

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF NOVEMBER, 2020



PRESENT

THE HON'BLE SHRI. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE SHRI. JUSTICE ASHOK S. KINAGI

WRIT PETITION NO.7987 OF 2020 (LB-ELE-PIL)

Between:

- 1 . SRI K.C. KONDAIAH
S/O SRI K V THIRUPALAPPA
AGED 69 YEARS,
THE EMBASSY, FLAT NO. 121
15, ALI ASKER ROAD
BANGALORE - 560 052
- 2 . SRI D.R. PATIL
S/O SRI LATE RANGANAGOWDA PATIL
AGED 74 YEARS
HULKOTI VILLAGE, GADAG TAULK
GADAG DISTRICT
- 3 . SRI RANGASWAMY M. A.,
S/O LATE ANDANI GOWDA
AGED 42 YEARS
JAMBUR VILLAGE, NUGGEHALI HOBLI
CHENNARAYAPATNA TALUK
HASSAN - 573 131
- 4 . SRI K. SRINIVASAGOWDA
S/O A. M. KRISHNAPPA
AGED 50 YEARS
VIJAYAPURA MAIN ROAD

BUDIGERE P.O.,
 CHANNARAYAPATNA HOBLI
 DEVANAHALLI TALUK
 BANGALORE RURAL - 562 165

- 5 . SRI H. M. SHIVARAMU
 S/O M. C. MADIAH
 AGED 56 YEARS
 HANAKADABURU VILLAGE
 KODIHALLI HOBLI
 KANAKAPURA TALUK
 RAMANAGARA DISTRICT - 562 119

...PETITIONERS

(BY PROF. RAVIVARMA KUMAR
 SENIOR COUNSEL FOR
 Ms. G. SHARADA BAI-ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
 REPRESENTED BY ITS CHIEF SECRETARY
 VIDHANA SOUDHA
 BANGALORE - 560 001
- 2 . THE STATE ELECTION COMMISSION
 REPRESENTED BY ITS COMMISSIONER
 NO.8, 1ST FLOOR
 K.S.C.M.F. BUILDING ANNEXE
 CUNNINGHAM ROAD
 BENGALURU - 560 052
- 3 . THE DEPUTY COMMISSIONER
 BANGALORE URBAN
 BANGALORE - 560 001
- 4 . THE DEPUTY COMMISSIONER
 BANGALORE RURAL
 DODDABALLAPURA ROAD

DEVANAHALLI TALUK
BANGALORE RURAL DISTRICT - 562 110

5. THE DEPUTY COMMISSIONER
BAGALKOTE DISTRICT
BAGALKOTE - 587 103
6. THE DEPUTY COMMISSIONER
BIDAR DISTRICT
BIDAR - 585 401
7. THE DEPUTY COMMISSIONER
BALLARY DISTRICT
BALLRY - 583 101
8. THE DEPUTY COMMISSIONER
BELGAUM DISTRICT
BELGAUM - 590 010
9. THE DEPUTY COMMISSIONER
BIJAPUR DISTRICT
BIJAPUR - 586 101
10. THE DEPUTY COMMISSIONER
CHAMARA JANAGARA DISTRICT
CHAMARAJANAGARA - 571 313
11. THE DEPUTY COMMISSIONER
CHIKKABALLAPURA DISTRICT
CHIKKABALLAPUR - 562 101
12. THE DEPUTY COMMISSIONER
CHIKKAMAGALURU DISTRICT
CHIKKAMAGALURU - 577 101
13. THE DEPUTY COMMISSIONER
CHITRADURGA DISTRICT
CHITRADURGA - 577 501

- 14 . THE DEPUTY COMMISSIONER
DAVANGERE DISTRICT
DAVANAGERE - 577 502
- 15 . THE DEPUTY COMMISSIONER
DHARWAD DISTRICT
DHARWAD - 580 001
- 16 . THE DEPUTY COMMISSIONER
DAKSHINA KANNADA DISTRICT
DAKSHINA KANNADA - 575 001
- 17 . THE DEPUTY COMMISSIONER
GADAG DISTRICT
GADAG - 582 101
- 18 . THE DEPUTY COMMISSIONER
GULBARGA DISTRICT
GULBARGA - 585 101
- 19 . THE DEPUTY COMMISSIONER
HASSAN DISTRICT
HASSAN - 573 201
- 20 . THE DEPUTY COMMISSIONER
HAVERI DISTRICT
HAVERI - 581 110
- 21 . THE DEPUTY COMMISSIONER
KOLAR DISTRICT
KOLAR - 563 101
- 22 . THE DEPUTY COMMISSIONER
KODAGU DISTRICT
KODAGU - 571 201
- 23 . THE DEPUTY COMMISSIONER
KOPPAL DISTRICT
KOPPAL - 583 231

- 24 . THE DEPUTY COMMISSIONER
MANDYA DISTRICT
MANDYA - 571 401
- 25 . THE DEPUTY COMMISSIONER
MYSORE DISTRICT
MYSORE - 570 001
- 26 . THE DEPUTY COMMISSIONER
RAMNAGARA DISTRICT
RAMNAGARA - 562 159
- 27 . THE DEPUTY COMMISSIONER
RAICHUR DISTRICT, RAICHUR - 584 101
- 28 . THE DEPUTY COMMISSIONER
SHIMOGA DISTRICT, SHIMOGA - 577 201
- 29 . THE DEPUTY COMMISSIONER
TUMKUR DISTRICT, TUMKUR - 572 101
- 30 . THE DEPUTY COMMISSIONER
UTTARA KANNADA DISTRICT
UTTARA KANNADA - 581 301
- 31 . THE DEPUTY COMMISSIONER
UDUPI DISTRICT, UDUPI - 576 101
- 32 . THE DEPUTY COMMISSIONER
YADGIRI DISTRICT, YADGIRI - 585 201.

RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI – ADVOCATE
GENERAL A/W SHRI VIJAYAKUMAR A. PATIL
– AGA FOR RESPONDENT NOS.1, 3 TO 32;
SHRI K.N. PHANINDRA – SENIOR COUNSEL
FOR SMT. VAISHALI HEGDE-ADVOCATE FOR
RESPONDENT NO.2)

THIS WRIT PETITION IS FILED UNDER ARTICLES-226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 28.05.2020 ISSUED BY RESPONDENT NO.2 AT ANNEXURE-A AS BEING ILLEGAL, VOID, INOPERATIVE AND UNCONSTITUTIONAL. DIRECT THE RESPONDENT NO.2 TO FULFILL THE CONSTITUTIONAL MANDATE OF CONDUCTING FREE, FAIR AND TIMELY ELECTIONS TO THE 6015 GRAMA PANCHAYATS IN THE STATE BEFORE THE EXPIRY OF THE FIVE YEAR TERM OF THE CURRENTLY EXISTING PANCHAYATS, AS STIPULATED IN ARTICLE 243E (3) (A) OF THE CONSTITUTION OF INDIA AND GRANT AN INTERIM ORDER TO STAY THE OPERATION OF THE IMPUGNED ORDER DATED 28.05.2020 ISSUED BY RESPONDENT NO.2 AT ANNEXURE-A AND ALL ACTIONS PURSUANT THERETO. STAYING ANY EXERCISE OF OR RELATED TO APPOINTING AN ADMINISTRATIVE COMMITTEE UNDER SECTION 8 OF THE KARNATAKA GRAM SWARAJ AND PANCHAYAT RAJ ACT, 1993. DIRECT THE RESPONDENT NO.2 TO MAKE ANNOUNCEMENTS AS TO THE RESERVATION OF SEATS AND THE SCHEDULE OF ELECTIONS TO THE 6015 GRAMA PANCHAYATS IN THE STATE, IN ACCORDANCE WITH THE TIMELINE SET OUT IN SECTION 308-AA OF THE KARNATAKA GRAM SWARAJ AND PANCHAYAT RAJ ACT, 1993. DIRECT RESPONDENT NO.2 TO ISSUE NOTIFICATION OF CALENDAR OF EVENTS FOR THE ELECTIONS TO THE MEMBERS OF THE 6015 GRAMA PANCHAYATS IN THE STATE IN ACCORDANCE WITH SECTION 308-AA AND TO BRING INTO FORCE THE CODE OF CONDUCT IN ACCORDANCE WITH SECTION 308-AC (A) OF THE KARNATAKA GRAM SWARAJ AND PANCHAYAT RAJ ACT. DIRECT THE RESPONDENT NO.1 TO PROVIDE ALL NECESSARY COOPERATION AND ASSISTANCE TO THE STATE ELECTION COMMISSION, I.E. RESPONDENT NO.2 TO ENABLE THE COMMISSION TO FULFILL THE CONSTITUTIONAL MANDATE OF HOLDING TIMELY ELECTIONS TO THE 6015 GRAMA PANCHAYATS IN THE STATE, INCLUDING BUT NOT LIMITED TO MAKING AVAILABLE ALL NECESSARY STAFF/PERSONNEL AS MAY BE NECESSARY FOR RESPONDENT NO.2 TO CONDUCT GRAMA PANCHAYAT ELECTIONS, ACCORDING TO

ARTICLE 243K (3) OF THE CONSTITUTION READ WITH SECTIONS 308 (3) AND 308A (1) OF THE KARNATAKA GRAM SWARAJ AND PANCHAYAT RAJ ACT, 1993.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **THE CHIEF JUSTICE** PRONOUNCED THE FOLLOWING:

ORDER

By this petition under Article 226 of the Constitution of India, the petitioners have sought a writ of mandamus for enjoining the second respondent – the State Election Commission (for short 'SEC') to conduct elections to 6015 Grama Panchayats in the State of Karnataka before the expiry of five years term, as provided in clause (3) (a) of Article 243E of the Constitution of India.

2. It is pointed out in the petition that the elections of 5844 Gram Panchayats were held on 29th May 2015 and 2nd June 2015 respectively. It is pointed out that by the end of October 2020, the term of all Grama Panchayats except 23 Grama Panchayats ended. The term of one Gram Panchayat will end in November 2020 and the term of 22 remaining Grama Panchayats will end in December, 2020. Reliance has been placed in the petition on Section 308-AA of the Karnataka Gram

Swaraj and Panchayat Raj Act, 1993 (for short 'the said Act of 1993'). It is submitted that as per the provisions of Section 308-AA, the SEC was under an obligation to complete the elections before the expiry of the current term of all the Gram Panchayats.

3. Apart from claiming a writ of mandamus as referred above, the challenge is to an order made on 28th May, 2020 (Annexure-A) passed by the SEC, temporarily postponing the elections to all the Gram Panchayats in the State, owing to an extraordinary situation created by the spread of COVID – 19.

4. The statement of objections was filed by the SEC on 30th June, 2020. The SEC heavily relied upon what is held by the Apex Court in the case of ***Kishansing Tomar –vs- Municipal Corporation of the city of Ahmedabad and others***¹. It was submitted that the Apex Court has held that certain man-made calamities or natural calamities which could prevent the authorities from holding elections can be treated as exceptional circumstances. It was pleaded that spread of COVID – 19 has created such an extraordinary circumstances to postpone the elections. It was however clarified that there is no intention on

¹ (2006) 8 SCC 352

the part of the SEC to indefinitely postpone the elections. In the statement of objections, a reference is made to an order dated 17th June, 2020 passed in this petition by which, direction was issued to the SEC to reconsider its decision dated 28th May, 2020, in the light of the observations made in paragraph five of the said Order. In paragraph 48 of the statement of objections, the SEC has stated that in compliance with the said order dated 17th June, 2020, consultations with the Deputy Commissioners of various districts in the State were held through video conferencing on 24th June, 2020. Various difficulties expressed by the Deputy Commissioners of different districts have been stated in paragraph 48. It is stated that all the Deputy Commissioners requested the SEC to hold the elections in October and November 2020, after reviewing the situation. It is pointed out that the Election Commission of India has postponed holding of elections to four vacant seats of the Legislative Council of Karnataka, due to pandemic COVID- 19. Additional statement of objections has been filed by the SEC on 25th August 2020. It is stated therein that reservation notifications in relation to twenty-seven districts have been published on 24th August 2020 and in respect of remaining three districts, the

same will be published shortly. It is further stated that publication of final voters' list of all the Grama Panchayats in the State is expected to be done by 31st August 2020. Relying on the provisions of Section 308-AA of the said Act of 1993, it was stated that the calendar of events can be announced only after expiry of forty-five days from the date of publication of voters' list. It is pointed out that total amount of rupees two hundred twenty-five crores will be required for holding the elections and accordingly, a proposal has been submitted to the State Government. It is further stated that the elections will be held in two to three phases to 5800 Grama Panchayats covering 226 Taluks.

5. A compliance report was filed by the SEC on 14th September 2020 stating that final voters' list for all the 5800 Gram Panchayats have been finalized and the same have been published on 31st August, 2020. Reliance is placed on Standard Operating Procedure (for short 'SOP') for conducting general election to the Local Bodies issued on 14th September, 2020 by the SEC. It was stated that the SEC is committed to take steps

for announcing the schedule of the elections to 5800 Grama Panchayats.

6. A memo has been filed by the State Government on 14th September, 2020 in which it is stated that the Finance Department has agreed to provide funds to the extent of Rs.1.25 crores for conducting the elections. A further status report has been filed on 8th October 2020 by the SEC wherein a reference was made to the letter dated 3rd October 2020 addressed by the State Government, calling upon the SEC to postpone the elections of Panchayats in view of spread of COVID – 19. A sealed cover was produced by the SEC along with a memo containing a copy of the tentative schedule/ dates of elections to be held in two phases. By the said memo, the SEC sought disposal of the petition. Another memo was filed on 14th October 2020 by the SEC enclosing therewith the letter dated 13th October 2020 sent by the SEC to the State Government, wherein the SEC has taken a clear stand that it is necessary to complete the Gram Panchayat elections in the year 2020.

7. The State Government has filed an affidavit dated 20th October, 2020 sworn by Dr. M.R. Ekanthappa, Director, Rural

Development and Panchayat Raj Department. In the said affidavit, the State Government pointed out that there will be approximately 2,95,64,498 voters in the Grama Panchayat elections and the number of candidates may be around 2,50,000. Apprehension is expressed by the State Government that there is a likelihood of candidates and voters not strictly following the social distancing norms and failing to comply with the other norms in the SOP. It is contended that it is the responsibility of the State Government to keep in mind the public safety and health issue. It is stated that though the State Government is not contending that there should be an indefinite postponement of elections, the same need to be postponed in the light of the grave circumstances. There is a rejoinder/counter affidavit filed by the petitioners on 22nd October, 2020 to the stand taken by the State Government in its affidavit.

8. Sri Ravivarma Kumar, the learned Senior Counsel appearing for the petitioners has referred to 73rd Constitutional Amendment. He pointed out that the entire object of the amendment was to ensure that the State Government should not interfere with the local self-governments and Panchayats.

He invited our attention to Article 243K of the constitution of India which lays down that the SEC is vested with the powers of superintendence, direction, control and preparation of electoral rolls as well as the conduct of elections of the Panchayats. He also invited our attention to sub-section (1) of Section 308 of the said Act of 1993 which is consistent with the provisions of Article 243K of the Constitution of India. He invited our attention to clause (3) of Article 243E which enjoins the SEC to ensure that an election to constitute a Panchayat shall be completed before the expiry of the term of five years. He submitted that five years term of all the Grama Panchayat, except few has already ended. He relied upon a decision of the Division Bench of this Court in the case of ***Professor B.K. Chandrashekar –vs- State of Karnataka and another***². The learned Senior Counsel submitted that in the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983, there was a provision regarding extending the term of Panchayats, but after repeal of the said Act of 1993, such provision was not incorporated enabling the SEC to conduct elections before the expiry of the term of the

²ILR 1999 KAR 2513

existing Panchayats. He submitted that though the SEC is willing to hold elections, the State Government does not want the elections to be conducted. He submitted that there are no exceptional circumstances inexistence which require the elections to be postponed. He urged that there was no hurdles for the SEC to conduct the elections in phased manner.

9. Shri K.N.Phanindra, the learned Senior Counsel appearing for the SEC submitted that fixing of schedule of elections and issuance of calendar of events is within the exclusive domain of the SEC and it is an independent power of the SEC. He submitted that when it comes to elections to Panchayats and Municipal bodies, the SEC enjoins the same status as that of the Election Commission of India. He pointed out the steps taken by the SEC in this regard and submitted that tentative schedule of election has already been produced in a sealed cover along with the memo. He submitted that on 25th June, 2020, the SEC has already held consultation meeting with all the Deputy Commissioners and Police Authorities of the districts through video conferencing. He pointed out that in the meeting, the majority of the Deputy Commissioners were of the

view that elections should be held during November or December 2020. He submitted that the SEC has taken a decision to hold elections of Gram Panchayats and it is necessary to conduct the elections only in the year 2020, inasmuch as, several other elections are due to be conducted in the year 2021. He submitted that in the State of Karnataka, lockdown has been completely relaxed and all normal activities are permitted barring opening of the Schools and Colleges. He submitted that the elections can be held in a phased wise.

10. Shri. Prabhuling K. Navadgi, the learned Advocate General urged that the State Government does not want to come in the way of holding elections. However, he pointed out certain factual aspects regarding spread of pandemic COVID - 19 all over the State of Karnataka. He submitted that the pandemic COVID -19 situation has worsened in the State of Karnataka and hence, the concept of compelling state interest and public health will always prevail over other circumstances. In support of his submissions, he relied upon a decision of the Apex Court in the case of ***K.S. Puttaswamy and another –vs-***

the Union of India and others³. He submitted that in May 2020, the SEC was of the opinion that the elections cannot be held due to COVID – 19 situation. Now, the SEC wants to conduct the elections despite the fact that COVID -19 situation has worsened. He submitted that though the SEC is an independent and autonomous authority, considering the present situation created by pandemic COVID – 19, consultation with the State Government is must, before taking a decision to hold elections of Grama Panchayats.

11. He relied upon evolution concept of transformative constitutionalism starting with a decision of the Apex Court in the case of ***State (NCT of Delhi) –vs- Union of India***⁴. He also relied upon a decision of the Apex Court in the matter of ***Navtej Singh Johar –vs- Union of India***⁵. He would therefore, urge that this Court is required to issue a direction to the SEC to consult the State Government before taking a decision to conduct the elections and before announcing the dates of elections thereafter.

³(2017) 10 SCC 1

⁴(2018) 8 SCC 501

⁵(2018) 10 SCC 1

12. We have carefully considered the submissions made across the Bar. Part-IX of the Constitution of India was incorporated by the Constitution (Seventy-third Amendment) Act, 1992 with effect from 24th April 1993. Part-IX deals with the 'Panchayat', as defined in clause (d) of Article 243 of the Constitution of India. There is no dispute that 'Grama Panchayat' within the meaning of the said Act of 1993 is a 'Panchayat' within the meaning of clause (d) of Article 243 read with Article 243B. What is material for our consideration is Article 243E which reads thus:

"243E.Duration of Panchayats, etc.-

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

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

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

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

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

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.”

(emphasis added)

The constitutional mandate laid down in clause (3) of Article 243E is that election to constitute a Panchayat must be completed before the expiry of the term of the Panchayat. There are no exceptions carved out to clause (3) of Article 243E.

13. Article 243K which provides for constitution of the SEC reads thus:

“243K. Elections to the Panchayats. -(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

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

(emphasis added)

14. At this juncture, it is necessary to make a reference to sub-section (1) of Section 308 of the said Act of 1993 which reads thus:

“308. State Election Commission.- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Grama Panchayat, Taluk Panchayat or Zilla Panchayat and the power of delimitation of territorial constituencies and enforcement of the code of conduct in respect such elections shall be vested in the State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) The conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office

except in like manner and on the like grounds as a judge of a High Court and conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(2-A) The commissioner may resign his office by writing under his hand and addressed to the Governor, but he shall continue in the office until his resignation is accepted by the Governor.

(2-B) A casual vacancy created by the resignation of the commissioner under sub-section (5) or for any other reason may be filled by fresh appointment:

Provided that such appointment shall be made as soon as may be, within one month from the date of the vacancy.

(2-C) The Government shall prescribe the financial powers of the State Election Commissioner and allocate funds commensurate with the functions and responsibilities, for incurring establishment and election related expenditure ensuring flexibility for getting procurements needed for conduct of elections and also freedom to divert funds between different heads of account.

(2-D) The State Election Commission shall determine its own procedure.

(3) The Governor shall when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission under sub-section (1).

Provided that the State Election Commissioner may also draft employees of state undertakings in the public sector for conducting elections to panchayats and to exclude any class of public servants including the local police from being employed in election duties relating to Panchayats.”

15. Hence, the legal position appears to be crystal clear that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats absolutely vests in the SEC. The State Government has no role to play in conducting elections of the Panchayats. Sub-section (1) of Section 308 of the said Act of 1993 is consistent with clause (1) of Article 243K. Even if government staff is required to be requisitioned by the SEC for holding of elections, the requisition has to be submitted by the SEC to the

Hon'ble Governor of the State and not to the State Government. Article 243K (3) leaves no choice to the Hon'ble Governor but to make available the required staff when a request comes from the SEC. Sub-Section 2C of Section 308 of the said Act of 1993 makes obligatory for the State Government to allocate funds to the SEC for running the establishment and for conduct of elections. Freedom to divert funds allocated by the State Government is conferred on the SEC. By invoking the concept of transformative constitutionalism, a role cannot be created for the State Government in conduct of the elections of Panchayat as the said concept cannot be invoked to defeat the constitutional provisions of conferring independence and autonomy on the SECs. The control of the State cannot be introduced by a backdoor method which will set at naught the very object of the seventy-third constitutional amendment.

16. Section 308AA of the said Act 1993 which is relevant reads thus:

“308-AA. Schedule of elections.- The State Election Commission shall complete the election process before the expiry of the term of the panchayat and shall announce the reservation of

seats and the schedule of elections, not less than forty five days before the issue of notification of calendar of events.”

17. Hence, on plain reading of the above provisions of the Constitution of India as well as the said Act of 1993, the following legal position emerges:

- i) The entire control over the elections of Panchayats absolutely vests in the SEC and the State Government has absolutely no role to play in the elections of Panchayats;
- ii) It is the constitutional duty of the SEC to ensure that elections for constituting the Grama Panchayats are completed before the expiry of the term of such Grama Panchayats;
- iii) As and when called upon by the SEC, the Hon'ble Governor of a State is under a mandate to make available to the SEC such staff, as may be necessary for holding/conduct of elections of Panchayats;

- iv) Thus, if the SEC wants requisite staff of the State Government for conducting the elections, the SEC has to request the Hon'ble Governor of the State and not the State Government, for providing the staff; and
- v) Under sub-section 2C of Section 308 of the said Act of 1993, it is the obligation of the State Government to provide necessary funds to the State Election Commissioner for conduct of the Elections.

18. On careful perusal of the provisions of Part IX of the Constitution and the said Act of 1993, the State Government has absolutely no role to play in deciding the schedule of Grama Panchayat elections, conduct of elections, counting and declaration of results. On this aspect, we may make a reference to a decision of the Constitutional Bench of the Apex Court in the case of ***Kishansing Tomar*** (supra). Part IX-A of the Constitution contains provisions regarding Municipalities. Article 243U deals with duration of Municipalities which is *pari materia* with Article 243E which applies to panchayats. The

Apex Court dealt with a case where a writ petition was filed in the High Court of Gujarat seeking a writ of mandamus directing the SEC to hold elections of a Municipal Corporation before the expiry of its term. The Apex Court considered the scheme of Chapter IX-A which deals with the Municipalities. The Apex Court dealt with Article 243-ZA which is *pari materia* with Article 243K. In paragraph 12, the Apex Court noted the objects and reasons for introducing constitutional amendment bill of the Constitution (Seventy-Fourth) Amendment Act, 1992, by which, part IX-A was incorporated in the constitution. Paragraphs 12 to 14 are relevant which read thus:

“12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Constitution (Seventy-fourth) Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. These views were expressed

by the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections. In the Statement of Objects and Reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated:

“In many States, local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-government.

Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for:

(i) putting on a firmer footing the relationship between the State Government and the urban local bodies with respect to:

(a) the functions and taxation powers, and

- (b) arrangements for revenue sharing.
- (ii) ensuring regular conduct of elections,
- (iii) ensuring timely elections in the case of supersession; and
- (iv) providing adequate representation for the weaker sections like the Scheduled Castes, Scheduled Tribes and women.

Accordingly, it has been proposed to add a new part relating to the urban local bodies in the Constitution to provide for—

(f) fixed tenure of 5 years for the municipality and re-election within a period of six months of its dissolution.”

13. The effect of Article 243-U of the Constitution is to be appreciated in the above background. Under this article, the duration of the municipality is fixed for a term of five years and it is stated that every municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243-U states that election to constitute a municipality shall be completed—(a) before the expiry of its duration specified in clause (1), or (b) before the expiration of a period of six months from the date of its dissolution. **Therefore, the constitutional mandate**

is that election to a municipality shall be completed before the expiry of the five years' period stipulated in clause (1) of Article 243-U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner. A proviso is added to sub-clause (3) of Article 243-U that in case of dissolution, the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the municipality for such period. It is also specified in clause (4) of Article 243-U that a municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued under clause (1) had it not been so dissolved.

14. So, in any case, the duration of the municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new municipality is constituted in time and elections to the municipality are conducted before the expiry of

its duration of five years as specified in clause (1) of Article 243-U.”

(emphasis supplied)

19. Thereafter, the Apex Court dealt with the contention raised by the SEC to the effect that it was not in a position to conduct the election and it was not in a position to apply Article 243U in conducting elections strict sense. Thereafter, the Apex Court referred to a decision of the Constitution Bench in Special Reference No.1 of 2002⁶. The Apex Court in the reference held that the impossibility of holding the election is not a factor against the Election Commission. The maxim of law *impotentia excusat legem* is intimately connected with another maxim of law *lex non cogit ad impossibilia*. In paragraphs 19, 21 and 22 of the decision ***Kishansingh Tomar*** (supra), after referring to the aforesaid decision of the Constitution Bench, the Apex Court held thus:

19. From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission

⁶ (2002) 8 SCC 237

shall try to complete the election before the expiration of the duration of five years' period as stipulated in clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. **In other words, the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.**

21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the municipality, but they are exceptional circumstances and under no (*sic* other) circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the municipality. Going by the provisions contained in Article 243-U, it is clear

that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects. It is only when the municipality is dissolved for any other reason and the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the municipality for such period.

22. In our opinion, the entire provision in the Constitution was inserted to see that there should not be any delay in the constitution of the new municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. **In this direction, it is necessary for all the State Governments to recognise the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for Parliament and the State Legislatures. In fact, in the domain of elections to the panchayats and the municipal bodies under Part IX and Part IX-A for the conduct of**

the elections to these bodies they enjoy the same status as the Election Commission of India.

(emphasis supplied)

20. Further, in paragraph 25, the Apex Court specifically held that the powers of the SEC in respect of conduct of elections is no less than that of the Election Commission of India. In paragraphs 25 to 28 the Apex Court held thus:

25. From a reading of the said provisions it is clear that the powers of the State Election Commission in respect of *conduct of elections* is no less than that of the Election Commission of India in their respective domains. These powers are, of course, subject to the law made by Parliament or by the State Legislatures, provided the same do not encroach upon the plenary powers of the said Election Commissions.

26. The State Election Commissions are to function independent of the State Governments concerned 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.

27. Article 243-K(3) also recognises the independent status of the State Election Commission. It states that upon a request made in that behalf the Governor shall make available to the State Election Commission “such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1)”. It is accordingly to be noted that in the matter of the conduct of elections, the Government concerned shall have to render full assistance and cooperation to the State Election Commission and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted.

28. Also, for the independent and effective functioning of the State Election Commission, where it feels that it is not receiving the cooperation of the State Government concerned in discharging its constitutional obligation of holding the elections to the panchayats or municipalities within the time mandated in the Constitution, it will be open to the State Election Commission to approach the High Courts, in the first instance, and thereafter the Supreme Court for a writ of mandamus or such

other appropriate writ directing the State Government concerned to provide all necessary cooperation and assistance to the State Election Commission to enable the latter to fulfil the constitutional mandate.

(emphasis supplied)

In paragraphs No.21, the Apex Court has observed that in case of existence of very exceptional circumstances, the SEC may not hold elections before the expiry of the term of Municipalities

21. The SEC is completely an independent body created under the Constitution and the SEC must function independently of the State Government in exercise of its powers of superintendence, direction and control of Panchayat elections. The State Government has no control over the SEC in these matters. In fact, as held in the case of ***Kishansingh Tomar*** (supra), the State is duty bound to abide by the directions of the SEC in the same manner in which it is under a mandate to follow the directions issued by the Election Commission of India during the election of Parliament and State Legislature. In fact, the SEC while conducting elections of panchayats or Municipalities

enjoys the same status which is enjoyed by the Election Commission of India for conducting elections for Parliament and State Legislature.

22. It is true that when circumstances are really exceptional, which make it impossible for the SEC to conduct elections within the time fixed by Articles 243E or 243U, the SEC may have discretion of postponing such elections for a reasonable period. But considering the independent status of the SEC, whether such extraordinary or exceptional situation exists or not is a matter to be exclusively decided by the SEC and the State Government has no say in the said decision making process of the SEC. If, for arriving at a proper decision, SEC wants any feedback or any factual information regarding the situation prevailing in the State in the context of holding election of local bodies, at the highest the SEC may seek feedback from the State Government or its Officers for the purposes of arriving at a decision. If found necessary, it may always consult the State Government. However, such consultation with the State Government is at all not mandatory as the State has absolutely no role to play in the conduct of such elections.

23. The learned Advocate General relied upon conflict between concept of compelling State interest and public health on one hand and the need to hold elections on the other hand. He also relied upon the concept of evolution of transformative constitutionalism evolved in the case of **State (NCT of Delhi)** (supra). On the same issue, he relied upon the decision of the Apex Court in the case of **Navtej Singh Johar** (supra).

24. It is true that issue public health will always prevail over other circumstances. At the same time, when it comes to the decision on the question whether exceptional circumstances exist or not, the State Government will have to exhibit trust in the SEC. That is what is held by the Apex Court in paragraph No. 284.5 of its decision in the case of **State (NCT of Delhi)** (supra). The effect of existence of public health issue on the holding of Panchayat elections is a question within the exclusive domain of the SEC and all other constitutional functionaries including the State Government will have to respect the decision of the SEC in this behalf. As observed earlier, if an issue of public health like spread of COVID-19 is involved, the SEC can always consult the State Government on factual aspects.

25. At this juncture, it is to be noted that in the affidavit filed by the State Government, it is contended that it will be very difficult to implement the SOP published by the SEC on 14th September 2020 at the rural level. We do not appreciate this approach on the part of the State Government. The State Government could have always suggested modifications in the SOP with a view to ensure its strict implementation. In fact, it is the duty of the State Government to take appropriate steps to ensure that the SOP published by the SEC is strictly implemented in its true letter and spirit. The State Government has put forth several difficulties such as, there will be 46,000 polling stations for electing 93,000 total seats of Gram Panchayats. The State Government has not taken into consideration the fact that in the State of Bihar, the Election Commission of India has gone ahead with the conduct of the general election to the State Legislature. Even in the State of Karnataka, by-elections were conducted in two constituencies of Legislative Assembly and for two seats of Legislative Council from the Teachers' constituencies. By following SOP, SSLC examination was smoothly conducted in the State when few lakhs minor student appeared. The lockdown

measures have now been considerably relaxed. The number of positive COVID – 19 cases are coming down in the State. These are the relevant aspects to be considered by the SEC.

26. The SEC has already held process of consultation with the Government Officers in the Districts, as disclosed in the statement of objections filed by the SEC. In fact, the initial stand taken by the SEC way back in May 2020 was to the effect that it may not be possible to hold elections of Panchayat at that point of time. By Order dated 17th June, 2020, for the reasons recorded therein, this Court directed the SEC to reconsider its decision dated 28th May, 2020. Thereafter, the decision was reconsidered by the SEC and the stand of the SEC is that it has already deliberated with Deputy Commissioners and Police Authorities of each District and by majority, they have agreed that elections to the Gram Panchayats can be held in November and December 2020.

27. In the Statement of Objections, the stand taken by the State Government is that considering the situation created by COVID – 19, elections to Gram Panchayats are required to be postponed. The stand of the State Government is that it is

difficult for the Government to make available the State machinery for holding of elections. The stand of the Government cannot be accepted inasmuch as, when it comes to providing necessary staff for the conduct of elections, the State Government does not come into picture. It is for the Hon'ble Governor to provide requisite staff to the SEC.

28. Therefore, we hold that it is for the SEC to take a call and take a decision at its discretion on the existence of the exceptional circumstances. But SEC cannot altogether ignore the constitutional mandate. To meet a particular contingency, the SEC can hold elections in a phase wise manner. The SEC has already taken a decision and in fact, the draft election schedule is placed on record in a sealed cover. Fixation of the schedule of elections is the function of the SEC. Therefore, we did not open the said sealed cover, inasmuch as, this Court cannot fix the schedule of elections. It is the domain of the SEC. The challenge to the order dated 28th May, 2020 will not survive, as the decision recorded therein has been reconsidered by the SEC. Hence, we dispose of the writ petition by passing the following:

ORDER

- i) We hold that in view of the Constitutional mandate of clause (3) of Article 243E, it is the mandatory duty of the SEC to complete elections of a Grama Panchayat before its term is over;
- ii) It is only in very exceptional circumstances that the SEC can conduct elections after expiry of the term of Panchayat. Whether such exceptional circumstances exist or not is a matter within the exclusive domain of the SEC. The State Government plays no role in deciding whether such exceptional circumstances are in existence. For deciding whether such circumstances are in existence, it is always open for the SEC to consult the Government on factual aspects;
- iii) We, therefore, direct the State Election Commission to finalize the schedule of elections of Grama Panchayats. The SEC shall announce the schedule of the Panchayat Elections within three weeks from today;

- iv) Needless to add that the State Government is under an obligation to provide necessary funds to the SEC for holding of Grama Panchayat elections;
- v) The writ petition is partly allowed on the above terms.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Vr