the provisions for appointing Special Officers/Persons-in-charge for Gram Panchayats in sub-section (3) of Section 136 of the 2018 Act when it faced no genuine supervening difficulty of the manner mentioned by the Supreme Court to conduct elections to Gram Panchayats before the expiry of their term on 01-08-2018. If it did, it would be an arbitrary and unreasonable exercise of power making efficient units of self-government, defunct.

121. Therefore I hold that Memo No.7033/Pts.III/A2/2018 dt.13-07-2018 of 1st respondent and the consequent G.O.Ms.Nos.46 to 75 Panchayat Raj and Rural Development (Pts.III) Department dt.01-08-2018 are violative of Article 14 and Art.243-E(3) (a) of the Constitution of India. Point (d) is answered accordingly.

Point (e)

122. I will now consider whether the ex-Sarpanchs of the Gram Panchayats are entitled to be appointed as persons-in-charge/Special Officers of the Gram Panchayats after the expiry of their term on 01-08-2018.

123. It is true that they had been elected as Sarpanchs in 2013 and most of them held office till 01-08-2018. It is possible that against most of them, there may not be any allegations of misdemeanor or misappropriation or misconduct. It is also probably true that they would be more aware of the needs of the Gram Panchayats where they got elected and might be in a better position to run the administration than the non-Gazetted or Gazetted employees of the State. It is also possible that some of the Special Officers are unable to discharge effectively their duties in the said position since they have to also attend to their regular job duties.

124. Petitioners submit that the law in India recognizes care taker Prime Ministers and care taker Chief Ministers when the Parliament and the State Legislative Assemblies are dissolved.

125. In the absence of any provision of law or precedent or practice mandating the State to continue ex-Sarpanchs as Persons-in-charge after the expiry of their term as Sarpanchs, the petitioners cannot claim to be appointed as such *as a matter of right*. No decision of any Court was cited in support of the claim of the petitioners/ex-Sarpanchs that they alone should be appointed as Persons-in-charge of the Gram Panchayats pending conduct of elections. Mere fact that State Government, in case of Cooperative Societies, took a different decision does not mean that in case of Panchayats, it can be compelled to do the same.

126. Moreover, since it is not disputed that the State Government had from 18-04-2018 under the 2018 Act increased the number of Gram Panchayats from 8690 to 12751, and there was also merger/upgradation of 306 Gram Panchayats as Municipal Corporations and Municipalities, there has been a change in the jurisdiction of the Sarpanchs elected in 2013 under the A.P. Panchayat Raj Act, 1994. There would be practical difficulties, where a Gram Panchayat was divided into more than one Gram Panchayat or merged with Municipal Corporation or Municipality, in deciding which Sarpanch of which area should be person-in-charge.

127. So I am not inclined to agree with the contentions of the petitioners that ex-Sarpanchs should be appointed in the place of the Special Officers to run the administration of the Gram Panchayats

pending conduct of elections. Point (e) is answered accordingly against the petitioners.

128. The Supreme Court in **Kishansing Tomar** (1 supra) had held that in the matter of conduct of elections, the State Government should render full assistance and cooperation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are held. In the **State Election Commission** case (3 supra) also the Division Bench of this Court held that the State Election Commission cannot function and discharge its duties without the cooperation of the State Government.

129. In my opinion, it is the duty of the Court exercising power under Article 226 of the Constitution of India to ensure early holding of elections by the State Election Commission and ensure that the State Government cooperates with the Commission by completing the process of enumeration of voters under Section 13 of the 2018 Act, makes reservations for Wards and Offices of Sarpanchs under Sections 9 and 17 of 2018 Act in the manner indicated in the Act so that the constitutional mandate in Part-IX is fulfilled.

Point (f):

130. Therefore, I hold :

- (a) that there was inaction of the part of 1st respondent in taking steps well in advance for enumerating the Backward Class voters under Section 13 of 2018 Act and making reservations

for Backward Classes, Scheduled Castes, Scheduled Tribes and Women for the Members and Offices of Sarpanchs of Gram Panchayats in the State of Telangana before 01-08-2018 and it is arbitrary, unreasonable and violative of Article 14 and Article 243-E(3) (a) of the Constitution of India;

- (b) that the 1st respondent did not extend the required cooperation to the State Election Commission of the State of Telangana before 01-08-2018 to complete the elections to the Members and Sarpanchs of the Gram Panchayats in the State of Telangana in the manner expected of it;
- (c) that the State Election Commission of State of Telangana failed to take proper steps to make the 1st respondent commence the process of reservations (except writing a letter in March, 2017) and failed in its constitutional duty to ensure that elections to Gram Panchayats in the State are held before 01-08-2018;
- (d) that the ex-Sarpanchs of the Gram Panchayats in the State of Telangana have no right to be appointed as Special Officers or Persons-in-charge till the holding of elections for the Gram Panchayats;
- (e) Memo No.7033/Pts.III/A2/2018 dt.13-07-2018 and G.O.Ms.Nos.46 to 75 Panchayat Raj and Rural Development

(Pts.III) Department dt.01-08-2018 issued by the 1st respondent are declared as violative of Article 14 and Art.243-E(3) (a) of the Constitution of India;

(f) though Memo No.7033/Pts.III/A2/2018 dt.13-07-2018 and G.O.Ms.Nos.46 to 75 Panchayat Raj and Rural Development (Pts.III) Department dt.01-08-2018 issued by the 1st respondent are declared as violative of Article 14 and Act 243-E (3) of the Constitution of India, the Special Officers appointed thereunder shall continue for a period of three (03) months from today, within which time, the State Election Commission of State of Telangana, with the complete cooperation of the 1st respondent, shall complete the entire process of holding elections to the Members and Offices of the Sarpanchs in the Gram Panchayats in the State of Telangana.

131. I direct that the 1st respondent shall extend full cooperation to the State Election Commission of the State of Telangana to enable the latter to conduct elections to the Members and Sarpanchs of Gram Panchayats as directed above.

132. It is made clear that the State Election Commission of State of Telangana is also granted liberty to request His Excellency the Governor of the State of Telangana, under clause (3) of Section

243-K, to make available to it such staff as may be necessary for the discharge of its above obligations.

133. These Writ Petitions are allowed to the above extent. No costs.

134. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11.10.2018

Note:-

Issue C.C. tomorrow.

B/o.

Vsv/Kvr/Ndr

