

HIGH COURT FOR THE STATE OF TELANGANA :: AT HYDERABAD

WRIT PETITION NOs.29058 & 29133 of 2019

W.P.No.29058 of 2019:

Between:

Kolluru Kailash Kumar, s/o. Kolluru Shiv Raj,
Aged about 38 years, occu: Business and Social service,
r/o.H.no.3-53, Narsingi, Gandipet Mandal,
Puppalaguda, Ranga Reddy district and another.

.....Petitioners

and

The State of Telangana, rep.by its Prl. Secretary to
Govt., Municipal Administration &Urban Development
Department, Telangana Secretariat, Hyderabad and
others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 08.01.2010

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

THE HON'BLE SRI JUSTICE P.NAVEEN RAO*+ WRIT PETITION NOs.29058 & 29133 of 2019**

%08.01.2020

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Govt., Municipal Administration & Urban Development
Department, Telangana Secretariat, Hyderabad and
others.

.... Respondents

!Counsel for the petitioners : Sri S.Satyam Reddy, Senior Counsel
representing M/s. K.V.Rajasree,
counsel in WP No.29058 of
2019;

Sri DPrakash Reddy, senior counsel
Representing Mr C.Naresh Reddy,
Counsel for petitioners.

Counsel for the Respondents : Additional Advocate General for
Municipal Administration & Urban
Development for respondent NO.1;
Mr. C.V.Mohan Reddy, standing
counsel for State Election

Commission

<Gist :

>Head Note:

? Cases referred:

(2010) 11 SCC 455
1999 (3) SCC 422
AIR 1964 SC 358
(2000) 8 SCC 216
(1996) 6 SCC 303
(1978) 1 SCC 405
1992 (2) Supplementary SCC 651
2001 (6) ALD 722
(1985) 4 SCC 689

THE HON'BLE SRI JUSTICE P NAVEEN RAO**WRIT PETITION Nos. 29058 AND 29133 OF 2019****COMMON ORDER:**

In these two writ petitions, petitioners challenge notification No. 3038/TSEC-ULBs/2019 dated 23.12.2019 issued by State Election Commission specifying the schedule of election to the Urban Local Bodies. As the issue in these two writ petitions is the same, the writ petitions are disposed of by the common order.

2. Heard learned senior Counsel for Petitioners Sri D Prakash Reddy and Sri S.Satyam Reddy, learned Additional Advocate General and learned senior counsel Sri C.V. Mohan Reddy for State Election Commission.

3. **THE BACKGROUND FACTS TO THE EXTENT RELEVANT ARE AS UNDER:**

3.1 The term of existing municipalities expired on 2.7.2019. In the meantime several new municipalities/municipal corporations are also formed. As of now there are about 120 municipalities and 10 municipal corporations in the State of Telangana, excluding Hyderabad Municipal Corporation. As per the mandate of the Constitution of India elections have to be held to elect the municipal councils even before the term of the elected body of the Municipality is over. Telangana Municipalities (Division of Municipalities into Wards) Rules, 2019 were notified vide G.O.Ms.No.78 Municipal Administration (Urban Development) Department dated 29.6.2019. These Rules deal with various aspects of delimitation/organization of wards/ publication / voters strength of the wards etc. G.O.Rt No. 459 Municipal Administration and Urban Development (MA) Department dated

29.6.2019 was issued directing the Director of Municipal Administration to commence the process of delimitation of wards for various municipalities. In response, on 2.7.2019 draft publication was issued, proposing the delimitation of wards. On 7.7.2019 final publication of wards was issued. Alleging that several illegalities are committed in the pre-election process undertaken by the respondents, batch of writ petitions are filed. This Court having noticed several infirmities in formation of wards clockwise, equitable distribution of the population/ voters strength in the wards etc, granted interim direction staying the election process. However, liberty was granted to remedy the infirmities noticed by the Court and to continue the election process. The writ petitions were finally disposed of by order dated 29.11.2019. After disposal of the batch of writ petitions, G.O.Rt No. 795 dated 2.12.2019 was issued by the Government directing the Director of Municipal Administration to commence afresh the process for fixing and delimitation of wards for various municipalities. The Government order prescribed schedule for undertaking the exercise. On 23.12.2019, the State Election Commission issued Notification No. 1244/TSEC-ULBs/2019 indicating the commencement of election schedule. On 24.12.2019, Director of Municipal Administration issued proceedings providing for schedule for identification and preparation of list of scheduled tribes, scheduled castes, backward classes and women voters. At this stage, these two writ petitions are filed.

4. LITIGATION TIMELINE

4.1 Before recording the submissions of learned senior counsel appearing for petitioners, learned senior counsel Sri C.V Mohan Reddy appearing for State Election Commission and learned Advocate General for the State, briefly the litigation history is noted hereunder.

4.2 W.P. No. 10570 of 2019 was instituted by Telangana State Election Commission praying to declare the action of the State Government in not confirming the delimitation of the wards, not notifying the reservation of the seats to the urban local bodies whose term would expire on 2.7.2019 as illegal and unconstitutional.

4.3 W.P No. 10978 of 2019 was instituted by Telangana State Backward Classes Welfare Association alleging inaction in conducting elections to the municipal corporations and municipalities by not preparing the electoral rolls, delimitation of wards, not publishing wardwise electoral rolls, not finalizing the reservations, not setting up of polling stations etc.

4.4 Person by name Sri Ganesh Chary, claimed to be a social worker and State President of Telangana Viswabrahmana Manmaya Sangam filed W P 11839 of 2019 praying to declare the action in not conducting elections to the municipal corporations and municipalities by not following the pre-election procedure as illegal.

4.5 In paragraph 16 of the counter affidavit filed by the Government, it is stated that time of 141 days is required to undertake various stages of pre-election process. However, during the course of hearing, learned Additional Advocate General fairly submitted that the total schedule can be reduced to 109 days with a cushion of 10 days. Learned senior counsel representing the State Election Commission informed the Court that after completion of pre-election process, the Election Commission would require 30 days to conduct the elections.

4.6 Recording the said submissions, those Writ Petitions were disposed of and State Government was directed to start the process of delimitation of wards forthwith and complete the entire exercise within

109 days with a margin on 10 days and Election Commission was directed to take further steps and complete the election process within 30 days thereafter.

4.7 Soon after publication of formation of wards, the first round of writ petitions were filed from all corners of the State pointing out serious infirmities in undertaking pre-election process and in violation of the provisions of **Rules 4,5 and 6**. As noted above, this Court passed the interim orders.

4.8 During the pendency of above writ petitions, public interest litigation in WP(PIL) Nos. 84 and 87 of 2019 were filed questioning the procedure adopted by the respondents for delimitation and division of municipalities into wards, subsequent publication of electoral rolls and identification of SC,ST, BC and women voters. These two writ petitions were dismissed by common order dated 22.10.2019.

4.9 When the batch of writ petitions instituted from all corners of the State came up for consideration, learned Additional Advocate General informed the Court that objections in writing would be received by respective Municipal Commissioners and petitioners could file objections within a period of one week from that date and within a period of one week thereafter, after affording opportunity of hearing, decision would be taken in accordance with the Rules contained in G O Ms No. 78 dated 29.6.2019. Court was informed that municipalities would submit reports to the Director of Municipal Administration who in turn would place the same before the Government. This submission of learned Additional Advocate General was agreed by the counsel appearing for petitioners. Accordingly, batch of writ petitions were disposed of by order dated 29.11.2019 permitting the respective

Municipal Commissioners to receive objections from the petitioners in writing as per the time schedule mentioned by learned Additional Advocate General, consideration of the objections by giving opportunity of hearing and take a decision and to act strictly in accordance with the Rules, especially **Rules 4, 5 and 8** and opportunity was also granted to the petitioners therein to agitate their rights in accordance with law, if they are aggrieved by the decision made by the respondent authorities.

5. **SUBMISSIONS:**

5.1 Learned senior counsel Sri. D. Prakash Reddy appearing for petitioner in W.P. 29133 of 2019 and companion learned advocates made following submissions:

5.2 Learned senior counsel Sri D Prakash Reddy, submitted that in the earlier round of litigation having found that the pre election process was not in accordance with the Rules notified vide G O Ms NO. 78 dated 29.6.2019, the Court granted interim orders staying the election process. He further submitted that the State Election Commission also filed W P No. 10570 of 2019 alleging inaction by state in initiating the election process amounting to violation of **Articles 243 EU**. In the said writ petition, counter affidavit was filed by the State prescribing detailed schedule and time required to undertake the pre-election process. Though, State requested for larger time to undertake the process, the time was reduced to 109 days. He would therefore submit that even according to stand of the respondent State, in the earlier round of litigation, it required minimum of 109 days to complete the various stages of election process, whereas, the entire election process is now reduced to only few days, obviously with an intention to deprive prospective candidates to identify the ward in which they can

contest, by pushing the issue of reservation of wards and reservation of councils, to a day before publication of the election notification and said action amounts to arbitrary exercise of power and is discriminatory. According to learned senior counsel the prospective candidates required to know in advance the voters of the wards, reservation of the wards etc so that they can plan to contest the elections and contesting of elections, being a valuable right, the same cannot be taken away by prescribing a very short schedule; that it would only weigh in favour of the ruling party as they would be having knowledge in advance about the reservation of wards and would therefore amount to inequitable treatment in the election process.

5.3 He would further submitted that anything done in hurry would amount to improper exercise of power and can thus amount to bias in favour of the ruling party and malafidies can be presumed in the manner in which the schedule is now determined. A plea to this extent is raised in paragraph '13.C' of the affidavit filed in support of the writ petition. He would submit that petitioner is in no way responsible for the delay in starting the election process; that the State took its own sweet time and at the last minute commenced the reduced schedule only to deprive the candidates who were opposed to the ruling party; for no fault of petitioners, the schedule is causing hardship in realizing the dream of contesting the municipal elections and to do public service. He would submit that State cannot hurry up in this manner in conducting elections to local bodies. The said action of the State and State Election Commission would thus certainly amount to bias. In support of his

contentions, he placed reliance on the decision of the Supreme Court in **Fuljit Kaur Vs. State of Punjab and others** ¹ (paragraph 25).

5.4. By placing reliance on the schedule in conducting elections in the year 2014, circulated by learned senior counsel Sri C V Mohan Reddy, appearing for State Election Commission, he would submit that in the year 2014, schedule was well-spread and sufficient time was available to the candidates to participate in the elections after pre-election process was completed. He would submit that schedule of 2014 would clearly show that there was gap of atleast 7 days before commencement of election process, whereas now, on the day after the final publication of reservation of wards and municipalities, the election notification would come leaving no time to analyse and work out strategy for any candidate to contest elections. The fact that a detailed exercise was undertaken and sufficient time was given in the year 2014 elections, whereas the same is now reduced would show malafide action of the respondent State.

5.5. Learned senior counsel further contended that appropriate procedure which would be transparent and equitable to all contestants is to be adopted, whereas, in the instant case, the schedule now prescribed is not meeting this basic requirement. In support of the said contention, he placed reliance on the decision of the Supreme Court in **Babu Verghese and others Vs Bar Council of Kerala and others**² (paragraph 31); and **State of U.P. v. Singhara Singh**³, (paragraph 8).

¹ (2010) 11 SCC 455

² 1999 (3) SCC 422

³ AIR 1964 SC 358

5.6. On the issue of maintainability of the writ petition challenging the impugned notification, learned senior counsel made the following submissions:

- i) What is under challenge is pre election exercise, election notification is not issued so far, therefore the embargo imposed by **Article 243 ZG** is not attracted. The bar on institution of litigation has application only after the election notification is issued i.e., from 7.1.2020. Thus as on the date of institution of writ petitions, no election notification was issued and therefore writ petition is maintainable and writ Court can undertake judicial review of the manner in which pre election process was undertaken by the State. By referring to provision in **Section 195** of the Telangana Municipalities Act, 2019, learned senior counsel submitted that Election Commission has to issue election notification which includes the dates on which elections to be conducted and according to **sub section 3**, the notification should specify the time schedule for various stages of the election. He would submit that cumulative reading of sub-sections of **Section 195** make it clear that what is impugned in the writ petition is not the election notification and therefore there is no bar in instituting the writ petition. It is permissible to undertake judicial review of the action of the respondent State in hurrying up the pre election process. He would therefore submit that the decisions relied upon by the learned senior counsel Sri C V Mohan Reddy, have no application to the facts of the writ petition.

- ii) He would further submit that no provision of the Constitution or Act of State Legislature can exclude the power of judicial review vested in the High Court under **Article 226** of the Constitution of India, as it is the basic structure of the Constitution. In support of the said contention, he placed reliance on the decision of the Supreme Court in **Election Commission of India Vs. Ashok Kumar and others**⁴ (paragraph 14). He would submit that in the said decision, Supreme Court was considering **Article 329** of the constitution of India, which is analogous to **Article 243 ZG** and therefore, the principle laid down therein would equally apply to the fact situation of this case.
- iii) Supplementing these submissions, learned counsel for petitioner on record Sri Naresh Reddy contended that in **Anugrah Narain Singh v. State of U.P.**⁵ Supreme Court held that the writ petition is maintainable. He would submit that as earlier notifications/ orders were set aside by this Court, fresh process was set in motion. But, even now several illegalities are committed by the respondent authorities, and Election Petition is not the remedy to challenge such all pervasive illegalities and an aggrieved person has no other remedy available to him. For the illegalities committed before the commencement of election process, the only remedy available to an aggrieved person is writ remedy under **Article 226** of the Constitution of India. The right to avail remedy provided under **Article 226** of the

⁴ (2000) 8 SCC 216

⁵ (1996) 6 SCC 303

constitution of India being an invaluable right no fetters can be imposed.

- iv) Extending further to these contentions, Sri Mayur Reddy, appearing in connected writ petition challenging the election process in Karimnagar Municipal Corporation, would submit that as held by Supreme Court in **Mohinder Singh Gill v. Chief Election Commissioner**⁶, election process would commence when notification is issued prescribing the schedule of election, whereas, in the instant case, so far notification is not issued. He would further submit that in the subsequent decisions, the Supreme Court reiterated the same principle. He further submitted that, assuming **Article 243 ZG** imposes bar on institution of the litigation, same is not applicable, firstly to the writ jurisdiction under **Article 226** and secondly the power of judicial review being an inalienable constitutional guarantee against administrative excesses, it has to be excluded by express term and not by inference and that exclusion is not attracted to the cases on hand.
- v) Sri Ravi Shankar Jandhyala, learned counsel appearing in related writ petitions also would submit that as held by supreme Court in the case in **Kihoto Hollohan v. Zachillhu**⁷, (paragraph 111) bar of jurisdiction is not applicable to superior Courts and when there is an allegation of malafides and arbitrary exercise of power, judicial review is available to review the action of the respondent State at the pre-election process stage.

⁶ (1978) 1 SCC 405

⁷ 1992 (2) Supplementary SCC 651

5.7. Learned senior counsel Sri. Prakash Reddy further pointed out that in the impugned notification what is referred to is **Article 243 ZA** and **Article 243 K**. According to learned senior counsel, **Article 243 ZA** deals with powers of State Election Commission and Article **243 K** deals with elections to Gram Panchayats. Thus, these provisions have no relevance to the issue involved and this would clearly show non application of mind.

5.8 He would finally submit that petitioner is not interested in protracting the election process or imposing bar on conducting elections but he is only interested in transparent manner of undertaking pre election process and giving reasonable time for the petitioner to plan his election strategy after the reservations are announced by following due process and giving reasonable time gap between the final notification of reservations and actual election notification.

6. Learned senior counsel S. Satyam Reddy appearing for petitioners in W P No. 29058 of 2019, made following submissions:

6.1. Learned senior counsel while broadly in agreement with contentions urged by Sri D Prakash Reddy, would submit that reservation of wards is an important exercise in the election process and only after completion of said exercise, the political parties can plan their strategy to contest elections and such planning is essential part of elections. Not notifying the reservations well in advance amounts to scuttling the democratic process and subverting the very objective of introducing Chapter IX A in the Constitution.

6.2 He would further submit that Election Commission has not realized that the election schedule now proposed would come in the way of agricultural season and Sankrantri festival. **Section 195** of Act,

2019 mandates the Election Commission to take due note of the agricultural season and festivals before stipulating the election schedule, whereas the State Election Commission has violated this mandatory requirement.

6.3 He would further submit that as per the schedule mentioned by Director of Municipal Administration in the letter dated 24.12.2019, list has to be furnished to the Director of Municipal Administration on 4.1.2020. After furnishing of the list, the Director has to process the list furnished to him and thereafter the list has to be finalized and published by the Government. Therefore, before 7.1.2020 the pre election process cannot be completed. Therefore, Election Commission erred in announcing in advance the date notification of election schedule as 7.1.2020, and the entire process is vitiated.

7. Learned senior counsel Sri C. V. Mohan Reddy, appearing for State Election Commission made following submissions:

7.1. Sri. C.V. Mohan Reddy, learned senior counsel submitted that the word 'notification' used in **Sub Section 1 of Section 195** of Act, 2019 has to be read as plural in view of the provision in **Section 13 (2)** of The General Clauses Act, 1897. Therefore there can be more than one notification as mentioned in **Section 195 (1)**.

7.2. He would further submit that notification is different from schedule. By placing reliance on the earlier schedule prescribed by the Election Commission when elections were held in the year 2014 to the local bodies, he would submit that the procedure now followed is same as was followed earlier and the election process set in motion is not vitiated, as is sought to be contended by the learned senior counsel for

petitioners. He would also submit that even Election Commission of India also follows similar procedure.

7.3. According to learned senior counsel, **Articles 243 EU, 243 ZQ and 243 ZG** form a self contained Code and regulate conducting of elections to the local bodies. Having regard to the constitutional mandate, the provisions of the statute have to be interpreted liberally. The Court need not go into minute details or minor deviations need not be looked into to scuttle the election process. He would submit that Division Bench of this Court considered all the aspects as agitated in the present batch of writ petitions in WP(PIL) No. 84 and 87 of 2019, and therefore, the present endeavor made by the petitioners to scuttle the election process is not maintainable.

7.4. According to learned senior counsel, preparation of the voters list is also part of election process. Therefore the bar imposed by **Article 243 ZG** on bar to institute litigation equally applies to the present writ petitions and therefore the writ petitions are not maintainable.

7.5. By referring to schedule, he would submit that there is no hurrying up of election process. The political parties were given list of reservation of wards by 30.12.2019 and political parties are aware of the reservation of the wards; they have ample time to examine the reservations and raise objections. He would submit that transparent procedure is prescribed by various orders, Rules and the Act, therefore, the contentions urged by learned senior counsel appearing for petitioners has no merit. The entire election process is undertaken under active supervision of the State Election Commission. No malice can be attributed to the constitutional body like State Election Commission.

However, he submits that with reference to reservation of wards, State Election Commission has no role.

7.6. He would further submit that the reservation of the wards is based on the population in a particular ward. Rules notified vide G O Ms No 215, 216 and 217 dated 2.8.2019 clearly delineate the process of reservation of wards, Chairperson/Mayor etc. He would submit that as there is urgent need to conduct elections, any interruption of the election process would only frustrate the constitutional obligation and prayed for dismissal of the writ petitions.

8. Learned Additional Advocate General, representing the State made the following submissions:

8.1 Learned Additional Advocate General vehemently contended that the decision rendered by Division Bench of this Court in W.P. (PIL) Nos. 84 and 87 of 2019 is complete answer to all the contentions urged by the learned senior counsel representing petitioners and therefore, writ petitions are liable to be dismissed in limine. He would submit that as election process is already set in motion, the writ petitions are not maintainable and only remedy available to an aggrieved person is to challenge by way of an election petition. He would further contend that any infirmities in conducting elections and eligibility of candidates can always be challenged during the process of scrutiny of nominations.

8.2 He would submit that ample opportunity was afforded to the political parties to raise objections on the election process. The notification impugned is not the starting point; earlier also, reservation of wards was notified. Political parties and individuals were aware of most likely ward that is to be reserved in favour of SC/ST/ women etc. Sufficient opportunity was also afforded to the political parties to raise

objections. According to learned Additional Advocate General, Rules notified in GO Ms No. 215, 216 and 217 dated 2.8.2019 prescribe the process to determine reservations and reservation of wards and there is no scope to deviate from this process.

8.3 He would submit that as held by the Division Bench, the schedule mentioned by the State in the counter affidavit filed in W P No. 10570 of 2019 is an outer limit and does not prohibit the State from reducing the time schedule. He would further submit that the present time schedule is in addition to the process already set in motion and as per the directions of the Court the revised exercise was undertaken to attend to the grievances ventilated by petitioners on various aspects and therefore it is not a case of suddenly, at a short notice, the delimitation, allotment of voters and reservation of wards is made at the last minute, as sought to be contended.

8.4 He would submit that reservation of wards depends on voters strength of a social group in a particular ward. Once the voters strength of the respective wards is published indicating the number of reserved category voters in a particular ward and compared to the overall population of the reserved category voters in a municipality, wards have to be reserved in the descending order of voters of particular social group in a ward and as procedure is well laid out and transparent, the contentions urged by learned senior counsel have no merit.

8.5 He would submit that all objections filed by the individuals and public representatives were considered and suitable replies were furnished. He would emphasize that wherever there was requirement to afford an opportunity of hearing, same was provided. That all objections were duly taken note and wherever it is necessary the mistakes pointed

out were rectified. Learned Additional Advocate General in support of his contention that writ petitions are not maintainable, placed reliance on decision of this Court in **Jandrajupalli Purushotham Vs District Collector, Prakasam district**⁸ (paragraph 14)

8.6. According to learned Additional Advocate General, as per **Article 243 ZG**, every order/ decision relating to conducting of elections to the local bodies is law and after election process was set in notification on 23.12.2019, writ petitions are not maintainable.

9. At this stage, it is necessary to notice the Constitutional and Statutory Framework of Urban Local Bodies.

9.1 Taking due note of the state of affairs in the Local Bodies, becoming weak and ineffective for variety of reasons defeating the very objective of democratic process and process of self-governance at the gross root level, the Indian Parliament realized the necessity to give constitutional framework, functional freedom and to hold elections at regular intervals to local bodies. By way of 73rd and 74th amendments to the Constitution of India (Act 2 of 1992), several provisions are incorporated into the Constitution. From the statement of objects and reasons for bringing the amendments to the Constitution. The salient features, insofar as the issue agitated in these two writ petitions are, ensuring regular conduct of elections; ensuring timely elections in the case of supercession and providing adequate representations to the weaker sections like schedules castes, schedule tribes and women. Accordingly, two new parts are added to the Indian Constitution i.e., Part IX dealing with panchayats and IX A dealing with the Municipalities. Consequent to the above amendment of the Constitution, the State

⁸ 2001 (6) ALD 722

Legislature has amended the Municipalities Act and the Panchayat Raj Act and incorporated several provisions to comply with the constitutional requirements of conducting elections and other aspects concerning the local bodies.

9.2 In supercession of the existing Municipalities Act, as amended from time to time, the State Legislature enacted the Telangana Municipalities Act, 2019 (Act 11 of 2019), which received the assent of His Excellency the Governor on 08.11.2019 and published in the Telangana Gazette Part IV – B Extension, dated 09.10.2019.

9.3 Insofar as the issues agitated in these writ petitions, the relevant provisions of Constitution of India are **Articles 243Q, 243R, 243T 243S, 243U, 243ZA, 243ZG**. The relevant sections of the Municipalities Act, 2019 are **Section 3 (2) & (3), Section 5 (2), Section 6 (1), Section 7, Section 10(1), Section 28, Section 29, Section 35, Section 194, Section 195 and Section 195A and Rules 4, 5, 6, 8 and 9** of the **Rules** notified vide G.O.Ms.No.78, dated 28.06.2019 and **Rules** notified vide G.O. Ms No. 215, 216 and 217 dated 2.8.2019.

10. **Article 243Q** requires constitution of Municipalities, which may be in the form of Nagara Panchayaths, which is a transitional area, a Municipal Council for a small urban area and a Municipal Corporation for a larger urban area. **Article 243R** deals with composition of Municipalities. The Municipal Council comprises of ward members elected directly in the respective Wards of the Municipal Area and any other Member as may be provided by the State Legislature. **Article 243T** requires reservation of seats. The Constitution mandates reservation of seats in favour of scheduled castes and scheduled tribes proportionate to the population of schedule castes and schedule tribes in

the municipality. It also requires reservation of atleast 1/3rd total seats in favour of women. It also requires reservation of offices of the Chairpersons in favour of scheduled castes/scheduled tribes and women. As per **Article 243U**, ordinarily the term of every Municipality should be for five years from the date appointed for its first meeting. Clause (3) of this Article requires to complete election process to constitute Executive Body of the Municipality before the expiry of duration of existing body specified in Clause (1)/before the expiry of a period of six months from the date of its dissolution. According to **Article 243ZA**, the superintendence direction and control of the preparation of electoral rolls for and the conduct of all elections to the Municipality is vested in the State Election Commission. **Article 243ZG** imposes bar of interference by Courts in election matters.

11. From the summation of above provisions, it is apparent that once elections are held and elected body is constituted for a Municipality, ordinarily that body should be allowed to administer the affairs of the Municipality for a period of five years and before completion of the tenure of the existing elected body, process should be set in motion and elections should be completed before the expiry of duration of the existing elected body. Alternatively, as can be seen from the **Article 243U (3) (b)**, the process of elections should be completed before the expiration of a period of six months from the date of its dissolution. Admittedly, the elections were not conducted before the expiration of term of the elected bodies of the existing Municipalities and the term expired on 02.07.2019. Therefore, the Government issued Ordinance 4 of 2019 to fill the vacuum and initiated the election process atleast to complete the election process before the time prescribed in **Article 243U (3)(b)**.

12. The Municipalities Act is divided into seven Chapters. Chapter II deals with constitution and composition of Municipalities. Chapter VI deals with the State Election Commission and conduct of elections. According to **Section 3(2)**, from the date of commencement of the Act, the Municipalities constituted under the Municipalities Act, 1965 and Municipal Corporations under the Municipal Corporations Act, 1994 shall be deemed to have been constituted as Municipal Councils as specified in Schedule – I and Municipal Corporations as specified in Schedule – II. Schedule - I lists out Municipalities in the State in a tabulated form. Column 2 deals with the name of the District in which a Municipality is constituted, column 3 deals with the name of the Municipality and column 4 deals with the number of Wards in each of the Municipalities. Similarly, Schedule II also deals with the number of Wards in the respective Municipal Corporations. In other words, from the date of coming into force of the Act 11 of 2019, the number of Wards of respective Municipalities/Municipal Corporations are determined by the State Legislature. **Sub-section (3)** vests power in the State Legislature to modify/add/alter Schedules I and II. According to **Section 5**, each Municipality shall have a Municipal Council or a Municipal Corporation, as the case may be, and shall consists of such number of Ward Members elected in direct elections as specified in column 4 of Schedules I and II as the case may be. This determination of number of Wards is not called in question.

13. As per **Section 6**, the Municipality has to be divided into Wards as mentioned in **Section 5(2)**. It also requires that all Wards shall have, as far as possible, equal number of voters and determine the Wards reserved to social groups. According to **sub-section (2)**, the voter of a Ward is entitled to vote irrespective of the reservation of that Ward in

favour of a social group. **Section 7** prescribes the principle for reservation of Wards. According to this provision, the reservation in favour of scheduled castes and scheduled tribes should be proportionate to their respective population in the Municipality and in favour of backward classes, not exceeding 50% of the total number of seats of the Municipality and 50% of the total number of seats reserved for scheduled castes, scheduled tribes and backward classes and unreserved to be reserved for women. According to **sub-section (3)**, such reservation should be by rotation. According to **section 10(1)**, the term of office of elected members at ordinary elections shall be five years. **Section 11** prescribes the qualifications to be possessed by candidates to contest as a Ward Member. **Section 28** deals with reservation of office of Chairperson. **Section 29** deals with reservation of office of the Mayor. The principle mentioned in **Section 7** for reservation of Wards is analogous for reservation of office of Chairperson/Mayor. **Section 35** requires notification of elections in prescribed manner. According to **Section 194**, preparation of electoral rolls and conduct of elections to all Municipalities in the State shall be under the superintendence, direction and control of the State Election Commission. The State Election Commission has the power to give directions as it deems necessary to the Commissioner and the Director of Municipal Administration, District Collectors, Commissioners of Municipalities / Municipal Corporations or any other public servant. **Section 195** deals with election notification. **Section 195-A** deals with preparation and publication of electoral roll for a Municipality.

14. Rules are formulated to give effect to provisions of the Act. In the Rules notified vide G.O.Ms.No.78, dated 28.06.2019, particularly **Rule 4** deals with the arrangement of Wards – clockwise, **Rule 5** deals with the

equitable distribution of voters and **Rule 6** deals with publication and inviting suggestions. Separate Rules are notified vide G.O.Ms Nos. 215, 216 and 217 dated 2.8.2019 dealing with process of wards, Chairperson and Mayor respectively.

15. Two primary submissions made are on maintainability of the writ petitions against election process and the power of judicial review to the writ Court on various illegalities/infirmities in the election process; and extensive submissions are made on various aspects of election process. Thus, the issues on which the Court is called upon to decide are, at what point of time, the election process is stated to be set in motion to attract the prohibition under **Article 243 ZG**. Further, assuming that the bar under **Article 243 ZG** is attracted even to pre-election process/process leading to conducting of elections issuing schedule of elections to Urban Local Bodies, whether it would impair power of judicial review of the High Court, to test whether the process undertaken by the respondents is patently illegal affecting the core aspects of holding elections to the public offices and undermining the object of Part IX A of the Constitution and the Act 11 of 2019 and on merits.

16. Before considering the jurisdiction aspect, it is necessary to assess as to whether the contentions urged by learned senior counsel representing the petitioners on the infirmities in the pre election process leading to conducting elections to the Municipalities are so demonstratively/palpably illegal vitiating the election process and caused serious prejudice to the petitioners which warrants undertaking judicial review by this Court to set at naught the election process. This is necessary in view of the nature of remedy provided under **Article 226** of the Constitution of India. It is also relevant to note that what is

challenged herein is notification of election schedule and not the process of delimitation of wards, distribution of voters and identification of voters belonging to various social groups.

17. Writ remedy is an extraordinary remedy and an equitable remedy. It is settled principle of law, need no reiteration, that even if petitioners have demonstrated some illegality in the pre-election process, writ court need not grant the relief sought, if granting of such relief would affect the election process, more so if it is proximate to election schedule, contrary to constitutional mandate of holding elections to Municipalities before expiry of the term of elected body/within six months of supercession of the elected body and frustrate proper functioning of Urban Local Bodies affecting the deliverables of civic amenities to citizens living in the Urban Local Bodies. Thus, granting of relief to petitioners, if it impacts larger public interest, writ Court may refuse to grant relief even when a legal infirmity is demonstrated. Thus, for the writ court to entertain the writ petition and grant relief, petitioners have to demonstrate the grave illegalities committed by the authority vitiating the democratic process which shocks the consciousness of the Court and by such actions grave prejudice is caused to petitioners and intervention of the writ Court is necessary in the larger public interest to ensure sanctity to democratic process. Keeping in mind above parameters of judicial review, submissions made by two learned senior counsel are carefully considered.

18. The substantive grievance of the petitioners is with reference to the shortened schedule to complete various aspects of pre-election process i.e., determination of voters in various Wards, determination of voters belonging to various social groups, reservation of Wards in favour of

scheduled castes, scheduled tribes and women and determination of reservation of Chairperson/Mayor. According to learned senior counsel, the schedule is so short and ultimate reservation of Wards would be notified only by 4th January, just three days before the announcement of election schedule, leaving no time for the petitioners to plan the election strategy. In other words, according to learned senior counsel, petitioners intend to contest the elections for the respective Municipalities/nominate their candidates, but they are unable to decide how to select candidates to respective wards as by the time the reservation of Wards is finalized, there would be hardly any time to assess the winnability factor of the candidates, whereas the Ruling Party candidates have an advantage as they would be knowing in advance which Ward would be reserved for scheduled castes, scheduled tribes, backward classes and women and accordingly they have already planned their election strategy depriving the same to the petitioners and thereby the actions of the respondents would be amounting to arbitrary exercise of power, bias in favour of candidates of political party in power and the same is not valid in law.

19. To appreciate this contention, two aspects required to be noticed. Firstly, though the petitioners plead that the political party in power may have an advantage with reference to the reservation of Wards, no material is placed on record to show as to whether the candidates claiming to be representing the Ruling Party have already announced their candidature from a particular Ward stating that the said Ward is already reserved or unreserved and undertaking canvassing for votes giving them clear edge in the election process except a vague assertion in ground 'C' in W P No. 29133 of 2019. Otherwise, all the candidates, who intend to contest the elections, would know the reservation of Wards

only on 4th January. Further, it is not the case of the petitioners in these two writ petitions, that they wanted to contest from a particular Ward/Wards. It is also appropriate to note at this stage, that petitioners have not declared whether they intend to contest as independents or seek nomination by a political party but they aver in the affidavits about nomination of candidates to all the wards. In what capacity they would do this is not spelt out. Without specific allegations and material in support of allegations placed on record, it cannot be assumed, merely because a particular political party is in power at the State level, that the candidates belonging to that political party would have an advantage on knowing the reservations in advance. Secondly, State Election Commission being a constitutional body, is independent of the State Government control and cannot be expected that it would be acting to favour the political party in power and deny level playing field to all the contestants. Further, the petitioners have not shown how prejudice is caused to them by virtue of shortened pre-election process.

20. It was the forcible submission of learned senior counsel that in the counter affidavit filed by the State in W.P.No.10570 of 2019 instituted by the State Election Commission it is stated before the Court that it requires approximately 140 days to complete the various aspects of election process, which schedule was reduced to 109 days with ten days of margin. The present exercise of reducing the schedule to a mere few days smacks of arbitrariness and points to the biased attitude of the respondent authorities and the said schedule is not valid in law. Before appreciating the response of learned Additional Advocate General, it is apt to note that process undertaken by the State is not under challenge.

21. As pointed out by learned Additional Advocate General, this very issue was also contested in W.P. (PIL) Nos.84 and 87 of 2019. It was contended that after the orders of this Court in W.P.No.10570 of 2019, the Director of Municipal Administration issued instructions to the Municipal Corporations to complete the work of identification of scheduled castes, scheduled tribes, backward classes and women voters within a period of seven days and such a huge task could not be achieved within a period of one week and thus the letter of the Commissioner dated 05.07.2019 requires to be set aside. The Division Bench observed that the time frame prescribed by the learned single Judge in W.P.No.10570 of 2019 is maximum time permissible and not the minimum time prescribed and rejected the contention. Having regard to the view taken by the Division Bench, the said contention is stated to be rejected.

22. At this stage, it is apt to note the view taken by the Division Bench in W P (PIL) Nos 84 and 87 of 2019. It reads as under:

“A bare perusal of Article 243-ZG of the Constitution of India clearly indicates that the said Article deals with the pre-election process, which would begin with the delimitation of constituencies of the municipalities, and the municipal corporations, and with the election to the municipality. While the Article 243-ZG(a) of the Constitution of India contains an absolute bar to calling in question in any Court any law relating to delimitation of constituencies, Article 243-ZG(b) of the Constitution of India prescribes that an election to any municipality can be questioned only through an election petition.”

The absolute bar contained in Article 243-ZG(a) of the Constitution of India has a *raison d'être*. Needless to say, the holding of elections, at regular intervals, for the municipal bodies cannot be over emphasized. As pointed out in the case of Anugrah Narain Singh....It was pointed out by the Apex Court in the case of *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman* that even if certain claims and objections were not finally disposed of, even if such objections or claims were filed in accordance with law, but even then, the pendency of claims and objections cannot arrest the process of election. In the said case, the Hon'ble Supreme Court had clearly opined that “the imminence of the electoral...”⁹..... “The opinion expressed by the Court hereinabove

⁹ Cited portion of para 30(1) of the judgment, extracted on page 4 of this document

is equally applicable to the elections of Municipalities and Urban Local Bodies. Moreover, if intervention with elections, i.e., pre-election process, or the election process were permitted by invoking the writ jurisdiction of the High Court, no election could ever take place. For, someone or the other would always find some excuse to move the Court to stall the elections. Once the democratic process has begun, with the pre-election process which would eventually end at the finish line of electing members of the municipalities, no obstacle is permitted to be placed, so as to interrupt, obstruct, or protract the election process.”

23. As can be seen from Schedules I and II appended to the Act, the number of Wards in the respective Urban Local Bodies are already fixed. Therefore, the question of going into the validity of the determination of number of Wards does not arise in these writ petitions. The Municipalities are required to notify geographical area of each of the wards and apportion of the voters in the municipal area to the respective Wards. While apportioning the voters to the respective Wards, they are required to maintain equitable distribution of voters to all Wards with minor variation, not exceeding 10%. Once the voters are apportioned in this manner, the number of voters belonging to a particular social group have to be identified and overall percentage of voters belonging to a particular social group in the Municipality has to be determined to arrive at the number of Wards that can be reserved and the relevant Wards which can be reserved for a social group.

24. Rules notified vide G.O.Ms.No.215 prescribe the principle for determination of Wards. This is clear from a reading of **Rules 3, 4 and 14** of the **Rules** notified vide G.O.Ms.No.215. According to **Rule 14** thereof, determination of reservation of a particular Ward in favour of a particular social group depends on the number of voters belonging to that social group in a particular Ward. It is thus clear from the scheme of these Rules notified vide G.O.Ms.Nos.215, 216 and 217 that no discretion is vested in the competent authority. Once voters strength is

identified in the respective Wards, all other things are required to be undertaken strictly in accordance with those Rules and is only a ministerial act.

25. Further, in these two writ petitions, petitioners are not challenging the pre-election process but are aggrieved by the advance notification of proposed election schedule. This notification of State Election Commission is challenged on the ground that the time schedule regarding determination of the reservation of Wards and postponing that event till the last minute of issuance of election notification is causing hardship to them and therefore State Election Commission ought not to have announced the election schedule in a hurry.

26. Determination of reservation of Wards is entirely a different aspect from the claim of a candidate to contest the election. As per the **Rules** noted above and the provisions of the Constitution and the Act, a person is entitled to contest elections to the Municipality from any Ward in the Municipality. Only requirement is, he must be an enrolled voter of the Municipality. Therefore, date of announcement of reservation of Wards has no relevance to the candidate's planning to contest the election. Further, as the finalization of voters list with identification of voters of various social groups and reservation of wards is to be made by 4th January only, it is uniformly applicable to all candidates who may contest as independent or sponsored by a political party. After determination of reservation of Wards, election notification would be issued and the filing of nomination process would start from the next date. The prospective candidate has about seven days to decide the Ward. Therefore, it cannot be said that a candidate does not have sufficient time to plan to contest.

27. Further, the determination of voters strength and reservations is based on the enrollment of voters in the Municipality. Enrollment of voters in the Municipality is based on the voters list prepared by the Election Commission of India. The State Election Commission is required to adopt the voters list prepared by the Election Commission of India and has no authority to include or exclude the name in the voters list published by the Election Commission of India. After obtaining the voters list published by the Election Commission of India, the voters are to be apportioned to various Wards. **Rules** provide method of apportionment. After such apportionment the voter strength of various social groups has to be undertaken and determined. Further in July, 2019, the voters lists and reservation of Wards were also undertaken. Though the process was subsequently abandoned on account of the illegalities pointed out by the Court with reference to organizing the Wards clockwise, the percentage of voters in the respective Wards and fresh process is set in motion, but the basic exercise was commenced then giving clear guidance to the candidates. Further, recognized/registered political parties were already informed much in advance about the reservation of Wards and objections were called from them and even those lists were placed in the public domain as prescribed by the Act and the **Rules** and therefore the candidates were fairly aware well in advance about the process set in motion including the possible reservation of Wards.

28. Be that as it may, right of the petitioners to contest elections is not affected in any manner on account of delay in publication of the reservation of the Wards. Further, the impugned notification in no manner affected the rights of petitioners to contest in the elections as it only indicates the impending announcement of the schedule.

29. **Section 195(1)** requires the State Election Commission to issue the notification schedule for general elections and elections for casual vacancies. The Schedule of the dates on various aspects of the elections should be decided by the State Election Commission in consultation with the State Government. It also requires the State Election Commission to take note of various aspects including law and order, security and more particularly to ensure that the Schedule should not come in the way of agricultural season, major fairs and festivals, education calendar and examinations in schools and colleges. According to **sub-section (2)**, for the purpose of holding elections, the State Election Commission should issue notification calling upon the voters of the Municipalities on such date or dates as may be specified thereon to elect Ward Members in accordance with the provisions of the Act. **Sub-section (3)** requires notification to specify the time schedule for various stages of the elections. From the scheme of this Section, it cannot be said that the impugned notification is ex-facie illegal without power/jurisdiction of the State Election Commission. The State Election Commission is repository of election process to local bodies. Merely because it announces in advance the actual election schedule, it cannot be said as vitiating the democratic process. In fact, it puts the prospective candidates on notice of impending election notification. Even without this notification, the State Election Commission can still announce the election schedule. Thus, by this notification, right of petitioners to contest election is not affected in any manner. Further, the Sankranti festival is on 15.01.2020 whereas voting is scheduled to take place on 22.01.2020. Therefore, Sankranti festival can not be said as coming in the way of election process. Further, as elections are to Urban Local Bodies, harvesting is not much relevant.

30. Thus, the issues pointed out by learned senior counsel on the process undertaken by the State, assuming that process is a pre-election process and there is no bar to undertake judicial review on validity of notification issued by State Election Commission impugned herein, it cannot be said that the exercise undertaken by the respondents is demonstratively/palpably illegal and smacks of arbitrariness and no prejudice is shown to have been caused to the petitioners vitiating the election process for this Court to entertain the writ petitions and to hold the impugned notification as illegal. Further, it is not in public interest to stall the elections at the threshold/when main election notification is issued at the instance of these petitioners, upsetting the whole election process.

31. In this regard it is appropriate to note, the observations of the Supreme Court and this Court on scope of judicial review in election related matters, noted hereunder:

31.1 The opinion expressed by the Constitution Bench of the Hon'ble Supreme Court in **Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman**¹⁰, is as under:

“a. We find it somewhat odd that, in the instant case, individuals whose rights are alleged to have been violated have not come to the Court at all. Not one out of the eight lacs. Persons who have come to the Court are members of a political party who claim to represent them. While we are on this question, it must be emphasized that election laws do not recognise political parties except in Rule 11(c) of the Registration of Electors Rules, 1960, the Election Symbols (Reservation and Allotment) Order, 1968, and Explanation 1 to Section 77(1) of the Act of 1951. The right to be included in the electoral roll or to challenge the inclusion of any name in the roll is a right conferred upon an individual and not upon any political party. The petitioners are espousing the cause of unnamed and undisclosed persons through a writ petition, which does not even claim to possess a representative capacity....” [para 16]

b. The revision of electoral rolls is a continuous process which has to go on, elections or no elections. [para 17]

¹⁰ (1985) 4 SCC 689

c. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations. If that were not so, the easiest expedient which could be resorted to for the purpose of postponing an election to the Legislature would be to file complaints and objections, omnibus or otherwise, which would take days and months to decide. It is not suggested that claims and objections filed in the prescribed form should not be decided promptly and in accordance with law. But, the important point which must be borne in mind is that whether or not a revision of an electoral roll is undertaken and, if undertaken, whether or not it is completed, the electoral roll for the time being in force must hold the field. Elections cannot be postponed for the reason that certain claims and objections have still remained to be disposed of. Then, claimants and objectors could even evade the acceptance of notices and thereby postpone indefinitely the decision thereon. ***The holding of elections to the Legislatures, which is a constitutional mandate, cannot be made to depend upon the volition of interested parties.*** [para 19]

d. Thus, the fact that an appeal is pending under Rule 23(1) against the decision of a Registration Officer under Rule 20, 21 or 21-A does not constitute an impediment to the publication of the roll and to the roll, upon such publication, coming into force. Rule 20 provides for inquiry into claims and objections; Rule 21 provides for inclusion of names which are left out of the roll owing to inadvertence or error; while, Rule 21-A provides for the deletion of names of dead persons and of persons who cease to be, or are not, ordinary residents of the particular constituency. Notwithstanding the fact that the roll contains these errors and they have remained to be corrected, or that the appeals in respect thereof are still pending, the Registration Officer is under an obligation to publish the roll by virtue of Rule 22. [para 20]

e. Election laws are self-contained codes. One must look to them for identifying the rights and obligations of the parties, whether they are private citizens or public officials. [para 22]

f. On the question as to the connotation of the word 'election' in Article 329(b), we may point out three decisions of this Court, one of which is *N.P. Ponnuswami* [AIR 1952 SC 64] referred to above, the other two being *Rampakavi Rayappa Belagali v. B.D. Jatti* [(1970) 3 SCC 147] and *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi* [(1978) 1 SCC 405]. It was held in *Ponnuswami* [AIR 1952 SC 64] that word 'election' is used in Article 329(b) in the wide sense of covering the entire process culminating in the election of the candidate. Fazi Ali, J., who spoke for the Court in that case, has referred to a passage in *Halsbury's Laws of England* to the following effect: (SCR p. 227)

"It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is 'reasonably imminent'. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion."

In *Rampakavi Rayappa Belagali* [(1970) 3 SCC 147, 150 : AIR 1971 SC 1348] , it was held that the scheme of the Act of 1950 and the amplitude of its provisions show that the entries made in an electoral roll of a constituency can only be challenged in accordance with the machinery provided by the Act and not in any other manner or before any other forum unless, some question of violation of the provisions of the Constitution is involved. In *Mohinder Singh Gill* [(1978) 1 SCC 405 : AIR 1978 SC 851 : (1978) 2 SCR 272] , Krishna Iyer, J., speaking for the Constitution Bench, has considered at great length the scope and meaning of Article 329(b) of the Constitution. Describing that article as the “Great Wall of China”, the learned Judge posed the question whether it is so impregnable that it cannot be bypassed even by Article 226. Observing that “every step from start to finish of the total process constitutes ‘election’, not merely the conclusion or culmination”, the judgment concludes thus: (SCC p. 427, para 26)

“The rainbow of operations, covered by the compendious expression ‘election’, thus commences from the initial notification and culminates in the declaration of the return of a candidate.” [para 27]

g. We have expressed the view that preparation and revision of electoral rolls is a continuous process, not connected with any particular election. It may be difficult, consistently with that view, to hold that preparation and revision of electoral rolls is a part of the “election” within the meaning of Article 329(b). Perhaps, as stated in *Halsbury* in the passage extracted in *Ponnuswami* [AIR 1952 SC 64 : 1952 SCR 218, 234 : 1 ELR 133] , the facts of each individual case may have to be considered for determining the question whether any particular stage can be said to be a part of the election process in that case. In that event, it would be difficult to formulate a proposition, which will apply to all cases alike. [para 28]

h. Secondly, though the High Court did not lack the jurisdiction to entertain the writ petition and to issue appropriate directions therein, no High Court in the exercise of its powers under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution. India is an oasis of democracy, a fact of contemporary history which demands of the courts the use of wise statesmanship in the exercise of their extraordinary powers under the Constitution. The High Courts must observe a self imposed limitation on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are a part of the process of ‘election’ within the meaning of Article 329(b) of the Constitution. [para 30(1)]”

31.(2) In **Anugrah Narain Singh**, the Hon'ble Supreme Court held that:

a. validity of laws relating to delimitation and allotment of seats made under Article 243-ZA cannot be questioned in any court. No election to a municipality can be questioned except by an election petition. Moreover, it is well settled by now that if the election is imminent or well under way, the court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the court and stall the elections. [para 12]

b. But the principles laid down in *Lakshmi Charan Sen case*[(1985) 4 SCC 689] will apply in full force to municipal elections because various articles dealing with holding of municipal elections in Part IX-A of the Constitution are similarly worded. In fact, highest importance has been attached to holding of panchayat as well as municipal elections by the Constitution. [para 17]

c. In the case of *State of U.P v. Pradhan Singh Kshettra Samiti*, AIR 1995 SC 1512, the Supreme Court held that any challenge to the validity of the delimitation of constituencies or the allotment of seats to such constituencies and the election to any panchayat should not be entertained by Court except on the ground that before the delimitation, no objection was invited and no hearing was given."

31.(3) In **Eppala China Venkateswarlu v. Secretary to Government, Social Welfare (2006) 5 ALD 409**, on review of precedent decisions, the Division Bench culled out the principles which govern disputes regarding elections to local bodies:

"48. The propositions which can be culled out from the above noted judgments of the Supreme Court, this Court and of the Division Bench of Gujarat High Court are:

- (1) The word "election" appearing in Article 243-O and the provisions contained in the 1994 Act and the rules framed thereunder bears larger connotation. It embraces and includes all steps commencing from the date of notification by the Competent Authority, whereby the electorates are called upon to elect Sarpanchas and Ward Members and ending with declaration of result. Reservation of offices of Sarpanch and Wards in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women, preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny of nomination papers and withdrawal thereof, publication of the list of eligible candidates, allotment of symbols, appointment of election agents, the conduct of poll, counting of votes, declaration of results and all other ancillary steps taken for the purpose of holding elections fall within the ambit of the term "election". (*N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, *Mohinder Singh Gill v. Chief Election Commissioner, Election Commission of India v. Shivaji and Election Commission of India v. Ashok Kumar* (supra))

- (2)(i) The bar contained in Article 243-O, which begins with *non-obstante* clause, debars all Courts from entertaining any challenge to law relating to delimitation of constituencies or allotment of seat made or purporting to be made under Article 243-K or election to the Panchayats. This bar also operates against the High Court's power of judicial review under Article 226. (*N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, *Durga Shankar Mehta v. Raghuraj Singh*, *Election Commission of India v. Shivaji* and *Election Commission of India v. Ashok Kumar* (supra))
- (ii) The proposition contained in clause (i) above is subject to the condition that challenge to the delimitation may be entertained in exceptional cases where no objections were invited and no hearing was given provided that such challenge is made before issue of notification for holding election. (*State of UP. v. Pradhan Sangh Kshetra Samiti*(supra))
- (iii) The bar contained in Article 243-O(b) operates only till the adjudication of election dispute by an adjudicatory forum created by or under any law made by the Legislature of the State. An order made by an adjudicatory forum constituted under the law made by the State Legislature can be called in question by filing a petition under Article 226 of the Constitution.
- (3) The bar contained in Article 243-O operates at all stages of the election *i.e.* notification issued by the State Election Commission calling upon the electorate to elect Sarpanches and Ward Members; reservation of offices of Sarpanches in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women; preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny and withdrawal thereof; allotment of symbols; appointment of election agents; counting of votes and declaration of result.
- (4) The bar contained in Article 243-O(b) does not operate *qua* challenge to the constitutionality of a statutory provision relating to elections, though, even in such a case, the High Court will be extremely loath to pass an interlocutory order which has the effect of stalling or jeopardizing the process of election or which may result in the constitutional hiatus on account of indirect violation of Article 243-K(3) read with Article 243-K(1).
- (5) The observations made in *Harnek Singh v. Charanjit Singh* (supra) have to be read in the light of the law laid down by the Constitution Benches in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, *Durga Shankar Mehta v. Raghuraj Singh*, *Mohinder Singh Gill v. Chief Election Commissioner* (supra) and by three Judges Bench in *Election Commission of India v. Ashok Kumar* (supra).
- (6) The High Court may entertain petition under Article 226 of the Constitution if the prayer contained in such petition does not have the effect of interpreting or delaying the process of election (*Election Commission of India v. Ashok Kumar* (supra)).

32. Reverentially, I am in agreement with the above enunciation of law on judicial review of pre-election process. It is admitted, that date of notification fixing schedule to election process is fixed as 7.1.2020, which was proximate when the cases were instituted and notified when

this decision is made. As the infirmities pointed out are not so grave and palpably/demonstratively illegal, interference of writ Court is not called for, more so, when that process is not under challenge and within the parameters of judicial review. Further, though elaborate submissions are made and several decisions are cited at the bar on the issue of maintainability of writ petitions, having regard to the view taken by me on the claim of petitioners, the said issue is not considered and left open to be considered in appropriate proceedings.

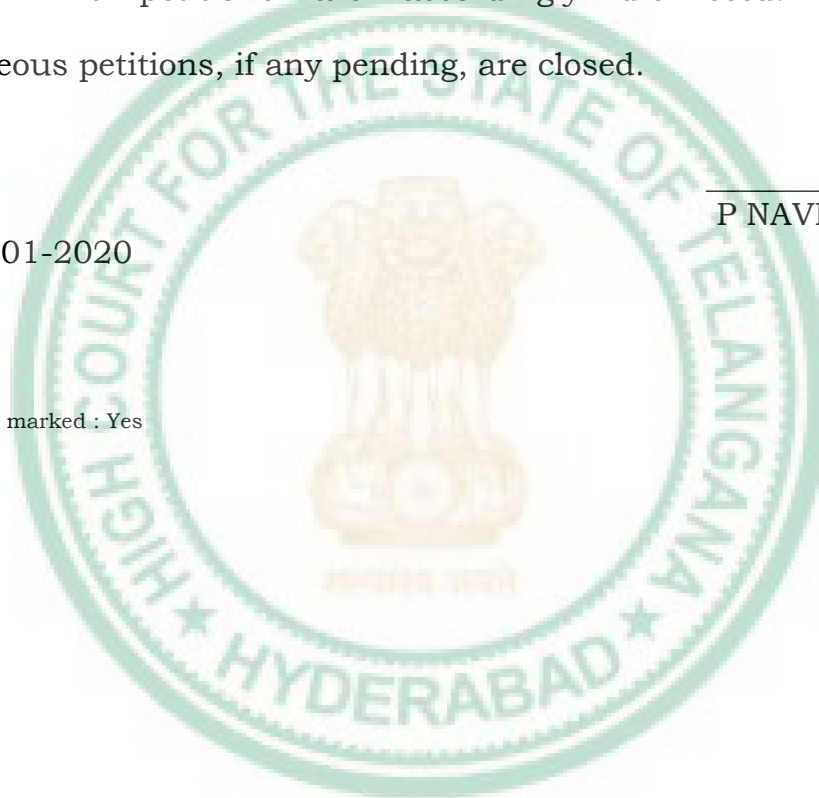
33. The writ petitions are accordingly dismissed. No costs. Miscellaneous petitions, if any pending, are closed.

DATE:08-01-2020

TVK/KKM

L.R.Copy to be marked : Yes

P NAVEEN RAO,J



THE HON'BLE SRI JUSTICE P NAVEEN RAO



WRIT PETITION Nos. 29058 AND 29133 OF 2019

Date: 8.1.2020