

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.32346 of 2018

ORDER :

In this Writ Petition, the petitioners seek a direction, more particularly in the nature of Writ of Mandamus declaring G.O.Ms.No.90 Panchayat Raj & Rural Development (Elecs & Rules) Department dt.01-08-2018 issued by the 1st respondent and consequential Memo No.6811/DPR&RD/D3/2017 dt.03-08-2018 issued by 3rd respondent as illegal, arbitrary, capricious, unjust, *mala fide*, against the rights guaranteed under Constitution apart from violative of principles of natural justice and contrary to the provisions of the A.P. Panchayat Raj Act, 1994 (for short “the Act”); to set aside G.O.Ms.No.90 dt.01-08-2018 and consequential Memo dt.03-08-2018; and to direct the respondents to forthwith appoint the petitioners as Person-in-charge of their respective Gram Panchayats or petitioners and Body Members as Committee of Persons-in-charge .

2. The petitioners herein are the Ex.Sarpanchs of Gram Panchayats having been elected in the year 2013. Their term is five years and it came to an end on 01-08-2018.

CONTENTIONS OF PETITIONERS

3. Ever since the petitioners were elected, they claim to have looked after the welfare of their respective villages by duly performing their duties to the utmost satisfaction of one and all

without any blemish. They claim to have developed their villages in many ways and safe guarded the interest of the villagers of their respective villages. They also claim that they conducted many programmes dealing with health, education etc and also undertook plantation of trees by duly keeping global warming in mind besides developmental activities including Swatch Bharath where the villages are kept in utmost clean and hygienic way by regularly monitoring sanitary works. According to them, during their tenure, CC roads were also laid in their respective villages and the villagers and the Members have cooperated very well, and every individual/villager is very happy and comfortable with the developmental activities undertaken by them.

4. They contend that as per Section 143(3) of the Act, 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.

5. Keeping in view of the same, petitioners contend that the Sarpanchs in the State had submitted a representation to the Government for appointing them as person-in-charge for their respective Gram Panchayats, and as the State Government has not taken any decision in that regard, batch of Writ Petitions were filed duly praying this Court to direct the Government to consider the

request of the Sarpanchs to appoint them as person-in-charge; and the 1st petitioner, being the President of Sarpanch's Sangam of Krishna District, has approached this Court and filed W.P.No.27034 of 2018 and also filed individually W.P.No.24527 of 2018. Similarly, other petitions were also filed. An interim was passed on 31-7-2018 in I.A.No. 1 of 2018 in WP No. 24527 of 2018 and in I.A.No.1 of 2018 in WP.No.27034 of 2018 on 1-8-2018 in these Writ petitions as under:

“Pending further orders, the respondents shall consider the case of petitioners also by 31-08-2018, for appointment as person-in-charge of respondent Nos.5 to 7 Gram Panchayats in accordance with law since term of petitioners as Sarpanchs is said to be expiring on 01-08-2018.”

6. It is contended that in spite of the same, the Government issued G.O.Ms.No.90 dt.01-08-2018 duly authorizing the District Collector to appoint an Officer from the Category of Tahsildar/Mandal Parishad Development Officer/Mandal Educational Officer/Extension Officer of Panchayat Raj and Rural Development or of similar higher rank as Special Officers of Gram Panchayat or a Group of Gram Panchayats *without considering the interim directions*. Petitioners contend that the respondent authorities ought to have invited or discussed with the Sarpanchs in the State before issuing the said G.O. particularly when their representations are pending consideration. They contend that the said action on the part of Government in issuing the impugned G.O. is illegal and arbitrary. Hence the present Writ Petition was filed.

7. It is contended that since the Government is very clear that the elections of Gram Panchayats are not going to be conducted immediately, the respondent authorities have power to extend the tenure of the Sarpanchs till the elections are again conducted or they can also appoint them as person-in-charge or a Committee of persons-in-charge to a Gram Panchayat.

8. They also contend that there is no provision under the Act that a Special Officer should be a Government Official; that Section 18 of the Act makes it clear that no village servant and no Officer of servant of the Government of India or any State Government or of a local authority receiving aid from the funds of the Government shall be qualified for being chosen as or for being a member of a Gram Panchayat; similarly, Section 14(6) of the Act states that the provisions of Sections 18 to 22 shall apply in relation to the office of the Sarpanch as they apply in relation to the office of an elected member of the Gram Panchayat; and on a combined reading of said provisions, it is clear that no Government Official should hold/or be chosen as for being a Member of a Gram Panchayat.

9. Petitioners contend that though the above quoted provisions relate to contesting in elections, they also apply to appointment of Special Officers and giving powers, functions and duties of Sarpanch to Special officers by appointing them would be against the provisions of the Act and also against to the intention of the legislation. They contend that such appointment, even for limited period, would go

against the intention of the legislation and such appointment would be a back door method for making Government Officers as a Sarpanchs, and as such the impugned G.O. cannot sustain in the eye of law.

10. Petitioners contend that the State Government is resorting to impose bureaucratic rule to circumvent Article 243-E of the Constitution of India which cannot be allowed and this Court has to interdict the same under Article 226 of the Constitution of India. It is submitted that democracy including self governance, being one of the basic structure of the Constitution of India, the Government has to conduct elections under any circumstances following the letter and spirit of Article 243-E of the Constitution except in case of genuine supervening difficulties like natural calamities which would prevent the State from holding of elections.

11. Petitioners contend that in the present case, no such situation is troubling the State Government to go for elections for Panchayats. In the said circumstances, petitioners contend that the Government cannot take shelter of Section 143 of the Act and appoint Special Officers. According to petitioners, if at all they want to do so, they can appoint the petitioners and Members of the Gram Panchayats as Committee of persons-in-charge.

12. It is further contended that in the impugned G.O., the Government has directed the District Collectors to appoint Special Officers to the Gram Panchayats from the category of

Tahsildar/Mandal Parishad Development Officer/Mandal Educational Officer/Extension Officer of Panchayat Raj and Rural Development or similar or higher rank; that the said Officers are all District Heads who are having abundant of work as it is; in the said situation, if they are appointed as Special Officers, it will ruin the affairs of the villages. It is also submitted that there is not enough strength of the above mentioned designated Officers, and they have been given/allotted 2 or 3 Gram Panchayats as Special Officers i.e. one Special Officer has been given charge of 2 or 3 Gram Panchayats. It is also pointed out that in certain places contrary to the impugned G.O., officials having lesser rank were appointed as Special Officers because of non-availability of rank of Mandal Heads, as envisaged in the impugned G.O.

13. Petitioners also point out that pursuant to the said G.O., the 3rd respondent-Director has issued Memo No.6811/DPR & RD/D3/2017 dt.03-08-2018 laying down guidelines on Powers, Functions and Duties of Special Officers. A perusal of the same clearly shows that vast powers were given to the Special officers which are contrary to the provisions of the Act and Rules made there under. Under the Act, certain decisions have to be taken by a body consisting of Sarpanch and Members and a resolution with majority of Members has to be passed in order to have collective and transparent decision, but whereas a Special Officer's decision would be unilateral and it would be against the spirit of the Act.

14. Petitioners submit that in the 1st petitioner's Mandal, the District Collector issued proceedings dt.02-08-2018 wherein for every two Gram Panchayats, one District Head of various Departments has been appointed as Special Officer who is not having knowledge about the Panchayats. As the same is causing difficult to look after two Gram Panchayats, the District Collector has issued another proceeding dt.16-08-2018 duly appointing one Official as Special Officer to each Gram Panchayat. In the said proceedings at serial No.1 for Gowravaram Gram Panchayat, a Special Officer was appointed whose designation is Superintendent of MPDO Office. Similarly Sl.No.3 with regard to Annaram Gram Panchayat is concerned, they have appointed an Officer who is also lesser rank than the specified rank under G.O.Ms.No.90. Similar is case of Gram Panchayats at Sl.Nos.7, 14, 15 and 17 and such appointments are contrary to G.O.Ms.No.90.

15. Petitioners submit that on instruction of the Hon'ble Chief Minister, the District Collector once again has issued another proceeding dt.25-08-2018 appointing Special Officers to the Gram Panchayats of the 1st petitioner's Mandal. This time also, the Collector has appointed to every two Gram Panchayats, one Special Officer. Not only that, he once again appointed one Deputy Tahsildar as Special Officer to Malkapuram Gram Panchayat contrary to G.O.Ms.No.90. Similar situation has taken place to the other Gram Panchayats belonging to the other petitioners' Mandals.

16. Petitioners submit that even otherwise, the Government Officials as mentioned in the impugned G.O. are expected to serve 2 to 5 villages more effectively as in-charge in addition to their normal duties, which is humanly impossible to do so. In this short one month period only, number of changes took place in appointing Special Officers as stated above. Apart from that, lot of inconvenience has been caused to the villagers which has come as news items in the local largest circulated news papers. The said news items were also filed as annexures.

17. Petitioners submit that, apart from all these, if any work takes place, the payments have to be made upon the bill made by the Mandal Engineer by entering in M.Book. In the given situation, in certain places, the Mandal Engineers also have been appointed as Special Officers. In the said situation, he will be preparing the bill as Mandal Engineer and also sanction the same as Special Officer by virtue of the above mentioned Memo dt.03-08-2018, and the fate of such Panchayats, without checks and controls, is beyond imagination. In the regular course, there would be Panchayat Board meetings and decisions would be taken. In the present situation, the decisions would be unilateral and dictatorial by the Special Offices, and the same would be against the Act. According to petitioners by virtue of appointing Special Officers under the impugned G.O., the State Government is doing indirectly what is not permitted to do directly.

18. Petitioners submit that in one Mandal on average there would be 15 to 20 Gram Panchayats and each Gram Panchayat will have 3 to 4 hamlets on an average. At present, each Panchayat Secretary has four Gram Panchayats as in-charge Secretaries in hand. They themselves are not able to do their regular duty in time. Earlier, when there were Sarpanchs and Ward Members they could run the Gram Panchayat smoothly and on many occasions, the petitioners and their Ward Members have attended to the work in the mid night when the water pumps have stopped working. If they did not attend the work in the mid night and waited for the Secretary to come on the next day, the villagers will not have water and the situation would be beyond one's control. They contend that the Sarpanchs and Ward Members of different villages also faced similar situations like that of the petitioners and because the Sarpanchs and Ward Members were available in the village 24 x 7, they could attend to the emergency situations when the villagers brought it to their notice.

19. It is submitted that after issuing of the impugned G.O. in the 1st petitioner's village, the Village borewell had a problem on 19-08-2018 and nobody from the Gram Panchayat i.e. either Panchayat Secretary or the Special Officer could attend for the same because of their other work in other Gram Panchayats. Because of the same, half of the village had no water and all of them have come to the 1st petitioner to look after the issue, and it took 7 days for the 1st petitioner to get it rectified by bringing the technicians from other

Districts as the problem to the borewell was a complicated one and that the 1st petitioner himself has invested money from his pocket to rectify that problem.

20. It is submitted that as the petitioners are elected by the public, they will have responsibility and duty to attend the villagers' problems and necessities at any time with utmost care and responsibility and if the petitioners fail to perform their duty, villagers will not spare them and they will ruin the future/career of the petitioners as people's representatives.

21. It is submitted that the Government itself introduced many welfare schemes for general public and by appointing Special Officers, the schemes are being kept in cold storage.

22. It is also contended that by virtue of appointing Special Officers during the year 2011 to 2013, the Finance Commission stopped fund allocation; and the said situation will again arise now; and the Central Government grants under different Central Sponsored Schemes and 14th Finance Commission funds would be stalled by virtue of appointing Special Officers; and consequently, a lot of hardship will be meted out to the Gram Panchayats.

23. Petitioners allege that the Government is not inclined to conduct elections to the Panchayats before Assembly and Parliament elections of 2019 and, even after such elections, it would take 3 to 4 months time for elected persons to assume office and till then huge

amounts towards funds and grants from the Finance Commission would be stalled and villagers will be affected.

THE STAND OF THE RESPONDENTS

24. Counter-affidavit is filed by 1st respondent refuting the above contentions.

25. It is contended that the ordinary elections were held in the month of July, 2013 in 3 phases and the petitioners herein were elected as Sarpanchs of their respective Gram Panchayats. After declaration of the result, the Commissioner has fixed 02-08-2018 as the date of 1st meeting. As such, the (5) years term of the offices of the petitioners automatically expired by 01-08-2018.

26. Further, as per Article 243-E of the Constitution of India, every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date of appointed for its first meeting *and no longer*.

27. It is contended that the Government issued G.O.Ms.No.90 dt.01-08-2018 duly authorizing the concerned Collector and District Magistrates of the District to appoint an Officer from the category of Tahsildar/Mandal Parishad Development Officer/Mandal Educational Officer/Extension Officer (PR & RD) or of similar higher rank as Special Officer for a Gram Panchayat or group of Gram Panchayats in their jurisdiction w.e.f. 02-08-2018. Subsequently, vide Memo No.PRRD01-35025/25/2018, Election, PRRD, dt.12-08-2018,

Government has requested the Collectors and District Magistrates in the State to appoint a Special Officer for each Gram Panchayat in their jurisdiction whose term of office of Sarpanch will expire on 01-08-2018.

28. It is contended that as a policy decision, Government issued orders to all the District Collectors to appoint an officer from the category of Tahsildar/MPDO/Mandal Educational Officer / Extension Officer (PR & RD) or of similar higher rank Officer as Special Officers to each Gram Panchayat in their jurisdiction. Based on the manpower which is available with the District Collector at that particular point of time, the District Collectors are appointing similar or higher rank Officers to that of Tahsildar/MPDO/MEO/Extension Officer etc.

29. Based on the Government Orders which require appointment of similar rank officers to that of Tahsildar/MPDO/MEO/Extension Officer etc., the District Collectors have wide range to select and appoint the Officers as per the availability from different Government sectors and from different Gazetted categories under their administrative control and the appointment of AEs/Deputy Tahsildars etc., as Special officers to Gram Panchayats, is hence justified.

30. It is pointed out that the DPO, Krishna District has informed that due to non-availability of (969) Officers to appoint as Special Officers to each of total 970 Gram Panchayats in Krishna District,

(leaving one Gram Panchayat whose term of Sarpanch will expire on 30-07-2019), the District Collector appointed (564) Special Officers to a group of 2 or 3 Gram Panchayats covering total 969 Gram Panchayats from different cadres.

31. It is contended that the Government has taken a decision and issued orders in G.O.Ms.No.90 dt.01-08-2018 authorising the District Collectors for appointment of Special Officers to the Gram Panchayat or a group of Panchayats.

32. Government have further examined the matter about the need for appointment of a Special Officer for each Gram Panchayat to ensure speedy implementation of the ongoing programmes in rural areas and requested the District Collectors to appoint one Special Officer for each Gram Panchayat in their jurisdiction vide Memo dt.12-08-2018.

33. It is further contended that as a part of the pre-election activities, the A.P. State Election Commission has given a schedule as per which the task of preparation of photo electoral rolls was already completed by the concerned in the District. The next phase in the Schedule is finalization of reservations for the SC, ST and BCs.

34. It is further submitted that elections to Gram Panchayats in Telangana State were stayed by the High Court on two grounds:

“i) Detailed investigation has to be conducted for identification of BC population and voters as laid down by the High Court and Supreme Court including publication of results of the survey done

inviting objections thereto and then take further steps in the matter of reservation before issue of elections notification (judgments dt.26-06-2018 in W.P.No.20477 of 2018 & W.P.No.21490 of 2018), and

ii) Upper ceiling limit of vertical reservation in favour of SCs, STs and BCs should not exceed 50% except in case of Panchayats located in Scheduled areas (judgment dt.09-07-2018 in W.P.No.21651 of 2018 and W.P.No.21902 of 2018)."

35. It is contended that in the stay order granted in W.P.No.21490 of 2018, the Chief Secretary and the Secretary, Backward Classes Welfare Department were made 7th and 8th respondents.

36. In view of this, it may be implied that the Gram Panchayat elections in Andhra Pradesh also shall be held only after complying with the direction given on investigation for identification of BC population and voters, publication of investigation results, inviting objections and finalization of figures so as to adopt them for the purpose of reservation for BCs in Panchayats.

37. The other order with regard to restriction on quantum of vertical reservation for SCs, STs and BCs (i.e that it shall not exceed 50%) may also be applied to Andhra Pradesh as it is a judgment delivered by the common High Court for both the States at Hyderabad and the total quantum of reservation is exceeding 50% in Andhra Pradesh State also.

38. It is contended that the last ordinary elections were stayed in the year 2011 vide W.P.No.31639 and batch on the same grounds and final orders passed on 04-09-2012. The Government approached the

Supreme Court, which passed the interim orders on 18-02-2013 [SLP(C) No.38295-38926 of 2016 and batch] directing the State Government and the Election Commission to proceed with election with the existing system (60.55% of seats reserved for SCs, STs and BCs) and observing that the main issue will be decided at a later stage. However, in the final judgment dt.08-02-2016, the Apex Court observed:

“In view of the efflux of time whereby the elections have already been held, we do not think it necessary to consider the matters on merit.

Therefore, leaving the question of law open, these Special Leave Petitions are disposed of”.

The observation that “leaving the questions of law open” means that elections to Gram Panchayats with reservation percentage exceeding 50% ceiling limit was allowed only for the elections held in the year 2013 in compliance of interim orders and that it cannot be extended to future elections.

39. It is contended that in view of the above directions of the Apex Court, it was decided to refer the subject of conducting the detailed investigation with regard to the Backward Classes of the population by collecting data, inviting objections from general public so as to determine the eligibility for reservations under BC category to the A.P. Commission for Backward Classes (APCBC) and accordingly orders were issued vide G.O.Ms.No.303 dt.28-06-2013 directing the said Commission to complete the investigation into the patterns of

Backward classes in State that are acting as barriers against the political participation. Finally they may identify the communities that need special dispensation so as to enable them to cross the barriers, if any, and participate in political process under the Act as required by the judgment of the Apex Court in W.P.(C) No.356 of 1994. It is stated that the report in the matter is still awaited.

40. It is submitted that in view of the above position, elections to Gram Panchayats are *deferred* for the present and the subject matter of conducting elections to the Gram Panchayats *is under active consideration*.

41. It is further submitted that in view of the facts submitted above, the action taken by the respondents in appointment of Special Officers in accordance to Section 143(3) of the Act is in order and there is nothing illegal in the impugned orders issued in G.O.Ms.No.90 dt.01-08-2018.

THE CONSIDERATION BY THE COURT

42. 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 Andhra Pradesh 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 Andhra Pradesh 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 Andhra Pradesh in appointing Special Officers to the Gram Panchayats after expiry of the term of their Members and Sarpanchs on 01-08-2018 vide G.O.Ms.No.90, Panchayata Raj and Rural development dt.1-8-2018 , Memo No.6811/DPR7 RD/D3/2017 DT.3-8-2018, and other consequential proceedings, 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):

43. In para-7 of the affidavit filed in support of this W.P, a specific contention is raised by the petitioners that the State Government is resorting to impose bureaucratic rule to circumvent Article 243-E of the Constitution of India which cannot be allowed, and this Court has to interdict the same under Article 226 of the Constitution of India. It is contended that 'democracy' is one of the basic structures of the Constitution of India which provides self-governance and the

Government has to conduct elections under any circumstances following the letter and spirit of Article 243-E except in case of genuine supervening difficulties like natural calamities which would prevent the State from holding elections. In the present case, it is contended that no such situation is troubling the State Government to conduct elections and in the said circumstances, the Government cannot take shelter of Section 143 of the Act and appoint Special Officers. If at all they want to do so, they can appoint the petitioners and Members of the Gram Panchayat as Committee of persons-in-charge.

44. Thus, the question of failure of the State Election Commission of the State of Andhra Pradesh and the State Government to hold elections to the Members and Sarpanchs of Gram Panchayats in the said State, has been specifically raised by the petitioners.

45. 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.

46. 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 Andhra Pradesh 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.

47. 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 Andhra Pradesh before 01-08-2018 is also required to be gone into while adjudicating this Writ Petition. Point (a) is answered accordingly in favour of the Writ Petitioners and against the State of Andhra Pradesh.

Point (b):

48. 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 Andhra Pradesh before expiry of their term.

49. Under Section 13 of the Act, the term of office of Members elected at ordinary elections to Gram Panchayats shall be 5 years and under Section 14(3) of the Act, the term of office of Sarpanchs elected at the ordinary election is also 5 years.

50. Admittedly their term expired on 1-8-2018.

51. Under Section 13(2), ordinary vacancies in the office of elected Members shall be filled at ordinary elections which shall be fixed by the State Election Commission to take place on such day or days within three months before the occurrence of the vacancies as it thinks fit.

52. Section 201 of the Act directs that all elections to Panchayat Raj institutions shall be held under the supervision and control of the State Election Commission constituted under Section 200, that it has to prepare electoral rolls and also request the State Government to place at its disposal staff required for conduct of elections.

53. 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.

54. 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.

55. 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 government¹.

56. 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.

57. 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.”

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

¹ Union of India Vs. Rakesh Kumar....(2010) 4 S.C.C. 50 para 39

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 :

59. 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.”

60. A Division Bench of this Court in the year 2000 in **State Election Commission Vs. State of Andhra Pradesh and another**² 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.

² 2000(3) ALD 456 (DB)

61. Similar view was expressed by another Division Bench in 2012 in **Nimmaka Jaya Raj Vs. The Government of Andhra Pradesh, represented by its Principal Secretary, General Administration Department, Secretariat, Hyderabad and others**³. 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.”

62. This legal position is not disputed by the Government Pleader for Panchayat Raj.

63. He 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

³ Order dt.04-09-2012 in PIL Nos.149 and 150 of 2012 (DB)

be necessary for the discharge of the functions conferred on it by clause (1).

64. 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 Vs. Municipal Corporation of the City of Ahmedabad and others**⁴ 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

⁴ (2006) 8 SCC 352

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.*

65. 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) :

66. I will now consider the question whether the State Government of Andhra Pradesh 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.

67. 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** (2 supra) and **Nimmaka Jayaraj** (3 supra).)

68. 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.

69. It is not the case of the State of Andhra Pradesh that such a situation existed in the State prior to 01.08.2018 which prevented holding elections to the Gram Panchayats before the expiry of their term.

70. 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 Andhra Pradesh, 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. Similar provisions are contained in Section 201 of the Act.

71. In the counter affidavit filed by the State, after referring to the fact that the AP State Election Commission had given a schedule as per which the task of preparation of photo electoral rolls were completed in the Districts, it is suggested that there should be finalization of reservations for SCs, STs and BCs. Thereafter reference is made to certain orders passed by this Court with regard to conduct of elections to Gram Panchayats in the Telangana State and it is stated that subject of conducting the detailed investigation with regard to the backwardness of population by collecting data, inviting objections from general public so as to determine the eligibility for reservations under B.C. category was entrusted to the A.P. Commission for Backward Classes in G.O.Ms.No.303 dt.28-06-2013. It is stated that elections to Gram Panchayats are *deferred* for the present and the subject matter of conducting elections to the Gram Panchayats *is under active consideration*. There is no elaboration on what actually has been done before 01-08-2018 or after 01-08-2018 in that regard.

72. Admittedly reservations are required to be provided for under Section 9 for SCs, STs, BCs and Women in seats of Members and under Section 15 of the Act for offices of Sarpanchs, and in the Scheduled areas, under Section 242-D of the Act. The A.P.Panchayat

Raj (Reservation of Seats and Offices of Gram Panchayats, (Mandal Praja Parishads and Zilla Praja Parishads) Rules, 2006 framed vide G.O.Ms.No.220 PR & RD (Elec. & Rules) Department dt.25-05-2006 set out the manner of making reservations for SCs, STs, BCs and Women.

73. Under Section 202-A of the Act, the reservation of the offices of Sarpanch to Members belonging to Backward Classes is to be done on the basis of population figures of the Backward Classes, gathered in the socio-economic survey conducted by the A.P. Backward Classes Cooperative Finance Corporation Limited, Hyderabad.

74. In the counter-affidavit filed by the respondents, they did not state what steps the State has taken through the above Corporation in gathering information about population figures of Backward Classes for reserving the offices of Sarpanch to Members of the Backward Class. If really this job was entrusted to the A.P. Commission for Backward Classes on 28-06-2013, it could have been completed long before 01-08-2018.

75. In my opinion, the State Government or its bodies such as Andhra Pradesh State Commission for Backward Classes and Andhra Pradesh 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.

76. Obviously, the State or the said Commission or the above A.P. Backward Classes Cooperative Finance Corporation Limited, Hyderabad, has done nothing to complete this process. If so, what does '*active consideration*' mean?

77. 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 as held in **Kishansing Tomar** (4 supra).

78. Its inaction in this regard either on account of indifference or lack of independence has resulted in the present situation.

STATE GOVERNMENT'S INACTION NOT *BONA FIDE*

79. 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 202-A, that under Section 9 seats (wards) of Members and under Section 15 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.

80. There is no valid explanation in the Counter affidavit what prevented it to commence this exercise of finding out the population figures of the Backward class population or make reservations for Backward Classes, Scheduled Castes, Scheduled Tribes and Women for Members and Sarpanchs in the State and complete the exercise *in the manner* indicated in the Act, *before* the term expired on 1-8-2018.

81. 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.

82. 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**⁵ 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** (3 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 Co-operative Finance Corporation Limited, invite objections thereto and then take further steps in the matter before issuing the election notification.

83. 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.

84. The State Government of Andhra Pradesh ought to have taken note of these decisions and woken up to it's constitutional

⁵ (1987) 1 ALT 665 (FB)

responsibility, and initiated the process for conducting elections to Gram Panchayats in State of Andhra Pradesh.

85. 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):

86. I will now consider the issue whether the action of the State of Andhra Pradesh in appointing Special Officers to the Gram Panchayats *after* expiry of the term of their Members and Sarpanchs on 01-08-2018 vide proceedings GO.Ms.90 PR and RD dt.1-8-2018 and consequent Memos, is valid.

87. Already more than 2 ½ months have elapsed since 1-8-2018 when the terms of the Sarpanchs and ward members had expired.

88. It is important to note that in the Counter affidavit filed by respondents, *there is no whisper when they would complete the aspect of reservations to Members and Sarpanchs and when they would conduct elections.* This lends support to petitioners' contentions that the respondents and the State Election Commission of Andhra Pradesh have no intention to conduct elections to members and

sarpanchs *in near future*. So the inaction of the State would frustrate the letter and spirit of Art.243-E(3) (a) of the Constitution.

89. 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 play⁶. 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 interest⁷.

90. In my opinion, the inaction of the State Government in enumerating the Backward Classes under Sec.202-A of the Act much before 01-08-2018, 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 Andhra Pradesh, and it is arbitrary, unreasonable and fails the test of Article 14 of the Constitution of India.

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

⁶ Union of India Vs. International Trading Co. (2003) 5 SCC 437 para-15 page 445

⁷ In Re: Natural Resources Allocation Special Reference No.1 of 2012.... (2012) 10 SCC 1 at para- 107 page-83 (5 Judges)

92. In **Kusheshwar Prasad Singh v. State of Bihar**⁸, 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**⁹ 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**¹⁰ 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,*

⁸ (2007) 11 SCC 447

⁹ AIR 1961 SC 1353

¹⁰ (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".

93. In fact, in the **State Election Commission case** (2 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.

94. 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.

95. The State 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 143 of the 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.

96. Therefore I hold that G.O.Ms.Nos.90 Panchayat Raj and Rural Development (Elecs & Rules) Department dt.01-08-2018 and MemoNo.6811/DPR&RD/ D3/2017 dt.3-8-2018 and all consequent memos /proceedings are violative of Article 14 and Art.243-E(3) (a) of the Constitution of India. Point (d) is answered accordingly.

Point (e)

97. 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.

98. 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.

99. 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.

100. 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*.

101. 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.

Point (f):

102. The Supreme Court in **Kishansing Tomar** (4 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 (2 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.

103. In my opinion, it is the duty of this 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 202-A of the Act, makes reservations for Wards and Offices of Sarpanchs under Sections 9 and 15 of Act *in the manner* indicated in the Act so that the constitutional mandate in Part-IX is fulfilled.

104. I therefore *suomoto* implead the State Election Commission of State of Andhra Pradesh rep.by it's Chief Election Commissioner, 1st Floor, New HOD's Building, Opp.Indira Gandhi Municipal Stadium, M G Road, Vijayawada, State of Andhra Pradesh -520010 as a party respondent to this Writ Petition, since it is necessary in the interests of justice to give proper directions in the W.P.

Point (f):

105. 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 population under Section 202-A of Act and making

reservations for Backward Classes, Scheduled Castes, Scheduled Tribes and Women for the Wards and Offices of Sarpanchs of Gram Panchayats in the State of Andhra Pradesh under Sec. 9 and 15 of the Act 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 Andhra Pradesh before 01-08-2018 to complete the elections to the Members and Sarpanchs of the Gram Panchayat in the State of Andhra Pradesh in the manner expected of it;
- (c) that the State Election Commission of State of Andhra Pradesh failed to take proper steps to make the 1st respondent commence the process of reservations 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 Andhra Pradesh have no right to be appointed as Special Officers or Persons-in-charge till the holding of elections for the Gram Panchayats;
- (e) G.O.Ms.Nos.90 Panchayat Raj and Rural Development (Elec & Rules) Department dt.01-08-2018 and MemoNo.6811/DPR&RD/ D3/2017 dt.3-8-2018 and all

consequent memos /proceedings issued by 1st respondent or other respondents are violative of Article 14 and Art.243-E(3) (a) of the Constitution of India.

106. Though G.O.Ms.Nos.90 Panchayat Raj and Rural Development (Elec & Rules) Department dt.01-08-2018 and Memo No.6811/DPR&RD/ D3/2017 dt.3-8-2018 and all consequent memos /proceedings issued by 1st respondent or other respondents are violative of Article 14 and Art.243-E(3) (a) of the Constitution of India, I direct that 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 Andhra Pradesh, with the complete cooperation of the 1st respondent, shall complete the entire process of holding elections to the Wards and Offices of the Sarpanchs in the Gram Panchayats in the State of Andhra Pradesh.

107. I further direct that the 1st respondent (a) shall complete the tasks of enumeration of Backward Class population under Section 202-A of Act and that of making reservations for Backward Classes, Scheduled Castes, Scheduled Tribes and Women for the Wards and Offices of Sarpanchs of Gram Panchayats in the State of Andhra Pradesh under Sec. 9 and 15 of the Act as expeditiously as possible and (ii) shall extend full cooperation to the State Election Commission of the State of Andhra Pradesh to enable the latter to conduct elections to the Members and Sarpanchs of Gram Panchayats as directed above.

108. The State Election Commission of State of Andhra Pradesh is also granted liberty to request His Excellency the Governor of the State of Andhra Pradesh, 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.

109. The Writ Petition is allowed to the above extent. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-10-2018

Note :-

Registry to communicate this order to:
State Election Commission of State of Andhra Pradesh
rep.by it's Chief Election Commissioner,
1st Floor, New HOD's Building,
Opp.Indira Gandhi Municipal Stadium, M G Road,
Vijayawada, State of Andhra Pradesh -520010

B/o.
Vsv