

HIGH COURT OF ANDHRA PRADESH: AMARAVATI

CHIEF JUSTICE J.K. MAHESHWARI

&

JUSTICE NINALA JAYASURYA

W.P. (PIL) No.177 OF 2019

Muppa Venkateswara Rao, S/o.late Ammaiah,
Aged 60 years, Pallapadu Post, Vatticherukuru Mandal,
Guntur District, Andhra Pradesh - 522017 ... Petitioner

Versus

State of Andhra Pradesh, rep. by its Principal Secretary,
Panchayat Raj Department, Secretariat,
Velagapudi, Amaravathi, Guntur District,
Andhra Pradesh and others ... Respondents

Counsel for the petitioner : Sri C.Panini Somayaji
Counsel for the respondents 1 to 5 : Sri P. Sudhakar Reddy,
Additional Advocate General
Counsel for respondent No.6 : Sri V.V.Prabhakar Rao, S.C.
for the A.P.State Election
Commission
Counsel for Union of India : Sri B.Krishna Mohan, ASG

W.P. (PIL) No.18 OF 2020

Angi Ramana, S/o.late Sanyasappadu, Age: 46 years,
Lakkavarapukota Talari Village Lakkavarapukota Mandal,
Vizianagaram District, Andhra Pradesh ... Petitioner

Versus

State of Andhra Pradesh, rep. by its Principal Secretary,
Panchayat Raj Department, Secretariat, Velagapudi,
Amaravathi, Guntur District, Andhra Pradesh
and others ... Respondents

Counsel for the respondents 1 to 7 : Sri P. Sudhakar Reddy,
Additional Advocate General
Counsel for respondent No.8 : Sri V.V.Prabhakar Rao, S.C.
for the A.P.State Election
Commission
Counsel for Union of India : Sri B.Krishna Mohan, ASG

COMMON ORDER**Dt: 10.03.2020****Per J.K. Maheshwari, CJ**

Writ Petition (PIL) No.177 of 2019 has been filed seeking relief in the nature of Mandamus against the in-action of respondents 2 to 5 not restraining the ruling YSRC Party members (in short 'YSRCP') in painting the Village Panchayat office building of Pallapadu village, Vatticherukuru mandal, with the colours of its party flag; that such an act is unconstitutional, arbitrary and illegal, however prayed for direction against the respondents to stop the ruling YSRCP from painting the Pallapadu Village Panchayat office building by the colours in the party flag. The direction has also been sought, asking interim relief, to stay painting the Pallapadu Village Panchayat office building.

2. The Court, while entertaining the P.I.L., on 13.12.2019, by way of interim relief, directed that the State Government shall not paint the Government buildings with the colours of the flag of a particular political party. It is also observed that, if the petitioner submits any complaint in this regard to the Election Commission, it shall be taken care by them. Report was sought from the Collector & District Magistrate, Guntur District, as to on which date these colours were painted on the Village Panchayat office buildings; what was the expenditure incurred on such painting; who is the person responsible for

painting of these colours and why the colours of particular political party flag have been painted on the Village Panchayat office buildings.

3. Writ Petition (PIL) No.18 of 2020 has been filed, inter alia, contending that, despite the interim order passed by the Court, the respondents have not restrained the members of the ruling YSRCP from painting the Village Panchayat office buildings/Sachivalayas with the colours akin to its party flag, however, prayed appropriate directions that such painting of the Panchayat buildings/Sachivalayas with the colours of the party flag may be declared unconstitutional, corrupt, illegal and contrary to the provisions of the Representation of Peoples Act, 1951 and to direct them to remove the paints applied to the Village Panchayat office buildings/Sachivalayas.

4. The petitioner in W.P. (PIL) No.177 of 2019 has specifically pleaded that he is a resident of Pallapadu village, Vatticherukuru mandal, Guntur District. He is filing this writ petition on the premise that in the said village, the building of the Gram Panchayat and several developmental project works, namely, public meeting stage, Government High School, Digital Classroom, Library, Pure Drinking Water Plant, Veterinary Hospital, Bus-Station, were constructed taking funds from the Non-Resident Indians (NRIs.) of the same village. Those NRIs., are not happy by these activities of colouring and on account of the act of the respondents, it is informed, in future, they will not provide fund for development projects of the village, because the

buildings constructed from their funds is being used by the political parties for their campaign and promotion, looking to the upcoming Panchayat Elections. The petitioner contends that, with intent to have cheap election publicity, public money has been mis-utilized by the ruling party, putting the colours of their party flag on the Government buildings, i.e. Panchayat. It is said that for the development of the village, 80% funds were given by NRIs., and the Government has only given 20% funds. As the villagers are neutral to all the political parties, however, they cannot recognize such act, which may amount to malpractice. In that view of the matter, above-mentioned reliefs have been prayed for.

5. In the subsequent case, i.e., W.P. (PIL) No.18 of 2020, the petitioner is a resident of Lakkavarapukota Talari village, Lakkavarapukota mandal, Vizianagaram District, where also, the Gram Panchayat building/Sachivalayam, has been painted with the colours of the party flag of ruling YSRCP on 22.01.2020, despite the interim order of the Court. The respondents are continuing to paint the Panchayat buildings using the Government funds with the colours of particular party flag, only to get mileage in Panchayat Elections, which may commence in near future, however, appropriate directions to remove the said colours have been sought for.

6. Counter-affidavit has been filed by respondent No.1, in which it is not disputed that the developmental activities including construction

have been made in Pallapadu village with the help of the funds of NRIs. It is urged that the averments made by the petitioner, being farmer, social activist and striving for various public causes to ventilate the grievances in the interest of the downtrodden, is subject to strict proof, to which no document is available. It is stated that the bona fides of the petitioner are suspicious and merely on his averments, it cannot be presumed that the present petition is in Public Interest, filed for the public cause. The fact regarding painting of the Pallapadu Village Panchayat office building with the colours of the YSRCP has denied, as false and untrue, contending that mere comparison of the colours of the party flag with the colours painted on the Gram Panchayat building have no clear nexus in view of the different shades. It is also stated that the colours of the flag, which allegedly resemble the colour of the Gram Panchayat building, are in a different pattern. On the flag, those colours are in vertical pattern while on the building, they are in horizontal pattern. It is further stated that running of day-to-day administration is the exclusive domain of the Government and the petitioner cannot be permitted to question the painting of colours of Panchayat buildings in the absence to show any violation of the fundamental or any statutory right. By the allegations and the material, the petitioner has failed to substantiate the same, however, relief as prayed may be denied. Relying upon the judgments of Hon'ble the Supreme Court, urged, in the absence of violation of any fundamental or statutory right, Public Interest Litigation may not be entertained.

7. It is also stated that the State Government has created and filled up 2.5 lakh posts of village volunteers on 15.08.2019, wherein each village volunteer has to take care of 50 households in the village. In addition, village secretariats is established for every 2000 persons in the village, creating regular posts, in exercise of power under Article 309 of the Constitution of India and appointments in the village secretariats have been made. The present issue has arisen, wherein the village and the Panchayat secretariats have been completely refurbished with good infrastructure, hardware and software support, offering clean environment and adequate sitting facilities for the villagers to make use the services available to them, for every 2000 households. In order to have a distinct identity, the Government has considered to provide refurbished look for the village secretariat buildings. In this regard, order has been passed vide memo dated 11.08.2019 duly permitting the Commissioner to take necessary action to have the village secretariats painted with the colour code which is aesthetically more appropriate and distinct. This memo is purely in the nature of administrative instructions, on the proposal of the Commissioner, PR & RD, however the painting is being done as per the said colour theme. It is also urged that it does not influence the voters with the voting pattern. Further, relying upon the judgment of Hon'ble Supreme Court, urged this petition is not entertainable, hence, it may be dismissed. Along with the counter-affidavit, the order passed by the Government dated 11.08.2019 and the proposal so made by the Commissioner, PR & RD and the

specimen map of the colours proposed for painting on the Panchayat buildings, has been attached.

8. Respondent No.1 has filed additional counter-affidavit, attaching the flag of the ruling party on the paper and cloth and also of the opposition Telugu Desam Party (in short '*TDP*'), to make them part of the record. During the course of hearing, it is argued that prior to the commencement of the regime of ruling YSRCP, the Panchayat office buildings were painted with the colours of the flag of TDP ruling at that time. In support of the said contention, no pleadings or documents are on record except to refer some photographs relating to *Anna Canteen* started by the TDP in the State.

9. Respondent No.2 has filed reply taking similar plea; in addition stated that, in furtherance to the order of the State Government, the District Collector and subordinate authorities are painting the Panchayat buildings with specific colours, which are binding on them. In the said counter-affidavit, certain documents have been filed showing the colour pattern of *Anna Canteen* which was being run in the State of Andhra Pradesh resembling to the colour of the flag of TDP. In this regard, no pleadings have been made in the counter-affidavit, except to file a cloth bag for perusal.

10. In view of the order passed by this Court on 13.12.2019, respondent No.2-Collector has submitted his report, in which the date of painting of the colours of the flag of the ruling YSRCP has not been

specified. It is said that in view of the letter of the Commissioner, PR & RD, dated 28.08.2019, the colours on the Panchayat buildings have been changed under the directions of the State Government, therefore, to paint those colours, violation as alleged on the part of the Panchayat Secretary is not justified.

11. The respondents 4 and 5 filed their reply, taking the shelter of the Government instructions. The respondent No.6, the State Election Commission, joined as party to the proceedings, has said that because the election has not been notified, in absence of imposition of the model code of conduct, no action can be taken by the Commission. In support to the said contention, the circular dated 29.11.2017 of the State Election Commission has been produced for perusal.

12. Learned counsel appearing on behalf of the petitioners has placed reliance on a judgment of Hon'ble the Supreme Court in *Common Cause v. Union of India*¹ and urged that, as per the directions of the Supreme Court, a Committee was constituted to formulate guidelines of the Government advertising and those guidelines apply to the Government buildings, that includes the buildings of the local bodies and authorities, i.e., Municipalities and Panchayats. The object to bring those guidelines were to check the misuse of public funds on advertisement campaigns in order to gain political mileage by the political establishment, by using public money and public fund and the

¹ (2015) 7 SCC 1

Government property. While framing guidelines for regulation, it is clarified that the advertisement material should be objective and not directed for promoting political interest of the ruling party that includes party political symbol or logo or flag. It should avoid photographs of the political leaders in the advertisements. The advertisements and the principles so enumerated should be restrained before and during the elections as far as possible. Simultaneously, it must comply the legal requirement that includes the election laws. The Court, after coding those guidelines and considering the objectives accepted the guidelines and directed that those should be strictly adhered to and if the Government has adopted such objectives and parameters mentioned, then special curb is not required on the eve of elections; otherwise they should be implemented. Reliance has further been placed on a circular issued by the Government of India, Ministry of Information & Broadcasting, dated 20.05.2015, directing all departments to take note of the view taken in the judgment and comply the same in letter and spirit. On the basis of the said submissions, it is urged that the action of the respondents in painting the Panchayat building with the colours of the flag of ruling YSRCP, by Government fund is wholly arbitrary and unconstitutional. The action of the respondents to continue with the painting of the colours similar to party flag despite interim directions, relying the Government instructions is contemptuous. It is contended that the Memo/Circular filed and relied in the reply is against the spirit

of the judgment in *Common Cause* supra; therefore, the same may be quashed.

13. It is contended that the ruling YSRCP has not conducted the election since more than one-and-a-half year, though on completion of the term of the Panchayat, the elections are due from 1st August 2018. In W.P.(PIL) No.141 of 2019, directions to conduct Panchayat election have already been given vide order dated 14.11.2019. In furtherance to it, the Government made the reservations contrary to the law laid by Hon'ble the Supreme Court in the case of *Dr.K.Krishna Murthy & Ors. v.Union of India & Anr.*² However, challenging the reservations, various other Public Interest Litigations were filed. This Court had denied interference in those cases at the threshold, because it may stall the Panchayat elections. On account of not granting stay and on filing S.L.P. (Civil) Diary No.1314 of 2020, vide order dated 15.01.2020, the Supreme Court requested to the High Court to decide the issue of reservation in the light of the judgment in *Dr. K. Krishna Murthy* supra, and till then, elections were stayed. It is said, after decision of the said batch, immediately the Panchayat elections are to be conducted, however, on the eve of the election, the Government instructions regarding painting of the Panchayat buildings with the photos of the Chief Minister on one-fourth of the board of the Panchayat, would

² (2010) 7 SCC 202

influence the free and fair election, therefore, appropriate direction has been sought.

14. On the other hand, learned Additional Advocate General has argued with vehemence that looking to the model as proposed by the Commissioner, PR & RD, approved by the Government, the colours are painted on the Panchayat buildings. Those colours do not resemble, being of different shades. It is urged, the allegation of painting of the colours of the flag of the ruling YSRCP is untrue, unjust and consideration of said issues would amount to interference in day-to-day administration of the Government, by the Court. It is contended that, the case of *Common Cause*, supra, applies on the advertisement. Painting of colours on the Gram Panchayat building does not fall within the purview of it. In addition, the Court is not required to see in the Public Interest Litigation, on the buildings of the Panchayat, what colour is to be painted with, however, the instructions issued by the Government on 11.08.2019 is reasonable and do not warrant interference.

15. It is urged these petitions are not in public interest; In fact, prior to the regime of the ruling YSRCP, the then TDP ruling party, has painted the Panchayat buildings with colour resembling the flag of their party. In case if the Government has decided any colour theme, looking to the aesthetic to give separate identity, it cannot be questioned. In such circumstances, prayer is made to dismiss this petition. On behalf

of respondent No.2, it is, inter alia contended that the orders passed by the higher authorities have been complied with by the Collector and other subordinate authorities, therefore, their action cannot be questioned in this petition.

16. Counsel for respondents 4 and 5 have adopted the arguments of the counsel for respondents 1, 2 and 3. The standing counsel appearing on behalf of the Election Commission contends that the representation submitted by the petitioner is rejected vide order dated 31.12.2019 because the Model Code of Conduct for election of Panchayats has not been notified, till then, the Election Commission do not have power to look into the said issue or to interfere in the matter.

17. Looking the facts of the case, Sri B. Krishna Mohan, learned Assistant Solicitor General representing the Union of India is requested to assist the Court on the issues since the same by and large relates to painting of Government buildings as per choice of political parties which may have impact on the eve of elections in respect of local bodies like in the present case. Learned ASG has stated that written instructions have not been received, but looking to the judgment in *Common Cause* supra, the act of the respondents broadly falls within the purview of the Advertisement and the said judgment duly apply to the facts of the case. It is further submitted that the State Election Commissioner must take steps, looking to the guidelines issued by the Central Election Commission consistent to the judgments of the

Supreme Court and various High Courts. However, the painting with the colours of the flag of ruling party on the eve of Panchayat elections on the buildings of the Panchayat by use of public funds is wholly unjustified.

18. After having heard learned counsel for the parties and on perusal of the pleadings of the petitions, counter affidavit and additional affidavits, the documents produced and the arguments so advanced, the following issues are cropped up, to answer:

1. *Whether the present writ petitions filed by the petitioners are in the public interest, espousing genuine cause or frivolous, however, ought not to be entertained?*
2. *Whether the Panchayat buildings fall within the purview of local self-government, and if so, painting of colours on them to serve interests of political parties falls within the purview of “sign” as per National Building Code, 2016 (in short ‘NBC’) and the same is permissible?*
3. *Whether the paint of the colours on the Gram Panchayat buildings, resembling the flag of ruling YSCRP in furtherance to the Government **Memo No.PRR01-PR0PPAN(MISC)/192/2019 Dt.11.08.2019**, is permissible in view of the judgment of **Common Cause supra**?*
4. *Whether the State Election Commission may take any step on the eve of the declaration of Panchayat election and, if so, the inaction on their part is just?*

5. *Whether in the facts and circumstances of the case, to maintain the uniformity and rule of law for all the political parties, what directions can be issued?*

Question No.1: *Whether the present writ petitions filed by the petitioners are in the public interest, espousing genuine cause or frivolous, however, ought not to be entertained?*

19. This question relates to the entertainability of Public Interest Litigations and strikes at the root of the matter, therefore considered at the earnest, dealing it first. It is noted that the pleadings made in the writ petition is neither admitted nor specifically denied by the respondents. It is not denied that in the Pallapadu village, several developmental projects were taken up from the year 2004, such as Panchayat Office Building, Public Meeting Stage, Government High School with Digital Class Rooms, Library, Pure Drinking Water Plant, Veterinary Hospital, Bus Stand etc., and construction was completed with the joint funds of NRIs and Government, in the ratio 80% : 20% respectively. The averments in the petition that the villagers are having no interest in any of the ruling party, being neutral and they want development is also not denied. The feelings of the villagers have been affected due to painting of buildings of Panchayat with the colours of the flag of the YSRCP with intent to take cheap political mileage has also not been specifically denied except to take shelter of Government instructions. These petitions are filed by the farmers of the village, to save the developmental activities, and to seek appropriate directions to prevent misuse of public money, by use of Government property. In

absence of denial of the said fact, if petitioners feel grievance by the painting of the Panchayat Building, similar to the colour of the flag of the ruling YSRCP, requires consideration in the Public Interest Litigations, to find out whether it is frivolous petition.

20. In this regard, the judgment of *Ashok Kumar Pandey v. State of West Bengal*³, is relied upon by the respondents referring paragraph 4, wherein the Court observed as under:

"4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke ones into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity."

21. On perusal thereof, it indicates that the Court has to interfere in real and genuine public interest litigations if any involved, and not for the adventure of knight errant and poke ones into for a probe. It may be looked into that the jurisdiction so invoked by a person or a body, is for his personal cause or to satisfy grudge and enmity. The respondents have not said, the petitioners are the members or workers of the opposition TDP or any way connected with them or any other political

³2004 (3) SCC 349

party, however, in order to take revenge against ruling YSRCP, filed the petitions.

22. On the facts of the case as discussed hereinabove, it cannot be gathered that the petitioner, in any way, has come to have a probe of Court to satisfy any personal grudge or enmity against the respondents. It is observed that in absence of denial of the developmental activities by the funds of NRIs., and the petitioners want to take continuous financial support from them, but NRIs are not feeling good by such an act of the Government, however filed this petition. In the facts, the issue is related to misuse of public money, and by use of Government property for political mileage, on the eve of Panchayat election. Thus, in the facts of the case, the said judgment is of no help to the respondents.

23. In the judgment in *Tehseen Poonawalla v. Union of India*⁴, relied by the respondents, the Supreme Court in paragraphs 96 to 98 said as thus:

“Public interest litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction was judicially recognised in situations such as those in *Bandhua Mukti Morcha v. Union of India* reported in (1984) 3 SCC 161. Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and under trials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the rules of standing. The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the

⁴2018 (6) SCC 72

proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of interest petitions. Environmental concerns affect the present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is in that sense a valuable instrument and jurisdictional tool to promote structural due process."

24. By the above para, it is clear that the hallmark of Public Interest Litigation is that the citizens may approach the Court to ventilate the grievance of a person or class of persons for developmental activities, for marginalised and oppressed category. The Public Interest Litigation ought to be filed to preserve rule of law, and to ensure the accountability and transparency within the structures of governance. If the PIL has been filed for the above said purpose, it is valuable instrument and jurisdictional tool to promote structural due process and to ensure accountability.

25. After going through the facts of the case, it is not in dispute that the colours of the flag of a particular political party are painted on the Panchayat buildings in the name of Sachhivalayas. It is also not in dispute that, for such painting, the Government has issued instructions on 11.08.2019 by their own, accepting the proposal of the Commissioner of PR & RD dated 07.08.2019. As per reply, it is not in dispute that the colours of the Panchayat office buildings are sought to be changed, as directed by the Government, for which the Public Interest Litigations have been filed for removal of the paint on Panchayat buildings. It is not in dispute that Panchayat elections were

not conducted by the Government, even after lapse of tenure, for which directions were issued in *PIL No.141 of 2019 & batch*. After the directions, the Government has fixed reservations more than 50%, wherein, Hon'ble the Supreme Court granted stay of the election, requesting the High Court to decide the said issue within one month, vide order dated 15.01.2020 in *S.L.P. (Civil) Diary No.1314 of 2020*. It is apposite to mention here, in furtherance to the directions of the Supreme Court, the *W.P.(PIL) No.02 of 2020 and batch* have been decided, vide order dated 02.03.2020 by declaring the 34% reservation of BCs as ultravires and the directions to rearticulate reservation for Panchayat elections within one month have been issued. In the said context, it is required to be seen whether the buildings of the Panchayat, which falls within local self government, can be painted with the colours of the flag of a particular ruling party just prior to the elections of the Panchayats. In the wake of the Panchayat elections, the instructions issued by the Government would amount to violative of the election laws, and also in non-observance of rule of law. Therefore, in the said context, we are not inclined to accept the argument of the learned Additional Advocate General regarding maintainability of the petitions and to reject the same being frivolous. In the facts, in our considered opinion, both the Public Interest Litigations raise the question of law, that painting of Government buildings by use of public funds with the colours of the flag of a particular political party, affecting the feeling of NRIs., and adversely affecting the developmental activities in the

village. The said question and other ancillary issues require due attention of the Court in facts.

26. Simultaneously, the argument advanced by the learned Additional Advocate General, that in the regime of the previous ruling party, i.e., TDP, the colours of the flag of the said ruling party were painted on Panchayat buildings, which is the indication of the fact that the ruling parties in the State are in the habit to do such acts. How far, such activities of the ruling parties in the State, to paint the Panchayat or Government Buildings, with colours of the ruling party flags, are justified by use of public money, to take political mileage is a question of much importance. In such circumstances, repelling the arguments of respondents to dismiss the writ petitions, we are of the considered view that these Public Interest Litigations have been filed to answer the justifiable issue and a laudable cause which is writ large. Therefore, maintaining these petitions, question No.1 is answered accordingly.

Question No.2: Whether the Panchayat buildings fall within the purview of local self-government, and if so, painting of colours on them to serve interests of political parties falls within the purview of “sign” as per National Building Code, 2016 (in short ‘NBC’) and the same is permissible?

27. So far as question No.2 is concerned, as per 73rd amendment of the Constitution, brought with effect from 24.04.1993 in Part IX as it exists today was amended introducing Panchayats. Article 243(b) defines ‘Gram Sabha’ as a body consisting of persons registered in the

electoral rolls relating to a village comprised within the area of Panchayat at the village level. As per clause (d) of Article 243 '*Panchayat*' means an institution of self-government constituted under Article 243-B for the rural areas. Under Article 243-B, '*Constitution of Panchayats*' has been specified, whereby, such Panchayats shall be constituted in every State at village, intermediate and district levels. The seats of the Panchayats shall be filled by the persons by way of direct election applying the reservation as per Article 243-K. As per Article 243-I, the Governor of the State shall, on expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats. Simultaneously, the State shall provide funds as per law so made. As per Section 3 of the Andhra Pradesh Panchayat Raj Act, 1994 (*hereinafter be referred as "APPRA"*), by way of notification, a Panchayat shall be notified. As per Section 6, there shall be a '*Gram Sabha*'. Thus, after the amendment in the Constitution, APPRA, has come into force constituting Panchayats of the Village, Mandal and Zilla level giving them power of self-governance.

28. As per the above said provisions, it is clear that the buildings of the Panchayat and its infrastructure ought to be developed with the funds of the Government as allocated through the Finance Commission by revision of its plan on five-year basis, specified under Article 243-I of the Constitution. It is not the case of the respondents that Panchayat buildings in the State have not been constructed with Government fund;

in fact, those buildings are of the local bodies and authorities constructed by the Government fund. Thus it cannot be doubted that the buildings of the Panchayats at all levels fall within the purview of the Government buildings belonging to the local bodies i.e., Panchayats.

29. The National Building Code, 2016 (*hereinafter be referred "NBC"*), has been brought to unify the building regulations throughout the country for use by Government departments, Municipal bodies and other construction agencies. The provisions of NBC are intended to serve as a model for adoption by Public Works Departments and other Government construction departments, local bodies and other construction agencies. Thus, NBC applies to 'local bodies'. Part 10 of NBC deals with '*Landscaping, Signs and Outdoor display structures*'. The said Chapter deals with the requirement of public safety, structural safety and fire safety, all signs and outdoor display structures. Clause 2.1 defines '*Signs of various types*'. As per clause 2.1.25, it is clear that '*Sign*' means any device visible from a public place, display either commercial or non-commercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations. Clause 3.3 deals with '*Unsafe and Unlawful signs*'. It specifies that if any sign is unlawfully installed, erected or maintained in violation of any of the provisions of NBC, the owner thereof, or the person or firm maintaining the same, shall upon written notice of the Authority, forthwith in the case of immediate danger and in any case within not more than three days, make such sign conform to the provisions of this

Part or shall remove it. If within three days the order is not complied with, the Authority may remove such sign at the expense of the owner. It would be appropriate at this stage to refer to the dictionary meaning of 'Sign'. 'Sign' as defined in *Concise Oxford English Dictionary* is 'an object, quality, or event whose presence or occurrence indicates the probable presence, occurrence, or advent of something else.' The word 'sign' as defined in the Major Law Lexicon by Sri P.Ramanatha Aiyar is 'it includes mark, when the person making the mark is unable to write his name; 'Sign' with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions [(General Clauses Act S.3(56)]; 'Sign' is an expression wide enough to include a wide range of unusual marks, such as marks consisting of single colour, a smell, a sound or a moving image [Kerly's Law of Trademarks and Trade-names, 13th Edn., 2001, C.2, para 2-07, P.9].

30. Clause 3.3.2 of NBC makes it clear the '***Signs which are not to be permitted under any circumstances***', whereby it is clarified that ***any sign which in the opinion of the Authority is an obscene, repulsive, revolting, or objectionable character or prejudicial to the municipality or savouring political propaganda or of a nature calculated to produce pernicious or injurious effect on public or any particular class of persons, or is displayed in such a place, in such a manner or by any means as, in the opinion of the Authority, could be likely to affect***

injuriously the amenities of, or to disfigure any neighbourhood. In such circumstances, it can safely be concluded that Panchayats established as per the provisions of Article 243-B of the Constitution and having been financed as per the Scheme of the Finance Commission, having its structure as a local body of self-governance under the conferment of the powers specified in the Constitution and the buildings so constructed to carry out activities of Panchayat would be of the local body and authority being a Government agency, to which NBC applies. Therefore, it is clear that as per NBC, which applies to the buildings of the local bodies and authorities, any sign of savouring political propaganda is not permitted in any circumstances on any Government Building covered by NBC. In such view of the matter and as per the discussion made hereinabove, as a necessary corollary, sign in any form on such building savouring the political interest is impermissible. The question No.2 is answered accordingly.

Question No.3: *Whether the paint of the colours on the Gram Panchayat buildings, resembling the flag of ruling YSCR in furtherance to the Government Memo No.PRR01-PR0PPAN(MISC)/192/2019 Dt.11.08.2019, is permissible in view of the judgment of Common Cause supra?*

31. So far as to answer Question No.3, the judgment in *Common Cause*, supra, relied by the petitioners may be seen. The relevant paragraphs of the said judgment are reproduced as under:

“5. In terms of the order of this Court, the Committee was duly constituted and after full deliberations in the matter, a report had been submitted by the Committee suggesting a set of guidelines

for approval of this Court. It is the plea of the petitioner that the said guidelines should be approved by this Court and directions be issued under Article 142 of the Constitution of India for enforcement of the said guidelines until an appropriate legislation in this regard is brought into effect by Parliament.

6. The contents of the guidelines suggested by the Court appointed Committee may be usefully extracted hereinbelow:

"GUIDELINES ON CONTENT REGULATION OF GOVERNMENT ADVERTISING"

These Guidelines shall be called the Government Advertisement (Content Regulation) Guidelines 2014.

They shall come into force with effect from.....

2. APPLICATION:

(1) These Guidelines shall apply to all Government advertisements other than Classified Advertisements.

(2) These Guidelines shall apply to the content of all Government Advertising till a suitable legislation is enacted by the Government to prevent the misuse of public funds on advertisements to gain political mileage as distinct from legitimate Government messaging.

(3) These Guidelines shall apply to all –

(a) institutions of Government;

(b) public sector undertakings;

(c) local bodies and other autonomous bodies/organizations established under a Statute.

3. DEFINITIONS:

In these Guidelines unless the context otherwise requires:

"Classified Advertisements" include public notices, tenders, recruitment notices, statutory notifications.

"DAVP Guidelines" means the existing guidelines of the Directorate of Advertising and Visual Publicity of the Ministry of Information and Broadcasting dealing with the eligibility and empanelment procedures and rates of payment and such other matters;

"Government" means Central Government, State Governments/Union Territory Administrations and also includes local bodies, public sector undertakings and other autonomous bodies/organisations established under a Statute.

"Government advertising" means any message, conveyed and paid for by the government for placement in media such as newspapers, television, radio, internet, cinema and such other,

media but does not include classified advertisements; and includes both copy (written text/audio) and creatives (visuals/video/multi media) put out in print, electronic, outdoor or digital media.

OBJECTS:

The objects of these Guidelines are:-

to prevent arbitrary use of public funds for advertising by public authorities to project particular personalities, parties or governments without any attendant public interest.

neither to belittle the need nor to deny the authority of the Union and State Governments and its agencies to disseminate information necessary for public to know on the policies and programmes of Government but only to exclude the possibility of any misuse of public funds on advertisement campaigns in order to gain political mileage by the political establishment;

to address the gap in the existing DAVP Guidelines which only deal with the eligibility and empanelment of newspapers/journals or other media, their rates of payment, and such like matters and not on how to regulate the content of Government advertisements;

to ensure that "all government activities satisfy the test of reasonableness and public interest, particularly while dealing with public funds and property";

to ensure that government messaging is well co-ordinate, effectively managed in the best democratic traditions and is responsive to the diverse information needs of the public.

5. GOVERNMENT ADVERTISEMENT TO INFORM CITIZENS:

Subject to these Guidelines Government may place advertisements or purchase advertising space or time in any medium to inform citizens about their rights and responsibilities, about government policies, programmes, services or initiatives, or about dangers or risks to public health, safety or the environment.

6. THE FIVE PRINCIPLES OF CONTENT REGULATION:

While placing advertisements or purchasing advertising space in any media, the Government shall be guided by the following principles, namely:-

Advertising Campaigns to be related to Government responsibilities:

While it is the duty of the Government to provide the public with timely, accurate, clear, objective and complete information about its policies, programmes, services and initiatives since the public has a right to such information, the content of government advertisements should be relevant to the governments' constitutional and legal obligations as well as the citizens' rights and entitlements.

Advertisement materials should be presented in an objective, fair and accessible manner and be designed to meet the objectives of the campaign:

The material shall be presented in a fair and objective manner and shall be capable of fulfilling the intended objectives;

Government shall exercise due caution while deciding the content, layout, size and design of the message including the target area and the creative requirement of the intended communication in order to ensure that the maximum reach and impact are achieved in the most cost effective manner;

Content of advertisement must enable the recipients of the information to distinguish between facts and analysis and where information is presented as a fact, it should be accurate and verifiable;

Pre-existing policies, products, services and initiatives should not be presented as new unless there has been a substantial change or modification of such policies, products or services;

Content of advertisement should provide information in a manner that accommodates special needs of disadvantaged individuals or groups identified as being within the target audience;

Multiple formats may be used to ensure equal access;

Every effort shall be made to pre-test the material in case of large scale campaign with target audiences.

Advertisement materials should be objective and not directed at promoting political interests of ruling party:

Display material must be presented in objective language and be free of political argument or partisan standpoint:

Government advertising shall maintain political neutrality and avoid glorification of political personalities and projecting a positive impression of the party in power or a negative impression of parties critical of the government.

Advertisement materials must not - Mention the party in government by name;

directly attack the views or actions of others in opposition;

include party political symbol or logo or flag;

aim to influence public support for a political party, candidate for election; or refer to link to the websites of political parties or politicians.

Government advertisement materials should avoid photographs of political leaders and if it is felt essential for effective Government messaging, only the photographs of the President/Prime Minister or Governor/Chief Minister should be used;

Government advertisements shall not be used at patronizing media houses or aimed at receiving favourable reporting for the party or person in power Advertisement Campaigns be justified and undertaken in an efficient and cost-effective manner:

Since it is the responsibility of government to safeguard the trust and confidence in the integrity and impartiality of public services and hence it should be the policy of governments to use public funds in such a manner as to obtain maximum value for taxpayers' money;

Advertisement Campaigns must be justified and undertaken in an efficient and cost-effective manner;

The Government shall – decide and announce beforehand, a list of personalities on whose birth or death anniversaries, advertisements could be released every year and specify which Ministry/Department could release the same;

avoid the issue of multiple advertisements by different departments and PSUs of the same Government in Commemorative Advertisements and shall issue a single advertisement only;

(d) Though advertising by governments should remain regulated all the time, it is particularly important to scrupulously follow these principles before and during the elections. As far as possible, during the period prior to elections, only those advertisements required by law (such as public health and safety advisories or job and contract advertisements) alone be released by governments;

(e) Advertisement campaigns should only be need based; and

(f) In case of large volume advertisement campaigns, post-campaign impact assessment is necessary to be included in the planning process itself and shall identify the indicators to measure success when the campaign has ended.

(5) Government advertising must comply with legal requirements and financial regulations and procedures:

Governments shall ensure that all Advertisements comply with:-

relevant laws regarding privacy, intellectual property rights, election laws and consumer protection laws apart from laws in respect of broadcasting and media; and copyright laws and ownership rights associated with works subject to copyright are fully respected.

COMPLIANCE AND ENFORCEMENT:

The Government shall appoint an Ombudsman who shall be an eminent expert independent of the Government to receive complaints of violations of Guidelines and to recommend action in accordance with the Guidelines.

Heads of government departments and agencies shall be responsible for ensuring compliance with these Guidelines and shall follow a procedure of certification of compliance before advertisements are released to the media.

As part of the performance audit of the Ministry/Department/Agency – there shall be separate audit of the compliance of Advertisement Guidelines by the Ministry/Department/Agency concerned; and The annual report of

such ministry/department/agency shall publish the findings of such audit and the money spent on advertising.

The regulatory bodies of print and electronic media will be within their powers to impose sanctions against such media groups acting against these Guidelines in seeking or obtaining government advertisements.

8. GENERAL:

(1) These Guidelines shall be in addition to and not in derogation of the existing Guidelines which are in place under the existing Advertisement Policy of Government.

(2) These Guidelines are equally applicable to State Governments and its agencies. The State Governments shall undertake amendments to whatever policies they have in this regard and observe the Guidelines strictly in letter and spirit.

The Ombudsman may recommend suitable changes to the Guidelines to deal with new circumstances and situations.

The Government shall take necessary steps to initiate necessary legislation on the subject, given its importance for democracy, human rights and good governance."

Whether the guidelines recommended should commend acceptance and if so whether the same should be made operative and enforceable under Article 142 of the Constitution.

7. In the earlier order dated 23-4-2014 [*Common Cause v. Union of India*, (2014) 6 SCC 552], this Court, after holding that reasonableness and fairness consistent with Article 14 of the Constitution would be the ultimate test of all State activities proceeded to hold that the deployment of public funds in any government activity which is not connected with a public purpose would justify judicial intervention. We would like to say something more.

8. Part IV of the Constitution is as much a guiding light for the Judicial organ of the State as the Executive and the Legislative arms, all three being integral parts of the "State" within the meaning of Article 12 of the Constitution. [*Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1 : (1966) 3 SCR 744] , [*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, para 1703] A policy certainly cannot be axed for its alleged failure to comply with any of the provisions of Part IV. Neither can the courts charter a course, merely on the strength of the provisions of the said Part of the Constitution, if the effect thereof would be to lay down a policy. However, in a situation where the

field is open and uncovered by any government policy, to guide and control everyday governmental action, surely, in the exercise of jurisdiction under Article 142 of the Constitution, parameters can be laid down by this Court consistent with the objects enumerated by any of the provisions of Part IV. Such an exercise would be naturally time-bound i.e. till the legislature or the executive, as the case may be, steps in to fulfil its constitutional role and authority by framing an appropriate policy.

9. Articles 38 and 39 of the Constitution enjoin upon the State a duty to consistently endeavour to achieve social and economic justice to the teeming millions of the country who even today live behind an artificially drawn poverty line. What can be the surer way in the march forward than by ensuring avoidance of unproductive expenditure of public funds. This is how we view the present matter and feel the necessity of exercise of our jurisdiction under Article 142 of the Constitution to proceed further.

10. It is neither possible nor feasible or even necessary to try and encompass the myriad situations where government advertisements are issued. Indeed, the situations and circumstances; events and occasions on which government advertisements are issued are infinite. Nevertheless, an attempt can be made to arrive at a broad categorisation for the purpose of an illustrative understanding.

16. An analysis of the draft Guidelines as prepared by the Committee set up by this Court in the case may now be made. The applicability of these Guidelines is to all government advertisements other than classifieds and in all mediums of communication, thereby including internet advertising. The objective of these Guidelines emphasise the Government's responsibility to disseminate information necessary for the public to know about the policies and programmes of the Government.

It principally spells out five principles to regulate the contents of advertisements, namely;

(i) advertising campaigns are to be related to government responsibilities,

(ii) materials should be presented in an objective, fair and accessible manner and designed to meet objectives of the campaign,

(iii) not directed at promoting political interests of a party,

(iv) campaigns must be justified and undertaken in an efficient and cost-effective manner, and

(v) advertisements must comply with legal requirements and financial regulations and procedures.

The five broad Content Regulations contained in the draft Guidelines framed by the Committee are similar to the provisions found in the Australian guidelines. However, under each broad head specific regulatory parameters have been indicated which seem to embody what would be good practices in the Indian context.

20. A consideration of the objections filed by the Union would go to show that the Union seriously disagrees with the recommendations of the Committee in respect of the following matters:

(1) Restricted publication of photographs of the government functionaries and political leaders along with the advertisement, etc.

(2) Appointment of an Ombudsman

(3) The recommendation with regard to performance audit by each Ministry.

(4) Embargo on advertisements on the eve of the elections.

22. The remaining recommendations of the Committee appear to be comprehensive and based on an analytical approach of the best practices prevailing in other jurisdictions. The said recommendations, in our considered view, would serve public interest by enabling dissemination of information and spreading awareness amongst the citizens not only of the government policies; achievements made and targets to be reached but also the rights and entitlements of the citizens including the availability of a host of welfare measures. The said recommendations, therefore, commend to the Court for acceptance and are accordingly accepted.

27. This will require the Court to consider the different aspects of a government advertisement campaign highlighted earlier on which we have reserved our comments. The first is with regard to publication of photographs of functionaries of the State and political leaders along with the advertisement issued. There can be no manner of doubt that one government advertisement or the other coinciding with some event or occasion is published practically every day. Publication of the photograph of an individual be it a State or party functionary not only has the tendency of associating that particular individual with either the achievement(s) sought to be highlighted or being the architect of the benefits in respect of which information is sought to be percolated. Alternatively, programmes/targets for the future as advertised carry the impression of being associated with the particular individual(s). Photographs, therefore, have the potential of developing the personality cult and the image of one or a few individuals, which is a direct antithesis of democratic functioning.

28. The legitimate and permissible object of an advertisement, as earlier discussed, can always be achieved without publication of the photograph of any particular functionary either in the State of a political party. We are, therefore, of the view that in departure to the views of the Committee which recommended permissibility

of publication of the photographs of the President and Prime Minister of the country and Governor or Chief Minister of the State along with the advertisements, there should be an exception only in the case of the President, Prime Minister and Chief Justice of the country who may themselves decide the question. Advertisements issued to commemorate the anniversaries of acknowledged personalities like the Father of the Nation would of course carry the photograph of the departed leader.

34. We also make it clear that the present directions issued under Article 142 of the Constitution. In this regard, we would like to clarify that it is not the intention of the Court to attempt to lay down infallible and all comprehensive directions cannot be comprehensive and there are several aspects of the matter which may have escaped our attention at this stage to cover the issue at hand. The gaps, if any, we are confident would be filled up by the executive arm of the Government itself inasmuch as the attainment of constitutional goals and values enshrined in Part IV of the Constitution is the conjoint responsibility of the three organs of the State i.e. legislative, executive and the judiciary, as earlier discussed.”

32. As per the said judgment, vide order dated 23.04.2014, while dealing the issue to regulate Government action in the matter as to prevent misuse/wastage of public funds, by way of Government advertisement and to adopt the best practices, constituted a Committee of three members to formulate guidelines. The said Committee appointed by the Court suggested guidelines which are known as ***“The Government Advertisement (Content Regulation) Guidelines, 2014”***. The said guidelines were made applicable to all Government institutions, Public Sector Undertakings, local bodies and other autonomous bodies/organizations established under a Statute. While defining ‘Government’, it is clarified that it shall include the Central Government, State Government, Union Territories, local bodies, public sector undertakings and other autonomous bodies established under a Statute. The term ‘Government advertising’ has been defined which means any message conveyed and paid for by the government for

placement in media such as newspapers, television, radio, internet, cinema and such other, media but does not include classified advertisements; and includes both copy (written text/audio) and creatives (visuals/video/multi media) put out in print, electronic, outdoor or digital media. These guidelines were brought with an object that the advertisements should not be by use of public funds in campaigning in order to gain political mileage by the political establishments. The activities of the Government must satisfy the test of reasonableness and of public interest, particularly, while dealing with public office and public property. For the purpose of regulation of such advertisements, in Clause (6) of the Guidelines, five principles have been specified, whereby the Advertising Campaigns relating to the Government responsibilities have been clarified. The material should be presented in an objective, fair and accessible manner and be designed to meet the objectives of the campaign. The said Advertisement materials should be objective and not directed to promote political interests of ruling party. It is clarified that the Government advertising shall maintain political neutrality and avoid glorification of political personalities and projecting a positive impression of the party in power. Advertisement materials must not mention the party in Government, by name, including political symbol of party or logo or flag. It should not be with an aim to influence public support for a political party, candidate for election or refer to link to the websites of political parties or politicians. The Government advertisement materials should avoid the photographs of

political leaders and in case of necessity, for effective Government messaging, only the photographs of the President/Prime Minister or Governor/Chief Minister should be used. The said advertisement should not be used at receiving favourable reporting for the party or person in power. The Advertisement Campaigns be justified and undertaken in an efficient and cost-effective manner. It is clarified in Clause (d) that these principles must be observed before and during the election as far as possible. It is also clarified in the scheme in Clause (5) the Government advertising must comply with legal requirements and financial Regulations and procedures that includes the election laws. The Scheme specifies compliance and enforcement and further general guidelines.

33. Thereafter, while dealing the objections of the Union Government as well as State, on the point of publication of the photographs of the Government functionaries and political leaders, appointment of Ombudsman, performance audit, embargo on advertisements on the eve of elections; however, leaving the aforesaid, the Court has held that the recommendations of the Committee are comprehensive and based on the analytical approach of the best practices prevailing in other jurisdictions. The Apex Court was of the considered view that it should serve public interest by enabling dissemination of information. While dealing with the figures of the functionaries, in paragraph 23, certain directions have been issued, which were reviewed in Review Petition (C) Nos.1879-

1881/2015 vide order dated 18.03.2016 permitting the photographs of the Prime Minister, Cabinet Minister, Minister-in-charge of the concerned Ministry in Central Government; similarly, of the Chief Minister and other similar Ministers of the State. On the point of the appointment of Ombudsman, the Court directed Government to take steps and also so far as special audit is concerned. In view of the material so available, it is required to ensure that accountability and proper utilization of the funds may be made by them. In paragraph 26, it is clarified that the advertisements must adhere to the objects and the parameters mentioned. If so, then, on the eve of the election, the curb is not required to be imposed, but the Court said that it is needless to say that the concepts of fairness will have to be maintained by the Government, be at the Centre or the States. In view of the aforesaid, the guidelines so formulated in the judgment in *Common Cause* supra are required to be adhered to by the Government. After the said judgment, Ministry of Information & Broadcasting, issued circular dated 20.05.2015, directed all departments to take note of the aspects mentioned in the judgment and comply it in letter and spirit.

34. In the context of the judgment of *Common Cause* supra, the facts of the present case are required to be analysed. In the facts of the case, it reveals that on the buildings of the Panchayats in the State, the colours of the flag of the ruling YSRCP have been painted approving the

proposal so made by the Commissioner, PR & RD, Tadepalli dated 07.08.2019.

PROPOSAL MADE BY COMMISSIONER, PR & RD, TADEPALLI

Note No. #1

3

C.No.751/CPR&RD/S/2019

Office Note Submitted:

Sub:PR&RD Department - Gram Panchayats – Establishment of Village Secretariats -
Change of colours to the existing GP Buildings In the State as per enclosed
Model - Note Submitted - Regarding.

It is submitted that, the OSD to Hon'ble Minister for PR&RD has informed the Commissioner, PR&RD to change the existing colours of Gram Panchayat Buildings in the wake of designating them as Grama Sachivalayams. A model developed by architect in the lines advised by OSD to the Hon'ble Minister is attached for further orders.



Change of colors to the Existing GP.pdf

05/08/2019 9:26 PM

G.SRINIVASA RAO
(PROGRAMME OFFICER)

Note No. #2

06/08/2019 12:45 PM

M. SUDHAKAR RAO
(ADDITIONAL COMMISSIONER)

Digily Signed

Note No. #3

OSD to Hon'ble Minister PR&RD has informed that the Minister has directed him to inform that the existing colours of the GP buildings should be changed and as per his indication of colours, a model has been got prepared and attached. For suitable orders

PrI Secretary PR&RD

07/08/2019 9:23 AM

M. GIRIJA SHANKAR, IAS
(COMMISSIONER)

ATTACHED SPECIMEN COLOUR CODE SENT BY PR & RD FOR APPROVAL

(IMAGE-I)



MEMO OF APPROVAL ISSUED BY THE GOVERNMENT

5

File No. PRR02-14021(46)/57/2019-RWS SEC (Computer No. 952869)
Receipt No : 2782923/2019/MDL-I-PRR01

GOVERNMENT OF ANDHRA PRADESH
PANCHAYAT RAJ & RURAL DEVELOPMENT (MDL.1) DEPARTMENT

Memo.No. PRR01-PR0PPAN(MISC)/192/2019 Dated : 11/08/2019

Sub:- PR&RD Department - Gram Panchayats – Establishment of Village
Secretariats - Change of colours to the existing GP Buildings -
Approved - Regarding.

Ref:- From the CPR & RD, Tadepalli, Guntur Dist.,
Proposal received through E-Office, in PRR02-14021(46)/57/2019-RWS SEC
- PRRD (Computer No. 952869), recd on 07-08-2019.
-o-o-

The attention of the Commissioner, Panchayat Raj & Rural Development,
Tadepalli, Guntur District is invited to the reference cited.

2. Government after careful examination hereby approve the proposal of the
Commissioner, PR&RD for change of the colours to the existing GP buildings in the
State duly including the Photograph of the Hon'ble C.M on one side of the Name
Board, which is to be covered in about 1/4 th of the space of the Name Board.

3. The Commissioner, Panchayat Raj & Rural Development, Tadepalli, Guntur
District is requested take appropriate action in the matter immediately.

GOPAL KRISHNA DWIVEDI
PRINCIPAL SECRETARY TO GOVT

To
The Commissioner, Panchayat Raj & Rural Development,
Tadepalli, Guntur District.

35. Thus, painting of the colours Blue, White and Green in terms of the circular is not in dispute, except taking a stand that the colours on the flag are vertical, while the colours on the Panchayat buildings are horizontal and the shades of colours are different. In this regard, to know the actual fact, as per the direction of this Court dated 13.12.2019, additional counter-affidavit has been filed by the 1st respondent attaching the flags of TDP and YSRCP on cloths as Annexures 10 and 11 respectively. The photo of the flag filed by the petitioners is also on record. To appreciate the painting of the colours on those flags, its impact due to painting of Panchayat buildings in terms of the judgment of the Supreme Court in *Common Cause* supra, it is necessary to trace the picture of the flags to compare with the colours proposed to paint the

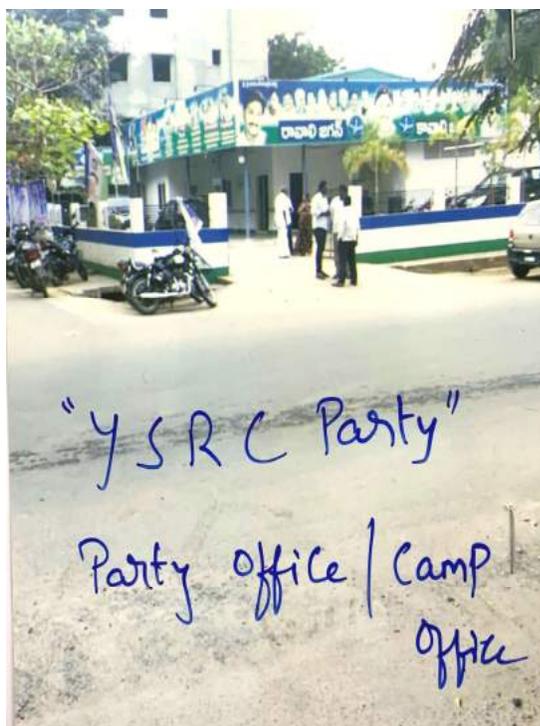
Panchayat buildings as approved by the Government (**Image-I**). Those traces are extracted as under:

THE TRACE OF THE FLAG OF RULING YSRCP WITH COLOURS
IMAGE-II **IMAGE-III**



36. The painting of the colours on the YSRCP office/camp office, filed along with the documents, by the petitioners is also relevant, which is traced as under:

YSRCP OFFICE/CAMP OFFICE
(IMAGE-IV)



37. After perusal of the above referred traced images, as per Image-I, the colours of the Panchayat buildings/Sachivalayams are three, namely, Green, White and Blue with horizontal lines. The colours in Images-II & III which are the flags of YSRCP are having similar colours, i.e., Blue, White and Green with vertical lines. Simultaneously, on Image-IV, which is the YSRCP Office/Camp Office, the colours are Blue, White and Green with horizontal lines. On comparison of all the aforesaid four images, it can safely be concluded that the colours Blue, White and Green are same in all four images. Even, there is no much difference of shades which may change the identity of colours as pleaded by the respondents. On the flag, all the three colours are in vertical lines, while on the camp office building of the party and Panchayat buildings, those three colours are painted horizontally giving visible resemblance of YSCRCP flag and colours of Party office. The proposal so given by the Commissioner, PR & RD with the same colour showing horizontal lines is approved by the Government vide order dated 11.08.2019. Thus, on perusal of the said images and as discussed, parity of the colours in all Images I, II, III & IV cannot be doubted. However, painting of Panchayat buildings with the colours of the flag and office of the party cannot be permitted. The purported justification given by the respondents, by change of pattern on the flag and on the Panchayat building by vertical and horizontal lining of the colours do not seem justifiable.

38. In view of the above discussion, the communication of the message by painting Panchayat buildings in the same colour of the party flag, as well the party office create impression of similarity to YSRCP and also influence the mind of the common citizen towards it. The word 'Government advertising' is nothing but to bring the fact into the knowledge of the general public of a thing, which Government want to project, for inviting the attention of public for having acquaintance to the object to which it was advertised. It is more questionable, when such activities have undertaken by use of Government building, and utilizing public money by the ruling party to advertise their ideology, that too on the eve of Panchayat elections. In our considered view, the things which cannot be done directly cannot be permitted to be done indirectly.

39. In the said context, reverting to the stand taken by the respondents during course of arguments that while in the regime of TDP, the Panchayat buildings were painted similar to the colours of the flag of the TDP. In support to the said contention and to substantiate the oral argument, the photographs of the canteens started by TDP, in the name of *Anna Canteens*, have been brought to our notice. The traces of the TDP flag and *Anna Canteen* are shown under as Images V & VI respectively:

THE TRACE OF TDP FLAG
(IMAGE – V)



ANNA CANTEEN
(IMAGE – VI)



40. It has not been brought on record under which statute the *Anna Canteens* were started. However, the colour design of *Anna Canteen* cannot be put at par to the Panchayat buildings which form part of the local self-government. But, in any case, either YSRCP or TDP, or any ruling party cannot be permitted to paint the colours of their flag on the buildings of the Panchayats at all levels or on any Government property, by utilising the public money to take political mileage, that too on the eve of the ensuing Panchayat elections.

41. In the judgment in *Common Cause* supra, the definition of ‘Government advertising’ has been specified, which means any message conveyed and paid for by the Government for placement in media such as newspapers, television, radio, internet, cinema and such other media. However, any message conveyed to the general public by use of Government property would come within the purview of ‘Government advertising’. As discussed above, the Panchayat buildings have been

painted with the colours of the flag of the ruling YSRCP questioning the action, inter alia, stating such painting is being done by use of public money to take political mileage by the ruling party. In the said context, we are unable to accept the contention of the learned Additional Advocate General that painting of the Panchayat building with similar colours would not come within the purview of 'Government advertising', in broad perspective it covers such an act. More so, the action of the Government in painting the same colours on the Panchayat buildings, resembling the colours of party flag and colours of office, by use of public money, does not qualify the test of reasonableness. In the facts of the present case, when such painting on the Panchayat buildings is being made on the eve of Panchayat elections, it would amount to evil practice and fall within the purview of violation of the election laws. Therefore, such action on the part of the Government is unjust, arbitrary, unreasonable and contrary to the spirit of the judgment in *Common Cause*. Accordingly, Question No. 3 is answered.

Question No.4: *Whether the State Election Commission may take any step on the eve of the declaration of Panchayat election and, if so, the inaction on their part is just?*

42. Part XV of the Constitution deals with elections. Article 324 of the Constitution confers power to the Election Commission regarding superintendence, direction and control of elections. The said provision applies for the General Elections of the Parliament as well as Legislative Assembly. While bringing Part IX of the Constitution, dealing with

Panchayats, as per Article 243-K, the superintendence, direction and control of the preparation of electoral rolls, and conduct of all elections to the Panchayats are vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. The terms and conditions of service and tenure of the office of the State Election Commissioner shall be such, as the Governor, by rule, determine and under the said provisions, the State Election Commission has to conduct the election to the Panchayats as well as the Municipalities, i.e., local bodies. In the matter of holding elections, the entity of the Election Commission is independent to the Government, because they ought to hold '*free and fair elections*' to maintain the democracy in India which is the largest in the world. It is trite law that the elections must be free and fair, uninfluenced by corruption or malpractices. In this regard, the Apex Court in the judgment of *Mohinder Singh Gill & Anr. v. Chief Election Commissioner*⁵, following the judgment of *N. Ponnuswami v. Returning Officer, Nanakkal Constituency and ors.*⁶, held as under:

"Since the conduct of all elections is vested under Art. 324(1) in the Election Commission, the framers of the Constitution took care to leaving scope for exercise of residuary power by the Election Commission, in the infinite variety of situations that may emerge from time to time. Yet, every contingency could not be foreseen and provided for with precision. The Commission may be required to cope with some situation, which may not be provided for in the enacted laws and rules. The Election Commission, which is a high-powered and independent body, cannot exercise its functions or perform its duties unless it has an amplitude of powers. Where a law is absent, the Commission is not to look to any external authority for the grant of powers to

⁵ 1978 AIR 851

⁶ (1952) SCR 218

deal with the situation but must exercise its power independently and see that the election process is completed in a free and fair manner. Moreover, the power has to be exercised with promptitude."

In the said judgment, it is further held as under:

"More is not necessary to specify; less is insufficient to leave unsaid. Article 324, in our view, operates in areas left unoccupied by legislation and the words "superintendence, direction and control, as well as 'conduct of all elections', are the broadest terms". Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election."

43. The Apex Court in the case of *Ghasi Ram v. Dal Singh & others*⁷ has held that election is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies although for general public good, is when all is said and done an evil practice, even if it may not be corrupt practice. The dividing line between an evil practice and a corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practices into corrupt practice.

44. Further, the Apex Court in the case of *A. Neelalohithadasan Nadar v. George Mascrene*⁸, with respect to the purity of the elections, held as under:

"When it is talked of ensuring free and fair elections it is meant elections held on the fundamental foundation of purity and the "secrecy of ballot" as an allied vital principle. It was observed by this Court in *Ragbir Singh case* [1980 Supp SCC 53 : (1980) 3 SCR 1302] as follows : (SCR p. 1320 : SCC p. 68, para 23)

⁷ 1968 SCR (3) 102

⁸ 1994 SCC Supl. (2) 619

"Secrecy of ballot though undoubtedly a vital principle for ensuring free and fair elections, it was enshrined in law to subserve the larger public interest, namely, purity of election for ensuring free and fair election. The principle of secrecy of ballot cannot stand aloof or in isolation and in confrontation to the foundation of free and fair elections, viz., purity of election. They can coexist but as stated earlier, where one is used to destroy the other, the first one must yield to principle of purity of election in larger public interest. In fact secrecy of ballot, a privilege of the voter, is not inviolable and may be waived by him as a responsible citizen of this country to ensure free and fair election and to unravel foul play."

45. As per the said judgment, the Court held that it is the duty of the Commission to not only see that free and fair elections to be held, but purity of elections should also be maintained free from corrupt or evil practices. Thus, as per the judgment in *Ghasi Ram* supra as well as *A. Neelalohithadasan* supra, the election must be based on the principle of purity and the Election Commission should ensure conducting of free and fair election with purity and such election should be free from corrupt practices including evil practices. In view of the above said judgment, it can safely be crystallized that in a democratic pattern where the governance of the Government is in the hands of the people, free and fair election is the paramount. The conduct of such free and fair election, without corrupt and evil practices, is the duty casted on the Election Commission in view of Article 324 and Article 243K of the Constitution.

46. As per the counter-affidavit filed by the State Election Commission, it reveals that the role of the Commission starts only when the election is notified in view of the guidelines of the State Election Commission issued in the year 2019. However, to deal with the said

issue, the judgment of the Supreme Court in the case of *N. Ponnuswami* supra, is relevant, wherein, referring the Halsbury's Laws of England, the Supreme Court, with respect to the commencement of the election, observed as under:

"The subject is dealt with quite concisely in *Halsbury Laws of England* in the following passage [See page 237 of *Halsbury's Laws of England*, 2nd Edn. Vol. 12] under the heading Commencement of the Election":

"Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is 'reasonably imminent'. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when 'the conduct and management of' an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case."

On a perusal thereto, it is clear that the election will usually begin at least earlier than the issue of the writ and the question when the election begins must be carefully distinguished that as to when "*the conduct and management of*" an election may be said to begin.

47. Relying upon the judgment in the case of *N. Ponnuswami, Ghasi Ram & A. Neelalohithadasan* supra, the Division Bench of the Punjab & Haryana High Court, had an occasion to consider similar issue in the

case of *Harbans Singh Jalal, Ex-MLA v. Union of India*⁹. The Court, relying upon the judgment in *Ghasi Ram*, observed as under:

"24. The existence of political parties and their participation in election cannot be denied by anyone. In the present democratic system prevailing in India, political parties play a vital role in the administration of the country. Leaders of the political parties, in their wisdom, evolved a model code of conduct, to be followed by them in election. That was so framed by them under the auspices of the Election Commission. That code does not contain any provision contrary or derogatory to any enactment. Such a code of conduct when it is seen that it does not violate any of the statutory provisions, can certainly be adopted by the Election Commission for the conduct of free and fair election which should be pure as well.

25. On the eve of election, political parties or candidates may come forward with tempting offers to the electorate to win their favour. If such a course is allowed to be resorted to by the parties or the candidates contesting the elections, it will certainly undermine the purity of elections. In such a situation, if Election Commission took steps to implement the code of conduct which in no way infringes any of the laws, this Court, in exercise of the powers under Article 226 of the Constitution, is not to interfere.

26. Election commission has not taken any step to prevent activities of the party which is in power during the period prior to the date of announcement of the election. Knowing the situation, Election Commission announced the election more than three weeks prior to the issuance of the notification under section 15 of the Act. This period of three weeks is to apprise the political parties of the ensuing elections, for enabling them to prepare for the election. The said period intervening between the date of announcement and date of notification, is not at all unreasonable. During the short period preceding the notification, the Election Commission compels the political parties, the party in power and the candidates to behave in a manner which will not undermine conduct of free and fair election."

48. In view of the foregoing legal position and by interpreting the election laws, the Apex Court as well as other High Courts are of the view that, to hold free and fair elections, it is necessary that the Election Commission should not act only after declaration of the election notification. But, the Election Commission must take steps to see how the conduct of free and fair election may be possible, uninfluenced by

⁹ (1997) 116 PLR 778

corrupt and evil practices. Therefore, the steps may be taken by the Election Commission in this regard even on the eve of the elections.

49. The Hon'ble Supreme Court in *S. Subramanian Balaji v. Govt. of Tamil Nadu & Ors.*¹⁰, issued the following directions:

"87. Therefore, considering that there is no enactment that directly governs the contents of the election manifesto, we hereby direct the Election Commission to frame guidelines for the same in consultation with all the recognised political parties as when it had acted while framing guidelines for general conduct of the candidates, meetings, processions, polling day, party in power, etc. In the similar way, a separate head for guidelines for the election manifesto released by a political party can also be included in the Model Code of Conduct for the Guidance of Political Parties and Candidates. We are mindful of the fact that generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date. Nevertheless, an exception can be made in this regard as the purpose of the election manifesto is directly associated with the election process.

88. We hereby direct the Election Commission to take up this task as early as possible owing to its utmost importance. We also record the need for a separate legislation to be passed by the legislature in this regard for governing the political parties in our democratic society."

50. By the said judgment, the Election Commission has been directed to formulate guidelines. As per the said directions, the Election Commission of India has formulated guidelines, which are known as *Manual on Model Code of Conduct issued in March, 2019*. The relevant provisions, chapter-wise are reproduced for perusal, which are as under:

"CHAPTER 2 - STATUS AND SCOPE OF MODEL CODE

2.4 Scope of Supplementing Instructions

¹⁰ SLP (C) No. 21455 of 2008

2.4.1 Model Code has been issued by the Election Commission under executive powers and most of the principles embodied in it do not have force of law but as the political parties have themselves consented to abide by them, they are bound to respect and observe them. Secondly, with the support of public opinion the Election Commission has a moral sanction to ensure observance of Model Code. **2.4.2** Besides, Article 324 of the Constitution vests vast responsibilities and powers in the Election Commission. Where enacted laws are either silent or do not have sufficient provisions to deal with any unforeseen circumstances during conduct of elections, the Election Commission is entitled to issue instructions exercising plenary power under Article 324 to ensure that the elections are conducted in a free and fair manner. The Supreme Court observed in S. Subramaniam Balaji that the Election Commission, in order to ensure level playing field between the contesting parties and candidates in elections and also in order to see that the purity of election process does not get vitiated, has been issuing instructions under Model Code of Conduct. The fountainhead of the powers under which the Election Commission issues these orders is Article 324 of the Constitution, which mandates the Election Commission to hold free and fair elections.

CHAPTER-3 ENFORCEMENT OF MODEL CODE

3.1 Introduction

Model Code of Conduct is a singular contribution by political parties to the cause of democracy in India. It ensures a level playing field in the arena of election, where the party in power cannot take any action in close proximity to announcement of election. As maintained in several cases by the Supreme Court, the object of Model Code is that energy to do good by the party in power should not be used on the eve of elections, so as to derive any benefit during elections.

3.2 Date of Enforcement

Model Code of Conduct comes into operation right from the time and day, the election schedule is announced by the Election Commission. The question in regard to date of enforcement of Model Code stands conclusively settled with the agreement dated 16 April 2001 between the Election Commission and the Central Government (Please refer to OM attached to case No.2 'Union of India Vs Harbans Singh Jalal'of CHAPTER- 23 LANDMARK JUDGEMENTS ON MODEL CODE). This is also clear from clause (vi) of Part VII of Model Code, which states that from the time the elections are announced by the Election Commission, the Ministers and other authorities shall not do certain things. It was further endorsed by the Supreme Court in its judgment dated 05 July 2013 in S. Subramaniam Balaji v/s Government of Tamil Nadu & Others wherein the court observed that Model Code becomes enforceable from the date of announcement of the election programme (Please refer to case No.4 of 17 "No voter to be left behind" CHAPTER- 23 LANDMARK JUDGEMENTS ON MODEL CODE). In fact, Part VIII of Model Code relating to manifesto may come into force even prior to the date of announcement of election, if a manifesto is issued by any political party before such announcement.

Whether the Election Commission Can Take Action under Model Code Before Announcement of Election Normally, the Election Commission does not take cognizance of alleged violation of Model Code before the announcement of election. In this regard, an issue came up before the Election Commission in 2010, that Bahujan Samaj Party, a recognized national party, had violated Model Code by erecting statues of 'elephant', its reserved symbol, by using government funds. The Election Commission maintained that it could not take cognizance of the alleged misuse of official power and machinery by any political party during the non-election period. The Election Commission's stand was questioned before the Delhi High Court in Common Cause vs Bahujan Samaj Party. After examining the relevant provisions of the Symbols Order, the High Court came to the conclusion that the election symbol of the party could not be frozen, as was prayed for by the petitioner, by the Election Commission in view of the existing provisions, though, the High Court observed that the parties in power should not use public funds to promote their own election symbols or their leaders, even during nonelection period, and, therefore, requested the Election Commission to frame some guidelines to achieve the above objectives.

CHAPTER 6 - PUBLICATION OF ADVERTISEMENTS AT COST OF PUBLIC EXCHEQUER

6.1.3 During 2004 parliamentary elections, a question was raised whether all such boards and hoardings should be removed. During the same elections, the Election Commission gave instructions that all publicity hoardings put up by the State governments on the eve of elections highlighting their achievements, may be removed. The Election Commission directed that photographs of MPs/MLAs be suitably covered. The same instruction was applied in the case of photograph of the Prime Minister on publicity boards displayed on main highways, newly laid or improved under the Prime Minister's Golden Quadrilateral Scheme.

6.3 Consolidated Guidelines

6.3.1 In 2004, the Election Commission issued detailed instructions on publication of government advertisements (Annexure X). Later on more instructions were issued, which are summarized as follows: (i) No advertisements shall be issued in electronic and print media highlighting the achievements of the Govt. at the cost of public exchequer. If any advertisement has already been released for telecast/broadcast or publication in the print media, it must be ensured that telecast/broadcast of such ads on electronic media is stopped forthwith and that no such ad is published in any newspapers, magazines, etc., i.e. in print media, from the date of announcement and it should be immediately withdrawn. (ii) For pre-viewing, scrutinizing and certifying advertisements to be telecast over TV channels and cable networks by any registered political party or by any group or organization / association, having headquarters in NCT of Delhi, the Chief Electoral Officer, Delhi shall constitute a Committee as directed in the Order. Similarly, the Chief Electoral Officers of other States / Union Territories will constitute Committees for dealing with applications by political parties and other associations / groups with headquarters in their States / Union Territories, as per provided in the Order. Returning Officer of every Parliamentary Constituency has been declared as Designated Officer for previewing, scrutinizing and 48 "No voter to be left behind" certifying advertisements by individual candidates contesting election from the constituency concerned.

(iii) Further, the Chief Electoral Officers of all States / Union Territories are also required to constitute further a Committee to attend to complaints / grievances in regard to the decision of the Committees of Designated Officers on the application for certification of advertisements. (iv) Each application for certification is to be submitted before the Committee concerned or the Designated Officer concerned in a statement as per the prescribed format. The certificate for telecast for an advertisement is to be given by the Committee / Designated Officer in the prescribed format. The applicants are required to submit two copies of the proposed advertisements in electronic form alongwith an attested transcript thereof. (v) A proper record in a register should be maintained for all applications received for certification. Each application should be serially numbered and the serial numbers should also be indicated on the two copies in electronic form and the receiving officer should affix his signature on the electronic copy. After issue of certificate, one electronic copy of the advertisement as certified for telecast, should be retained by the Committee / Designated Officer. (vi) All Chief Electoral Officers may take immediate action for acquiring, by hiring or purchase, necessary equipments / infrastructure, such as television. VCR, VCD, etc. that may be required for the purpose of previewing and scrutinizing of advertisements by the Committees and Designated Officer in their State / Union Territory. Purchase of equipment, if any, is to be made in accordance with the rates and procedures approved by the State Governments for similar items.

6.4 Display of Advertisements and Hoardings At the Cost of Public Exchequer

6.4.1. The Election Commission has directed that such hoardings, 49 "No voter to be left behind" advertisements, etc., put up by the Government, which purport to give general information or convey general messages to the masses on family planning, social welfare schemes etc. may be allowed to be displayed. However, all the hoardings, advertisements, etc. at the cost of public exchequer, which seek or purport to project the achievements of any living political functionary or political party and which carry his photo or name or party symbol should be removed forthwith as no political functionary or political party can use public resources and incur or authorize expenditure from public exchequer to eulogise himself or itself or enhance his/its own or any political leader's personal image. Such hoardings, etc. undoubtedly amount to their individual/party election campaign at public cost.

6.4.2. The Election Commission has also directed that no advertisements should be issued in the newspapers and other media, including electronic media, at the cost of public exchequer during the election period and misuse of mass media during election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power, should be scrupulously avoided.

CHAPTER 9 - DISPLAY OF PHOTO/MESSAGE ON OFFICIAL WEBSITE/GOVT. BUILDINGS/ ADVERTISEMENTS

9.1 Introduction:

The Election Commission has observed that official websites of Ministers and their offices/ organizations, which carry material on personal achievements of the Ministers in their political/ public

life, continue to display the same during election period. It amounts to violation of Model Code provisions. The Election Commission has issued directives to regulate this type of political advertisements.

9.2 Display of Photo/Message on Official Website

9.2.1 The Election Commission has instructed that partisan coverage of ministers highlighting and eulogizing their personal achievements on various official websites of Govt. Departments and social media, in order to furthering the prospects of party in power should be scrupulously avoided during the period Model Code is in force.

9.3 Display of Photo/Message in Government Buildings

The Election Commission has also instructed that during Model Code period photographs of Prime Minister, Chief Ministers, ministers and other political functionaries many of whom are still active in public life and may be contesting elections should not be displayed in government buildings/premises as that would have the effect of disturbing the level playing field vis-à-vis the political functionaries of other parties and candidates.

9.4 Display of Photo/Message on Government Advertisements/Hoardings

The Election Commission has directed that "hoardings, advertisements, etc., put up by the Government which purport to give general information or convey general messages to the masses on family planning, social welfare schemes etc. may be allowed to be displayed. However, all those hoardings, advertisements, etc. which seek or purport to project achievements of any living political functionaries or political party and which carry their photos or name or party symbol should be removed forthwith as no political functionary or political party can use public resources and incur or authorize expenditure from public exchequer to eulogize himself or itself or enhance his/its own or any other political leader's personal image. Such hoardings, etc. undoubtedly amount to their individual/party election campaign at public cost.

CHAPTER 12 USE OF SCHOOL GROUNDS/PUBLIC PROPERTIES

12.1 Introduction

For the purpose of holding public meetings in the course of their election campaigns, political parties require big maidans, parks, play-grounds, etc. In many cities and towns, political parties often face scarcity of such grounds for their public meetings and they often approach the Election Commission for use of school/college grounds for holding their public meetings. Apart from making a provision in the Model Code of Conduct itself in Part VII (ii) that the parties in power shall not monopolize public places such as maidans for holding their election meetings and for using as helipads for helicopters/ aircrafts, the Election Commission has issued clear instructions on the use of play grounds of schools, colleges and other educational institutions and other public properties, which the authorities concerned will have to keep in mind while issuing necessary permission.

12.2 Use of School/College Premises/Grounds

12.2.1 The Election Commission has allowed use of school/college grounds for political meetings provided that: (i) academic calendar of school/college is not disturbed under any circumstances. (ii) the school/college management has no objection and prior permission for such campaigning is obtained from them as well as Sub Divisional Officer concerned. (iii) such permission is granted on first-come-first served basis and no political party is allowed to monopolize use of such grounds. (iv) there is no order/direction of any court prohibiting use of any such premise/ground. (v) the political parties/candidates/campaigners shall ensure that no Model Code norms are violated. (vi) any violation in allotment of school/college grounds for political meetings will be viewed seriously by the Election Commission. The accountability in this regard lies with the Sub Divisional Officer.

12.2.2 The political party which has been permitted to use grounds for campaigning purpose will be responsible to return the ground to school/ college authority concerned, without any damage or with the requisite compensation for the damage caused, if any.

12.3 Restriction on Use of Public Properties for Political Advertisements

12.3.1 While prohibiting use of space in public places/public properties like railway stations, government dispensaries/hospitals, post offices, bus stands, airports, bridges, railways flyovers, roadways, government buses, government/public buildings/premises, civil structures, electric/telephone poles, municipal/local bodies buildings, etc. for political advertisements, the Election Commission has directed that no wall writing, pasting of posters/papers or defacement in any other form, or erecting/displaying of cutouts, hoardings, banners, flags etc. shall be permitted during election period as part of election campaign.

12.3.2 It is further directed that subject to relevant law or court order, if any, the government departments (whether central or state) local authorities, joint sector undertakings etc., municipalities, municipal corporations, marketing boards etc., while entering into a contract for providing space for publicity purpose with private advertising agencies, shall make a provision in the contract that use of the assets for political advertisement during the period Model Code will be subject to directions of the Election Commission."

51. On perusal of the said guidelines as well as the judgment of the Supreme Court, it can safely be observed that the Election Commission cannot act as silent spectator prior to the notification of the election. Relying upon the judgment of the Delhi High Court in *Common Cause v. Bahujan Samaj Party*¹¹, the Election Commission of India has issued

¹¹ 2016 SCC OnLine Del 3787

as circular on 07.07.2016, whereby the Commission was of the view that utilizing public funds/public place for promoting any political party or propagating its election symbol would be antithetical to the concept of free and fair election and the principle of level playing field for all stakeholders. The Election Commission has clearly ruled that no political party shall henceforth either use or allow the use of any public funds or public place or government machinery for carrying out any activity that would amount to advertisement for the party or propagating the election symbol allotted to the party.

52. In view of the above, it is clear that the State Election Commission cannot sit as silent spectator, waiting for election notification. In the present case, on issuing the direction by this Court on 13.12.2019, a representation was submitted to the Election Commission on 20.12.2019 which is rejected by the Commission vide its Letter No.N.Dis.No.07/SEC-B2/2019, dated 31.12.2019, only commending that prior to the election notification, the Commission cannot take any steps. It is not out of place to note here that in W.P.(PIL) Nos.141 and 153 of 2019, the Election Commission is the party wherein vide order dated 21.11.2019, directions were issued to hold the Panchayat election, because on account of completion of the term of Panchayats in August 2018, even by lapse of 1 ½ year, Panchayat elections were not conducted by the Government. In the said writ petition, order was passed by this Court on 08.01.2020, as per the undertaking of the Election Commission to complete the election by

03.03.2020. Even on the undertaking, election has not been notified immediately and in the meantime, the Supreme Court on 15.01.2020, passed the order in S.L.P.1314 of 2020 to stay the election. In furtherance thereto, this Court has heard those cases - W.P. (PIL) Nos.2 of 2020 and the batch, and decided it vide order dated 02.03.2020, by struck down the reservations so made not less than 34% for the BCs., and also set aside the G.O.Ms.No.176, PR & RD dated 28.12.2019, by which 59.85 % reservation was made in aggregate of S.Cs., S.Ts., and B.Cs. In the said case, further direction to hold the election after rearticulating the reservation within one month has been issued. In the said sequel of the facts and circumstances, the acts of the Election Commission cannot be recognised as just, for holding free and fair election. It is the duty of the Election Commissioner to act upon as per the spirit of the Constitution of India, thereby free and fair Panchayat elections can be held in the State of Andhra Pradesh.

53. As per the discussion made hereinabove and comparing the Model Code of Conduct issued by the State Election Commission, 2019 for Local Bodies, it is not in conformity with the guidelines issued by the Central Election Commission. In this regard, it is observed that the power conferred under Article 324 to the Central Election Commission and Article 243-K is co-terminus. Simultaneously, the State Election Commission is bound to issue guidelines consistent to the guidelines of the Central Election Commission, and it must be in conformity to the said spirit. Question No.4 is answered in view of the foregoing.

Question No.5: *Whether in the facts and circumstances of the case, so as to maintain the rule of law and uniformity, what directions can be issued?*

54. In view of the foregoing discussion, it can safely be concluded that these Public Interest Litigations have espoused a justifiable cause and have not been filed with any ulterior motive. The reason for filing of the Public Interest Litigations is to check the mis-utilization of the public money by the hands of political parties; comparing this act of painting of the Panchayat/Government buildings with the colours akin to their party and office colours only to get political mileage, adopting evil practices. Thus, it is concluded that these petitions are for just and bona fide cause and entertainable.

55. Upon hearing, it is luculent, as and when any political party comes into power in the State, they are in the habit to paint the buildings of the Panchayat or other Government buildings akin to the colours of their party flag. Such practice must be stopped. As the buildings of the Panchayat falls within the purview of the local self-government and constructed with the funds of the Government, however for such buildings and also of the Government, NBC applies. The use of impermissible signs which covers painting of the colours similar to the colours of the party flags or the office of the political parties, cannot be permitted to be used in future. As discussed, such an act is being done to propagate the ideology of the individual political party, which may effect the free and fair election. More so, such an act of the officials to

propose painting of the panchayat buildings akin to the colours of the flag and office of the political parties approved by Government tantamount to mis-utilization of the Government money by use of Government properties for political gain, which violates the election laws and also amounting to violation of the rule of law in the State. It appears more pre-determined, particularly when the authorities are not complying the interim order of the High Court as in the present case W.P.(PIL) No.177 of 2019, passed on 13.12.2019. Even then, in the garb of the Government Memo dated 11.08.2019, the authorities have not checked the painting of Panchayat buildings, and continued to paint the buildings, however, making allegations of violation of the Court order, another W.P.(PIL) No.18 of 2020 is filed. Thus, by quashing *Government Memo No.PRR01-PROPPAN(MISC)/192/2019 Dt.11.08.2019*, such practice should be stopped. Simultaneously, in view of the judgments of the Supreme Court in the cases of *N.P.Ponnuswami, A. Neelalohithadasan and Ghasi Ram* supra, the stand of the Election Commission is also unjust and improper and also not in conformity to the directives of the notification issued by the Central Election Commission, relying upon the judgment of the Supreme Court as well as Delhi and Punjab & Haryana High Courts. Therefore, it is concluded that as per the spirit of the Constitution of India, it is expected that the State Election Commission must act fairly, thereby fair and impartial elections of the Panchayat may be held in the State of Andhra Pradesh.

56. Therefore, while allowing these Petitions, we issue the following directions:

- i) The *Government Memo No.PRR01-PR0PPAN(MISC)/192/2019 Dt.11.08.2019* issued by the Principal Secretary to Government approving the proposal of the Commissioner dated 08.08.2019 to paint the buildings of the Gram Panchayat with the colours of Image-I, is hereby quashed.
- ii) The respondents are restrained to paint the Government buildings/Panchayat buildings similar to the colours of the flags of the parties or the party offices by use of public money.
- iii) The respondents are directed to remove the colours painted on the Panchayat buildings in furtherance of their Memo dated 11.08.2019 within 10 (Ten) days from today, atleast prior to the elections of the Panchayat. The directions be issued, forthwith, by the respondent No.1/Principal Secretary to the Government, in this regard.
- iv) The Chief Secretary of the State shall ensure the compliance of the directions and submit a compliance report within 2 (two) weeks to the Registrar (Judicial) of this Court. Failure to submit the same may entail the

responsibility of Respondent No.1 including the Chief Secretary.

- v) The Chief Secretary is further directed to formulate the guidelines to specify suitable colour combination for painting the Panchayat/Government buildings and other properties belonging to the Government as well as local bodies and authorities; which should not be similar to the colours of the flags and office of political parties. Prior to the election, the panchayat buildings, if any are painted in furtherance of the Memo dated 11.08.2019, such colours shall be removed or repaint by the colour theme, so decided by the Chief Secretary.
- vi) The State Election Commission is directed to hold free and fair election of the local bodies, and to take appropriate steps, in the State without allowing to adopt the evil practices, by any of the party.
- vii) The State Election Commission shall issue fresh guidelines akin to the guidelines issued by the Central Election Commission, which is based on the judgments of the Supreme Court as well as various High Courts.

57. Let a copy of this order be sent by Fax by the Registry to the Chief Secretary of the State, Principal Secretary, Panchayat Raj & Rural Development Department and Central Election Commission to look into the functioning of the State Election Commissioner and to do the needful.

58. Accordingly, these petitions succeed and are hereby allowed subject to the terms indicated hereinabove. No order as to costs. As a sequel, all pending miscellaneous applications stand disposed of.

J.K. MAHESHWARI, CJ

NINALA JAYASURYA, J

MRR