IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

+ WRIT PETITION NOs.7847 AND 7778 of 2021

% Dated 21.05.2021

W.P.No.7847 of 2021

#
Janasena Party, a registered Political Party
Rep. by its Secretary
Chillapalli Srinivasa Rao
R/o 8-589, Bhargavapeta
Mangalagiri, Guntur-522 503

..... Petitioner

Vs.

$
The State Election Commissioner,
Andhra Pradesh State Election Commission,
1st Floor, New HOD Building
M.G. Road, Vijayawada-520 010 & two others ……Respondents

W.P.No.7778 of 2021

#
Varla Ramaiah,
s/o Issac, Hindu
Politburo Member and General Secretary of
Telugu Desam Party,
R/o 1-3-174/8, Varka Yugandhar Marg,
Vidyadharapuram, Vijayawada-12 ..... Petitioner

Vs.

$
The State Election Commissioner,
Andhra Pradesh State Election Commission,
1st Floor, New HOD Building
M.G. Road, Vijayawada-520 010 & two others ……Respondents

JUDGMENT PRONOUNCED ON:

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? YES

2. Whether the copies of judgment may be marked to Law Reporters/Journals YES

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? YES

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ WRIT PETITION NOs.7847 AND 7778 of 2021

% Dated 21.05.2021

W.P.No.7847 of 2021

#
Janasena Party, a registered Political Party
Rep. by its Secretary
Chillapalli Srinivasa Rao
R/o 8-589, Bhargavapeta
Mangalagiri, Guntur-522 503
..... Petitioner

Vs.

$
The State Election Commissioner,
Andhra Pradesh State Election Commission,
1st Floor, New HOD Building
M.G. Road, Vijayawada-520 010 & two others .....Respondents

! Counsel for the petitioner : Sri V. Venugopala Rao

^ Counsel for the respondent :
1. Sri C.V. Mohan Reddy, learned Senior Counsel
2. Learned Advocate General for State of A.P

W.P.No.7778 of 2021

#
Varla Ramaiah,
s/o Issac, Hindu
Politburo Member and General Secretary of
Telugu Desam Party,
R/o 1-3-174/8, Varka Yugandhar Marg,
Vidyadharapuram, Vijayawada-12 ..... Petitioner

Vs.

$
The State Election Commissioner,
Andhra Pradesh State Election Commission,
1st Floor, New HOD Building
M.G. Road, Vijayawada-520 010 & two others .....Respondents

! Counsel for the petitioner : Sri Vedula Venkataramana

^ Counsel for the respondent : Sri C.V. Mohan Reddy
Learned Senior Counsel

Advocate General

<GIST:

> HEAD NOTE:

? Cases referred

1. (1995) 4 SCC 611
2. (2013) 10 SCC 1
3. (2016) 2 SCC 445
4. AIR 2000 SC 3266
5. (2013) 3 SCC 526
6. 2003 (2) SCR 180
7. Misc Bench No.9470 of 2014 dated 16.01.2015
8. 2017 (9) ADJ 251
9. 1986 (4) SCC 632
10. 1995 All.L.J 534
11. (1996) 9 SCC 309
12. (2004) 2 SCC 150
13. (2008) 2 SCC 280
14. 2017 (9) ADJ 251
15. AIR 1952 SC 12
16. AIR 1951 SC 41
17. AIR 1977 SC 276
18. (2002) 1 SCC 33
19. 2019 (5) ALT 165
20. AIR 2012 SC 2010
21. AOR 1952 SC 64
22. AIR 1967 SC 669
23. AIR 1985 SC 1746
24. AIR 1978 SC 854
25. AIR 2004 SC 3600
26. (1984) 3 SCR 74
27. (2020) 6 SCC 548
28. 2000 (8) SCC 216
29. 1999 AIR SC 1723
30. (2021) 2 MLJ 603
31. (1967) 2 SCR 762
32. 1981 SCR (1) 206
33. AIR 1997 SC 1125
34. AIR 2007 SC 861
35. AIR 1996 AP 37
36. AIR 1987 SC 386
37. AIR 1987 SC 663
38. AIR 1996 AP 324
39. 2001 (6) ALD 136
40. AIR 1999 P&h 1
41. 1995 Supp. (3) SCC 643
42. (1997) 116(2) PLR 778
43. (2013) 9 SCC 659
44. AIR 1968 SC 647
45. 1901 AC 495

46. AIR 1990 AP 171
47. (2002) 3 SCC 496
48. (1951) 2 All. ER 1 (HL)
49. (1971) 1 WLR 1062
50. (1972) 2 WLR 537
51. (2003) 11 SCC 584
52. (2004) 3 SCC 75
53. (2004) 7 SCC 214
54. (2004) 8 SCC 579
55. (2006) 1 SCC 368
56. 1994 (2) SCC 481

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NOs.7847 AND 7778 of 2021

COMMON ORDER:

Both these writ petitions are filed under Article 226 of the Constitution of India, for identical relief, so also, on identical major grounds. Hence, it is appropriate to decide both the writ petitions by common order.

W.P.No.7847 of 2021

"Janasena Party", a registered political party, represented by it's Secretary Chillapalli Srinivasa Rao, Guntur, filed W.P.No.7847 of 2021 claiming a declaration that the Notification No 1503/SEC-B1/2021 dated 01.04.2021 of 1st respondent resuming the election process of Mandal Praja Parishads Territorial Constituencies (MPTCs) and Zilla Praja Parishads Territorial Constituencies (ZPTCs) in State of Andhra Pradesh, from the stage where it was stopped without issuing fresh notification, keeping in view the earlier report in letter No.221/SEC-PESHI/2020 dated 18.03.2020 addressed to the Home Secretary, Government of India reporting instances of violence viz., prevention from filing nominations, forceful withdrawal as bad, illegal, arbitrary and contrary to Articles l4 and 243-K of Constitution of India and consequentially, set aside the same by directing the first respondent to issue fresh notification for filing of fresh

nominations to conduct elections to MPTCs and ZPTCs in State of Andhra Pradesh by free and fair election process.

W.P.No.7778 of 2021

One Varla Ramaiah, Politburo Member and General Secretary to Telugu Desam Party (T.D.P) filed W.P.No.7778 of 2021 to declare the action of the first respondent in not imposing the MCC for a period of four weeks before the notified date of polling as mandated by the Supreme Court of India in W.P.(Civil) No.437 of 2020 dated 18.03.2020 and preceding to issue the election Notification No.1503/SEC-B1/2021 dated 01.04.2021 purporting to conduct the elections for MPTCs and ZPTCs on 08.04.2021 in violation of the orders of the Supreme Court of India without re-imposition of the model code of conduct for four weeks prior to the date of poll is patently arbitrary and illegal, set-aside the said notification and direct the first respondent to issue a fresh notification scheduling the date of poll of MPTCs and ZPTCs elections in the State by re-imposing the Model Code of Conduct for four weeks from the date of notification till completion of election process.

The major and common ground raised in W.P.No.7778 of 2021 and in W.P.No.7847 of 2021 is that, when a notification for conduct of elections for MPTCs and ZPTCs was issued on 07.03.2020, the election process of MPTCs and ZPTCs was completed upto the stage of publication of list of contesting candidates. More so, on 15.03.2020, the first respondent issued a notification withholding/suspending the election process of MPTCs

/ ZPTCs and Urban local bodies due to threat of pandemic, Covid-19. It is contended that the second respondent/State of Andhra Pradesh had filed W.P.(Civil) No.437 of 2020 before the Hon'ble Supreme Court of India challenging the Notification dated 15.03.2020 issued by the State Election Commission, postponing the Elections for local bodies such as panchayats and municipal bodies including MPTCs & ZPTCs by six weeks or any other date on the ground of threat of Covid-19.

The Hon'ble Supreme Court of India in W.P.(Civil) No.437 of 2020 dated 18.03.2020 issued the following order:

> "The petitioner – State of Andhra Pradesh has filed this writ petition challenging the action of the respondent – Andhra Pradesh State Election Commission (for short, the 'Election Commission') in issuing a Notification dated 15.03.2020 postponing the elections for the local bodies such as Panchayats and Municipal Bodies by six weeks or any other date on the ground of spread of Corona virus (COVID 19).
>
> We do not see any reason why this Court should interfere with the decision of the respondent - Election Commission to postpone the elections particularly since the postponement is due to possible outbreak of Corona virus (COVID 19) epidemic in the country. We therefore decline to interfere with the said decision of the Election Commission. However, it appears that one of the grievances raised by the petitioner – State needs to be addressed. According to Mr. ANS Nadkarni, learned Additional Solicitor General appearing for the State, a large number of developmental activities have been suspended due to the imposition of the MCC for the aforesaid Elections in the State of Andhra Pradesh.
>
> Mr. Nadkarni, learned Additional Solicitor General, submits that the imposition of the MCC would not be justified if the Elections are postponed. We see much substance in the above submissions of the learned Additional Solicitor General. ***We therefore direct that the Election Commission shall impose the MCC four weeks before the notified date of polling.*** Mr. Shekhar Naphade, learned Senior Counsel appearing for the respondent – Election Commission, submits that the State of Andhra Pradesh is not entitled to move this Court by way of filing writ petition under Article 32 of the Constitution of India. We are not inclined to go into this question in the present writ petition due to the emergent circumstances in which the same is filed. The said question is left open for determination in an appropriate case. Mr. Nadkarni, learned Additional Solicitor General for the petitioner – State, submits that the Election Commission was not entitled to postpone the elections without appropriate consultation with the State Government. He relies upon the decision of this Court in Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad and Others – (2006) 8 SCC

352. According to Mr. Naphade, learned Senior Counsel for the respondent – Election Commission, the decision in Kishansing Tomar (Supra) does not require prior consultation. This is also not a controversy which we consider appropriate for decision in this case in view of the order we propose to pass.

We direct that since the Election Commission has already taken the decision to postpone the Elections, there shall be a post decisional consultation with the State of Andhra Pradesh before the next date is notified by the Election Commission. ***The MCC for the elections shall be re-imposed four weeks before the date of polling***. We further direct that the present development activities which have already been undertaken shall not be interrupted till the MCC is re-imposed. However, if the State Government wishes to undertake any fresh developmental activities, they shall do so only with the prior permission of the respondent – Election Commission. In no circumstance, the State Government shall be prevented from taking necessary steps to curb the menace of Corona Virus (COVID 19) epidemic. The instant writ petition is disposed of in the above terms."

In view of the orders passed by the Hon'ble Supreme Court, the first respondent should re-impose MCC four weeks before the notified date of polling, which means that during the period of "Model Code of Conduct" (for short 'MCC') the State Government shall not take any steps to attract the voters towards it's so called welfare schemes "Navaratnalu". The restart should be preceded by re-imposition of MCC, it should be four weeks before the notified date of polling. Instead of following the directions issued by the Hon'ble Supreme Court, the first respondent/State Election Commissioner on 01.04.2021 took charge of her office on appointment and resumed the election process of MPTCs and ZPTCs to elect their representative members, except those specified in the annexure enclosed to the notification.

It is contended that, as per the annexure to the impugned notification dated 01.04.2021, the issue of notification by the State Election Commission, resumed the adjourned election process of MPTCs and ZPTCs on 01.04.2021, proposed to conduct polling wherever necessary on 08.04.2021, re-poll if any on 09.04.2021,

counting of votes was on 10.04.2021 and declaration of results is soon after completion of election process.

It is contended that, the first respondent has restricted its operation of MCC from 01.04.2021 to 08.04.2021 which is a patent violation of the order of the Hon'ble Supreme Court, since the Hon'ble Supreme Court directed the State Election Commission to re-impose MCC for four weeks before the notified date of polling. By virtue of this notification, the object of imposition of MCC for four weeks before the notified date of polling is to create an equal platform to all the political parties to participate in the elections for obtaining free and transparent verdict of the voters. But, contrary to the directions issued by the Hon'ble Supreme Court, the notification was issued and therefore, it is illegal and arbitrary.

The additional grounds raised by **"Janasena"** Political Party i.e petitioner in W.P.No.7847 of 2021 are that, during the period from 07.03.2020 till 14.03.2020, for conduct of elections to MPTCs and ZPTCs, several instances which never happened in the history of elections happened in the State of Andhra Pradesh, hackling democracy, but in pursuance of the said election notification dated 07.03.2020, there was great disturbance, consistently and systematically undertaken by the ruling party and created horrendous situation. In several parts of the State, the leaders and representatives of the ruling party have openly and deliberately made their efforts preventing the persons from filing nominations to participate in election process except persons from ruling party. There are hundreds of instances preventing persons from filing

nominations in pursuance of notified election schedule and there are thousands of instances of violence, attacks and threats interrupting the process of filing nominations by the candidates from all other political parties and independent candidates while insisting for unanimous elections as dictated by the ruling party representatives, in some of the incidents official of various departments of government at the instance of ruling party leaders. It became a hectic task to file nominations and in some occasions where the persons from other political parties, except ruling party were able to reach the centres for filing nominations, they were threatened and compelled to withdraw nominations, so as to declare the candidates from ruling party elected unanimously. The violations and other instances are known to public as to how the political party in power abused its power, in preventing several contesting candidates from participating in the elections at one stage or the other and made them to withdraw their nominations forcibly. Having no other alternative, the then State Election Commissioner/first respondent, responded and sent a detailed report to the Government of India vide letter No.221/SEC-PESHI/2020 dated 18.03.2020 about the experiences in State of Andhra Pradesh, particularly the representatives from the ruling party. Based on those grounds, the petitioner contended that the election process was totally undemocratic and high-handed acts lead to postponement of elections, now the first respondent is taking steps to proceed with election process of MPTCs and ZPTCs from the stage where it was stopped. In such process, the first respondent has issued an order No:700/SEB1/2021 dated

18.02.2021 calling report of specific instances of prevention from filing nominations subject to an enquiry and due satisfaction, ignoring earlier report dated 18.03.2020, thereby the first respondent is trying to dilute what had happened earlier, causing injury, to make the election process as mockery. It is only an eyewash enquiry sought to be conducted by the first respondent.

It is further contended that, the earlier report of the first respondent addressed to the Government of India dated 18.03.2020 is self explanatory. But, ignoring the incidents and without issuing a notification afresh for conducting elections, the notification impugned in the writ petition is issued to commence fresh election process from the stage of filing nominations instead of commencing from the stage, where it was stopped. The contesting candidates, including the candidates of **Janasena** party were deprived of their right to contest in the fair and free elections of MPTCs and ZPTCs by filing their nominations and the some were forced to withdraw.

It is the specific contention that, the first respondent took charge of the office of the first respondent after retirement as Chief Secretary to the Government of Andhra Pradesh on 01.04.2021 and issued the impugned notification, though the first respondent is expected to proceed further un-biasedly, basing on the record available in terms of Articles 243-K of the Constitution of India and under the relevant provisions of the Andhra Pradesh Panchayat Raj Act, 1994. Issue of such serendipitous notification without looking into the situation explained by the predecessor in office of

the first respondent and denying notification afresh for conducting elections for MPTCs and ZPTCs is an arbitrary exercise of power by the first respondent while scuttling the level play field in the process, in defiance of the directions of the Hon'ble Supreme Court and thereby, the notification issued by the first respondent impugned in the writ petition is illegal and arbitrary and sought a direction, as stated above by the petitioner - Janasena Party in W.P.No.7847 of 2021 and Sri Varla Ramaiah; petitioner in W.P.No.7778 of 2021.

The Secretary to the State Election Commission of Andhra Pradesh filed preliminary counter affidavit on behalf of the first respondent, raising a preliminary objection regarding maintainability of W.P.No.7778 of 2021, controverting the allegations levelled by the petitioner in the affidavit filed in support of W.P.No.7778 of 2021. It is specifically pointed out that the W.P.No.7778 of 2021 has been filed by Sri Varla Ramaiah in his individual capacity, but not as a member of Telugu Desam Party. It is contended that the petitioner is not a candidate who is contesting the elections to MPTCs and ZPTCs; the acts alleged are in violation of the fundamental rights and therefore, in his individual capacity, he cannot espouse any grievance, questioning the manner of issuance of the election notification by the first respondent, as such, the petitioner in W.P.No.7778 of 2021 has no *locus standi* to maintain the writ petition and the same is liable to be dismissed.

The Secretary to the State Election Commission of Andhra Pradesh filed counter affidavits separately in both the writ petitions. However, the reply to the major grounds regarding issue of notification in violation of the judgment of Hon'ble Supreme Court in W.P.(Civil) No.437 of 2020 dated 18.03.2020 is common in both the counter affidavits. Hence, it is apposite to narrate the appropriate pleas raised by the respondents in both the petitions in two separate counter affidavits. The first respondent has denied the allegations made in the writ affidavits, more particularly, about violation of direction issued by the Supreme Court in W.P.(Civil) No.437 of 2020 dated 18.03.2020 and denied the allegations of violence, forcible withdrawals specifically raised in W.P.No.7847 of 2021.

The sum and substance of the common contentions raised in both the counter affidavits is that; the first respondent admitted about issue of notification on 07.03.2020 notifying the election of MPTCs and ZPTCs along with Urban and Rural Local Bodies, pausing of process of elections amid Covid-19 and later, carried the matter to the Hon'ble Supreme Court in W.P.(Civil) No.437 of 2020, it's disposal by the Hon'ble Supreme Court by order dated 18.03.2020 directing the first respondent to remove MCC and later a notification was issued stopping further process of elections with a condition to resume the same whenever Covid-19 recedes, in consultation with the Government. Accordingly, the process was resumed, issued notification for local bodies, both Urban and Rural and held elections for the local bodies, but nobody raised objection regarding non-compliance of the direction to re-impose

MCC four weeks before the notified date of polling. After completion of elections to local bodies, the erstwhile Election Commissioner demitted the office, on completion of tenure.

On 01.04.2021, the first respondent reviewed the situation with the Chief Secretary to Government, Director General of Police, Principal Finance Secretary, Principal Secretary to Government (Panchayat Raj), Principal Secretary to Government (Health, Medical & Family Welfare), Commissioner (Panchayat Raj), Commissioner (Health & Family Welfare) to ascertain the readiness of the Government for deployment of staff and police force, Covid-19 precautions including vaccination to the poll staff and police personnel and other logistics, in order to facilitate the first respondent to resume the adjourned election process of the MPTCs/ZPTCs. Subsequently, the Chief Secretary to Government vide Letter No. 12/CS/2021, dated 01.04.2021 informed preparedness for resumption of elections to MPTCs/ZPTCs was ascertained from the District Administrations and that they are fully prepared for conduct of elections to MPTCs/ZPTCs. Vide the said communication, the State Government requested to consider an early resumption of the halted election process of MPTCs and ZPTCs. Later, the present notification was issued on 01.04.2021 proposing to hold elections on 08.04.2021 for 9,696 MPTCs notified for election on 07.03.2020, MPTC Members unanimously elected were 2,371 and out of 652 ZPTCs notified for elections, 126 were declared elected unanimously (uncontested) on 14.03.2020. Accordingly, notification was issued due to recession in covid-19 cases. As such, the MCC was in force for a long period and that the

notification was issued only in consonance with the directions issued by the Hon'ble Supreme Court, but not otherwise, on the ground of violations of Hon'ble Supreme Court directions, notification cannot be set-aside.

In W.P.No.7778 of 2021, the respondents questioned the very *locus standi* of the petitioner therein, so also, the **"*form*"** of writ petition, as the allegations made in the writ affidavit are indicative of espousing public interest, consequently, writ petition is not maintainable and the petitioner may file appropriate petition invoking public interest litigation before the Division Bench, but, this Court consisting of single Judge cannot hear and decide W.P.No.7778 of 2021, except to dismiss the writ petition. The respondents raised two different contentions in two different paragraphs. At one stage, *locus standi* of the petitioner in W.P.No.7778 of 2021 was challenged and at another stage, the ***"form"*** of W.P.No.7778 of 2021 was challenged. On these grounds also, the respondents sought to dismiss the writ petition filed by one Sri Varla Ramaiah, writ petitioner in W.P.No.7778 f 2021.

Whereas, in W.P.No.7847 of 2021, the respondents specifically denied the alleged violence, forcible withdrawal of nominations, prevention of candidates from filing their nominations etc., while contending that the petitioner therein is not entitled to claim the relief for issue of fresh notification of elections to MPTCs and ZPTCs, in view of the order of this Court in W.P.No.4154 of 2021 & batch, where, this Court by common order dated 16.03.2021, elaborately dealt with the issue and directed

that the election of such candidates who were elected unanimously shall be declared immediately and certificates of election be granted to them as per Rule 16 of the Conduct of Election Rules, 2016 and set-aside the order of the State Election Commission's Order dated 18.02.2021 passed by the State Election Commission, which delegated the powers to the District Collectors and District Election Authorities to review complaints and revive the candidature of affected candidates, by virtue of plenary powers vested in it under Article 243-K of the Constitution of India. The same was not disclosed in the petition. On this ground also, the petition is sought to be dismissed.

The allegations made in Paragraph Nos. 4,5,6 & 7 of the affidavit were denied, as the allegation are bald, without any material or record to substantiate those allegations regarding violations or prevention from filing nominations or forcible withdrawal of nominations etc. Therefore, question of issue of a fresh notification for holding elections to MPTCs and ZPTCs does not arise, as the elections were already held and the first respondent became functus officio and prayed to dismiss the writ petition.

Heard, Sri Vedula Venkataramana, learned Senior Counsel for the petitioner in W.P.No.7778 of 2021, Sri V. Venugopala Rao, learned counsel for the petitioner in W.P.No.7847 of 2021; learned Advocate General representing the State Government and Sri C.V. Mohan Reddy, learned Senior Counsel for the first respondent/State Election Commission.

Considering rival contentions, perusing the material available on record, the points that need to be answered by this Court are as follows:

1. ***Whether Sri Varla Ramaiah, petitioner in W.P.No.7778 of 2021 espoused any public cause in the writ petition. If so, whether the writ petition under Article 226 of the Constitution of India, without invoking the public interest litigation can be decided by a learned Single Judge of this Court, in view of Rule 7-A of Writ Proceeding Rules, 1977 and Public Interest Litigation Rules, 2015?***

2. ***Whether the State Election Commissioner/first respondent infringed or invaded the statutory or constitutional right of Sri Varla Ramaiah, petitioner in W.P.No.7778 of 2021 by issuing Notification No.1503/SEC-B1/2021 dated 01.04.2021?***

3. ***Whether Notification No.1503/SEC-B1/2021 dated 01.04.2021 is contrary to the direction issued by the Hon'ble Supreme Court in W.P.(Civil) No.437 of 2020 dated 18.03.2020?***

4. ***Whether the entire notification for election of MPTCs and ZPTCs is liable to be set aside in view of the report submitted by respondent No.1 to the Central Government as claimed by the petitioner in W.P.No.7847 of 2021? If so, whether the notification No.68/SEC-B1/2020 dated 07.03.2020 is liable to be struck down and a direction be issued to respondent No.1 to issue notification for election to MPTCs and ZPTCs afresh by following the directions of Hon'ble Supreme Court?***

***P O I N T No.1*:**

Sri Varla Ramaiah, petitioner in W.P.No.7778 of 2021, a Politburo Member and General Secretary of Telugu Desam Party filed W.P.No.7778 of 2021 not representing the political party, but in his individual capacity. The respondents contended in the preliminary counter affidavit that this petitioner being an individual cannot espouse the public cause and he has no *locus standi*, since there is no infringement of his individual right either statutory or constitutional. Based on preliminary counter affidavit, the learned single Judge of this Court passed an interim order in I.A.No.1 of 2021 in W.P.No.7778 of 2021 dated 06.04.2021. The same was carried in W.A.No.224 of 2021 before the Division Bench of this Court and in-turn, upon hearing both the counsel, the Division Bench of this Court in W.A.No.224 of 2021 dated 07.04.2021 set-aside the order of the learned single Judge and observed that, granting of interim stay would amount to acceptance to the *locus standi* of this petitioner during pendency of the writ petition itself and directed the learned single Judge to dispose off the main writ petition after filing counter affidavit. In the preliminary counter affidavit, no specific objection was raised regarding ***"form"*** of the writ petition. In the counter affidavit filed in the main writ petition, in addition to the preliminary objections raised in the counter affidavit, a specific plea is urged before this Court that, ***"form"*** of the writ petition is in the nature of public interest litigation, in view of Rule 7-A of the Writ Proceeding Rules and Public Interest Litigation Rules, the petitioner is not entitled to espouse the public cause, as an individual and such writ petition

espousing the public cause has to be heard and decided by a Division Bench as per the Writ Proceeding Rules. Refuting the same, Sri Vedula Venkataramana, learned Senior Counsel contended that, the petitioner did not raise such contention questioning the form of writ petition in the preliminary counter affidavit, but the learned single Judge passed order in the interlocutory application and appeal was filed against order in interlocutory application. He also contended that, when the first respondent did not raise such plea in the interlocutory application, the first respondent is deemed to have waived its right to raise such contention for the first time in the main writ petition, thereby, the first respondent is estopped to raise such contention and requested to reject the contention of the respondents.

This contention was seriously disputed by Sri C.V. Mohan Reddy, learned Senior Counsel appearing for the first respondent and so also by Sri S. Sriram, the learned Advocate General, on the ground that estoppel is a principle of evidence and unless sufficient material is produced before this Court to substantiate such contention, this Court cannot reject the plea of the respondents based on observations made by the Division Bench of this Court.

In view of the above contentions, it is necessary to decide both, ***locus standi*** and ***form*** of writ petition. The petitioner in W.P.No.7778 of 2021 filed the writ petition as an individual citizen of the country and questioned the action of the first respondent being an 'elector', contending that the first respondent, in utter

violation of the direction issued by the Hon'ble Supreme Court in W.P (Civil) No.437 of 2020, issued the notification impugned in the writ petition and thereby, the notification totally scuttled the candidates of their level play field and retarded the process of free and fair election, no opportunity of campaigning the candidates of political parties was afforded virtually. The petitioner, who is an elector, is entitled to question such illegal act which retards free and fair election, issued in violation of order of Hon'ble Supreme Court, since the petitioner being an elector, is entitled to elect a representative of the people in democratic set-up. Hence, in view of the unfair process of election under the notification issued by the first respondent, the petitioner in W.P.No.7778 of 2021 is deprived to elect a representative of his choice in free and fair election. Therefore, the petitioner being an elector is competent to question the notification issued for the elections of MPTCs and ZPTCs in the State of Andhra Pradesh.

A little probe is required to decide the litigational competency of this petitioner to challenge the notification. According to Section 81 of the Representation of the People Act, 1951, election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any ***"elector"*** within forty-five days, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates. Thus, the intention of the Legislature is clear that the

elector can challenge the election of the people's representative. The explanation annexed to Section 81 made it clear that, ***"elector"*** means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not. Any elector/voter who is competent to cast his vote in such election can file an application and challenge the election of a People's Representative whether or not, he voted in the said election, the question of right to exercise of vote by this petitioner does not arise on the date when the writ petition was filed in the present case, since the election notification itself was challenged by this petitioner. When the Legislature permits any elector/voter to challenge the election of a peoples representative under the Representation of the People Act, 1951, who is competent to cast his vote in such election, whether he voted or not in the said election, the voter or elector can challenge even the notification when his right to participate through indirect process to elect its representative is infringed or invaded.

Elections to the house of people and to the legislative assembles of the State and public bodies like ZPTC, MPTC, Urban Local Bodies etc is based on "***Adult Suffrage***", as enunciated under Article 326 of the Constitution of India. According to it, Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty one years of age on such date as may be fixed in that

behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under this constitution or any law made by the appropriate Legislature on the ground of non residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election. Thus, Article 326 of the Constitution of India provides qualification for being a voter and it has nothing to do with the right to stand in any of the elections. Therefore, the petitioner in W.P.No.7778 of 2021 is a qualified voter, entitled to exercise his vote in the elections.

At the same time, the Universal Declaration of Human Rights, 1948, to which India is a signatory states that, everyone has the right to take part in the government of his country, directly or through freely chosen representatives. It is apposite to extract Article 21 of the Universal Declaration of Human Rights, 1948 and Article 25 of the International Covenant on Civil and Political Rights, 1966.

Article 21 of the **"Universal Declaration of Human Rights, 1948**".

a) *Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*
b) *Everyone has the right of equal access to public service in his country.*
c) *The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

Article 25 of the **"*International Covenant on Civil and Political Rights, 1966*"**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

a) *To take part in the conduct of public affairs, directly or through freely chosen representatives;*

b) *To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*

c) *To have access, on general terms of equality, to public service in his country.*

According to Article 21 of the Universal Declaration of Human Rights, 1948 and Article 25 of the International Covenant on Civil and Political Rights, 1966, to which India is a signatory, the State has to ensure free and fair elections based on equal adult suffrage and the petitioner being an elector has got a right to elect a representative in the free and fair elections. When a right guaranteed under the Constitution of India i.e. right to vote under Article 19(1) or the human rights guaranteed under Article 21 of the Universal Declaration of Human Rights, 1948 and Article 25 of the International Covenant on Civil and Political Rights, 1966, the petitioner can approach the Court and seek redressal of his grievance invoking Article 226 of the Constitution of India.

Free and fair elections are foundation of every democracy. Reaffirming the significance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which establish that the authority to govern shall be based on the will of the people as expressed in periodic and genuine elections. The fundamental principles relating to periodic free and fair

elections that have been recognized by States in universal and regional human rights instruments, including the right of everyone to take part in the government of his or her country directly or indirectly through freely chosen representatives, to vote in such elections by secret ballot, to have an equal opportunity to become a candidate for election, and to put forward his or her political views, individually or in association with others. Conscious of the fact that each State has the sovereign right, in accordance with the will of its people, free to choose and develop its own political, social, economic and cultural systems without interference by other States in strict conformity with the United Nations Charter. Wish to promote the establishment of democratic, pluralist systems of representative government throughout the world recognizes the free and fair elections and it is the basis for democracy.

Free and fair elections can be based on vote and election rights i.e. adult suffrage, eligibility, Candidature, Party and Campaign Rights and Responsibilities. That means, everyone has the right to take part in the government of their country and shall have an equal opportunity to become a candidate for election. The criteria for participation in government shall be determined in accordance with national constitutions and laws and shall not be inconsistent with the State's international obligations. Everyone has the right to join, or together with others to establish, a political party or organization for the purpose of competing in an election.

Everyone individually and together with others has the right, to express political opinions without interference; to seek, receive and impart information and to make an informed choice; to move freely within the country in order to campaign for election; to campaign on an equal basis with other political parties, including the party forming the existing government. When such an opportunity is denied, the petitioner being an individual elector can challenge the action of the State and its instrumentalities.

The Preamble of our Constitution proclaims that our Country is democratic republic. Democracy consists of public representatives who were elected in free and fair elections, otherwise, it cannot be called as democracy, since free and fair election is the foundation of the democracy.

Democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country. In order to ensure the purity of the election process it was thought by our Constitution-makers that the responsibility to hold free and fair elections in the country should be entrusted to an independent body which would be insulated from political and/or executive interference. It is inherent in a democratic set up that the agency which is entrusted the task of holding elections to the legislatures should be fully insulated so that it can function as an independent agency free from external pressures from the party in power or executive of the day. This objective is achieved by the setting up of an Election

Commission, a permanent body, under Article 324(1) of the Constitution. The superintendence, direction and control of the entire election process in the country has been vested under the said clause in a commission called the Election Commission, as held by the Constitutional Bench of the Supreme Court in ***T.N. Seshan v. Union of India***[1]**.** Even according to the observations made in the judgment of the Constitutional Bench of the Supreme Court, free and fair election is the basic foundation to democracy in India and if, free and fair elections were not conducted, those elections are nothing but mockery of compliance of constitutional ritual.

The Three-Judge Bench in ***People's Union for Civil Liberties and another v. Union of India and another***[2]**,** after dwelling upon many a facet opined that, democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections would alone guarantee the growth of a healthy democracy in the country. The 'Fair' denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thus participate in the governance of our country. For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote.

---

[1] (1995) 4 Supreme Court Cases 611
[2] (2013) 10 SCC 1

Right to vote and right to elect a representative of their own choice in free and fair election is a constitutional right guaranteed under the Constitution, as held by the Supreme Court in ***Rajabala & others v. State of Haryana***[3], where the Supreme Court held that, the right to vote and right to contest at an election to a PANCHAYAT are constitutional rights subsequent to the introduction of Part IX of the Constitution of India. Both the rights can be regulated/curtailed by the appropriate Legislature directly. Parliament can indirectly curtail only the right to contest by prescribing disqualifications for membership of the Legislature of a State. Therefore, law is settled that, free and fair elections are the foundation to democracy, right to contest in the election and elect a representative is a constitutional right. If such right is violated or infringed, any citizen can approach the Court for redressal.

Turning to the present facts of the case, the first respondent issued notification on 01.04.2021 proposing to hold elections on 08.04.2021, despite the directions issued by the Supreme Court in W.P. (Civil) No.437 of 2020 dated 18.03.2020 to re-impose MCC four weeks before the notified date of polling in utter disobedience of the directions of the Hon'ble Supreme Court, according to the petitioner. Such violation amounts to scuttling the role playing field and retarding the election process. Since the petitioner is an elector who is competent even to challenge the election of the peoples representative under the Representation of the People Act, cannot deny the relief to the petitioner in the present petition, on the ground that he has no *locus standi,* since, right to chose

---

[3] (2016) 2 SCC 445

peoples representatives in the fair and free elections is denied by the act of the first respondent issuing impugned notification in clear violation of directives issued by the Hon'ble Supreme Court. Applying the analogy drawn from Section 81 of the Representation of the People Act, 1951, the petitioner can be held to have *locus standi* to challenge the notification, being a citizen and elector of the State, when the notification is in violation of the directions issued by the Hon'ble Supreme Court.

One of the major contentions raised by the first respondent during hearing is that, the ***form*** of writ petition under Article 226 of the Constitution of India is not proper form, as the petitioner is espousing the public cause raising a specific plea that the decision taken by the first respondent not aimed to free and fair elections in the election process. Sri C.V. Mohan Reddy, learned Senior Counsel drawn attention of this Court to Rule 7-A of the Writ Proceeding Rules, 1977, in support of his contention. Rule 7-A, is inserted vide ROC No.137/SO/2010 dt.Oct.93 and A.P. Gazette No.23 dt.10.06.2010. But, it is not necessary to extract the entire procedure prescribed under Rule 7-A of the Writ Proceeding Rules, it runs into several pages. However, notification was issued notifying the Rules for public interest litigation known as Public Interest Litigation Rules, 2015. But, here, the petitioner did not espouse the public cause to conclude that the claim of this petitioner is in the nature of public interest litigation. While asserting his right to claim relief, he made certain allegations that the action of the respondents would impede free and fair election, which is the basic foundation for democracy. That does not mean

that the petitioner is totally espousing the public cause, ignoring his individual claim as 'elector'. Hence, Rule 7-A of the Writ Proceeding Rules and Public Interest Litigation Rules, 2015, will have no role in the matter, since the petitioner did not espouse the public cause. Hence, the contention of the respondents that the ***form*** of writ petition is incorrect is hereby rejected.

Initially, in the preliminary counter affidavit, the first respondent raised a contention that the petitioner has no *locus standi*, but during argument, the first respondent confined to the form of writ petition while contending that the petitioner is espousing public cause and not individual cause, thereby, the petition is liable to be dismissed, as it is in violation of Rule 7-A of the Writ Proceeding Rules, 1977 and Public Interest Litigation Rules, 2015. Sri C.V. Mohan Reddy, learned Senior Counsel for the first respondent relied on judgments of the Supreme Court of India in ***M.S. Jayaraj v. Commissioner of Excise, Kerala and others***[4]***, Kavi Raj and others v. State of Jammu and Kashmir***[5]***, Chief Conservator of Forests, Government of Andhra Pradesh v. Collectors***[6] and judgments of Allahabad High Court in ***Smt. Chawali v. State of Uttar Pradesh***[7] *and* ***Ajit Singh v. Union of India***[8]**.** But, the various decisions placed on record by Sri C.V. Mohan Reddy, learned Senior Counsel for the first respondent/State Election Commission with regard to *locus*

---

[4] AIR 2000 SC 3266
[5] (2013) 3 Supreme Court Cases 526
[6] 2003 (2) SCR 180
[7] Misc Bench No.9470 of 2014 dated 16.01.2015
[8] 2017 (9) ADJ 251

standi needs no consideration and they are not necessary for deciding the present issue.

In view of my foregoing discussion, I hold that the petitioner has *locus standi* to maintain the writ petition under Article 226 of the Constitution of India in the present ***form*** of the writ petition, as filed before this Court, as it is not in contravention of Rule 7-A of the Writ Proceeding Rules or Public Interest Litigation Rules. Accordingly, Point No.1 is answered in favour of the petitioner and against the respondents in W.P.No.7778 of 2021.

***P O I N T No.2*:**

The petitioner in W.P.No.7778 of 2021 challenged the notification in his individual capacity, on the ground that the first respondent restricted operation of Model Code of Conduct for the period from 01.04.2021 to 10.04.2021 is a patent violation of the order of the Hon'ble Supreme Court in W.P. (Civil) No.437 of 2020 dated 18.03.2020 and filed this petition only in the interest of conduct of fair and transparent elections to MPTCs and ZPTCs in the State of Andhra Pradesh (vide Paragraph No.13 of the writ affidavit).

The petitioner claimed Writ of Mandamus to declare the action of the first respondent in not imposing MCC for four weeks before notified date of polling is contrary to the order of the Hon'ble Supreme Court in W.P. (Civil) No.437 of 2020 dated 18.03.2020 and for consequential directions.

The first respondent contended that, in the absence of any pleadings that the legal right of this petitioner, either statutory or constitutional is infringed or invaded or threatened to be infringed or invaded, writ of mandamus cannot be granted.

Writ of mandamus is discretionary in nature and such power of judicial review under Article 226 of the Constitution of India can be exercised only in certain circumstances. At best, this Court cannot decide the legality of the order. Yet issuance of Writ of Mandamus is purely discretionary and the same cannot be issued as a matter of course.

In "***State of Kerala v. A.Lakshmi Kutty***[9]", the Hon'ble Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

In "***Raisa Begum v. State of U.P***.[10]", the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do

[9] 1986 (4) SCC 632
[10] 1995 All.L.J. 534

or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

In "***State of U.P. and Ors. v. Harish Chandra and Ors***.[11]" the Supreme Court held as follows:

> "10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition."
>
> *(Emphasis supplied)*

In "***Union of India v. S.B. Vohra***[12]" the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

---

[11] (1996) 9 SCC 309
[12] (2004) 2 SCC 150

In "***Oriental Bank of Commerce v. Sunder Lal Jain***[13]" the Supreme Court held thus:

> "The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:
>
> Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.
>
> Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.
>
> Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances."
>
> *(Emphasis supplied)*

[13] (2008) 2 SCC 280

When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

> "Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective."
>
> (emphasis supplied)

It is a known fact that the writ petitions are being disposed of based on undisputed facts pleaded in the writ petition, counter affidavit and material produced in support of those pleadings. In the absence of any pleadings, the Court cannot invent a different case and grant relief to the petitioner.

In view of the law declared by the Hon'ble Supreme Court, the petitioner must plead and prove that legal right existed either statutory or constitutional right of this petitioner is infringed or

invaded or threatened to infringe or invade by the act of the first respondent. But, the bald allegations made in Paragraph No.13 of the affidavit that the notification was issued totally in violation of the directions issued by the Hon'ble Supreme Court without demonstrating the existence of any right and it's infringement or it's invasion or threatened infringement or invasion by the notification issued by the first respondent. In the absence of establishing the existence of right, it's infringement or invasion or threatened infringement or invasion, the petitioner is not entitled to claim writ of mandamus.

The Division Bench of the Allahabad High Court in ***Ajit Singh v. Union of India***[14] while dealing with *locus standi* of a person who filed petition under Article 226 of the Constitution of India, referred the judgments of the Supreme Court to hold that existence of legal right and its infraction must necessarily be pleaded and proved, to issue Writ of Mandamus.

In ***State of Orissa v. Madan Gopal***[15] Hon'ble Supreme Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution. In ***Charanjit Lal Chowdhuri v. Union of India***[16], it has been held by the Hon'ble Supreme Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. I do not see any reason why a

[14] 2017 (9) ADJ 251
[15] AIR 1952 SC 12
[16] AIR 1951 SC 41

different principle should apply to the facts of the present case under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. Thus, Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right.

Similarly, in ***Mani Subrat Jain v. State of Haryana***[17], while considering Article 226 of the Constitution, the Hon'ble Supreme Court in paragraph 9, observed thus:

> *"...It is elementary though it is to be restated that no one can ask for a mandamus without a legal right There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (See Halsbury's Laws of England 4th Ed. Vol I, paragraph 122); State of Haryana v. Subash Chander, (1974) 1 SCR 165 : (AIR 1973 SC 2216); Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed, (1976) 3 SCR 58 : (AIR 1976 SC 578) and Ferris Extraordinary Legal Remedies paragraph 198."*

[17] AIR 1977 SC 276

(emphasis supplied)

It is well-settled that existence of a legal right of a petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under Article 226 of the Constitution. While reiterating this legal proposition, the Hon'ble Supreme Court in paragraph 38 of its judgment in ***Ghulam Qadir v. Special Tribunal***[18]**,** held thus:

> *"38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provisions the petition filed by such a person cannot be rejected on the ground of Ms having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."*

(emphasis supplied)

In view of the law declared by the Supreme Court and reiterated by the Division Bench of the Allahabad High Court in the judgment referred supra, the petitioner must plead and prove that a legal right vested on him is violated or infringed or threatened to be infringed to obtain a relief of writ of mandamus. But, in the

---

[18] (2002) 1 SCC 33

present writ petition, except alleging that, issue of notification in violation of the order passed by the Supreme Court in W.P (Civil) No.437 of 2020 dated 18.03.2020, no other allegation is made about infringement or violation of his legal right, either statutory or constitutional, except alleging that the notification was issued to avoid free and fair elections. These pleadings are insufficient to prove that there existed a legal right on the petitioner enforceable in a Court of law, either statutory or constitutional and it's infringement or invasion or threatened to infringe or invade by the act of the first respondent. In the absence of pleadings, it is difficult for me to hold that the petitioner's legal right, either statutory or constitutional is infringed or invaded by the act of the first respondent issuing Notification dated 01.04.2021. Though, this Court held in Point No.1 that the petitioner is entitled to maintain the writ petition having *locus standi*, as the right to vote and right to elect a representative in the governance is a constitutional right, but still, the petitioner has to plead and prove that such right is invaded or infringed. Unless the petitioner established that he is a voter of MPTC or ZPTC constituency to vote in that election and that their exists a legal right and it's infringement or invasion or threatened infringement or invasion, writ of mandamus by exercising power under Article 226 of the Constitution of India cannot be issued. Thus, the petitioner failed to plead and prove the requirements for issue of writ of mandamus, thereby, Sri Varla Ramaiah, the petitioner in W.P.No.7778 of 2021 is disentitled to claim writ of mandamus.

Accordingly, the point is answered in favour of the respondents and against the petitioner in W.P.No.7778 of 2021.

P O I N T No.3:

The basis for claim is that, the first respondent issued notification without complying the direction issued by the Hon'ble Supreme Court in W.P. (Civil) No.437 of 2020 dated 18.03.2020, which amounts to denial of right to campaign and scuttling the role playing field, retarding the free and fair elections for MPTCs and ZPTCs and thereby, the proposed elections is not free and fair to contest in the elections for MPTCs and ZPTCs by the candidates of the petitioner in W.P.No.7847 of 2021.

Undisputedly, the Hon'ble Supreme Court issued a direction to re-impose MCC for four weeks prior to the notified date of polling. But the contention of the respondents is that respondent No.1 understood that the time frame is outer limit for re-imposing MCC i.e. maximum period for re-imposing MCC, thereby respondent No.1 can re-impose MCC for a term of less than four weeks. Thus, the real controversy is around the understanding of the judgment of the Hon'ble Supreme Court in W.P. (Civil) No.437 of 2020.

Along with the main petition, I.A.No.01 of 2021 is filed in both the petitions. Learned single Judge of this Court by order dated 06.04.2021 granted stay of all further proceedings pursuant to the notification No.1503/SEC-B1/2021 dated 01.04.2021 issued by the 1st respondent. The order of the learned single Judge of this Court was challenged before the Division Bench in

W.A.No.224 of 2021. The Division Bench of this Court by order dated 07.04.2021 set aside the direction issued by the learned single Judge in I.A.No.01 of 2021. The relevant part of the order of the Division Bench in W.A.No.224 of 2021 including operative portion is as follows:

> *"A perusal of the impugned order of the learned single Judge would go to show that the learned single Judge, in effect, while granting the interim order, had virtually allowed the writ petition, though the writ petition is still pending disposal. That the order has a ring of finality is apparent in view of the direction to the State Election Commission to issue a fresh notification. Furthermore, the learned single Judge, during the course of the order, did not consider the aspect relating to elections held after the order of the Hon'ble Supreme Court in respect of Gram Panchayats, Municipalities and Municipal Corporations, for which the Model Code of Conduct was not imposed for a period of four weeks. The learned single Judge also did not specifically decide the issue of locus standi of the writ petitioner.*
>
> *We are of the considered opinion that there are contentious issues to be adjudicated in the writ petition. Considering the matter in its entirety, we set aside the order of the learned single Judge. Balancing the competing equities, we direct that the poll can be conducted on 08.04.2021. We, however, direct that counting of votes shall not take place and consequently, result of elections shall also not be declared till disposal of the writ petition.*
>
> *We dispose of this appeal in terms of the above directions. As the learned single Judge had fixed the writ petition for consideration on 15.04.2021, Registry will list the writ petition, as directed by the learned single Judge, on that date."*

Based on the direction issued by the Division Bench, the matter was listed before the learned single Judge for disposal, but after sometime it is listed before this Court due to change in the roster.

In view of the contentious issues raised in the writ petitions, little narration of the history of various notifications leading to filing of these cases is necessary.

Initially, Election Notification No.1503/SEC-B1/2020 dated 07.03.2020 was issued by the State Election Commission

proposing to conduct the elections for the MPTCs and ZPTCs along with other local bodies, both urban and rural, in the State of Andhra Pradesh. After issuing notification, nominations were received and list of contesting candidates was finalised by the State Election Commissioner and displayed the names of contesting candidates. At this stage, by notification No.68/SEC-B1/2020 dated 15.03.2020; the election process for Municipal Corporations, Municipalities, Nagar Panchayats, MPTCs and ZPTCs was paused. In the said notification dated 15.03.2020 it is stated that the election process of MPTCs, ZPTCs and Urban Local Bodies will be continued after (6) weeks from 15.03.2020 or after the threat of Covid-19 recedes, whichever is earlier; and the schedules already announced for Gram Panchayat elections are kept in abeyance until further orders.

The notification dated 15.03.2020 issued by respondent No.1 was challenged by the State of Andhra Pradesh before the Hon'ble Supreme Court in W.P. (Civil) No.437 of 2020 and the same was disposed of on 18.03.2020 with the specific direction. To avoid repetition, it is condign to extract the relevant direction for better appreciation.

> ***"We therefore direct that the Election Commission shall impose the Model Code of Conduct four weeks before the notified date of polling."***
>
> ***"The Model Code of Conduct for the elections shall be re-imposed four weeks before the date of polling."***
>
> ***"We further direct that the present development activities which have already been undertaken shall not be interrupted till the Model Code of Conduct is re-imposed"***

The Hon'ble Supreme Court directed the State Election Commissioner while lifting the MCC whenever election is being conducted, directed respondent No.1 to re-impose MCC for four weeks prior to the notified date of polling. Later, a Notification dated 17.11.2020 was issued by the State Election Commission stating that the Commission had decided to hold elections to the Gram Panchayats in the month of February, 2021, and that actual schedule would be finalized after due consultation with the State Government and thereafter only, the election schedule would be notified. The Notification dated 17.11.2020 was challenged by the State of Andhra Pradesh by filing a writ petition No.22900 of 2020 before this Court. The said writ petition was disposed of by an order dated 29.12.2020 permitting the State Government to submit a written version of its case enclosing all relevant materials relating to pleas and the instructions/guidelines issued by the Union of India pertaining to Covid-19, for consideration of the State Election Commission and that the State Election Commission, after undertaking the consultation process and after giving opportunity to the concerned officials of the State, has to take final decision in the matter of holding elections.

Thereafter, State Election Commissioner by order dated 08.01.2021 notified elections to the Gram Panchayats contrary to the request made by the State Government for postponement of the elections, fixed specific schedule for holding ordinary elections to the Gram Panchayats in four phases. The same was challenged in W.P.No.1158 of 2021 and an interim order was passed by the learned single Judge on 11.01.2021 suspending the notification

08.01.2021. Ultimately, in W.A.No.24 of 2021 the interim order was set aside by the Division Bench of this Court. The order of the Division Bench was challenged before the Hon'ble Supreme Court in SLP (C).No.1520 of 2021 and the same was dismissed by an order dated 25.01.2021. Later, elections were conducted for Gram Panchayats. Similarly, election process was completed to Municipal Corporations, Municipalities/Nagar Panchayats by separate notifications despite challenge in various Courts. It is relevant to decide the effect of raising no objection for holding those elections in terms of the order of the Supreme Court in W.P.(Civil) No.437 of 2020 dated 18.03.2020.

Later, respondent No.1 issued notification No.1503/SEC-B1/2021 dated 01.04.2021, which reads thus:

> *"Now, therefore, the State Election Commission, in exercise of powers conferred under Article 243K of the Constitution of India, Sections 151 (1) and 179(1) of Andhra Pradesh Panchayat Raj Act, 1994 (Act 13 of 1994) the State Election commission, Andhra Pradesh, hereby, resumes the election process of MPTCs and ZPTCs from the stage where it was stopped earlier (emphasis supplied) and calls upon the registered voters of all Territorial Constituencies of Mandal Praja Parishads (MPTCs) and of all Territorial Constituencies of Zilla Praja Parishads (ZPTCs) to elect their respective Members, except those specified in the Annexure enclosed."*

Along with the notification, respondent No.1 issued election schedule as follows:

1.	*Issue of Notification by the State Election Commission for resumption of adjourned election process of MPTCs and ZPTCs*	*01.04.2021*
2.	*Conduct of Poll, wherever necessary*	*08.04.2021 (From 7 AM to 5 PM)*
3.	*Re-poll, if any*	*09.04.2021 (From 7 AM to 5 PM)*
4.	*Counting of Votes*	*10.04.2021 (From 8 AM onwards)*
5.	*Declaration of Results*	*Soon after completion of counting of votes*

Simultaneously, respondent No.1 also issued a press note dated 01.04.2021 stating that the MCC has come into force with immediate effect in the rural areas of the entire State and it shall remain in force till completion of election process, meaning thereby the MCC will remain in force from 01.04.2021 to 10.04.2021. Challenging the imposition of MCC for only ten days as against the direction of the Hon'ble Supreme Court in W.P. (Civil) No.437/2020 directing the Election Commission to re-impose the MCC for four weeks before the notified date of polling, the instant writ petitions are filed.

Thus, the issue of various Notifications and challenge thereto in various Courts and issue of impugned notification fixing schedule as stated above is not in quarrel.

Undoubtedly, the Supreme Court issued a direction to respondent No.1 to re-impose MCC for four (4) weeks before the notified date of polling, when a challenge was made against the order dated 15.03.2020 pausing the election/stopping the election process for rural and urban public bodies including MPTC and ZPTC. Later, elections were conducted for both rural and urban local bodies by different Notifications except for ZPTC and MPTC. Those elections for urban and rural local bodies were attained finality after completion of entire process of election. But no one raised objection about the non-compliance of direction issued by the Hon'ble Supreme Court in W.P.(Civil) No.437 of 2020 by order dated 18.03.2020. Non-challenge to those notifications on any of

the grounds, more particularly, non-compliance of the direction issued by the Supreme Court in W.P. (Civil) No.437 of 2020, does not amount to waiver of right by the petitioners herein. Because of failure to challenge the illegality in holding elections to local bodies, the relief cannot be negated to the petitioners, if they are otherwise entitled to claim the same. For the reason that an illegality was committed by respondent No.1 and it was not challenged before this Court by anyone, this Court cannot legalize such illegality, that means the Court cannot perpetuate the illegality, as held by the Supreme Court in "***Goa State Cooperative Bank Ltd. v. Krishna Nath A. (Dead) through L.Rs. and Others***[19]", wherein it is held that "the concept of restitution is a common law principle and it is a remedy against unjust enrichment or unjust benefit. ***The Court cannot be used as a tool by a litigant to perpetuate illegality***."

In "***A. Shanmugam v. Respondent: Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President and Others***[20]" the Supreme Court held as follows:

> "In consonance with the principle of equity, justice and good conscience judges should ensure that the legal process is not abused by the litigants in any manner. ***The court should never permit a litigant to perpetuate illegality by abusing the legal process***. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorized or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the Respondent or the Defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing

[19] 2019(5)ALT 165
[20] AIR 2012 SC 2010

> punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation."
>
> (Emphasis supplied)

By applying the principles laid down in the above judgments, on the ground of failure to challenge those notifications, relief to the petitioners in the present writ petitions cannot be denied or refused.

Though the respondents did not challenge the power of this Court to interfere with the process of election in terms of Article 243-O of the Constitution of India, it is necessary to advert to the bar created by the Constitutional provision to examine permissibility of interference in the election process after its notification. It is undoubtedly true that the jurisdiction of this Court under Article 226 of the Constitution of India to interfere with the election process is limited. The Hon'ble Supreme Court in "***N.P. Ponnuswami and others v. Returning Officer, Namakkal Constituency and others***[21]***"***, "***Meghraj Kothari v. Delimitation Commission and others***[22]***", "Krishna Ballabh Prasad Singh v. Sub-Divisional Officer Hilsa-cum-Returning Officer and others***[23]***"***, consistently held that the Courts shall not interfere with the process of election exercising power under Article 226 of the Constitution of India and such election can be challenged by way of election petition, in view of bar under Article 329 (b) of the Constitution of India. In "***Mohinder Singh Gill and others v. The***

---

[21] AIR 1952 SC 64
[22] AIR 1967 SC 669
[23] AIR 1985 SC 1746

Chief Election Commissioner, New Delhi and others[24]***"***, the challenge before the Hon'ble Supreme Court was the order of Election Commission to cancel the election and to conduct fresh poll for whole of the Ferozepur Parliamentary Constituency. The appellant therein approached the High Court of Delhi with a writ petition challenging the order of the Election Commissioner. Respondent No.3 therein objected that the High Court had no jurisdiction in view of Article 329(b) of the Constitution. The High Court holding that it had no jurisdiction to entertain the writ petition, nevertheless proceeded to enter verdicts on the merits of all the issues. The appellant filed the appeal before the Supreme Court by special leave. The Supreme Court having considered the embargo created under Article 329(b) of the Constitution upon the Courts to entertain the disputes questioning the elections except by an election petition ultimately held that the Delhi High Court had no jurisdiction to entertain the writ.

In the above judgment, the Hon'ble Supreme Court has delineated as to what types of issues for which decisions are sought from the High Court would amount to calling in question the election and what issues would not amount so, where the Court can intervene. It was observed in paragraph No.29 thus:

> *" What emerges from this perspicacious reasoning, if we may say so with great respect, is that any decision sought and rendered will not amount to 'calling in question' an election if it sub-serves the progress of the election and facilitates the completion of the election. We should not slur over the quite essential observation "Anything done towards the completion of the election proceeding can by no stretch of reasoning be described as questioning the*

[24] AIR 1978 SC 851

election". Likewise, it is fallacious to treat 'a single step taken in furtherance of an election as equivalent to election'.

Thus, there are two types of decisions, two types of challenges. The first relates to proceedings which interfere with the progress of the election. The second accelerates the completion of the election and acts in furtherance of an election. So, the short question before us, in the light of the illumination derived from Ponnuswami, is as to whether the order for re-poll of the Chief Election Commissioner is "anything done towards the completion of the election proceeding" and whether the proceedings before the High Court facilitated the election process or halted its progress. The question immediately arises as to whether the relief sought in the writ petition by the present appellant amounted to calling in question the election. This, in turn, revolves round the point as to whether the cancellation of the poll and the reordering of fresh poll is 'part of election' and challenging it is 'calling it in question'."

(Emphasis supplied)

In "***Manda Jaganath v. K.S.Rathnam and others***[25]***"***, the Hon'ble Supreme Court has observed that whether the Returning Officer was justified in rejecting Form-B submitted by the first respondent therein was not a matter for the High Court to decide in the exercise of its jurisdiction and the issue could be agitated by an aggrieved party in an election petition only in view of specific prohibition created under Article 329(b).

It is pertinent to note that in the above judgment, the Hon'ble Supreme Court discussed the scope of interference in election matters, by referring "***N.P. Ponnuswami and others v. Returning Officer, Namakkal Constituency and others"*** and "***Mohinder Singh Gill and others v. The Chief Election Commissioner, New Delhi and others" (referred supra)***. It observed thus:

"***In the very same paragraph this Court, however, demarcated an area which is available for interference by the High Court and the same is explained as follows***

[25] AIR 2004 SC 3600

> "But what is banned is not anything whatsoever done or directed by the Commissioner but everything he does or directs in furtherance of the election, not contrarywise. For example, after the President notifies the nation on the holding of elections under Section 15 and the Commissioner publishes the calendar for the poll under Section 30, if the latter orders returning officers to accept only one nomination or only those which come from one party as distinguished from other parties or independents, is that order immune from immediate attack. We think not. Because the Commissioner is preventing an election, not promoting it and the Court's review of that order will facilitate the flow, not stop the stream. Election, wide or narrow be its connotation, means choice from a possible plurality, monolithic politics not being our genius or reality, and if that concept is crippled by the Commissioner's act, he holds no election at all."
>
> ***Of course, what is stated by this Court herein above is not exhaustive of a Returning Officer's possible erroneous actions which are amenable to correction in the writ jurisdiction of the courts. But the fact remains such errors should have the effect of interfering in the free flow of the scheduled election or hinder the progress of the election which is the paramount consideration*** (emphasis supplied). If by an erroneous order conduct of the election is not hindered then the courts under Article 226 of the Constitution should not interfere with the orders of the Returning Officers remedy for which lies in an election petition only."
>
> (Emphasis supplied)

In view of the law declared in the judgments (referred supra), generally the Courts will not interlope in election matters to adjudicate upon by exercising the plenary jurisdiction under Article 226 of the Constitution, particularly when once the election process begins, in view of the prohibition wielded under Article 329 of the Constitution. The aggrieved party has to move an election petition before the appropriate authority. However, it is incorrect to say that the scope of judicial review under Article 226 of the Constitution in election matters is totally alien. As expounded by the Hon'ble Supreme Court in "***Mohinder Singh Gill and others v. The Chief Election Commissioner, New Delhi and others" (referred supra)*** the Court can intervene in certain circumstances. For instance, when the Election Commissioner's acts and orders, prevent fair election and scuttle the level play field or retard the

progress of the election and not promote the election in accordance with law, the Courts' review will facilitate the flow of election. The Supreme Court in the above case cleared that the errors of the Election Commissioner or Returning Officers if tend to have the effect of interfering in the free flow of the schedule of election or hinder the progress of the election, the Courts' intervention is permissible. In the said decision, it was also held that every challenge will not amount to calling in question an election if it sub-serves the progress of the election and facilitates the completion of election. On the other hand, if a challenge is intended to stall the election, the Court may not exercise its plenary jurisdiction and leave the petitioner to seek remedy by way of an election petition. Thus, the law is well settled that this Court can exercise power if the Election Commissioner proceeding with the election contrary to the rules, preventing fair election and scuttle the level play field or retard the progress of the election and not promoting the election in accordance with law.

In "***A.C. Jose v. Sivan Pillai***[26]", the Supreme Court held that it is true that Article 324 does authorise the commission to exercise powers of superintendence, direction and control of preparation of electoral rolls and the conduct of elections to Parliament and State legislatures but then the Article has to be read harmoniously with the Articles that follow and the powers that are given to the Legislatures under entry No. 72 in the Union List and entry No. 37 of the State List of the Seventh Schedule to the Constitution. The Commission in the garb of passing orders for

[26] [1984] 3 SCR 74

regulating the conduct of elections cannot take upon itself a purely legislative activity which has been reserved under the scheme of the Constitution only to Parliament and the State legislatures. By no standards can it be said that the Commission is a third Chamber in the legislative process within the scheme of the Constitution. Merely being a creature of the Constitution will not give it plenary and absolute power to legislate as it likes without reference to the law enacted by the legislatures.

The Supreme Court in the same judgment proceeded to hold that the intention of the founding fathers of our Constitution was to make the Commission a separate and independent body so that the election machinery may be outside the control of the Executive Government, but the intention was not to make the commission an Supreme body in respect of matters relating to elections, conferring on it the legislative powers ignoring the Parliament altogether.

In the same judgment it is stated that no one is an *imperium in imperio* in our constitutional order. The ***Commissioner cannot defy the law armed by Article 324. Likewise his functions are subject to the norms of fairness and he cannot act arbitrarily. Unchecked power is alien to our system***.

Recently, the Supreme Court in "***Dravida Munnetra Kazhagam v. Secretary Governors Secretariat***[27]" while dealing with the issue of delimitation for local body elections, which had already been notified earlier as per proposal of Delimitation Commission, accepted by the State Government and notification

[27] (2020) 6 SCC 548

was issued in respect of 31 revenue districts, held that the ratio of a coordinate Bench in "***Election Commission of India v. Ashok Kumar***[28]" squarely applies to the said case. In "***Election Commission of India v. Ashok Kumar***" (referred supra) the Supreme Court held as follows:

> (2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.
>
> (3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body been shown to have acted in breach of law.
>
> (4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

While reiterating the above principles, the Supreme Court in "***Dravida Munnetra Kazhagam v. Secretary Governors Secretariat***" (referred supra), issued the following directions:

> *"a. The Respondent-authorities shall hold elections to all Panchayats at village, intermediate and district levels, except those in the following nine reconstituted districts:*
>
> *(i) Kancheepuram, (ii) Chengalpattu, (iii) Vellore, (iv) Thirupathur, (v) Ranipet, (vi) Villupuram, (vii) Kallakurichi, (viii) Tirunelveli, (ix) Tenkasi;*
>
> *b. The Respondents (including the Delimitation Commission) are directed to delimit the nine newly-constituted districts in accordance with law and thereafter hold elections for their panchayats at the village, intermediate and district levels within a period of four months;*
>
> *c. There shall be no legal impediment against holding elections for Panchayats at the village, intermediate and district levels for rest of the districts;*

---

[28] 2000 (8) SCC 216

d. State Election Commission shall notify elections for the panchayats at village, intermediate and district levels in respect of all districts except the nine re-constituted districts as per the details given in direction 'a' above.;

e. While conducting elections, the Respondents shall provide proportionate reservation at all levels, in accordance with the Rule 6 of Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995."

The Court interfered with election process on account of inherent illegality committed by the Election Commissioner in notifying the elections even without completing the required exercise before proceeding to issue notification. The powers of the Courts under Article 226 of the Constitution of India are not totally taken away and the hands of the Court are not tied when the Election Commissioner committed an illegality in the process of election or acting arbitrarily in the process of election without making any attempt to hold free and fair election, scuttle the level play field or retard the progress of the election and not conducting the election in accordance with law.

The Hon'ble Supreme Court had an occasion to deal with similar situation in "***K. Venkatachlam v. A. Swamickan***[29]**"**, In this matter a person was elected for Tamilnadu Assembly from Lalguda Constituency and after one year of his election his election was challenged before High Court under Article 226 of the Constitution of India, on the ground that his name was not included in the electoral list of the Constituency. A Division Bench of High Court in Writ Appeal declared his election void being disqualification for being a member of state Assembly as contemplated under Article 173 of the Constitution read with

[29] 1999 AIR SC 1723

Section 5 of the Representation of People's Act, which mandated that a person to be elected from an Assembly constituency has to be elector of that constituency. While deciding the Appeal Hon'ble Supreme Court held that in such a situation when no other remedy remains as the fact of the non inclusion of the name of the elected Candidate in the list of electorate, came into the knowledge of the Petitioner after one years of the completion of election process over, Article 329-b doesn't create any bar from applying writ Jurisdiction under Article 226, Division Bench observed that:-

> *"Article 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one bar of Article 329(b) will not come into play when case falls under Articles 191 and 193 and whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the Court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?"*

In this manner the Court diluted the law laid down in Ponnuswami Case and further affirmed in various judgments and even in Mohinder Singh Gill's Case, though left a leeway, finally held that Jurisdiction of High Court under Article 226 extends to entertain the Petition related with the election process. But above discussion is related with the Article 329 (b). Application of those decisions in the matters of Panchayat elections have been considered largely based on the principle of pari materia cases. Certainly Article 243 O is simply application of article 329 (b) in Panchayat Election Matters, but it create a huge difference in between, prevents to consider it as pari materia case.

In "***State of Goa v. Fouziya Imtiaz Shaikh and others***[30]**"**, the Hon'ble Supreme Court had an occasion to decide an identical question with regard to municipal elections with reference to Article 243-ZG of the Constitution of India. Few facts are necessary for application of the principle to the present controversy. The Goa State Election Commission issued notification for conduct of urban local bodies and later postponed to 11 municipal councils whose terms were to expire on 04.11.2020. The elections were to be scheduled 18.10.2020, which were postponed to 18.01.2021 in view of Covid-19 pandemic situation in the State of Goa. On 03.11.2020, the Governor of Goa appointed the Law Secretary of Government of Goa, a member of Indian Administrative Service as State Election Commissioner which duties were to be in addition, as Law Secretary. By an order dated 05.11.2020, the Municipal Administrators were appointed by the Department of Urban Development for all the Municipal Council whose terms had expired. By another notification dated 14.01.2021, the Goa State Election Commission further postponed the election for a period of three months till April, 2021 or the election date which may be determined by the Commission. While so, Section 10(1) of Goa Municipalities Act was amended on 04.02.2021, published in the Official Gazette, by which the time frame for issuance of notification for reservation of wards was stated as being "at least seven days" before schedule of dates and events of election. On the same day, the Director of Municipal Administration issued an

[30] (2021) 2 MLJ 603

order for reservation of wards for 11 municipal councils in the State.

Aggrieved by the order dated 04.02.2021, nine writ petitions were filed and the Division Bench of Goa High Court allowed the appeals against the State Government. Aggrieved by the order, the State of Goa preferred Special Leave Petition before the Hon'ble Supreme Court. One of the contentions before the Supreme Court was that, in view of the bar under Article 243-ZG of the Constitution of India, the High Court cannot interfere with the process of election when the election date is notified. The Full Bench (Three Judges) of the Supreme Court, after considering entire law on the subject with reference to Articles 324 and 329 and Articles 243-ZA and 243-ZG of the Constitution of India, held that, a conspectus of the law laid down in the contest of municipal elections yield the following results (The relevant principles are extracted hereunder):

> *I.....*
>
> *II. If, however, the assistance of a writ court is required in subserving the progress of the election and facilitating its completion, the writ court may issue orders provided that the election process, once begun, cannot be postponed or protracted in any manner.*
>
> ***III. The non-obstante Clause contained in Article 243ZG does not operate as a bar after the election tribunal decides an election dispute before it. Thus, the jurisdiction of the High Courts Under Articles 226 and 227 and that of the Supreme Court Under Article 136 of the Constitution of India is not affected as the non-obstante Clause in Article 243ZG operates only during the process of election.***
>
> *IV.....*
>
> ***V. Judicial review of a State Election Commission's order is available on grounds of review of administrative orders. Here again, the writ court must adopt a hands-off policy while the election process is on and interfere either before the process commences or after such process is completed***

unless interfering with such order subserves and facilitates the progress of the election.

VI.....

VII. The bar contained in Article 243ZG(a) mandates that there be a judicial hands-off of the writ court or any court in questioning the validity of any law relating to delimitation of constituency or allotment of seats to such constituency made or purporting to be made Under Article 243ZA. This is by virtue of the non-obstante Clause contained in Article 243ZG. The statutory provisions dealing with delimitation and allotment of seats cannot therefore be questioned in any court. However, orders made under such statutory provisions can be questioned in courts provided the concerned statute does not give such orders the status of a statutory provision.

VIII. Any challenge to orders relating to delimitation or allotment of seats including preparation of electoral rolls, not being part of the election process as delineated above, can also be challenged in the manner provided by the statutory provisions dealing with delimitation of constituencies and allotment of seats to such constituencies.

IX. The constitutional bar of Article 243ZG(a) applies only to courts and not the State Election Commission, which is to supervise, direct and control preparation of electoral rolls and conduct elections to municipalities.

X. The result of this position is that it is the duty of the SEC to countermand illegal orders made by any authority including the State Government which delimit constituencies or allot seats to such constituencies, as is provided in proposition (IV) above. This may be done by the SEC either before or during the electoral process, bearing in mind its constitutional duty as delineated in the said proposition.

However, in the peculiar facts of the above case, the Supreme Court was constrained not to interfere with the impugned judgments under Article 136 of the constitution of India, for the reason that it is important to note that the State Election Commissioner is none other than the Law Secretary to the Government of Goa. The whole process of these elections is, therefore, faulted at the start so to speak as the State Election Commission is not, in the facts of these cases, an independent body as is mandated by Article 243K of the Constitution of India. The second reason is that, State Election Commission had itself postponed the municipal elections twice due to the COVID-19

pandemic raging throughout the State. On the second occasion, by the notification dated 14.01.2021, the State Election Commission had itself postponed these elections till April 2021 or the election date which may be determined by the State Election Commission. Obviously, the expression "or the election date which may be determined by the Commission" would indicate a date beyond April, 2021, given the situation in which the State of Goa finds itself due to the COVID-19 pandemic. It is important to note that the High Court in its direction contained in paragraph 81(e) directs the State Election Commission to act in accordance with this notification so that elections are held by 15.04.2021. The other reasons are extracted hereunder:

> *"All the writ petitions in the present cases were filed between 9th and 12th February, 2021 immediately challenging the Director's order dated 04.02.2021. None of these writ petitions contained a prayer that would hold up any election programme. The only prayer was to strike down the aforesaid order so that the Director in issuing a fresh order would have to truly and faithfully carry out the constitutional mandate of Article 243T of the Constitution of India and the statutory mandate contained in Section 9 of the Goa Municipalities Act.*
>
> *When the High Court issued notice on 15.02.2021 for final hearing on 22.02.2021, the SEC did not inform the High Court that vide a note of 05.02.2021 (disclosed for the first time by an affidavit filed in this Court on 08.03.2021), elections were proposed to be held on 20.03.2021.*
>
> *In a clear attempt to overreach the High Court, the State Election Commissioner, who is none other than the Law Secretary of the State of Goa, issues an election notification at 9:00 a.m. on 22.02.2021, even before the Government offices open at 9:30 a.m. in order to forestall the hearing of the writ petitions filed before the High Court, which commences hearing the writ petitions at 9.00 a.m.*[1]
>
> *After the judgment was pronounced by the Division Bench of the High Court on 01.03.2021 and no stay granted, this Court, "issued notice" on 04.03.2021 and stayed the impugned judgment, the effect of which was to revive the election programme that was notified on 22.02.2021. Despite this, the State Election Commission, on this very day i.e., 04.03.2021, amended the aforesaid notification by extending the time period for filing of nomination for 5 Municipal Councils from 04.03.2021 till 06.03.2021 between 10:00 hrs to 13:00 hrs. and therefore, rescheduled the election."*

In view of the law declared by the Supreme Court, the Court can interfere in the process of election by exercising power under Article 226 in certain circumstances, more particularly when State Election Commission issued notification to over-reach the order of the Courts and when the act of the State Election Commission is totally contrary to the procedure. Thus, in exceptional circumstances, the Court can interfere with the election process when the State Election Commission did not act in accordance with law and that the power of the High Court is not totally taken away. The facts of the present case are almost identical to the facts of the above case, except election to urban and rural local bodies. However, the principles laid down with reference to Articles 324 and 329 of the Constitution of India have no direct application to the present facts, as Articles 324 and 329 of the Constitution of India are part of original Constitution.

The present controversy is with regard to permissibility of interference of this Court in the election process, in view of the bar under Article 243-O of the Constitution of India. For better appreciation, Article 243-O of the Constitution of India is extracted hereunder:

> *"Article 243-O Bar to interference by courts in electoral matters:*
>
> *Notwithstanding anything in this Constitution:-*
>
> *(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243K, shall not be called in question in any court;*
>
> *(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State"*

Though Article 243-O is identical to Article 329 of the Constitution of India, there is vast difference between two Articles. Article 329 is a part of original constitution, whereas, Article 243-O is incorporated in the Constitution by 73rd Amendment Act 1992. Thus, Article 243-O is not part of original Constitution, but it came into effect on 24.04.1993. Though Article 329 also fails to pass the acid test, but it stands in safe zone, as it cannot be examined based on Doctrine of Basic Structure, being part of original constitution adopted on 26.11.1949 and enforced with effect from 26.01.1950, but Article 243-O has no such privilege.

In "***Golak Nath v. State of Punjab***[31]**"** and "***Minerva Mills Limited v. Union of India***[32]**"**, the Hon'ble Supreme Court examined the 'Doctrine of Basic Structure'. In "***L. Chandra Kumar v. Union of India***[33]**"**, the Constitutional Bench (Seven Judges Bench) held that, the legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of

---

31 (1967) 2 SCR 762
32 1981 SCR (1) 206
33 AIR 1997 SC 1125

effectively discharging its' wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the t ask of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. The Hon'ble Supreme Court held that the **power of judicial review over legislative action vested in the High**

Courts under Article 226 and in this court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High courts and the Supreme court to test the constitutional validity of legislations can never be ousted or excluded.

It is further held that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution.

Similarly, in concluding Paragraphs, Hon'ble Supreme Court in "***I.R. Colho vs. State of Tamilnadu***[34]**"** held that:

> *"(i) A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine or it may not. If former is the consequence of law, whether by amendment of any Article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated in exercise of judicial review power of the Court. The validity or invalidity would be tested on the principles laid down in this judgment.*
>
> *(ii) The majority judgment in Kesavananda Bharati's case read with Indira Gandhi's case, requires the validity of each new constitutional amendment to be judged on its own merits. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account for determining whether or not it destroys basic structure. The impact test would determine the validity of the challenge.*
>
> *(iii) All amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential*

[34] AIR 2007 SC 861

features of the Constitution as reflected in Article 21 read with Article 14, Article 19, and the principles underlying them. ……..

(iv) Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by Constitutional Amendments shall be a matter of Constitutional adjudication by examining the nature and extent of infraction of a Fundamental Right by a statute, sought to be Constitutionally protected, and on the touchstone of the basic structure doctrine as reflected in Article 21 read with Article 14 and Article 19 by application of the "rights test" and the "essence of the right" test taking the synoptic view of the Articles in Part III as held in Indira Gandhi's case. Applying the above tests to the Ninth Schedule laws, if the infraction affects the basic structure then such a law(s) will not get the protection of the Ninth Schedule.

(v) If the validity of any Ninth Schedule law has already been upheld by this Court, it would not be open to challenge such law again on the principles declared by this judgment. However, if a law held to be violative of any rights in Part III is subsequently incorporated in the Ninth Schedule after 24th April, 1973, such a violation/infraction shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Article 14, Article 19 and the principles underlying thereunder.

(vi) Action taken and transactions finalized as a result of the impugned Acts shall not be open to challenge"

In the light of the above legal proposition, Article 243-O added by 73rd amendment is subject to judicial review on the parameter of destruction of basic structure of the Constitutional power. Article 243-0 takes away the power of the Constitution of the Court i.e. power of judicial review provided under Article 226 of the Constitution of India.

A similar question came up before the High Court of Andhra Pradesh in "***S. Fakruddin v. Government of Andhra Pradesh***[35]**"**, where the Constitutional Bench consisting of Five Judges examined the issue of taking away the power of judicial review of High Court by Article 243-O of the Constitution of India with reference to **Minerva Mills** case, **Golak Nath** case, "***S.P. Sampath Kumar v. Union of India***[36]**"** and "***Sambamurthy v. State of***

[35] AIR 1996 AP 37
[36] AIR 1987 SC 386

A.P[37], **Ponnuswamy** case, **Mohinder Singh Gill** case (referred supra) with reference to Articles 324, 329, 243-K and 243-O of the Constitution of India, held as follows:

> *"A constitution amendment which tends to take away the Constitutional Courts' power that is the power of the High Court under Art. 226 of the Constitution, shall be invalid. There can be no matter in the hands off the legislature in its function as the law maker which will be kept out of the scrutiny of the Courts however limited that scrutiny be. Even the conservative view that if there is an alternative effective and efficient mechanism for judicial review which is as independent as the High Court, its power under Art. 226 of the Constitution will not be available leaves scope for the court to see whether the mechanism is such that the Court should refrain and not exercise its jurisdiction, court is inclined to extend this principle and hold as respects the matters which are sought to be excluded from the judicial review under Art. 243-O of the Constitution which has been brought in by the 73rd Amendment."*
>
> *As regards the power of judicial review of High Courts and the Supreme Court, it was observed:*
>
> *"The consesus of the opinion is that judicial review is a basic feature except in respect of matters which are specifically excluded by the Constitution as originally enacted and that "Courts act as the real interpreters of the real will of the people ..... they perform an essential judicial function .....*
>
> *The basic features of the Constitution stand projected, for Art. 32, the power of the Supreme Court, cannot be taken away and its power under Art. 136 can be a proper safeguard of judicial review of any adjudication by the alternative authority or forum, provided however it is an effective alternative institutional mechanism or arrangement of judicial review. It is through the power of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained, and every organ of the State is kept within the limits of the law."*
>
> (emphasis supplied)

In "***Smt. Sk. Khasim Bee v. The State Election Commissioner***[38]**"** and "***Kayathi Jayapal Reddy v. State Election Commission***[39]**"**, the Court examined the power of the High Court to interfere with the election process on the touchstone of basic structure principle, held that the Court can interfere with the election process, if the State Election Commission did not act in accordance with law.

Following the principle laid down in **S. Fakruddin** case (referred supra), Punjab and Haryana High Court in "***Lalchand v.***

---

[37] AIR 1987 SC 663
[38] AIR 1996 AP 324
[39] 2001 (6) ALD 136

State of Haryana and others[40], reiterated the principle laid down by the Constitutional Bench of High Court of Andhra Pradesh.

In "***Election Commission of India v. Union of India***[41]**"**, the Hon'ble Supreme Court observed that "there are no un-reviewable discretions under the constitutional dispensation. The overall constitutional function to ensure that constitutional authorities function within the sphere of their respective constitutional authority is that of the courts.

If the bar on jurisdiction of the High Court contained in Article 243-O of the Constitution of India is absolute, the State Election Commission may take any decision totally in derogation of the constitutional or statutory provisions, in the election process. For instance, in hypothetical situation, State Election Commission issued notification for conduct of elections without imposing MCC or fixing date of poll within a week from the date of notification, though state distributed huge amount in the name of welfare schemes, luring the voters to vote in favour of the political party in power, taking advantage of Article 243-O of the constitution of India, can this Court decline to interfere with the election process which is not fair? Certainly not, in view of power of judicial review conferred on the Courts under Article 226 of the Constitution of India, in view of the law declared by the Hon'ble Supreme Court in **L. Chandra Kumar** case (referred supra). Therefore, interdict on the power of judicial review is allegedly created by Article 243-O of the Constitution of India is misnomer.

---

[40] AIR 1999 P&H 1
[41] 1995 Supp. (3) SCC 643

The law declared by Supreme Court in **K. Venkatachalam, L. Chandra Kumar** cases (referred supra) and two Constitutional Benches of High Court of Andhra Pradesh and Punjab and Haryana High Court is consistent that Article 243-O cannot take away the power of judicial review of the High Courts. Thus, the bar under Article 243-O is not an absolute one. The Court can interfere with the election process when the State Election Commissioner did not act in accordance with law. Therefore, I hold that the power of the High Court under Article 226 of the Constitution of India is not taken away by Article 243-O of the Constitution of India and that, this Court can interfere with the election process when the State Election Commission acted in violation of the constitutional provisions or any statutory provisions.

Before adverting to various contentions with regard to violation of the directions issued by the Hon'ble Supreme Court in W.P (Civil) No.437 of 2020 dated 18.03.2020 regarding re-imposition of MCC, it is necessary to advert to the history of MCC briefly and it's judicial recognition by the Courts.

Model Code of Conduct for political parties is having lot of history and it was adopted in the month of February 1960 during General Elections to State Legislative Assembly of Kerala State. Later, several States followed the same with certain modifications. However, it has no statutory basis, but it was recognised judicially for the first time in "***Harbans Singh Jalal v. Union of India***[42]", where the Punjab and Haryana High Court recognised the MCC. In

[42] (1997) 116(2) PLR 778

the facts of the judgment, writ petition was filed against the Election Commissioner's direction to make Model Code applicable from the date of announcement of programme for General Election to Punjab Legislative Assembly in December 1996. While upholding the Election Commission's direction, the High Court in its Order dated 27th May 1997, maintained that the Election Commission was entitled to take necessary steps for conduct of a free and fair election even anterior to date of issuance of notification, i.e., from the date of announcement of election. The Central Government, who was a party in the matter, filed a petition for special leave to appeal in the Supreme Court against the ruling of the Punjab & Haryana High Court in "Union of India v. Harbans Singh Jalal (Special Leave Petition (C) No.22724 of 1997", but again no specific opinion was expressed by the Supreme Court.

From the date of judgment in ***Harbans Singh Jalal v. Union of India***" (referred supra), the MCC is being followed.

In the month of February 2014, an additional Part VIII was added to Model Code to regulate the issue of election manifestos by political parties pursuant to judgement dated 5th July 2013 of the Supreme Court in "***S.Subramaniam Balaji v. The Government of Tamil Nadu***[43]" Thus, it was judicially recognised though not enforceable under law and being followed during every election. Even according to the judgment in ***Harbans Singh Jalal v. Union of India***" (referred supra)", the MCC comes into operation right from the time and day, the election schedule is announced by

[43] (2013) 9 SCC 659

the Election Commissioner. Therefore, based on the judgment of the Punjab and Haryana High Court in ***Harbans Singh Jalal v. Union of India***" (referred supra), and the judgment of the Supreme Court in "***S.Subramaniam Balaji v. The Government of Tamil Nadu***" (referred supra) all the State Election Commissioners adopted the MCC and its implementation is not in controversy.

Keeping in view the historical background and importance of MCC, the Full Bench of the Hon'ble Supreme Court in W.P. (Civil) No.437 of 2020 issued such direction to re-impose MCC for four weeks before the notified date of polling.

The main endeavour of Sri E.Venugopal, learned counsel for the petitioner in W.P.No.7778 of 2021, is that when elections paused/stopped in view of earlier notification on account of widespread of Covid-19, State approached the Supreme Court by filing W.P. (Civil) No.437 of 2020, wherein certain directions were issued (extracted in the earlier paragraphs). The major direction in the order is that respondent No.1 shall impose the Model Code of Conduct for four weeks before the notified date of polling. The first respondent being the Constitutional Authority at the State Level has to respect the order of the Highest Constitutional Court, but in utter disregard issued notification impugned, depriving the party candidates to campaign, which is not free and fair process of election, on the lame excuse of the understanding of the State Election Commission.

The language of the judgment is clear that respondent No.1 herein was directed to re-impose MCC for four weeks before the notified date of polling. Instead of following the direction,

respondent No.1 who took charge of the office on 01.04.2021, took decision to resume election process of MPTC/ZPTC in utmost haste even without looking into the order passed by the Hon'ble Supreme Court in W.P. (Civil) No.437 of 2020. The main grievance of the petitioners is that on account of issue of such election notification impugned in the writ petition without providing appropriate opportunity to make preparation campaigning in the elections by the contesting candidates, more particularly candidates of the petitioner in W.P.No.7847 of 2021, thereby the procedure adopted by respondent No.1 did not provide fair opportunity to contest in the election process to the candidates of the petitioner in W.P.No.7847 of 2021 and it is in violation of constitutional right, as held in **Rajabala** case (referred supra).

Indisputably, a direction was issued by the Supreme Court for re-imposing MCC for four weeks before the notified polling date. In fact, MCC is the Code for holding free and fair elections, which is the basic foundation for democracy. On account of hasty decision taken by respondent No.1, dishonouring the direction with scant respect, the petitioners candidates were disabled to take part in the elections effectively with readiness and the impugned notification scuttled the level play field to the contesting candidates of petitioners in W.P.No.7847 of 2021. The sudden narcissistic decision taken by respondent No.1, without looking into the order of the Hon'ble Supreme Court, would cause irreversible consequences and irreparable injury to the candidates of petitioner in W.P.No.7847 of 2021 to participate in the election process. The explanation offered in the counter filed by the Secretary of

respondent No.1 is that the four weeks time is maximum time for re-imposing MCC and the State Election Commission can reduce the period of MCC. Therefore, based on the understanding of respondent No.1, notification impugned in the writ petitions was issued.

Secretary of respondent No.1 filed the counter. State Election Commissioner, who is the Constitutional authority, did not file verified counter for the reasons best known to her, who took a decision in utmost haste to resume the election process for MPTC and ZPTC on the day when she took charge of her office after retirement having enjoyed the extension of service for six months in the same Government as Chief Secretary. The State Election Commission did not explain as to how she could understand the direction of the Hon'ble Supreme Court.

It is well settled law that the judgment can be read in total and cannot read here and there and interpret the same. The ratio analysis depends upon facts of different cases. Even the broad system of legal culture, the components of the Courts, other culture can be explained in different ways. The importance of ascertaining the ratio of the case cannot be over-mentioned. When understanding the ratio and other concepts of authority, distinguishing, overruling *per incuriam* are rather meaningless. Therefore, the Court cannot look into the judgments distinguished, overruled or held as *per incuriam* and the ratio alone is to be taken

out from the judgment. While reading judgment of the Court, an individual understanding or perception is irrelevant, but the exact ratio is relevant for the purpose of application of the ratio laid down in the judgment. The Division Bench of Uttarakhand High Court in "***Parshuram v. State of Uttarakhand*** (Writ Petition (S/B) No. 168/2017 Decided On: 18.03.2019) made a sincere and honest attempt to explain as to the width of the judgment, while analyzing a similar case. A decision is only an authority for what it actually decides and not every observation found therein nor what logically follows from the various observations made in it. Every judgment must be read as applicable to the particular facts proved, or assume to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The case cannot be quoted for a preposition that may seem to follow logically from it. It is not a profitable task to extract a sentence here and there from a judgment and to build up on it. (***State of Orissa v. Sudhansu Sekhar Misra***[44]**;** ***Quinn v. Loathem***[45]**)**. Judgments ought not to be read as statutes. They are an authority for what they decide. A word here or a word there should not be read out of context. (***Sri Koanaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju***[46]). Observations of the Courts are not to be read as Euclid's theorems or as provisions of the statute. These

[44] AIR 1968 SC 647
[45] 1901 AC 495
[46] AIR 1990 AP 171

observations must be read in the context in which they appear. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes (vide: ***Haryana Financial Corporation v. Jagdama Oil Mills***[47]).

In ***London Graving Dock Co. Ltd. V. Horton***[48]:-

> "The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."
>
> (emphasis supplied)

Megarry, J. in ***Shepherd Homes Ltd. v. Sandham***[49] observed:

> *"One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament."*

And, in ***Herrington v. British Railways Board***[50] Lord Morris said:

> *"There is always peril in treating the words of a speech or a judgment as though they were words in legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case…."*
>
> (emphasis supplied)

These observations have been reiterated by the Supreme Court in "***Ashwani Kumar Singh v. U.P. Public Service***

---

[47] (2002) 3 SCC 496
[48] (1951) 2 All ER 1 (HL)
[49] (1971) 1 WLR 1062
[50] (1972) 2 WLR 537

Commission[51]***"***; "***Union of India v. Amrit Lal Manchanda***[52]***"***; "***Escorts Ltd. v. Commissioner of Central Excise, Delhi II***[53]***"***; "***Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani***[54]***"***; "***Union of India v. Major Bahadur Singh***[55]***"***.

In the present case, instead of reading the judgment of the Supreme Court in W.P. (Civil) No.437 of 2020, learned State Election Commissioner interpreted the judgment on her own and concluded that the four weeks time prescribed in the order is outer limit i.e. maximum period of MCC, thereby the State Election Commissioner can reduce it. Such interpretation by misreading or misunderstanding of order is totally misplaced and it is nothing but purposive interpretation, such interpretation cannot be accepted by any stretch of imagination in view of the law declared by the Supreme Court in the judgments (referred supra). Therefore, explanation offered by the Secretary to respondent No.1 in his counter is unacceptable.

The order passed by the Supreme Court in W.P.(Civil) No.437 of 2020 is clear and categorical. On reading the said order, even a common man who can read, write and understand the English language can easily find out the direction issued by the Supreme Court in the order. But, here the State Election Commissioner, who worked as Chief Secretary to the State being a senior most retired IAS Officer, could not understand the simple direction issued by the Hon'ble Supreme Court in right perspective, which

[51] (2003) 11 SCC 584
[52] (2004) 3 SCC 75
[53] (2004) 7 SCC 214
[54] (2004) 8 SCC 579
[55] (2006) 1 SCC 368

creates doubt as to her suitability and fitness to the post of Election Commissioner.

The present State Election Commissioner issued notification impugned in the writ petition on the day when she took charge of the office even without looking into the purport of the order issued by the Supreme Court in W.P.(Civil) No.437 of 2020. It is an undisputed fact, such understanding of the Election Commissioner of the State is contrary to the directions issued by the Supreme Court. Obviously, such notification was issued limiting the MCC for a minimum period from 01.04.2021 till declaration of results as per schedule i.e. 10.04.2021, even without looking into the direction issued by the Supreme Court and such notification would scuttle the level play field of political parties and their candidates in the proposed election to be held on 08.04.2021. Such act of respondent No.1 can be described as democratic backsliding, it is also known as autocratization and de-democratization. It is a gradual decline in the quality of democracy and the opposite of democratization, which may result in the State losing its democratic qualities, becoming an autocracy or authoritarian regime. Democratic decline is caused by the state-led weakening of political institutions that sustain the democratic system, such as the peaceful transition of power or electoral systems. Although these political elements are assumed to lead to the onset of backsliding, other essential components of democracy such as infringement of individual rights and the freedom of expression question the health, efficiency and sustainability of democratic systems over time. One of the reason for such democratic

backsliding is *executive aggrandizement***.** The most important feature of executive aggrandizement is that the institutional changes are made through legal channels, making it seem as if the elected official has a democratic mandate. Some examples of executive aggrandizement are the decline of media freedom and the weakening of the rule of law (i.e., judicial and bureaucratic restraints on the government), such as when judicial autonomy is threatened.

Another reason for democratic backsliding is strategic harassment and manipulation during elections. This form of democratic backsliding entails the impairment of free and fair elections through tactics such as blocking media access, disqualifying opposition leaders, or harassing opponents. This form of backsliding is done in such a way that the elections do not appear to be rigged and rarely involves any apparent violations of the law, making it difficult for the Election observer to observe these misconducts. As such, the act of the respondents is nothing but democratic backsliding.

Normally, the IAS officers, who are working and achieved excellence in the career with their brilliance, were posted in the rank of Principal Secretary and above to look after the entire administration in the State and expected to act fairly and freely without any fear or favour; though worked in particular Government, they are being appointed in key posts such as State Election Commissioner since they possessed knowledge vested with power. Based on such brilliance and knowledge, the State Election Commissioner could not understand the purport of the

order passed by the Full Bench of the Hon'ble Supreme Court, obviously for the reasons best known to the State Election Commissioner. The present situation is fine example of democratic backsliding. The understanding of the order of the Full Bench of the Hon'ble Supreme Court by respondent No.1 or by Secretary to respondent No.1 is not based on any reasoning, except non-application of mind by the concerned authority. The State Election Commissioner did not care even the direction issued by the Full Bench of the Hon'ble Supreme Court by over-reaching the order, made the direction lifeless and the direction became redundant. Hence, the contention of the learned senior counsel for respondent No.1 is hereby rejected. Accordingly, I hold that the impugned notification was issued in deliberate and intentional violation of the direction dated 18.03.2020 issued by the Supreme Court in W.P. (Civil) No.437 of 2020, which is in the nature of direction issued under Article 142 of the Constitution of India, and the same is binding on the State. The first respondent being constitutional authority is expected to maintain rule of law and act within the sphere of constitutional authority, but acted in clear defiance of the directions with almost disrespect to the order of the Hon'ble Supreme Court. Consequently, the notification impugned in the writ petitions is liable to be set aside. Accordingly, the point is answered in favour of the petitioners and against the respondents.

P O I N T No.4:

The petitioner in W.P.No.7847 of 2021 made several serious allegations about the violence took place both at the time of

nominations, withdrawals, more particularly forcible withdrawals and untoward incidents took place in the process of election before stoppage of election by issuing notification No.68/SEC-B1/2020 dated 15.03.2020 exercising power under Rule 7 of the A.P.Panchayat Raj (Conduct of Elections) Rules. The petitioner also relied on the letter addressed by the State Election Commissioner to the Home Secretary dated 18.03.2020 making serious allegations like vandalism of the representations of present political party in power, which is extended to the person of the then Election Commissioner. The petitioner also relied on earlier letter, which is not placed on record.

In any view of the matter, notification dated 01.04.2021 fixing the date of polling as 08.04.2021 was issued resuming election process from where it was stopped, which is impugned in the writ petition, and the entire election process was completed as on date.

When the entire election process is completed, the alleged vandalism in the process of election by the men or supporters of the political party in power may be a ground to set aside the election of particular candidate, but it is not a ground to cancel the entire election process and direct to issue a fresh notification for elections.

According to Article 243-O of the Constitution of India, the election cannot be called in question except by election petition on any of the grounds available to the petitioner, which is identical to Article 329 of the Constitution of India, but the Court disagreed

with the bar on jurisdiction of Courts, examining the bar on the touchstone of basic structure doctrine. However, Section 225 of the Andhra Pradesh Panchayat Raj Act, 1994 permits fresh election in case of destruction of ballot boxes etc. at any election and several circumstances were enumerated in Section 225 of the Andhra Pradesh Panchayat Raj Act. But none of the contentions urged in the affidavit filed along with the petition do not fall within the ambit of Section 225 of the Andhra Pradesh Panchayat Raj Act.

Similar issue came up before this Court in W.P.No.4154 of 2021 and batch, wherein the learned Single Judge declined the relief. Therefore, the issue involved in the petition is no more *res integra*. By applying the principle laid down in the above judgment, I find that it is not a fit case to direct election for ZPTCs and MPTCs afresh. However, it is left open to the petitioner in W.P.No.7847 of 2021 to challenge the election on any of the available grounds under law by filing election petition. Hence, I find no ground to grant relief to the petitioner for ordering fresh election for ZPTCs and MPTCs.

During hearing, learned counsel for respondent No.1 would contend that the polling was completed and ballot boxes were preserved in safe place as the Division Bench of this Court directed not to take up counting of votes and not to declare the result of the election, consequently the writ petition itself becomes infructuous. Hence, on this ground, requested to dismiss the writ petition.

No doubt, election process is completed including polling except counting votes, declaration of results. But the learned single

Judge in I.A.No.01 of 2021 in W.P.No.7778 of 2021 stayed all further proceedings in pursuance of the notification No.1503/SEC-B1/2021 dated 01.04.2021, when it was challenged before the Division Bench by filing W.A.No.224 of 2021, the Division Bench of this Court with certain restraint passed such an order not to undertake counting process and not to declare the results. On account of the order passed by the Division Bench, the respondent No.1 could complete the election process.

The candidates of Janasena Party, petitioner in W.P.No.7847 of 2021 were disabled to participate in the election process due to scuttling of level play field by issuing impugned notification. Therefore, on the ground of completion of polling based on such illegal notification, the writ petitions did not become infrutuous. Consequently, the writ petitions cannot be dismissed as infructuous.

Yet, another contention of learned senior counsel for respondent No.1 is that the relief under Article 226 of the Constitution of India is purely discretionary in nature and the Court has to balance equities. In support of his contention, he placed reliance on the judgment of the Supreme Court in "***State of Maharashtra v. Prabhu***[56]". In the said judgment, the Supreme Court held that the distinction between writs issued as a matter of right such as habeas corpus and those issued in exercise of discretion such as certiorari and mandamus are well known and explained in countless decisions given by the Supreme Court and

[56] 1994 (2) SCC 481

English Courts. It is not necessary to recount them. The High Courts exercise control over Government functioning and ensure obedience of rules and law by enforcing proper, fair and just performance of duty. Where the Government or any authority passes an order which is contrary to rules or law it becomes amenable to correction by the courts in exercise of writ jurisdiction. But one of the principles inherent in it is that the exercise of power should be for the sake of justice. One of the yardsticks for it is if the quashing of the order results in greater harm to the society, then the court may restrain from exercising the power.

No doubt, the Court has to balance the equities since the State already spent Rs.160 crores for holding elections as contended by the learned senior counsel for respondent No.1, based on such illegal notification. If such equities are balanced on the basis of spending huge amount, it is nothing but perpetuating illegality or legalising an illegality on the basis of equity, which is impermissible under law, since it is the duty of the Constitutional Court to uphold the right of citizen without sacrificing sobriety. In fact, when the learned single Judge of this Court passed an order in I.A.No.01 of 2021 in W.P.No.7778 of 2021, the State in hurry, moved the Division Bench by way of writ appeal, obtained an order, and held election in utmost haste. The reason can be inferred from the circumstances of the case. However, had the State waited for some time, the State ought to have saved the amount at least to some extent, which was spent for holding elections and for preserving ballot boxes, on account of order of

Division Bench. Because of the hasty act of the State Election Commissioner, the State was compelled to incur such huge amount. Hence, based on such principle of balancing equities, the relief in the writ petition cannot be denied since the amount was incurred due to utmost haste decision of respondent No.1 both in issuing notification and approaching the Division Bench against the order passed by the learned Single Judge in hurry. When the State incurred such huge expenditure on account of hasty acts of officials of the State, infringement of rights of the citizen or public cannot be permitted and such equity cannot outweigh the statutory rights of the electors and contesting candidates of ***Janasena*** Party in W.P.No.7847 of 2021. Therefore, it is difficult to accede to the request of the learned senior counsel for respondent No.1 and the same is hereby rejected.

Accordingly, the point is answered in favour of the respondents and against the petitioners.

Before concluding the order, the findings recorded by me are summed-up, as follows:

(1) The petitioner in W.P.No.7778 of 2021 has got litigational competency and that the writ petition in the present form is maintainable under Article 226 of the Constitution of India and single Judge of this Court is competent to decide the issue, since the petitioner did not espouse the public cause.

(2) The petitioner in W.P.No.7778 of 2021 has failed to establish existence of legal right in him either statutory or

constitutional and it's infringement or invasion or threatened infringement or invasion and thereby, not entitled to claim writ of mandamus.

(3) Article 243-O of the Constitution of India is not an absolute bar to interfere with the process of election for MPTCs and ZPTCs.

(4) The petitioner in W.P.No.7847 of 2021 pleaded and proved that the right of contesting candidates of the Janasena Party (political party) is infringed or invaded, thereby entitled to claim Writ of Mandamus, as the notification was issued in utter disregard of the direction of the Hon'ble Supreme Court in W.P (Civil) No.437 of 2020 dated 18.03.2020.

(5) Notification No.1503/SEC-B1/2021 dated 01.04.2021 issued by the State Election Commissioner is declared as illegal as the same was issued to scuttle the level play field of candidates of Janasena Party or retard the progress of free and fair election and contrary to the direction issued by the Hon'ble Supreme Court in W.P. (Civil) No.437 of 2020.

In the result,

(a) Writ Petition No.7778 of 2021 is dismissed without costs.

(b) Writ Petition No.7847 of 2021 is allowed-in-part, declaring the Notification No.1503/SEC-B1/2021 dated 01.04.2021 as illegal, arbitrary and violative of direction issued by the Hon'ble Supreme Court in W.P. (Civil) No.437 of 2020, and consequently set-aside the same, while declining to order election process afresh for MPTCs and ZPTCs in the State from the stage of nominations.

(c) The first respondent is directed to issue notification afresh resuming the election process for MPTCs and ZPTCs from where it was stopped, re-imposing Model Code of Conduct strictly adhering to the directions issued by the Hon'ble Supreme Court in W.P. (Civil) No.437 of 2020 . No costs.

Consequently, miscellaneous petitions pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

21.05.2021

Note: L.R. copy to be marked
B/o
Ksp/sp

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W

LR folder

WRIT PETITION NOs.7847 AND 7778 of 2021

DATE: 21.05.2021

Ksp/SP