

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

***WRIT PETITIONS NO.179/2020, 183/2020,184/2020,
186/2020 & 191/2020***

WRIT PETITION NO.179/2020

Dnyaneshwar Narso Naik.
of major age, Indian National,
resident of H.No.1246,
Barazan,
Near Sarvodaya High School,
Usgao, Goa

.... Petitioner.

Versus

1. State of Goa,
through its Secretary
(Panchayats), Secretariat,
Porvorim, Bardez, Goa.

2. Director of Panchayats,
Government of Goa,
Panaji, Goa.

3. Goa State Election Commission,
Through it's Commissioner,
Having it's Office at
Altinho, Panaji, Goa.

.... Respondents.

Mr. S.D. Lotlikar, Senior Advocate with Mr. J. Karn, Advocate for
the Petitioner.

Mr. D.J. Pangam, Advocate General with Mr. G. Shetye, Additional
Government Advocate for Respondents No.1 & 2.

WITH

WRIT PETITION NO.183/2020

Nelly Joyce Rodrigues,
Wife of Jose Joey Rodrigues,
Age 59 years,
Residing at H.No. 100,
Godinho Vaddo, Calata, Majorda,
Salcete, Goa.

.... Petitioner.

Versus

1. State of Goa,
through the Chief Secretary
Porvorim, Goa.

2. Directorate of Panchayat,
Through Director of Panchayat,
Panaji, Goa.

3. Goa State Election Commission,
Through the State Election Commissioner,
Having their Office at
Altinho, Panaji, Goa.

.... Respondents.

Mr. Amey Kakodkar, Advocate for the Petitioner

Mr. D.J. Pangam, Advocate General with Mr. P. Arolkar, Additional
Government Advocate for Respondents No.1 & 2.

Mr. S.N. Joshi with Ms. S. Joshi, Advocates for Respondent No.3.

WITH

WRIT PETITION NO. 184 OF 2020

Janu Gaonkar
Son of Pandurang Gaonkar,
Age 39 years,
Residing at H.No.324, Talleawaddo,
Guddi, Mulem, Salcete Goa

... Petitioner

Versus

1. State of Goa
Through the Chief Secretary,
Porvorim, Goa.
2. Directorate of Panchayat
Through Director of Panchayat
Panaji, Goa.
3. Goa State Election Commission
Through the State Election Commissioner
having their office at
Altinho, Panaji, Goa.

... Respondents

Mr. Amey Kakodkar, Advocate for the Petitioner

Mr. D.J. Pangam, Advocate General with Mr. Deep Shirodkar,
Additional Government Advocate for Respondent No.1 and 2..

Mr. S.N. Joshi with Ms. S. Joshi, Advocates for Respondent No.3.

WITH

WRIT PETITION NO.186/2020

Gupesh Shiva Naik.
Son of Shiva Naik,
age 56 years,
Residing at H.No. 224,
Haliwada, Britona,
Bardez, Goa.

.... Petitioner.

Versus

1. State of Goa,
Through the Chief Secretary

Porvorim, Goa.

2. Directorate of Panchayat,
Through Director of Panchayat,
Panaji, Goa.

3. Goa State Election Commission,
Through the State Election Commissioner,
having their Office at
Altinho, Panaji, Goa.

.... Respondents.

Mr. Amey Kakodkar, Advocate for the Petitioner

Mr. D.J. Pangam, Advocate General with Mr. P. Arolkar, Additional
Government Advocate for Respondents No.1 & 2.

Mr. S.N. Joshi with Ms. S. Joshi, Advocates for Respondent No.3.

WITH

WRIT PETITION NO.191/2020

Shri Sudesh M. Parab
son of Shri. Madhukar Parab,
48 years of age,
businessman, resident of
154, Panch Wada, Near Adinath Temple,
Usgao, Ponda Taluka,
Goa

... Petitioner

Versus

1. State of Goa
Through the Chief Secretary,
Secretariat, Vidhan Sabha Complex,
Porvorim, Bardez Taluka,
Goa

2. The Secretary, Panchayats
Secretary, Vidhan Sabha Complex,
Porvorim, Bardez Taluka,
Goa
3. Goa State Election Commission
Through the State Election Commissioner
having their office at
Altinho, Panaji, Goa.
4. The Directorate of Panchayats
Junta House, 3rd lift, 3rd floor,
Swami Vivekanand Road
Panaji – Goa.

... Respondents

Mr. Rui Gomes Pereira, Advocate for the Petitioner

Mr. D.J. Pangam, Advocate General with Mr. G. Shetye, Additional
Government Advocate for Respondents No.1 & 2.

Mr. S.N. Joshi with Ms. S. Joshi, Advocates for Respondent No.3.

***Coram: M.S. Sonak &
M.S. Jawalkar, JJ.***

Reserved on: 9th December 2020

Pronounced on: 11th December 2020.

JUDGMENT: - (Per M.S. Sonak, J.)

Heard the learned Counsel for the parties.

2. The learned Counsel for the parties agree that these
Petitions can be disposed of by a common Judgment and Order,

since, they relate to the challenges to the Government Notification dated 20th February 2020, reserving certain constituencies for the candidates from scheduled tribes/other backward/woman, etc. at the Zilla Panchayat elections, earlier scheduled for 22nd February 2020 and now rescheduled for 12th December 2020. In some of the Petitions, there is a challenge to the constitutional validity of some of the provisions of the Goa Panchayat Raj Act, 1994 (said Act) to the extent they relate to the powers of the Government to make such reservations.

3. The Petitioners in Writ Petitions No.179/2020 and 191/2020 challenge the Notification dated 20th February 2020 to the extent it relates to the Usgao-Ganje constituency for scheduled tribe candidates. In these Petitions, there is a challenge to the constitutional validity of the provisions in Sections 7(4), 118 and 119 of the said Act to the extent these provisions vest the power to provide reservations in the Government, instead of the State Election Commissioner (SEC) in terms of Section 243 K of the Constitution of India. These provisions are also challenged on the ground that they vest in the Government unfettered and uncanalized power to make reservations which, according to the Petitioners, violates the mandate of non-arbitrariness in Article 14 of the Constitution.

4. The Petitioners in Writ Petitions No.183/2020, 184/2020, and 186/2020 also challenge the Government Notification dated 20th

February 2020 to the extent it relates Colva Constituency for Other Backward Class (OBC); Guirdolim Constituency for woman and Penha de Franca Constituency for OBC (Woman), at the ensuing Zilla Panchayat Elections.

5. Mr. S.D. Lotlikar, the learned Senior Advocate for the Petitioner in Writ Petition No.179/2020 and Mr. Rui Gomes Pereira, the learned Counsel for the Petitioner in Writ Petition No.191/2020, at the outset, submitted that the provisions in Sections 7(4), 118 and 119 of the said Act are unconstitutional to the extent they vest powers to make reservations in the State Government when, in fact, the said powers ought to vest in the SEC in terms of Article 243 of the Constitution. They submit that the reservation of seats is an integral part of the conduct of elections and, since, Article 243 K vests power of conducting elections in SEC, the impugned provisions to the extent they provide otherwise, are liable to be struck down or in any case, read down to fall in the line of the constitutional mandate. They refer to the provisions in Article 243 N in support of these contentions. They rely on *Mohinder Singh Gill & anr. vs. Chief Election Commissioner, New Delhi and ors.*¹, *Special Reference No.1/2002 (Gujarat Election matter)*²; *Lalji Shukla & anr. Election Commission of India*³ and *S. Fakruddin & ors. etc.*

¹ (1978) 1 SCC 405;

² (2002) 8 SCC 237

³ AIR 2002 All 73

vs. Government of A.P. & ors.⁴.

6. Mr. Lotlikar and Mr. Pereira, in the alternate, submit that the impugned provisions are ultra vires Article 14 of the Constitution since they confer arbitrary, uncanalized, unguided, uncontrolled, and unbridled powers upon the Government in making reservations to any particular constituency. They point out that on account of vesting of such arbitrary power in the Government by the impugned provisions, the government is enabled to choose the constituencies for reservation based upon whim and caprice, rather than focusing upon the aspect of predictability and transparency, which is a *sine qua non* for free and fair elections. They point out the arbitrary manner in which the reserved constituencies have been chosen and submit that unless the impugned provisions are struck down, the Government will perpetrate such arbitrariness in the matter of choosing reserved constituencies. They rely on *A. N. Parasuraman v. State of Tamil Nadu*⁵; *M/s. Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh*⁶; *Kunnathat Thatunni Moopil Nair v. State of Kerala and another*⁷ and *Committee of Management and another v. Vice-Chancellor and others*⁸ in support of these contentions.

⁴ AIR 1996 AP 37

⁵ AIR 1990 SC 40

⁶ AIR 1954 SC 224

⁷ AIR 1961 SC 552

⁸ 2009 (2) SCC 630

7. Mr. Amey Kakodkar, the learned Counsel for the Petitioners in Writ Petitions No.183/2020, 184/2020, and 186/2020, adopts the contentions of Mr. Lotlikar and Mr. Pereira but clarifies that in these Petitions there is no formal challenge to the impugned provisions in Sections 7(4), 118 and 119 of the said Act. He, however, submits that both, the Constitution, as well as the said Act, in terms, provide that the reserved seats shall be allotted by rotation to different wards or constituencies in a Panchayat or a Zilla Panchayat area. He submits that this mandate of rotation of reserved seats, has been flouted and the reservations are made without any predetermined or transparent criteria. He pointed out that the Notification making reservations is invariably issued on the eve of the notification announcing the elections as it was done in the present matters, solely to preempt any challenge to such notification, knowing fully well that choice of reserved seats, is *ex facie* arbitrary and in breach of the provisions of the Constitution and the said Act.

8. Mr. Kakodkar pointed out that Writ Petition No.184/2020 refers to an instance where for three consecutive Zilla Panchayat elections, the Girdolim Constituency has been reserved for women. He pointed out to the facts in the other Petitions as well to submit that choice is patently arbitrary and only made to assist the ruling dispensation by the means which are more foul than fair. He, therefore, submits that even these Petitions be allowed and the impugned notification to the extent they concern the Petitioners, be

set aside.

9. Mr. D. Pangam, the learned Advocate General who appears along with Mr. Deep Shirodkar, Mr. Shivdatta Munj, and Mr. P. Arolkar, the learned Additional Govt. Advocates, at the very outset, submits that the challenge to the impugned provisions is barred under Article 243 O of the Constitution, since, the impugned provisions relate to the allotment of reserved seats to the constituencies. He submits that in any case, now that the election process has commenced, no reliefs be granted in all these Petitions, because, any grant of relief, would result in interrupting and delaying the election process. He relies on *Anugrah Narain Singh and another v. State of Uttar Pradesh and others*⁹, *Jammu and Kashmir National Panthers Party vs. Union of India*¹⁰; *Mohinder Singh Gill* (supra), and *Roger Mathew vs. South Indian Bank Limited*¹¹ in support of his contentions.

10. Mr. Pangam, without prejudice, submits that the challenge to the impugned provisions is, even otherwise, untenable and the impugned provisions cannot be struck down on the alleged ground of absence of any guidelines. He submits that the guidelines are present in the impugned provisions itself and, in any case, the Government is on an affidavit to state that objective and transparent criteria is and

⁹ 1996 (6) SCC 303

¹⁰ (2011) 1 SCC 228

¹¹ (2020) 6 SCC 1

will be invariably adopted in the matter of providing for reservations. He submits that in a given case if any arbitrariness or breach of the statutory or constitutional provisions is demonstrated, the power of judicial review can as well be exercised to correct the executive act of actual reservation. However, he submits that this cannot be a ground to strike down the legislative provisions themselves. He relies on *Orissa State (Prevention and Control of Pollution) Board v. Orient Paper Mills and another*¹²; *Odisha Industrial Infrastructure Development Corporation Limited v. Pitabasa Mishra and others*¹³ and *Ilyas Amir Maniyar vs. State of Maharashtra and ors.*¹⁴ in support of his contentions.

11. Mr. Pangam submits that delimitation of the constituencies or allotment of seats to such constituencies, which would include the reservations to be made, is a stage prior to the conduct of elections as understood in the election law. He submits that in terms of Article 243 K of the Constitution, superintendence, direction, and control of preparation of the electoral roll for, and conduct of elections to Panchayats, is vested in the SEC. He submits that there is no provision in the said Act which, in any manner, denudes the powers of the SEC in the matter of preparation of the electoral rolls or the conduct of elections. He submits that there can be no bar to the

¹² 2003 (10) SCC 421

¹³ 2018 (3) SCC 732

¹⁴ 2009(6) Bom.C.R. 138

legislature of the State to enact any law to confer the powers of delimitation or reservation of constituencies upon the Government and such a law, in no manner, infringes Article 243 K of the Constitution or denudes the SEC from exercising the power of superintendence, direction, and control of preparation of the electoral rolls and, the conduct of elections. He, therefore, submits that there is no constitutional infirmity in the impugned provisions. He relies on *Mohinder Singh Gill* (supra) in support of his contention that the election process commences upon the Government issuing a notification under Rule 10(1) of the Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996 (said Rules) and concludes normally with the declaration of results in terms of Rule 56 of the said Rules, unless, there is any issue of a recount in terms of Rule 57 of the said Rules.

12. Mr. Pangam, in the context of the affidavits filed by and on behalf of the SEC in this matter, submits that hereafter the necessary notifications concerning delimitation and reservations of seats for elections will be issued and published at least three weeks before the issuance of notification under Section 10(1) of the said Rules for holding elections to the Village Panchayats and Zilla Panchayats. Mr. Pangam also states that within three months, suitable guidelines will also be issued by the Government prescribing well-defined criteria for reservation of constituencies and rotation of reserved seats to different wards in a Panchayat or a Zilla Panchayat area. He submits that this

will be done without prejudice to his basic contention that there is no constitutional infirmity whatsoever in the impugned provisions since, the guidelines are already to be found in the Constitution and the provisions of the said Act and, further, the Government always adopt objective criteria in such matters. He pointed out that the reserved seats go to the extent of almost about 60% and, therefore, some amount of overlapping is quite inevitable. He, therefore, submits that some minimal overlapping ought not to be construed as a breakdown of the rotation principle or be criticized as some arbitrary allotment of reserved constituencies.

13. Mr. Pangam referred to the facts in each of the Petitions and contended that there was no arbitrariness involved in the executive action of reservation of the constituencies in these matters.

14. Mr. Pangam also pointed out that now that the election process has fairly advanced and the actual polls are scheduled for 12th December 2020, this Court in deference to the provisions in Article 243 O of the Constitution ought not to interfere in the election process. He points out that any interference at this stage, even qua any single constituency, will result in interfering with the entire election process and thereby delaying the same indefinitely. He points out that the term of earlier elected Zilla Panchayat expired on 24th March 2020 and it is only on account of the COVID-19 pandemic situation that the elections could not be held as proposed on 22nd

March 2020. He further pointed out that even if it is assumed that there was any breakdown in the rotation principle provided in the first proviso to Section 7(6) of the said Act, it was always open to any aggrieved elector or the Petitioner to question the results of the election on its conclusion, by instituting an election petition in terms of Sections 16 to 25 of the said Act.

15. Mr. Pangam made special reference to the provisions in Section 20(1)(d)(iv) which provides that if the prescribed authority before whom an election petition is filed is of the opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by any non-compliance with the provisions of the said Act, or with any rules or the order made thereunder, the prescribed authority has all powers to declare the election of the returned candidate to be void. Mr. Pangam submits that this is an additional ground as to why no relief be granted in the present Petitions, relegate the Petitioners to the remedy of instituting an election petition before the Prescribed Authority.

16. Mr. S.N. Joshi, the learned Counsel for the SEC, commenced his arguments by submitting that he adopts the submissions of the learned Advocate General. However, little later, he submitted that he does not adopt the submissions of the learned Advocate General, but agrees with the submissions of the learned Counsel for the Petitioners that the powers of delimitation and

reservation of constituencies should be vested in the SEC and not in the Government. He pointed out that for these very elections for almost a year, the SEC was sending constant reminders to the State Government to issue necessary notifications on delimitation and reservation so that the election process could be completed before the expiry of the term of the previous body. He points out that despite several reminders, the State Government took its own time and the notification relating to the reservation was issued only on 20th February 2020. He pointed out that the SEC requires a minimum of about 26 days to complete the election process and, therefore, if the election process had to be completed by 24th March 2020, there was no option for the SEC to notify the election program on the immediate next day i.e. 21st February 2020. He submitted that this is what routinely happens and, therefore, it would be appropriate if even the powers of delimitation and reservation are vested in the SEC in terms of Article 243 K of the Constitution.

17. Mr. Joshi also pointed out that several states have enacted laws in terms of the mandate of Article 243 N of the Constitution so that the existing laws conform to the provisions of the Constitution (Part IX of the Constitution). He pointed out that in such laws, the powers of delimitation or reservation are vested in an independent Delimitation Commission or the State Election Commission, as the case may be. He pointed out that the Central Government has also issued a Model Panchayat and Gram Swaraj Act, in terms of which

such powers are vested in the State Election Commission. After having submitted all this, at a later point in time, Mr. Joshi again submitted that the impugned provisions were not unconstitutional and, therefore, he would adopt the submission of the learned Advocate General.

18. As we were extremely confused with the stance or the changing stances on behalf of the SEC, we inquired with Mr. Joshi, learned Counsel for the SEC as to whether the SEC stands by the affidavits which have been filed in these matters, or whether, there is any proposal to withdraw the same. Mr. Joshi submitted that the SEC stands by the stance adopted by the Commission in the affidavits and we may proceed on the said basis. According to us, it would be safer for us to proceed based upon the stance reflected in the affidavit filed on behalf of the SEC on 25th February 2020 and the additional affidavit dated 12th October 2020 in Writ Petition No.191/2020.

19. The rival contentions now fall for our determination.

20. Since, the first challenge is to the provisions contained in Sections 7(4), 118, and 119 of the said Act, we transcribe the provisions in Sections 7, 118, and 119 of the said Act for convenience of reference :

“7. Constitution of Panchayats.— (1) A Panchayat shall

consist of, such number of members as the Government may, by order, determine, so far as may be in accordance with the following Table:-

TABLE

<i>For a Panchayat with a population of</i>	<i>Number of members</i>	<i>Classification</i>
<i>(1) 1500 or more but not more than 2000</i>	<i>5</i>	<i>D</i>
<i>(2) more than 2000 but not more than 5000</i>	<i>7</i>	<i>C</i>
<i>(3) more than 5000 but not more than 8000</i>	<i>9</i>	<i>B</i>
<i>(4) more than 8000 ..</i>	<i>11</i>	<i>A</i>

(2) All the members of a panchayat shall be elected.

(3) The Director shall divide each Panchayat area into wards the number of which shall be equal to the number of members determined in respect of such Panchayat under sub-section (1).

(4) In every Panchayat, seats shall be reserved for the Scheduled Castes and the Scheduled Tribes and the number of seats so reserved shall bear as nearly as may be, the same proportion to the total number of seats in the Panchayat as the population of the Scheduled Castes and the Scheduled Tribes in the Panchayat area bears to the total population of the Panchayat area:

Provided that Government may by notification reserve any seat reserved for Scheduled Castes and Scheduled Tribes for women belonging to the Scheduled Castes or as the case may be, the Scheduled Tribes:

[Provided further that the Government may, by order published in the Official Gazette, direct any Panchayat to co-opt in such manner as may be prescribed, a person belonging to the Scheduled Caste, where there is a reasonable population of the Scheduled Caste but the reservation may not be made.]

(5) The Government may, by notification reserve such number of seats in any Panchayat as may be considered necessary, taking into account the population of the backward classes in the Panchayat area, for persons belonging to the backward classes.

(6) Not less than one third (including the number of seats reserved for women belonging to Scheduled Castes or Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women:

Provided that the seats reserved under sub-section (4), (5) and (6) shall be allotted by rotation to different wards in the panchayat area:

Provided further that nothing contained in this section shall be deemed to prevent a woman or a person belonging to the Scheduled Castes and Scheduled Tribes or Backward Classes from contesting for elections to any non-reserved ward in such Panchayat.

(7) Notwithstanding anything contained in sub-section (1) where two-thirds of the total number of members are required to be elected or have been elected, failure to elect the remaining members shall not affect the constitution of the Panchayat.

(8) The Director shall publish, in the prescribed manner, the names of members elected or deemed to have been duly elected to a Panchayat.

[Explanation:— In this section, the expression

“population” means the population as ascertained at the last preceding census of which the relevant figures of have been published, but where figures of census are not available, the population shall be ascertained from other relevant authenticated records maintained by the Government.]

118. Reservation of seats.— *Reservation of seats as are applicable for an election to the Panchayat under the provisions of sub-sections (4) to (6) of section 7 shall, mutatis mutandis, apply to the elections of the members referred to in clause (i) of section 117.*

119. Delimitation of territorial constituencies.— *The Government shall, by notification,—*

[(a) divide the area within the jurisdiction of North Goa Zilla Panchayat and South Goa Zilla Panchayat into [25 and 25] single member territorial constituencies respectively, for the purpose of election, to such Zilla Panchayat.]

(b) determine the territorial constituencies or constituencies in which seats are reserved for the Scheduled Castes, Scheduled Tribes, Backward Classes and Women.”

21. From the aforesaid provisions, it is clear that the scheme for reservation of constituencies at the Panchayat level is to be found in sub-Sections (4), (5), and (7) of Section 7 of the said Act. Thereafter, Section 118 of the said Act provides that reservation of seats, as are applicable for an election to the Panchayat under the provisions of sub-sections (4) to (6) of section 7, shall, *mutatis mutandis*, apply to the elections of the members of a Zilla Panchayat. Section 119 of the said Act, in terms, provides that the Government shall, by

notification, delimit the constituencies and determine the territorial constituencies or constituencies in which seats are to be reserved for the Scheduled Castes, Scheduled Tribes, Backward Classes, and Women.

22. Now, the challenge of the Petitioners to the aforesaid impugned provisions is twofold:-

(a) that the power to reserve the constituencies for Scheduled Castes, Scheduled Tribes, Backward Classes, and Women, should in fact vest in the SEC and not the Government in terms of Article 243 K of the Constitution; and

(b) that, in any case, the power which is vested in the Government for the aforesaid purpose is arbitrary, uncanalized, unguided, uncontrolled, and unbridled.

23. The learned Counsel submitted that conferment of such powers on the Government renders the provisions by which such power is conferred, ultra vires Article 14 of the Constitution.

24. Before we examine the aforesaid challenges, it is necessary to address the preliminary objection raised by the learned Advocate General based on the provisions in Article 243 O of the Constitution. The learned Advocate General submitted that the impugned provisions constitute law relating to the delimitation of constituencies

or allotment of seats to such constituencies and, therefore, in terms of Article 243 O of the Constitution, the validity of any such law cannot be called in question in any Court.

25. Article 243O of the Constitution provides that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court.

26. Since, Article 243O(a) refers to laws made or purporting to be made under Article 243K of the Constitution, it is necessary to refer to the provisions of Article 243K of the Constitution, which read as follows :

“243K. Elections to the Panchayats The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor;

(2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State

Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

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

27. In terms of Article 243K of the Constitution, the powers vested in the State Election Commission, are the same as those vested in the Election Commission of India under Article 324 of the Constitution. From a reading of the two constitutional provisions, it is held by the Hon'ble Supreme Court that the powers of the SEC in respect of the conduct of election to Panchayats and Zilla Panchayats is no less than that of the Election Commission of India in the matter of conduct of elections to the Parliament and, these powers are no doubt subject to any law which may be made by the Parliament or the State Legislature, provided that such law does not encroach upon the plenary powers of the Election Commission of India or the SEC, as the case may be. Besides, the expression '*superintendence, direction and control*', as well as the expression '*conduct of elections*' have been interpreted in broad terms by the Hon'ble Supreme Court in *Special Reference 1/2002* (supra) and *Mohinder Singh Gill* (supra). In fact, these decisions suggest that the powers of the Election Commission in the domain reserved for the Election Commission by Article 243K are quite plenary. This means that even the residuary powers, no doubt, within the domain allocated by

Article 243K, vest in the Election Commission.

28. Therefore, in principle, should the law purporting to relate to the delimitation of constituencies or allotment of seats to such constituencies, encroach upon the plenary jurisdiction reserved by the Constitution to the Election Commission, certainly, the provisions of Article 243 O of the Constitution, will not constitute some absolute bar to the powers of judicial review vested in the constitutional courts under Article 226 of the Constitution of India. The constitutional Courts will be entitled to determine whether the law is indeed some law under Article 243 K of the Constitution and, further whether such law transgresses the limits prescribed by Article 243 K of the Constitution. Similarly, Article 243 O(a) also cannot be interpreted to mean that any challenge to such law on the ground that it infringes Part III of the Constitution, is also barred under Article 226 of the Constitution of India. This was not the import of the decisions relied upon by the learned Advocate General in support of such an extreme proposition. It is not appropriate for us to read a sentence here or there, mostly torn out of the entire context and conclude that the provisions in Article 243 O impose a complete embargo upon this Court exercising its jurisdiction under Article 226 of the Constitution from examining the vires of a State legislation, particularly since such power of judicial review is held to be a part of the basic structure of the Constitution by the Hon'ble Supreme Court in a series of decisions.

29. The Full Bench of Andhra Pradesh High Court in *S. Fakruddin & ors.* (supra), squarely considered this issue and held that the provisions of Article 243 O(a) cannot be construed to impose any such absolute embargo on the exercise of jurisdiction under Article 226 of the Constitution. The Full Bench also held that the legislature of the State is quite competent to make laws concerning the composition of Panchayas or delimitation of constituencies or allotment of seats, but such competence is subject to the provisions of the Constitution as stipulated under Article 243 K of the Constitution. This means that the State legislature can make laws in addition to what has been preserved for it under Article 243 C of the Constitution and not extending the matters which are left to the exclusive control of the State Election Commission under Article 243 K(1) of the Constitution. This means that if the State legislatures were to make any law, usurping to itself the control of preparation of the electoral roll or for conduction of elections to Panchayats, such a law, would then, encroach upon the jurisdiction which the Constitution has reserved to the State Election Commission. Such a law, according to us, cannot claim immunity from challenge based on the provisions of Article 243 O of the Constitution. This Court, exercising its extraordinary jurisdiction under Article 226 of the Constitution, would then not only be entitled to but be duty-bound to examine the validity of such a contention.

30. In *Keshavananda Bharati vs. State of Kerala*¹⁵, the majority expressed the view that the power of Parliament under Article 368 to amend the Constitution does not extend to abrogating the basic feature of the Constitution. The independence of the constitutional Courts – the Supreme Court and the High Courts, is assured by the Constitution, and the power of judicial review is vested in them.

31. In *Smt. Indira Nehru Gandhi vs. Raj Narain*¹⁶, it was held that democracy is an essential feature of the Constitution and judicial power must intervene in the interests of purity of elections. It was further held that judicial review is a basic feature and it is the Court that acts as the real interpreter of the real will of the people by performing the essential judicial functions.

32. In *Minerva Mills Ltd. vs. Union of India*¹⁷ clauses (4) and (4) in Article 368 of the Constitution which had barred judicial review, were struck down as violative of the basic structure of the Constitution and, therefore, beyond amending power of the Parliament. In this case, speaking for the majority, Chief Justice Y.V. Chandrachud reiterated the ratio laid down in *Keshavananda* (Supra) that limited amending power of the Parliament was itself one of the basic features of the Constitution and that limited power cannot be

¹⁵ AIR 1973 SC 146

¹⁶ AIR 1975 SC 2299

¹⁷ AIR 1980 SC 1789

enlarged into absolute power.

33. The principle that the Judges of the constitutional Courts have not only powers but also duty to pronounce upon the validity of laws under our constitutional set up, was highlighted by the learned Chief Justice by observing thus :

“...Our Constitution is founded on a nice balance of power among the three wings of the State viz., the Executive, the Legislature and the Judiciary. It is the function of the Judges, nay their duty, to pronounce upon the validity of laws. If Courts are totally deprived of that power, the fundamental rights conferred upon the people will become a mere adornment because rights without remedies are as writ in water. A controlled Constitution will then become uncontrolled.”

[emphasis supplied)

34. In the precise context of the provisions of Article 243 O of the Constitution, the Full Bench of the Andhra Pradesh High Court in *S. Fakruddin & ors.* (supra), after considering the decisions of the Hon'ble Supreme Court in *N.P. Ponnuswami vs. Returning Officer, Namakal* AIR 1952 SC 64; *The State of Madras vs. V.G. Row* - AIR 1952 SC 196; and *Kihota Hollohon vs. Zachilhu* – AIR 1993 SC 412 held that the bar in Article 243 O of the Constitution is to the ordinary jurisdiction of the Courts and not to the extraordinary jurisdiction under Articles 136 and 226 of the Constitution. The Full Bench did not declare Article 243 O of the Constitution as

unconstitutional but clarified that it does not take away the power of the High Court under Article 226 of the Constitution to examine the validity of any law relating to elections, including delimitation of constituencies or allotment of seats to such constituencies made or purporting to be made under Article 243 K of the Constitution.

35. The Full Bench also noted the clear statement to this effect in the Judgment of the Hon'ble Apex Court in the case of *Lakshmi Charan Sen vs. A.K.M. Hassan Uzzaman*-AIR 1985 SC 1233 that the High Court concerned acted within its jurisdiction in entertaining a writ petition and in issuing a writ *Rule Nisi* since the petition questioned the vires of the laws of election law. The Supreme Court, no doubt, held in this case that though the jurisdiction is undoubtedly vested in the High Court, the High Court should loathe to make any orders, interim or otherwise which have the tendency or effect of postponing the election, which is reasonably imminent and concerning which its writ jurisdiction is invoked. The Apex Court held that the fact that the Court has the power to do a certain thing, does not mean that it must exercise that power regardless of consequences.

36. Therefore, we are unable to uphold the preliminary objection raised by the learned Advocate General based on the provisions of Article 243 O of the Constitution. We, therefore,

proceed to examine the merits of the challenge to the constitutional validity of the impugned provisions that Sections 7(4), 118, and 119 of the said Act.

37. In this regard, we must observe that the reliefs applied for by the Petitioners in their respective Petitions are by no means complete in themselves. This means that even if we were to strike down the impugned provisions, it is not as if the power to make reservations in their entirety would stand divested from the Government. For example, there is no challenge to Section 7(5) of the said Act, which provides that the Government may, by notification reserve such number of seats for persons belonging to backward classes. So also striking down the provisions of Section 118 and 119 of the said Act, would lead to complete chaos as there would then be no provisions for reservation of seats to Zilla Panchayats. Both the pleadings, as well as how the reliefs were cast, leave a lot to be desired. The reliefs, particularly where the petitions are drafted and settled by trained professionals and where there are challenges to the constitutional validity of legal provisions, must be specific and clear. The lacunae cannot be sought to be downplayed by reference to residuary prayer clause seeking such other and further reliefs in the matter.

38. Be that as it may, the Petitioners to succeed in the first limb of their challenge, were required to demonstrate that the subjects of

delimitation of constituencies and allotment of seats, which would include the reservation of seats, are included in the expression '*the superintendence, direction and control of the preparation of electoral rolls for, and conduct of, all elections to the Panchayats ...*'. Only then the Petitioners can urge that the domain which was exclusively left by Article 243 K of the Constitution with the SEC has been encroached upon by the impugned provisions made by the State legislature and the impugned provisions are therefore unconstitutional to the said extent.

39. Now, it is not even the case of any of the Petitioners that the impugned provisions relate to the preparation of electoral rolls. The learned Counsel for the Petitioners were not quite clear as to whether the law relating to the delimitation of constituencies or reservation of such constituencies amounts to the law for the conduct of election to the Panchayats or Zilla Panchayats, as the case may be. Some vague submissions were made to the effect that since delimitation and reservation ultimately affect the conduct of elections, the power to make delimitation or reservations ought to be necessarily vested in the SEC. Though such vague submissions were made across the Bar, the same were not made good by reference to any constitutional or statutory provisions or reference to any precedents on the subject.

40. In contrast, the learned Advocate General pointed out that the election or the election process commences from the date of

issuance of notification by the Government under Rule 10(1) of the said Rules. This rule provides that the Government, in consultation with the SEC, or, shall, after it is decided to hold an election in the Village Panchayats or Zilla Panchayats concerned, by notification in the Form I or Form I-A as the case may be, appoint the date(s) for holding election thereof.

41. Rule 10(2) of the said Rules then provides that the SEC shall take such steps for fixing dates and hours for subsequent stages of the election as specified. Based on this rule, the learned Advocate General submitted that the election process commences with the issuance of notification under Section 10(1) and upon issuance of such notification, it is the SEC, who is the master when it comes to conducting of elections as provided under Article 243 K of the Constitution. He submits that the stage of delimitation of constituencies or reservation is a stage before the commencement of the election process as contemplated in Article 243 K and, therefore, there is no infirmity whatsoever in the impugned provisions which vests the power of delimitation or making the reservation in the State Government.

42. According to us, the submission of the learned Advocate General as to when the election process commences, finds support from *Mohinder Sing Gill* (supra). Though the observations in the said Judgment relate to the scheme of Parliamentary elections,

according to us, in principle, there is no significant qualitative difference between the two schemes on the aspect of commencement of the election process.

43. In *Mohinder Sing Gill* (supra), the Hon'ble Supreme Court has held that the President of India, under Section 14 of the Representation of the People Act, 1950, ignites the general elections across the nation by calling upon the People, divided into several constituencies and registered in the electoral rolls, to choose their representatives to the Lok Sabha. The constitutionally appointed authority, the Election Commission, takes over the whole conduct and supervision of the mammoth enterprise involving a plethora of details and a variety of activities and starts with the notification of the time table for the several stages of the election (Section 30). The Judgment finally proceeds to hold that the election process concludes with the declaration of results by the Returning Officer. In fact, the issue involved in *Mohinder Singh Gill* (supra) was, whether Article 329(b), which corresponds to Article 243 O(b), constitutes a blanket ban on all manner of questions which may have an impact on the ultimate result of the election, arising between two temporal termini, viz. the notification by the President calling for the election and the declaration of the result by the returning officer.

44. Thus construed, we can not accept the petitioners' contention that the constitutional scheme in Article 243 K envisages

that even the power of delimitation of constituencies or reservation of seats thereat has to be necessarily vested in the SEC and not the Government. The SEC, no doubt, has plenary and consequently, even the residual powers when it comes to preparation of electoral rolls for or conduct of all elections to the Panchayats or Zilla Panchayats. However, since the subjects of delimitation of constituencies or providing reservations thereat, cannot be said to be included in the domain of either preparation of the electoral rolls, or conduct of elections, we cannot say that the impugned provisions are unconstitutional on the ground that they usurp the jurisdiction essentially vested in the SEC and confer the same on the Government.

45. It is true, as pointed out by Mr. Lotlikar and Mr. Pereira and even by Mr. S.N. Joshi that several States have enacted legal provisions to vest even power of delimitation of constituencies and reservation of seats thereat in Delimitation Commission or the SEC itself. It is also true that the Central Government in the Model Panchayat and Gram Swaraj Act which it has formulated and circulated for implementation of 73rd Amendment to the Constitution in letter and spirit also vests powers of providing reservations in the State Election Commission, instead of the State Government. However, based upon this, we are afraid that we will not be in a position to strike down the impugned provisions.

46. The Model Panchayat and Gram Swaraj Act, as its name suggests, is intended to be a '*model law*'. The vesting of powers to delimit constituencies or to provide reservation there at in some independent authority, like the SEC indeed appears to be an ideal situation, particularly if the provisions of the 73rd Amendment to the Constitution are to be implemented in its spirit. However, the laws which may not rank up to the model law, or the ideal law, may still not fall foul of the constitutional limitations. Such laws, though not model or ideal, may nevertheless, pass the constitutional muster.

47. Even, according to us, particularly going by how the State Government has acted in this case, the ideal position would be to vest even the power of delimitation or, in any case, the power of reservation and rotation of reserved seats in the SEC. However, neither the formulation of the Model Panchayat and Gram Swaraj Act by the Central Government, the enactment of such laws by several other States, nor our opinion as what might be ideal position, is quite sufficient for us to strike down the impugned provisions as ultra vires or unconstitutional. In matters of judicial review of legislation, we cannot permit our notion of what might be ideal to prevail. There, we think that we will have to defer to the jurisdiction and the proverbial wisdom of the legislature.

48. Again, we must confess that it is possible that one of the reasons for our opinion, relates to the manner in which the State

Government has acted in this matter by unjustifiably delaying the entire election process, simply by not issuing the notification for delimitation and reservation of seats until 20th February 2020 despite the SEC, virtually pleading with the State Government to do so right from 11th June 2019 *i.e.* almost 9 months before the date on which the term of the Zilla Panchayats was to expire. This conduct has been highlighted by the SEC in the affidavits filed in these matters.

49. The second limb of the Petitioners' challenge is premised on the proposition that the impugned provisions must be declared unconstitutional because there are no rules, regulations, executive instructions, or guidelines to guide the discretion of the State Government in matters of reservations or the rotation of reserved seats. Several decisions were cited particularly by Mr. Rui Gomes Pereira to submit that vesting of any arbitrary, uncanalized, or unbridled powers in the Government or any authority, renders the legal provisions itself arbitrary and violative of Article 14 of the Constitution.

50. M.P. Jain, in his treatise on '*Indian Constitutional Law*' 6th Edition, has adverted to a common tendency in modern democracies is to confer discretionary power on the Government or administrative officers. The power is usually couched in very broad phraseology and gives a large area of choice to the administrator concerned to apply the law to actual factual situations. To ensure that discretion is

properly exercised, the statute in question must lay down some norms or principles according to which the administrator has to exercise the discretion. Many a time, the statutes do not do this and leave the administrator free to exercise his power according to his Judgment. This creates the danger of official arbitrariness which is subversive of the doctrine of equality. To mitigate this danger, the courts have invoked Article 14. In course of time, Article 14 has evolved into a very meaningful guarantee against any action of the Administration which may be arbitrary, discriminatory, or unequal. (see *Jamshed N. Guzdar vs. State of Maharashtra* – (2005) 2 SCC 591).

51. In *Sheo Nandan Paswan vs. State of Bihar* (1987) 1 SCC 288, the Hon'ble Supreme Court held that the law always frowns on uncanalised and unfettered discretion conferred on any instrumentality of the State.

52. In *District Registrar and Collector v. Canara Bank*, (2005) 1 SCC 496, the Hon'ble Supreme Court held that where power granted is open and disproportionate to purpose to be achieved, then the law conferring such power is invalid in the absence of guidelines or principles or norms which are 'essential' for the exercise of such power.

53. In *Naraindas v. State of Madhya Pradesh*, (1974) 4 SCC 788, the Hon'ble Supreme Court reiterated that Article 14 ensures

equality before law and strikes at arbitrary and discriminatory State action. If power conferred by statute on any authority of the State is vagrant and unconfined and no standards or principles are laid down by the statute to guide and control the exercise of such power, the statute would be violative of the equality clause, because it would permit the arbitrary and capricious exercise of power, which is the antithesis of equality before the law.

54. In *Sudhir Chandra vs. Tata Iron & Steel Co. Ltd.* AIR 1984 SC 1064, the Supreme Court held that our Constitution envisages a society governed by rule of law. Absolute discretion, uncontrolled by guidelines that may permit denial of equality before the law is the antithesis of rule of law. Absolute discretion, not judicially reviewable inheres the pernicious tendency to be arbitrary and is therefore violative of Article 14. Equality before the law and absolute discretion to grant or deny the benefit of the law, are diametrically opposed to each other and cannot co-exist.

55. This means that the legislature cannot validly enact a provision conferring naked or arbitrary power on the Administration to be exercised by it in its absolute discretion. No law ought to confer excessive discretionary power on any authority. The Court can veto the conferment of discretionary power on authority if it finds it to be naked or arbitrary. A discretionary power may not necessarily be a discriminatory power, but where a statute confers power on an

authority to decide matters of the moment without laying down any guidelines or principles or norms, the power has to be struck down as being violative of Article 14. The rationale underlying this proposition is that unbridled discretionary power may degenerate into arbitrariness, or may result in discrimination and, thus, contravenes Article 14 of the Constitution, which bars discrimination. Therefore, to be valid, discretionary power ought to be hedged by policy, standards, guidelines, or procedural safeguards to regulate its exercise otherwise the Court may declare a provision conferring sweeping powers on the Administration void.

56. The above principle was quite eloquently explained in *Maneka Gandhi v. Union of India*, (1978) 2 SCJ 350 by observing that when a statute vests unguided and unrestricted power in an authority to affect the rights of a person without laying down any policy or principle which is to guide the authority in the exercise of this power, it would be affected by the vice of discrimination since it would leave it open to the Authority to discriminate between persons and things similarly situated.

57. Therefore, the question is whether the impugned provision or for that matter, the provisions in the said Act or the Constitution, provide for any norms or guidelines, based upon which the State Government is to exercise the power of reservation or the rotation of constituencies in favour of the reserved categories, like Scheduled

Caste, Scheduled Tribes, Backward Class, Women, etc. In such matters, it is quite well settled that the Court must focus not only upon the provisions which are impugned but must also look to the entire legislative scheme, including the aspects like the object of the Act, its preamble, etc. and only thereafter, decide whether the discretion which is conferred upon the Government or governmental authorities is arbitrary, uncanalised, unfettered and therefore unconstitutional.

58. The decided cases on the subject, indicate that the Courts show a good deal of tolerance and deference towards conferment of discretion and it is only in extreme situations that a statutory provision is declared invalid on the ground of conferring excessive administrative discretion. M.P. Jain, by reference to several decided cases, has observed that there are several cases in which conferment of broad discretion has been upheld on such grounds as: the statutory provision conferring power has sufficient guidelines, principles or policies to regulate the exercise of power; the power has been conferred on a high official who is not expected to misuse the same, but is expected to exercise the power reasonably and rationally; there are procedural safeguards subject to which the power is to be exercised, such as, natural justice, recording of reasons for the decision, provision of appeal to a higher authority, etc.

59. Now, it is also quite well settled that mere likelihood of

abuse of discretionary power conferred under the statute would not render the statutory provision unconstitutional, There is always a difference between the statute and the action taken under a statute. The statute may be valid and constitutional, but the action taken under it may be invalid and consequently, liable to be declared unconstitutional. This is what is laid down in *Government of Andhra Pradesh vs P. Laxmi Devi*, (2008) 4 SCC 720.

60. In *Chandrakant Saha vs. Union of India*, (1979) SCC 285 and several other decisions, it has been held that the principles or the guiding norms based upon which the discretion is to be exercised need not be found in the very section in the statute which confers such power. If the principles or the guiding norms can be gathered from the preamble or other provisions of the statute, including in some cases, the long title of the statute, the discretion would not be regarded as uncontrolled or unguided and the statute, in question, will not be declared invalid.

61. Thus, the challenge of the Petitioners to the vires of the impugned provisions on the ground that they violate Article 14 of the Constitution, will have to be examined by keeping in mind the aforesaid principles.

62. Now, the impugned provisions, as noted earlier, are to be found in Section 7(4), 118 and 119 of the said Act. Section 118 of

the said Act, as noted earlier, merely provides that reservations of seats as are applicable for the elections to the Panchayats under the provisions of sub-Section (4) to (6) of Section 7, shall *mutatis mutandis*, apply to the elections to Zilla Panchayats. Further, Section 119 of the said Act provides that it is for the Government to determine the territorial constituencies or constituencies in which seats are reserved for the Scheduled Castes, Scheduled Tribes, Backward Classes, and Women. Section 119 has to be read together with the provisions contained in Section 7 of the said Act, including, in particular, the provisions of sub-Sections (4), (5), and (6) of Section 7 of the said Act.

63. Now, when it comes to reservations, sub-Section (4) of Section 7 firstly provides that the seats shall be reserved for Scheduled Castes and Scheduled Tribes and the number of seats so reserved, shall bear as nearly as may be the same proportion to the total number of seats in the Panchayat as the population of the Scheduled Castes and the Scheduled Tribes in the Panchayat area bears to the total population of the Panchayat area. This provision is nothing but an echo of what is provided in Article 243 D of the Constitution. Therefore, one of the norms to be applied by the State Government in the matters of reservation for Scheduled Castes and Scheduled Tribes, is the nexus with the population of Scheduled Castes and Scheduled Tribes in the Panchayat area. This is not just some statutory norm, but the constitutional norm, provided by Article 243

D of the Constitution.

64. Although the provisions of Section 7(4) do not give any clear indication as to which of the delimited constituencies should be first reserved after coming into force of the said Act, generally looking to the provisions of Article 243 D and Section 7(4) of the said Act itself, it is reasonable to proceed on the basis that the constituencies which have a substantial concentration of the Scheduled Castes and Scheduled Tribes, must be first reserved so that the policy of reservation is made really effective. Having done this, both the constitutional provisions in Article 243 D, as well as the statutory provisions in the first proviso to Section 7(6), clearly mandate that the seats reserved for Scheduled Castes, Scheduled Tribes, Backward Class and Women shall be allotted by rotation to different Wards in the Panchayat areas at the subsequent elections.

65. The aforesaid means that there is yet another clear norm which is not just statutory, but also constitutional, that the State Government must follow the principle of rotation when it comes to reservation of seats. Though the expression '*rotation*' may not have been defined under the said Act, it is a settled position in law that in absence of a statutory definition, the expression has to be understood in its ordinary sense.

66. In ***Shri G. Sangappa vs. State of Karnataka, and ors.***¹⁸

the Karnataka High Court in the very context of reservation of seats to a Panchayat area has explained this principle of rotation in the following terms :

“20. At this stage, it is necessary to know the meaning of the term ‘rotation’. This term has not been defined anywhere in the Panchayat Act or the Rules framed thereunder. When a familiar word is used by a legislative drafter or draftsman, it is usually intended to be given its unadorned, normal meaning. The golden rule is that the words of a statute must prima-facie be given their ordinary or natural meaning.

21. The Bloomsbury English Dictionary (New Edition) gives the meaning of ‘rotation’ as ‘turning motion like that of a wheel around an axis or a fixed point, or the act or process of turning in such a way.’

22. Collins English Dictionary (Harper Collins Publishers, Third Edition) gives the meaning of ‘rotation’ as 1) the act of rotating; rotary motion. 2) a regular cycle of events in a set order or sequence.

23. Random House Webster's College Dictionary gives the meaning of ‘rotation’ as 1) the act of rotating; a turning around as on an axis. 2.a) the movement or path of the earth or a heavenly body turning on its axis. b) one complete turn of such a body. 3) regularly recurring succession, as of people performing a job.

24. The perusal of the meaning of the term ‘rotation’ from the above-referred neutral sources reveals that it is a process where a regular cycle of events in a set order or a sequence takes place. It is a planned sequence in which the complete

¹⁸ 2010 SCC Online Kar 2589

turn of a body takes place. It is a regular recurrent sequence of events or change of positions. Keeping this neutral meaning of the term 'rotation' in view, what it means in the context of the allotment of reservation and general seats to different constituencies in a Zilla Panchayat is required to be examined. When an enactment includes a word, which in itself is neutral or colourless, the context supplies colouring agent. The Court can neither add words to the statute nor read words into it, which are not there. The words used in a statute are to be trustingly read.

25. It is not in dispute that vertically and horizontally there are 9 reservational categories – SC, ST, BCA, BCB, SC(W), ST(W), BCA(W), BCB(W) and G(W). In addition thereto, the 10th category is the nonreserved seats belonging to the general category. The first proviso to S. 162(3) of the said Act prescribes that the reserved seats be allotted by rotation to the different constituencies in a district. The proviso is certainly reflective of the distributive strategy of the legislators. This cannot be defeated by making a constituency alternate between SC and ST. If a constituency is perpetually reserved for SC and ST, it would entail in two avoidable deprivations:

- a) The people belonging to other categories (other than SC/ST category) are perpetually deprived of the representational opportunity.*
- b) The people belonging to SC/ST in other Zilla Panchayat constituencies of the same Taluka would be deprived of the reservation.”*

67. Thus, there are at least two guidelines that are discernible in Section 7 of the said Act itself to control the discretion of the

Government when it comes to reserving the constituencies in the Panchayat area. In the Statement of Objects and Reasons concerning the 73rd Amendment to the Constitution, there is a reference to the reservations for Scheduled Castes/Scheduled Tribes and amendment for the post of Members, as well as Chair Person of Panchayat and Zilla Panchayat. There is a reference to reserved seats being allotted by rotation to different constituencies in the Panchayat and the aim of rotation being to draw into the political process the members of vulnerable groups in all areas. Again, this also offers a guideline that in matters of reservation, the State has to endeavor to ensure that vulnerable sections of the society are effectively drawn into the political process.

68. The State has filed an affidavit in this Petition, in which Mr. Narayan Gad, the Director of Panchayats has conceded that there are no rules prescribed under the said Act for implementation of the rotation policy. However, he has made the following statement in this regard:-

“...However, the rotation is done, as far as practicable, in an objective manner considering that almost 60% of the seats are to be reserved, either for Scheduled Caste (SC), Scheduled Tribe (ST), Other Backward Class (OBC) and Women as seen from the chart below. In the State of Goa 2% seats are to be reserved for SC, 12% seats are to be reserved for ST, 27% seats are to be reserved for OBC & 33.33% seats are to be reserved for women (which includes women from SC, ST, OBC and UR categories.)”

69. The statement that the rotation policy is implemented objectively must find support in the objectivity to be reflected in the actual action itself. For example, in Writ Petition No.184/2020, the record indicates that for the Guirdolim constituency, the reservation for women was made at the Zilla Panchayat elections held in 2010, 2015 and now in 2020. The affidavit points out that for the year 2015, the reservation was not for women simpliciter, but the same was for Scheduled Tribe Women. Even assuming that some consideration is to be shown to this aspect, at least, *prima facie*, we fail to understand as to how, such consecutive reservation in favour of women for years 2010, 2015, and 2020 can be justified under the rotation policy which the Government is mandated to comply with. Therefore, the affidavit of the Director of Panchayats hardly inspires any confidence about the implementation of the rotation policy in its letter and spirit. A proper implementation would require some guidelines or norms in place, indicating with clarity, how the rotation policy is to be implemented in the matter of reservations.

70. Having said this, we feel that the absence of such policy, or guidelines at the present stage, is not a ground to strike down the impugned provisions, particularly because this is not a matter where the legislature has provided for no guidelines or no norms whatsoever. According to us, the real difficulty is in the matter of implementation of these norms or guidelines in their letter and spirit. Therefore,

merely because on some occasions, the administrative action in pursuance of the statutory provisions may be arbitrary, that by itself is not a ground to strike down the statutory provisions itself, particularly because the statutory provisions contain sufficient guidelines or norms, which, if adhered to, will rule out arbitrariness to a great extent.

71. The learned Advocate General has made a statement that the Government will, within a period of three months, formulate and publish the norms or guidelines for effective implementation of the rotation policy, envisaged in Article 243 D of the Constitution and Section 7 of the said Act. We accept this statement and direct the State Government to formulate such norms/guidelines as expeditiously as possible and, in any case, within a period of three months from today and to publish such norms, so that they are made known to the electorate. Subject to any challenges to such norms or guidelines, we further direct the Government to adhere to such norms or guidelines in the future, so that there is both, transparency and predictability in matters of implementation of the rotation policy, which is a constitutional, as well as statutory mandate.

72. The records in these matters reveal quite a disturbing trend about the interaction between the SEC and the State Government in the matters of elections to the Zilla Panchayat. This is evident from

the affidavits filed by the SEC in these matters on 25.02.2020 and 12.10.2020.

73. There is no dispute that the term of elected members of the Zilla Panchayat was to expire on 24.03.2020. Therefore, in terms of the provisions of Article 243-E of the Constitution, the elections for the fresh term ought to be held before 24.03.2020. This is also what is provided by the Hon'ble Supreme Court in the case of *Kishansing Tomar Vs Municipal Corporation of the City of Ahmedabad and others*¹⁹. It was, therefore, the duty of both the State Government as well as SEC to take such steps as may be necessary for ensuring that the elections are indeed held before 24.03.2020, so that there is compliance with the provisions of Article 243-E of the Constitution as well as the law laid down by the Hon'ble Supreme Court in *Kishansing Tomar* (supra).

74. Now that the State Government has retained to itself the powers of delimitation and reservation of seats, it was expected that the State Government completes these functions well in advance to enable the SEC to proceed with the conduct of the elections before 24.03.2020. The record indicates that at least SEC was conscious of the mandate to hold elections on or before 24.03.2020 and therefore, as early as June 2019 began perusing the matters with the State

¹⁹ (2006) 8 SCC 352

Government.

75. The affidavit filed by Melvyn Vaz, Secretary to the Goa State Election Commission states that by letter dated 11.06.2019 he informed the Director of Panchayats that the term of the existing members expires on 24.03.2020 and therefore, the SEC proposes to hold elections to this Zilla Panchayat on 15.03.2020. The letter requested the Director of Panchayats to undertake delimitation of constituencies and undertake the process of reservation and rotation of reserved vacancies so that holding of elections on time is possible.

76. Since, there was no response from the Director of Panchayats, yet another letter dated 17.09.2019 was addressed, inquiring about the progress in the matter of delimitation of constituencies, reservation, and rotation of seats.

77. Again, there was no response and therefore, the SEC addressed yet another letter dated 10.01.2020 to the Director of Panchayats requesting him to issue Form 1A in terms of Rule 10(1) of the said Rules as also complete the process of reservation and rotation of seats for Zilla Panchayat.

78. Again, there was no response for almost a month. Thereafter, by letter dated 11.02.2020, the Director of Panchayats

requested the SEC to postpone the date of the elections by a week on account of “*Shigmostav and Holi*”. In this matter, we are not called upon to go into either the validity or propriety of making such request or entertainment of such request by the SEC. However, it appears that the SEC accepted such a request because the proposed date of elections which was earlier on 15.03.2020 was advanced to 22.03.2020.

79. Since, the Director of Panchayats was not even responding to the communications addressed by and on behalf of the SEC, the SEC addressed a D.O. letter dated 27.09.2019 to the Chief Secretary apprising the Chief Secretary about the letters sent to the Director of Panchayats and the absence of any response to the same.

80. Since, even the Chief Secretary did not even bother to acknowledge, much less to respond, the SEC, addressed yet another D.O., letter dated 04.02.2020 to the Chief Secretary seeking his intervention to expedite the matter. The SEC, this time ended his letter dated 04.02.2020 by the following :

“Your kind intervention is being sought to expedite the matter. A line in confirmation would be highly appreciated”.

81. At least, the record does not indicate that even a line was issued by way of confirmation to the SEC who held a constitutional position.

82. The SEC, therefore, addressed yet another D.O., letter dated 20.02.2020 to the Chief Secretary making reference to all the previous correspondence and seeking an urgent response. The first paragraph of this communication refers to the previous correspondence between the SEC and the Director of Panchayats. The last two paragraphs refer to correspondence between the SEC and the Chief Secretary and finally, the communication seeks urgent response in the matter.

83. Now the elections were scheduled on 22.03.2020 and the SEC, in its affidavit has stated that the entire election process takes a minimum of 26 days to complete. Therefore, the least that was expected from the State Government was to at least respond to the letters of the SEC and issue the necessary notifications forthwith. The learned counsel for the Petitioners submitted that this delay was deliberate to deprive the electors an opportunity of seeking judicial redress against the arbitrary choice of reserved constituencies. We will deal with this contention a little later, but we will be failing in our duty if we do not observe that this is not how the State Government should treat a constitutional functionary like the State Election Commission particularly when this constitutional functionary is seeking to discharge the duties imposed upon him or his office under the Constitution itself.

84. The correspondence placed on record by the SEC which has not been disputed by the State Government, indicates that the State Government was either oblivious to or was desirous of subverting the constitutional position of the SEC by not at all cooperating with the SEC in the matter of holding of timely elections to the Zilla Panchayat. The SEC was virtually forced to beg to the Chief Secretary of the State of Goa to at least give a line of confirmation about the receipt of his D.O., letters. Neither the Director nor the Chief Secretary of the State of Goa thought it important to even acknowledge the letters of SEC much less, to comply with the requests contained therein. This is not how a constitutional functionary is to be treated by the Government.

85. The 73rd Amendment to the Constitution introduced Part IX in the Constitution with one of the objectives of preventing a delay in the constitution of Panchayat every five years and to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue. In this regard, the powers for the conduct of elections were vested in an independent constitutional functionary i.e. the State Election Commission. The Hon'ble Supreme Court has made it clear that all the State Governments must recognize the significance of the State Election Commission which is a constitutional body and need to abide by the directions of the State

Election Commission in the same manner in which they follow the directions of the Election Commission of India during the election of Parliament and State Legislatures. In this sense, it has been clarified that the State Election Commissioner enjoys the same status as the Election Commissioner of India when it comes to the domain of election to the Panchayats and Municipal Council in the State. {See: *Kishansing Tomar* (supra)}.

86. The Hon'ble Supreme Court has also held that the expressions “*superintendence, direction and control*” as well as “*the conduct of elections*” are to be interpreted in the broadest terms when it comes to construing the powers of the Chief Election Commissioner. The Hon'ble Supreme Court in *Kishansing Tomar* (supra) has held that similar construction is required to be adopted when it comes to defining powers to State Election Commissioner as well. The Hon'ble Supreme Court has held that from a reading of the constitutional provisions, it is clear that the power of the State Election Commissioner in respect of the conduct of elections is no less than that of the Election Commissioner of India in their respective domains. These powers are of course, subject to a law made by Parliament or by the State Legislature provided the same does not encroach upon the plenary powers of the Election Commission.

87. The Hon'ble Supreme Court on interpreting constitutional

scheme in Part IX and IXA of the Constitution has further made it clear that the State Election Commissioners are to function independently of the State Government concerned in the matter of their powers of superintendence, direction, and control of all elections and preparation of electoral rolls for the conduct of all elections to the Panchayats and Municipalities. Article 243-K(3) also recognizes the independent status of the State Election Commission. It is accordingly to be noted that in the matter of the conduct of an election, the Government concerned shall have to render all assistance and co-operation to the State Election Commission and respect the latter's assessment of the needs to ensure that free and fair elections are conducted.

88. In fact, in *Kishansing Tomar* (supra) at paragraph 28 the Hon'ble Supreme Court has held that for the independent and effective functioning of the State Election Commission, where it feels that it is not receiving the co-operation 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 co-operation and assistance to the State Election

Commission to enable the latter to fulfill the constitutional mandate.

89. In the present case, just as we deprecate how the State Government refused to co-operate with the State Election Commission, we also record that the State Election Commission itself failed to take sufficient steps to assert its independence and authority, in the matter of discharging its constitutional obligations. Simply addressing letters to the Director of Panchayats or the Chief Secretary was not sufficient and as observed by the Hon'ble Supreme Court in *Kishansing Tomar* (supra), the SEC should have taken out appropriate legal proceedings to secure co-operation from the State Government, which was obviously not forthcoming. The State Election Commission should realize that this is not some matter between two individuals but this is a matter concerning the independence and the constitutional position of the SEC. Taking no steps to uphold such independence, would tend to subvert both, the independence and the constitutional status of the SEC. The purpose of conferring such vast powers coupled with protective measures to secure the independence of the State Election Commission would then be frustrated. In a democracy, the people's right to have an independent SEC to ensure free, fair, and timely elections cannot be frustrated by the non-cooperation of the Government and the failure on the part of the SEC to assert its independence.

90. In this matter, we do not wish to say anything much about the submissions made by the counsel for the SEC. However, we must note that at least the affidavits filed on behalf of the SEC have given an insight into how it was treated when all that it was attempting to do was to discharge its constitutional obligation of holding elections in a timely, free and fair manner. Now that this is brought to our notice by the SEC by filing an affidavit before us, we feel that we would be failing in our duty in not reminding the State Government about the constitutional status of the SEC and the corresponding obligation on the State Government to render every possible co-operation to the SEC when the SEC is discharging its constitutional obligation to hold a free and fair election on time to the Panchayats and Municipal Councils in the State of Goa. We trust that at least hereafter the SEC, constitutional functionary will not be reduced to the level of addressing D.O., letters to the Chief Secretary and requesting him quite desperately to at least write a line of confirmation about the receipt of such correspondence. The status of a constitutional functionary cannot be undermined like this and we trust that this will not happen in the future.

91. The Secretary of the SEC in his additional affidavit filed on 12.10.2020 has pointed out that after the 73rd Amendment to the Constitution which entered into force on 01.06.1993, a task force was appointed by the Government of India on the subject of “*State*

Election Commission and related matters”. This task force recommended various reforms in the process of elections and one of the recommendations was that the State Election Commissioner should be vested with the powers for delimitation of wards, reservation of seats, and rotation.

92. The additional affidavit then proceeds to state that this recommendation was accepted and the Secretary, Ministry of Panchayat Raj, Government of India sent a letter dated 27.04.2009 to all the Chief Secretaries of the States and Union Territories and circulated a draft of “*Model Panchayat and Gram Swaraj Act.*” In terms of the Model Act, the entire exercise of the holding of the elections from delimitation of constituencies, determination of reservation of seats for SC, ST, OBC, for women, etc., is to be undertaken by the State Election Commission or an officer authorized by it in that behalf.

93. The additional affidavit then proceeds to state that various States including Kerala, Maharashtra, Karnataka, Bihar, Gujarat, Jharkhand, West-Bengal have carried out necessary amendments to their respective Panchayat Raj Acts. In all these States, the power of delimitation, the power for reservation, the power to decide rotation of seats among SC/ST women, etc., are vested in the State Election Commissioners. The additional affidavit however notes that no such

amendment has been carried out in the said Act by the State Government.

94. The additional affidavit then points out that the Ministry of Panchayat Raj sent various reminders from time to time to the State Government to carry out necessary amendments to the Panchayat Raj Act. There is a reference to the letter dated 17.03.2007 issued by the then Minister of Panchayat Raj, letters dated 18.11.2008 and 18.03.2009 by the Additional Secretary reminding the State Government to carry out the necessary amendment on the lines of Model Act so circulated.

95. The additional affidavit then proceeds to state that the purpose of accepting the recommendations of the Task Force was for the preparation of '*Model Panchayat and Gram Swaraj Act*' and letters and reminders to the State Government to implement the same was to strengthen the democracy at the grass-root level. The additional affidavit states that the purpose of such enactments including the 73rd and 74th Amendments was to hold free and fair elections of Panchayats and Municipalities. The additional affidavit states that in case the powers concerning the delimitation of wards, reservation of seats, rotation of reserved seats is to continue to be vested in the State Government, the same would defeat the very purpose of the 73rd and 74th Amendment to the Constitution of India

providing for a mechanism to timely hold free and fair elections to the local bodies.

96. The additional affidavit then proceeds to state that despite the constitutional amendments, the State of Goa failed to carry out necessary amendments to the said Act and the Goa Municipalities Act, 1968. The additional affidavit then indicates that how the exercise of holding an election is carried out presently and then states that the SEC would prefer if the existing provisions of the said Act and the said Rules framed thereunder, as well as the Goa Municipalities Act and the Rules framed thereunder are amended by the Government keeping in view the spirit of the 73rd and 74th Constitutional Amendment and Model Act circulated by the Ministry of Panchayat Raj of Government of India.

97. Although in these matters we have expressed ourselves on the issue of vesting of powers relating to delimitation, reservation, and rotation of reserved vacancies in the SEC, for reasons indicated by us, we are not persuaded to strike down the impugned provisions or direct vesting of such powers in the SEC. We, therefore, leave it to the State Government to at least consider whether any amendments on the lines indicated in the Model Panchayat and Gram Swaraj Act are necessary to comply with the spirit of 73rd and 74th Constitutional Amendments. This is precisely what even the Central Government is

urging the State Government to do by addressing several letters and reminders on this subject. This is precisely what several States in the Union of India including the states of Kerala, Maharashtra, Karnataka, Bihar, Gujarat, Jharkhand, West Bengal have already done in deference to the spirit of the 73rd and 74th Amendment to the Constitution of India.

98. In this case, there is yet another disturbing feature. Despite repeated letters and reminders from the SEC commencing from 11.06.2019 to the State Government requiring the State Government to complete the exercise of delimitation, reservation, and rotation of reserved seats, such exercise was completed and notified only on 20.02.2020, knowing fully well that the term of the earlier members was to expire on 24.03.2020 and the SEC would require a minimum 26 days to complete the election process. As noted earlier, the learned counsel for the Petitioners have pointed out that the purpose for this delay and the issuance of forthcoming Notification by the SEC was to preempt any challenges to the impugned Notification dated 20.02.2020 before the Constitutional Court. The learned counsel for the Petitioners pointed out that this is invariably done so that once the election process sets in, the Constitutional Courts are extremely reluctant to interfere with the election process in deference to the provisions in Article 243-O of the Constitution.

99. According to us, this contention of the Petitioners cannot be lightly brushed aside at least in the facts of the present case. There is no explanation whatsoever in the affidavit filed on behalf of the State Government about the unreasonable delay involved in issuing Notification for reservation of seats or rotation of reserved seats. It is not as if the State Government was unaware that the term of the members was to expire on 24.03.2020 and therefore, the election had to be necessarily held on or before the said date. The record indicates that right from 11.06.2019 the SEC was continuously reminding the State Government to complete this exercise so that the SEC would be in a position to complete the election process within the period prescribed.

100. Therefore, the inference which the Petitioners seek to draw that this delay was mainly to preempt the court from exercising its powers of judicial review cannot be said to be some unfounded inference in the facts of the present case. Predictably, once it was pointed out that the election schedule was announced by the SEC on the very next day *i.e.* on 21.02.2020, this Court in deference to the provisions of Article 243-O(b) of the Constitution declined the interim relief to the Petitioners.

101. Thereafter, on account of the COVID-19 Pandemic situation, the election could not be held on 22nd March 2020 as

scheduled. On 14.10.2020, this Court ordered these matters to be placed for final hearing in the week commencing from 23.11.2020. The final hearing commenced on 24.11.2020. During the final hearing, Notifications were issued fixing the date of polling on 12.12.2020. Once again it was contended now that the election process is so far advanced, this Court ought not to grant any reliefs to the Petitioners. Thus, by delaying the issuance of impugned Notifications, the State Government has virtually succeeded in depriving the Petitioners of a reasonable opportunity of seeking judicial review before this Court. Again, there is no explanation whatsoever in the affidavit filed on behalf of the State Government as to why Notifications regarding reservation were not issued earlier even though the SEC was constantly reminding the State Government for issuance of the same.

102. The learned Advocate General has now, however, made a statement that hereafter the exercise of notifying reservations will be made at least three weeks before any Notification is issued under Rule 10(1) of the said Rules to commence the election process. According to us, this period of hardly three weeks is too short and this exercise of notifying the reserved constituencies must be made at least two months before the date of issuance of Notification under Rule 10(1) of the said Rules. We, therefore, direct the State Government to issue Notification reserving and/or rotating reserved seats at least two

months before the date of issuance of Notification under Rule 10(1) by which the election process to the Panchayats commences.

103. As regards the factual position in each of these petitions, we note that Writ Petition Nos.179 of 2020 and 191 of 2020 concern the Usgao-Ganje constituency. The affidavit filed by the State Government indicates that this constituency came into existence first time in the year 2015 when the same was reserved for Other Backward Class (OBC). Thereafter, in the year 2020, this Constituency has been reserved for Scheduled Tribes (ST). The affidavit states that before 2015 there was no constituency by the name Usgao-Ganje but this area was a part of the constituency called as Curti. In the years 2000 and 2005 this Curti Constituency was an unreserved Constituency and in the year 2010, this Constituency was reserved for Women. Based on these facts, at least *prima facie*, we do not find any complete break down of the rotation principle. However, this is only *prima facie* opinion, and therefore, we leave it to the Petitioner in these two petitions to invoke the remedy of instituting an election petition since the Petitioners, *inter alia* allege breach of provisions of the proviso to subsection 6 of Section 7 of the said Act. This is more so because the Petitioners in these petitions have not impleaded the other candidates from this Constituency, who would be *prima facie* necessary parties.

104. The learned Advocate General has pointed out that in terms of Section 20(1)(d)(iv), the result of the election, in so far as it concerns a returned candidate can always be challenged on the ground that the same has been materially affected by any non-compliance with the provisions of the said Act or of any rules or order made thereunder. We, therefore, relegate the Petitioners to this remedy, should they choose to. However, we make it clear that should any such election petitions be filed, the same will have to be decided on their own merits and in accordance with the law without being influenced by any *prima facie* observations made by us on the factual position.

105. Writ Petition No. 183 of 2020 concerns Colva Constituency. The affidavit filed on behalf of the State Government indicates that in the years 2005-2010 and 2015 this Constituency was an unreserved Constituency which has now been reserved for women (OBC). At least, *prima facie* therefore, there is no breach of rotation principle. In any case, we relegate the Petitioner to the remedy of the election petition should he choose to, and the directions made in Writ Petition Nos. 179 of 2020 and 191 of 2020 will apply in this matter as well.

106. Writ Petition No. 186 of 2020 concerns Penha de Franca Constituency. The affidavit filed on behalf of the State Government indicates that in the years 2005, 2010, and 2015 this was an

unreserved Constituency and in the year 2020, this Constituency has been reserved for women (OBC). At least, *prima facie* therefore, there does not appear to be a breach of the rotation policy. However, the Petitioner is relegated to the remedy of instituting an election petition should he choose to. The directions issued in Writ Petition Nos. 179 of 2020 and 191 of 2020 will apply in this petition as well.

107. Writ Petition No. 184 of 2020 concerns Guirdolim Constituency. The affidavit filed on behalf of the State Government indicates that in the year 2010 this Constituency was reserved for women, in the year 2015 this Constituency was reserved for women (ST), and in the present 2020 elections, this Constituency is again reserved for women. At least, *prima facie* there appears to be a breach of the rotation policy. However, necessary parties have not been impleaded in this petition. Therefore, we relegate the Petitioner in this petition as well to the remedy of an election petition. The directions made in Writ Petition Nos. 179 of 2020 and 191 of 2020 will apply in this petition as well.

108. Accordingly, we dispose of all these petitions by making the following order;

(A) The challenge to the constitutional validity of the provisions in Section 7(4), 118 and 119 of the Goa Panchayat Raj Act, 1994 is dismissed.

(B) The challenge to the impugned Notification dated 20.02.2020 is not entertained. The Petitioners are granted liberty to avail the remedy of instituting election petitions if they so choose and to question the result of the elections with which they are concerned *inter alia* on the ground that the result of such elections has been materially affected by non-compliance with the provisions of Goa Panchayat Raj Act, 1994 or any rules or orders made thereunder. The issue of the validity of the impugned Notification dated 20.02.2020 is therefore kept open and the prescribed authority will have to go into the issue as to whether there was non-compliance with the principle of rotation set out in the first proviso to Section 7(6) of the Goa Panchayat Raj Act, 1994. The election petitions, if instituted, will have to be decided on their own merits and in accordance with the law. Any observations on factual aspects in this judgment and order are only *prima facie* and therefore, the prescribed authority need not be influenced by the same.

(C) The statement of the learned Advocate General for the State of Goa that the Government will notify the norms or guidelines for implementing the policy of rotation of reserved seats in terms of the first proviso to Section 7(6) of the Goa Panchayat Raj Act within three months from today is accepted. The State Government is directed to act accordingly and file the necessary compliance report on or before 31.03.2021 in this Court by serving copies on the SEC and the learned counsel for the petitioners.

(D) Subject to rights of any parties to challenge such norms or guidelines, we direct that such norms or guidelines, once notified, will have to be adhered to in the matter of implementation of the rotation policy as provided in the first proviso to Section 7(6) of the Goa Panchayat Raj Act, 1994 to ensure transparency and predictability.

(E) The statement of the learned Advocate General for the State of Goa that the exercise of delimitation and reservation of Constituencies or the rotation of reserved seats will be completed well in advance and will be notified at least three weeks before the issuance of Notification under Rule 10(1) of the Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996 is noted. However, we direct that such Notification be issued at least eight weeks before the issuance of Notification under Rule 10(1) of Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996.

(F) We direct the State Government to take decision on the letter dated 27.04.2009 as well as letters dated 17.03.2007 and reminders dated 18.11.2008, 18.03.2009, 26.05.2009 referred to in paragraphs 7 and 9 of SEC's additional affidavit dated 12.10.2020 on the issue of vesting of powers of the delimitation of constituencies, determining of reservation of seats for SC, ST, OBC, women, etc., and rotation of such reserved seats within a period of three months from today and file a compliance report in this Court on or before 31.03.2021. We clarify that we have not directed the State

Government to amend the provisions of the Goa Panchayat Raj Act, 1994 but merely, directed the State Government to consider the aforesaid communications of the Central Government urging the State Government to implement the accepted recommendations of the task force *inter alia* about vesting of such powers in the State Election Commission.

(G) We direct that hereafter the State Government should render all possible assistance to the State Election Commission so that the State Election Commission is in a position to discharge its constitutional obligations to conduct elections freely, fairly, and within the period prescribed period. In particular, we direct that the correspondence from the SEC be responded to within a reasonable period so that the constitutional status and the independence of the SEC is maintained.

(H) The Chief Secretary, State of Goa to file compliance reports on or before 31.03.2021 in terms of the directions in clauses (C) and (F) above.

(I) There shall be no order as to costs.

M.S. Jawalkar, J.

M.S. Sonak, J.