

WWW.LIVELAW.IN

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3213 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

Sd/-

and

HONOURABLE MR. JUSTICE ILESH J. VORA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No
	Circulate this judgment in the subordinate judiciary	

SARIFABEN ISUBBHAI MAHETAR

Versus

STATE ELECTION COMMISSION

Appearance:

MR AJ YAGNIK(1372) for the Petitioner(s) No.

1,10,11,12,13,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,32,4,5,6,7,8,9

MS. MANISHA LUVKUMAR SHAH, LD. GOVERNMENT PLEADER with MS. AISHWARYA GUPTA, LD. AGP for the Respondent(s) No. 2 & ,3

MR. MIHIR JOSHI, LD. SR. COUNSEL with MS. ROOPAL PATEL, LD. ADVOCATE for the Respondent(s) No. 1

for the Respondent (s) No.4

WWW.LIVELAW.IN

CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 15/02/2021

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

“ A judge should value independence above gold, not for his or her own benefit, but because it is of the essence of the rule of law.” - **Lord Chief Justice Phillips**

Dr. Barrack in his book ‘The Judge in a Democracy’ has very eloquently described the role and function of a judge:

“As a judge, I do not have a political platform. I am not a political person. Right and left, religious and secular, rich and poor, man and woman, disabled and nondisabled, all are equal in my eyes. All are human beings, created in the image of the Creator. I will protect the human dignity of each. I do not aspire to power. I do not seek to rule. I am aware of the chains that bind me as a judge and as the president of the Supreme Court. I have repeatedly emphasized the rule of law and not of the judge. I am aware of the importance of the other branches of government – legislative and executive – which give expression to democracy. Between those two branches are connecting bridges and checks and balances. I view my office as a mission. Judging is not a job. It is a way of life. Whenever I enter the courtroom, I do so with the deep sense that, as I sit at trial, I stand on trial.”

Indian Courts are bestowed upon with the duty to protect, deliberate and acknowledge the individual rights of the people with the continuing effort of upholding the constitutional beliefs of a democratic country. The initial dogmatic view regarding its role was only to resolve private disputes, predominantly of civil nature. The judges were also required to

determine the question of guilt of persons charged with offences and also the degree of punishment that could implement the proper deterrent in the society. However, an indispensable function of the courts, which has now put a test, more particularly since the twentieth century, is its role as the arbiter of disputes between the State and the citizen. Government of a modern State in order to bring about socio-economic changes and reforms would require discretionary power. Such possession of vast powers which operates through a human organization is inevitably threatened with the peril of abuse of power. Our Constitution-makers foreseeing such a danger, have consequently introduced an independent authority to ensure the protection of the individual rights, which are granted in the first place to balance against this government's discretionary power.

Further, the authority is also responsible to see that the powers are not abused and that those armed with such powers exercise them in accordance with the laws enacted for the required purpose. According to the scheme of our Constitution, such command is exercised by the courts. The purpose of the courts as arbiter of disputes between the State and the citizen highlights the importance of the independence of the courts as an extremely powerful constitutional body, which carries a heavy onus to provide proper checks and balances in the system of governance.

Now, this role requires every judge to understand its basic function which is to interpret the law according to the given facts of the case. In exercising the power of judicial

WWW.LIVELAW.IN

review, there is a theoretical prohibition on courts that it must not replace its ideas against the wisdom behind the legislation. The policy matters fall under the domain of legislature's functions. Nonetheless, the responsibility of the courts is to adjudicate on the validity of the legislations and whether they are in consonance with or in violation of the provisions of the Constitution. Once the courts have done that, their duty ends.

1. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs;

A. Your Lordships be pleased to hold and declare that failure on part of petitioners to submit to respondent Election Officer their mandate, in support of forms having already been filled up to contest in the election of Palitana municipality in all the nine wards comprising of 36 posts of municipal councillor, on or before 03:00 PM on 13.02.2021 for the reasons beyond their control and on account of absolutely malicious and unfair intervention on the part of opponents and disgruntled elements predetermined to disallow petitioners to submit their mandate well within the time scheduled in accordance with law is in violation of Part IXA of the Constitution of India read with relevant provisions of elections under the Municipalities Act, 1963 together with election rules on the subject matter and hence the same is illegal and unconstitutional; AND BE ALSO FURTHER PLEASED TO hold and declare that such malicious and unfair prevention and intervention by opponents and disgruntled elements too is in violation of Part IXA of the Constitution of India read with relevant provisions of elections under the Municipalities Act, 1963 together with election rules on the subject matter hence the same is illegal and unconstitutional.

B. Your Lordships Be pleased to direct respondents and respondent election commission as well as election officer in charge of Palitana municipality to accept the mandate of the petitioners and allow them to contest election in accordance with law and the provisions of the

WWW.LIVELAW.IN

constitution in the backdrop of unprecedented situation and in the case of where mandate of the respective petitioners has failed to reach the office of the respondent election officer.

C. During the pendency and/or final disposal of the present petition be pleased to direct respondent state election commission and election officer in charge of Palitana municipality to accept the mandate of the petitioners and allow them to contest elections in the case where mandate of the respective petitioners has failed to reach the office of the respondent election officer.

D. To grant any other and further reliefs that may be deemed fit and proper and in the interest of justice.”

2. The case put up by the writ applicants, in their own own words, as pleaded in the memorandum of the writ application, is as under;

1. The petitioners are citizens of India who are contesting for the post of Municipal Councillors in/on the election of Palitana Nagar Palika. All the petitioners who have their affiliation towards the same political party have submitted their nomination papers to the respondent Election Officer for contesting the Nagar Palika Elections.

Cause of Action for preferring the present petition

The petitioners have been constrained to approach this Hon'ble Court calling for its interference in its plenary powers as the petitioners have not been able to submit their mandate forms which is also known as Form "KH" [a form which is to be submitted pursuant to the filing of nomination papers] for the reasons beyond their control and on account of absolutely malicious and unfair intervention on the part of disgruntled elements of the opposing party who are predetermined to disallow and prohibit petitioners to submit their mandate. In sum and substance such disgruntled elements by tearing apart the mandate forms of the petitioners prevented them

from submitting their mandate well within the scheduled time in accordance with law. This unprecedented situation took place within the premises of the Nagar Palika Office which is also under CCTV Surveillance, yet the respondents have chosen to turn a blind eye to it, so as to facilitate uncontested elections to ensure smooth victory of the members of Bhartiya Janta Party who are contesting the local body elections. Moreover, the police authorities were present at the Nagar Palika Office and yet in complete derogation of its duties and obligations nothing was done to address the situation.

It is further stated that the mandate was to be submitted by 03:00 PM on 13.02.2021. However around 02:30 PM when the petitioners were about to submit their mandate, the disgruntled elements of the opposing party tore apart the mandate forms which has prevented the petitioners from submitting their mandate well within the time schedule in accordance with law.

The present petition is being filed, inter alia, seeking a direction to the State Election Commission as well as Election Officer in charge of Palitana municipality to accept the mandate of the petitioners and allow them to contest election in accordance with law in the backdrop of unprecedented situation and in the case where mandate of the respective petitioners has failed to reach the office of the respondent election officer, failing which the election would not be a free and fair election and rather it would be an uncontested election since the mandate forms of all members of one political party have been torn apart so as to prevent them from filing their mandate within stipulated time and hence in turn to prevent them from contesting elections.

It is stated that 15.02.2021 is the last day for scrutinizing of the forms by the election officer and hence if on or before 15.02.2021, the forms of the petitioners are not accepted and considered, then there would be no scope of intervention and would ultimately result in an uncontested election. It is required that the Hon'ble High Court in its plenary powers and extraordinary jurisdiction, urgently intervenes, failing which would not only render the cause, but also the idea of democratic values and free and fair elections, infructuous.

The petitioners have made formal complaints to the respondents which have gone unattended to and

unanswered and hence the petitioners have no other remedy than to approach this Hon'ble Court.

2. The petitioners are citizens of India and are entitled to the protection and enforcement of fundamental rights, statutory rights and other established rights by invoking writ jurisdiction under Article 226 of the Constitution of India.

3. Respondent No. 1 is the State Election Commission represented through the Election Commissioner. Respondent No. 2 is the Election Officer in charge of the Palitana Nagar Palika. Respondent No. 3 is the Collector, District Bhavnagar. Respondent No. 4 is the Police Inspector, Palitana Town Police Station. Therefore they are all "State" as enshrined in Article 12 of the Constitution of India and thus writ petition under Article 226 of the Constitution of India is maintainable against them.

4. FACTS:

4.1 It is stated that the petitioners are residents of Palitana Town whose names are included in the voters list of Palitana Nagar Palika.

4.2 It is stated that all the petitioners are contesting for the post of Municipal Councillors in/on the election of Palitana Nagar Palika.

4.3 It is stated and submitted that the elections for local bodies i.e., 6 Municipal Corporations [Ahmedabad, Vadodara, Surat, Rajkot, Bhavnagar and Jamnagar] which consists of 642 Corporators, 42 Municipalities /Nagar Palikas which consists of 4488 Corporators, 33 District Panchayats are underway at present.

4.4 It is further stated that the respondent State Election Commission after deferring the conduct of elections once due to Corona, has issued the fresh

schedule of elections and the same process is now underway.

4.5 It is stated and submitted that the nominations were to be filed/submitted from 8 th February, 2021 to 13 th February, 2021. It is stated that all the petitioners who have their affiliation towards the same political party have submitted their nomination papers to the respondent Election Officer for contesting the Nagar Palika Elections.

4.6 It is stated that pursuant to filing/submitting of nomination papers with the respondent Election Officer, the petitioners are further required to submit two more forms being Form-K and Form KH.

4.7 It is stated that Form-K is a common form submitted on behalf of all the candidates of a single party stating that the candidates will contest on the party symbol as stated of their party. The said form too including the names of the petitioners has been duly submitted.

4.8 It is stated and submitted that pursuant to submission of Form-K and nominations papers, on 13.02.2021, the petitioners were required to submit their individual Form-KH which is also known as the mandate/mandate form to the respondent Election Officer. The said form was to be submitted duly filled by 03:00 PM on 13.02.2021 to the respondent election officer.

4.9 It is further stated and submitted that 36 prospective candidates having their affiliation to single political party were about to submit their mandate forms for contesting election of Palitana municipality in all the nine wards comprising of 36 posts of municipal councillor, around 02:30 PM on 13.02.2021.

4.10 It is stated and submitted that however, when the City Party President namely Shri Karansinh Mori and the Former Nagar Palika Opposition Leader namely

Pravinbhai M. Gadhvi were about to submit the mandate forms of all the 36 prospective candidates on behalf of their party, in the Premises of the Nagar Palika Office itself, which is under CCTV Surveillance and also under the police supervision, some disgruntled elements intervened and tore apart the mandate forms and hence the petitioners could not submit the same in time by 03:00 PM.

4.11 It is stated and submitted the petitioners thus have not been able to submit their mandate forms for the reasons beyond their control and on account of absolutely malicious and unfair intervention on the part of disgruntled elements of the opposing party who are predetermined to disallow and prohibit petitioners to submit their mandate. In sum and substance such disgruntled elements by tearing apart the mandate forms of the petitioners prevented them from submitting their mandate well within the scheduled time in accordance with law. At the risk of repetition, it is stated and submitted that this unprecedented situation took place within the premises of the Nagar Palika Office which is also under CCTV Surveillance, yet the respondents have chosen to turn a blind eye to it, so as to facilitate uncontested elections to ensure smooth victory of the members of Bhartiya Janta Party who are contesting the local body elections. Moreover, the police authorities were present at the Nagar Palika Office and yet in complete derogation of its duties and obligations nothing was done to address the situation.

4.12 It is stated and submitted soon after the incident, a formal complaint was made to the respondent/s

It is stated and submitted that representation/s were also made seeking concerned CCTV footage with regard to the offending incident.

4.13 It is stated and submitted that a formal complaint was even made to the respondent PI, Town Police Station, Palitana as well as to the DIG [Bhavnagar Range]. However, no action was taken and rather the

same remained unattended to.

4.14. It is stated and submitted that the mandate was to be submitted by 03:00 PM on 13.02.2021. However around 02:30 PM when the petitioners were about to submit their mandate, the disgruntled elements of the opposing party tore apart the mandate forms which has prevented the petitioners from submitting their mandate well within the time schedule in accordance with law.

4.15 It is stated and submitted that such 36 mandate forms were torn apart by disgruntled elements. However the petitioners had with them a handful/few extra copies of the mandate form and hence filed up the same and submitted. However since the time limit was till 03:00 PM, it was not possible for reasons beyond the control of the petitioners to immediately re-submit the mandate forms for all 36.

4.16 It is stated and submitted the respondent Election Officer was intimated about the untoward incident but nothing at all was done by the respondent Election Officer. Also, what is more grievous is the fact that everything happened in the Office of the Nagar Palika where police personnel were present.

4.17 It is stated and submitted that pursuant to the incident whatever extra mandate forms were available were filled in and submitted. Moreover, the petitioner had scanned copies of 32 forms which were torn apart and hence after taking print outs of the same, those too were submitted. However since because of the all ruckus, the petitioners could not submit the same within the stipulated time period of 03:00 PM.

The same indicates that 7 mandate forms were submitted on or before 03:00 PM. 4 mandate forms are shown as having been submitted at 03:15 PM. However it is stated and submitted that it was the respondent election officer who consumed time in scrutinizing the same and hence the time shown is that of 03:15 PM. And lastly, the 32 mandate forms which were re submitted

after obtaining copies of the same since the petitioners had with them scanned copies of the forms which were torn apart, are shown as having been submitted at 05:05 PM.

4.18 It is stated and submitted that the respondent Election Officer is in the know how of the entire incident and rather than acting upon it has only added to the woes of the petitioners.

4.19 It is stated and submitted that hence the present petition is being filed, inter alia, seeking a direction to the State Election Commission as well as Election Officer in charge of Palitana municipality to accept the mandate of the petitioners and allow them to contest election in accordance with law in the backdrop of unprecedented situation and in the case where mandate of the respective petitioners has failed to reach the office of the respondent election officer, failing which the election would not be a free and fair election and rather it would be an uncontested election since the mandate forms of all members of one political party have been torn apart so as to prevent them from filing their mandate within stipulated time and hence in turn to prevent them from contesting elections.”

3. The facts of this case, as pleaded and referred to above, are quite gross and disturbing. The letter addressed by the Election Officer, Palitana Nagarpalika dated 13th February, 2021 to three office bearers of the political party, Annexure-E to this writ application, is more disturbing and self-explanatory. The true English translation of the same is as under;

“Election Officer,
Palitana Nagarpalika and Deputy
Director of Agriculture, Bhavnagar
Nagarpalika office, Palitana.

Dated : 13.02.2021

To, **WWW.LIVELAW.IN**

- (1) *Shri Pravinbhai Mulubhai Gadhvi*
Add: Charan Niwas, Akheda, Palitana,
Dist. Bhavnagar.
- (2) *Rumibhai Karimbhai Shaikh*
Add : Hathiyaghar, Palitana, Dist. Bhavnagar.
- (3) *Shri Karansang G.Mori*
Add : Baharpara, Palitana, Dist. Bhavnagar.

Subject : *Palitana Nagarpalika General Election – 2021*

Information seeking the time and details of the mandates Form-A and Form-B of the National Congress Party that have been submitted.

Sir,

It is respectfully submitted on the captioned subject that on 23.01.2021 the State Election Commission, Gandhinagar, has declared the election programme for conducting the ensuing general election of the Palitana Nagarpalika scheduled to be held on 28.02.2021.

By your application dated 13.02.2021 @ 18:00 hours, the forms of all the candidates from the Indian National Congress have been submitted today on the last date of submission of the forms, i.e. 13.02.2021. However, at the time of submitting the mandate Form-B of the party, some miscreants looted the mandate Form-B, laid an assault and tore off the mandate Form-B.

An information had been sought for from the Indian National Congress party today, i.e. on 13.02.2021, regarding the time of submission of the Form-A and Form-B. The details of the same is as under :

<i>Sr. No.</i>	<i>Mandate - Form-A or Form-B</i>	<i>Date of Submission of Mandate - Form-A or Form-B</i>	<i>Time of Submission of Mandate - Form-A or Form-B</i>	<i>Number of Candidates for Form-B</i>
<i>1</i>	<i>Form-A</i>	<i>13.02.2021</i>	<i>14-59 pm.</i>	<i>-</i>
<i>2</i>	<i>Form-B</i>	<i>13.02.2021</i>	<i>15-00 pm.</i>	<i>7 (Seven)</i>

3	Form-B	13.02.2021	15-15 pm.	4 (Four)
4	Form-B	13.02.2021	17-05 pm.	32 (Thirty-two)

WWW.LIVELAW.IN

Sd/-

(Gaurav Dave)

Election Officers

Palitana Nagarpalika and

Deputy Director of

Agriculture.”

4. We have also taken notice of the representation dated 14th February, 2021 addressed to the District Election Officer and District Collector, Bhavnagar, Annexure-B to this writ application. The same reads thus;

“(1) Pravinbhai J.Rathod
President, Bhavnagar District
Congress Samiti, at Palitana.

(2) Pravinbhai Mulubhai Gadhvi
Former President, Palitana
Nagarpalika.

Dated : 14.02.2021.

To,
The District Election Officer & District Collector,
Collectorate Office, Kala Nala Road, Bhavnagar.

Subject : To immediately supply the video recording
footages of and around the Palitana
Nagarpalika building captured by the
Videographer appointed by
you.....Regarding.

We, the undersigned, by this written application, submit
that :

On 13.02.2021 at 2:45 p.m., we were, in all 36
candidates from Ward Nos.1 to 9 of the Palitana
Nagarpalika, going to submit our mandates of the Indian
National Congress, at that point of time, when we

reached the main entrance of the Palitana Nagarpalika building, we were attacked by some miscreants who looted and ran away with the mandates of the Indian National Congress party.

We followed them to take back the mandates, but they had tore the mandates at the car parked near Rajdeep Pan located at the entrance of the Palitana Nagarpalika building and ran away.

For the said incident, a complaint came to be lodged before the Palitana Town Police Station on 13.02.2021 at 21:15 hours.

As we intend to file a complaint before the Chief Election Commissioner, Gujarat State, as well as before the District Election Officer, Bhavnagar, and as we intend to seek legal proceedings at higher level into this serious incident, we request you to pass an order immediately, in the interest of justice, to supply us the video recording footages of and around the Palitana Nagarpalika building captured by the Videographer appointed by you, on 13.02.2021 between 2 O'clock and 4 O'clock, as the same is required to be produced before the authorities concerned as an evidence.

We undertake to pay the amount that may be required for supplying the video recording footages of and around the Palitana Nagarpalika building captured by the Videographer appointed by you.

(1) Sd/-
(Pravinbhai J.Rathod)

(2) Sd/-
(Pravinbhai Mulubhai Gadhvi)

Copy forwarded with respect to :

- (1) The State Election Commissioner.*
- (2) The President, Gujarat State Congress.*
- (3) The Opposition Leader (Gujarat Legislative Assembly)"*

5. We have also taken notice of the representation dated 14th February, 2021 addressed to the DIG, Bhavnagar Range,

WWW.LIVELAW.IN

Bhavnagar, which reads thus;

“(1) Pravinbhai J.Rathod
President, Bhavnagar District
Congress Samiti, at Palitana.

(2) Pravinbhai Mulubhai Gadhvi
Former President, Palitana
Nagarpalika.

Dated : 14.02.2021.

To,
The Deputy Inspector General of Police
(Bhavnagar Range)
D.S.P. Office Compound,
Navapara, Bhavnagar.

Subject : To immediately supply the CCTV footages of
and around the Palitana Nagarpalika building
as well as of the private shops..... Regarding.

We, the undersigned, by this written application, submit
that :

On 13.02.2021 at 2:45 p.m., in all 36 candidates from
Ward Nos.1 to 9 of the Palitana Nagarpalika were going
to submit the mandates of the Indian National Congress
party, at that point of time, when we reached the main
stair of the Palitana Nagarpalika building, we were
attacked by some miscreants who looted and ran away
with the mandates of the Indian National Congress party.

We followed them to take back the mandates, but they
had tore the mandates at the car parked near Rajdeep
Pan shop located at the entrance of the Palitana
Nagarpalika building and ran away.

As the said incident happened within your jurisdiction, a
complaint came to be lodged before the Palitana Town
Police Station on 13.02.2021 at 21:15 hours.

As we intend to file a complaint before the Chief Election
Commissioner, Gujarat State, as well as before the
District Election Officer, Bhavnagar, and as we intend to

seek legal proceedings at higher level into this serious incident, we request you to pass an order immediately in the interest of justice, to supply us the CCTV footages of and around the Palitana Nagarpalika building as well as the CCTV footages of the private shops recorded on dated 13.02.2021 between 2 O'clock and 4 O'clock, as the same is required to be produced before the authorities concerned as an evidence.

We undertake to pay the amount that may be required for supplying the CCTV footages.

(1) Sd/-
(Pravinbhai J.Rathod)

(2) Sd/-
(Pravinbhai Mulubhai Gadhvi)

Copy forwarded with respect to :

- (1) *The State Election Commissioner.*
- (2) *The President, Gujarat State Congress.*
- (3) *The Opposition Leader (Gujarat Legislative Assembly)*
- (4) *The Home Secretary.*
- (5) *The Director General of Police, Gujarat State.*
- (6) *The District Superintendent of Police, Bhavnagar."*

6. We have heard Mr. Anand Yagnik, the learned counsel appearing for the writ applicants, Mr. Mihir Joshi, the learned senior counsel assisted by Ms. Roopal Patel, the learned counsel appearing for the State Election Commission and Ms. Manisha Luvkumar Shah, the learned Government Pleader appearing for the State-respondents.

7. Having regard to the urgency in the matter, Mr. Yagnik, the learned counsel appearing for the writ applicants sought permission of this Court to get this writ application circulated Yesterday in the late evening. Mr. Yagnik had to make frantic efforts to get the matter circulated at the earliest as time was running against his clients. We are informed that a

WWW.LIVELAW.IN

request was made to the Hon'ble the Chief Justice for urgent circulation, and that is how the matter has come up today before this Court.

8. We started hearing this matter at 11:30 A.M. today. Mr. Yagnik, the learned counsel appearing for the writ applicants, raised manifold contentions in support of his case, and at the same time, various submissions were made on behalf of the State Election Commission as well as the State-Respondents. In the course of the hearing of this matter, we thought fit to ask the Returning Officer to join the Video Conference. We also had some discussion with Mr. A.A. Ramanuj, Joint Commissioner, State Election Commission. Incidentally, the State Election Commissioner Mr. Sanjay Prasad, was also on the Video Conference assisting Mr. Mihir Joshi, but in a different matter. We ceased the opportunity to put few questions to Mr. Sanjay Prasad as regards the unruly incident that took place on 13th February, 2021 and the steps taken by him as the Election Commissioner. The matter was, thereafter, taken up in the post lunch session.

9. The entire election process is manned by a competent agency called the "Election Commission". Article 324 of the Constitution of India postulates the superintendence, direction and control of election to be vested in an "Election Commission". Clause (1) of Article 324 specially deals with the power of superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission referred to in the Constitution as "Election Commission."

WWW.LIVELAW.IN

10. Clause (6) of Article 324 provides that the President or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Clause (I).

11. Thus, Article 324 of the Constitution of India makes provisions for a Centralised Election machinery. The Election Commission is empowered to issue all necessary directions for the purpose of conducting smooth, free and fair elections.

12. Article 329(b) of the Constitution of India postulates the bar to interference by Courts in electoral matters. The embargo imposed under Article 329 barring interference and the power of Election Commission under Article 324 have been extensively considered by the Supreme Court in **N. P. Ponnuswami v. The Returning Officer**, 1952 AIR 64 and **Mohinder Singh Gill v. The Chief Election Commission**, 1978 AIR 851.

13. Dealing with the powers of the Election Commission under Article 324, the Supreme Court in the decision cited supra, has held :

“Functions as referred to in Article 324 (6) include powers as well as duties. It is incomprehensible that a person or body can discharge any functions without exercising powers. Powers and duties are integrated with function. The Chief Election Commissioner has to pass appropriate orders on receipt of reports from the returning officer with regard to any situation arising in the course of an election and power cannot be denied to him to pass appropriate orders. Moreover, the power has to be exercised with promptitude. Whether an order passed in wrong, arbitrary or is otherwise invalid, relates to the mode of exercising the power and does not touch upon the existence of the power in him if it is there either

WWW.LIVELAW.IN

under the Representation of the People Act or the rules made in that behalf or under Article 324(1).

The Commission is entitled to exercise certain powers under Article 324 itself or its own right, in an area not covered by Representation of the People Act and the rules... It is true that in exercise of powers under Article 324(1) the Election Commission cannot do something impinging upon the power of the President in making the notification under Section 14 of the Representation of the People Act. But after the notification has been issued by the President, the entire electoral process is in the charge of the Election Commission and the Commission is exclusively responsible for the conduct of the election without reference to any outside agency. There is no limitation in that where the law made under Article 327 or the relevant rules made thereunder do not provide for the mechanism of dealing with a certain extraordinary situation, the hands of the Election Commission are tied and it cannot independently decide for itself what to do in a matter relating to an election. The Election Commission is competent in an appropriate case to order re-poll of an entire constituency where necessary. It will be an exercise of power within the ambit of its functions under Article 324."

14. The authoritative pronouncements of the Apex Court referred to above undoubtedly, lay down that the Election Commission is sufficiently clothed with the power though not vested under the Act, but even by invoking the plenary powers conferred on it under Article 324 and issue appropriate directions for the conduct of free and fair elections in a given case.

15. Here is a case of an unruly event which occurred in the office premises of the Returning Officer itself. Few hooligans forcefully entered into the premises of the Returning Officer and created a ruckus. In the words of the Returning Officer himself, there was looting of the mandate forms, assault and a

systematic attack on 36 writ applicants herein, who wanted to file their nomination forms along with the mandate of their political party. The object of providing a State Election Machinery is only in such direction to ensure purity in the electoral process. In a contingency of this nature, could it be said that the State Election Commission is helpless and has to be a silent spectator? To our mind, the State Election Commission is not without power to remedy the situation. Article 324(1) of the Constitution of India confers power of superintendence, direction and control on the Election Commission. The Election Commission is not only entitled but duty bound to exercise certain powers under Article 324 itself on its own right, in an area not covered by the Representation of the People Act and the Rules or any other enactment or Rules framed therein. Situations may arise which enacted law may not have provided for. The Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Article 324 to take care of situations like the one on hand. That power itself has to be exercised not mindlessly nor mala fide, not arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the State Notification nor any existing legislation. Article 324 of the Constitution, to our mind, operates in areas left unoccupied by the legislation and the words "superintendence, direction and control" as well as "conduct of all elections" are the broadest terms. When a high functionary like the Election Commissioner is vested with wide powers, the law expects him to act fairly, promptly and legally. Article 324 is geared to the accomplishment of free and fair elections expeditiously. Moreover, the discretion vested in a high functionary may be reasonably trusted to be

WWW.LIVELAW.IN

used properly not perversely. If it is misused, certainly the Court has the power to strike down the act. [See N. Kristappa vs. Chief Election Commission, 1995 (1) ALT 121]

16. It is relevant to extract the words of Lord Denning, which are instructive:

“Law does not stand still. It moves continually. Once this is recognised, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time, must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect-thinking of the structure as a whole building for society a system of law which is strong, durable and just. It is on his work that civilised society itself depends.”

17. The words of Lord Denning are so inspiring and pragmatic. The Courts are to be pragmatic in adjudicating a dispute by consciously seeking to mould the law so as to serve the needs of the time.

18. The facts and circumstances of the case on record undoubtedly disclose that the purity of the election process was irretrievably sullied on 13th February, 2021 at 3:00 O'clock in the office of the Returning Officer.

19. Mr. Mihir Joshi, the learned senior counsel appearing for the State Election Commission, submitted that having regard to the peculiar facts and circumstances of the case, more particularly, the fact that the nomination forms duly filled up by all the writ applicants were already accepted by the Returning Officer in time, the State Election Commission shall ensure that their nominations are not rejected only on the ground that they were not in a position to produce the

mandate of the political party in time, i.e, before 3:00 O' clock on 13th February, 2021 on account of the unruly event. According to Mr. Joshi, the production of the mandate of a particular party is a part of the guidelines, and in extreme cases like the one on hand, the same can be waived or relaxed to a certain extent in the larger interest of justice. Mr. Joshi, the learned senior counsel wants the writ applicants to file a representation at the earliest addressed to the State Election Commission as regards the subject matter of this writ application with a request that their nominations for the ensuing Palitana Nagarpalika Election be accepted.

20. Mr. Yagnik submits that as he has the signatures of all the 36 writ applicants on his Vakalatnama, he would file the representation under his signature as a legal representative of the writ applicants today itself before 7:30 P.M..

21. Mr. Joshi, the learned senior counsel submits that once the representation is received by the State Election Commission, the necessary orders/instructions shall be issued to the concerned authority to accept the nomination forms so that the writ applicants are able to contest the ensuing Palitana Nagarpalika Election.

22. We appreciate the concern shown by the State Election Commissioner for the purpose of maintaining the rule of law as embodied under Article 324 of the Constitution. Better late than never. We strongly condemn the unruly incident that occurred within the premises of the Returning Officer on the fateful day and date. We are informed that a first information report has also been registered at the Palitana Town Police Station for the offence punishable under Sections 143, 147,

352 read with Section 34 of the IPC and Section 136(1)(a) of the Representative of Peoples Act, 1950 against ten hooligans (accused persons) named in the FIR and other unidentified individuals.

23. In view of the aforesaid statement being made by the learned senior counsel appearing on behalf of the State Election Commission, we need not now adjudicate this writ application on merits.

24. We dispose of this writ application in the aforesaid terms.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

Vahid



WWW.LIVELAW.IN