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IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.238/2022
AND
MISC. CIVIL APPLICATION NO.1380/2022 (F)
WITH
WRIT PETITION NO.1365/2022 (F)**

MR SANDEEP VAZARKAR,
aged 52 years, residing at an
House No. 1831/3, Vidyanager,
Penha de Franca,
Bardez - Goa.

... Petitioner

Versus

1. STATE OF GOA

Through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa.

**2. GOA STATE ELECTION
COMMISSION,**

Through the Commissioner,
having its office next to Joggers Park,
near BSNL Tower, Altinho, Panaji,
Goa.

**3. DIRECTOR OF PANCHAYATS,
Government of Goa,
having office at Patto, Panaji, Goa.**

**4. MR. RAJESH GAWAS,
Statistical Assistant,
Co Director General of Police,
Panaji, Goa.**

... Respondents

Mr. Y.V. Nadkarni with Mr. Sanket Kamat, Advocate for the

Petitioner.

**Mr. D. Pangam, Advocate General with Mr. Deep Shirodkar,
Additional Government Advocate for Respondents – State.**

Mr. S.N. Joshi, Advocate for Respondent No.2.

AND

MISC. CIVIL APPLICATION NO.1380/2022 (F)

1. Mr. Sudip Tamankar,
48 years of age,
C-5, Harbans Vihar,
Old Goa, Kadamba Bypass Road,
Near Saibaba Temple,
Ribandar – Goa.

2. Kewal Gurudas Mayekar,
29 years of age,
H.No.265, Cardoz Waddo,
Taleigao – Goa, 403002.

.... Applicants

Versus

1. State of Goa,
Through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa.

2. Goa State Election Commissioner
Through the Commissioner,
having its office next to Joggers Park,
near BSNL Tower,
Altinho, Panaji, Goa.

3. Director of Panchayats
Government of Goa,
having office at Patto,
Panaji, Goa.

4. Mr. Rajesh Gawas,

Statistical Assistant,
C/o. Director General of Police,
Panaji, Goa.

..... Respondents

**Mr. D. Lawande with Mr. P. Dangui, Mr. G. Nadkarni and
Mr. J. Mathew, Advocates *for the Applicants.*
Mr. D. Pangam, Advocate General with Mr. Deep Shirodkar,
Additional Government Advocate *for Respondents – State.*
Mr. S.N. Joshi, Advocate *for Respondent No.2.***

**WITH
WRIT PETITION NO.1365/2022 (F)**

1. Mr. Patrick Savio Almeida
S/o. late Marcelino F. Almeida,
Aged 50 years, residing at
H.No.1698/1, Gumalwaddo,
Anjuna Bardez Goa.

2. Mrs. Sheetal Subhash Naik,
Wife of Mr. Subhash Naik,
Aged 44 years, residing at
750 S Michael Waddo,
Near Flea market Anjuna,
Anjuna, Bardez-Goa.

3. Mr. Pedro Antonio Mendonca
Aged 68 years, Indian National,
H.No.1589/1, Grand Chinvar,
Anjuna, Bardez-Goa.

4. Mr. Devanand Vasudev Shirodkar,
S/o. Vasudev Shirodkar,
Aged 47 years, Indian National,
H.No.1079/2, Mazal waddo,
Anjuna Bardez Goa.

5. Mr. Sandesh Narahari Khorjuvekar
S/o. Narhari Khorjuvekar

Aged 46 years, Indian National,
H.No.187/2, Deul vaddo,
Chapora Anjuna,
Bardez – Goa.

5. Pratima R. Govekar
Wife of Raghu Govekar
67 years of age, Indian National,
R/o. H.No.213/1, Zor waddo,
Anjuna, Bardez-Goa.

.... Petitioners

Versus

1. State of Goa,
Through its Chief Secretary,
having office at Secretariat,
Porvorim, Goa.

2. Goa State Election Commissioner
Through the Commissioner,
having its office next to Joggers Park,
near BSNL Tower,
Altinho, Panaji, Goa.

3. Director of Panchayats
Government of Goa,
having office at Patto,
Panaji, Goa.

..... Respondents

**Mr. S.S. Kantak, Senior Advocate with Mr. Kapil Kerkar and
Mr. Abhijeet Gosavi, Advocates for the Petitioners.**

**Mr. D. Pangam, Advocate General with Ms. M. Correia,
Additional Government Advocate for Respondents – State.**

Mr. S.N. Joshi, Advocate for Respondent No.2.

**CORAM: M. S. SONAK &
R.N. LADDHA, JJ.**

Reserved on: 27th June 2022

Pronounced on : 28th June 2022

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

1. Heard learned Counsel for the parties.
2. Rule in both the petitions. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties. Even otherwise, by our order dated 21.06.2022, we had made it clear that these matters cannot brook any delay.
3. The term of 186 Panchayats in the State of Goa, including the Village Panchayat of Socorro, ended on 18.06.2022. The Goa State Election Commission (SEC) had proposed to hold elections on 29.05.2022, 04.06.2022, 11.06.2022, 15.06.2022 & 18.06.2022. However, the SEC claims that no elections could be held for want of the State Government issuing Notification under Rule 10(1) of the Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996, appointing the date for holding of the election. The State Government refutes this charge. They say that the SEC is responsible for the failure. Neither offers convincing reasons for the failure to observe the Constitutional mandate.
4. The SEC maintains that it is eager and capable of completing the election process within thirty days from the State

Government notifying the date under rule 10(1) of the Election procedure rules, 1996. The State Government, however, insists that elections in monsoons are not conducive, and they have consciously decided to postpone them to September 2022.

5. The question for determination is whether the State Government and the SEC are jointly and severally avoiding holding elections to constitute the Panchayat before the expiry of its duration as specified under Article 243-E of the Constitution?

6. In 2017 also, Rohan Shirodkar had petitioned this Court about the failure of the State Government and the SEC to hold elections for 185 Panchayats in the State of Goa before the expiry of their duration specified under Article 243-E of the Constitution. In the decision reported in ***Rohan Shirodkar V/s. State of Goa & Ors.***¹, the Co-ordinate Bench had observed the following:

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

¹ 2017 (4) Bom.C.R. 406

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

7. The above observations mean that for the last three terms, the State Government and the SEC have avoided or attempted to avoid holding elections to constitute Panchayats before the expiry of their duration as specified under Article 243-E(1) of the Constitution. This is, now, the fourth occasion.

8. That elections to constitute a Panchayat must be completed before the expiry of its duration specified in Article 243-E(1) of the Constitution is not a legal position that admits to any serious dispute or debate. In any case, this position is made clear by the Constitution Bench in *Kishansing Tomar V/s. Municipal Corporation of the City of Ahmedabad & Ors.*² and very recently, by *Suresh Mahajan V/s. State of Madhya Pradesh & Anr.*³. Even in the precise context of the State of Goa, this

2 (2006) 8 SCC 352

3 2022 SCC OnLine SC 589

position was made evident in *Rohan Shirodkar* (supra), *Joseph Sequeira V/s. State of Goa*⁴ and *Naresh Gaunekar V/s. State of Goa*⁵.

9. Article 243-E(1) of the Constitution provides that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Furthermore, article 243-E(3) provides that an election to constitute a Panchayat shall be completed before the expiry of its duration specified in clause (1).

10. These provisions have been interpreted by the Hon'ble Supreme Court and Co-ordinate Benches of our Court, holding that it is the constitutional duty of State Election Commissions to complete elections to constitute a Panchayat before the expiry of its duration specified in Article 243-E(1). From this, it follows that it is also the constitutional duty of the State to render every assistance to the SEC to enable the SEC to comply with the constitutional mandate.

4 WP no.13/2017 decided on 13.02.2007

5 2008 (1) Bom.C.R. 788

11. In *Kishansing Tomar* (supra), the Hon'ble Supreme Court explained that the object of inserting part IX-A in the Constitution was to ensure that elections to local bodies were held regularly and on time. The Court held that there is a constitutional mandate to complete the elections before the stipulated five years expire. The duration of a municipality or a Panchayat is fixed as five years from the date of its first meeting and no longer. Therefore, it is incumbent upon Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new municipality is constituted in time and elections are conducted before the expiry of its five years.

12. After considering earlier precedents, the Hon'ble Supreme Court held that the State Election Commission could not put forward any excuse based on unreasonable grounds that the election could not be completed in time. Any revision of electoral rolls, if not carried out within a reasonable time, the election has to be conducted based on the then-existing electoral rolls. The Court explained that the Election Commission must complete the election before the expiration of the duration of the five years and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

13. The Hon'ble Supreme Court held that there may be certain man-made calamities, such as rioting or breakdown of law and order, or the natural calamities which could distract the authorities from holding elections to the municipality. Still, they are exceptional circumstances, and under no other circumstance would the Election Commission be justified in delaying the election process after consulting the State Government and other authorities. The Court emphasized that the delay can be only in exceptional circumstances and shall not be a regular feature to extend the duration of the municipality. Going by the provisions contained in Article 243-U (which are para materia to the provisions in Article 243-E), the Court held that it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory and has to be followed in all respects. The Court held that the entire provision was inserted in the Constitution to see that there should not be any delay in the constituting of a new local body every five years and to avoid the mischief of delaying the election process and allowing the nominated bodies to continue.

14. The Hon'ble Supreme Court then referred to the constitutional provisions that require the State Election Commissions to function independently of the State Government concerned State Governments in the matter of their powers of

superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections to the Panchayats and Municipalities. The Court made specific reference to Article 243-K(3) and held that it also recognizes the independent status of the State Election Commission. The Court noted that in the conduct of elections, the concerned Government will have to render full assistance and cooperation to the State Election Commission and respect the latter's assessment of the needs to ensure that free and fair elections are conducted.

15. The Hon'ble Supreme Court held that for the free and effective functioning of the State Election Commission, where it feels that it is not receiving the cooperation of the concerned State Government in discharging its constitutional obligation of holding the elections to the Panchayats or Municipalities within the time mandated in the Constitution, it would be open to the State Election Commission to approach the High Courts, in the first instance, and after that the Supreme Court for a writ of mandamus or such other appropriate writ directing the concerned State Government to provide all necessary cooperation and assistance to the State Election Commission to enable the latter to fulfill the constitutional mandate.

16. Despite the clear exposition of the legal position in *Kishansing Tomar* (supra), the Hon'ble Supreme Court noticed in *Suresh Mahajan* (supra) that no timely elections were held in

the States of Madhya Pradesh and Maharashtra, amongst others. The reasons for such delay were the non-completion of delimitation work and/or triple test compliance prescribed in *Vikas Kishanrao Gawali V/s. State of Maharashtra & Ors.*⁶, etc.

17. The Hon'ble Supreme Court emphatically rejected the above reasons and held that if such grounds pressed into services by the State Authorities were to be accepted; it would be infeasible for any Election Commission - be it Madhya Pradesh State Election Commission - to notify the election program well-in-time and to ensure that newly elected body is installed before the expiry of 5 (five) years tenure of the outgoing elected body. That would defeat the constitutional mandate and go against the tenet of local self-Government by democratically elected representatives, uninterrupted.

18. The Hon'ble Supreme Court, in paragraphs 7, 8, 9 and 18, observed as follows:

“7. Thus, all concerned are obliged to ensure that the newly elected body is installed in every local body before the expiry of 5 (five) years term of the outgoing elected body. Even in case of dissolution before the expiry of five years period, where an Administrator is required to be appointed by the State, that regime cannot be continued beyond 6 (six)

⁶ 2021 (6) SCC 73

months by virtue of relevant provisions in the respective State Legislation(s).

8. This constitutional mandate is inviolable. Neither the State Election Commission nor the State Government or for that matter the State Legislature, including this Court in exercise of powers under Article 142 of the Constitution of India can countenance dispensation to the contrary.

9. Despite such constitutional mandate, the reality in the State of Madhya Pradesh as of now, is that, more than 23,263 local bodies are functioning without the elected representatives for last over two years and more. This is bordering on break down of rule of law and more so, palpable infraction of the constitutional mandate qua the existence and functioning of such local self-government, which cannot be countenanced.

18. To put it differently, completion of delimitation exercise or be it triple test formality, as the case may be, can wait if not completed well before the expiry of five years term of the outgoing elected body, including giving enough time to the Election Commission to complete the election process within such time. Thus, the declaration of election programme cannot be delayed by the Election Commission on that account. For, it would inevitably result in creating hiatus situation upon expiry of 5 (five) years term of outgoing elected body. Such an eventuality needs to be eschewed by all the duty holders. A priori, it is not only a constitutional obligation of the State Election Commission but also

of the State Government including of the constitutional Courts."

19. The Hon'ble Supreme Court made it clear that its directions for completing the elections to local bodies before the expiry of the five-year term of the outgoing election body were not restricted only to the States of Madhya Pradesh and Maharashtra but would apply to all the States/Union Territories. This is clear from paragraph 31, which reads as follows:

"31. We also make it clear that this order and directions given are not limited to the Madhya Pradesh State Election Commission/State of Madhya Pradesh; and Maharashtra State Election Commission/State of Maharashtra in terms of a similar order passed on 04.05.2022, but to all the States/Union Territories and the respective Election Commission to abide by the same without fail to uphold the constitutional mandate."

20. In *Naresh Gaunekar* (supra), the State Government defied the constitutional mandate in Article 243-U and avoided holding elections to the municipalities concerned on the ground that collecting data and finalizing reservations was not complete. However, the Co-ordinate Bench rejected such ground and, following the law laid down in *Kishansing Tomar* (supra), directed the State Election Commission to initiate the election process forthwith and complete the same in the shortest possible

time and in any case within 45 days based on existing electoral rolls and the available data.

21. In *Joseph Sequeira* (supra), the challenge was to a policy decision of the State Government to postpone the elections to various Village Panchayats in the State of Goa. The postponement was sought to be justified by the State Government on the following grounds:

- (a) School exams and Board exams were round the corner. If teachers were drafted for election duties, the schools and students would suffer;
- (b) Most developmental works are suspended during monsoons and the period from November to February is crucial to undertake such developmental activities. If elections are held in January, such developmental activities will come to a standstill, and even the budgetary provisions might lapse;
- (c) The annual summary of revision of electoral rolls for Assembly and Parliamentary elections was in progress, and new electoral rolls would be published on 12.01.2007. Therefore, holding elections based

on the earlier available electoral rolls will not be appropriate;

(d) The Government staff usually drafted for election duties had been requisitioned by the Chief Electoral Officer for election-related works. He had expressed his inability to release these staff for the Panchayat elections. As such, there would be a severe constraint on the Government workforce, thereby hampering administration.

22. In the above case, even the SEC, while agreeing that it was mandatory to hold elections to 185 Panchayats before 30.01.2007, meekly agreed with the State Government's "policy decision" to defy the constitutional mandate by simply observing that no elections could be held until the Director of Panchayats issues Notification regarding the formation of wards, etc.

23. Upon considering *Kishansing Tomar* (supra), the Co-ordinate Bench of our Court issued directions for completing the entire election process by 07.05.2007.

24. In *Rohan Shirodkar* (supra) Co-ordinate Bench noted that this was the third occasion that this Court was called upon to

examine the validity of the decision in not complying with the mandatory provisions of Article 243-E of the Constitution. The Court took note of the earlier precedents in *Naresh Gaunekar* (supra) and *Joseph Sequeira* (supra). It held that despite the observations recorded by this Court and rejecting the reasons to defer holding of elections because the process of delimitation was not complete, the State Government had once again avoided holding the election of the Panchayats on similar grounds.

25. The State Government had reasoned that delimitation was yet to be complete, that it did not have the requisite staff, and that it would be better to have elections during school vacations so that school premises could be used as polling booths. The Co-ordinate Bench, in emphatic terms, held that such reasons could not be cited to avoid compliance with the mandatory constitutional provisions to hold elections within the time specified.

26. The Co-ordinate Bench also expressed surprise that the State Government was, for reasons already adjudged as impermissible, avoiding holding elections in defiance of the constitutional mandate. Finally, the Co-ordinate Bench directed the concerned authorities to complete the election process on or before 12.06.2017.

27. This is the fourth instance in the last two decades when the State Government and the SEC have avoided or failed to comply with the constitutional mandate in Article 243-E. The delay and consequent defiance of the constitutional mandate have become a regular feature. The attempt is to bring about a situation of *fait accompli*, emboldened by the fact that not even the most powerful Court can turn the clock back or recoup the lost time. There are no reported instances of any action against those responsible for the defiant breaches of the constitutional mandate. In most instances, the SEC would meekly toe the line of the State Government and plead helplessness.

28. This time, however, the SEC has made it clear that it not only wants to hold the elections at the earliest, and it made all efforts to hold the polls on 29.05.2022, 04.06.2022, 11.06.2022, 15.06.2022 & 18.06.2022. This was not just some statement made across the Bar by Mr. Joshi but was repeated in the affidavit filed by Brijesh Manerkar, the Secretary to the Goa State Election Commission.

29. The SEC affidavit refers to the correspondence with the State Government on the issue of holding the elections consistent with the constitutional mandate in Article 243-E. First, there is a reference to the State Government not replying to the repeated letters of the State Election Commission about holding elections

before the expiry of the terms of 186 Village Panchayats. There is a reference to the correspondence on the issue of reservations and delimitations. Finally, there is a reference to letters by which the SEC repeatedly requested the State Government to issue the necessary Notification under Rule 10 of the Election Procedure Rules, 1996.

30. Mr. Joshi, learned Counsel for SEC, maintained that the SEC was prepared to complete the elections within 30 days, and the poll date may be determined by this Court or the State Government based on the direction of this Court. He referred to the statement to this effect in paragraph 15 of the Secretary's affidavit.

31. Mr. D. Panagam, the learned Advocate General, joined issue, not much with the learned Counsel for the petitioners but with the learned Counsel for the SEC. Despite being a constitutional body, he submitted that the SEC had suppressed material facts, including letters issued by it and the letters/replies by the State Authorities. He submitted that the State Government had agreed to the holding of elections on 04.06.2022, and but for the SEC's irrelevant queries and correspondence, the polls could have been held before the onset of monsoons. He referred to para 29 of the affidavit of Smt. Siddhi Halarnakar, the Director of

Panchayats and Ex-Officio Joint Secretary of Government of Goa
that reads as follows:

“29. I say that Affidavit of the Respondent No.2 has been filed in a very casual manner. I say that it is surprising that the Election Commission, which is a constitutional body, has suppressed material facts, including letters issued by it and the letters/replies by the State authorities. This suggests that there is an attempt to mislead this Hon’ble Court and paint a picture as if the State Government was not even responding to the letters of the Commission. I say that the records bear out that the State Government has always taken necessary action based on the communications of the State Election Commission. All necessary assistance and co-operation was and continues to be provided to the Commission by the State authorities.”

32. The learned Advocate General submitted that the State of Goa receives rainfall of about 110 to 120 inches during the monsoons. In the past, there have been cyclones and floods. The Government staff and machinery are involved in disaster management. Therefore, with all responsibility, the State Government has taken a "*conscious decision*" to hold the elections in September 2022.

33. The learned Advocate General submitted that in the meantime, it would also be possible to comply with the triple test

prescribed in *Vikas Gawali* (supra) and provide reservations to OBC categories in terms of the statutory requirement. He also submitted that voter turnover is affected during monsoons, and democratic principles will be a casualty if there is no maximum voter participation. He referred to the statements in paragraphs 32 to 38 of Smt. Halarnakar's affidavit. The paragraphs indeed refer to the position of monsoons in the State of Goa. To back the statements, the affiant has relied on news reports in Times of India, India Today, and even a Kerala-based newspaper/magazine 'Manorama.'

34. The Times of India reports flash floods in some parts of Goa the previous year. There is a report on monsoon in 2020 and landslides in some areas. There is a report of 24th July 2021 again about floods in some Talukas. Kerala magazine reports a decrease in voter turnout for legislative assembly elections during monsoons. Based on such material, the learned Advocate General submits that the State Government's conscious decision to defer the polls notwithstanding the constitutional mandate must be accepted.

35. One of the reasons stated by Smt. Halarnakar, on behalf of the State Government, for deferring the polls is to be found in paragraph 37 of her affidavit, which reads as follows:

“37. I say that apart from that, there are various problems relating to transportation of the election material and staff on account of rain. I say that it is pertinent to note that the election will be held using ballot paper. As such, on account of the rains, there are chances of the paper being spoilt or the ink being smudged, etc. when the voter handles the ballot paper while voting in the election.”

36. The learned Advocate General submits that Rule 10 of the Election Procedure Rules, 1996 empowers the State Government to appoint the date for holding the elections in consultation with the Commissioner. After finalizing the date, the State Government must issue a Notification in Form I or Form I-A, as the case may be, for the election process to begin.

37. The learned Advocate General submits that since the power to appoint a date for holding the elections is vested in the State Government, the State Government's opinion and perception about the appropriate date for holding of such election will have to be respected. He submits that the State Government has taken a bonafide and conscious decision to defer the polls up to September 2022. He submitted that the grounds on which such a decision is based are squarely covered by the observations in paragraph 21 of *Kishansingh Tomar* (supra). He submits that monsoons, the consequent flash floods, and cyclones are natural

calamities. He submits that the SEC's insistence on holding elections during monsoons would render democracy a casualty.

38. The learned Advocate General also relied on *Mr. Kenneth Ian Stewart Silveira V/s. State of Goa & Ors.*⁷ to submit that this Court had upheld the State Government's decision to postpone the polls due to the COVID-19 pandemic. He submitted that similar reasoning ought to be applied to uphold the State Government's conscious decision to postpone the polls beyond monsoons and September 2022.

39. The learned Advocate General also relied on *Dnyaneshwar Narso Naik V/s. State of Goa & Ors.*⁸ to submit that the State Government could not have issued Notification under Rule 10 of the Election Procedure Rules, 1996 unless the SEC were to have issued Notification reserving and/or rotating reserved seats at least two months before the date of issuance of such Notification. He referred to paragraph 102 of this decision.

40. The learned Advocate General also referred to orders dated 17.05.2022 and 18.05.2022 made by the Hon'ble Supreme

⁷ PIL Writ Petition No.17/2020
decided on 21.03.2020

⁸ 2020 SCC OnLine Bom. 3903

Court in *Suresh Mahajan* (supra) permitting the State Election Commissions to modulate the election schedule if the elections are affected by monsoons. He submitted that these orders make it clear that the Hon'ble Supreme Court has accepted the position that elections to local bodies can be postponed due to monsoons, notwithstanding the constitutional mandate.

41. To evaluate the learned Advocate General's contentions, we must first refer to Section 15 of the Goa Panchayat Raj Act and Rule 10 of the Election Procedure Rules, 1996.

42. Section 15 of the Goa Panchayat Raj Act provides that the election of members from wards of a Panchayat shall be held in accordance with such manner as may be prescribed on such date or dates as the Government may, by Notification direct. The second proviso to this Section provides that nothing contained in this Section shall apply if the remainder of the term of a member in relation to a vacancy is less than one year; or if the State Election Commission, in consultation with the Government, certifies that it is difficult to hold the bye-election within the said period of 6 months provided in the first proviso. Though the second proviso is not presently attracted, it is pertinent that even

the legislature has left it to the discretion of the SEC to determine the difficulties in holding the election.

43. Rule 10 of the Election Procedure Rules, 1996 reads as follows:

“10. Power of the Government to appoint dates etc. for holding elections.- (1) The Government, in consultation with the Commissioner, or shall, after it is decided to hold an election in the Village Panchayat 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.

(2) The Commissioner shall take such necessary steps for fixing the dates and hours for following stages of an election namely:-

- (i) The nomination of Candidates;*
- (ii) The scrutiny of nomination;*
- (iii) The withdrawal of nomination;*
- (iv) The counting of votes;*

Provided that:-

(i) between the date fixed for the nomination of candidate and the date fixed for the recording of votes, there is at least [an interval of 7 days]; and

(ii) the date(s) for the scrutiny of nominations shall be the date(s) immediately following date(s) fixed for the nomination of candidates.

(3) On the issue of notification under sub-rule (1), the Commissioner shall give public written notice in Form No. 2 or 2-A as the case may be, of

the intended election not less than [seven days] before the last date fixed for the nomination of candidates inviting nominations of candidates for such election and specifying the place where nomination papers are to be delivered. Copies of notice shall be published by affixing at the Village Panchayat Office, Office of the Mamlatdar, Office of the Block Development Officer, Office of Chief Executive Officer and if necessary, at any other place in the Panchayat area appointed by the Commissioner.

(4) The date(s) and hours appointed under sub-rules (1), (2) and (3) shall not be changed except with the previous sanction of the Commissioner:

Provided that if Government is of the opinion that it is necessary in the public interest to change the date(s) so fixed and if there is no sufficient time for obtaining the previous sanction of the Commissioner to such change, the Government may, for reasons to be recorded in writing, change such a date(s). In every such case, the Government shall forthwith forward a copy of its order and the reasons so recorded to the Commissioner.

(5) The Government shall also publish in the said notice in Form No.1, the date(s) and hours of poll as may be notified by it under section 15 of the Act. "

44. The learned Advocate General submitted that since the constitutional validity of Rule 10 of Election Procedure Rules, 1996 was not questioned before us, we must go by the provision

as it now stands. He submitted that Rule 10 is the source of the power of the State Government to appoint the date for holding elections. He submits that such a date cannot be set by the State Government mechanically but must precede the application of mind. He submits that it is in pursuance of the powers vested in the State Government by this rule that a conscious decision has been taken to defer the elections up to September 2022. He reiterated that monsoons are one of the most relevant considerations; therefore, this Court must not interfere with the State Government's decision to defer the polls. He submitted that the bonafide of the State Government is quite evident because it had agreed to polls being held on 04.06.2022.

45. The constitutional validity of Rule 10 of the Election Procedure Rules, 1996 is not an issue in either of the petitions before us. However, the question is whether the State Government, relying on Section 15 of the Goa Panchayat Raj Act or Rule 10 of the Election Procedure Rules, 1996, can postpone the elections to the Panchayats in defiance of the clear and unambiguous constitutional mandate in Article 243-E? To read into the Act or the rules a power to override a Constitutional mandate would not be the correct interpretation. As long as the Constitutional mandate is to be obeyed, we need not go into the

issue of the constitutional validity of the provisions because such an issue is not pleaded or raised before us. But the invitation to read into the said provisions, the power to act contrary to the constitutional mandate, is something we, as a Constitutional Court, will have to decline.

46. As noted earlier in *Suresh Mahajan* (supra), the Hon'ble Supreme Court has held that the constitutional mandate in Article 243-E is "**inviolable**". Therefore, neither the State Election Commission nor the State Government or, for that matter, the State Legislature, including the Hon'ble Supreme Court, in exercise of powers under Article 142 of the Constitution of India can countenance dispensation to the contrary. These are phrases employed in the Judgment by the Hon'ble Supreme Court to emphasize the mandatory nature of the constitutional provision.

47. Therefore, we think it is too farfetched for the State Government to contend that Section 15 of the Goa Panchayat Raj Act or Rule 10 of the Election Procedure Rules, 1996, empowers it to postpone the Panchayat elections beyond the stipulation in Article 243-E(1) of the Constitution. In effect, the State Government contends that Section 15 of the Goa Panchayat

Raj Act or Rule 10 of the Election Procedure Rules, 1996 empowers it to violate or even defy the constitutional mandate in Article 243-E, even though the Hon'ble Supreme Court has declared that the same is "inviolable." Such contention, with respect, cannot be countenanced, both on principle and precedent.

48. Section 15 of the Goa Panchayat Raj Act or Rule 10 of the Election Procedure Rules, 1996, cannot be interpreted as a charter or a license to the State Government to violate the constitutional mandate in Article 243-E. Besides, as noted earlier, the Hon'ble Supreme Court in paragraph 31 of *Suresh Mahajan* (supra) had made it clear that its directions for holding elections consistent with the constitutional mandate in Article 243-E were not restricted only to the States of Madhya Pradesh and Maharashtra but would apply to all States/Union Territories. Therefore, the respective Election Commissions of all States/Union Territories were also directed to abide by the same without fail to uphold the constitutional mandate.

49. The Hon'ble Supreme Court issued the above directions in *Suresh Mahajan* (supra) on 10.05.2022. The correspondence placed on record by the SEC indicates that the legal position

reflected in *Suresh Mahajan* (supra) was repeatedly brought to the notice of the State Government or its Officers. Particular reference is necessary to the note dated 16.05.2022 forwarded by the State Election Commission to the Government/Government Authorities. This note quotes the order made by the Hon'ble Supreme Court in *Suresh Mahajan* (supra) on 10.05.2022. The order in *Suresh Mahajan* (supra) is again specifically quoted in SEC's communication dated 20.05.2022 addressed to the Director of Panchayats with a copy marked to the Secretary (Panchayats). To the communication dated 20.05.2022, even the copy of the order passed by the Hon'ble Supreme Court in *Suresh Mahajan* (supra) on 10.05.2022 was attached.

50. In the teeth of clear and unambiguous directions issued by the Hon'ble Supreme Court in *Suresh Mahajan* (supra), we fail to understand how the State Government, in the purported exercise of powers under Section 15 of the Goa Panchayat Raj Act or Rule 10 of the Election Procedure Rules, 1996, could have on 26.05.2022 decided to postpone the elections to September 2022, that is, way beyond the period prescribed in the constitutional mandate.

51. The learned Advocate General, however, submitted that State Government's conscious decision to postpone the polls was bonafide. He submitted that State Government had agreed with the SEC about holding the polls on 04.06.2022. He submitted that this establishes that the only reason for deferring the polls was the monsoons.

52. The SEC and the State Government have placed on record the correspondence they exchanged on the issue of elections of Panchayats and compliance with not only the constitutional mandate in Article 243-E but the directions issued by the Hon'ble Supreme Court in *Suresh Mahajan* (supra). From the perusal of such correspondence, we think that if the State Government was indeed serious about holding the polls in terms of Article 243-E, then nothing prevented the State Government from issuing the necessary Notification under Rule 10 of the Election Procedure Rules, 1996 and appointing 04.06.2022 as the date for holding of the polls. The State Government earlier agreed to this date. Rule 10, as it stands, speaks about consultation with SEC and not concurrence.

53. The correspondence on record suggests that even the SEC dragged its feet by seeking unnecessary clarifications from the

State Government. For example, even after the State Government informed the SEC that it was forwarding the latest available data, the SEC sought a certification from the State Government that there was compliance with the triple test directed by the Hon'ble Supreme Court in *Vikas Gawali* (supra). The learned Advocate General pointed out that the SEC even advised the State Government to obtain necessary orders from the appropriate Court of law for deferring the elections.

54. On this last submission of the learned Advocate General, we think such advice was in the context of the precise directions issued by the Hon'ble Supreme Court in *Suresh Mahajan* (supra). The law laid down in paragraph 8, coupled with the directions in paragraph 31 of *Suresh Mahajan* (supra), required the SEC and the State Government to ensure that the elections are held in terms of the constitutional mandate in Article 243-E. Naturally, the SEC did not wish to be seen or perceived as a party to defy the constitutional mandate declared by the Hon'ble Supreme Court as "inviolable". But, to a certain extent, the learned Advocate General is right that even the SEC could have proceeded with the polls on the agreed date of 04.06.2022.

55. *Kenneth Silveira* (supra) does not and could not have taken the view contrary to the law laid down by the Hon'ble Supreme Court in *Kishansing Tomar* (supra), which was explicitly quoted therein. Besides, the issue involved in the said matter was the holding of elections while the COVID-19 pandemic was raging. This Court held that the holding of timely elections in a free and fair manner is no doubt the basic feature not only of a democracy but of our Constitution as well. However, a free and fair election postulates the existence of circumstances in which the voters are in a position to exercise their franchise in a free and fair manner unhindered by a looming pandemic, not to mention the several directives and advisories to even refrain from moving outdoors, unless, it is really necessary. Ultimately, democracy is a Government of the people, by the people, and for the people. Therefore, even in compliance with the democratic principle of holding timely elections, the lives of the voters cannot be put at stake.

56. This Court further held that the SEC, in such a situation, will have to weigh the competing demands of holding a timely, free, and fair election with the demands of health and medical security of its people. This Court held that amidst the rampage of this virus, Constitutional Court cannot stand still. This Court,

whilst appreciating and recognizing that holding or not holding elections was primarily a matter for the SEC to decide or take the first call, such call has to be considered. The decision-making process leading to this call must embrace relevant considerations and eschew irrelevant ones.

57. This Court also held that there was absolutely nothing wrong with the State Government and SEC consulting one another. However, considering the constitutional position of the SEC, independent application of mind by the SEC was imperative. To begin with, the SEC had to decide the matter on the poll date, and this was not a matter which the SEC could simply go by the decision of the State Government. Finally, this Court neither approved nor disapproved the proposal for postponement of elections but merely directed the SEC to decide the matter. The SEC finally decided on the issue of postponement.

58. *Kenneth Silveira* (supra), far from assisting the learned Advocate General's contention, establishes that primacy has to be accorded to the decision of the SEC, considering its independent constitutional position. In the present case, the SEC has no problems holding the elections in monsoons. Therefore, based

upon its own interpretation of Rule 10 of Election Procedure Rules, 1996, the State Government cannot insist on the postponement of the elections, thereby defying the constitutional mandate in Article 243-E that the Hon'ble Supreme Court has described as "inviolable".

59. In *State of Goa V/s. Fouziya Imtiaz Shaikh*⁹ the Hon'ble Supreme Court held that under Article 243-ZA(1), the SEC is in overall charge of the superintendence, direction and control of the preparation of electoral rolls, and the conduct of all municipal elections. If there is a constitutional or statutory infraction by any authority including the State Government either before or during the election process, the SEC by virtue of its power under Article 243-ZA(1) can set right such infraction. For this purpose, it can direct the State Government or other authority to follow the Constitution or legislative enactment or direct such authority to correct an order which infracts the constitutional or statutory mandate. For this purpose, it can also approach a writ court to issue necessary directions in this behalf. It is entirely upto the SEC to set the election process in motion or, in cases where a constitutional or statutory provision is not followed or infringed, to postpone the election process until such illegal action is remedied. This the SEC will do taking into account the

⁹ (2021) 8 SCC 401

constitutional mandate of holding elections before the term of a municipality or municipal council is over. In extraordinary cases, the SEC may conduct elections after such term is over, only for good reason.

60. *Fouziya Imtiaz Shaikh* (supra) was incidentally a matter in which the State of Goa had given its Law Secretary the charge of constitutional position of SEC. The Hon'ble Supreme Court found this to be the most disturbing feature of this case and held that this would amount to subversion of the constitutional mandate contained in Article 243-K. The Hon'ble Supreme Court reiterated that the State Election Commissioner has to be a person who is independent of the State Government as he is an important constitutional functionary who is to oversee the entire election process in the State qua Panchayats and municipalities. The Hon'ble Supreme Court issued directions not only to the State of Goa but to all the States to ensure that only independent persons are appointed to this high constitutional office of SEC.

61. Mr. Nadkarni, Mr. Kantak, and Mr. Lawande are justified in contending that the monsoons, a yearly feature in Goa, cannot be elevated to the level of "a natural calamity" referred to in paragraph 21 of the *Kishansing Tomar* (supra). Merely because

there may have been some flash floods or even cyclones in the past, monsoons generally cannot afford an excuse for defying the constitutional mandate in Article 243-E. The material, mainly in the form of some press reports produced by the State Government, is hardly sufficient to excuse compliance with the constitutional mandate. The reason submitted on this occasion is not qualitatively different from the reasons offered by the State Government on the previous three occasions when citizens were forced to petition this Court for a writ of mandamus to direct the authorities to hold elections to local bodies.

62. The Director of Panchayats & Ex-officio Joint Secretary to the Government of Goa goes to the extent of submitting that "*on account of the rains, there are chances of the paper being spoilt or the ink being smudged, etc. when the voter handles the ballot paper while voting in the election.*" With respect to the Director, we think that this trivializes the constitutional mandate described by the Hon'ble Supreme Court as inviolable.

63. Article 243-K of the Constitution vests the superintendence, direction, and control of the preparation of the electoral rolls for, and the conduct of, all elections to the Panchayats in the State Election Commission. Even the provisions

of the Goa Panchayat Raj Act, including Rule 10 of the Election Procedure Rules, 1996, provide that practically all steps except perhaps the issuance of the first Notification appointing the date for holding the election are to be taken by the SEC. The SEC is on record, not just through the statements of its Counsel, but through the affidavit filed by its Secretary, that it can hold the elections within 30 days from the State Government notifying the date in terms of Rule 10 of the Election Procedure Rules, 1996.

64. The orders dated 17.05.2022 and 18.05.2022 in *Suresh Mahajan* (supra) do not dilute the law so emphatically declared on 10.05.2022. Besides, the SEC and not the State Government have been empowered to modulate the election schedule if the situation so demands. Moreover, even the two orders require the SEC to forthwith or at least within one week issue the necessary Notifications for holding of elections. Therefore, based on the two orders, there is no case to postpone the elections to September 2022.

65. If, after issuing the election schedule at the earliest, the SEC finds any circumstances as described in paragraph 21 of *Kishansing Tomar* (supra), then the SEC is granted liberty to

apply. However, for reasons discussed earlier, we clarify that the SEC must independently assess the situation in this regard.

66. The directions in paragraph 102 of *Dnyaneshwar Narso Naik* (supra) were made when the State Government had the powers to notify reservations in the ward and rotations of the wards. We found that the reservation/rotation Notifications would invariably be issued simultaneously with or close to the issue of Notification under Rule 10(1) of the Election Procedure Rules, 1996. This would preempt the Court from exercising powers of judicial review because the Courts are reluctant to exercise such powers once the election process commences. Besides, neither the notings nor the affidavit of the State Government whispers much less reasons that the State Government did not issue the Notification under Rule 10 of the Election Procedure Rules, 1996 because the SEC did not issue Notification on reservations/rotations.

67. Incidentally, in *Dnyaneshwar Narso Naik* (supra), we had directed the State Government to decide on the vesting of powers of delimitation of constituencies, reservations, and rotations with the SEC within three months. Based on this direction, the State Government did amend the provisions of the Panchayat Raj Act

to vest such powers with the SEC. Even in *Dnyaneshwar Narso Naik* (supra), we were constrained to direct the State Government to render all possible assistance to the SEC so that the SEC is in a position to discharge its constitutional obligations to conduct elections freely, fairly, and within the prescribed period.

68. The Secretary to the Commission has filed the affidavit on behalf of the SEC. Nevertheless, the same is an affidavit on behalf of SEC, a constitutional authority as explained by the Hon'ble Supreme Court in *Kishansing Tomar* (supra). Therefore, though the affidavit may not be very elaborate, the criticism leveled by the Director of Panchayats in paragraph 29 of her affidavit is not justified. Indeed, there was no suppression or attempt to mislead this Court, as alleged.

69. In any case, with due respect to the Director of Panchayats, we do not think it augurs well for the State Government to make such allegations against a constitutional authority like the SEC. The correspondence placed on record by the Director suggests that the SEC was making repeated efforts to persuade the State Government to issue Notification under Rule 10 of the Election Procedure Rules, 1996, without which the SEC felt handicapped in completing the elections consistent with the constitutional mandate in Article 243-E.

70. The Director of Panchayats, in her affidavit, has raised three preliminary objections. Firstly, she has objected to the maintainability of the petitions for want of demand for justice by the petitioners. Secondly, she submitted that since the elections of 185 Panchayats were being deferred on account of common reasons, there cannot be a separate order concerning only one Panchayat. Thirdly, she has contended that there are no specific pleadings or grounds to challenge the Notification appointing the Administrator.

71. The intervenors in Writ Petition No.238 of 2022, in which the Director of Panchayats has filed her affidavit by their notice dated 14.06.2022, have demanded justice after inviting the authorities' attention to the ruling in *Kishansing Tomar* (supra) and *Rohan Shiroadkar* (supra). Even otherwise, we find that the respondents have acted not only in breach of the constitutional mandate in Article 243-E but they have also not followed the direction in *Suresh Mahajan* (supra).

72. The second objection concerns the absence of relief of holding elections in 185 Panchayats apart from the Sucorro Panchayat. Now, if the common reason for postponing the polls

to all such Panchayats and thereby defying the constitutional mandate under Article 243-E is found to be unsustainable, the Constitutional Court will have to order the respondents to hold elections for all 186 Panchayats whose terms have since expired or are about to expire. Even the Counsel on either side were heard on that premise.

73. In paragraph 18 of *Suresh Mahajan* (supra), the Hon'ble Supreme Court has held that the declaration of election program cannot be delayed by the Election Commission for it would inevitably create a hiatus situation upon expiry of five years term of the outgoing elected body. Such an eventuality needs to be eschewed by all the duty holders. *A priori*, it is not only a constitutional obligation of the State Election Commission but also of the State Government, including the *Constitutional Courts*. Article 144 of the Constitution mandates that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. The second preliminary objection is also adequately answered.

74. Finally, we find that the pleadings and grounds are sufficient to quash the appointment of the Administrator and the deferring of the elections contrary to the constitutional mandate in Article 243-E. However, now that we propose to issue a

mandamus to hold elections at the earliest, the appointments of Administrators need not be quashed. The Administrators must, however, take no policy decisions or expend Panchayat funds other than for routine matters.

75. The SEC has already made it clear that it has no problems for holding the elections and that it had taken the necessary steps for complying with the constitutional mandate. The SEC's affidavit states that the election process can be completed within 30 days once the poll date is finalized under Rule 10 of the Election Procedure Rules, 1996.

76. For all the above reasons, we quash the State Government's decision to postpone the elections and direct the State Government to issue a Notification under Rule 10 of the Election Procedure Rules, 1996 appointing the date for holding of elections to 186 Panchayats in the State of Goa, whose terms have expired or due to expire shortly, within three days from today. The concerned officers of the State Government must confer with the SEC and appoint the precise date for holding elections. However, the State Government and the SEC must ensure that the elections are held and completed no later than 45 days from today. A writ of mandamus is issued in the above terms.

77. The rule is made absolute in the above terms. There shall be no orders for costs.

78. Both the Writ Petitions and the application for intervention are disposed of.

R.N. LADDHA, J.

M. S. SONAK, J.

NITI K
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