HIGH COURT OF ANDHRA PRADESH : AMARAVATI

CHIEF JUSTICE J.K. MAHESHWARI
&
JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION Nos.8163, 8164, 8165, 8166, 8167 & 8394 of 2020;
WRIT PETITION (PIL).Nos.89, 90, 94, 95, 97, 98 & 99 of 2020

WRIT PETITION No.8163 of 2020

Dr. N. Ramesh Kumar, IAS,
S/o. Late Ravindranath Chowdary,
Aged about 64 years, Occ: Government Service,
R/o. Plot No.59, Street No.3, Prashashan Nagar,
Jubilee Hills, Hyderabad.

.. Petitioner

Versus

1. The State of Andhra Pradesh,
   Rep. by its Principal Secretary to Government,
   General Administration Department,
   A.P. Secretariat, Velagapudi,
   Guntur District, Andhra Pradesh.

2. The State of Andhra Pradesh,
   Rep. by its Principal Secretary to Government,
   Panchayatraj & Rural Development (E&R) Department,
   A.P Secretariat, Velagapudi,
   Guntur District, Andhra Pradesh.

3. The A.P. State Election Commission,
   Rep. by its Secretary,
   1st Floor, New HOD's Building,
   Indira Gandhi Municipal Stadium,
   M.G. Road, Vijayawada,
   Andhra Pradesh – 520010.

4. Sri Justice V. Kanagaraj,
   Retired Judge, High Court of Madras,
   No.104, Supreme enclave, Tower-10,
   Mayur Vihar Phase-1, New Delhi – 110091.

5. Dr. Srinivasa Rao Gochipata S/o. Yesiyya Gochipata,
   Aged 45 years, Occ: Advocate, H.No.24-139/2,
   Nambur Post, Pedakakani Mandal, Guntur District-522508.

..Respondents

Counsel for petitioner	:	Mr. D.V. Sitarama Murthy, Sr. Counsel for Mr. N. Ashwani Kumar
Counsel for respondents 1 & 2	:	Mr. S.Sriram, Advocate General

Counsel for respondent No.3 : Mr. C.V. Mohan Reddy, Sr. counsel
for Mr. V.V. Prabhakar Rao

Counsel for respondent No.4 : Mr. S.Satyanarayana Prasad, Sr. Counsel
for Mr. S.Vivek Chandrasekhar

Counsel for respondent No.5 : Mr. Solomon Raju Manchala

WRIT PETITION No.8164 of 2020

1. Mallela Sravan Kumar Reddy S/o. M. Muni Sekhar Reddy,
Aged about 25 years, R/o. D.No.19/1504,
Bhagyanagar Colony, Jammalamadugu,
Kadapa District.

2. V. Srinivasa Raju S/o. Rama Raju, aged about 55 years,
R/o.Kommuvari Street, Satyanarayanapuram,
Vijayawada, Krishna District.

.. Petitioners

Versus

1. The State of Andhra Pradesh, Rep. by Secretary,
Law and Legislative Affairs Department,
Secretariat, Velagapudi,
Amaravathi, Guntur District.

2. The State of Andhra Pradesh, Rep. by Secretary,
Panchayat Raj and Rural Development Department,
Secretariat, Velagapudi,
Amaravathi, Guntur District.

3. The State Election Commission,
State of Andhra Pradesh, Vijayawada, Krishna District.

4. Dr. B. Srikanth S/o. Sri B. Rangaswamy,
Aged 48 years, Asst. Professor,
Department of Zoology,
Srikrishna Devaraya University, Anantapur.

..Respondents

Counsel for petitioners : Mr. Vedula Venkata Ramana, Sr.Counsel
for Mr. M. Balanaga Srinivas

Counsel for respondents 1 &2 : Mr. S.Sriram, Advocate General

Counsel for respondent No.3 : Mr. C.V.Mohan Reddy, Sr. Counsel
for Mr. V.V.Prabhakar Rao

Counsel for respondent No.4 : Mr. L.Ravi Chander, Sr. Counsel
for M/s. Indus Law Firm

WRIT PETITION No.8165 of 2020

Varla Ramaiah,
S/o. Varla Isaac, aged 69 years,
r/o. D.No.1-3-174/8 'Sarvahita'
Varla Yugandhar Marg,
Vidyadharapuram, Vijayawada.

.. Petitioner

Versus

1. State of Andhra Pradesh,
Rep. by its Principal Secretary,
General Administration Department,
Secretariat, Velagapudi, Amaravathi.

2. State of Andhra Pradesh,
Rep. by its Principal Secretary,
Panchayat Raj and Rural Development Department,
Secretariat, Velagapudi, Amaravathi.

3. State of Andhra Pradesh,
Rep. by its Principal Secretary,
Law Department, Secretariat,
Velagapudi, Amaravathi.

4. Y.S. Jagan Mohan Reddy,
S/o. late Y.S. Rajasekhar Reddy,
Aged 48 years, r/o. Chief Minister Camp Office,
Tadepalli, Guntur District.

5. Smt. Suvvari Padmavathi W/o. Ananda Rao
Aged 65 years, Occ: Ex. Sarpanch, V R Gudem,
Grampanchayat, R/o. V R Gudem Village,
Ponduru Mandal, Srikakulam District.

..Respondents

Counsel for petitioner : Mr. D.Srinivas, Sr. Counsel
for Mr.Ginjupalli Subba Rao & S.Pranathi

Counsel for respondents 1 to 3 : Mr. S.Sriram, Advocate General

Counsel for respondent No.5 : Mr. Y. Nagi Reddy

WRIT PETITION No.8166 of 2020

Ganduri Mashesh
S/o. G.C.S.M0urthy, Aged 32 years,
R/o.22-23-74, Shivalayam Street,
Satyanarayanapuram,
Vijayawada 520011.

.. Petitioner

Versus

1. Union of India,
   Rep. by its Under Secretary,
   Ministry of Home Affairs, New Delhi.

2. Office of the Governor of Andhra Pradesh,
   Rep. by its Secretary, Rajbhavan,
   Vijayawada.

3. State of Andhra Pradesh,
   Rep. by its Chief Secretary,
   General Administration Department,
   Secretariat, Velagapudi, Amaravati.

4. The Principal Secretary,
   Panchayat Raj & Rural Development Department,
   Secretariat, Velagapudi, Amaravati.

5. The Andhra Pradesh State Election Commission,
   Rep. by its Secretary, 1st Floor, New HOD's Building,
   Indira Gandhi Municipal Stadium, M.G.Road,
   Vijayawada, Andhra Pradesh – 520010.

6. Dr. N. Ramesh Kumar, I.A.S.,
   1st Floor, New HOD's Building,
   Indira Gandhi, Municipal Stadium, M.G.Road,
   Vijayawada, Andhra Pradesh – 520010.

7. Sri Justice (Retd.) V.Kanagaraj,
   A.P. State Election Commissioner,
   1st Floor, New HOD's Building,
   Indira Gandhi Municipal Stadium, M.G.Road,
   Vijayawada, Andhra Pradesh – 520010.

..Respondents

Counsel for petitioner	:	Mr.A. Satya Prasad, Sr. Counsel for Mr.Balaji Medamalli
Counsel for respondent No.1	:	Mr. Josyula Bhaskara Rao
Counsel for respondents 2 to 4	:	Mr. S.Sriram, Advocate General
Counsel for respondent No.5	:	Mr. C.V.Mohan Reddy, Sr. Counsel for Mr. V.V.Prabhakar Rao
Counsel for respondent No.6	:	Mr. D.V.Sitarama Murthy, Sr.Counsel for Mr.N.Ashwani Kumar
Counsel for respondent No.7	:	Mr. S.Satyanarayana Prasad, Sr.Counsel for Mr.S.Vivek Chandrasekhar

WRIT PETITION No.8167 of 2020

Dr. Kamineni Srinivas S/o Late Vijayasimha,
Hindu, Age 74 years Occ: Medical Practitioner
Former Health Minister BJP, R/o. Kaikaluru,
Krishna District, Andhra Pradesh.

.. Petitioner

Versus

1. The State of Andhra Pradesh,
   Rep. by Chief Secretary to Government,
   Department of General Administration,
   A.P. Secretariat, Velagapudi,
   Amaravati – 520020, A.P.

2. Government of Andhra Pradesh,
   Rep. by Principal Secretary to Government,
   Department of Legal and Legislative,
   A.P. Secretariat, Velagapudi,
   Amaravati – 520020, A.P.

3. Government of Andhra Pradesh,
   Department of Panchayat Raj and Rural Development,
   Rep. by its Principal Secretary,
   Velagapudi, Amaravati : 520020, A.P.

4. A.P. State Election Commission,
   Rep. by its Secretary,
   New HOD's Building, Indira Gandhi Building,
   Vijaywada: 520010, AP.

5. Sri Justice V. Kanagaraj
   Retired Judge, High Court of Madras,
   A.P. State Election Commissioner
   New HOD's Building, Indira Gandhi Building,
   Vijaywada: 520010, AP.

6. Dr. N. Ramesh Kumar, IAS,
   S/o.Late Ravindranath Chowdary,
   Hindu, Aged about 64 years,
   Former State Election Commissioner,
   R/o. Plot No.59, Street No.3, Prashashan Nagar,
   Jubilee Hills, Hyderabad.

..Respondents

Counsel for petitioner	:	Mr. Ravi Shankar Jandhyala
Counsel for respondents 1 to 3	:	Mr. S.Sriram, Advocate General
Counsel for respondent No.4	:	Mr. C.V.Mohan Reddy, Sr.counsel for Mr. V.V. Prabhakar Rao
Counsel for respondent No.5	:	Mr. S.Satyanarayana Prasad, Sr.Counsel for Mr.S.Vivek Chandrasekhar
Counsel for respondent No.6	:	Mr. D.V.Sitarama Murthy, Sr.Counsel for Mr.N.Ashwani Kumar

WRIT PETITION No.8394 of 2020

Vineet Appasani S/o. Anjaiah,
Aged 25 years, Occ: Advocate,
R/o. 4-8-40, Chalasani Venkata Ratnam Street,
DV Manor Road, Vijayawada – 520010.

.. Petitioner

Versus

1. State of Andhra Pradesh,
   Rep. by its Principal Secretary,
   Legal and Legislative Affairs & Justice,
   Law Department, Secretariat, Velagapudi, Amaravathi.

2. The Principal Secretary,
   Panchayat Raj and Rural Development Department,
   Government of Andhra Pradesh,
   Secretariat, Velagapudi, Amaravathi.

..Respondents

Counsel for petitioner : Mr. Kambhampati Ramesh Babu

Counsel for respondents : Mr. S.Sriram, Advocate General

WRIT PETITION (PIL).No.89 of 2020

Thandava Yogesh S/o. Venkateswarlu,
Occ: Advocate, Aged 34 years, Gowthavaram,
Racherla Mandal, Prakasam Dt.,
Andhra Pradesh – 523368.

.. Petitioner

Versus

1. The State of Andhra Pradesh, Rep. by Chief Secretary,
   Government of Andhra Pradesh,
   A.P., Secretariat, Velagapudi,
   Amaravathi - 522503.

2. The State of Andhra Pradesh, Rep. by Principal Secretary,
   Department of Panchayat Raj,
   AP Secretariat, Velagapudi,
   Amaravathi- 522503.

3. The State of Andhra Pradesh, Rep. by Principal Secretary,
   Department of Law,
   AP Secretariat, Velagapudi,
   Amaravathi – 522503.

4. Sri Justice V. Kanagaraj,
   Aged about 75 years, Occ: State Election Commissioner,
   Retired Judge of High Court of Madras,
   C/o. State Election Commission,
   New HOD Building, IGM Stadium, M.G.Road,
   Vijayawada – 10.

5. Sri Dr.N. Ramesh Kumar, IAS, S/o. late Ravindranath Chowdary,
Aged about 64 years, Occ: Government Service,
R/o. Plot No.59, Street No.3,
Prasasan Nagar, Jubilee Hills, Hyderabad.

6. Gajula Umapathi S/o. G. Gopal,
Aged 49 years, Ex.MPTC Member, Gulepalyam Village,
Vajrakarur Mandal, Ananthapur District.

.. Respondents

Counsel for the petitioner : Mr. Thandava Yogesh, party-in-person

Counsel for respondents 1 to 3 : Mr. S.Sriram, Advocate General

Counsel for respondent No.4 : Mr. S.Satyanarayana Prasad, Sr.Counsel
for Mr. S.Vivek Chandrasekhar

Counsel for respondent No.5 : Mr. D.V.Sitarama Murthy, Sr.Counsel
for Mr. N.Ashwani Kumar

Counsel for respondent No.6 : Mr. K.N.Jwala, Sr. Counsel
for Mr. B.V. Anjaneyulu

WRIT PETITION (PIL) No.90 of 2020

Vadde Sobhanadreswara Rao
S/o. Late Sri V. Ankaiah,
Hindu, Aged 77 years,
R/o. Vyyuru Village and Mandal,
Krishna District, AP.

.. Petitioner

Versus

1. The State of Andhra Pradesh,
Rep. by its Chief Secretary,
A.P. Secretariat, Velagapudi,
Amaravati, Guntur District,
Andhra Pradesh.

2. The Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi,
Rep. by its Chief Election Commissioner.

3. The Secretary to Government,
Legal and Legislative Affairs and Justice,
Law Department, A.P. Secretariat,
Velagapudi, Amaravati, Guntur District,
Andhra Pradesh.

4. The Principal Secretary to Government,
Panchayat Raj and Rural Development Department,
A.P. Secretariat, Velagapudi, Amaravati,
Guntur District, Andhra Pradesh.

5. The Principal Secretary to Government,
Municipal Administration and Urban Development
Department, A.P. Secretariat, Velagapudi, Amaravati,
Guntur District, Andhra Pradesh.

6. The Andhra Pradesh State Election Commission,
1st floor, New HOD Buildings,
MG Road, Vijayawada – 520010,
Krishna District, Andhra Pradesh.

7. Dr. N. Ramesh Kumar,
Ex-Chief Election Commissioner,
Plot No.59, Road No.72, Street No.3,
Prashashan Nagar, Jubilee Hills,
Hyderabad, Telangana.

8. Honourable Sri Justice V. Kanaga Raj
Chief Election Commissioner,
1st Floor, New HOD Buildings,
MG Road, Vijayawada: 520010
Krishna District, Andhra Pradesh.

..Respondents

Counsel for petitioner	:	Mr. Velagapudi V.N.Rao
Counsel for respondents 1, 3 to 5	:	Mr. S.Sriram, Advocate General
Counsel for respondent No.2	:	Mr.Avinash Desai
Counsel for respondent No.6	:	Mr. C.V.Mohan Reddy, Sr.counsel for Mr. V.V. Prabhakar Rao
Counsel for respondent No.7	:	Mr. D.V.Sitarama Murthy, Sr.Counsel for Mr.N.Ashwani Kumar
Counsel for respondent No.8	:	Mr. S.Satyanarayana Prasad, Sr.Counsel for Mr.S.Vivek Chandrasekhar

WRIT PETITION (PIL) No.94 of 2020

Muthamsetty Lakshmana Siva Prasad,
S/o. Venkateswara Rao, Aged 65 years,
Resides at Flat No.103, 1st Floor, Vemula Residency,
Suryarao Pet, Vijayawada, Krishna District,
AP – 520 002.

.. Petitioner

Versus

1. The State of Andhra Pradesh,
Rep. by its Chief Secretary,
A.P. Secretariat, Velagapudi,
Amaravati, Guntur District,
Andhra Pradesh.

2. The Government of Andhra Pradesh,
Panchayat Raj and Rural (E&R) Development Department,
Rep. by its Principal Secretary,
A.P. Secretariat, Velagapudi,
Guntur District, Andhra Pradesh.

3. The Government of Andhra Pradesh,
Legal & Legislative Affairs & Justice Department,
Rep. by its Secretary, AP Secretariat,
Velagapudi, Guntur District, Andhra Pradesh.

4. The A.P. State Election Commission,
Rep. by its Secretary, 1st Floor, New HODs Building,
Opp: Indira Gandhi Municipal Stadium,
M.G. Road, Vijayawada – 520 010.

5. Dr. N. Ramesh Kumar,
Ex-Chief Election Commissioner,
Plot No.59, Road No.72, Street No.3,
Prashashan Nagar, Jubilee Hills,
Hyderabad, Telangana.

6. Shri V. Kanaga Raj
State Election Commissioner,
1st Floor, New HOD Buildings,
MG Road, Vijayawada: 520010
Krishna District, Andhra Pradesh.

..Respondents

Counsel for petitioner	:	Sri T. Sreedhar
Counsel for respondents 1 to 3	:	Mr. S.Sriram, Advocate General
Counsel for respondent No.4	:	Mr. C.V.Mohan Reddy, Sr.counsel for Mr. V.V. Prabhakar Rao
Counsel for respondent No.5	:	Mr. D.V.Sitarama Murthy, Sr.Counsel for Mr.N.Ashwani Kumar
Counsel for respondent No.6	:	Mr. S.Satyanarayana Prasad, Sr.Counsel for Mr.S.Vivek Chandrasekhar

WRIT PETITION (PIL) No.95 of 2020

Dr. Maddipati Sailaja, W/o. Late M. Lakshmi Narayana
Choudary, Aged about 43 years, Occ: Doctor,
R/o. Door No.18-53, Samsons Aruna Apartments,
1st Lane Vidya Nagar, Guntur – 522 007.

.. Petitioner

Versus

1. The State of Andhra Pradesh,
Rep. by its Chief Secretary,

A.P. Secretariat, Velagapudi,
Amaravati, Guntur District, Andhra Pradesh.

2. The Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi, Rep. by its Chief Election Commissioner.

3. The Secretary to Government,
Legal and Legislative Affairs and Justice,
Law Department, A.P. Secretariat,
Velagapudi, Amaravati,
Guntur District, Andhra Pradesh.

4. The Principal Secretary to Government,
Panchayat Raj and Rural Development Department,
A.P. Secretariat, Velagapudi,
Amaravati, Guntur District,
Andhra Pradesh.

5. The Principal Secretary to Government,
Municipal Administration and Urban Development Department,
A.P. Secretariat, Velagapudi,
Amaravati, Guntur District,
Andhra Pradesh.

6. The Andhra Pradesh State Election Commission,
1st Floor, New HOD Buildings,
MG Road, Vijayawada – 520010,
Krishna District, Andhra Pradesh.

7. Dr. N. Ramesh Kumar,
Ex-Chief Election Commissioner,
Plot No.59, Road No.72, Street No.3,
Prashashan Nagar, Jubilee Hills,
Hyderabad, Telangana.

8. Honourable Shri Justice V. Kanaga Raj,
Chief Election Commissioner,
1st Floor, New HOD Buildings,
MG Road, Vijayawada – 520010,
Krishna District, Andhra Pradesh.

..Respondents

Counsel for petitioner	:	Mr. T. Sreedhar
Counsel for respondents 1, 3 to 5	:	Mr. S.Sriram, Advocate General
Counsel for respondent No.2	:	Mr.Avinash Desai
Counsel for respondent No.6	:	Mr. C.V.Mohan Reddy, Sr. Counsel for Mr. V.V. Prabhakar Rao
Counsel for respondent No.7	:	Mr. D.V.Sitarama Murthy, Sr.Counsel for Mr.N.Ashwani Kumar

Counsel for respondent No.8 : Mr. S.Satyanarayana Prasad, Sr.Counsel
for Mr.S.Vivek Chandrasekhar

WRIT PETITION (PIL) No.97 of 2020

K. Jithendra Babu,
S/o. K. Sreeramachandra Murthy,
aged about 56 years, Occ: Advocate,
R/o. 2-126, Munagala Post and Mandal,
Suryapet (Former Nalgonda District) District,
Telangana State,
Office at Flat No.2A, 2nd Floor, Nirmala Residency,
Bharati Nagar Road, Novotel Lane,
Vijayawada – 520 007, Andhra Pradesh.

.. Petitioner

Versus

1. Union of India,
   Law and Legislative Affairs,
   New Delhi,
   Rep. by the Principal Secretary.

2. The State of Andhra Pradesh,
   Law and Legislative Affairs and Justice Department,
   Velagapudi, Amaravati, Guntur District,
   Rep. by Principal Secretary.

3. The State of Andhra Pradesh,
   Panchayatraj and Rural Development (E&R) Department,
   Velagapudi, Amaravati, Guntur District,
   Rep. by Principal Secretary.

4. The Andhra Pradesh State Election Commission,
   First Floor, New HOD Building,
   M.G. Road, Vijayawada – 520 010.

5. Dr. N. Ramesh Kumar,
   Aged about 64 years,
   Former A.P. State Election Commissioner,
   Plot No.59, Road No.72, Street No.3,
   Prasasan Nagar, Jubilee Hills,
   Hyderabad, Telangana.

6. Hon'ble Justice (Retd.) V. Kanagaraj,
   State Election Commissioner,
   First Floor, New HOD Buildings,
   MG Road, Vijayawada – 520 010.

..Respondents

Counsel for petitioner : Mr.B. Nalin Kumar

Counsel for respondent No.1 : Mr. Josyula Bhaskara Rao

Counsel for respondents 2 & 3 : Mr. S.Sriram, Advocate General

Counsel for respondent No.4 : Mr. C.V.Mohan Reddy, Sr. Counsel
for Mr. V.V. Prabhakar Rao

Counsel for respondent No.5 : Mr. D.V.Sitarama Murthy, Sr. Counsel
for Mr.N.Ashwani Kumar

Counsel for respondent No.6 : Mr. S.Satyanarayana Prasad, Sr. Counsel
for Mr.S.Vivek Chandrasekhar

WRIT PETITION (PIL) No.98 of 2020

1. D. Kiran S/o. Vasantha Rao,
Aged about 28 years, R/o. H.No.1/148,
Devagudi Village & Post,
Jammalamadugu Mandal,
YSR Kadapa District.

2. M. Vinay Kumar Reddy, S/o. M.Veera Reddy,
Aged about 33 years, R/o. Pulla Reddy Peta (V),
Thappatla, Valluru (M), YSR Kadapa District.

.. Petitioners

Versus

1. The State of Andhra Pradesh,
Rep. by its Chief Secretary,
A.P. Secretariat, Velagapudi,
Amaravati, Guntur District.

2. The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Panchayat Raj and Rural Development Department,
A.P. Secretariat, Velagapudi,
Amaravati, Guntur District.

3. The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Law Department,
A.P. Secretariat, Velagapudi,
Amaravati, Guntur District.

4. Andhra Pradesh State Election Commission,
Rep. by its Secretary,
M.G. Road,
Vijayawada, Krishna District.

5. Sri Justice V. Kanagaraj,
Andhra Pradesh State Election Commissioner.

..Respondents

Counsel for petitioners : Mr. P. Veera Reddy, Sr. Counsel
for Ms. Sodum Anvesha

Counsel for respondents 1 to 3 : Mr. S.Sriram, Advocate General

Counsel for respondent No.4 : Mr. C.V.Mohan Reddy, Sr. Counsel for Mr. V.V. Prabhakar Rao

Counsel for respondent No.5 : Mr. S.Satyanarayana Prasad, Sr. Counsel for Mr. S.Vivek Chandrasekhar

WRIT PETITION (PIL) No.99 of 2020

Shaik Mastan Vali S/o. Shaik Kasim,
Aged 50 years, Occ: Politician (Public Service),
Working President of Congress (I) Party of A.P. Unit,
R/o. 18-18-70, Barayimampanja,
Mupthi Veedi, Guntur, Guntur District.

.. Petitioner

Versus

1. The State of Andhra Pradesh,
   Rep. by its Principal Secretary.
   Panchayat Raj & Rural Development Department,
   Secretariat Buildings, Velagapudi, Guntur District.

2. The Commissioner,
   Panchayat Raj & Rural Development,
   Government of A.P., Guntur.

3. The Secretary,
   State Election Commission,
   Government of A.P., Vijayawada.

4. Hon'ble Shri Justice V. Kanaka Raj (Retired),
   Presently working as Chief Election Commissioner,
   1st Floor, New HOD Building,
   MG Road, Vijayawada,
   Krishna District, Andhra Pradesh State.

5. Dr. N. Ramesh Kumar,
   Ex. Chief Election Commissioner,
   Plot No.59, Road No.72, Street No.3,
   Prashashan Nagar, Jubilee Hills,
   Hyderabad, Telangana State.

..Respondents

Counsel for petitioner : Mr.B. Adinarayana Rao, Sr. Counsel for Mr. Narra Srinivasa Rao

Counsel for respondent Nos.1 & 2 : Mr. S.Sriram, Advocate General

Counsel for respondent No.3 : Mr. C.V.Mohan Reddy, Sr. Counsel for Mr. V.V. Prabhakar Rao

Counsel for respondent No.4 : Mr. S.Satyanarayana Prasad, Sr. Counsel for Mr.S.Vivek Chandrasekhar

Counsel for respondent No.5 : Mr. D.V.Sitarama Murthy, Sr. Counsel for Mr.N.Ashwani Kumar

COMMON ORDER

Dt: 29.05.2020

Per J.K. Maheshwari, CJ

As the issue involved in all these petitions is common and the proceedings impugned therein are one and the same, they are heard together and are being decided by this common order.

2. All the above writ petitions have been filed challenging the Ordinance No.5 of 2020 i.e., Andhra Pradesh Panchayat Raj (Second Amendment) Ordinance, 2020 (for short, *'the impugned Ordinance'*) dated 10.04.2020, promulgated by the Governor of Andhra Pradesh, substituting Section 200 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, *'the APPR Act'*); G.O.Ms.No.617 Panchayat Raj and Rural Development (E&R) Department, dated 10.04.2020 has also been assailed, by which the Andhra Pradesh Panchayat Raj (Salaries and Allowances, Conditions of Service, Tenure of State Election Commissioner) Rules, 2020 (for short, *'the New Rules, 2020'*) were notified replacing the existing Andhra Pradesh Panchayat Raj (Salaries and Allowances and Conditions of Service of State Election Commissioner) Rules, 1994 (for short, *'the Old Rules, 1994'*). The consequential notification in G.O.Ms.No.618, Panchayat Raj and Rural Development (E&R) Department, dated 10.04.2020, directing that the incumbent State Election Commissioner (for short, *'the*

SEC') Dr. N. Ramesh Kumar, (hereinafter referred to as, '***Mr.A***') ceases to hold the office prior to completion of the tenure, and another G.O.Ms.No.619, Panchayat Raj and Rural Development (E&R) Department, dated 11.4.2020, appointing Justice V. Kanagaraj (hereinafter referred to as, ***Mr.B***'), Retired Judge of the High Court of Madras, as SEC of Andhra Pradesh, for a period of three years from the date of assumption of office, in consequence to cessation of office by **Mr.A** have also been assailed. The facts and averments in the respective writ petitions pleaded to challenge those notifications are referred in succeeding paragraphs.

FACTS IN THE RESPECTIVE WRIT PETITIONS:

3. W.P.No.8163 of 2020:

3.1. This writ petition has been filed by **Mr.A**, who was holding the post of the SEC of the State of Andhra Pradesh challenging the above proceedings on the ground that they are illegal, manifestly arbitrary and unconstitutional. A consequential prayer has also been made to declare that the petitioner be entitled to serve as the SEC of Andhra Pradesh for the remainder tenure because his appointment was for a period of five years from the date of assuming the office, i.e., 01.04.2016.

3.2. The petitioner averred in the petition that he holds M.A. & Ph.D. in Economics and also LL.B. Degree from Osmania

University. He had served the Governor of Andhra Pradesh and Telangana approximately for 7 years as Principal Secretary and later as Special Chief Secretary, prior to assuming the office of the SEC of Andhra Pradesh. He had held important posts as Secretary of various Departments in the State Government. He assumed the office of the SEC of Andhra Pradesh with effect from 01.04.2016 for a tenure of five years, in pursuance to the G.O.Ms.No.11 dated 30.01.2016.

3.3. It is stated that after consultation with the State Government, elections to the local bodies, such as Panchayats and Municipal bodies, in the State were notified by the State Election Commission and accordingly, schedule for filing nominations, conduct of polls, declaration of results etc. was issued, starting the process of election with effect from 07.03.2020. While issuing the Notification for elections, the State Government assured to provide requisite security forces to safeguard against possible poll violence. After issuance of the election Notification and on completion of first stage of election, all the opposition parties have alleged in both print and electronic media that the electoral process had witnessed unprecedented violence and intimidation by the candidates belonging to the ruling party with the active connivance of the police personnel. It is alleged that 35 incidents of prevention of nominations, 23 incidents of forcible withdrawals and 55 instances

of violence targeting the candidates, members and supporters of the opposition parties, i.e. Telugu Desam party and Bharatiya Janata Party-Janasena combined, were reported.

3.4. While the State Election Commission was actively deliberating stringent measures to check the unabated violence, the nation was struck with the Novel Corona Virus (COVID-19) pandemic with rising number of infected persons and in furtherance to the advisory issued by the World Health Organization on 11.03.2020, the petitioner issued notification dated 15.03.2020, postponing the elections of the local bodies for six weeks or to any other date. It is stated that in some other States also, i.e., Maharashtra, West Bengal and Orissa, a decision was taken to postpone the elections of the Panchayats and Municipalities. The said decision of the petitioner to postpone the local body election on account of the outbreak of COVID-19 came to a lot of adverse criticism by the members of the ruling party. A press conference was convened on the very same day and several derogatory remarks and allegations were made against the petitioner in the live press conference by the Chief Minister of the State, in which he expressed his dissent and opposition towards the appointment of the petitioner as the SEC of Andhra Pradesh.

3.5. It is further pleaded that being aggrieved by the decision of the State Election Commission to postpone the election,

the State Government filed Writ Petition (Civil) No.437 of 2020 before Hon'ble the Supreme Court, which was decided *vide* order dated 18.03.2020, refusing to interfere with the decision of the State Election Commission with a further observation that the Commission shall consult the State Government before notifying the election in future and the Model Code of Conduct for the elections shall be re-imposed four weeks before the date of polling.

3.6. It is further stated that as many as 200 countries in the world have taken stringent measures and have gone into complete or partial lockdown after COVID-19 situation, combating the health emergency. The States/Provinces in India have closed their respective State borders and have imposed curfew under Section 144 Cr.P.C. prohibiting free movement of people making the life standstill. In the said situation of disaster management, the Central Government as well as the State Governments are busy in taking measures to cope up with the public health issues, diverting all State mechanism towards health services and supply of essential commodities. In that course, police personnel, health and sanitary workers are completely engaged to render their services and all other departmental functionaries have stopped functioning and they are only rendering the essential services in the field of health, food and civil supplies, public administration and sanitisation. In such situation, the State Government, with unseemly haste and

secrecy, proceeded to bring amendment to Section 200 of the APPR Act, by way of the impugned Ordinance, only with intent to remove the petitioner from the office of the SEC. It is alleged that copy of the Ordinance has been uploaded on the website belatedly, although GOs were uploaded and they were categorised as confidential, making the contents invisible for a long time.

3.7. It is further stated that the promulgation of the impugned Ordinance would amount to exercise of legitimate power to achieve the illegitimate object of removing the petitioner from the office of SEC and to appoint another SEC of their choice. It is stated that there is no emergent situation warranting immediate action by the Governor to promulgate the impugned Ordinance during the lockdown of the nation due to COVID-19 and after notifying the elections of the Panchayats and Municipalities. It is further stated that there was no objective basis for the legislative changes although media and the State Government claim that it is part of legislative reforms.

3.8. It is also stated that the petitioner, in his official capacity as SEC, found it necessary to transfer two District Collectors, Superintendents of Police, Deputy Superintendents of Police and Circle Inspectors and suspend one Circle Inspector of Police from service, as they were affecting the free and fairness in the electoral process. But, the State Government has not acted on

a single corrective measure. It is further stated that the media had widely captured the incidents of misuse of the benefits extended on account of COVID-19 by the ruling party contestants by canvassing while distributing those benefits and inducing voters, in violation of the norms. Upon major opposition groups bringing those incidents to his notice, the petitioner, being the SEC, had instructed the District Collectors and Election Observers to act firmly and send immediate reports on matters which require attention. Thus, it is urged that the petitioner was committed to hold free and fair elections in the State against wishes of ruling YSRC party.

3.9. Further, it is averred that the Governor has exercised the power to make the Ordinance, without there being any emergent situation, requiring immediate steps to issue such Ordinance as contemplated under Article 213 of the Constitution of India, 1950 (hereinafter referred to as, '*the Constitution*'). It is further stated that the appointment of the petitioner as SEC was for a period of five years from the date of assuming his office, which cannot be curtailed in view of the provisions contained under Article 243K(2) of the Constitution, more particularly, the proviso thereto, without following the procedure contemplated for removal at par to the Judge of High Court by way of impeachment. Thus, issuance of the impugned Ordinance, which was made applicable at once, bringing amendment to Section 200 of the APPR Act, to

cease the holding of office by **Mr.A** and to appoint **Mr.B**, is colourable exercise of power, unconstitutional and impermissible.

3.10. In view of the above, it is prayed that the impugned Ordinance, which was introduced only with an oblique intention to remove the petitioner from the post of SEC, may be quashed and in consequence thereto, the subsequent notifications, *vide* G.O.Ms.No.617 dated 10.04.2020, G.O.Ms.No.618 dated 10.04.2020 and G.O.Ms.No.619 dated 11.04.2020, may also be quashed, with a further direction to continue the petitioner to hold the office of the SEC till completion of the prescribed tenure of five years as per G.O.Ms.No.11 dated 30.01.2016.

3.11. The petitioner has also prayed for interim relief, by filing four interlocutory applications, viz., I.A.No.1 of 2020 seeking stay of all further proceedings pursuant to the impugned Ordinance; I.A.No.2 of 2020 seeking suspension of the operation of G.O.Ms.No.617 dated 10.04.2020; I.A.No.3 of 2020 seeking suspension of the operation of G.O.Ms.No.618 dated 10.04.2020, and I.A.No.4 of 2020 seeking suspension of the operation of G.O.Ms.No.619 dated 11.04.2020.

4. <u>W.P.No.8164 of 2020</u>:

4.1. This writ petition has been filed by the petitioners, namely Mallela Sravan Kumar Reddy and V. Srinivasa Raju,

challenging the impugned Ordinance as arbitrary, discriminatory and unconstitutional and to strike down the same, seeking consequential relief to direct the respondents to forbear from enforcing any provision contained in the said Ordinance.

4.2. It is averred in the writ petition that challenging the postponement of elections of local bodies by **Mr.A** in the capacity of SEC for six weeks, the State approached the Supreme Court and having remained unsuccessful while challenging it, the impugned Ordinance is promulgated, making amendment in Section 200 of the APPR Act, prescribing the term of office of the SEC as three years, due to which the tenure of **Mr.A** has been reduced in a short-circuited manner in gross violation of the provisions of Article 243K(2) of the Constitution. As per the said provision, the conditions of service of the appointed SEC cannot be changed/altered/varied during the tenure or after his appointment. However, the impugned Ordinance can only be enforced after the expiry of the original term of the office of the SEC. Further, it is stated that the impugned Ordinance is violative of Article 14 of the Constitution as it is vague and does not disclose any rationale or the purpose sought to be achieved by reducing the tenure of the office of the SEC. It is further stated that there is no valid contingency or circumstance available to exercise the power for issuance of the Ordinance under Article 213 of the Constitution. On

the above grounds, challenge is made to the impugned Ordinance and the petitioners prayed for the relief as stated above.

4.3. By filing I.A.No.1 of 2020, the petitioners sought for suspension of the operation and effect of the impugned Ordinance, pending disposal of the writ petition.

5. <u>W.P.No.8165 of 2020</u>:

5.1. This writ petition has been filed by Varla Ramaiah, challenging the action of the respondents in issuing the impugned Ordinance and G.O.Ms.Nos.617 and 618, dated 10.04.2020, as illegal, arbitrary, vitiated by *mala fides*, colourable exercise of power and contrary to G.O.Ms.No.11, Panchayat Raj and Rural Development (Elections) Department, dated 30.01.2016 and Articles 14, 21 and 243K of the Constitution, and consequently prayed to set aside the impugned Ordinance and G.Os.

5.2. It is pleaded that **Mr.A** was appointed as the SEC of Andhra Pradesh State for a period of five years *vide* G.O.Ms.No.11 dated 30.01.2016, because of having long distinguished track record of service. The said appointment was in exercise of the power under Article 243K of the Constitution. The intent and object for appointment of the SEC under the Constitution is to hold free and fair election; therefore, the procedure for removal of the SEC was specified at par to the Judge of a High Court, enabling the SEC

to discharge his functions independently, free from any influence of the local political parties. However, in the proviso to Article 243K(2) of the Constitution, it is specified that after appointment of the SEC, the conditions of service shall not be varied to his disadvantage. Being a constitutional functionary, the office of the SEC is responsible to conduct the elections of the local bodies immune from the philosophy, political agenda of any political party and to keep the SEC insulated from any foreign pressure, such an immunity has been prescribed by the Constitution to the office. The purport behind providing such immunity is that in a democratic pattern, the people want to elect their representative by their own choice uninfluenced by any pressure.

5.3. It is further stated that after issuance of the election notification for conducting elections to the local bodies of Panchayats and Municipalities in the State of Andhra Pradesh, the first phase of the election was completed on 14.03.2020. At that stage, on 15.03.2020, **Mr.A**, being the SEC, has postponed the election for six weeks on account of COVID-19 pandemic, as it has been declared as a disaster and the Government of India has invoked the Disaster Management Act. The said decision did not go well with the ruling dispensation and the Chief Minister of the State expressed his displeasure against him on 15.03.2020 itself in a press conference, making personal comments against **Mr.A** and

also expressed his displeasure about his appointment and continuation in the post in a most vitriolic and offending language casting aspersions and prejudice on the ground of his appointment during the term of the present opposition party and his caste. After the said statement of the Chief Minister, it has become the daily chore of the Cabinet Ministers including the Speaker of the Assembly to heap choicest abuses and attributing *mala fides* against **Mr.A**. The party leaders down the line, i.e., MLAs and other cohorts have been mouthing most unbecoming, uncouth utterances against the State Election Commission and its Commissioner. It is stated that all video clippings consisting the statements of the Chief Minister as well as other Ministers and MLAs, abusing **Mr.A**, are available online for public watch.

5.4. It is further alleged that before postponing the elections, the Election Commission witnessed the atrocities of the ruling dispensation at the time of nominations of the persons belonging to the opposition parties, who were prevented from filing nominations and there have been plethora of cases pertaining to threatening and physical violence by the goons of the ruling dispensation against their opponents. The situation in the State was amicable to the ruling dispensation, as they managed to take control of all their opponents by hook or crook, thereby crippling the democratic governance in the State. It is stated that because

everything was within the control of the ruling dispensation, the postponement of the elections came as a shocker to them and that explains the frustration on their part which led to venting it out before the public in print and electronic media. As the things were going out of control and looking to the threatening and assault, **Mr.A** was constrained to seek police protection from the Central Government. A letter written by him in this regard, dated 18.03.2020, has been enclosed as Annexure-P5 to the petition. As a result of the frustration of the ruling party, the Ordinance and the consequential G.Os. were issued with a view to send **Mr.A** out from the office of the SEC, amending Section 200 of the APPR Act and by making it applicable retrospectively by virtue of Clause (5), ordered to cease the holding of office. It is further contended that the APPR Rules, 2020, were brought into force, *vide* G.O.Ms.No.617 dated 10.04.2020, in violation of the provisions of the Constitution. The act of the respondents is *mala fide*, arbitrary, colourable exercise of the power and fraud on the Constitution. Therefore, it is urged that in exercise of the power under Article 226 of the Constitution, the impugned Ordinance and the consequential G.O.Ms.Nos. 617 and 618, dated 10.04.2020, be quashed.

5.5. I.A.No.1 of 2020 has been filed seeking suspension of the operation of G.O.Ms.No.618 dated 10.04.2020, while I.A.No.2 of 2020 has been filed seeking suspension of the operation of the

impugned Ordinance as well as the APPR Rules, 2020, issued *vide* G.O.Ms.No.617 of 2020 dated 10.04.2020.

6. <u>W.P.No.8166 of 2020</u>:

6.1. This writ petition has been filed by Ganduri Mahesh, challenging the impugned Ordinance and the consequential G.O.Ms.No.617 dated 10.04.2020, G.O.Ms.No.618 dated 10.04.2020 and G.O.Ms.No.619 dated 11.04.2020, as arbitrary, illegal and unconstitutional. Challenge is made by the petitioner being contesting candidate for the Municipal Ward No.33 of Municipal Corporation of Vijayawada.

6.2. It is stated that the appointment of **Mr.A** as the SEC of Andhra Pradesh was made for a period of five years from the date of assumption of the charge, *vide* G.O.Ms.No.11 dated 30.01.2016, and he took over the charge on 01.04.2016. The election notification for the local bodies in the State of Andhra Pradesh was issued on 07.03.2020 and 09.03.2020, which was to be completed on 29.03.2020. The nominations were filed, some of which were withdrawn, and the process is in midway. Due to outbreak of COVID-19 pandemic, **Mr.A** has postponed the election for six weeks, to which there was instant reaction by the Chief Minister, some of their Ministers and functionaries, leaders of the YSRCP party, accusing the decision of **Mr.A** in the capacity of SEC for

postponing the election, and attack was made including personal comment on caste, through print and electronic media. In such circumstances, **Mr.A** was left with no option except to address letter dated 18.03.2020, requesting the Ministry of Home Affairs, Union of India, to grant protection and also to grant permission to work from outside the State due to threat to life. Copy of the said letter has been filed along with the petition. It is urged that contents of the said letter speak volume about the situation in the State of Andhra Pradesh as well, how the election was maneuvered by the ruling party leaders to see that the opponents shall be prevented from contesting in the elections.

6.3. It is further stated that on account of **Mr.A** addressing the said letter, the top brass in the State administration seems to have taken him into task personally and resorted to the present action of issuing the impugned Ordinance, amending Section 200 of the APPR Act, thereby restricting the term of the office of the SEC to three years as against the original appointment of five years in total defiance of the mandate as per Articles 243K and 243 ZA of the Constitution. The action of the State Government is unconstitutional, arbitrary and mala fide. Referring the aims and object of the 73rd Constitutional Amendment and also referring the provisions of the said amendment as well the unamended provision of Section 200 of the APPR Act, it is urged that Section 200 of the

APPR Act was merely a reproduction of the contextual language of Articles 243K and 243ZA of the Constitution. However, attacking on the constitutionality and legality of the impugned Ordinance, it is urged that promulgation of the impugned Ordinance is a fraud on the power of the Constitution. It is further contended that there was no emergent situation available to the Governor to exercise the power as contemplated under Article 213(1) of the Constitution. In view of the foregoing, it is prayed that in exercise of the power under Article 226 of the Constitution, the relief as prayed may be granted.

6.4. By filing I.A.No.1 of 2020, a prayer is made to suspend the operation of the impugned Ordinance, G.O.Ms.No.617 of 2020 dated 10.04.2020, G.O.Ms.No.618 dated 10.04.2020 and G.O.Ms.No.619 of 2020 dated 11.04.2020. By filing I.A.No.2 of 2020, a further prayer is made to stay the further process of election for local bodies in the State of Andhra Pradesh until the disposal of the writ petition.

7. <u>W.P.No.8167 of 2020</u>:

7.1. The petitioner, Dr. Kamineni Srinivas, who is a medical practitioner by profession and former Health Minister, BJP, filed the present writ petition emphasising the statement of objects and reasons to bring 73rd Constitution (Amendment) Bill, referring the provision of Article 40 of the Constitution, which enshrines the

effective functioning of the self government. Emphasising the importance of the democratic pattern through the Panchayats, referring Article 243K of the Constitution, it is said that the amendment brought in Section 200 of the APPR Act, 1994, by way of the impugned Ordinance, is a fraud on the Constitution, being colourable legislation.

7.2. Alleging number of instances of prevention of nominations, forcible withdrawal of nominations and instances of violence by the candidates belonging to the ruling party, it is said that the postponement of the election was resorted on account of COVID-19 pandemic for six weeks or any other date, vide notification dated 15.03.2020. Being displeased by the postponement, the State Government approached Hon'ble the Supreme Court by filing W.P.(Civil).No.437 of 2020, which was dismissed without any interference and it was observed that while notifying the date of election in future, consultation with the State Government may be made.

7.3. It is further stated that while the nation is taking measures on a war-footing basis, to curb down and contain the spread of COVID-19 and the entire State machinery is deeply involved in essential services only, with unseemly haste and secrecy, steps were taken to bring amendment to Section 200 of the APPR Act, by way of an Ordinance, altering the qualification

and term of office of the post of SEC. In consequence, G.O.Ms.No.617 dated 10.04.2020, issuing the new Rules of 2020, and G.O.Ms.No.618 dated 10.04.2020, stating that **Mr.A** ceases to hold the office of the SEC with effect from 10.04.2020, and G.O.Ms.No.619 dated 11.04.2020, appointing **Mr.B** as the SEC, have been issued by the Government. A news item appeared on 10.04.2020 that the State Government is seeking to remove **Mr.A** from the office of SEC, except the same, the impugned Ordinance and G.Os. were not available immediately in public domain and they were uploaded subsequently.

7.4. It is said that looking at the ground realities and importance of the office, the tenure of the office of the SEC should not be left in the hands of the executive pleasure. The increase of the tenure of the office is a beneficial incident; however, it would not be proper to curtail it by bringing the legislation, that too, on unfounded grounds or for any reason whatsoever. The SEC cannot be treated like an ordinary Government servant and the provisions of Article 243K of the Constitution cannot be interpreted similar to the statutes covering the service conditions of Government servants, as it would defeat the very purpose of the constitutional provisions. Referring the powers conferred upon the Election Commissioner of India under Article 324 of the Constitution, it is said that in case the tenure is not protected, the office of the

Election Commission cannot discharge the constitutional obligation of holding free and fair elections as casted on it. Therefore, it is urged that the impugned Ordinance and the subsequent G.Os. are violative of Articles 14, 21 and 243K of the Constitution.

7.5. Relying upon the judgment of Hon'ble the Supreme Court in **State of Madhya Pradesh v. Shardul Singh**[1]**,** it is said that the conditions of service would include the holding of a post by a person right from the time of his appointment till his retirement and beyond it in matters like pension etc.; therefore, reduction of the tenure of the SEC from five to three years is nothing but a disadvantage after his appointment. Reliance has also been placed on the judgment of **K.C. Gajapati Narayan Deo v. State of Orissa**[2], wherein the doctrine of colourable legislation has been defined, and further drawing comparison between the provisions of Articles 243K, 243ZA and 324 of the Constitution, placed reliance on the judgment of **Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi**[3]**,** wherein the Court said that the high and independent office of the Election Commission has been created under the Constitution to be in complete charge of the entire electoral process commencing with the issue of the notification till the final declaration of result.

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[1] (1970) 1 SCC 108

[2] AIR 1953 SC 375

[3] (1978) 1 SCC 405

7.6. Reliance has also been placed on the judgment of Hon'ble the Supreme Court in **T.N. Seshan v. Union of India**[4], wherein it is said that looking to the nature and function of the Election Commission, the Chief Election Commissioner should not be removed from his office except in the like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service shall not be varied to his disadvantage after his appointment. In view of the said judgment, it is urged that the curtailment of the tenure of the office of the SEC is nothing but infringement of the legal protection given by the Constitution. It is further said that the appointing authority of the SEC is the Governor; however, he is competent to lay down the conditions of service and tenure of office, subject to any law being made by the legislature of the State, but now the Government of Andhra Pradesh, through its Panchayat Raj Department, framed Rules, which is not permissible. Further, relying upon the judgment of Hon'ble the Supreme Court in **P. Venugopal v. Union of India**[5], it is said that in the absence of having a justifiable reason, the legislative provision so enacted intending to remove one person from the tenure post which he is holding, is discriminatory, unconstitutional and hit by Article 14 of the Constitution. In view of the foregoing reasons, it is urged that the impugned Ordinance

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[4] (1995) 4 SCC 611

[5] (2008) 5 SCC 1

promulgated by the Governor and the consequential G.Os. issued by the Government deserve to be quashed.

7.7. The petitioner has also filed I.A.No.1 of 2020 with prayer to suspend the operation of G.O.Ms.No.618 dated 10.04.2020; I.A.No.2 of 2020 to suspend the appointment of **Mr.B** as SEC *vide* G.O.Ms.No.619 dated 11.04.2020; I.A.No.3 of 2020 to suspend the operation of the impugned Ordinance and I.A.No.4 of 2020 to suspend the operation of the new Rules, 2020, issued *vide* G.O.Ms.No.617 dated 10.04.2020.

7.8. The petitioner filed copies of various letters of the members of Bharatiya Janata Party, the details of which are as under:

i) Letter dated 13.03.2020 addressed by Kanna Lakshmi Narayana, Former Minister, BJP, to the Governor of Andhra Pradesh, complaining about the atrocious conduct of elections to local bodies in the State of Andhra Pradesh.

ii) Letter dated 15.03.2020 addressed by Satya Murthy Vamaraju, District President, BJP, Vijayawada, to the District Collector, Krishna, requesting to cancel the election process.

iii) Letter dated 17.03.2020 addressed by Kanna Lakshmi Narayana, Former Minister, BJP, to **Mr.A**, SEC, complaining about forcible withdrawal of nominations of Mrs. Kallam Vijaya Lakshmi,

Veeravatnam MPTC Candidate by the police of Rompicherla Police Station.

iv) Letter dated 17.03.2020 addressed by Kanna Lakshmi Narayana, Former Minister, BJP, to **Mr.A**, SEC, complaining violation of election rules, intimidations, attempts to kidnap and involvement of police in Jammalamadugu Constituency, Kadapa District.

v) Letter dated 17.03.2020 addressed by Kanna Lakshmi Narayana, Former Minister, BJP, to **Mr.A**, SEC, complaining about failure to include the name of Mrs. Kamasani Anuradha in Form VI, despite submission of nomination papers.

vi) Letter dated 17.03.2020 addressed by Kanna Lakshmi Narayana, Former Minister, BJP, to **Mr.A**, SEC, seeking to provide security and protection to the contestants of Venkatagiri Assembly segment of Nellore District and Bellamkonda Mandal of Guntur District.

vii) Letter dated 17.03.2020 addressed by Kanna Lakshmi Narayana, Former Minister, BJP, to **Mr.A**, SEC, complaining about physical assault by SI of Police, Vidavaluru Police Station, Nellore District.

viii) Letter dated 18.03.2020 addressed by Kanna Lakshmi Narayana, Former Minister, BJP, to **Mr.A**, regarding protection to be provided to the SEC apprehending threat of physical attack

consequent to verbal attack on account of postponement of elections.

ix) Letter dated 05.04.2020 addressed by Kanna Lakshmi Narayana, Former Minister, BJP, to **Mr.A**, SEC, complaining about unauthorized and illegal involvement of YSRCP leaders in the distribution of COVID-19 benefits.

x) Letter dated 06.04.2020 addressed by Kanna Lakshmi Narayana, Former Minister, BJP, to the Governor of Andhra Pradesh, complaining about unauthorized and illegal involvement of YSRCP leaders in the distribution of COVID-19 benefits.

xi) Letter dated 10.04.2020 addressed by Kanna Lakshmi Narayana, Former Minister, BJP, to the Chief Election Commissioner of India, with a request to reject the proposal of the impugned Ordinance.

xii) Letter dated 06.04.2020 addressed by Kanna Lakshmi Narayana, Former Minister, BJP, to the Governor of Andhra Pradesh, complaining about unauthorized and illegal involvement of YSRCP leaders in the distribution of COVID-19 benefits.

7.9. The petitioner has also filed various newspaper clippings of the statements of various political persons regarding poll violence caused by the ruling party members in the local body elections and the related issues, vide USR No.20946 of 2020.

7.10. The orders passed by the Hon'ble the Supreme Court in Writ Petition (Civil) No.104 of 2015, dated 23.10.2018, along with the report of the Task Force to strengthen the institution of the State Election Commission and related matters, have also been filed by the petitioner.

8. W.P.No.8394 of 2020:

8.1. This writ petition has been filed by Mr. Vineeth Appasani, a practicing Advocate of the High Court of Andhra Pradesh, being voter in Gaddamanugu Village, G. Konduru Mandal, Krishna District, questioning the validity of the impugned Ordinance; the consequential G.O.Ms.No.617, Panchayat Raj & Rural Development (E&R) Department, dated 10.04.2020 and G.O.Ms.No.618, Panchayat Raj & Rural Development (E&R) Department, dated 10.04.2020, and all other consequential actions, as illegal, arbitrary and unconstitutional.

8.2. It is stated that issuance of the impugned Ordinance is contrary to the spirit of Article 243K(1) of the Constitution. The conditions for the appointment cannot be included in the Ordinance either prescribing the eligibility for holding the post of the Election Commissioner or for tenure. It is further stated that appointment of **Mr.A** as SEC was for a period of five years from the date of his assuming the office. Therefore, bringing the Ordinance, his services cannot be put to an end before completion of the said term,

particularly, looking to the proviso of Article 243K(2), the conditions of service would not include the pre-requisite for appointment and it can only reflect the conditions of service after appointment and tenure.

8.3. It is further said that after declaration of the Election Notification on 07.03.2020, in view of the outbreak of COVID-19 pandemic, for which advisory was issued by the World Health Organization, the election process has been deferred for a period of six weeks, *vide* notification dated 15.03.2020. On account of interference by the members of the ruling party in the election process and also the personal attack made on him in view of the decision to postpone the election, on 18.03.2020, a letter was addressed by **Mr.A** to the Ministry of Home Affairs, Union of India, to provide adequate protection for conducting elections and also protection to his life. Dissatisfied by the said action, the impugned Ordinance has been promulgated bringing change in the eligibility and the tenure of the office of SEC and in consequence thereto, **Mr.A** has been removed without observing protection so available to him under the Constitution.

8.4. It is further stated that there was no emergent situation available to the Governor to exercise the power under Article 213 of the Constitution of India, after declaration of the election notification, immediately on the pretext of electoral reform.

8.5. In view of the foregoing, prayer is made to quash the impugned Ordinance and the consequent G.O.Ms.Nos.617 and 618 of 2020 dated 10.04.2020.

8.6. I.A.No.1 of 2020 has been filed seeking interim relief to suspend the operation of G.O.Ms.No.617 dated 10.04.2020 and the consequential actions thereto, pending disposal of the writ petition.

9. <u>W.P.(PIL).No.89 of 2020</u>:

9.1. The petitioner, Thandava Yogesh, who is a practicing advocate and filed various writ petitions in public interest as specified in sub-clause (ii) (a) to (k) of para 1 of the writ affidavit, filed the present writ petition in the nature of public interest litigation, challenging the validity of the impugned Ordinance with respect to sub-sections (3) and (5) of Section 200 of the APPR Act, as amended therein, and also challenging the conditions enumerated in Rule 5 of the new Rules, 2020, issued *vide* G.O.Ms.No.617 dated 10.04.2020 and the consequential orders vide G.O.Ms.No.618 dated 10.04.2020 and G.O.Ms.No.619 dated 11.04.2020 issued by the Government through Panchayat Raj & Rural Department.

9.2. The principal contention of the petitioner is that sub-clause (2) of Article 243K of the Constitution does not apply to

appointment, but it applies only to the conditions of service and tenure of office. The conditions of service, in this context, would mean the conditions which regulate the holding of a post by a person after his appointment but not prior. In support of the said contention, reliance has been placed on judgments of Hon'ble the Supreme Court in the cases of **State of Madhya Pradesh v. Shardul Singh; I.N. Subba Reddy v. Andhra University**[6]**; Syed Khalid Rizvi and others v. Union of India**[7]; **Union of India v. Tulsiram Patel & others**[8] and a recent judgment of this Court in **G. Rama Mohan Rao v. The Government of Andhra Pradesh**[9].

9.3. It is further stated that prescribing eligibility for appointment cannot be a part of the conditions of service. He has assailed sub-clauses (3) and (5) of Section 200 of the APPR Act, amended under the impugned Ordinance and also Rule 5 of new Rules, 2020, issued *vide* G.O.Ms.No.617 dated 10.04.2020. It is urged that the impugned Ordinance has been issued with an oblique intention and malice; therefore, interference in the petition is warranted.

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[6] (1977) 1 SCC 554

[7] 1993 Supp (3) SCC 575

[8] (1985) 3 SCC 398

[9] (2017) SCC Online Hyd 54

9.4. The petitioner, by way of filing a Memo on 01.05.2020, has placed on record certain documents, viz., a) Report of the National Commission to Review the Working of the Constitution (2001), b) Report of the Second Administrative Reforms Commission and c) 255th Report of the Law Commission. In view of the said reports, it is urged that the appointment of the new incumbent is not permissible.

9.5. I.A.No.1 of 2020 has been filed seeking interim relief to stay the operation of Rule 5 of G.O.Ms.No.617 dated 10.04.2020.

9.6. The letter 11.04.2020 addressed by Mr. D. Nagendra Reddy, Advocate, seeking certain reliefs about observation of national protocol and rules during lockdown by political persons, is taken up as I.A.No.4 of 2020 in this writ petition.

10. <u>W.P.(PIL).No.90 of 2020</u>:

10.1. The petitioner, namely Vadde Sobhanadreswara Rao, who is an agriculturist, technocrat, political leader and social worker, has filed the present writ petition in the nature of public interest litigation assailing the validity of the impugned Ordinance and the subsequent G.Os., *inter alia,* stating that the entire exercise was done with a *mala fide* intention and to subvert the constitutional provisions. It is stated that on the date of issuance of

the impugned Ordinance, there was no emergent situation available to the Governor to exercise the power under Article 213 of the Constitution of India. Therefore, the power so exercised is beyond the scope and ambit in the circumstances exist.

10.2. It is stated that the election was notified on 07.03.2020 and 09.03.2020 for Zilla Parishad Territorial Constituencies (in short, 'ZPTC'), Mandal Parishad Territorial Constituencies (in short, 'MPTC'), Municipal bodies and Gram Panchayats. After issuance of the said notification, the first phase of the election was over and on 14.03.2020, some of the candidates were declared elected unanimously. But, on account of the outbreak of COVID-19, keeping in view the health issue of the citizens, further elections were postponed for a period of six weeks, *vide* notification dated 15.03.2020. The said decision was subjected to criticism even by the Chief Minister, who issued statement against **Mr.A** attributing bias in postponing the elections and transferring some of the District Collectors, Superintendents of Police and Inspector of Police has also been questioned, stating that if it is allowed, SEC would rule the State. It is said that the issue has been brought to the notice of the Governor and the matter would be scaled up to the next level if he does not mend his ways. Several Ministers, Speaker of Legislative Assembly, several MLAs and political leaders also gave similar statements attributing

bias. In such a situation, issuance of the Ordinance amounts to affect the independent functioning of the SEC, under illegal persuasion of the State Government.

10.3. It is further stated that conditions of service and tenure as specified under Article 243K(2) of the Constitution would mean all those conditions which regulate the holding of a post by a person on the appointment till his retirement and even beyond in the matter of pension. Reliance is placed on a judgment of Hon'ble the Supreme Court in **State of Madhya Pradesh v. Shardul Singh**, which has been referred by this Court in **G. Rama Mohan Rao v. The Government of Andhra Pradesh.** Reliance has further been placed on a decision in **D.C. Saxena v. State of Haryana**[10] and **J.S. Yadav v. State of Uttar Pradesh**[11].

10.4. In view of the aforesaid rulings, it is contended that the conditions of service also include tenure of service and they do not reflect the eligibility for appointment. It is further stated that where the law ends, tyranny begins and the power conferred on the State Election Commission by the Constitution cannot be permitted to be flouted or misused on the whims and fancies of the people at power. The Apex Court, in the case of **P.D. Aggarwal v.**

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[10] (1987) 3 SCC 251

[11] (2011) 6 SCC 570

State of Uttar Pradesh[12], held that the Government has got power to make retrospective amendment to Rules, but if the Rules are arbitrary and take away vested right, the same infringes Articles 14 and 16 of the Constitution. Further, in the case of **Chairman, Railway Board, v. C.R. Rangadhamaiah**[13]**,** the Hon'ble the Supreme Court held that the Government has got power to frame the Rules for future operation but if the same infringes the rights of the present incumbent, the same will be in violation of Articles 14 and 16 of the Constitution of India. Reliance has further been placed on the judgment of **P. Venugopal v. Union of India**, in support of the said contention.

10.5. In addition to the aforesaid, it is stated that as per the information available in Google website, the new incumbent **Mr.B**, who is allowed to hold the office of SEC, has retired as a Judge of the High Court in the year 2006 and at present, he is aged about 76 years. It is further stated that the new incumbent is the resident of the neighbouring State of Tamilnadu and he has taken oath on 11.04.2020 during lock down period, without following the advisory issued by the Ministry of Home Affairs in relation to observing 14 days quarantine by the persons coming from other States. Therefore, it appears that the things have been done in a planned way and only to displace **Mr.A** from the office of the SEC.

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[12] (1987) 3 SCC 622

[13] (1997) 6 SCC 623

10.6. The petitioner has also filed I.A.No.1 of 2020, seeking suspension of the operation of the impugned Ordinance; I.A.No.2 of 2020 seeking suspension of the operation of G.O.Ms.No.617 dated 10.04.2020; I.A.No.3 of 2020 seeking suspension of the operation of G.O.Ms.No.618 dated 10.04.2020 and I.A.No.4 of 2020 seeking suspension of the operation of G.O.Ms.No.619 dated 11.04.2020.

11. W.P. (PIL).No.94 of 2020:

11.1. Mr. Muthamsetty Lakshmana Siva Prasad filed this petition in the nature of public interest litigation on the ground that the proceedings in question are arbitrary, illegal, ultra vires and unconstitutional.

11.2. It is averred that free and fair election is a constitutional assurance to democracy. Part IX, consisting of Articles 243 to 243-O, has been brought by way of Constitution (73rd Amendment) Act, 1992, with effect from 24.04.1993, which deals with Panchayats. The power to conduct elections to the Panchayats and Municipalities is vested in the State Election Commission consist of State Election Commissioner, as specified under Article 243K(1) and 243ZA of the Constitution. The power to appoint the SEC is vested in the Governor. The functions of the SEC are independent of the State Government in matters of

superintendence, direction and control of elections to Panchayats and Municipalities, exercise of such power to hold free and fair election and it being constitutional post, the procedure for the removal of the SEC was set up at par to the Judge of a High Court and the conditions of service shall not be altered to his disadvantage after his appointment. Thus, the SEC is holding the constitutional post appointed by the Governor under the immunity as provided by the Constitution.

11.3. It is further stated that **Mr.A** was appointed as SEC of the State of Andhra Pradesh *vide* order dated 30.01.2016 for a period of five year and he has assumed the office on 01.04.2016 as per the tenure specified in the Rules prevalent on the date of his appointment. By way of the impugned Ordinance, the tenure of the office of SEC came to be reduced to three years and the eligibility criteria for holding the post is also changed from the post of not below the rank of Principal Secretary to the Government to that of a Judge of High Court. The consequential effect of the said changes, as has been specified therein, is that the existing SEC shall cease to hold the office, which is nothing but removal to which a procedure prescribed at par to the Judge of a High Court as specified in the Constitution, was not followed, in the guise of the impugned Ordinance.

11.4. Relying upon the judgment in **Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad**[14], it is said that conduct of elections is the primary duty of the Election Commission and if the Government is not providing adequate cooperation to hold free and fair election, the Election Commission can approach the High Court or Supreme Court seeking appropriate directions.

11.5. It is further stated that after the SEC took a decision on 15.03.2020 postponing the elections for MPTC, ZPTC and Municipalities in the State of Andhra Pradesh for six weeks, keeping in mind public safety on account of spread of COVID-19, the State Government became furious against the said decision and made allegations of caste bias in favour of Telugu Desam Party President; however, the impugned Ordinance has been brought into force to achieve an oblique purpose of removing **Mr.A** from the office of the SEC.

11.6. It is further stated that the conditions of service and tenure do not include the eligibility for appointment and they only specify the terms of the service conditions after appointment. Reliance has been placed on the judgments of the Hon'ble the Supreme Court in the cases of **State of Madhya Pradesh v.**

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[14] (2006) 8 SCC 352

Shardul Singh; State of Punjab v. Kailash Nath[15]**; I.N. Subba Reddy v. Andhra University; Union of India v. Tulsiram Patel**, on the preposition that terms and conditions of services may be classified as salary or wages including subsistence allowance during suspension, periodical increments, pay scale, leave, provident fund, gratuity, confirmation, promotion, seniority, tenure or termination of service, compulsory or premature retirement, superannuation, pension, changing the age of superannuation, deputation and disciplinary proceedings, and they do not include the required eligibility for appointment.

11.7. Further, placing reliance on a judgment of Hon'ble the Supreme Court in **D.C. Saxena v. State of Haryana**, it is stated that the expression 'terms and conditions' clearly includes tenure of service. Reliance has also been placed on **J.S. Yadav v. State of Uttar Pradesh**, wherein the above proposition has been fortified by Hon'ble the Supreme Court.

11.8. Further reliance has also been placed on **P. Venugopal v. Union of India**, wherein it was held that a Government servant does not forego his fundamental right to hold his post for tenure and in fact, he acquires additional rights constitutionally protected and such person is entitled to

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[15] (1989) 1 SCC 321

constitutional remedies either under Article 32 or 226 of the Constitution.

11.9. It is further contended that the Ordinance issued is an outcome of the oblique motive. Relying on the judgment of Hon'ble the Supreme Court in **Union of India v. Tushar Ranjan Mohanty**[16], it is contended that when a person is deprived of an accrued right vested in him under a statute or under the Constitution and successfully challenges the same in the Court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation. To fortify this contention, reliance has also been placed on the judgments in **P.D. Aggarwal v. State of Uttar Pradesh** and **Chairman, Railway Board, v. C.R. Rangadhamaiah**.

11.10. It is further contended that in view of the provisions of Article 213 of the Constitution, the Governor has power to promulgate an Ordinance in emergent circumstances. There being no emergent circumstances warranting promulgation of Ordinance changing the tenure and eligibility criteria, the impugned Ordinance is not in accordance with law. Placing reliance on **D.C. Wadhwa v. State of Bihar**[17], it is urged that the power conferred on the Governor to issue ordinances is in the nature of an emergency

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[16] (1994) 5 SCC 450

[17] (1987) 1 SCC 378

power vested in the Governor for taking immediate action where such action may become necessary when the Legislature is not in session. It is contended that in the present case, no such situation is available.

11.11. Further, reliance has been placed on **Krishna Kumar Singh v. State of Bihar**[18], wherein it is held that the satisfaction of the Governor is not immune from judicial review. The test is whether the satisfaction is based on some relevant material. The Court, in exercise of its power of judicial review, will not determine the sufficiency or adequacy of the material. In fact, the Court shall scrutinise whether the satisfaction in a particular case constitutes a fraud on power or was actuated by an oblique motive. The judicial review, in other words, would enquire into whether there was no satisfaction at all.

11.12. Reliance has also been placed on a judgment of **S.R. Bommai v. Union of India**[19], wherein the Hon'ble the Supreme Court, taking note of decision of the Privy Council in **Bhagat Singh v. Emperor**[20], clarified as to what situation would constitute a state of emergency.

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[18] (2017) 3 SCC 1

[19] (1994) 3 SCC 1

[20] AIR 1931 PC 111

11.13. In view of the above decision and looking to all the circumstances narrated above, it is urged that the promulgation of the impugned Ordinance by the Governor changing the terms for appointment by incorrectly stating that it would amount to terms and conditions is illegal and arbitrary; therefore, the impugned Ordinance as well as G.O.Ms.No.617 dated 10.04.2020, G.O.Ms.No.618 dated 10.04.2020 and G.O.Ms.No.619 dated 11.04.2020 deserve to be set aside.

11.14. The petitioner filed I.A.No.1 of 2020 seeking suspension of the operation of G.O.Ms.No.619 dated 11.04.2020; I.A.No.2 of 2020 seeking suspension of the operation of G.O.Ms.No.618 dated 10.04.2020; I.A.No.3 of 2020 seeking suspension of the operation of the impugned Ordinance; and I.A.No.4 of 2020 seeking suspension of the operation of G.O.Ms.No.617 dated 10.04.2020.

12. <u>W.P.(PIL) No.95 of 2020</u>:

12.1. The petitioner, Dr. Maddipati Sailaja, filed this petition in the nature of public interest litigation, challenging the proceedings in question, by joining the Council of Ministers as a party in addition to the other relevant respondents, including the present incumbent, i.e., **Mr.B**, who has been appointed as SEC *vide* impugned G.O.Ms.No.619 dated 11.04.2020.

12.2. The contention of the petitioner is that the proviso to Article 243K(2) of the Constitution confers immunity to the SEC against removal from his office except in like manner and on the like grounds as a Judge of a High Court and prohibits the State from altering the conditions of service including tenure, after his appointment. It is further contended that the impugned Ordinance reduced the tenure of the office of the SEC to three years, against the constitutional spirit. If the tenure is not secured, the SEC shall not be in a position to discharge the constitutional obligation on account of the interference by the executive and political persons as happened in the present case. It is stated that on postponing the election *vide* notification dated 15.03.2020, the members of the Council of Ministers gave statements accusing **Mr.A** on caste and attributing *mala fides* and demanding his removal. The said statements of Mr. Thammineni Seetharam, Mr. Perni Nani, Mr. Vijayasai Reddy and Mr. Kurasala Kannababu are filed in a pen drive, along with I.A.No.6 of 2020. It is urged that looking to those statements, the impugned Ordinance is a consequence of the anguish of the ruling party against **Mr.A** due to postponing the elections, with an oblique and ulterior motive.

12.3. It is further stated that the conditions of service do not include the pre-requisite eligibility for appointment. Reliance has been placed on the judgments of **State of Madhya Pradesh v.**

Shardul Singh; Syed Khalid Rizvi & others and Ramesh Prasad Singh & others v. Union of India; Union of India v. Tulsiram Patel & others; G. Rama Mohan Rao v. The Government of Andhra Pradesh, State of Punjab v. Kailash Nath and **I.N. Subba Reddy v. Andhra University.**

12.4. It is further stated that **Mr.B**, the present incumbent, is a resident of State of Tamilnadu; what was the basis to appoint him is not clear although the retired Judges of existing High Court of Andhra Pradesh as well as erstwhile High Court at Hyderabad are available and this speaks volume about the pre-plan and *mala fide* intention of the Government in choosing him for appointing as SEC. The Andhra Pradesh Government Business Rules and Secretariat Instructions are filed along with the petition to apprise the functioning of the office of the Governor and the Government.

12.5. The petitioner has also filed I.A.No.1 of 2020, seeking suspension of the operation of G.O.Ms.No.618 dated 10.04.2020; I.A.No.2 of 2020 seeking suspension of the operation of G.O.Ms.No.617 dated 10.04.2020; I.A.No.3 seeking suspension of the operation of the impugned Ordinance and I.A.No.4 of 2020 for the same relief as prayed in I.A.No.2 of 2020.

12.6. Along with I.A.Nos. 5 & 6 of 2020, apart from video clippings made available in pen drive, as stated above, the

petitioner has also filed newspaper clippings of the statements of various ruling party leaders, accusing **Mr.A** in the name of caste and attributing *mala fides* and demanding his removal. The said statements are as under:

i. Paper clipping of Andhra Jyothi e-paper dated 17.03.2020 showing that Chief Whip of the Government Kapu Ramachandra Reddy has commented SEC as caste biased and he is the reason for the loss of State exchequer; another statement of Minister Vanitha stating that he joined hands with Telugu Desam Party under the guise of Corona virus.

ii. Paper clipping of Andhra Jyothi e-paper dated 17.03.2020 showing that Speaker Thammineni Seetharam commented on SEC that he is taking own decisions influenced by caste; another statement of Sajjala Ramakrishna Reddy, Advisor to the Chief Minister commenting that the SEC has taken the decision exceeding his limits.

iii. Paper clipping of Eenadu, Visakhapatnam edition showing the comments of Minister Botsa Satyanarayana that SEC has taken unilateral decision.

iv. Paper clipping of Andhra Jyothi e-paper dated 18.03.2020 showing that YSR Congress Party MLA Korumutla Srinivasulu criticized **Mr.A** that he is the pet dog of Nara Chandrababu Naidu.

v. Paper clipping of Andhra Jyothi e-paper dated 16.03.2020 showing an article that Chief Minister Jagan Mohan Reddy has seriously commented SEC, **Mr.A** in the press meet for postponing the elections.

13. <u>W.P.(PIL).No.97 of 2020</u>:

13.1. This petition is filed by Mr. K. Jithendra Babu, who is an advocate, in the nature of public interest litigation, questioning the legality, propriety and constitutional validity of all the proceedings.

13.2. It is averred that the appointment of **Mr.A** as Andhra Pradesh State Election Commissioner was made *vide* G.O.Ms.No.11, Panchayat Raj & Rural Development (Election) Department, dated 30.01.2016, for a tenure of five years in terms of Rule 3 of G.O.Ms.No.927, dated 30.12.1994 under the Old Rules. The Andhra Pradesh State Election Commission issued notification on 07.03.2020 for conducting elections to MPTCs and ZPTCs in the State and the first phase of election was over declaring the result in respect of unanimously elected candidates on 14.03.2020. A notification dated 09.03.2020 was also issued for conducting elections to Municipal Corporations, Municipalities and Nagar Panchayats in the State. After completion of scrutiny of the nominations on 14.03.2020, the poll was scheduled to be held on 23.03.2020. In the meantime, in view of the difficulties posed by

the spread of COVID-19, a notification dated 15.03.2020 has been issued by the State Election Commission, ordering halt of the election process of MPTCs, ZPTCs and urban local bodies with immediate effect with an observation that it will be continued after six weeks of the date of notification or after the threat of COVID-19 decreases, whichever is earlier. A lot of criticism came from the ruling party members against the said postponement and recourse has also been taken before Hon'ble the Supreme Court by filing Writ Petition (C) No.437 of 2020. The Hon'ble Supreme Court, in the aforesaid writ petition, passed orders on 18.03.2020, refusing to interfere with the decision of the State Election Commission.

13.3. It is further stated that in the first phase of election, **Mr.A** has taken several steps to try and stem the violence and intimidation, which was antithesis of free and fair elections. In the said recourse, transfer of two Collectors, two Superintendents of Police, two Deputy Superintendents of Police, three Circle Inspectors of Police and suspension of one Circle Inspector of Police was directed. Neither these directions nor the postponement of the elections were to the liking of the ruling party of the State; however, **Mr.A** has faced unprecedented abuse and personal threats to him as well as his family members. In such circumstances, a letter was addressed by him on 18.03.2020 for deployment of the Central Police Force to provide security at his

office as well as his residence at Hyderabad to which he was forced to flee in the face of threats to his safety. In the meantime, the State Government moved swiftly to remove **Mr.A** from the office of the SEC. As widely reported in the media, a series of well-coordinated events involving the Governor's office, Law Department and Panchayat Raj Department took place between 10.04.2020 and 11.04.2020. The details of events, commencing from promulgation of the impugned Ordinance by the Governor and issuance of consequent G.O.Ms.Nos.617 dated 10.04.2020, notifying new Rules, 2020, G.O.Ms.No.618 dated 10.04.2020, holding that **Mr.A** ceases to hold the office of the SEC on and with effect from 10.04.2020, and G.O.Ms.No.619 dated 11.04.2020, appointing **Mr.B** as SEC, were narrated. It is stated that within an hour after issuance of G.O.Ms.No.619 dated 11.04.2020, the newly appointed incumbent took charge to ease out **Mr.A** from the office and the blinding speed within which those events took place clearly indicate that everything was premediated and pre-planned.

13.4. It is further stated that the change so made in Section 200 of the APPR Act is not permissible as per the constitutional provisions, more so, the definition of Sections 2(39) and 2(40) of the APPR Act, is illegal. It is said that there was absolutely no urgency in removing **Mr.A** from the office of the SEC in the midway

of the poll process, that too, when the entire nation was in the grip of COVID-19.

13.5. In view of the above, it is urged that the impugned Ordinance and G.Os. are tainted by *mala fides*, manifestly arbitrary, discriminatory and violative of Article 14 of the Constitution and prayed for the relief as stated above.

13.6. I.A.No.1 of 2020 has been filed seeking interim direction against respondents 4 to 6 not to take any decision or further action in the matter of ongoing elections to MPTCs, ZPTCs, Municipal Corporations, Municipalities and Nagar Panchayats in the State of Andhra Pradesh, pending disposal of the writ petition.

14. <u>W.P.(PIL).No.98 of 2020</u>:

14.1. This writ petition, which is in the nature of public interest litigation, has been filed by Mr. D. Kiran and Mr. M. Vinay Kumar Reddy, initially challenging Rule (5) of the new Rules, 2020, issued by the Government *vide* G.O.Ms.No.617 dated 10.04.2020. Later, by way of filing I.A.No.4 of 2020, the petitioners sought amendment of the prayer to challenge the impugned Ordinance. The said application was allowed vide separate docket order.

14.2. The contention of the petitioners is that the power to amend the Rules has been exercised with an ulterior motive to end the tenure of the incumbent SEC, on account of issuance of order

of postponing the elections vide notification dated 15.03.2020, after commencement of the elections and completion of first phase. It is further urged that in view of Article 243K of the Constitution, the conditions of service and tenure as applicable on the date of appointment cannot be varied or changed in a disadvantageous situation, in particular, looking to the proviso to Article 243K(2) of the Constitution. It is urged that in case the tenure of service is not secured or protected and change in tenure bringing an Ordinance is permitted, it would impact the independent functioning of the SEC in holding free and fair elections to the local bodies, affecting the democratic process of the local self-government. Therefore, it is prayed that the relief as sought may be granted.

14.3. The petitioners have also filed I.A.No.1 of 2020 seeking suspension of the operation of Rule 5 of the new Rules, 2020, issued vide G.O.Ms.No.617 dated 10.04.2020; I.A.No.2 of 2020 to treat the matter as urgent and take it up for hearing on admission and interim relief.

15. <u>W.P. (PIL).No.99 of 2020</u>:

15.1. Mr. Shaik Mastan Vali, who claims to be the Working President of Congress (I) Party for Andhra Pradesh State Unit, filed this petition, in the nature of public interest litigation, initially challenging G.O.Ms.No.617 dated 10.04.2020, G.O.Ms.No.618 dated 10.04.2020 and G.O.Ms.No.619 dated 11.04.2020 issued by

the Government of Andhra Pradesh. Subsequently, by filing I.A.No.4 of 2020, amendment of the prayer is sought for, to challenge the impugned Ordinance and the same was allowed vide separate order.

15.2. It is averred that issuance of the impugned Ordinance as well as subsequent G.Os. is nothing but creating a threat to the independence of the State Election Commission, which is a constitutional body. The services of the SEC are safeguarded by the provisions of the Constitution, with a view to enable the SEC to discharge the functions unbiased and to conduct free and fair elections in the State. However, altering the service conditions of the office of the SEC to the disadvantage of the incumbent **Mr.A**, after his appointment, merely due to postponing the elections of local bodies on account of COVID-19 pandemic, is in gross violation of the provisions of the Constitution, in particular, proviso to Article 243K(2). It is further stated that if the tenure of the office of the SEC is not protected, it would influence the discharge of the duties of SEC in conducting free and fair election in the State. Further, it is stated that the Ordinance so promulgated by the Governor shall be prospective in nature and shall not apply retrospectively, giving retrospective effect to the Ordinance is fraud on the power of the Constitution. It is further stated that reducing the tenure of the SEC, by way of promulgation of the Ordinance, and altering the

service conditions to the disadvantage of the incumbent SEC after his appointment, is unconstitutional.

15.3. Reliance has been placed on the decisions in **State of Madhya Pradesh v. Shardul Singh**; **G. Rama Mohan Rao v. The Government of Andhra Pradesh; J.S. Yadav v. State of Uttar Pradesh; D.C. Saxena v. State of Haryana; P.D. Aggarwal v. State of Uttar Pradesh** and **P. Venugopal v. Union of India**, and it is urged that the impugned Ordinance and the subsequent G.Os. may be set aside.

15.4. By way of filing a memo, the petitioner prayed to receive certain documents on record, viz., details of tracking of the files relating to the impugned Ordinance and appointment of the new incumbent. As the said documents are relevant and reliance has been placed on them during the course of hearing, they are taken on record by separate order.

15.5. The Statement of Objects and Reasons appended to the Constitution (Thirty-First Amendment) Bill, 1972, to include Article 312A into the Constitution, has also been filed for perusal of the Court.

15.6. The petitioner filed I.A.No.1 of 2020, seeking suspension of the operation of G.O.Ms.No.618 dated 10.04.2020; I.A.No.2 of 2020, seeking suspension of the operation of

G.O.Ms.No.619 dated 11.04.2020; and I.A.No.3 of 2020, seeking a direction for continuation of **Mr.A** as SEC, until further orders.

COUNTER AFFIDAVIT/REPLY FILED BY THE RESPECTIVE RESPONDENTS:

16. On behalf of all the Secretaries of the respective Departments of the State Government, who are joined as parties to these petitions, a consolidated counter affidavit/reply has been filed in W.P.No.8163 of 2020, including reply to the respective I.As., in the said case as well as in other cases, on an affidavit of the Principal Secretary to the Government of Andhra Pradesh, Panchayat Raj and Rural Development Department.

17. Learned Advocate General has stated across the Bar that this reply substantially meets all the points as raised in the writ petitions and the public interest litigations; therefore, it may be accepted as main and final reply of the State Government.

18. In the reply, it is said that the petitioners have raised many incorrect allegations on fact and law and such of those averments, which are not specifically admitted, are denied. The allegation that the Ordinance in question is aimed at removing **Mr.A** from the office of the SEC is denied and it is contended that the Ordinance in question is brought into force keeping in view the immediate

necessity and to secure the constitutional goal of free and fair elections. It is stated that towards achieving the objectives of the State in heralding electoral reforms in the arena of local body elections and to ensure that the electoral process is free from any influence, Ordinance No.2 of 2020 dated 20.02.2020 was brought into existence, by which the definition of corrupt practices was expanded, specifying the punishment thereto. The State has been contemplating a thorough set of reforms in ensuring the tier of governance comprised in the units of local self-government function effectively to fruitfully implement the objectives of the welfare programs of the State. It is stated that consequent to the 73rd and 74th amendments to the Constitution and more particularly, keeping in view Article 243K, the State enacted Section 200 of the APPR Act and Sub-sections (2) and (3) thereof have been referred. It is further stated that under the Old Rules framed by the Governor vide G.O.Ms.No.927 dated 30.12.1994, the term of appointment of the office of the SEC was five years as per Rule 3 and by Rule 4, the SEC so appointed will acquire the status of a Judge of High Court. Rules 5 to 18 of the said Old Rules specify various arena regarding pay and allowances, leave, dearness allowance, pension, leave travel concession, residence of Commissioner and maintenance. Later, as per G.O.Ms.No.91 dated 15.03.2000, an amendment was brought into the Old Rules,

making the status of SEC at par with the High Court Judge, with retrospective date, i.e. from 12.09.1994.

19. It is further stated that ever since promulgation of Ordinance amending Section 200 of the APPR Act, the conduct of local election under the aegis of an officer of the rank of Principal Secretary, was subjected to criticism. It is stated that the local body elections, particularly since the year 2000, resulted in litigation, wherein the conduct of the respective officials gained severe criticism in the judgments rendered by the common High Court. The office of the SEC, in the manner of its composition, invited frequent and repetitive criticism from various quarters periodically; however, in the said sequel, the first phase of reforms for cleansing the electoral process of the local bodies was ushered, by issuing Ordinance No.2 of 2020 and thereafter, in continuation, the Ordinance in question was brought into existence, imposing the constitutional mandate of neutrality on the office of the SEC in its functioning.

20. It is further stated that the functioning of the SEC was not adequate owing to this composition; however, series of allegations were levelled by all political parties from time to time. The Government has taken it as a pointer towards an imminent need for reform with a view to ensure the conduct of free and fair elections. In the course of such decision making process, the

Government was aware of the present process of election for local bodies and the attendant circumstances, including the correspondence made with Union of India and also the representations received from contestants in the local body elections. In view of the said fact, the primary object of the legislation is to address the issue arising from composition of SEC vis-à-vis the objective of conduct of free elections from time to time and it has nothing to do with **Mr.A**.

21. In advertence to the facts of W.P.No.8163 of 2020 with regard to the process of election initiated by the petitioner therein, it is stated that the State is obligated to conduct elections in the normal course of events in the year 2018, soon after the expiry of the term of the bodies elected pursuant to Elections in the year 2013. Referring the order dated 23.10.2018 passed in W.P.No.32346 of 2018 and the orders passed in PIL Nos.141 of 2019 and 153 of 2019, it is stated that the schedule of the election was notified describing the course for the elections of the local bodies. The notification, vide Annexure-R10, was issued under the aegis of **Mr.A**, in compliance with the directions issued in the writ petitions referred above. Reference has been made to the notification dated 15.03.2020 directing postponement of the elections on account of COVID-19 and also to the order dated 18.03.2020 passed by Hon'ble the Supreme Court in W.P(C).No.437

of 2020 filed by the State challenging the decision of the SEC to postpone the elections.

22. It is further stated that within hours, a few media channels started circulating a letter addressed by **Mr.A** to the Union Home Minister, a copy of which is filed in W.P.No.8166 of 2020 and in fact, **Mr.A** has not disclosed the said letter and now it is contended that in view of his act, the Ordinance in question is aimed at him. In response to it, the State Government is constrained to traverse the said pleadings to place all the facts in its perspective. In fact, the said letter is only for enhancing the security in view of his alleged threat perception to his life as specified in the letter. It is further said that the security of **Mr.A** was immediately enhanced and he has moved to Hyderabad to function from the premises at Hyderabad. **Mr.A** has also conveyed his acceptance for continuation of the 'house sites scheme' on the representation of the Government that it is an ongoing programme as on the date of election notification. A reply has also been submitted by the Chief Secretary to the Union of India vide letters dated 20.03.2020 and 24.03.2020, inter alia, denying the facts so narrated in the letter dated 18.03.2020 to be incorrect and also informing that the State has been exploring the possibility of completion of the process of elections either under the aegis of Election Commission of India or through a multi-member team of officers.

23. Regarding the allegation that the tenure of the SEC being cut-short and that the Ordinance is a colourable exercise of power, it is stated that the decision making process leading to the impugned Ordinance, took into account all circumstances that led to criticism of the functioning of the SEC during the last decade or so and was of the *bona fide* view that the scope for the same is consequent to the composition of the SEC. It is towards arriving at that satisfaction that all the relevant facts and circumstances were taken into account. Apprehending commencement of remainder election process on easing of COVID-19 restrictions, it is said that if the reform in the composition is not implemented prior to such commencement, the objective of the State to conduct free and fair elections may have been lost. In view of the same, it is urged that the plea so taken by **Mr.A** that the Ordinance in question is aimed at his removal is untenable and it is to be noticed that he is not sought to be replaced by another officer of same rank as an institutional reform posited in the Ordinance.

24. It is further stated that the composition of the State Election Commission is a subject matter, expressly delegated to the State, in terms of Article 243K and the power to legislate on the composition of the State Election Commission is vested in the State. There exist emergent conditions to exercise such power, viz., the Legislature not being in session and the need for an immediate

action to provide for such composition of the State Election Commission for free and fair conduct of local body elections notified on 07.03.2020. In such circumstances, the Governor has rightly exercised the power conferred under Article 213 of the Constitution. The provision so brought regarding cessation of the office of **Mr.A** is on account of the fact that his continuation would be inconsistent with Section 200 of APPR Act, introduced by the Ordinance in question w.e.f. 10.4.2020. Therefore, the cessation of the office of **Mr.A** cannot be contended to be an oblique motive or tantamount to a single member legislation. It is urged that the circumstances that were taken into account by the State indicated need for urgent measures and immediate action for reform and there is adequate material for the Cabinet of the State in justification of the Ordinance in question.

25. It is further stated that the proposal was approved by the Cabinet by circulation on 09.04.2020 and the attendant files shall be placed before this Court for perusal. It is reiterated that the Government is bound to conduct free and fair elections; therefore, after due deliberations, it has taken the decision to bring the Ordinance in question. Thus, the plea taken that the Ordinance in question was issued in haste is denied.

26. Reiterating the reference made in the Government file, it is said that because it is necessary to implement the reform

immediately, sub-clause (5) has been introduced in Section 200 of the APPR Act as per the Ordinance in question, more particularly, when the proviso to Article 243K does not include the word 'tenure'. The object of the said Clause is to achieve the objective of reform under the Ordinance in question. The Ordinance in question repeals Section 200 of the APPR Act in part, re-enacting the same with changes as regards composition and tenure. It is further stated that the continuance of **Mr.A** as SEC, unless expressly or impliedly saved under Section 8 of the A.P. General Clauses Act, 1891, would be inconsistent with the amendment.

27. Further, referring Article 243K(2) and the proviso wherein the word '*tenure*' has not been used, it is urged that the protection is provided only with respect to conditions of service which do not include the '*tenure*' as per the plain interpretation of it and contended that the Ordinance in question is perfectly in consonance with the spirit of Article 243K of the Constitution and it does not circumvent the prescribed mechanism of legislature affecting its constitutionality. It is further stated that after following the procedure so prescribed, the Ordinance in question has been brought into existence, which does not warrant any interference by this Court. In view of the above facts, it is urged that the Ordinance in question has not been issued either by exercising

fraud on power or with oblique motive or with an intent to do something indirectly, which could not be done directly.

28. Regarding the decision taken to postpone the elections to local bodies by the SEC, it is contended that the said issue was announced first in the Press/Electronic media before sending the Notification dated 15.03.2020 to the Government. Prior to issuing the said notification, the State Government or the Health Department have not been consulted, although the election was in progress as notified on 07.03.2020 and the first phase of the election was completed by 14.03.2020. In reference thereto, the notifications, communications and press-release issued by **Mr.A** between 14.03.2020 and 19.03.2020 have been filed for perusal of the Court.

29. Referring the allegation made with regard to poll violence, it is stated that immediate action has been taken to the incidents as pointed out and all such cases were promptly registered and investigated into and arrests were also made. It is contended that the State has taken corrective measures in the election process; therefore, all the adverse contentions are denied. Regarding the fact of postponement of elections in the States of Maharashtra, Odisha and West Bengal due to outbreak of COVID-19, it is stated that in all the three States, such decision was taken after consultation with the respective State Governments.

30. It is further stated that at the time of proposal for filling up the post of SEC, initially the Government proposed the name of a retired IAS Officer and thereafter, the name of **Mr.A** was finalised. Denying the allegation that the entire process leading to the issuance of the Ordinance was shrouded in secrecy, it is contended that the Ordinance in question was duly published in the Gazette and subsequently, the Rules were gazetted. The uploading of the Ordinance was delayed by 40 minutes on account of the delay on part of some officers, who reached the Secretariat a little late due to lock down, and there is no *mala fide* intention in causing the delay.

31. Referring the strength of Panchayat Raj Institutions in the State, it is stated that in respect of huge number of offices/seats of Gram Panchayats, Election Notification is yet to be issued by the State Election Commission and since major part of elections is yet to start, the contention that the Ordinance in question was promulgated in the midst of ongoing election process is denied.

32. It is urged that following the procedure as contemplated under Article 213 of the Constitution and to achieve the object specified under Article 243K, the Ordinance in question has rightly been issued making necessary amendment to Section 200 of the APPR Act, prescribing appointment of a Judge of a High Court to hold the office of SEC and reduction in the tenure of the office of

the SEC, which does not warrant any interference on the grounds so alleged by the petitioners.

33. In addition to the above consolidated reply of the I.As., an additional reply has been filed on behalf of the State on 24.04.2020, reiterating the stand that the issue of electoral reforms was discussed at several levels, several times, examining several options like having a multi-member Commission, conduct of elections under Election Commission of India, appointment of judicial persons as SEC and after due diligence and deliberations only, the decision of issuing the Ordinance was taken. The details of the composition and tenure of the SECs working in various states as well the details of pre-poll violence in the years 2013, 2014 in 13 districts versus the pre-poll violence reported in 2020 have been furnished for a comparative analysis and stated that in the neighbouring State of Telangana, the instances of violence are more. It is reiterated that there is no substance in the contention that the Ordinance in question is a colourable legislation promulgated to achieve an oblique motive of removal of **Mr.A** from the office of the SEC.

34. A separate reply has also been filed on behalf of the State in W.P.Nos.8164, 8165, 8166 and 8167 of 2020 and also in W.P.(PIL).Nos.89, 90, 94, 95, 97, 98 and 99 of 2020 and it is stated that the reply filed to the I.As., which has been treated as

main reply as stated by the learned Advocate General, be treated as part and parcel of the separate reply filed in each of the above cases. In addition, it is contended that as the aggrieved person has approached this Court in W.P.No.8163 of 2020, the other writ petitions filed by third parties in their individual capacity or in public interest do not deserve adjudication and are liable to be dismissed as not maintainable in *limini*. It is further stated that Sub-section (5) of Section 200 of the APPR Act, as amended, has rightly been brought with a view to remove the repugnancy in the existing state of affairs and it seeks to implement the objectives of the Ordinance effectively; thus, there is no violation of Article 243K(2) or Article 14 of the Constitution. It is further stated that in the matter of bringing legislative change in the process, by way of an Ordinance which is within the competence of the legislature, there would be no application of principles of natural justice. It is also stated that the Ordinance has been brought after seeking approval of the Cabinet by circulation on 09.04.2020. In the facts as narrated in detail in the reply, the emergent situation exists to take immediate action for the Governor and the power under Article 213 of the Constitution has rightly been exercised. It is further stated that under the proviso to Article 243K(2), the change of service conditions alone has been protected and not the tenure, more so, it is not a case of removal in which the procedure as contemplated ought to be followed. It is a case in which on account of change of

tenure of the office of SEC and in view of lapse of the said tenure, it was declared that the existing incumbent shall cease to hold the office of the SEC, which cannot be said to be illegal. It is further contended that as the Ordinance in question has come into existence at once, continuation of **Mr.A** in the office of the SEC would be patent repugnancy to the provisions of the Ordinance. In view of the above, it is prayed that all the writ petitions and public interest litigations be dismissed.

35. Regarding the writ petitions filed in the nature of public interest litigation, relying upon the judgment of the Hon'ble the Supreme Court in **Bandhua Mukti Morcha v. Union of India**[21], it is contended that only in cases where the person affected is unable to pursue his rights, a public interest litigation is entertainable, relaxing the rules. In that situation, the essential aspect of the procedure is that the person who moves the Court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the Court. It is contended that when **Mr.A**, being aggrieved party, has also filed a writ petition, challenging the Ordinance in question and the subsequent G.Os., filing of other writ petitions or public interest litigation on the very same subject are not maintainable in law.

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[21] (1984) 3 SCC 161

36. In W.P.(PIL).No.95 of 2020, on behalf of the Council of Ministers, a reply has been filed by the Chief Secretary to Government, stating that as per Rule 11(2) of the A.P. Government Business Rules, 2018, the Chief Secretary or such other officer, as the Chief Minister may appoint, shall be the Secretary to the Council. The Secretary to Council shall convene the meetings of the Council of Ministers as and when the Chief Minister desires. It is stated that looking to the averments made in the PIL and the video clippings attached thereto, it can be seen that the statements have been made by the individual Ministers in relation to their political opinion made by them in the public domain. Hence, the Council of Ministers, as a whole, will not be responsible for such statements made by the Ministers in the public domain and the Chief Secretary will not be in a position to give any answer to them.

37. The State Election Commission, through its Secretary, has filed its reply, *inter alia,* stating that it adopts the reply filed on behalf of the State with respect to the contentions regarding requirement of Ordinance, legislative competence and validity of the Ordinance in question and tenure of the office of the SEC. In addition, it is stated that the decision of the State Government to bring about reforms in the electoral process is a welcome relief. On 15.03.2020, **Mr.A** has convened a press conference to the surprise of the Secretary of the State Election Commission,

announcing postponement of elections and stated that such decision was taken after contacting National level functionaries on the threat of spread of Corona Virus. But, surprisingly, there was no file being run regarding communication with National level health functionaries and no written communication or information obtained from any Central Government or State Government health agencies regarding assessment of COVID-19 threat is available on record. The decision to postpone the elections was solely taken by **Mr.A** on his own volition and the Notification was signed in the press conference itself. Regarding the issue of transfer of District Collectors, Superintendents of Police, Deputy Superintendents of Police, Circle Inspector and suspension of a Circle Inspector, it is stated that **Mr.A** called for the above actions based on media and complaints by political parties and there is no note file regarding this communication in the office of the State Election Commission. It is stated that the State Election Commission welcomes the steps taken by the State Government, which are necessary for independence and autonomy of the SEC. It is further stated that earlier, on numerous occasions, the State Election Commission acted as a mouthpiece of the Government in power or that it was too partisan in its conduct and during the process of local body elections. Therefore, appointment of a retired High Court Judge to hold the office of the SEC is a welcome step, which will restore the majesty, independence and autonomy of the SEC.

38. The newly appointed SEC, **Mr.B**, has filed common reply, *inter alia*, stating that the petitioners cannot maintain the writ petitions or the public interest litigations challenging the validity of the Ordinance and the consequential G.Os. issued by the State Government and all objections are not tenable. It is further stated that the State Government filed the detailed counter-affidavit which is accepted to the extent relevant to the newly appointed SEC. It is further stated that in view of G.O.Ms.No.617 dated 10.04.2020, **Mr.A**, who was holding the office of the SEC, has been ceased to hold the office on and from the date of coming into force of the Ordinance in question, in terms of the amended Sub-section (5) of Section 200 of the APPR Act. Referring the provision of Article 243K, it is denied that the said Ordinance is a single person legislation and the proviso is of no help to the petitioners as it does not protect the tenure. The allegation that the Ordinance in question and the consequential G.Os. are arbitrary, illegal, *mala fide* and unconstitutional, is denied and it is contended that the Governor, on the facts and in circumstances, in the light of the material placed before him, was satisfied with the existence of the circumstances warranting immediate action and promulgated the Ordinance to ensure free and fair ongoing electoral process. Responding to the instances of prevention of filing of the nominations, forcible withdrawals, violence and targeting the candidates, it is stated that those instances are not peculiar to the

present election process and those complaints are required to be examined carefully and at every stage and appropriate remedial steps have to be taken depending on the truth or otherwise of the complaints. It is further stated that the Ordinance in question has not been issued in haste or in secrecy and it has been rightly issued in exercise of the power under Article 213 of the Constitution of India by the Governor, who is the Executive Head and acts on the advice of Council of Ministers owing collective responsibility to the elected legislature. It is further stated in furtherance to his appointment as SEC on 11.04.2020, he assumed the charge on the same day and has been functioning as the SEC of Andhra Pradesh. So far as the allegation of his joining the office on the very same day during lockdown, it is contended that it is not proper on the part of **Mr.A**, being responsible Government official, to make such allegation and after appointment, he assumed the charge following the practice in vogue. Referring the averments made in W.P.No.8164 of 2020, it is said that the petitioner in the said writ petition borrowed the contents from the affidavit filed in W.P.No.8163 of 2020 and thus, the parties have joined hands in challenging the Ordinance. In view of the above, it is urged that the petitions may be dismissed.

39. In W.P.No.8166 of 2020, Mr. Josyula Bhaskara Rao, Standing Counsel for Central Government, filed copy of the e-mail received

by him from Mr. Rajendra Chaturvedi, Advisor (VS), Ministry of Home Affairs, New Delhi, attaching letter dated 27.04.2020 addressed to the Chief Secretary, Government of Telangana, in the matter of providing security to **Mr.A** by the Government of Telangana. A copy of the said letter dated 27.04.2020 was also marked to the Director General of Police, Telangana.

REJOINDERS FILED BY THE RESPECTIVE PETITIONERS:

40. Rejoinder to the reply of the State on I.As. has been filed by **Mr.A**, the petitioner in W.P.No.8163 of 2020, *inter alia,* denying all the contentions averred in the reply, mainly stating that the impugned Ordinance has been promulgated with motive only to remove him from the office of the SEC and in such situation, the State cannot be permitted to defend the legislation citing laudable objects. While denying the plea regarding taking reformative steps to strengthen the local body system, it is said that by the Union of India, Ministry of Panchayat Raj, under the centrally sponsored scheme of Rajiv Gandhi Panchayat Swashaktikaran Abhiyan (RGPSA) was launched in the 12th Five Year plan period, with a view to strengthen the Panchayat Raj system across the States. Referring the Report of the Task Force dated 14.10.2011 and the recommendations of the Standing Committee of the State Election Commissioners, dated 09.12.2011, which are filed along with the rejoinder, it is urged that as per the said recommendations, the

SEC should be given the status of a High Court Judge and the tenure of the SEC should be five/six year or up to 65 years of age, whichever is earlier, without any provision of extension.

41. The facts mentioned regarding criticism about the functioning of the SEC are denied and it is contended that in any case, no malice is attributed against any of the SEC. It is further contended that in 2018 itself, the process of elections with the correspondence of the State Government was started but because the Government has not completed the reservation process, it could not have been done and after issuance of directions by this Court, the election process started, but in the meantime, on account of improper reservation exceeding 50% upper limit, again it was challenged before this High Court; however, it was struck down. It is therefore contended that for the delay caused in the said process, the SEC cannot be made responsible.

42. Reiterating the open threat given in the statements of the Chief Minister, Ministers and Speaker of Legislative Assembly, it is stated that **Mr.A** addressed a letter on 18.03.2020 to the Union Home Ministry to provide protection to him and permit him to shift the office on account of such threat. It is further stated that the Chief Secretary addressed letters dated 20.03.2020 and 24.03.2020 to the Union of India, to justify the several aberrations pointed out

by **Mr.A** in his letter, and they were not in response to any communication asking for views of the State Government.

43. In view of the aforesaid, it is stated that as a result of the *mala fide* intention on the part of the State Government, the impugned Ordinance has been brought into force, to remove **Mr.A** from the office of the SEC. It is further stated that looking to the allegations and counter allegations, if there was any proved misconduct on the part of the SEC, then the recourse, as provided under the provision of Article 243K(2) of the Constitution, may be taken by the State but instead of taking the said recourse, the State got the Ordinance issued, exceeding the power conferred, which is not permissible under the provisions of the Constitution. Therefore, it is urged that the action so taken in bringing the impugned Ordinance into force is *mala fide,* unconstitutional and to achieve oblique motive and fraud on the power conferred by the Constitution.

44. The petitioner in W.P.No.8163 of 2020 also filed rejoinder to the separate reply filed by the State in the said writ petition, indicating the percentage of unanimous elections in MPTC and ZPTC, i.e., 79% and 76% in the year 2020, and it is stated that particularly in the constituency of the Chief Minister, there are more unanimous elections, which is suffice to demolish the free, fair and democratic pattern of election by the ruling party in the State. It is

contended that the contrary averments made in the reply are merely to justify the illegal acts of the State and not otherwise.

45. The petitioner in W.P.No.8163 of 2020 also filed rejoinder to the reply filed by the A.P. State Election Commission, denying the averments made therein in general and, *inter alia,* stating that the SEC has power to exercise his discretion to postpone the elections and it requires no mandatory consultation with the Government. So far as transfer of officers is concerned, it is stated that transfer of officers is a routine measure, to prevent failure of law and order and abuse of power and although certain transfers of officers were suggested in the light of uncontrolled acts of violence, the Government did not choose to act upon the said recommendations and the said inaction defeats the purpose of free and fair election.

46. In W.P.No.8167 of 2020, the petitioner filed rejoinder to the reply filed by the State, *inter alia*, referring the recommendations of the Task Force dated 14.10.2011 and, more particularly, paras 5.1 and 5.2, dealing with the recommendation of the Task Force for fixing the tenure of five years or 65 years to the office of the SEC, whichever is earlier, without any further extension. The report further says that there was a suggestion that SEC should be a three-member body as a single Election Commissioner could be more vulnerable to pressure of the State Government and other groups. But, it was observed that amendment of Article 243K(1)

would be required and the Task Force refused to support a three-member Commission.

47. Further, referring the judgment of **Kishansing Tomar v. Municipal Corporation, Ahmedabad**, it is stated that the status of the SEC is similar to the status of the Election Commission of India as provided under Article 324 of the Constitution. Further reliance has been placed on the judgment of Hon'ble the Supreme Court in **Dayal Singh v. Union of India**[22], wherein it was upheld that what cannot be done directly cannot be done indirectly. In view of the above, it is urged that the averments as made in the reply of the State are not justifiable and contrary to law.

48. By filing rejoinder to the reply filed by **Mr.B**, the petitioner in W.P.No.8167 of 2020, denied the averments made in the reply and with respect to the similarity of the contents of the petitions, it is contended that factual aspects can be reproduced.

49. In W.P.(PIL).No.89 of 2020, Mr. Thandava Yogesh, who is appearing as party-in-person, has filed three rejoinders. In the first rejoinder, referring the judgment of the Hon'ble the Supreme Court in **Samsher Singh v. State of Punjab**[23], it is contended that the conditions of service includes the tenure. Further, referring the judgment of **Kishansing Tomar v. Municipal Corporation of**

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[22] (2003) 2 SCC 593

[23] AIR 1974 SC 2192

the City, Ahmedabad, it is said that the tenure and status of the SEC is similar to the Election Commissioner of India. The details relating to the conditions of service of various posts are referred. Referring the Constitutional Assembly Debates regarding the conditions of service and tenure of the Election Commissioners and Regional Commissioners, it is urged that the independence of the Election Commission is a sine-qua-non; therefore, the impugned Ordinance, altering the conditions of service and tenure of the SEC, is an attack on the said independence, which cannot be sustained. Further, referring various comparative statements of the provisions of Articles of the Constitution and relying upon various judgments of Hon'ble the Supreme Court, it is urged that bringing the Ordinance into effect, to cut down the tenure, would amount to removal of the SEC with a mala fide intention in the facts of the case; therefore, the said action cannot be sustained.

50. In the second rejoinder, the objection raised by the respondents regarding maintainability of the Public Interest Litigation has been dealt with and, by placing reliance on the judgment of Hon'ble the Supreme Court in **Balco Employees Union v. Union of India**[24], it is contended that the Public Interest Litigation is maintainable.

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[24] (2002) 2 SCC 333

51. In the third rejoinder also, while responding on the maintainability of the Public Interest Litigation, it is further contended that the impugned Ordinance to the extent of immediate enforcement and consequential removal of the SEC is ultra vires the provisions of Article 243K(2) of the Constitution.

52. In W.P.(PIL).No.90 of 2020, a rejoinder has been filed by the petitioner to the reply filed on behalf of the State, *inter alia*, stating the fact that the Public Interest Litigation is maintainable in a case where the Ordinance affecting the rule of law in the entire State has been challenged.

53. In W.P.(PIL).No.94 of 2020, a rejoinder has been filed by the petitioner, emphasising the judgment of **Kesavananda Bharati v. State of Kerala**[25] and further, referring to various other judgments and the provisions of Article 311 of the Constitution, it is contended that the action so taken by the State in bringing the impugned Ordinance is not in accordance with law and all the averments made in the reply to the contrary are denied. He also filed rejoinder to the common reply filed by the State to the I.As., to the extent it deals with the averments in W.P.(PIL).No.94 of 2020, and referring to Articles 243K(2), 213, 217, 218 of the Constitution and Section 200 of the APPR Act and the judgment of the **D.C. Saxena v. State of Haryana**, it is stated that the

[25] (1973) 4 SCC 225

impugned action so taken by the State is not in conformity with the spirit of the Constitution; therefore, such action is not tenable in law.

CONTENTIONS OF THE COUNSEL FOR PETITIONERS:

54. Learned Senior Counsel representing the petitioners have commonly contended that **Mr.A** was appointed as SEC as per G.O.Ms.No.11, dated 30.01.2016 in exercise of powers conferred under Article 243K of the Constitution read with Section 200(2) of the APPR Act, and he has assumed the charge on 01.04.2016 for a period of five years, but his removal is in consequence of Section 200(5) of the APPR Act brought in the impugned Ordinance, *inter alia* mentioning that he shall cease to hold the office. It is contended that there was no circumstance, which render it necessary for immediate action of the Governor recording satisfaction to bring the impugned ordinance as contemplated under Article 213(1) of the Constitution. The said aspect is required to be adjudicated in the light of the facts that **Mr.A** was continuing to hold the post from 01.04.2016 for a tenure of five years, which will come to an end by 01.03.2021. He has notified the election by issuing two notifications on 07.03.2020 and 09.03.2020. The first phase of the election was completed on 14.03.2020. On 15.03.2020, he passed an order postponing the election on account of outbreak of COVID-19 pandemic. The said order was assailed

by the Government before Hon'ble the Supreme Court by filing W.P.(C).No.437 of 2020, which was dismissed vide orders dated 18.03.2020. In the meantime, several political persons including the Chief Minister gave statements against **Mr.A** accusing personally on caste and for his change. Facing the said difficulty and having threat of security, **Mr.A** addressed a letter on 18.03.2020 to the Ministry of Home affairs, Union of India, requesting to provide security. The said letter or its contents are not denied. The impugned Ordinance is the consequence of the said reaction. However, the material as to the recording of satisfaction of the Governor for taking such immediate action was not available, to bring the impugned Ordinance when both the houses were not in session. In support of the said contention, reliance was placed on **R.C. Cooper v. Union of India**[26], **S.R. Bommai v. Union of India**, **A.K. Roy v. Union of India**[27], **Indra Sawhney v. Union of India**[28], **D.C. Wadhwa v. State of Bihar, Krishna Kumar Singh v. State of Bihar, Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly**[29], **Shamsher Singh v. State of Punjab**.

[26] (1970) 1 SCC 248

[27] (1982) 1 SCC 271

[28] 1992 Supp (3) SCC 217

[29] (2016) 8 SCC 1

55. It is also contended that in the facts narrated herein above, the impugned Ordinance is a colourable legislation and is a fraud on the power of the Constitution, for political gain with oblique motive. Therefore, the impugned ordinance deserves to be set aside. In support of the said contention, reliance has been placed on the judgments of **K.C. Gajapati Narayan Deo v. State of Orissa** and **Sonapur Tea Company Ltd. V. Mazirunnessa**[30].

56. It is further contended that the State legislature does not have the legislative competence to bring an Ordinance specifying the eligibility for appointment to the post of the SEC. The said power is conferred to the Governor under Article 243K(1) of the Constitution. The Government may bring law only with respect to the conditions of service and tenure. Therefore, in the facts and circumstances, the ordinance so brought is arbitrary.

57. It is contended that the impugned ordinance has been brought making it applicable at once, but by adding Clause (5) of Section 200 of the APPR Act in the said Ordinance, it is specified that by virtue of the ordinance, **Mr.A** shall cease to hold the office of SEC although his appointment was under Article 243K, for a period of five years. Therefore, his appointment, which was made under the APPR Act, cannot be taken away, in particular when immunity has been provided to him against removal under the

[30] AIR 1962 SC 137

proviso of Article 243K(2) of the Constitution. Therefore, the ordinance so brought is not in accordance with law.

58. It is further contended that specific provision has been incorporated in the ordinance prescribing the eligibility for appointment. It is not in the domain of the State Government to meet the law on that point. The appointment of SEC may be made by the Governor, in exercise of discretionary power under Article 243K(1) of the Constitution. The only power, which is given to the State legislation, is with respect to the conditions of service and the tenure that too qualifying the test of Article 14 of the Constitution. Therefore, making insertion of eligibility for appointment of SEC by amending Section 200 of APPR Act, by way of ordinance, is illegal. It is also contended that the competence of the State legislation to specify the tenure is also not rational, looking to the report of the National Task Force Committee. The said report has not been considered prior to bringing the impugned ordinance specifying the tenure. Therefore, the impugned ordinance so brought is not in conformity to qualify the test as specified. It is stated that **Mr.A** is having vested right to continue for the remainder tenure which is protected by Article 243K(2) of the Constitution and proviso thereto. Therefore, bringing of the ordinance to make it applicable retrospectively does not qualify the test of arbitrariness contemplated under Article 14 of the Constitution. The right which

is conferred to **Mr.A** cannot be abridged or taken away by such ordinance.

59. Sri Vedula Venkata Ramana and Sri B. Adinarayana Rao, learned Senior Counsel have contended that the State Government may have an exclusive power to make the laws for the State or any part thereof with respect to the matters enumerated in List II of Schedule-7 subject to the provisions of the Constitution. The Government do not have the power under List II of Schedule-7 in the matter of appointment of SEC. The said power is confined to enact law only with respect to local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration. However, the said power is confined with respect to the constitution and powers of the aforementioned organizations. Even under Article 243K(4) of the Constitution, the State Government may make provision with respect to all matters relating to or in connection with the elections to the panchayat. Therefore, the subject matter i.e., specifying the conditions for appointment of SEC is not a domain of the State Legislature. In such circumstances, the Government must apply the principle of constitutional morality and is not supposed to frame the law for which the powers are not conferred on them. Thus, in view of

Articles 245 and 246 of the Constitution and applying the principle of constitutional morality, the impugned ordinance is liable to be set aside. Therefore, consequential orders, if any passed by issuance of G.Os or making amendments in the previous Act deserve to be quashed.

60. Sri Dammalapati Srinivas, learned Senior Counsel has contended that the word 'and' used in Article 243K referring to 'conditions of service and tenure of service' cannot be used as disjunctive. In support of the said contention, reliance has been placed on **Carew & Co. Ltd. v. Union of India**[31], **Dwarka Prasad v. Dwarka Das Saraf**[32], **Haryant C. Shelat v. State of Gujarat**[33] and **M. Satyanarayana v. State of Karnataka**[34].

61. Sri Thandava Yogesh, the petitioner in person has referred Article 312-A of the Constitution to contend that Article 312-A was brought by way of 28th amendment with effect from 29.08.1972 giving immunity to certain posts, those are Chief Justice and Judges of Hon'ble the Supreme Court and High Court, Comptroller and Auditor General of India, the Chairman or other members of the Union or State Public Service Commission and the Chief Election Commissioner. Under the said immunity, the Parliament do

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[31] (1975) 2 SCC 791

[32] (1976) 1 SCC 128

[33] 1978 SCC Online Guj 119

[34] (1986) 2 SCC 512

not have any power to vary or revoke the conditions of service of the officers of the said category/persons so appointed under the said category. The appointment of the State Election Commissioner under Article 243K is by way of 73rd amendment brought with effect from 24.04.1993. The status of the SEC shall be on par with the CEC as held by Hon'ble the Supreme Court in the case of **Kishansing Tomar v. Municipal Corporation of the City, Ahmedabad.** Therefore, the immunity under Article 312-A is available to the SEC, whose appointment is under Article 243K at par to the CEC and having the similar immunity in the matter of their removal following the procedure of impeachment. In such circumstances, the State legislature cannot make any law of the conditions of service of the SEC.

62. At last, it is urged that the appointment of the petitioner was for a tenure which gives vested right to him for such tenure and it cannot be taken away bringing the impugned ordinance making a provision specifying that he shall cease to hold the office. The office which he was holding is protected by Section 8 of the A.P. General Clauses Act. Therefore, the impugned ordinance is not in accordance with law and it would apply prospectively not retrospectively.

63. In support of their contentions, learned counsel for the petitioners further relied upon the following decisions:

Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company[35], Commissioner of Income Tax v. Indo Mercantile Bank Limited[36], D.C. Saxena v. State of Haryana, J.S.Yadav v. State of U.P., B.P. Singhal v. Union of India[37], Vipulbhai Mansingbhai Chaudhary v. State of Gujarat[38], S. Timmaiah v. State of Andhra Pradesh[39], P.Venugopal v. Union of India, D.S. Reddy v. Chancellor, Osmania University, M. Thirupathi Rao v. State of Telangana[40], State of Assam v. Akshaya Kumar Deb[41], S.R. Balasubramaniyan v. State of Tamilnadu[42], K. Nagaraj v. State of Andhra Pradesh[43], T.N. Seshan v. Union of India, Commissioner of Income Tax v. Vatika Township (P) Ltd.[44], State of M.P. v. Shardul Singh, Manoj Narula v. Union of India[45], Mohinder Singh Gill v. The Chief Election Commissioner, Rohtas Industries v. S.D. Agarwal[46], R.K. Garg v. Union of India[47],

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[35] (2018) 9 SCC 1

[36] AIR 1959 SC 713

[37] (2010) 6 SCC 331

[38] (2017) 13 SCC 51

[39] AIR 2015 AP 78

[40] 2015 (2) ALD 373

[41] 1975 (4) SCC 339

[42] 2006 (3) CTC 129

[43] AIR 1985 SC 551

[44] (2015) 1 SCC 1

[45] (2014) 9 SCC 1

[46] (1969) 1 SCC 325

[47] (1981) 4 SCC 675

C. Ravichandran Iyer v. Justice A.M. Bhattacharjee[48], **N. Kannadasan v. Ajoy Khose**[49], **K.P. Manu v. Chairman, Scrutiny Committee for Verification of Community Certificate**[50], **Bondu Ramaswamy v. Bangalore Development Authority**[51] and **M. Nagaraj v. Union of India**[52].

CONTENTIONS OF THE RESPONDENTS:

64. The learned Advocate General representing the State Government has argued with vehemence and submitted that the State Government is having legislative competence to bring the Ordinance in question on this subject including the conditions for pre-appointment. It is further urged that the Ordinance in question brought by the Government complied all the requirements regarding satisfaction on the relevant material and it has not been brought with oblique intention. In fact, the said legislation was brought by way of electoral reforms in furtherance to the previous Ordinance bearing No.2 of 2020 of the State legislature bringing stringent provisions against the contestants of the elections. It is further contended that as per Clause (2) of Article 243K of the

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[48] (1995) 5 SCC 457

[49] (2009) 7 SCC 1

[50] (2015) 4 SCC 1

[51] (2010) 7 SCC 129

[52] (2006) 8 SCC 212

Constitution, tenure is not a part of conditions of service and it is independent, therefore, the State is not powerless to bring law in view of the language used in the Clause, more particularly, the words 'any law' in Article 243K of the Constitution. Thus, the provision, which has been brought in the Ordinance, is not restricted by the legislation.

65. In relation to the argument of single member legislation by adding Sub-section (5) to Section 200 of the APPR Act in the impugned ordinance, it is urged that the argument is not in a right perspective, in fact, it is a consequential effect of the legislation, which has been enumerated therein. However, it is constitutionally valid on commencement of the ordinance in question.

66. It is further contended that the argument as advanced regarding non-availability of any material to bring the ordinance in question is without any basis, and it has not been demonstrated bringing relevant material for the satisfaction of the Court. It is further stated that in the judgment of **D.S. Reddy v. Chancellor Osmania University** and **J.S. Yadav V. State of Uttar Pradesh**, the word '*tenure*' has not been used, in fact, in those cases, it is used as *'term of office'*. Therefore, those judgments have no application to the facts of the case. Placing heavy reliance on the judgments in the cases of **R.K. Garg v. Union of India, A.K. Roy v. Union of India, K. Nagaraj v. State of Andhra**

Pradesh, T. Venkata Reddy v. State of Andhra Pradesh[53], Krishna Kumar Singh v. State of Bihar, Dharam Dutt v. Union of India[54], it is urged that in a case where the ordinance in question has been brought by the legislature, approved by the Governor in exercise of power under Article 213 of the Constitution, interference is not warranted.

67. Lastly, it is urged that the petitions filed by the petitioners in the shape of Public Interest Litigation challenging the Ordinance in question and the consequential notifications are not maintainable, in particular, when the aggrieved person himself has filed a writ petition. **S.P. Gupta v. Union of India[55], Krishna Swami v. Union of India[56], Jayanthipuram Gram Panchayat v. The District Panchayat Officer, Krishna at Machilipatnam[57], Malik Brothers v. Narendra Dadhich[58], Asian Paints India Limited v. Additional Commissioner (Finance)[59], Villianur Iyarkkai Padukappu Maiyam v. Union of India[60], State of**

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[53] (1985) 3 SCC 198

[54] (2004) 1 SCC 712

[55] 1981 Supp SCC 87

[56] (1992) 4 SCC 605

[57] (1994) 2 ALT 727

[58] (1999) 6 SCC 552

[59] 2001 (1) ALD 117

[60] (2009) 7 SCC 561

Uttaranchal v. Balwant Singh Chaufal[61]**, Balco Employees Union v. Union of India**[62]**, Gurpal Singh v. State of Punjab**[63].

68. Sri S. Satyanarayana Prasad, learned Senior Counsel representing the incumbent SEC, i.e., **Mr.B**, has strenuously urged that looking to the averments so made in any of the writ petitions, nothing adverse has been stated regarding competence of the office functioning. It is further stated that he adopts the arguments of the learned Advocate General with respect to promulgation of the ordinance in question. It is contended that **Mr.B** has been appointed by the Governor in exercise of the power conferred under Section 200 of the APPR Act to discharge the functions of the State Election Commission, being uninfluenced by any of the political parties, looking to the fact that he has held the post of Judge of the High Court of Madras and is not connected with any of the persons in the State of Andhra Pradesh. However, on these aspects, his appointment cannot be questioned by the petitioners. He placed reliance on the judgment of **K. Nagaraj v. State of Andhra Pradesh** and other cases.

69. Sri C.V. Mohan Reddy, learned Senior Counsel representing the State Election Commission, has not advanced oral arguments but filed written arguments, requesting to treat as his arguments in

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[61] (2010) 3 SCC 402

[62] (2002) 2 SCC 333

[63] (2005) 5 SCC 136

the petitions, and urged that Section 200 of the APPR Act was enacted pursuant to the mandate contained in Article 243K of the Constitution regarding superintendence of the elections to the local bodies/panchayats. It is contended that Section 200 of the APPR Act confers power on the Governor to appoint a person, who is holding an office of such rank not less than that of Principal Secretary to Government, however, the said appointment was made. Now recently, an Ordinance has been brought, to which the argument advanced by the Advocate General is accepted by and cover all his contentions. It is stated that the qualification *'not less than the rank of Principal Secretary to the Government'*, has been replaced by that of **'***who has held an office of a Judge of a High Court'*. The insertion of the said provision is any way not arbitrary and within the competence of the power conferred to the Council of Ministers headed by the Chief Minister. In this regard, he placed reliance on the judgment of Hon'ble the Supreme Court in **Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly***.* Justifying the power of the Governor to promulgate the ordinance under Article 213 of the Constitution and relying upon the judgments of Hon'ble the Supreme Court in **R.K. Garg v. Union of India** and **A.K. Roy v. Union of India,** it is urged that the power has rightly been exercised. Further, explaining the doctrine of colourable legislation/fraud on power, reliance has been placed on the

judgments in **K.C. Gajapathi Narayan Deo v. State of Orissa, Board of Trustees, Ayurvedic and Unani Tibia College v. State of Delhi**[64]**, R.S. Joshi, STO v. Ajit Mills Ltd.**[65]**, Welfare Association, A.R.P. v. Ranjit P.Gohil**[66]**, Dharam Dutt v. Union of India, State of Kerala v. Peoples Union for Civil Liberties**[67] and **Krishna Kumar Singh V. State of Bihar.** He also relied upon the judgments of Hon'ble the Supreme Court in **Union of India v. Kannadapara Sanghatanegala**[68]**, Delhi Science Forum v. Union of India**[69]

70. Discarding the contention of single member legislation and explaining the conditions of service and tenure as distinct, it is urged that the ordinance has rightly been passed. In support of this contention, reliance has been placed on the judgments of Hon'ble the Supreme Court in **Shri Ram Krishna Dalmia v. Sri Justice S.R. Tendolkar**[70]**, S.S. Dhanoa v. Union of India**[71]**, B.R. Enterprises v. State of U.P.**[72]**, DLF Qutab Enclave Complex Educational Charitable Trust v. State of**

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[64] AIR 1962 SC 458

[65] (1977) 4 SCC 98

[66] (2003) 9 SCC 358

[67] (2009) 8 SCC 46

[68] (2002) 10 SCC 226

[69] (1996) 2 SCC 405

[70] AIR 1958 SC 538

[71] AIR 1991 SC 1745

[72] AIR 1999 SC 1867

Haryana[73], The Member, Board of Revenue V. Arthur Paul Benthall[74], Shri Ishar Alloy Steels Ltd. v. Jayaswals NECO Ltd.[75], State of Himachal Pradesh v. Kailash Chand Mahajan[76], T.N. Seshan v. Union of India and **Ishwar Nagar Cooperative Housing Building Society v. Parma Nand Sharma[77].** It is further explained that cessation of service is different from removal of service. Explaining the maxim *'Expresso Unius Est Exclusio Alterius'*, it is stated that when one thing has been specified, it expressly exclude the other. It is also explained that the ordinance acts retrospectively and not prospective in nature. Reliance has been placed on the judgments in **Life Cell International (p) Ltd. v. U.O.I[78], Shanti Conductors (P) Ltd. v. Assam State Electricity Board[79], State Bank's Staff Union (Madras Circle) v. Union of India[80]** and **Virender Singh Hooda v. State of Haryana[81].**

71. Lastly, referring to the provisions of the General Clauses Act, it is stated that under the General Clauses Act, **Mr.A**'s continuation in office is not saved on account of bringing the enactment. In

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[73] (2003) 5 SCC 622

[74] AIR 1956 SC 35

[75] (2001) 3 SCC 609

[76] AIR 1992 SC 1277

[77] (2010) 14 SCC 230

[78] 2015 SCC Online Madras 8289

[79] 2019 SCC Online SC 68

[80] (2005) 7 SCC 584

[81] (2004) 12 SCC 588

conclusion, it is urged that the Court should not interfere with the policy decision of the State. Reliance has also been placed on the judgments in **State of Punjab v. Harnek Singh**[82] and **Commissioner of Customs v. Dilip Kumar & Co.**[83], **State of Punjab v. Mohar Singh**[84].

72. In support of the other aspects contended, the respondents further placed reliance on the following judgments: **Aparmita Prasad Singh v. State of U.P.**[85], **S. Fakruddin v. Government of Andhra Pradesh**[86], **Channala Ramachandra Rao v. State of Andhra Pradesh**[87], **Prakasam District Sarpanchas Association v. Government of Andhra Pradesh**[88], **Harbhajan Singh v. Press Council of India**[89], **Krishna Kumar Singh v. State of Bihar, Union of India v. Brigadier P.S. Gill**[90], **Shilpa Mittal v. State (NCT of Delhi)**[91], **Samsher Singh v. State of Punjab, State of U.P. v. Pradhan Sangh Kshettra Samiti**[92], **Shrimati Tarulata Shyam v. CIT**[93], **State of Tamilnadu v.**

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[82] (2002) 3 SCC 481

[83] (2018) 9 SCC 1

[84] AIR 1955 SC 84

[85] 2008 (26) LCD 340

[86] AIR 1996 AP 37

[87] 2000 (2) ALD 652

[88] 2001 (1) ALD 143

[89] (2002) 3 SCC 722

[90] (2012) 4 SCC 463

[91] (2020) 2 SCC 787

[92] AIR 1995 SC 1512

[93] (1977) 3 SCC 305

K. Shyam Sunder[94], Transport Corporation of India v. ESI Corporation[95], State of Assam v. Union of India[96], M. Venkataramana Hebbar v. M. Rajagopal Hebbar[97], Whirlpool of India Limited v. Union of India[98], J.K. Jute Mills Co. Ltd. V. State of U.P.[99], Bansidhar v. State of Rajasthan[100], Shree Bhagwati Steel Rolling Mills v. CCE[101], Goa Glass Fibre Limited v. State Goa[102], Bharat Hydro Power Corporation Ltd. v. State of Assam[103], Bharat Singh v. State of Haryana[104] , State of Bihar v. Kamlesh Jain[105], Nandjee Singh v. P.G. Medical Students' Association[106], Kalawati Devi Harlalka v. CIT[107], Sagar Pandurang Dhundare v. Keshav Aaba Patil[108], Gaurav Aseem Avtej v. U.P. State Sugar Corporation Limited[109], Union of India v.

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[94] (2011) 8 SCC 737

[95] (2000) 1 SCC 332

[96] (2010) 10 SCC 408

[97] (2007) 6 SCC 401

[98] ILR (2013) III Delhi 2183

[99] AIR 1961 SC 1534

[100] (1989) 2 SCC 557

[101] (2016) 3 SCC 643

[102] (2010) 6 SCC 499

[103] (2004) 2 SCC 553

[104] AIR 1988 SC 2181

[105] 1993 Supp (2) SCC 300

[106] (1993) 3 SCC 400

[107] AIR 1968 SC 162

[108] (2018) 1 SCC 340

[109] (2018) 6 SCC 518

A.K. Behl, AVSM, PHS[110], Prof. V.S.S. Sastry v. Ministry of Human Resource Development, Government of India[111], DMRC v. Tarun Pal Singh[112] , Mukund Dewangan v. Oriental Insurance Co. Ltd.[113], Eera v. State (NCT of Delhi)[114], Ahmedabad Municipal Corporation v. GTL Infrastructure Ltd.[115], Sher Singh v. State of Haryana[116], Roxann Sharma v. Arun Sharma[117], Rohitash Kumar v. Om Prakash Sharma[118], Prafull Goradia v. Union of India[119], Ujagar Prints v. Union of India[120], Kasturi Lal Harlal v. State of U.P.[121], Rangareddy District Sarpanches' Association v. Government of Andhra Pradesh[122], Union of India v. Shiv Dayal Soin & Sons (P) Ltd.[123], State of Bombay v. Ali Gulshan[124], Pandraki Parvathi v. Akula Gangaraju[125],

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[110] (2015) 9 SCC 256

[111] 2008 SCC Online AP 128

[112] (2018) 14 SCC 161

[113] (2017) 14 SCC 663

[114] (2017) 15 SCC 133

[115] (2017) 3 SCC 545

[116] (2015) 3 SCC 724

[117] (2015) 8 SCC 318

[118] (2013) 11 SCC 451

[119] (2011) 2 SCC 568

[120] (1989) 3 SCC 488

[121] (1986) 4 SCC 704

[122] 2004 (2) ALD 1

[123] (2003) 4 SCC 695

[124] AIR 1955 SC 810

[125] 2004 (2) ALD 261

Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta[126].

73. The implead petitioners/proposed respondents have also filed their written arguments adopting the arguments advanced by the learned Advocate General and submitted that the ordinance in question has rightly been brought by the State Legislation in exercise of their power in the context of determination of terms and conditions of the employment of the State Election Commissioner including pre-requisite for such appointment. In consequence of bringing the legislation, which is accepted by the Governor, in exercise of power under Article 213 of the Constitution, passing the consequential G.Os is within the competence of the State Government. Therefore, interference in the aspects is not warranted.

REPLY ARGUMENTS ON BEHALF OF THE PETITIONERS **:**

74. In order to rebut the contention regarding the maintainability, the learned Counsel for the petitioners have placed reliance on the judgments **Central Electricity Supply Utility of Odisha v. Dhobei Sahoo[127], State of Punjab v. Salil Sabhlok[128], Hari Bansh Lal v. Sahodar Prasad Mahto[129],**

[126] 2019 SCC Online SC 1478

[127] (2014) 1 SCC 161

[128] (2013) 5 SCC 1

[129] (2010) 9 SCC 655

State of Uttaranchal v. Balwant Singh Chaufal, **Centre for PIL v. Union of India**[130], **Guruvayoor Devaswom Managing Committee v. C.K. Rajan**[131] and **S.P. Gupta v. Union of India** *inter alia,* contending that the ordinance brought by the State Legislation, to which they do not have competence and power, with oblique intention especially during the tenure of lock down in which all the State Governments in India are busy to cope up the situation of pandemic COVID-19, can only be termed as illegal legislation only to single out the SEC to which they do not have any power, therefore, such legislation can be challenged by filing a public interest litigation by a common man to invoke jurisdiction of this Court.

75. It is further stated that the defence so taken by the respondents to bring the impugned Ordinance towards electoral reforms is baseless, in particular, for the purpose of electoral reforms. The Task Force Committee has prepared the guidelines on which objections have been invited from the State Government. Those recommendations have been accepted by the State Government regarding tenure of the SEC and the age. The appointment of **Mr.B** made by the State Government at the age of 77 years i.e., after 15 years of his retirement itself is illegal and biased and it is to bring a person of their choice to conduct election

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[130] (2011) 4 SCC 1

[131] (2003) 7 SCC 546

in the circumstances, without following the procedure. Therefore, the legislation so brought and the consequential notifications deserve to be set aside.

76. After hearing the learned Counsel representing the respective parties on both sides, it is seen from the record that the appointment of **Mr.A** as SEC *vide* notification dated 30.01.2016 has been ordered to be ceased on account of issuance of impugned ordinance and by the consequential notifications simultaneously **Mr.B** has been appointed as SEC by the Governor. Therefore, considering the arguments so advanced by the Counsel representing the parties, in our considered opinion, following questions arises for consideration:

1) **What are the Constitutional provisions governing the appointment of the SEC in contra-distinction to the provisions governing appointment of the CEC; and whether the expressions 'Conditions of service' and 'Tenure of office' specified in Article 243K(2) of the Constitution include 'Appointment'?**

2) **What is the statutory friction with respect to SEC in the APPR Act, the Andhra Pradesh Municipalities Act, 1965 (for short, 'the APMC Act') and the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'the GHMC Act')?**

3) Whether the power exercised by the Council of Ministers extending aid and advice to the Governor in promulgation of Ordinance prescribing pre-qualification and manner of appointment of SEC constitute fraud; and the State Legislature is having competence to make any law in this regard?

4) Whether in the facts of the case, any circumstances exist for satisfaction of the Governor, to take immediate action to promulgate the impugned Ordinance and issuance of consequential notifications, or is it actuated by oblique reasons and on extraneous grounds?

5) Whether the term 'ceased to hold office' as per Sub-section (5) of Section 200 of the APPR Act in the Ordinance may lead to removal of Mr.A, SEC, and is it permissible ignoring immunity prescribed under the Constitution?

6) Whether the appointment of Mr.A made for a tenure of five years as SEC, may confer any vested right to continue him upto such term amidst promulgation of the impugned Ordinance?

7) Whether the petitioners in the PILs and the other writ petitions have locus standi to maintain the petitions challenging the impugned Ordinance and consequential notifications along with the writ petition filed by the aggrieved person?

77. Prior to adverting the said questions individually, it is necessary to refer the relevant notifications regarding appointment of **Mr.A**, vide G.O.Ms.No.11, dated 30.01.2016, the impugned Ordinance No.5 of 2020, dated 10.04.2020, G.O.Ms.Nos.617, dated 10.04.2020, consequential notification G.O.Ms.No.618, dated 10.04.2020 ceasing the tenure of office of **Mr.A** and other consequential notification G.O.Ms.No.619, dated 11.04.2020 appointing **Mr.B** as SEC, which are traced hereunder.

78. **Mr.A** was appointed as SEC vide notification of State of Andhra Pradesh dated 30.1.2016, which is reproduced as Image - 1:

IMAGE - 1

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Andhra Pradesh State Election Commission – Appointment of Dr.N.Ramesh Kumar, IAS, as State Election Commissioner- Orders – Issued.

PANCHAYAT RAJ AND RURAL DEVELOPMENT (Elections.) DEPARTMENT

G.O.MS.No.11 Dt. 30. 01. 2016
Read :

G.O.Ms.No. 10, PR &RD (Elections.) Dept., dt.30.01.2016.

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NOTIFICATION

In exercise of the powers conferred on me under Article 243 K of the Constitution of India read with Sub-Section (2) of Section 200 of the Andhra Pradesh Panchayat Raj Act, 1994, I, E.S.L.Narasimhan, Governor of Andhra Pradesh hereby appoint Dr.N.Ramesh Kumar, IAS, as State Election Commissioner for a period of five years from the date of assumption of office.

E.S.L.Narasimhan,
Governor of Andhra Pradesh.

79. On perusal of the above, it is clear that appointment of **Mr.A** was in exercise of the power under Article 243K read with Section 200(2) of APPR Act. Undisputedly, he has assumed charge on

01.04.2016. As per the said notification, his tenure comes to an end by 31.03.2021 on completion of period of five years from the date of assumption of the office.

80. The Ordinance No.5 of 2020 which is in question was promulgated on 10.04.2020, which is reproduced as Image – 2 :

IMAGE – 2

ANDHRA PRADESH ORDINANCE NO. 5 OF 2020

Promulgated by the Governor in the Seventy First year of the Republic of India.

AN ORDINANCE FURTHER TO AMEND THE ANDHRA PRADESH PANCHAYAT RAJ ACT, 1994.

Whereas, the Legislature of the State is not now in session and the Governor of Andhra Pradesh is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor hereby promulgates the following Ordinance:-

Short title and commencement

1. (1) This Ordinance may be called the Andhra Pradesh Panchayat Raj (Second Amendment) Ordinance, 2020.

(2) It shall come into force at once.

Substitution of section 200.

Act No. 13 of 1994.

2. In the Andhra Pradesh Panchayat Raj Act, 1994 in Part - V, in Chapter-I for section 200 along with marginal heading, the following shall be substituted, namely,-

Constitution of Andhra Pradesh State Election Commission for Local Bodies

200. (1) There shall be constituted a State Election Commission for the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of elections to, all the Panchayat Raj Institutions governed by this Act.

(2) The said State Election Commission for Local Bodies shall consist of a State Election Commissioner. The Governor on the recommendation of the Government shall appoint a person, who has held an office of the Judge of a High Court, as State Election Commissioner.

(3) State Election Commissioner shall hold office for a term of three (3) years and shall be entitled to be considered for re-appointment for another term of three (3) years.

Provided that no person shall hold the office of State Election Commissioner for more than (6) years in the aggregate.

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

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

(5) On and with effect from the date of coming into force of this Ordinance, any person appointed as State Election Commissioner and holding office as such shall cease to hold office.

BISWABHUSAN HARICHANDAN,
Governor of Andhra Pradesh.

81. On perusal of the aforesaid, it is clear that the Governor in exercise of power under Article 213(1) of the Constitution brought the Ordinance making amendment in Sub-sections (2), (3) and (5) of Section 200 of the APPR Act, the details of which are referred herein while dealing with the arguments to the context in issue.

82. G.O.Ms.No.617 has been issued by the State Government introducing new Rules known as Andhra Pradesh Panchayat Raj (Salaries and Allowances, Conditions of Service and Tenure of State Election Commissioner) Rules, 2020. These Rules have replaced the previous Rules known as 'the Old Rules, 1994'. The said Rules are reproduced as Image - 3 :

IMAGE – 3

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

RULES – Andhra Pradesh State Election Commission– Andhra Pradesh Panchayat Raj (Salaries and Allowances, Conditions of Service and tenure of State ElectionCommissioner) Rules 2020 – Notification - Issued.

PANCHAYAT RAJ AND RURAL DEVELOPMENT (E&R) DEPARTMENT

GO.Ms.No.617 **Dated:10.04.2020**

Read the following:-

1. GO.Ms.No.540, GA (Genl.C) Department, dated 01-11-1994
2. GO.Ms.No.927, Panchayat Raj, Rural Development & Relief (Elec.III) Dept., dated. 30.12.1994
3. GO.Ms.No.91, Panchayat Raj and Rural Development (Elections)Department, dated 15.3.2000.
4. Andhra Pradesh Ordinance No.5 of 2020 Dated: 10.04.2020.

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ORDER:-

The following Notification shall be published in the Extra-Ordinary issue of Andhra Pradesh Gazette:-

NOTIFICATION

In exercise of the Powers conferred by Section 200 of Andhra Pradesh Panchayat Raj Act, 1994 (Act.No.13 of 1994) and in supersession of all previous rules and orders issued on the subject, the Governor of Andhra Pradesh hereby makes the following rules namely:-

1. **Short title and Commencement:** These rules may be called the Andhra Pradesh Panchayat Raj (Salaries and Allowances, Conditions of service and tenure of State Election Commissioner) Rules 2020, and these rules shall come into force with immediate effect.
2. **Definitions**: In these rules, unless the context otherwise requires:
   1. "Act" means the Andhra Pradesh Panchayat Raj Act, 1994".
   2. "Government" means the Government of Andhra Pradesh.
   3. "Commission" means the State Election Commission constituted under section 200 of the Act.
   4. "Commissioner" means the State Election Commissioner appointed by the Governor under Section 200 of the Act.
   5. The words and expression used but not defined in these rules shall have to be the same meaning as assigned to them in the Andhra Pradesh Panchayat Raj Act, 1994.
3. **Appointment:** State Election Commissioner shall be appointed by the Governor, on the recommendation of the State Government.
4. **Eligibility:** A person who has held an office of the Judge of a High Court shall be eligible for the appointment as State Election Commissioner.
5. **Tenure of Office**:
   1. State Election Commissioner shall hold office for a term of three (3) years

      Provided that the incumbent State Election Commissioner shall also be entitled to be considered for re-appointment to another term of three (3) years.

      Provided further that no person shall hold the office of State Election Commissioner for more than six (6) years in the aggregate.
   2. On and with effect from the date of coming into force of the Ordinance mentioned in the reference 4th read above, any person appointed as State Election Commissioner and holding the office as such shall cease to hold office.
6. **Status:** The State Election Commissioner will be a full time Officer and will have the status of a Judge of the High Court.
7. **Emoluments and Pension payable**: The State Election Commissioner shall be entitled to pay and allowances, pension and perks and facilities to which a High Court judge is entitled under the High Court Judges (Conditions of service) Act, 1954 (Central Act 28 of 1954) and the rules made there under, as amended, and any orders issued in pursuance thereto either by the State Government or the Central Government, from time to time.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

GOPAL KRISHNA DWIVEDI
PRINCIPAL SECRETARY TO GOVERNMENT

83. The Government of A.P. has further issued notification bearing G.O.Ms.No.618, dated 10.04.2020, which is reproduced as

Image - 4:

IMAGE – 4

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

PR&RD Dept – Dr. N. Ramesh Kumar, IAS(Retd), State Election Commissioner, A.P.State Election Commission – Cessation of Tenure due to promulgation of Ordinance No. 5 of 2020, dated:10.04.2020 – Notification – Issued.

PANCHAYAT RAJ AND RURAL DEVELOPMENT (E&R) DEPARTMENT

G.O.Ms.No.618 **Dated: 10.04.2020**

Read the following:-

1. G.O.Ms.No.11, PR&RD(Elections) Department dt. 30-01-2016.
2. A.P. Ordinance No. 05 of 2020, Dated.10-04-2020.
3. G.O.Ms.No.617 PR&RD(E&R) Department, dated.10-04-2020.

-ooo-

NOTIFICATION

In pursuance of promulgation of Ordinance No.5 of 2020 dated:10.04.2020, Dr. N. Ramesh Kumar, IAS (Retd), the incumbent State Election Commissioner ceases to hold the office of State Election Commissioner on and with effect from 10.04.2020.

GOPAL KRISHNA DWIVEDI
PRINCIPAL SECRETARY TO GOVERNMENT

84. On perusal of the aforesaid, it reveals that the Government in consequence of promulgation of Ordinance 5 of 2020, directed **Mr.A** to cease to hold the office of SEC with effect from 10.4.2020. The said Notification is signed by the Secretary of the Panchayat Raj & Rural Development of the State Government, not by the Governor of the State who appointed him.

85. The Government has also issued G.O.Ms.No.619, dated 11.04.2020, which is reproduced as Image - 5:

IMAGE – 5

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

PR&RD Dept. – Sri Justice V.Kanagaraj, Retired High Court Judge, appointed as State Election Commissioner of A.P State Election Commission - Notification – Issued.

PANCHAYAT RAJ AND RURAL DEVELOPMENT(E&R) DEPARTMENT

G.O.Ms.No.619. Dated: 11-04-2020
Read the following:-

1. A.P.Ordinance No. 5 of 2020, Dated: 10-04-2020.
2. G.O.Ms.No. 617, PR&RD(E&R) Department, dt.10-04-2020.
3. G.O.Ms.No. 618, PR&RD(E&R) Department, dt. 10-04-2020.

-ooo-

NOTIFICATION

In terms of Ordinance No. 5 of 2020, dated.10-04-2020, and consequent on cessation of tenure of the incumbent State Election Commissioner, and in terms of amended Section 200 of the Andhra Pradesh Panchayat Raj Act, 1994, I, Biswa Bhusan Harichandan, Governor of Andhra Pradesh hereby appoint Sri Justice V.Kanagaraj, Retired High Court Judge, as the State Election Commissioner for a tenure of three years from the date of assumption of office.

BISWA BHUSAN HARICHANDAN
GOVERNOR OF ANDHRA PRADESH

86. On perusal, it is clear that on account of cessation of the tenure of **Mr.A** as SEC and in terms of amendment in Section 200 of APPR Act, the Governor has appointed **Mr.B** as SEC for a tenure of three years from the date of assumption of office. It is clear that the notification has been issued on account of amendment to Section 200 of APPR Act under the impugned Ordinance but not in exercise of the power under Section 243K (1) of the Constitution.

The afore-traced notifications are relevant for adjudication of the issues involved in the present case.

SCOPE OF JUDICIAL REVIEW:

87. In the present case, the impugned Ordinance promulgated by the Governor, making amendment in Section 200 of the APPR Act, and the consequential notifications, replacing the Old Rules, 1994 with the New Rules, 2020, ceasing **Mr.A** to hold the office of the SEC and appointing **Mr.B** as new SEC, are under challenge. In the said subject matter, the primary concern of this Court is, what is the scope of judicial review in exercise of the power under Article 226 of the Constitution.

88. Learned counsel for the respondents contended that in the facts of the case, there is no scope of judicial review to this Court, while learned counsel representing the petitioners contended that it is a case in which the scope of judicial review is open to the Court and the impugned Ordinance and other proceedings are not immune to judicial review.

89. In support of the contentions, learned counsel for petitioners relied on the judgment of **R.C. Cooper** (supra) in which the Apex Court while examining the constitutionality of the Banking Companies (Acquisition of Undertakings) Ordinance, 1969 which sought to nationalise 14 India's largest commercial banks, held that the President's decision could be challenged on the grounds that 'immediate action' was not required; and the Ordinance had been

passed primarily to by-pass debate and discussion in the legislature. Then inserted a new Clause (4) in Article 123 of the Constitution stating that the President's satisfaction while promulgating an Ordinance was final and could not be questioned in any court on any ground and deleted Clause (4) inserted by the 38th Constitution Amendment Act and therefore, reopened the possibility for the judicial review of the President's decision to promulgate an Ordinance.

90. In the case of **A.K. Roy** (supra), while examining the constitutionality of the National Security Ordinance, 1980, which sought to provide for preventive detention in certain cases, the Apex Court concluded that the Ordinance making power of the President is not beyond the scope of judicial review.

91. Learned counsel for petitioners also relied on a Nine-Judge Bench judgment of Hon'ble the Supreme Court in **Indra Sawhney** (supra). In the said case dealing with the issue of scope of judicial review, the Court held that there is no particular or special standard of judicial scrutiny available, it is based on the fact situation of the individual case. The political executive decisions including policy decisions, which do not fall in constitutional parameters, are well within the scope of judicial review. The administrative review periodically done by experts is also subject to judicial review. In the context of the facts of the said case, it was

held that applying wrong criterion, wrong inclusion or exclusion of classes and disproportionate or unreasonable percentage of reservation may fall within the scope of judicial review.

92. Further, in the case of **S.R.Bommai** (supra), relied on by the learned counsel for the petitioners, the Nine-Judge Bench of Hon'ble the Supreme Court, in para 374, has observed as thus :

> "....In other words, the truth or correctness of the material cannot be questioned by the court nor will it go into the adequacy of the material. It will also not substitute its opinion for that of the President. Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action. The ground of mala fides takes in inter alia situations where the Proclamation is found to be a clear case of abuse of power, or what is sometimes called fraud on power - cases where this power is invoked for achieving oblique ends. This is indeed merely an elaboration of the said ground...."

In the case of **M.Nagaraj** (supra), relied on by the learned counsel for the petitioners, a Five-Judge Bench of Hon'ble the Supreme Court has clarified that basic structure of the Constitution, or any systematic principles underlying and connecting the provisions of the Constitution are affected, the scope of judicial review is available.

93. Learned counsel for the petitioners have also relied on a Division Bench judgment of Hon'ble the Supreme Court in **N.Kannadasan** (supra), wherein it was said that the eligibility criteria for appointment of the Chairman of a Commission may fall within the purview of the scope of judicial review. Further, in the case of **Centre for PIL** (supra), relied on by the learned counsel for the petitioners, Hon'ble the Apex Court has made a distinction between judicial review and merit review and while dealing with the same in a case where the integrity of the decision-making process in the matter of appointment of Central Vigilance Commissioner has been questioned, the Court said scope of judicial review is not immune.

94. Learned counsel for the respondents relied on a Constitutional Bench judgment of Hon'ble the Supreme Court in **Nabam Rebia and Bamang Felix** (supra) so far the issue of scope of judicial review is concerned. Even as per the said judgment, Hon'ble the Supreme Court said that if the Governor transgresses his constitutional authority, the scope of judicial review is permissible in the context of transaction of Business Rules.

95. The Constitutional Bench of the Hon'ble Apex Court consisting of seven Judges in a celebrated judgment of **Krishna Kumar Singh** (supra) has reaffirmed the judgment of

Nabam Rebia (supra). The Apex Court held that the question whether the satisfaction to promulgate Ordinance was based on relevant material or spurred by an oblique motive to by-pass the legislature in order to promulgate the Ordinance, can be scrutinized by the Court and concluded that if the President or the Governor was influenced by ulterior motive to promulgate the Ordinance, such an act by the two constitutional authorities would amount to fraud on their powers and observed as under:

> "The interference of the Court can arise in a case involving a fraud on power or an abuse of power. This essentially involves a situation where the power has been exercised to secure an oblique purpose. In exercising the power of judicial review, the court must be mindful both of its inherent limitations as well as of the entrustment of the power to the head of the executive who acts on the aid and advice of the Council of Ministers owing collective responsibility to the elected legislature. In other words, it is only where the court finds that the exercise of power is based on extraneous grounds and amounts to no satisfaction at all that the interference of the court may be warranted in a rare case."

The Court, while drawing the conclusions, in para 105.12 and 105.13, has held as thus:

> "105.12. The question as to whether rights, privileges, obligations and liabilities would survive an Ordinance which has ceased to operate must be determined as a

matter of construction. The appropriate test to be applied is the test of public interest and constitutional necessity. This would include the issue as to whether the consequences which have taken place under the Ordinance have assumed an irreversible character. In a suitable case, it would be open to the court to mould the relief.

105.13. The satisfaction of the President under Article 123 and of the Governor under Article 213 is not immune from judicial review particularly after the amendment brought about by the forty-fourth amendment to the Constitution by the deletion of clause 4 in both the articles. The test is whether the satisfaction is based on some relevant material. The court in the exercise of its power of judicial review will not determine the sufficiency or adequacy of the material. The court will scrutinize whether the satisfaction in a particular case constitutes a fraud on power or was actuated by an oblique motive. Judicial review in other words would enquire into whether there was no satisfaction at all."

96. Sri C.V.Mohan Reddy, learned Senior Counsel, also referred the judgments of Hon'ble the Supreme Court in **Delhi Science Forum** (supra) and **Kannadapara Sanghatanegala** (supra), in the written arguments filed by him, but they were not attached or produced for perusal. He further relied upon the judgment of Hon'ble the Apex Court in **Balco Employees Union** (supra), wherein the Court said that in a policy decision regarding economy

matters, the scope of judicial review is not available until it is contrary to the statutory or the Constitutional provisions. Even, as per this judgment, if the violation of the Constitutional provisions has been found, the scope of interference is permissible, in judicial review.

97. Learned counsel for the respondents have also relied upon the judgment of **Samsher Singh** (supra) on the point of judicial review, but this judgment was delivered on 23.08.1974 prior to amendment in Article 213 of the Constitution deleting Clause (4). Therefore, it is not required to be dealt with in detail. The judgment of Hon'ble the Supreme Court in **Pradhan Sangh Kshettra Samiti** (supra) is relied upon by the learned counsel for the respondents, but the said judgment is not on the scope of judicial review and only confined to the powers of the Governor; therefore, it is not relevant.

98. At this stage, learned counsel representing the parties have fairly conceded that as per the principles laid down in the judgment of **Krishna Kumar Singh** (supra), this Court is having scope of judicial review in the matter of promulgation of the impugned Ordinance. In addition to the aforesaid, the question of exercising the power by the Governor on having satisfaction in the circumstances exist, which render it necessary for him to take immediate action, has also been put into stack *inter alia* stating

that such urgent circumstances are not available in the facts of the present case to invoke such power by the Governor. Thus, on both the issues the scope of judicial review is open to the Court, and the decision of the Governor is not immune to judicial review.

99. In view of the above discussion, it can safely be held the scope of judicial review in exercise of the power under Article 226 of the Constitution is available to the Court on the subject matter in issue, and in the view of the recent judgment of **Krishna Kumar Singh** (supra).

QUESTION No.1: What are the Constitutional provisions governing the appointment of the SEC in contra-distinction to the provisions governing appointment of the CEC; and whether the expressions 'Conditions of service' and 'Tenure of office' specified in Article 243K(2) of the Constitution include 'Appointment'?

100. This question relates to the constitution and appointment of the SEC; however, it is necessary to elaborate the relevant provisions for appointment of CEC and SEC. While adopting the Constitution, with intent to conduct free and fair elections of the Parliament at Centre and the Legislative Assembly of every State and the office of the President and Vice-President, the framers of the Constitution found it necessary to constitute the Election Commission. Therefore, Article 324 of the Constitution is originally added specifying the power of superintendence, direction and

control of the said elections, vesting it in the Election Commission, headed by the Chief Election Commissioner and other Election Commissioners.

101. Part IX of the Constitution deals with 'the Panchayats'. It was brought by the Constitution (Seventy-second Amendment) Bill, 1991, and was enacted by the Constitution (Seventy-third Amendment) Act, 1992. In order to know why this amendment was necessary, it is relevant to refer the Statement of Objects and Reasons appended to the Constitution (Seventy-second Amendment) Bill, 1991, which is reproduced as thus:

STATEMENT OF OBJECTS AND REASONS

"Though the Panchayat Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersession, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

2. Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last

forty years and in view of the short-comings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them.

3. Accordingly, it is proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for Panchayats and holding elections within a period of 6 months in the event of supersession of any Panchayat; disqualifications for membership of Panchayats; devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic developments and social justice and for the implementation of development schemes; sound finance of the Panchayats by securing authorisation from State Legislatures for grants-in-aid to the Panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by, the Panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within

one year of the proposed amendment and thereafter every 5 years to review the financial position of Panchayats; auditing of accounts of the Panchayats; powers of State Legislatures to make provisions with respect to elections to Panchayats under the superintendence, direction and control of the chief electoral officer of the State; application of the provisions of the said Part to Union territories; excluding certain States and areas from the application of the provisions of the said Part; continuance of existing laws and Panchayats until one year from the commencement of the proposed amendment and barring interference by courts in electoral matters relating to Panchayats.

4. The Bill seeks to achieve the aforesaid objectives."

102. On perusal, it may be gathered that the Panchayat Raj institutions have been in existence for a long time, but even on lapse of 40 years of adoption of the Constitution after independence; regular elections, prolonged supersession, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources continue to exist. Thus, to overcome those shortcomings, the said Amendment, adding Part IX of the Constitution, was proposed, which came into effect from 24.04.1993.

103. Part IX of the Constitution deals with the provisions of Gram Sabha at the village level, including the Panchayats at village and other levels, composition of Panchayats, reservation of seats, duration of Panchayats, disqualification for membership, powers, authority and responsibilities of the Panchayats, powers to impose taxes by, and funds of, the Panchayats, constitution of Finance Commission to review financial position, audit of accounts of Panchayats and elections to the Panchayats.

104. Similarly, Part IXA of the Constitution was introduced by the Constitution (Seventy-fourth Amendment) Act, 1992, with effect from 01.06.1993, which deals with the 'Municipalities' and while enacting the same, altogether, similar provisions, as specified in Part IX referred above, have been brought with certain changes and made applicable to the Municipalities.

105. As per Article 324 of the Constitution, the Election Commission was specified for conducting elections to the Parliament, Legislative Assembly and to the offices of President and Vice-President, giving power to the Chief Election Commissioner, while in Part IX and IXA, the powers have been given to the State Election Commission for conducting elections to the Panchayats and Municipalities, under Articles 243K and 243ZA of the Constitution respectively, which shall be exercised by the SEC.

106. To understand the distinction and the manner in which the power of appointment and functioning of the CEC and SEC has been specified in the Constitution, it is essential to extract the said provisions to draw comparison between them, however, by way of chart, they are reproduced as under:

Article 324 **Superintendence, direction and control of elections to be vested in an Election Commission**	**Article 243K** **Elections to the Panchayats**	**Article 243ZA** **Elections to the Municipalities**
(1) The 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 this Constitution as the Election Commission). (2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President. (3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.	(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. (2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: **Provided** that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. (3) The Governor of a State shall, when so requested by the State Election	(1)The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in State Election Commission referred to in Article 243-K. (2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1). (5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine; Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment: Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner. (6) 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	Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1). (4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.	

discharge of the functions conferred on the Election Commission by clause (1).		

107. The comparison of the above provisions reflects that the Superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections in the matters of Parliament, Legislative Assembly, President and Vice-President, are vested with the Election Commission of India; while the same powers with respect to Panchayats and Municipalities are vested in the State Election Commission. In the case of Election Commission of India, it shall consist of Chief Election Commissioner and other Commissioners as the President may from time to time fix, but, in the latter case, it is a single-member Commission, run by SEC.

108. As per Clause (2) of Article 324 of the Constitution, power is conferred on the President of India to appoint the CEC, subject to the provisions of any law made in that behalf by the Parliament, but in case of appointment of a SEC, the said power is given to the Governor without specifying that such appointment would be subject to the provisions of any law made by either Parliament or State Legislature, meaning thereby the power of appointment of SEC is on the Governor and exercise of such power is as per his discretion and not under any law made in this behalf, akin to Article 324 of the Constitution.

109. Further, as per Clause (4) of Article 324 of the Constitution, at the time of elections in the Legislative Assemblies, the Regional Commissioners may be appointed by the President of India, after consultation with the Election Commission, to assist the Commission in performance of the functions conferred on the Election Commission for superintendence, direction and control of the preparation of the electoral rolls and for conduct of the elections in the States.

110. As per Article 243K(2) of the Constitution, the conditions of the service and tenure of the office of the SEC may be subject to the provisions of any law made by the Legislature of the State or otherwise shall be such as the Governor may by rule determine. A similar provision is made in Clause (5) of Article 324, replacing the word 'Legislature of a State' by 'Parliament'. Thus, it is clear that the powers have been given to the Parliament and State Legislature under Articles 324(5) and 243K(2) respectively for making any law regarding the conditions of service and tenure of the office or otherwise the President or the Governor may by rule determine.

111. On comparison, it is clear that the power of appointment of CEC given to the President, under Article 324(2), is subject to any law made by the Parliament in that behalf, but the power so given to the Governor to make appointment of SEC, under Article

243K(1), is at his discretion, not subject to any law made in that behalf by the State Legislature. Further, Clause (2) of Article 243K and Clause (5) of Article 324 provide for the conditions of service and tenure of the office of the SEC and CEC respectively. Therefore, it can safely be understood the power of appointment, as conferred under Article 324(2) to the President of India and Article 243K(1) to the Governor of the State, are to be exercised in different manner. But, for conditions of service and tenure, respective legislative body is having competence to make law, or otherwise it may be determined by the President or the Governor, as the case may be.

112. The aforesaid fact fortify from the Constituent Assembly Debates[132] made while bringing Article 324 of the Constitution. The said Debate was on corresponding Article 289 as it was in the draft Constitution. In debate, the motion was moved on the subject of appointment of CEC by the President of the Committee. On the said motion, Prof. Shibban Lal Saksena has proposed to move that the appointment of Election Commissioner should be subject to confirmation by 2/3rd majority in a joint session of both the Houses of Parliament. The said proposal was not found feasible on the pretext that the post of the CEC cannot be left vacant till availability of the Sessions of both the Houses, which may not be possibly in

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[132] Constituent Assembly Debates – Vol. VIII – Pg. 3879

motion at the required point of time. Simultaneously, the issue of majority may also be not possible to the extent of 2/3rd; therefore, it was not accepted. Thereafter, during the debate, the issue of establishment of Tribunal or One-man Commission was raised. A detailed debate was made on the issue, including the issue as to who may be a proper person to be appointed as the CEC. Pandit Hirday Nath Kunzru was not in favour of leaving the matter of appointment of CEC in the hands of the Hon'ble President of India on the ground that by giving such power, a room is being given to exercise the political influence in appointment of the CEC and other Election Commissioners. It is stated by him that if the CEC will have to be appointed on the advice of the Prime Minister and the Prime Minister suggests the appointment of a party man, the President will have no option but to accept the Prime Minister's nominee, however unsuitable he may be on public grounds. It is stated by him that the full responsible Government will prevail over at the Centre and the President cannot be expected to act in any matter at his discretion. He can only act on the advice of the Ministry and when, in matters of patronage, he receives the recommendations of the Prime Minister, he cannot, if he wants to act as a constitutional Head of Republic, refuse to accept them. However, for the said reasons, he suggested that the matter ought not to be left to the sweet will of the President, in reality the Prime Minister of the day, but should be determined by law.

113. Considering those objections, while answering Sub-clause (2) of Article 289, as it was in the draft Constitution, it was proposed as under:

> "The appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the Provisions of any law made in this behalf by Parliament, be made by the President."

However, the words *'to be appointed by the President'* were replaced with the words "provisions of any law made in that behalf by Parliament, the appointment be made by the President".

114. If the said analogy is taken, which was adopted at the time of appointment of the CEC and other Election Commissioners, then the intention of the framers of the Constitution was clear that the appointment of the CEC and Election Commissioners must be made by the President subject to the law made by the Parliament and not on the basis of the recommendation of the Prime Minister; thereby it should remain uninfluenced by the ideology or decision of the Government. However, the said amendment has been adopted for, and appointment of CEC is decided to be guided by the law made by the Parliament.

115. In the said context, on research, it is found that the Parliament has not made any law in that behalf and we have come across regarding pendency of Writ Petition (Civil).No.104 of 2015

before Hon'ble the Supreme Court. In the said case, it was apprised by the Solicitor-General that the Prime Minister is involved in the selection of Election Commissioner. It was stated before the Court that the successive Governments have failed to discharge their constitutional obligations to set up a fair, just and transparent process for appointment. It was also questioned that if the appointments were made by the President solely on the basis of advice given by political executives at Centre, it would give ample room to the ruling party to choose someone whose loyalty is ensured and render the selection process vulnerable to manipulations, which is violative of Article 14 of the Constitution. As per Order dated 23.10.2018, the said matter has been referred to the Constitutional Bench for hearing. The said case is still pending before Hon'ble the Supreme Court. Thus, at this time, we can observe, for appointment of CEC, no law is made by the Parliament and what may be a fair procedure of appointment is yet to be decided by Hon'ble the Supreme Court in the said writ petition.

116. On the said issue, the Report No.255 of the Law Commission of India, titled 'Electoral Reforms' is relevant. In Chapter VI of the said Report, at Clause 6.12.5, certain recommendations have been made prescribing the manner of appointment of CEC. The said recommendations are reproduced as under:

> **"2A. Appointment of Chief Election Commissioner and Election Commissioners :–**
>
> (1) The Election Commissioners, including the Chief Election Commissioners, shall be appointed by the President by warrant under his hand and seal after obtaining the recommendations of a Committee consisting of:
>
> (a) the Prime Minister of India – Chairperson,
> (b) the Leader of the Opposition in the House of the People –Member,
> (c) the Chief Justice of India – Member.
>
> *Provided* that after the Chief Election Commissioner ceases to hold office, the senior-most Election Commissioner shall be appointed as the Chief Election Commissioner, unless the Committee mentioned in sub-section (1) above, for reasons to be recorded in writing, finds such Election Commissioner to be unfit.
>
> *Explanation:* For the purposes of this sub-section, "the Leader of the Opposition in the House of the People" shall, when no such Leader has been so recognized, include the Leader of the single largest group in opposition of the Government in the House of the People."

117. Now coming to the appointment of the SEC, it is necessary to explain that while using the words and phraseology '*vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor'* in Article 243K of

the Constitution, the intention of the Constitution is very clear that the appointment of SEC shall be made as per discretion on the Governor.

118. Here, it is necessary to understand that under the Constitution, discretion has not been conferred to the President of India, but conferred so to the Governor. In this regard, the debate of the Constitutional Assembly[133] on Article 143, as it was proposed in the draft Constitution and now introduced as Article 163 of the Constitution, is relevant. In general debate, the issue arose as to why was it necessary to remind the Ministers of the powers of the Governor and his functions, by telling them that they shall not give any aid or advice insofar as, the Governor, is required to act in his discretion. It was also questioned that this issue is not required to be debated because Article 143 in the draft Constitution was dealing with the powers of the Chief Minister. The debate was on the words *'except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion'* in Article 143 are entirely unnecessary and should not be there and further that if the Governor is given the power to act in his discretion, there is no power on earth to prevent him from doing so. It was also opined that there may be dispute between the Ministers and the Governor about the competence of the Ministers

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to advise the Governor and the Governor's voice would prevail over and the voice of the Ministers would count for nothing. While replying the above objection of Pandit Hirday Nath Kunzru, Dr. B.R. Ambedkar stated as under:

> "It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my honourable Friend, Pandit Kunzru."

119. At that time, on raising a point by Mr. H.V.Kamath that there may not be any difference regarding powers of the President under Article 61(1) and 143 of the Draft Constitution, Dr. B.R. Ambedkar replied that they did not want to vest the President with any discretionary power though they wanted to vest such discretionary power with the Governor. Accordingly, Article 143, as it was then, which is now Article 163, was added in the Constitution.

120. In view of the aforesaid, it is apparent that the framers of the Constitution gave discretionary power to the Governor as specified in Article 163 of the Constitution but not given to the President of India. In the said context, Article 163 of the Constitution is relevant and reproduced as thus:

"Article 163: Council of Ministers to aid and advise Governor:

(1) There shall be a council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion;

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion;

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court."

121. On perusal of the aforesaid, it is clear that the Council of Ministers with the Chief Minister as the Head have to aid and advise the Governor in exercise of his functions, except in so far as he is by or under the Constitution, is required to exercise his functions or any of them in his discretion; meaning thereby, except to the functions to be discharged on aid and advise of the Council of Ministers, the Governor is conferred discretion and having right to exercise the discretion.

122. The conduct of the business of the Government may be possible as per Article 166 of the Constitution, as the Governor is the executive head to actions of the State, however it is also relevant and reproduced as thus:

> **"Article 166 : Conduct of business of the Government of a State :-**
>
> (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
>
> (2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
>
> (3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

123. For the purpose of the present case, emphasis is required to be supplied from Clause (3) of Article 166 of the Constitution. On perusal thereto, it is clear that for more convenient transaction of

the business of the Government of the State, to which he is the Head of the Executive, the Rules are required to be framed for allocation of such business among the Ministers. It is clarified that the matters in which the Governor is by or under the Constitution is required to act in his discretion, would not be covered by those Rules.

124. The Governor of the State of Andhra Pradesh, in exercise of the power under Clauses (2) and (3) of Article 166 of the Constitution, has formulated the Rules which are known as the Andhra Pradesh Government Business rules and Secretariat Instructions (in short *'the Business Rules'*). Part-I deals with 'Rules of Business' and Section-II thereof deals with the Procedure of the Council constituted under Article 163 of the Constitution. Clause 15 (1) of Section–II is relevant and is reproduced as thus:

> "15. (1) All cases referred to in the Second Schedule shall be brought up for consideration at a meeting of the Council:
>
> Provided that where the Secretary of the Department or the Minister in-charge feels that in view of the urgency a decision should be taken in a case either in circulation to all the Ministers, or by the Chief Minister, the connected file shall be circulated to the Chief Minister for a decision regarding the method to be adopted.

Provided further that where a decision is taken in a case without bringing up the matter at a meeting of the council, it shall be placed before the Council at its next meeting for ratification.

Provided also that in cases not falling under Second Schedule, if the Minister concerned considers the matter to be of great importance and requires approval of the Council, prior approval of the Chief Minister shall be taken for bringing it up at the meeting of the Council."

125. The Second Schedule refers to Rules 9 and 15, which is reproduced as under:

SECOND SCHEDULE

(See rules 9 and 15)

CASES TO BE BROUGHT BEFORE THE COUNCIL

1. Proposals for the appointment or removal of the Advocate-General.

2. Proposals to dissolve the Legislative Assembly of the State.

3. Decision on questions arising as to whether a Member of the Legislature of the State has become subject to any disqualification under Article 191 and any proposal to refer such questions for the opinion of the Election Commission; or to recover or to waive the recovery of the penalty due under Article 193.

4. The annual financial statements to be laid before the Legislature and demands for supplementary, additional or excess grants.

5. Proposals relating to rules to be made under Article 208, clause (3).

6. Proposals for the making of rules under Article 234 or amending them contrary to or otherwise different from the provisions in the rules contained in Part II of the Andhra Pradesh State and Subordinate Service Rules.

7. Proposals for the issue of a notification under Article 237.

8. Any proposal involving any action for the dismissal, removal or suspension of a Member of the Public Service Commission.

9. Any proposal involving any action for the dismissal, removal or suspension of the Andhra Pradesh Vigilance Commissioner.

10. Any proposal for legislation including the issue of an Ordinance under Article 213.

11. Cases in which the attitude of the Government to any resolution or a Bill to be moved in the Legislature is to be determined in important cases.

12. Proposals for the imposition of a new tax or any change in the method of assessment or the pitch of any existing tax or land revenue or irrigation rates or for the raising of loans on the security of the revenues of the State or for the giving of a guarantee by the State Government for amounts exceeding Rs.1,00,00,000.

13. Any proposal which affects the finances of the State which has not the consent of the Finance Minister.

14. Any proposal for re-appropriation to which the consent of the Finance Minister is required and has been withheld.

15. Proposals involving the alienation either temporary or permanent or of sale, grant or lease of Government property exceeding Rs.2,00,000 in value, except when such alienation, sale or grant or lease of Government property is in accordance with the rules or with a general scheme already approved by the Council:

Provided that in the case of alienation of Government land, other than tank beds, on market value where Government orders are required, upto an extent of 25 acres or upto a value of Rs.25 lakhs, orders in

circulation to the Chief Minister shall be obtained and a list of such cases approved shall be placed before the Council for information.

16. The annual audit review of the finances of the State and the report of the Public Accounts Committee.

17. Proposals involving any important change of policy or practice.

18. Proposed circulars embodying important changes in the administrative system of the State.

19. Reports of the Committees/Commissions of Inquiry appointed in pursuance of a resolution of the Council of Ministers or of the State Legislature.

20. Cases which affect or are likely to affect materially the good governance of Scheduled Areas.

21. Proposals to vary or reverse a decision previously taken by the Council of Ministers.

22. Non-Plan cases in respect of New Services or Schemes or otherwise where recurring expenditure is Rs.20,00,000 and above and non-recurring expenditure is Rs.1,00,00,000 and above:

Provided that this rule shall not apply to a plan scheme.

Provided further that where any Department propose to create any new post or up-grade any post or make any additions to the existing cadre strength in their department or Undertakings under their administrative control and Institutions in Government, whether the expenditure is under plan or non-plan, such proposals shall be sent in complete shape to the Finance (SMPC) Department for obtaining prior approval of Council of Ministers and for the issue of necessary orders thereon except in respect of up-gradation or creation of ex-cadre posts in the matter of posting of All India Service Officers, due to administrative exigencies.

Provided also that where it is proposed to create any supernumerary post in the case of direct recruits who have to undergo the prescribed induction training in the department or foundational course in a State-Level or designated training institution during the period of their probation, before they assume charge in a regular post

in the department, such cases need not be placed before the Council of Ministers and orders will be issued with the approval of the Chief Secretary, provided that such posts automatically stand lapsed the moment the public servant concerned is relieved to assume charge in a regular post.

23. Proposals relating to---

(i) Creation of new Corporations or Companies either wholly owned or partially financed by the State Government or by a public sector undertaking;

(ii) participation by the State Government or a public sector undertaking other than Andhra Pradesh State Industrial Development Corporation and Andhra Pradesh State Financial Corporation in providing share capital to a new or an existing corporation or company;

(iii) providing share capital exceeding rupees fifty lakhs by Andhra Pradesh Industrial Development Corporation and the Andhra Pradesh State Financial Corporation to a new or an existing corporation or company;

(iv) winding up, amalgamation or such other major schemes of structural reorganisation of public sector undertakings;

(v) increase in capital cost estimates of State owned public corporations, companies, enterprises and projects where such increase is more than twenty percent or rupees twenty five lakhs, whichever is less.

(vi) expansion of existing schemes or establishing of new schemes or new lines of production by any State owned public corporation, company, enterprise or project where such expansion or establishing involves --

(a) a capital outlay of not less than rupees fifty lakhs; or

(b) capital outlay of not less than twenty five percent of the 'Gross Block' of such Corporation, enterprise or project other than Andhra Pradesh State Industrial Development Corporation and Andhra Pradesh Financial Corporation; and the

total investment is not less than rupees twenty five lakhs; and

(c) grant of loans by Andhra Pradesh State Industrial Development Corporation and Andhra Pradesh State Financial Corporation in excess of the limits laid down by the Industrial Development Bank of India for purposes of refinancing.

24. Schemes involving the abandonment of existing revenue including recurring losses of revenue to be written off by the Government involving an amount of Rs.2,50,000 and above per annum and non-recurring losses of revenue to be written off by the Government involving an amount of Rs.10,00,000 and above or when the scheme involves a change of policy.

25. Governor's address/messages to the Legislative Assembly.

26. All cases of purchase of new vehicles.

27. Amendments to Schedule II of the Business Rules.

28. Cases required by the Chief Minister to be brought before the Council.

From the aforesaid, it is clear that all cases referred to in Second Schedule shall be brought up before the Governor as per the recommendations of the Council of Ministers or otherwise on the special request of the Minister of the Department with the approval of the Chief Minister.

126. As seen from the above, it is clear that the subject matter *'appointment of Election Commissioner'* has not been specified in Schedule-II of the Business Rules and no special request is on record produced before us. In view of the foregoing discussion, it can safely be concluded that the appointment of SEC has to be

made by the Governor in exercise of the power under Article 243K(1) at his discretion and not on the aid and advise of the Council of Ministers. But, simultaneously, the subject matters as specified in the II Schedule of the Business Rules may include the subject, any proposal for legislation to bring Ordinance under Article 213 of the Constitution, and may be dealt with by the Governor on the aid and advice of Council of Ministers, on fulfilling the legal and constitutional requirement.

127. Bare reading of the provisions of Article 243ZA of the Constitution makes it further clear that the power of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K of the Constitution. Therefore, the SEC so appointed by the Governor in exercise of the powers under Article 243K(1) of the Constitution would be the SEC for the purpose of conducting elections to the Municipalities under Article 243ZA of the Constitution.

128. As per the discussion made hereinabove, it can be concluded that in the matter of discretionary power to appoint the SEC in exercise of the power under Articles 243K(1) and 243ZA of the Constitution, the Governor is not required to take the aid and advise of the Council of Ministers in view of the Business Rules. The

manner of appointment of SEC is based on discretion uninfluenced by the proposal of the Council of Ministers and Chief Minister. At present, this Court can observe that the recommendation as proposed by the Law Commission in its report can safely be made applicable with modifications for the States. But, in any case, the appointment of SEC cannot be made by the Governor as per the proposal made by the Chief Minister.

129. Article 243K(2) of the Constitution specifies that the conditions of service and tenure of the office of the SEC shall be subject to the provisions of any law made by the Legislature of the State, otherwise it shall be such as the Governor may, by rule, determine. As per Article 324(5) of the Constitution, the conditions and tenure of office of the CEC shall be subject to the provisions of any law made by the Parliament, otherwise, they shall be such as the President may by rule determine. Therefore, Articles 324(5) and 243K(2) of the Constitution are couched with *pari materia* language, with only difference in the word 'Parliament', which is replaced by the word 'State Legislature'.

130. The provisions of Articles 243K(2) and 324(5) of the Constitution specify the expression *'conditions of service and 'tenure'*, which shall be as per any law made by the Legislature or Parliament and in the absence of such law, as may be determined by the Governor or the President. Thus, it is necessary to

understand the broader sense of the expression '*conditions of service and tenure'*. The expression '*conditions of service'* came up for consideration before the Hon'ble the Supreme Court in the case of **Shardul Singh** (supra), in which the Court observed that the expression 'conditions of service' means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc. Thus, it is clear that after appointment, to regulate the conditions of service of a person, who hold the post may be determined by rule and it would be included in the said expression. The interpretation made in the said case has been reaffirmed in the judgment in the case of **I.N. Subba Reddy** (supra) in the context of Section 19(d)(iii) of the Andhra University Act, 1926, which confers power of suspension and dismissal to a Professor of the University. While distinguishing the suspension and dismissal from the conditions of service, the Court relied on the judgment of **Shardul Singh** (supra).

131. In the context of 'conditions of service and tenure of office', when a similar matter came up before a Division Bench of Allahabad High Court (Lucknow Bench) relating to State Election Commissioner of the State of Uttar Pradesh, in the case of **Aparmita Prasad Singh** (supra), it was decided by a Division Bench consist of *Pradeep Kant* and *Devi Prasad Singh, JJ.* In the

said case, while interpreting the expression 'conditions of service and tenure' as specified in proviso to Article 243K(2) of the Constitution, both the Hon'ble Judges have taken different views on merit. But, finally it was dismissed on account of non-joinder of parties. Though the findings in the said case are not binding precedent in view of the divergent opinions taken by both the Hon'ble Judges while deciding the case, as the said judgment was referred in the file relating to the impugned Ordinance of the office of the Governor, we deem it appropriate to discuss on the judgment. *Pradeep Kant, J* while dealing with the provisions of the Statute regarding cessation of office and removal held that cessation of office is different from removal, on account of amendment reducing age of retirement the tenure has come to an end, as per the provisions of the law. The judgments of **K.Nagaraj** (supra) as well as **Kailash Chand Mahajan** (supra) are referred in which it was distinguished that taking a punitive action is different than to specify disqualification by reducing the tenure. Therefore, reducing the tenure would not fall within the purview of mischief for removal of the incumbent from the office. While referring the conditions of service and tenure, interpretation is made that the tenure is different than conditions of service and in case tenure has been changed by framing of Rules, then it would not form part of conditions of service as specified in Article 243K(2) of the Constitution. Therefore, the question of changing of the

conditions of the service to his disadvantage after appointment does not arise. *Devi Prasad Singh, J* after referring the relevant provisions, stated that the question with respect to removal of the SEC of the State of Uttar Pradesh and may be required to be examined in the light of proviso to Clause (2) of Article 243K of Constitution, which provides conditions of service of the SEC shall not be varied to his disadvantage after his appointment and it shall include the tenure of office. While dealing with the said question he referred the provision of Article 243K(2) of the Constitution and the Rules so formulated by the UP Government. He emphasized the importance of the elections of the local bodies and the office of the Election Commission relying upon the judgments of **T.N.Seshan** (supra) and **Mohinder Singh Gill** (supra) as well as **Kishansing Tomar** (supra) and held that the provisions of the Constitution were inserted to see that there should not be any delay in constitution of the new Municipalities every five years and in order to avoid the mischief of delay in the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. Thereafter, he referred to the provisions of Articles 243K and 243ZA(1) of the Constitution and said the power is similar to the powers of the Chief Election Commissioner. Further, referring the provisions of the statutory interpretation explaining the meaning of proviso said, it means to provide more strength to the State Election Commission as

specified in Article 243K(2) of the Constitution. While interpreting the word *'and'* used in *'conditions of service and tenure',* it is held that the word *'and'* has been used in between for giving it cumulative effect to protect the independence of the SEC at par with CEC. However, the proviso must be read in conjunction not in disjunction. Further, referring the purposive interpretation of the same with the words *'conditions of service',* distinguishing the judgments so relied upon and referred by the *Pradeep Kant, J* and also distinguishing the judgment of **Kailash Chand Mahajan** (supra), it is held that the rule so made amending the age after his appointment is violative of the Constitutional provision. But, in the result it is said that the dismissal is also on account of non-joinder of necessary party. Therefore, upholding the said dismissal, **Aparmita Prasad Singh** (supra) was decided. Against the said judgment, a Civil Appeal No.4624 of 2007 was filed before the Hon'ble the Supreme Court, which was dismissed upholding the dismissal of Writ Petition leaving the question of law open for determination in an appropriate case. Thus, the judgment of **Aparmita Prasad Singh** (supra), is not a binding precedent in this case.

132. The Apex Court in the case of **Tulsiram Patel** (supra), while dealing with the doctrine of pleasure, observed that it relates to tenure of a Government servant which includes manner, conditions

or terms of holding something. Referring dictionary meaning, it is said that 'conditions of service' would include 'tenure of office'. In the case of **Kailash Nath** (supra) while incorporating the rules of recruitment and conditions of service of a person appointed to a public service, the Court found that this rule does not purport to regulate recruitment, therefore, it may be taken note only for the purpose of conditions of service, but not for recruitment in the context of Article 309 of the Constitution.

133. It is further relevant to understand why the word *'and'* is used in between the expressions *'conditions of service' and 'tenure'*. The Hon'ble Supreme Court, in its judgment in **M. Satyanarayana** (supra), had an occasion to deal with the said issue and the relevant portion thereof is reproduced as thus:

> "5. If the expression "and" in clause (*a*) is read independently then there was no need for him to suffer at all and mere participation would be enough to make him a political sufferer. That would defeat the rationale behind the rule. It would, therefore, frustrate the intention and purpose of the legislature. The expression "and" in these circumstances cannot be read disjunctively. It is not possible to hold that clause (*a*) should be read independently of clause (*b*). A statute cannot be construed merely with reference to grammar. Statute whenever the language permits must be construed reasonably and rationally to give effect to the intention and purpose of the legislature. The

> expression "and" has generally a cumulative effect, requiring the fulfilment of all the conditions that it joins together and it is the antithesis of "or". In this connection reference may be made to *A.K. Gopalan* v. *State of Madras* [AIR 1950 SC 27 : 1950 SCR 88, 126 :] . See also the observations of this Court in *Ishwar Singh Bindra* v. *State of U.P.* [AIR 1968 SC 1450 : (1969) 1 SCR 219]."

On perusal thereto, it can be said that the word '*and*' has generally cumulative effect to fulfil all conditions which it joins together.

134. The learned counsel for the petitioners also placed reliance on the judgment in **Dr.D.C.Saxena** (supra) wherein it was held that 'terms of service' includes tenure of service. Para 9 of the said judgment is relevant, therefore, extracted as under :

> "9. The appellant, in desperation, put forward another plea, that the expression "terms and conditions of service" would not take within its ambit "tenure of service". In other words, his case was that the word "term" did not indicate the period of service and that therefore, the Government did not have the requisite authority to curtail his tenure. This plea was met by the respondents' counsel saying that the word 'term' included the tenure of service also. Both sides invited us to Dictionaries in support of their respective cases. We do not think it necessary to seek support from the Dictionary for this purpose. The expression "terms of

> service" clearly includes tenure of service. We regret, we cannot help the appellant on this plea either."

135. The Hon'ble Supreme Court in the case of **P.Venugopal** (supra) also held that tenure means a term during which the office is held the relevant portion of which is as under :

> "32. From the above quotation, as made in para 16 of the said decision of this Court, it is evident that this Court has laid down that the term of 5 years for a Director of AIIMS is a permanent term. Service conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise at all. Even an outsider (not an existing employee of AIIMS) can be selected and appointed to the post of Director. The appointment is for a tenure to which principle of superannuation does not apply. "Tenure" means a term during which the office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said post begins when he joins and it comes to an end on the completion of tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure."

Further, in the matter of **J.S.Yadav** (supra), placing reliance of the judgments in the cases of **D.C.Saxena** (supra) and **P.Venugopal** (supra) also held that the expression 'terms of service' includes 'tenure of service'. In view of the above legal

position, the argument advanced by the Advocate General that the said judgments only deal the terms of office and not the tenure is misplaced.

136. In rebuttal to the said judgments, the Full Bench judgment of Gujarat High Court in **Haryant C. Shelat** (supra), has been cited by the respondents, wherein while interpreting Article 309 of the Constitution, it was held that the conditions of service does not include the qualifications for service. The judgment is cited in the context that, because the eligibility prescribed earlier has been changed, therefore, by virtue of the amended provisions of the impugned Ordinance, there cannot be any change of conditions of service. But in our opinion, the said judgment is not helpful to the respondents, infact it may be of some help to petitioner, **Mr.A.** The judgments of **K.Nagaraj** (supra) and **Kailash Chand Mahajan** (supra) have also been relied upon, which have been dealt with in detail while answering Question Nos.4 and 5 respectively making negative the submission as made by the respondent.

137. It is relevant to refer here that to carry out the purpose of Article 324(5) of the Constitution, the Parliament in the Forty-first year of the Republic of India, has formulated an Act, which is known as the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991. Under the said Act, salary, term of office, leave, pension payable to

Election Commissioner, right to subscribe to General Provident Fund and other conditions of service have been specified, including the transaction of business of Election Commission and disposal of business by Election Commission. After 73rd Amendment, in lieu of the provisions as contained under Article 243K(2) of the Constitution, there was no law made by the Legislature of a State regarding conditions of service, however, the Governor of the State of Andhra Pradesh, in exercise of powers as conferred under Sub-section (3) of Section 200 of the APPR Act, formulated the Rules which are known as Andhra Pradesh Panchayat Raj (Salaries and Allowances and Conditions of Service of State Election Commissioner) Rules, 1994, referred as 'the Old Rules, 1994'. Under Rule 3 of the Old Rules, 1994, it is clarified that term of the office of the SEC shall be five years from the date of assumption of his office as Commissioner. Therefore, the tenure of the office was specified in the Old Rules, 1994, itself. In addition thereto, the status, salary, leave entitlement, leave sanctioning authority, pension, provident fund, traveling allowance, leave travel concession, residence of Commissioner, conveyance allowance, sumptuary allowance, facilities for medical treatment, personal staff and other facilities, and residuary provisions were specified. However, the Legislature or the Governor are well aware that the Rules specifying the conditions of service, the tenure of SEC is prescribed. Therefore, the 'conditions of service and tenure' as

specified in Article 324(5) and Article 243K(2) of the Constitution do not include the appointment or eligibility or manner of appointment of either CEC or SEC as specified under Articles 324(2) and 243K(1) of the Constitution, and it would include the conditions of service after appointment.

138. On the issue regarding the tenure of the CEC, it was opined in the Constituent Assembly Debates that there was no use of making a fixed and secure tenure of CEC, if there is no provision in the Constitution to prevent either a fool or a knave or a person who is likely to be under the thumb of the Executive. Accordingly, Clause (4) relating to conditions of service, tenure and removal along with the proviso was conclusively added in Article 289(4), which is presently Article 324(5) of the Constitution. As we have already stated that Article 243K of the Constitution is brought on the basis of Article 324, therefore, the Constituent Assembly debate, as discussed above, may be relevant for the conditions of service and tenure of the office of the SEC.

139. At this stage, it is further relevant to note that the provision regarding SEC has been brought by the 73rd and 74th Constitutional Amendment Act, relying upon Article 324 of the Constitution brought at the time of adoption of the Constitution. However, the debate with respect to conditions of service and tenure of office as

well as removal in Article 289 of the Draft Constitution as discussed in the Constituent Assembly debates[134] again is relevant.

140. As per the said debate, Dr. B.R.Ambedkar said that the determination of the conditions of service and tenure of the members of the Election Commission has been left to the discretion of the President because the object of the House is that all matters relevant to elections should be outside the control of the Executive Government of the day. He further said that it is absolutely necessary that the new machinery which is being set up, namely, the Election Commission should be irremovable by the Executive by a *mere fiat*. Therefore, they have given the CEC the same status as of the Judge of the Supreme Court so far as removability is concerned, although they have not proposed to give the same status to the other members of the Election Commission. Prof. Shibban Lal Saksena raised an objection that the conditions of service and tenure of the office of the CEC shall not be such as the President may by rule determine, but he was in favour that the Election Commission may be really an independent commission and the real fundamental right vis-à-vis of adult franchise to be exercised in proper manner.

141. After discussion, Sri K.M.Munshi was of the opinion that the proposals so made are good so far as it relates to conditions of

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service, tenure and removability. The tenure may be of five year. However, agreeing with the proposal of Pandit Hirday Nath Kunzru, it was proposed that the conditions of service and tenure may be determined by the President subject to the provisions of law made in this behalf by the Parliament and suggested for insertion of those words. So far as removability is concerned, it was agreed that the proviso is necessary for independence. Dr. B.R.Ambedkar has accepted the suggestion with an observation that as regards the question of removability is concerned, no change seems necessitated as per the discussion and the removal of CEC shall be similar to the removal of the Judge of Supreme Court, while concurring with the proviso.

142. Both Article 243K(2) and Article 324(5) of the Constitution contain a proviso, which deals with the removal of the SEC and CEC respectively and impose a restraint to change the conditions of service after their appointment. As per the proviso to Article 324(5) of the Constitution, in case of removal of the CEC, the procedure as prescribed for removal of a Judge of the Supreme Court of India under Article 124(4) of the Constitution is to be followed; while in case of SEC, as per the proviso to Article 243K(2) of the Constitution, the procedure as prescribed for removal of a Judge of a High Court is to be followed, i.e., as specified in Article 217(1) of the Constitution. Thus, removal of CEC or SEC, as the case may be,

can only be permissible by way of impeachment and no other way is expressly specified in the Constitution.

143. On perusal of the comparative statement of Articles 324, 243K and 243ZA of the Constitution extracted supra, it is clear that in Article 324, a similar provision to Article 243K(4) and 243ZA(2) has not been added. As per Clause (6) of Article 324 and Clause (3) of Article 243K, it is made clear that as and when a request is made to the President in the case of Election Commission of India and to the Governor in the case of State Election Commission, by the respective Commissions to provide such staff as may be necessary for discharge of the functions conferred on such Commission as specified in Clause (1), and such staff shall be provided to the respective Commissions by the President and the Governor, as the case may be. Therefore, interference by the State Executive is completely checked, and for this reason, for any need, they have to request the Governor and not to the State Government, giving him independence, uninfluenced by political interference.

144. Now, looking to the provisions of Article 243K(4) and 243ZA(2) of the Constitution, it is clear that the Legislature of a State is conferred with the power, subject to the provisions of the Constitution, to make provision with respect to all matters relating to, or in connection with, elections to the Panchayats and Municipalities, which is akin to the Statement of Objects and

Reasons specified at the time of bringing 73rd and 74th Constitutional Amendment. Therefore, such power has been given to the State Legislature to make provision by law with respect to all matters relating to or in connection with the elections of the Panchayats and Municipalities, subject to the provisions of the Constitution.

145. Thus, in view of the discussion made hereinabove, it can safely be concluded that the connotation specified under Article 243K(4) and 243ZA(2) of the Constitution to make law with respect to the matters relating to or in connection with the elections of the Panchayats and Municipalities would not include the matters relating to appointment of SEC as specified under Article 243K(1) or the conditions of service and tenure of the office of the SEC as specified under Article 243K(2) of the Constitution. Further, on the above analysis, it is clear that Article 243K(1) deals with the arena of appointment of the Election Commissioner; Articles 243K(2) and 324(5) deal with "conditions of service and tenure of office" and removal of the Election Commissioner; Articles 243K(3) and 324(6) deal with the assistance that may be taken by the CEC and SEC from the Governor and the President, as the case may be, in the matter of discharge of functions by the respective Election Commissions. Article 243K(4) and 243ZA(2) provide power to the State Legislature to make law with respect to elections of the

Panchayats and Municipalities subject to the provisions of the Constitution similar to Articles 327 and 328 of the Constitution. Therefore, all the clauses of the Articles 324, 243K and 243ZA as compared hereinabove, are independent and do not overlap the arena of other as per the spirit of the Constitution.

146. The Hon'ble Supreme Court, in its judgment in the case of **Mohinder Singh Gill** (supra) had an occasion to deal with the issue regarding independence of the Election Commission, as discussed in the Debates of Constituent Assembly, and following the judgment of **N. Ponnuswami v. Returning Officer, Nanakkal Constituency**[135]**,** the Court held as under:

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

[135] (1952) SCR 218

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

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

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

147. Further, the Hon'ble Apex Court in the case of **T.N.Seshan** (supra) has noticed the position of the CEC. The position of SEC in the State is similar to CEC under the Constitution, so far as superintendence, control and preparation of electoral rolls for and conduct of election is concerned as well as removal from the post. The Hon'ble Apex Court in the above case has observed as thus:

"11. We may now briefly notice the position of each functionary of the Election Commission. In the first place, clause (2) states that the appointment of the CEC and other ECs shall, subject to any law made in that behalf by Parliament, be made by the President. Thus the President shall be the appointing authority. Clause (5) provides that subject to any law made by

Parliament, the conditions of service and the tenure of office of the ECs and the RCs shall be such as may be determined by rule made by the President. Of course the RCs do not form part of the Election Commission but are appointed merely to help the Commission, that is to say, the CEC and the ECs, if any. As we have pointed out earlier the tenure, salaries, allowances and other perquisites of the CEC and ECs had been fixed under the Act as equivalent to a Judge of the Supreme Court and the High Court, respectively. This has undergone a change after the Ordinance which has so amended the Act as to place them on par. However, the proviso to clause (4) of Article 324 says (*i*) the CEC shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and (*ii*) the conditions of service of the CEC shall not be varied to his disadvantage after his appointment. These two limitations on the power of Parliament are intended to protect the independence of the CEC from political and/or executive interference. In the case of ECs as well as RCs, the second proviso to clause (5) provides that they shall not be removed from office except on the recommendation of the CEC. It may also be noticed that while under clause (4), before the appointment of the RCs, consultation with the Election Commission (not CEC) is necessary, there is no such requirement in the case of appointments of ECs. The provision that the ECs and the RCs once appointed cannot be removed from office before the expiry of their tenure except on the

recommendation of the CEC ensures their independence. The scheme of Article 324 in this behalf is that after insulating the CEC by the first proviso to clause (5), the ECs and the RCs have been assured independence of functioning by providing that they cannot be removed except on the recommendation of the CEC. Of course, the recommendation for removal must be based on intelligible, and cogent considerations which would have relation to efficient functioning of the Election Commission. That is so because this privilege has been conferred on the CEC to ensure that the ECs as well as the RCs are not at the mercy of political or executive bosses of the day. It is necessary to realise that this check on the executive's power to remove is built into the second proviso to clause (5) to safeguard the independence of not only these functionaries but the Election Commission as a body. If, therefore, the power were to be exercisable by the CEC as per his whim and caprice, the CEC himself would become an instrument of oppression and would destroy the independence of the ECs and the RCs if they are required to function under the threat of the CEC recommending their removal. It is, therefore, needless to emphasise that the CEC must exercise this power only when there exist valid reasons which are conducive to efficient functioning of the Election Commission. This, briefly stated, indicates the status of the various functionaries constituting the Election Commission."

148. In view of the foregoing, there is no scintilla of doubt that the functions of the Election Commission should not be affected by the influence of the Executive *fiat* and it must be independent so as to maintain the basic structure, independence of Commission to safeguard democracy in the Country by holding free and fair elections. Therefore, the power of appointment as discussed above has been given on the discretion of the Governor but not on the Executive fiat of the Government. The conditions of service and tenure of office so prescribed has been checked by way of proviso specifying the manner of removal, as provided under Articles 243K(2) and 324(5) of the Constitution.

149. At this stage, the judgment of the Constitutional Bench of Hon'ble the Supreme Court in **Kishansing Tomar** (supra) is also relevant. In the said judgment, it has been specified that the SEC ought to function independent of the State Government concerned in the matter of their powers of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, elections either in the case of Panchayats or Municipalities. The power of the State Election Commissioner is akin to that of the Chief Election Commissioner of India. It is further said that for such independent discharge of function, the SEC shall seek the assistance from the Governor, otherwise he can take recourse by moving the High Court and the Supreme Court.

150. In view of the discussion made hereinabove, the appointment of the CEC is under the law made by the Parliament but for SEC on discretion of Governor. The Rules made by the Governor or President determine the conditions of service and tenure of the SEC and CEC respectively. They have independent status unaffected by Executive fiat because the democracy is part of the basic structure of the Constitution of India. Their appointment should remain uninfluenced by the political interference, therefore, a specific procedure for removal is prescribed. In the functioning of CEC and SEC, the intervention of the Central Government or the State Government, as the case may be, has been restricted. Therefore, they have to proceed in the matter of elections, taking assistance from the President or Governor, as the case may be, or otherwise through Courts, as specified by the judgments of **T.N.Seshan** (supra) and **Kishansing Tomar** (supra). As per the judgment of **Mohinder Gill Singh** (supra), it is clear that the free and fair election ought to be conducted by the SEC or CEC. In such a situation, looking to the provisions of the Constitution to give independence, the power of appointment has been conferred on the discretion of the Governor. How such power is to be exercised by the Governor, is on his sole discretion and the indulgence by the Council of Ministers in the appointment is not permissible. The conditions of service and tenure is different from appointment as discussed and the

Clauses of Articles 243K and 324 of the Constitution are independent to each other and deal the different arena. In terms of the above, Question No.1 is answered accordingly.

Question No.2: *What is the statutory friction with respect to SEC in the APPR Act, the Andhra Pradesh Municipalities Act, 1965 (for short, 'the APMC Act') and the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'the GHMC Act')?*

151. As discussed in Question No.1, it is apparent that the Governor acquires power of appointment of SEC under Article 243K(1) of the Constitution. In the present case, the impugned Ordinance inserting amendment in Section 200 of the APPR Act is under challenge along with consequential notifications. However, in the said context, it is necessary to refer the old Section 200 as well the new Section 200 inserted by amendment, promulgating Ordinance No.5 of 2020. The old Section 200 of the APPR Act is reproduced as thus:

> **"Section 200: Constitution of State Election Commission:-**
>
> (1) There shall be constituted a State Election Commission for the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of elections to, all the Panchayat Raj Institutions governed by this Act.

(2) The said Election Commission shall consist of a State Election Commissioner. The Governor on the recommendation of the Government shall appoint a person, who is holding or who has held an office not less in rank than that of a Principal Secretary to Government, as State Election Commissioner.

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

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

152. On perusal of the aforesaid, Sub-section (1) of Section 200 of the APPR Act, is a replica of the Article 243K(1) and Article 243ZA of the Constitution. Sub-section (2) of Section 200 of the APPR Act ordains that *"the Governor on the recommendation of the Government shall appoint a person, who is holding or who has held an office not less in rank than that of a Principal Secretary to Government, as State Election Commissioner".* As per Article 243K of the Constitution, the SEC shall be appointed by the Governor, therefore, the above referred provision in the old provision of Sub-section (2) of Section 200 of the APPR Act regarding

recommendation by the Government and as to who may be appointed is not in conformity with the spirit of the Constitution. As discussed in Question No.1, the power of appointment of SEC is discretionary and vested on the Governor, hence to avoid repetition re-discussion is not required. But it can safely be concluded that the said part even in the old Section 200 of the APPR Act was not as per constitutional spirit. So far as Sub-section (3) of the old Section 200 of the APPR Act is concerned, it is again a replica of Article 243K(2) of the Constitution. Therefore, nothing is objectionable in reference to the constitutional provisions.

153. Reverting to the amended Section 200 of the APPR Act by Ordinance No.5 of 2020, it reads as thus:-

> **"Section 200. Constitution of Andhra Pradesh State Election Commission for Local Bodies :-**
>
> (1) There shall be constituted a State Election Commission for the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of elections to, all the Panchayat Raj Institutions governed by this Act.
>
> (2) The said Election Commission for Local Bodies shall consist of a State Election Commissioner. The Governor on the recommendation of the Government shall appoint a person, who has held an office of the Judge of a High Court, as State Election Commissioner.

(3) The State Election Commissioner shall hold office for a term of three (3) years and shall be entitled to be considered for re-appointment for another term of three (3) years.

Provided that no person shall hold the office of State Election Commissioner for more than (6) years in the aggregate.

(4)The conditions of service of office of the State election Commissioner shall be such as the Governor may, by rule, determine:

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

(5) On and with effect from the date of coming into force of this Ordinance, any person appointed as State Election Commissioner and holding office as such shall cease to hold office.

154. On perusal, in the amended Sub-section (2) of Section 200 of APPR Act, as per the impugned Ordinance, the Governor on the recommendation of the Government shall appoint a person who has *'held an office of the Judge of the High Court as State Election Commissioner'* has been substituted. As discussed in Question

No.1, the power of appointment of the SEC is in the Governor in his discretion, thus the expression *'recommendation of the Government'* used in unamended Section 200(2) or amended Section 200(2) is not as per Article 243K of the Constitution. In this regard, if we see the debates of the Constituent Assembly referred above, then it is clear that the Governor may exercise his discretion, but not on the recommendation of the Government. The change further made is *'who has held an office of the Judge of the High Court as State Election Commissioner'* in place of *'who has held an office not less in rank than that of a Principal Secretary to the Government'.* In this regard, who may be appointed as SEC has also not been specified while granting discretion to the Governor in the matter of appointment of SEC, therefore, it is also on his discretion and the State legislature does not have power to make law on the said subject. Thus, the provision specifying the eligibility for holding the post by a person on the recommendations of the State Government is also not in conformity with the constitutional spirit, in view of the discussion made above and also in Question No.3.

155. In Sub-section (3) of Section 200 of the impugned Ordinance, it is said that the SEC shall hold office for a term of three years and may be entitled for consideration for a further period of three years, as such he may hold office for six years in aggregate if re-

appointed after three years. As per Article 243K(2) of the Constitution, the conditions of service and tenure may be subject to any law made by the State Legislature, but while specifying a tenure the basis lies again in the Constituent Assembly debate of Article 324, previously Article 289, as it then was in the Draft Constitution. It was debated that the tenure should not be specified to the Election Commissioner and in case to be specified, it may be five years or at maximum 6 years. The intention of the Legislature was that the appointment of SEC should be free from political indulgence, thereby he can freely conduct the elections in the State for local bodies i.e., Panchayats and Municipalities uninfluenced by any political party. Therefore, specifying the three year tenure in the said provision is against the intention of the Constituent Assembly debates. It is to observe that as per Article 243K(2) of the Constitution for tenure the State Legislature may make the law but it should be based on reasonable classification and intelligible differentia. On this aspect, the Report of the Task Force Committee dated 14.10.2011 filed in W.P.No.8167 of 2020 by Dr.Kamineni Srinivas is also relevant, in which the following recommendation is made :

> **"6.4 Central Sector Scheme :-**
>
> 6.4.1 .....
>
> (a) The State Election Commissioner must be full time;

(b) He should have a tenure of five years or up to 65 years of age whichever is earlier;

(c) There should be no provision for extensions. The protection given to the SEC under Article 243K must be available under the state law or rules governing the State Elections Commissions;

(d) the SEC must have the status of a High Court Judge."

156. To take note of the above Report, it is true Task Force Committee is a Committee of the Parliament for electoral reforms and on submitting the report, objections were called for from all the States on which, the State of Andhra Pradesh have consented to the recommendations. It is equally true that report of the Committee is only recommendatory, but for electoral reforms, if required to be implemented, it is having great value; however, without having any reason, deviations from those recommendations is arbitrary. In the context of the discussion made above regarding Constituent Assembly debate on Article 324 of the Constitution ('Article 289' as it was then in the Draft Constitution) and the recommendations of the Task Force Committee, there is no justification to specify three (3) year tenure of the SEC in the name of electoral reforms giving allurement of enhancement of further three (3) years on the recommendation of the Government. It can well be explained like this; if any SEC is

appointed as recommended by the State Government, and he has not acted as per the sweet will of the Government, after three years, no further recommendation shall be made to him. But, in case he has acted as per the sweet will of the Government, consideration for further three (3) years and re-appointment may be made. Therefore, the said provision would take away the independence of the SEC, and the object of free and fair election in a democratic pattern shall remain on paper or in dream looking for future. Therefore, for the above said reason, Sub-section (3) of Section 200 of the APPR Act by the impugned Ordinance is primarily against the spirit of Constitution and also does not qualify the test of reasonableness as per Article 14 of the Constitution.

157. So far as Sub-section (4) of Section 200 of New APPR Act, it is akin to Clause 243K(2) of the Constitution, similar to Sub-section (3) of Section 200 of the old APPR Act. However, in this regard nothing is required to be dealt with because it is as per the spirit of the Constitution.

158. Sub-section (5) of Section 200 of the APPR Act of the impugned Ordinance appears to be arbitrary, unreasonable and discriminatory. It says, on and with effect from the date of coming into force of this Ordinance, any person appointed as SEC and holding office as such shall cease to hold office. The impugned

Ordinance has come into force at once, and any substantive law making amendment brought into force at once would be prospective and not retrospective. The guidance can be taken from the judgment of a Division Bench of the Rajasthan High Court in **Girjashanker v. Lalu**[136], whereby it is clear that when any law was to come into force at once, it mean that it has to come into force as soon as it is promulgated. Therefore, it can be said that it would come into force from the date of its promulgation prospectively.

159. On perusal of the language of Sub-section (5) of Section 200 of the APPR Act, its first part states, it is brought into operation with effect from the date of its commencement, but latter part says, *'any person appointed as State Election Commissioner and holding office as such shall cease to hold office'* is against all cannons of law and unconstitutional. It is relevant to note, the impugned Ordinance came into existence on the date of its promulgation, while the appointment of SEC was made in 2016 i.e., four years back. However, SEC would not cease to hold its post and office merely by bringing the Ordinance without having any intendment of retrospective applicability. In addition thereto, it does not qualify the test of Article 14 of the Constitution. The other reason to hold Sub-section (5) of Section 200 as

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unconstitutional is, the power to make an amendment in Section 200 of the APPR Act is with the State Legislature, but not on the subject appointment and removal of the SEC, as reveal from Article 243K(1) of the Constitution and as discussed in Question No.3. The removal of SEC is permissible in the manner as specified in the proviso to Article 243K(2) of the Constitution, however the State Legislature by introducing Sub-section (5) in Section 200 of the APPR Act and on implementation of Ordinance, cannot direct to cease to hold the office of SEC on the pretext of statutory friction; although his appointment and removal was under Article 243K(1) and (2) of the Constitution. Therefore, in all regards, Sub-section (5) of Section 200 of APPR Act is on its face unconstitutional and it cannot be made applicable retrospectively, as discussed in detail while answering Question No.5.

160. In respect to the substantive provision of Section 200 of the impugned Ordinance which came into force with effect from 22.04.1994, the source of Section 200 of the APPR Act is Article 243K of the Constitution, brought by 73rd Amendment with effect from 24.04.1993 and 243ZA by 74th Amendment with effect from 01.06.1993 bringing Part-IX (Panchayats) and Part-IXA (Municipalities) in the Constitution. In the said context, we have examined the definition of the **"Election Commission"** and **"Election Commissioner"** in the APPR Act, specified in Sub-

sections (39) and (40) of Section 2. The said definitions are reproduced as under:

> **"Section 2 (39) :-** 'State Election Commission' means the State Election Commission constituted under Section 200.
>
> **Section 2 (40) :-** 'State Election Commissioner' means the a State Election Commissioner appointed by the Governor under sub-section (2) of Section 200."

161. On perusal, the fallacy in the APPR Act is that while defining State Election Commission and State Election Commissioner, the State Legislature mentioned that the State Election Commission constituted under Section 200 and appointment of SEC under Sub-section (2) of Section 200 ignoring its source of power of appointment. It is made clear here that constitution and appointment of the SEC cannot be made under statute, it is under Constitution of India, therefore, the said definition is how far just is a question to re-visit and re-think by State Legislature.

162. The said fact fortify by the amendment in the APMC Act, in Section 2(40) brought after amendment in Constitution on 01.06.1994 defining the State Election Commission, which is as thus:-

> **"Section 2 (40):-** 'State Election Commission' means the State Election Commission

constituted in pursuance of Article 243-K of the Constitution of India."

163. As per above definition, it is clear that for the Municipalities, the State Election Commission would be a Commission constituted and appointed in pursuance to Article 243K. Sections 10-A and 10-B of the APMC Act have been brought to carry out the purpose of Article 243K(1) in the matter of superintendence, direction and control of preparation of the Electoral Rolls and for conduct of all elections to all Municipalities.

"Section 10-A. State Election Commission :-

The preparation of electoral rolls for, and the conduct of elections to, all municipalities in the State shall be under the superintendence, direction and control of the State Election Commission.

Section 10-B: Powers and functions of the State Election Commission:-

(1) All elections to the Municipalities shall be held under the supervision and control of the State Election Commission and for this purpose it shall have power to give such directions as it may deem necessary to the Commissioner and Director of Municipal Administration, District Collector or any officer or servant of the Government and the Municipalities so as to ensure efficient conduct of the elections under this Act.

(2) The preparation of electoral rolls for the conduct of all elections under the Act shall be done under the supervision and control of the State Election Commission.

(3) For the purposes of this section the Government shall provide the State Election Commission with such staff as may be necessary.

(4) On the request of the State Election Commission, the State Government shall place at the disposal of the Commission such staff of the State Government, Municipalities for the purpose of conduct of elections under this Act.

(5) The State Election Commissioner may, subject to control and revision, delegate his powers to such officers as he may deem necessary."

164. A similar provision has been brought in the GHMC Act in Section 2(51-a) defining 'State Election Commission' which is as under:

"**Section 2(51-a) :** 'State Election Commission' means the State Election Commission constituted in pursuance of Article 243K of the Constitution of India."

165. On perusal thereto, it is clear that as per the APMC Act, the Election Commission constituted pursuant to Article 243K would be the Commission and as per Sections 9 and 10 the power and

functions of the Election Commission has been defined which are as under:-

> **"Section 9 : State Election Commission :-**
> The preparation of electoral rolls for, and the conduct of elections to Corporation shall be under the superintendence, direction and control of the State Election Commission.
>
> **Section 10 : Powers and functions of the State Election Commissioner :-**
> (1) All elections to the Municipal Corporations shall be held under the supervision and control of the State Election Commission and for this purpose it shall have power to give such directions as it may deem necessary to the Commissioner of the concerned Municipal Corporation, District Collector or any officer or servant of the Government and the Municipal Corporation concerned institutions so as to ensure efficient conduct of the elections under this Act.
>
> (2) The preparation of electoral rolls for the conduct of all elections under the Act shall be done under the supervision and control of the State Election Commission.
>
> (3) For the purposes of this section the Government shall provide the State Election Commission with such staff as may be necessary.
>
> (4) On the request of the State Election Commission, the State Government shall place at the disposal of the

Commission such staff of the State Government and the Municipal Corporations for the purpose of conduct of elections under this Act.

(5) The State Election Commissioner may, subject to control and revision, delegate his powers to such officers as he may deem necessary.

(6) The State Election Commission shall issue the notification and schedule for general election and elections for casual vacancies in Greater Hyderabad Municipal Corporation in concurrence with the State Government, which while giving concurrence has to consider matters pertaining to Law and Order situation, internal security, availability of police, security personnel, home guards, central armed police forces and the logistics of their deployment, availability of staff or election related duties, availability and procurement of election related material and premises for polling and counting, conduct of elections to other legislative and statutory bodies, natural calamities and seasonal conditions including drinking water situation and agricultural season, major fairs and festivals, education calendar and examination in schools and colleges, onset of any epidemic diseases, operations relating to collection of vital statistics like census or any other enumeration and matters involving public interest and any other."

Thus for the purpose of Municipalities and Municipal Corporation, the constitution and appointment of SEC can be made

in pursuance of Article 243K of the Constitution and not under Section 200 of the APPR Act.

166. Comparing the definition of the State Election Commission as specified in the APPR Act and also specified in the APMC Act, GHMC Act, the difference is substantial by which the APMC Act and GHMC Act acknowledge the Election Commission constituted and appointed pursuant to under Article 243K of the Constitution, it do not recognize the Election Commission constituted under Section 2(39) and appointed under Section 2(40) read with Section 200 of the APPR Act. Therefore, SEC appointed under Article 243K of the Constitution can discharge functions of State Election Commission to supervise and conduct the elections of the Municipalities and Corporations.

167. In the said context vide notification issued by the Governor dated 30.01.2016, the appointment of **Mr.A** was made by the Governor in exercise of the power under Article 243K of the Constitution read with Sub-Section (2) of Section 200 of the APPR Act. But, while the appointment of **Mr.B** is made by the Governor vide notification dated 11.04.2020, in terms of Ordinance No.5 of 2020 amending Section 200 of the APPR Act alike an employer. The appointment of **Mr.B** is not in exercise of the power under Article 243K of the Constitution, however, **Mr.B** cannot discharge the functions of the SEC, for superintendence, direction and control of preparation of electoral rolls for, and conduct of all the elections of

the Municipalities or Municipal Corporations, without his appointment under Article 243ZA and 243K(1) of the Constitution.

168. During course of hearing, this Court vide order dated 04.05.2020 posed the said question to answer; in reply, the learned Advocate General, *inter-alia* stated that the power derived in the APPR Act is by virtue of Article 243K of the Constitution and the State Legislature is having a right to make any law, accordingly, the APPR Act has been amended bringing such provision, therefore, irrespective of definition given in the APMC Act and the GHMC Act, the Election Commission, constituted and appointed by the impugned Ordinance may discharge the functions of SEC to Municipalities. As per the discussion made herein above, we are unable to accept such argument. In addition thereto, we have already discussed the power of appointment is vested with the Governor in exercise of his discretionary power as contemplated under Article 243K(1) of the Constitution. In such circumstances, it can safely be held that the appointment, if any, made by the Governor in exercise of the powers conferred under the statute ignoring the Constitutional provisions cannot be recognized valid appointment of SEC for the Municipalities and Municipal Corporations under the law.

169. At this stage, it is necessary to refer presumable contention of Advocate General and other counsel representing the

Respondents, that quoting wrong provision or misquoting the provision in the order, may not be a ground of interference by the Court. But, in our considered opinion, it is not a matter in which while applying to the Court or any quasi-judicial authority, a wrong provision has been quoted asking relief in the process of adjudication. The present matter related to an appointment of a Constitutional post holder having immunity under Constitution, to which an appointment is to be made by the Governor under the Constitution and not under statute, however in the said contingency, reference to exercise of the source of power derived under the Constitution must be made in the appointment order, otherwise such appointment would be invalid. Question No.2 is answered accordingly.

Question No.3: ***Whether the power exercised by the Council of Ministers extending aid and advice to the Governor in promulgation of Ordinance prescribing pre-qualification and manner of appointment of SEC constitute fraud; and the State Legislature is having competence to make any law in this regard?***

170. In the facts of the case, the issue of legislative competence in bringing the Ordinance has been advanced by either side on the subject matter i.e., appointment of the Election Commissioner, pre-eligibility and the manner of appointment. Relying on Articles 245 and 246 of the Constitution, the learned Senior Counsel appearing

for the petitioners have strenuously contended that the State legislature is not competent to prescribe the manner and pre-eligibility for appointment of SEC. To appreciate the arguments, the said Articles are relevant, however, reproduced as thus:

> **"Article 245 : Extent of laws made by Parliament and by the Legislatures of States :-**
>
> (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
>
> (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation.
>
> **Article 246 : Subject matter of laws made by Parliament and by the Legislatures of States :-**
>
> (1) Notwithstanding anything in clauses (2) and(3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the"Union List").
>
> (2)Notwithstanding anything in clause(3),Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the"Concurrent List").

> (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
>
> (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

171. On perusal, it is clear that subject to the provisions of the Constitution, the State legislature may make laws for the whole or any part of the State. In Article 246 dealing with power of the State legislature, in Clause (3) it is specified that the State legislature has power to make laws on any of the matters specified in List II of Schedule 7 of the Constitution. As per the record when file was put before the Governor, the State Government has appraised the source of power vide Entry No.5 List II of Schedule 7 of the Constitution to bring Ordinance on the subject, however, the said entry is reproduced as under:

> "Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

172. The scope of Entry No.5 is visible from its construction by which it confers power on the State legislature to make law regarding the "*constitution and powers*" of the municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration. Thus, the matter pertaining to appointment of the SEC shall not come within the ambit of the said Entry No.5. In fact, it only strengthen the bodies of local self-Government by their '*constitution and powers*'.

173. As per the record of File No.2 produced, the State Legislature has assumed power under Entry No.5 of List II of Schedule 7 and proceeded through Council of Ministers, which does not have power to propose amendment on the subject eligibility and appointment and manner of appointment of SEC. The approval by the Governor of the impugned Ordinance on the said subject under Articles 163(1) and 166(3) of the Constitution read with the provisions of the Business Rules, is without authority which would amount to fraud on power.

174. Another source of power to the State Legislature for appointment of SEC may possibly be in Articles 243K(4) and 243ZA(2) of the Constitution at par to Articles 327 and 328 of the Constitution, which are in respect to CEC. Articles 243K(4) and 243ZA(2) may be relevant, however, reproduced as under :

> "Article 243K : Elections to the Panchayats:-
>
> (1) . . . . .
>
> (2) . . . . .
>
> (3) . . . . .
>
> (4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.
>
> Article 243-ZA : Elections to the Municipalities :-
>
> (1) . . . . .
>
> (2) Subject to the provisions of this Constitution. The Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities."

175. As per Articles 243K(4) and 243ZA(2) of the Constitution, the State Legislature may make law *"with respect to all matters relating to or in connection with the elections of the Panchayats"* subject to the provisions of the Constitution. What may be included in the expression '*the matters relating to or in connection with',* can well be understood by the observations of Justice Fazal Ali in **Ponnuswami** (supra) as was summarized in **Mohinder Singh Gil** (supra), extracted as under :

> "The concept of democracy as visualized by the Constitution presupposes the representation of the people in Parliament and State Legislatures by the method of election. And, before an election machinery

can be brought into operation, there are three requisites which require to be attended to, namely, (1) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made; (2) there should be an executive charged with the duty of securing the due conduct of elections; and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections. Articles 327 and 328 deal with the first of these requisites, Article 324 with the second and Article 329 with the third requisite. Article 329(b) envisages the challenge to an election by a petition to be presented to such authority as the Parliament may, by law, prescribe. A law relating to election should contain the requisite qualifications for candidates, the method of voting, definition of corrupt practices by the candidates and their election agents, the forum for adjudication of election disputes and other cognate matters. It is on the basis of this law that the question whether there has been a valid election has to be determined by the authority to which the petition is presented. And, when a dispute is raised as regards the validity of the election of a particular candidate, the authority entrusted with the task of resolving the dispute must necessarily exercise a judicial function, for, the process consists of ascertaining the facts relating to the election and applying the law to the facts so ascertained.

176. The observations made by the Hon'ble Apex Court fortify the Statement of Objects and reasons while proposing 73rd and 74th amendment to the Constitution. It was felt that the Panchayat Raj Institutions could not acquire status and dignity for the reason that the regular elections are not held; insufficient representation of weaker sections like women, inadequate devolution of powers and lack of financial resources. Therefore, while giving power regarding the constitution of Gram Panchayats, its members, reservation, disqualification of the members, devolution of the State Legislature, economic Development, power to impose tax duties for financial upliftment, auditing accounts of the Panchayats, power to make the law with respect to election to the Panchayats under superintendence, direction and control of the Chief Electoral Officer of the State, were given. Therefore, the power under Article 243K(4) and 243ZA(2) of the Constitution was given to the State Legislature to enact law with respect to the matters relating to and in connection with the election of the Panchayats on the said subject. However, the said power is subject to the provisions of this Constitution. The constitution of the State Election Commission and appointment of SEC is not a matter relating to or in connection with the elections of the Panchayats, as clear from Article 243K(1) of the Constitution. Therefore, it would not fall within the scope of Article 243K(4) of the Constitution. While dealing with Question No.1, it is made clear that Article 243K(1), (2), (3) and (4) works in

different arena and spheres. Therefore, even under Articles 243K(4) and 243ZA(2) of the Constitution, the State Legislature does not have power to make law regarding eligibility and the manner of appointment for the post of SEC on constituting the State Election Commission.

177. The third source to the State Legislature to make a provision by any law in the subject matter is in Article 243K(2) of the Constitution. The said Article confers power to make any law to the conditions of service and tenure of office of the SEC. As discussed in Question No.1, the constitution and appointment of SEC is a function of the Governor. However, on constitution of the State Election Commission, appointment of SEC be made by the Governor, and the conditions of service and tenure of office held by the SEC, shall be subject to any law made by the State Legislature or otherwise determined by the Governor. Thus, it also does not confer any power to make law regarding pre-eligibility and manner of appointment of the SEC.

178. The expression *'conditions of service'* and '*tenure'* would not include 'appointment' as has been discussed in detail in Question No.1. In the said question, referring the debates of Constituent Assembly and further referring the similar provisions specified in Articles 243K(2) and 324(5) of the Constitution and relying upon various judgments, it is held that after appointment and on holding

the post, the conditions of service and tenure of office would be regulated by it. Therefore, the conditions of service would start on appointment of the holder of the post. However, by virtue of Article 243K(2) of the Constitution, the Legislature of the State does not have any power to introduce Sub-section (2) prescribing eligibility and manner of appointment in Section 200 of the APPR Act by way of amendment, specifying the eligibility and the manner of appointment of the SEC.

179. In view of the discussion made herein above, it is clear that under Articles 245 and 246 of the Constitution, the power of the State Legislature to make law is with respect to entry No.5 of List II of Schedule 7, subject to the provisions of the Constitution. Entry No.5 of List II does not cover the subject matter constitution and appointment of State Election Commission and the SEC. As per Article 243K(4) and 243ZA (2) of the Constitution, the matter concerning and relating to as specified in the Statement of Objects and Reasons while proposing 73rd and 74th amendment also do not confer power of State Legislature. Simultaneously, under Article 243K(2) of the Constitution, the power of the State Legislature is regarding the conditions of service and tenure of office, which may come into operation on holding the post of SEC on appointment. Therefore, the attempt made by the State Legislature to bring the

law on the subject appointment, manner, eligibility etc., of the SEC, is beyond the Legislative competence of the State.

180. Learned Advocate General has placed reliance on the judgment of the Constitutional Bench of the composite High Court of Andhra Pradesh in **Ranga Reddy District Sarpanches' Association** (supra). But in view of the discussion made herein above, it is clear that the subject matter specifying the pre-qualification, appointment and manner of SEC is not specified under the powers of the State Legislature, therefore, the said judgment is of no help in the facts of the case, to the respondents.

181. The impugned Ordinance also proposes the tenure of the SEC. Indeed under Article 243K(2) of the Constitution, for conditions of service and tenure, the State Legislature may make any law. But such law must qualify the test of reasonableness, rationality in relation to the objects sought to be achieved by the statute in question. While dealing with question No.1, we have discussed in detail, holding that the manner in which the tenure has been specified do not qualify the test of reasonableness under Article 14 of the Constitution. Thus, we hold that with respect to tenure to the post of SEC, the State Legislature may have competence, but the amendment as brought is violative to Article 14 of the Constitution, therefore, it is illegal.

182. In view of the foregoing discussion, we have no hesitation to hold that the Council of Ministers do not have power to bring the Ordinance on the subject State Election Commission, eligibility and manner for appointment of the SEC. Question No.3 is answered accordingly.

QUESTION No.4: Whether in the facts of the case, any circumstances exist for satisfaction of the Governor to take immediate action to promulgate the impugned Ordinance and issuance of consequential notifications, or is it actuated by oblique reasons and on extraneous grounds?

183. This question is a mixed question of facts and law. However, to answer the question, chronology of the facts and events regarding the movement of file to the Governor to promulgate the impugned Ordinance, specifying the need and urgency are required to be referred. Under the direction of this Court, a photocopy of the record stating it to be relevant has been produced by the Advocate General. We have perused the said record. In addition, directions issued by this Court in W.P. (PIL) Nos.141 and 153 of 2019 as referred in the reply/counter filed by the respondents has been seen from the record of the Court.

184. As per chronology of facts and events, it reveals that the earlier elections for Panchayats and Municipalities were held in the year 2013 and on completion of the tenure of five years, the

elections of the Panchayats and Municipalities were not conducted though due since 2018. As per proceedings of W.P. (PIL) Nos.141 and 153 of 2019, the Court noted that the period of 15 months had elapsed after the tenure of five (5) years but elections were not conducted, despite the direction of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh, in W.P.No.32346 of 2018 vide judgment dated 23.10.2018, to the State Election Commission to complete the elections within a period of three months from the date of judgment. The Election Commission in its counter and additional counter-affidavit filed on 28.10.2019 and 07.11.2019 respectively, came with an excuse that the State Government did not carve out reservation, however, the Commission is unable to hold elections. Upon hearing, on 07.11.2019, this Court in W.P. (PIL) Nos.141 and 153 of 2019 gave directions to the Chief Secretary of the State and the Principal Secretary, Panchayat Raj Department to file counter-affidavits on the said issue within a week. On 14.11.2019, the Chief Secretary did not file counter-affidavit, however, the Principal Secretary, Panchayat Raj Department filed an affidavit stating that the State Government is committed to extend all possible support to the Election Commission in conducting elections to Rural local bodies and is ready to complete the entire process within four months.

185. This Court, vide order 14.11.2019, observed that respondent No.3 therein (Principal Secretary, Panchayat Raj Department) has violated the constitutional mandate and previous directions of the Court by taking lame excuses, and also observed that the Election Commission failed to exercise the power conferred on it as per the judgment of Hon'ble the Supreme Court in **Kishansing Tomar** (supra), however, directed the Chief Secretary of the State to file her affidavit on all the issues on or before 20.11.2019 and accordingly, the counter-affidavits have been filed. On 21.11.2019, this Court gave a direction to the State Government to finalize the reservations for conducting elections of the three tier system i.e., Gram Panchayats, Mandal Parishads and Zilla Parishads on or before 03.01.2020. After the said order and on fixing the date, the State Government vide G.O.Ms.No.176, PR & RD, dated 28.12.2019 decided the percentage of reservations for conducting the elections. On issuance of the said G.O., issue of inappropriate reservation cropped up and various petitions were filed vide W.P.(PIL) No.2 of 2020 and batch, in which stay was not granted by this High Court. In the said scenario, the petitioners have approached Hon'ble the Supreme Court by filing Special Leave Petition (Civil) Diary No: 1314 of 2020 which was disposed vide order dated 15.01.2020 granting stay and requesting the High Court to decide the matter within four weeks. Thus, all those

matters were taken up and decided on 02.03.2020, declaring the percentage of reservations for Backward Classes as *ultra vires*.

186. The respondents, criticising the functioning of the Election Commission, filed the judgments of **S.Fakruddin** (supra), **Channala Ramachandra Rao** (supra) and **Prakasham District Sarpanchas Association** (supra), raising objection in the counter affidavit that functioning of the Election Commission was questioned by the Court. After going through those judgments, in our view, there is no stricture regarding misbehaviour or incapacity of the SEC and that too, against **Mr.A.** As discussed above, not conducting elections in time is not alone a fault of the SEC, in fact, the State Government is also equally responsible. In this view of the matter, we are not in agreement to the defence as taken by the respondents that the Court has criticised the functioning of the present SEC.

187. After the orders passed in W.P(PIL).No.2 of 2020 and batch, on 02.03.2020, the election notification could be issued on 07.03.2020 and 09.03.2020. As per the schedule of elections for MPTCs and ZPTCs, in the first phase, nomination forms were submitted by the candidates. In that process, the SEC apprehended indulgence of the ruling party, because some persons of opposition party were not allowed to fill up the forms to contest the election, due to which violence has been reported and percentage of

unanimous election enormously increased. In the previous elections of 2013, the percentage of unanimous election was 2% for MPTC seats and 0.09% for ZPTC seats, which is increased to 24% and 19% respectively in the year 2020, while in the constituency of the Chief Minister, 79% MPTC seats and 76% ZPTC seats declared unanimous. The SEC **Mr.A** has smelt unfairness with the connivance of the administration and police, however, directed to transfer some Collectors, Superintendents of Police, Deputy Superintendents of Police, and also to suspend one Circle Inspector, but those orders were not complied by the State Government. In the meantime, as per the advisory issued by the World Health Organization on 11.03.2020, **Mr.A** suspended the elections, postponing it for a period of six weeks or until further orders vide Notification dated 15.03.2020. The said order became a root cause to entire litigation. The State Government, being aggrieved, challenged it before Hon'ble the Supreme Court by filing W.P.(C) No.437 of 2020. The said writ petition was dismissed vide order dated 18.03.2020 with observations that Model Code of Conduct during this period shall not remain in operation and directed that while resuming the process of election, due consultation be made with the State Government, giving liberty to State to continue public welfare activities.

188. In the meantime, the Chief Minister of Andhra Pradesh, the Speaker of Legislative Assembly, Members of Parliament and

Members of Legislative Assembly belonging to the ruling party made various allegations and casted personal aspersions on SEC. Some of the statements and the documents filed along with I.As, are relevant and those are re-produced as thus:

The statement of the Chief Minister (paper clipping):

> "He (SEC) lost his discernment and is reading out the order written by someone else. We did not appoint the State Election Commissioner. Chandrababu Naidu (TDP President and former Chief Minister) appointed a person belonging to his community. Under the pretext of corona virus, he has indefinitely postponed the local body elections. The SEC had neither discussed the matter with the Chief Secretary nor the officials of the Health Department. Only then it can save its reputation and respect. Mr.Naidu may have bestowed upon him the post. Both may belong to the same community. But is it justified to show such discrimination. On one hand, Mr.Kumar citing discretionary powers, postponed the elections indefinitely and on the other transferred the District Collectors and SPs of Guntur and Chittoor. He also transferred the Macherla C.I. How can he transfer the Collectors and SPs unilaterally? Does he have more powers than an elected government? If so, the SEC can rule the State. The police have discharged their duties with utmost sincerity. They have even booked attempt to murder cases. We have brought the SEC issue to the notice of the Governor. The matter will be scaled up to the next level if the State Election Commissioner does not mend his ways."

The statement of the Speaker of the Legislative Assembly, Mr.Thammineni Seetharam (video clipping):

> "The SEC should be immediately sacked. The President and Governor must interfere. If the Election Commissioner transfers Collectors, Circle Inspectors and SPs, then what the Government do? For what purpose we people are here? Is it for taking donkeys? I clearly stated my opinion. I am not going to sustain any loss in whichever manner anyone receives my words."

The Minister of Transport and I & PR, Perni Neni said that the SEC has not taken fair decision. The decision taken for postponing the election is not proper. They shall approach all forums to revert the decision taken by the SEC and he is acting on the instructions of the former Chief Minister affecting the fair process of election, therefore, they should fight and face it.

In his statement, the Member of Parliament, RajyaSabha, Mr.Vijayasai Reddy has named the SEC, **Mr.A** in the name of the former Chief Minister, who is assassinating the constitutional bodies and democracy.

The Minister of Agriculture said that the SEC is connected with TDP and he is taking the system into his hands and acting biased.

189. On behalf of Council of Ministers, the Chief Secretary of the State has filed the counter-affidavit, in which the aforesaid

statements have not been disputed. It is explained that by those statements, they have expressed their personal view point and it has nothing to do to bring the impugned legislation. As per the said reply and the reply of the State Government, the statements made by the Chief Minister and other Ministers casting aspersions are not in dispute.

190. Facing all these unbecoming situations, the SEC **Mr.A** addressed a letter on 18.3.2020 to the Home Ministry of Union of India. The said letter is a part of the record of Governor and also relevant, therefore reproduced, by tracing the same as under:

Dr. N. RAMESH KUMAR, IAS (Retd.)
State Election Commissioner
Andhra Pradesh

Ph : 0866 - 2970024
0866 - 2970023

Letter No.221/SEC-PESHI/2020, Date: 18.03.2020

To
The Home Secretary,
Government of India,
New Delhi.

Sir,

Sub: Seeking Central protection for the State Election Commissioner – Reg.

*****

In the State of Andhra Pradesh, the much litigated and delayed elections to the Local Bodies schedules were announced on 07.03.2020 and it was envisaged to complete the election by 31st March 2020 in three spells so as to assist the State to access 14th Finance Commission grants.

Before declaring the election, I held a series of meetings with the State and District officials, viz., District Collectors and Superintendents of Police as well as senior functionaries at the State headquarters, viz., Chief Secretary and the Director General of Police and other senior contingent.

I wrote to the State Government and got categorical assurance from the State Government that requisite security forces will be deployed to safeguard against any possible poll violence.

However, these expectations were completely belied at the completion of stage one elections itself which had witnessed unprecedented violence and intimidation by the ruling party with the active connivance of Police personnel as alleged by all the opposition parties big and small in one voice. There were about 35 incidents of prevention of nominations, 23 incidents of forceful withdrawals and 55 instances of violence targeting the principal opposition parties, i.e., Telugu Desam Party and the Bharatiya Janati Party-Janasena combine. The norms of peaceful and orderly conduct of elections was completely vitiated. There is an unprecedented spike in unanimous elections as below.

S.No.	Name of the Office	Year 2014 No. & Percentage	Year 2020 No. & Percentage
1.	MPTC Members	346 out of 16,589 (2%)	2362 out of 9696 (24%)
2.	ZPTC Members	1 out of 1096 (0.09%)	126 out of 652 (19%)

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The scenario of unanimous elections in the Chief Minister's district of YSR Kadapa and his constituency is as below.

S.No.	Name of the Office	YSR Kadapa District - No. & Percentage
1.	MPTC Members	439 out of 553 (79% Unanimous)
2.	ZPTC Members	38 out of 50 (76% Unanimous)

In YSR Kadapa district, there is a piquant situation with the Zilla Praja Parishad bagged by ruling YSR Congress Party through unanimous elections that witnessed unheard of violence even before a single ballot was cast. The repeated and categorical assurances of the State Government have become a complete mockery.

It is the unanimous view of the contending opposition groups and stakeholders that the Chief Minister's clear and unmistaken message on the eve of elections that the Ministers would lose their berths if they do not deliver an emphatic result and the MLAs will be denied seats in the next elections for poor performance.

This had spurred the Ministers, MLAs and party cadres into frenzy and indulge in large scale violence and intimidation indulged with impunity and widely captured both in electronic and print media leaving the citizens aghast!

The State Election Commission was getting a spate of complaints almost by the hour and all our efforts to mitigate the situation by exhorting the poll Observers who are senior State IAS Officers was of little avail. The entreaties to Collectors and SPs had been futile despite the constant exhortion and persuasion to mend the situation. The daily situation reports from these functionaries were completely distorted and whitewashed oblivions of ground level realities.

The State Government had brought in a draconian Ordinance – A.P. Ordinance No. 2 of 2020 which provides for imprisonment of 3 years and fine upto Rs.10,000/- as well as penalty of disqualification in cases of "offenders" even after winning elections, if they were found to be harbouring liquor and money as inducements.

The opposition has termed this as a completely partisan and draconian measure tailor-made to target opposition outfits. Notwithstanding the express caveat of the SEC not to misuse this ordinance and be impartial, cases have actually come to light where liquor had been planted by ruling party goons and leading the police parties to arrest the opposition party leaders and contestants.

The political parties were apprehensive to campaign and the public at large are in the grip of psychological terror due to acts of violence encompassing the elections at every stage highlighting of its unprecedented menace. The actual polling percentages would definitely have hit the abysmal rock bottom. The upper and elite groups are in no mood to congregate at the polling booths given the present fears of "Corona" virus.

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Besides, there is a scarier scenario ahead particularly in the last leg of Gram Panchayat elections where the stakes are even higher as well as incidents of violence traditionally. The Gram Panchayat elections are fought on non-party lines and were scheduled for the last phase (3rd Phase). A scarier scenario of upto 70% unanimous elections is allegedly the game plan of the ruling party as alleged by the opposition groups.

In this background, the State Election Commission was actively deliberating stringent measures to check the unabated violence and to bring about course correction. The declaration by Government of India that the Corona virus as a notified disaster and the strict health advisories against public gatherings had cast a shadow on the ongoing election scenario!

The advisories ramping up preventive measures had resulted in lock down in neighbouring Karnataka and Telangana partially. In case of State Election Commission, Andhra Pradesh had made an assessment that large movement of people across the States and the use of traditional printed ballot paper is a recipe for public health crisis.

After taking inputs from the higher echelon of the Government of India and health experts and guided by relevant information in public domain (WHO & Ministry of Health & Family Welfare), the State Election Commission had taken a well deliberated and correct decision to halt the election for six weeks and to take stock again in the fourth week of April, 2020. The State Election Commissioners of Maharashtra, West Bengal and Orissa followed the suit with postponement of elections in the nest one to two days. This was widely welcomed across the board as the correct decision scare the ruling party which felt thwarted and determined to hold the elections as per their will rehearsed game plan. The State Government dissatisfied with the decision of the State Election Commission has chosen to go on appeal to the Supreme Court which heard the matter in W.P. (Civil) No. 437 dated 18.03.2020 and the Bench headed by Hon'ble Chief Justice of India upheld the authority and domain of the State Election Commission to take any election related matter and schedules. The State Election Commission's stand is completely vindicated. However, Supreme Court had given certain relief regarding continuation of Model Code of Conduct which was asked to be lifted with some important safeguards.

The State Election Commission had a duty cast upon it to act against gross violations of electoral violence in the next phase and to establish credibility for the democratic process to ensure a level playing field which was farthest from this goal. The State Election Commission is determined not to cognizance the aberrations that took place in Phase-I to repeat in the next two phases.

Simultaneously, the State Election Commission after obtaining reports, accessing the objective media accounts and complaints of political parties recommended to the Government to act against defaulting officers vide its Order dated 15.03.2020 ordering -

1. transfer of Collectors of Guntur and Chittoor Districts and Superintendents of Police of Guntur Rural and Tirupati Urban.
2. transfer of 2 Dy. SPs (Srikalahasti and Palamaneru).

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3. transfer of 3 Circle Inspectors of (Punganur, Rayadurgam and Tadipatri).
4. suspension of Circle Inspector of Macherla for gross failure and complicity (Incidentally Macherla Municipal election at the nomination stage itself had witnessed single valid nominations in majority of the wards after completion of scrutiny when the process was put on hold by the Commission)

Obviously, this is not to the liking of the Government of the day and these orders are yet to be given effect as the Government has gone on appeal to Supreme Court on the applicability of Model Code of Conduct by State Election Commission as stated earlier. A case is since instigated and filed in the High Court of Andhra Pradesh. The State Election Commission as stated above had successfully defended its stand. The detailed judgment is still awaited.

There is an unprecedented assault on me personally and the State Election Commission ever since postponing elections on 15.03.2020 by no less than the Chief Minister who had attacked me in most vitriolic and offending language casting aspersions and prejudice in his press meet on 15.03.2020.

Taking a cue from him, it has become the daily chore of the Cabinet Ministers including the Speaker of Assembly to heap choicest abuses and attributing malafides to me. The party leaders down the line, i.e., MLAs and other cohorts are mouthing most unbecoming, uncouth utterances against me.

I have been receiving repeated warnings and threats non-stop and even my family members are not spared of this ordeal. All this intimidation is meant to demoralize me and to force me to revisit the postponed elections for their sole political advancement!

I am standing my ground firmly adhering to the Constitutional safeguards and the empowering judgments of both Supreme Court and High Court to ensure free and fair elections at any cost. Now the Supreme Court had upheld my actions. But the road ahead is a testing time beset with challenges and acrimony as the Government of the day lacks in grace to treat Constitutional bodies with due dignity and deference.

The axing of partisan and inefficient bureaucrats and police officers was meant as a signal to bring home the necessary needed course correction and neutrality and fair play in the next phase of elections (stage 2 and 3 elections) from the poll machinery, but Government chose not to implement on the pretext of pending W.P. in the Supreme Court.

Any let up at this stage would completely weaken the election machinery and demoralize the opposition groups who will be hard but to give a semblance of fight. Needless to say, the stakes are very high for the ruling party to intimidate, coerce me and bringing me around forcibly to do their bidding which I am not prepared to do under any circumstances.

I have a long and distinguished track record in the State having worked as District Collector, the youngest Executive Officer of Tirumala-Tirupati Devasthanam, Tax Commissioner (nearly 4 years), Secretary/Principal Secretary to heavyweight Departments like Housing,

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Cooperation, Agriculture & Marketing, Finance (3 years). I was deputed to Raj Bhavan in 2009 and served with the doyen of Governors Sri E.S.L. Narasimhan for seven years as Principal Secretary and later as Special Chief Secretary. On superannuation, I was appointed as State Election Commissioner in 2016 at the behest of the Governor by the then State Government.

In this background, I am greatly disturbed and apprehensive for my safety and the security of family members. At this point of time, it also suits me to reside at Hyderabad which is relatively safe but not completely so as the adversaries have a long reach.

All through the elections, I have stayed ensconced in my office itself which is presently protected with a posse of State police. I dare not venture outside without full protection. Once the election process is over, I am completely vulnerable and will be my family.

I have been advised by well-wishers and colleagues who are well versed in security matters that the State mechanism is not equal to the threat perceptions I am facing. There are real apprehensions of physical threats, attacks directed against me and family members. Looking at the intolerant face of the top leadership of the present dispensation and their faction ridden background and known vindictive nature, I have come to the painful conclusion that my safety and my family's safety is in great peril.

Under the circumstances, I have no other recourse other than appealing to the Government of India and the Home Ministry to come to my rescue and provide a security cover through appropriate Central Police Force commensurate with the current risk perceptions. This would be necessary for extended duration this Government which is inimically disposed to me is in power and at the helm of the State with the vast of reach of resources and criminal gangs ready to their bidding. Their antecedents bear testimony to reach this conclusion painful as it is.

I beseech you to act swiftly and provide me with security cover so that the balance phase of elections at least will be held with a modicum of fair play. I am determined to do full justice with no let up to the Constitutional office of State Election Commissioner and to my call of duty and wish to adhere to rule of law and strengthen my hands in a timely manner.

I implore earnestly for early and favourable action to instill confidence and discharge my bounden duty with redoubtable energy and commitment.

Yours sincerely,

State Election Commissioner

191. The brief points of the said letter are as under :

i. Despite assurance given by the State Government, requisite security force was not deployed for possible poll violence;

ii. The expectation belied reflects on completion of first stage of elections which had witnessed unprecedented violence and intimidation by the ruling party with the active connivance of Police personnel;

iii. Percentage of unanimous election was increased. Referring the constituency of the Chief Minister, it is stated that unanimous election of MPTC and ZPTC members increased by 79% and 76% respectively in the constituency of the Chief Minister.

iv. There is a piquant situation with the Zilla Praja Parishad bagged by YSRC party through unanimous elections that witnessed unheard of violence even before a single ballot, which has become a complete mockery;

v. The Chief Minister gave clear and unmistaken message on the eve of elections that the Ministers would lose their berths if they do not deliver an emphatic result and the MLAs will be denied seats in the next elections;

vi. Large scale of violence and intimidation indulged with impunity and widely captured both in electronic and print media;

vii. The SEC was getting a spate of complaints and all their efforts to mitigate the situation by exhorting the poll Observers, who are senior State IAS Officers was of little avail.

viii. No support from the Collectors and SPs despite the constant extortion and persuasion to mend the situation. Functionaries were completely distorted and whitewashed oblivions of ground level realities;

ix. The political parties were apprehensive to campaign and the public at large are in the grip of psychological terror due to acts of violence encompassing the elections at every stage highlighting of its unprecedented menace;

x. A duty cast upon the State Election Commission to act against gross violations of electoral violence in the next phase and to establish credibility for the democratic process to ensure a level playing field.

xi. On obtaining reports, accessing the objective media accounts and complaints of political parties, the SEC recommended to the Government for transfer of Collectors of Guntur and Chittoor Districts and Superintendents of Police of Guntur Rural and Tirupati Urban; transfer of two Deputy Superintendent of Police (Srikalahasti and Palamaneru); transfer of three Circle Inspectors of Punganur, Rayadurgam and Tadipatri) and

suspension of Circle Inspector of Macherla. But the Government has not complied;

xii. There was unprecedented assault on him personally and the State Election Commission ever since postponing elections on 15.03.2020 by the Chief Minister, in most vitriolic and offending language casting aspersions;

xiii. Taking a cue from him, it has become the daily chore of the Cabinet Ministers including the Speaker of Assembly to heap choicest abuses and attributing malafides to him, and the party leaders and M.L.As are making unbecoming utterances against him;

xiv. He is receiving repeated threats and warnings from them to demoralize him. For conducting free and fair elections and maintaining democracy in the State, avoiding other things, personal security may be provided.

192. The record further indicates that three complaints were received from (1) Mamidi Babji, Kama ZPTC, YSRCP, Seethanagaram Mandal, Vizianagaram (undated), (2) Taddi Krishna Veni, MPTC, Garkam-2, Merakamudidam Mandal, Vizianagaram District, dated 28.3.2020 and (3) Konise Uma, YSRCP, MPTC contestant, Garividi Mandal, Vizianagaram District, dated 25.3.2020 to the Governor of the State and two other complaints were submitted by Mamidi Babji, Kama ZPTC, YSRCP, Seethanagaram

Mandal, Vizianagaram (undated) and Taddi Krishna Veni, MPTC, Garkam-2, Merakamudidam Mandal, Vizianagaram District, dated 28.03.2020 to the Chief Secretary of the State. In all these complaints, allegations were made against **Mr.A** demanding his removal from the post of SEC. Those complaints form the basis to initiate the proceedings.

193. It is also relevant to place on record that the Chief Secretary in retaliation to the letter of SEC dated 18.03.2020 addressed two letters on 20.03.2020 and 24.03.2020 to the Home Ministry, Union of India, which are also part of the record. On perusal, it appears to be the explanation of the letter of SEC by their own without being asked by any authority of the Central Government. In the said sequel of facts, the file was processed by PR & RD department.

194. The four files of the Governor produced for perusal reveal the following aspects:

(1) File No.PRR02-14023/28/2020-D (Computer No. 1130507) was processed regarding proposal of the Commissioner, PR & RD, for amendment to Section 200 of the APPR Act (hereinafter referred as *'File No.1'*).

(2) File No.PRR01-SEC0MISC (RDRE)/40/2020-ELEC-R (Computer No.1134519) was processed regarding issuance of Ordinance No.5 of 2020 amending

Section 200 of the APPR Act, 1994 and issuance of new Rules in G.O.Ms.No.617 (PR & RD), Dept., dated 10.04.2020 (hereinafter referred as *'File No.2'*).

(3) File No.PRR01-SEC0MISC (RDRE)/42/2020-RD-II (Computer No.1134954) was processed regarding cessation of tenure of the incumbent SEC, **Mr.A** vide G.O.Ms.No.618 (PR & RD), Dept., dated 10.04.2020 (hereinafter referred as *'File No.3'*).

(4) File No.PRR01-SEC0MISC (RDRE)/41/2020-ELEC-R (Computer No.1134806) was processed regarding appointment of new SEC, **Mr.B** vide G.O.Ms.No.619 (PR & RD), Dept., dated 11.04.2020 (hereinafter referred as *'File No.4'*).

195. In paragraphs Nos.1 to 7 of File No.2, reference of provisions regarding appointment of CEC and SEC is made, mentioning that at Centre level, the Election Commission is a multi-member body whereas at State level, the State Election Commission is only a single member body, which is to be notified by the Governor. It further reveals that the Law Department gave its opinion regarding the amendments taking support of the judgment of the Allahabad High Court in **Aparmita** (supra) and entry No.5 of List II of Schedule 7 of the Constitution. Thereafter, paragraph Nos.8 to 11 reflect the cause for initiation of action which is relevant, therefore, reproduced as under:

"8. The present state of affairs in the A.P. in the occurrence of recent turn of events originating from the Office of the SEC, has caused the resurfacing of the debate again. A few decisions of the SEC in the recent past, constrained the Government to approach the Hon'ble Supreme Court in W.P.(C) No.437/2020 in case of State of Andhra Pradesh Vs. A.P. State Election Commission.

9. So much so, that the State Election Commissioner, who was appointed to this Office in the year 2016 with a tenure of 2021, did not conduct elections to the local bodies when due in the year 2018, even after a court directive, incurring criticism that he had abdicated his discretion to the winning chances of a political party, which then in 2018, in power in the Government, was widely predicted to lose the elections. Soon after the orders of the High Court including on the percentages of reservations and also the schedule of polls to be organized, the poll schedule was announced, including in the light of the Ordinance No.2 of 2020 dated 20-2-2020 issued by the State to gear for an incident-free elections.

10. Surprisingly, and after the conclusion of the stage of election, with reference to the withdrawal of nominations, a series of steps have been taken by the SEC which has led to bitter criticism from the ruling party and adulation of the opposition parties. The allegations made by the SEC against the entire rank and file of State bureaucracy stunned everyone warranting

an exchange of correspondence between the Chief Secretary and the Union of India and vide the letter dated 20-3-2020 and 24-3-2020. The State had clearly indicated to the UOI that it bonafide believes, that under the present incumbent SEC, it does not expect a free and fair election.

11. The above series of events has again given rise to the contentious issue of independence of the SEC, drawn from the State bureaucracy, which in the recent past, faced allegations, not without justification, of allying with one political party or the other. Further, representations have been received from the contestants in the present local body elections, expressing apprehension that the remainder of the election process to commence after normalcy is restored post-COVID-19, would not be free and fair since the SEC is oriented towards one political ideology or the other. It is also being remarked that a long tenure of 5 years has also contributed to the incumbent eyeing or vested interests within the Government to orient its functioning to suit the political interests of one party."

In para 12, the action is proposed by the Committee, which is reproduced as under:

"In this back drop of events a meeting was conducted on 7-4-2020 by Principal Advisor to C.M. which was attended by Ld. Advocate General, Principal Secretary to C.M., and Principal Secretary, PR & RD. In the

> meeting above issues were discussed in detail and it was agreed that urgently steps may be taken to initiate reforms with respect to appointment, eligibility, tenure etc., with respect to State Election Commissioner."

Last paragraph No.15 of the said note is as thus:

> "In the above said circumstances the file may be sent to Law Department for their comments on the proposal and preparation of Draft Ordinance, and vetting the draft Notification for amending enabling rules."

196. On perusal, it is clear that in view of the cause referred in paragraph Nos.8 to 11, a meeting was conducted on 07.04.2020 by the Principal Advisory to the Chief Minister, which was attended by the Advocate General, Principal Secretary to the Chief Minister and Principal Secretary, PR and RD and discussed the above issues in detail, on which they agreed to take urgent steps to initiate reforms with respect to appointment, eligibility, tenure etc., of SEC. In the said context, the reforms regarding change of eligibility for appointment and tenure from five (5) year to three (3) year was proposed. The file was processed further through Law Department, then processed on 08.04.2020, on which the note was put up by the Chief Secretary, endorsing that para (5) of Section 200 of APPR Act as proposed may be interpreted not in accordance with Article 243K(2) of the Constitution, hence, the opinion of the Advocate General may be taken and put up thereafter. Later, the Advocate General gave his opinion to process the impugned Ordinance

through Council of Ministers and then it was sent to the Governor, who digitally signed in routine course on 10.04.2020 at 1.59 p.m., and on the same date, the impugned Ordinance is promulgated.

197. The File No.2 is related to the New Rules, 2020. In the said file, while making rules regarding conditions of service and tenure, the rules have been changed in consequence to the amendment in Section 200 of the APPR Act and the rules are also amended accordingly. As the Rules are consequential to the amendment in Section 200 of the APPR Act, which is fraud on power and do not qualify the test of Article 14 of the Constitution, such Rules would also be arbitrary, illegal and unconstitutional.

198. In consequence to it, the order of cessation of office of **Mr.A** as SEC was issued by the Principal Secretary, PR & RD on 10.04.2020. The movement of File No.3 was initiated at 9.45 p.m. on 10.04.2020 on which the order declaring cessation of tenure of **Mr.A** was digitally signed by the Principal Secretary, PR & RD at 10.07 p.m. on 10.04.2020 itself and in furtherance of the same, G.O.Ms.No.618 was issued, with his signature. It is further noticed from File No.3 that there was no approval of the Governor on it, however, G.O.Ms.No.618 PR & RD Dept., dated 10.04.2020 was issued by the Principal Secretary to the Government, PR & RD, mentioning 'By order and in the name of the Governor of Andhra

Pradesh' although no such order or signature of the Governor is in the file.

199. Referring to the appointment of **Mr.B** as SEC, File No.4 was moved. As per notings of paragraph No.7 of the File, it was submitted to the Governor through the Chief Secretary, the Minister of PR & RD and the Chief Minister, duly recommending suitable person for appointment as SEC for a tenure of three (3) years, and a draft G.O. format for appointment of SEC with blank name of new person to be appointed as SEC was submitted for approval at 3.29 p.m. on 10.04.2020. On the same day, at 4.02 p.m., the Chief Minister submitted the bio-data of **Mr.B** to appoint him as SEC. The said proposal was approved and digitally signed by the Governor at 8.54 a.m., on 11.4.2020. Thus, it is clear that the movement of file for removal of **Mr.A** as SEC i.e., File No.3 was initiated subsequent to processing File No.4 for appointment of new SEC. It is also to be noted that the CV of **Mr.B** proposing to appoint him as new SEC was submitted by the Chief Minister at 4.02 p.m., prior to it, keeping his name blank, file was processed at 3.29 p.m. on 10.4.2020. While File No.2 relates to issuance of the Rules in consequence of promulgation of the Ordinance vide G.O.Ms.No.617, dated 10.04.2020.

200. In the context of the aforesaid facts, the legal position to the issue whether the circumstances exist for satisfaction of the

Governor and to take immediate action to promulgate the Ordinance and notifications, or it is actuated by oblique reasons and extraneous grounds, is required to be adjudged in view of various judgments of the Court cited by either parties.

201. According to the learned counsel for the petitioners, the existing circumstances do not render it necessary to the Governor to take immediate action in exercise of the power under Article 213 of the Constitution, while the learned counsel for the respondents denied the said contention. To advert the contentions, Article 213(1) of the Constitution is relevant and reproduced as thus:

> **"Article 213 : Power of Governor to promulgate Ordinances during recess of Legislature :-**
>
> (1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require: Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if-
>
> (a) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

> (b) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or
>
> (c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President."

202. As per law, it is clear that during the recess of Legislative Assembly, the Governor is having power to promulgate an Ordinance. Such power can be exercised on fulfilling twin conditions, viz., (i) when the Legislative Assembly and the Council are not in session and (ii) the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action. Learned counsel for the petitioners have relied upon the judgment of Hon'ble the Supreme Court in **Rohtas Industries** (supra), wherein, while dealing the issue of non-application of mind by the Government to form opinion, the Court said that the opinion so formed without sufficient material on record, is in excess of the power. In the facts of the case at hand, the said judgment is of no help to them. The judgment of **R.C. Cooper** (supra) has also been relied upon by the learned counsel, but the same does not emphasise the issue indicating the circumstances which render it necessary to take immediate action.

Further, learned counsel for the petitioners have relied on the

Seven-Judge Bench judgment of Hon'ble the Supreme Court in the case of **Samsher Singh** (supra), wherein it was observed that the satisfaction required while promulgating the Ordinance by the President or the Governor, is not personal satisfaction, but it is in the constitutional sense under the Cabinet system of the Government.

203. The judgment of Hon'ble the Supreme Court in **R.K.Garg (supra)** has also been relied upon by both sides, wherein the Court observed as under:

> "4. . . . . It will be noticed that under this Article legislature power is conferred on the President exercisable when both Houses of Parliament are not in session. It is possible that when neither House of Parliament is in session, a situation may be arise which needs to be dealt with immediately and for which there is no adequate provision in the existing law and emergent legislation may be necessary to enable the executive to cope with the situation. What is to be done and how is the problem to be solved in such a case? Both Houses of Parliament being in recess, no legislation can be immediately undertaken and if the legislation is postponed until the House of Parliament meet damage may be caused to public weal. Article 123 therefore confers powers on the President to promulgate a law by issuing an Ordinance to enable the executive to deal with the emergent situation which might well include a situation created by a law being declared void by a

Court of law. "Grave public inconvenience would be caused", points out Mr. Seervai in his famous book on Constitutional Law, if on a statute like the Sales Tax Act being declared void, "no machinery existed whereby a valid law could be promulgated to take the place of the law declared void'. The President is thus given legislative power to issue an Ordinance and since under our constitutional scheme as authoritatively expounded by this Court in *Shamsher and Anr. v. State of Punjab,* the President cannot act except in accordance with the aid and advice of his Council of Ministers, it is really the executive which is invested with this legislative power."

On perusal of it, in reference to the book on *Constitutional Law* by Mr. H.M. Seervai, it is stated that if any grave public inconvenience is going to be caused on account of not having valid legislation, then emergent situation may arise to take immediate action by the Governor in the circumstances exist. In the facts of the present case, the circumstances exist for immediate action are the postponement of the election due to COVID-19 pandemic by the SEC, addressing a letter to the Union of India specifying the circumstances showing violation of law taking it in hands affecting free and fair election by the State Government, and the statements given by politicians to curb **Mr.A**, are on record. In the said sequel of facts, the judgment of **R.K. Garg** (supra) is of no help to the respondents in particular, but it specifies what may be the emergent circumstances.

204. Learned counsel for the petitioners have further relied upon the judgment of **A.K. Roy** (supra) in which the Constitutional Bench of Hon'ble the Supreme Court, while dealing with the Ordinance issued by the President or the Governor, referring the Debates of the Constituent Assembly, said that the power to issue Ordinance as per the said Debates is regarded as a necessary evil and to be used to meet extraordinary situations and not perverted to serve political ends. The said Debate gives an assurance to the people that the extraordinary power shall not be used in order to perpetuate a fraud on Constitution which is conceived with so much faith and vision. It is further stated that whether preconditions to the exercise of power under Article 123 of the Constitution have been satisfied or not cannot be regarded as a purely political question and kept beyond judicial review.

205. Learned counsel for the petitioners have also placed reliance upon the judgment of Hon'ble the Supreme Court in **D.C. Wadhwa** (supra), wherein, in the context of repeated promulgation of the Ordinances by the Governor, the Court has referred the power of the Governor to promulgate the Ordinance dealing with the circumstances which render it necessary for him to bring the Ordinance. The Court observed as thus:

"7. The power conferred on the Governor to issue Ordinances is in the nature of an emergency power

which is vested in the Governor for taking immediate action where such action may become necessary at a time when the Legislature is not in Session. The primary law making authority under the Constitution is the Legislature and not the Executive but it is possible that when the Legislature is not in Session circumstances may arise which render it necessary to take immediate action and in such a case in order that public interest may not suffer by reason of the inability of the Legislature to make law to deal with the emergent situation, the Governor is vested with the power to promulgate Ordinances. .....

> The power to promulgate an Ordinance is essentially a power to be used to meet an extra-ordinary situation and it cannot be allowed to be "perverted to serve political ends." It is contrary to all democratic norms that the Executive should have the power to make a law, but in order to meet an emergent situation, this power is conferred on the Governor and an Ordinance issued by the Governor in exercise of this power must, therefore, of necessity be limited in point of time."

On perusal of the above, it is clear that when the Legislature is not in session, circumstances may arise which render it necessary to take immediate action, and in such situation, in order to see that the public interest may not suffer by reason of inability of the Legislature to make the law, the power has been conferred

to the Governor. The said power cannot be allowed to be perverted to serve political ends, contrary to all democratic norms.

206. Learned counsel for the petitioners have also relied upon the judgment of **Nabam Rebia** (supra), but the said judgment is on the power of promulgation of Ordinance on the aid and advice of the Council of Ministers, not on the issue of the satisfaction on the circumstances exist which render it necessary to take immediate steps.

207. On the other hand, learned counsel for the respondents have relied upon the judgment of **K. Nagaraj** (supra), in particular para Nos.31, 32, 33 and 34 of the case, in which the judgments of **A.K. Roy** (supra) and **R.K. Garg** (supra) have been considered along with the judgment of **High Court of A.P. v. V.V.S. Krishnamurthy**[137]. In the said case, the question arose on the ground of non-application of mind in hurry, which shows arbitrary character. But, in the present case, the situation is entirely converse with respect to legislative competence and due to oblique reason to bring the Ordinance to the effect, to which it was brought. Therefore, the said judgment is of no help to the respondents. The judgment of **T.Venkata Reddy** (supra) has also been cited by the respondent-State and the intervener but the said judgment has been overruled in the case of **Krishna Kumar**

[137] (1979) 2 SCC 34

Singh (supra). Therefore, reliance on an overruled judgment is of no avail to the respondents. Learned Senior Counsel appearing for **Mr.B** has relied upon the judgment of **Pradhan Sangh Kshettra Samiti** (supra). But it is relating to the delimitation of the village territories in which the power of the Governor has been specified. However, the said judgment is also of no help to the case of **Mr.B.**

208. On the issue of colourable legislation, learned counsel for the petitioners relied upon the judgment of **K.C. Gajapathi Narayan Deo** (supra), in which Hon'ble Apex Court has made it clear that the doctrine of colourable legislation does not involve any question of *mala fide* on the part of the Legislature but this doctrine revolves around the question of competency of a particular Legislature to enact a particular law. Reliance has also been placed by the learned counsel for the petitioners on the judgment of Hon'ble the Supreme Court in **Sonapur Tea Company Ltd.** (supra), in which the judgment of **K.C. Gajapathi Narayan Deo** has been referred in the context of colourable legislation. On the other hand, learned Advocate General placed heavy reliance on the judgment of Hon'ble the Supreme Court in **R.S. Joshi** (supra), wherein at para 16, it is *inter alia* stated that the colourable legislation would not mean tainted with bad faith or evil motive. In the jurisprudence of power, colourable exercise of or fraud on legislative power or, more frightfully, fraud on the Constitution, are the expressions which

merely mean that the Legislature is incompetent to enact a particular law although the label of competency is stuck on it, and then it is colourable legislation. However, in the present case, in view of the discussion made hereinabove, the State Legislature does not have the competence to bring the law on the point of appointment and eligibility of SEC, and the issue of tenure does not qualify the test of class legislation specified in Article 14 of the Constitution. In addition thereto, the statements of the Chief Minister and other Ministers, which are on record, and remain undisputed, and in the manner in which the department has processed the file to promulgate the impugned Ordinance, through Council of Ministers and signed by the same persons, indicate that they have decided to remove **Mr.A**, due to not having connivance, however, brought narcissist Ordinance to remove him and to bring the person of their choice. Therefore, the promulgation of Ordinance is actuated by oblique reason and on extraneous grounds.

209. Learned counsel for the respondents also placed reliance on the judgment of **Dharam Dutt** (supra), in which the Hon'ble Apex Court has referred the judgment of **K.C. Gajapathi Narayan Deo**. The principle laid down in **K.C. Gajapathi Narayan Deo** has been distinguished in the facts of the present case, as discussed above. The respondents has further placed reliance on

the judgment of **Committee of Creditors of Essar Steels India Limited** (supra) in which the judgment of **R.S. Joshi** has been followed. The said judgments are of no help to the respondents, looking to the facts of the case as discussed.

210. The Hon'ble Apex Court, in the case of **Krishna Kumar Singh** (supra), has considered the issue of necessity of bringing the Ordinance and held that the Governor is required to form a satisfaction of the existing circumstances which makes it necessary to take immediate action. The Court has further distinguished the word '*necessity*' with *'mere desirability'*. Explaining the same, it is said that the '*necessity*' coupled with *'immediate action'* conveys the sense that it is imperative due to an emergent situation to promulgate an Ordinance during the period when the legislature is not in session. In assessing the emergent situation, the appropriate test to be applied is whether the Ordinance is in the public interest and based on constitutional necessity. Therefore, applying the ratio of the said judgment, the satisfaction of the Governor to promulgate the impugned Ordinance may be based on the circumstances exist which render it necessary for him to take immediate action.

211. In view of the legal position as it exists, the facts are; as per the order dated 08.01.2020 passed in W.P(PIL).Nos.141 and 153 of 2019 and the common order dated 02.03.2020 passed in

W.P(PIL).No.2 of 2020 and batch, the elections for local bodies were notified on 07.03.2020 and 09.03.2020 and the first phase of the election was concluded on 14.03.2020. In the said process, unprecedented violence and intimidation by ruling party contestants with connivance of the police was found, due to which the percentage of the unanimous election was increased unprecedentedly and the incidents of forcible withdrawal of nominations and targeting opposition party contestants were reported. The SEC recommended the Government to transfer the Collectors of Chittoor and Guntur Districts, Superintendents of Police of Guntur Rural and Tirupathi Urban, Deputy Superintendents of Police of Srikalahasti and Palamaneru of Chittoor District, Circle Inspectors of Punganur, Rayadurgam and Tadipatri, and also suspension of Circle Inspector of Macherla, Guntur District. Those orders are not complied by the Government. In the meantime, as per the advisory of the World Health Organization due to COVID-19 pandemic, the election notification was suspended postponing the election on 15.03.2020. The said process was challenged before Hon'ble the Supreme Court in which the State Government remained unsuccessful in the matter of continuation of election process. Thereafter, various political persons, including the Chief Minister, Speaker of Legislative Assembly and Ministers who form the Council of Ministers, and Members of Legislative Assembly gave statements, making

allegations and casting personal aspersions on the SEC, **Mr.A** and to take up the issue to the higher ups and the Governor to sack **Mr.A** as SEC. The SEC addressed a letter on 18.03.2020 to the Home Ministry, Union of India, informing all the circumstances in the State and expressing fear of personal safety and requested for providing security. The letter of the Central Government filed by the counsel for the Union of India reflects that the State of Telangana was directed to consider providing due security. The existence of all these facts is not in dispute. But the State Government and State Election Commission have disputed its contents on exaggeration of the acts of the SEC.

212. In the meantime, as seen from File No.2 placed before the Governor to promulgate the Ordinance, three complaints were made by MPTC and ZPTC members and on receiving those complaints on 25.03.2020 and 28.03.2020, the file was processed by the Panchayat Raj & Rural Development Department on 07.04.2020 in the manner as referred hereinabove. Para Nos. 8 to 11 of the note in File No.2 indicates the reference of the existing circumstances. Para No.12 of the same indicates that the Principal Advisor to the Chief Minister, Advocate General, Principal Secretary to the Chief Minister and Principal Secretary to the PR&RD, have discussed the issues and they agreed that urgent steps may be taken to ensure reforms with respect to appointment, eligibility and

tenure of the SEC. Along with the said file, they attached a draft Ordinance making amendment to Section 200 of the APPR Act. It was processed through Chief Secretary, consists of advice of Advocate General and thereafter, by Council of Ministers, which is digitally signed by the Governor.

213. The aforesaid circumstances clearly reveal that upto 07.03.2020 and 09.03.2020, at the time of declaration of the Election Notification, there was no point regarding electoral reforms. The issue arose only on issuance of notification on 15.03.2020, suspending the election notification and postponing the elections, and when the State Government remained unsuccessful before Hon'ble the Supreme Court in challenging the said notification. The SEC projected the unprecedented events and acts of the ruling party to the Central Government, which is controverted by other side. The statements of the Council of Ministers to sack **Mr.A** are on record. Thereafter, on the basis of two or three complaints, the entire action has been taken in the name of electoral reforms and promulgated the impugned Ordinance, making amendment to Section 200 of the APPR Act.

214. Looking to the aforesaid events, in our considered opinion, there is no public interest or constitutional necessity exist to take immediate action by the Governor for promulgation of Ordinance. In the manner the events took place, it indicates the desirability of

the State Government to bring the Ordinance in the name of electoral reforms to remove the incumbent SEC, **Mr.A** and the power so exercised by the Governor under Article 213 of the Constitution cannot be said to be based on the satisfaction of the circumstances exist which may render it necessary for him to take immediate action. It is not out of place to mention here that when there is a complaint made by the SEC against the State Government to the Union of India, which is controverted by other side, it may be a ground to the State Government to refer the issue, as required under the proviso to Article 243K(2) of the Constitution, for removal of the SEC on the ground of proved misbehaviour or incapacity through impeachment, as per the procedure prescribed. But, in the present case, the State Government has resorted to promulgation of the impugned Ordinance, changing the pre-eligibility for appointment and tenure, to remove the SEC. As discussed hereinabove, in the matter of appointment and determining pre-eligibility for appointment, the State Government does not have power to bring any Ordinance, therefore, it is a fraud on power under the Constitution. In fact, the action has been taken merely on the desirability of the State Government, without there being any public interest or constitutional necessity warranting exercise of the power for promulgation of the impugned Ordinance.

215. As per the record produced from the office of the Governor, the State Government want to initiate reforms with respect to appointment, eligibility and tenure of the SEC. As discussed in detail while deciding Question Nos.1 and 3, there is no source of power available to the State Government to make reforms with respect to appointment and eligibility. So far as the tenure is concerned, if we see the issue of urgency, the tenure of the SEC, **Mr.A** was for five years as per the order of the Governor vide G.O.Ms.No.11, dated 30.01.2016. Nothing is brought on record to show that the tenure of the SEC is going to effect the constitutional spirit or public interest. In such a case, there is no justification to cut down the tenure and in particular to direct **Mr.A** to cease to hold the office of the SEC. In the facts of the case, there is no material to justify that the circumstances exist which render it necessary to the Governor to take immediate action. Therefore, promulgation of the impugned Ordinance does not qualify the test of second part of Article 213 of the Constitution.

216. In view of the above discussion, we hold that the power so exercised by the Governor under Article 213 of the Constitution in promulgating the impugned Ordinance is not based on the satisfaction of the circumstances exist which may render it necessary for him to take immediate action in public interest or in

constitutional necessity, but it is actuated by oblique reasons and on extraneous grounds. Accordingly, Question No.4 is answered.

Question No.5: ***Whether the term 'cease to hold office' as per Sub-section (5) of Section 200 of the APPR Act in the Ordinance may lead to removal of Mr.A, SEC, and is it permissible ignoring immunity prescribed under the Constitution?***

Effect of 'Cease to hold Office':

217. In the present case, Sub-section (5) of Section 200 of the APPR Act brought by the impugned Ordinance lead to a consequence, **Mr.A** shall cease to hold and discharge the functions as SEC. The impugned Ordinance has already been quoted herein above, in which, in addition to bring amendment in Sub-sections (2) and (3) prescribing eligibility for appointment and tenure of the SEC, the Sub-section (5) is added to cease to hold which is relevant for the purpose of this issue. However, at the cost of repetition, it is reproduced thus:

> **"Section 200 : Constitution of Andhra Pradesh Election Commission for Local Bodies :-**
>
> (1) .....
>
> (2) .....
>
> (3) .....
>
> (4) .....

> (5) On and with effect from the date of coming into force of this Ordinance, any person appointed as State Election Commissioner and holding office as such shall cease to hold office."

218. On perusal of the aforesaid, it reveals that Sub-section (5) contains some important ingredients, that on commencement of the Ordinance, '*any person appointed as State Election Commissioner and holding office as such shall cease to hold office*', meaning thereby, it applies to the SEC holding the office in present shall cease to hold his office. In other way, it means that the SEC appointed and discharging the functions shall now cease to continue by virtue of the impugned Ordinance. In the said context, it can safely be understood that the SEC holding the office on the date of promulgation shall not continue in such office further.

219. As per the scheme of the Constitution**,** the State Election Commission shall consist of one Member SEC and be appointed by the Governor under Article 243K(1) of the Constitution. Under Article 243K(2) immunity is prescribed specifying the manner of his removal. By virtue of promulgation of Ordinance by Executive *fiat*, Sub-section (5) of Section 200 of the APPR Act is brought directing to cease to hold the office. Therefore, it is to be understood, how far the said statutory provisions are justifiable in the context under Article 243K(2) of the Constitution. The said Article is relevant, however, reproduced as thus:

> **"243K: Elections to the panchayats :-**
>
> (1) .....
>
> (2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine - -
>
> Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment."

220. A plain reading of the proviso in entirety deals the conditions of service and tenure both as specified in Clause (2) of Article 243K of the Constitution. Therefore, to understand the same, we have to read it by splitting up the same. The first part of the proviso stated as under:

> "The State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court."

The word *'removal'* may indicate his discontinuation from the office prior to completion of the tenure. The presumption under the Constitution is that on appointment of SEC, he may not be removed in any manner except as prescribed. He can only be dislodged

from the Office when he has done an act of proved misbehaviour and by following the procedure contemplated for removal of a Judge of High Court by way of impeachment. Therefore, the first part of the proviso deals with the protection for tenure, while the second part reads as thus:

> "the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment."

If we interpret the latter part of the proviso, then in the conditions of service, tenure so prescribed of five (5) year at the time of his appointment cannot be varied to his disadvantage making it short to three (3) years after his appointment. The expression *'after his appointment'* carries weight. If we accept the contention of the learned Counsel for the respondents that the conditions of service is rather different than the tenure, even because at the time of appointment, the Old Rules, 1994 were in vogue, wherein the term of five (5) years was prescribed to the SEC, after his appointment the said conditions cannot be varied to his disadvantage.

221. In the said context, the first issue that arises is; what is the status of the office of the SEC to whom the immunity is provided and whether such status is at par to the other office holder under the Constitution, holding office under the pleasure of the President

or the Governor. The said issue has been considered by a Constitutional Bench judgment of Hon'ble Apex Court in the case of **B.P.Singhal[138].** In the said case, the removal of the office of the Governor was under challenge. However, while determining various questions, the Apex Court has considered the nature of the offices held by the citizens, under the pleasure or restricted pleasure or with immunity. The Apex Court in paras 31 and 32 of the said judgment, held as thus:

> "31. The Constitution of India thus provides for three different types of tenure: (i) Those who hold office during the pleasure of the President (or Governor); (ii) Those who hold office during the pleasure of the President (or Governor), subject to restrictions; (iii) Those who hold office for specified terms with immunity against removal, except by impeachment, who are not subject to the doctrine of pleasure.
>
> 32. The Constituent Assembly Debates clearly show that after elaborate discussions, varying levels of protection against removal were adopted in relation to different kinds of offices. We may conveniently enumerate them: (i) Offices to which the doctrine of pleasure applied absolutely without any restrictions (Ministers, Governors, Attorney General and Advocate General); (ii) Offices to which doctrine of pleasure applied with restrictions (Members of

[138](2010) 6 SCC 331

defence service, Members of civil service of the Union, Member of an All-India service, holders of posts connected with defence or any civil post under the Union, Member of a civil service of a State and holders of civil posts under the State); and (iii) Offices to which the doctrine of pleasure does not apply at all (President, Judges of Supreme Court, Comptroller & Auditor General of India, Judges of the High Court, and Election Commissioners). Having regard to the constitutional scheme, it is not possible to mix up or extend the type of protection against removal, granted to one category of offices, to another category."

222. Undisputedly, the post of the SEC under consideration in the case at hand, held by **Mr.A** would fall in category (iii) as specified above and the doctrine of pleasure do not apply at all to the President of India, Judges of the Supreme Court and High Court including the Chief Justices, the Comptroller and Auditor General of India and the Election Commissioners. The Court further clarified that looking to the constitutional scheme it is not possible to mix up or extend the type of protection granted against removal in one category to another. Therefore, there cannot be any doubt to say that the post of SEC, fall in a category in which doctrine of pleasure do not apply and the bearer of the post is having immunity prescribed from removal. Thus, the SEC cannot be removed at the

pleasure of the Governor or by an act of Executive *fiat* from the said post without following the procedure established by law.

223. The Hon'ble Apex Court in **In Re Reference under Article 317(1) of the Constitution**[139] while dealing with office held by the Member of the Public Service Commissioner observed as thus:

> "9. The case of a government servant is, subject to the special provisions, governed by the law of master and servant, but the position in the case of a Member of the Commission is different. The latter holds a constitutional post and is governed by the special provisions dealing with different aspects of his office as envisaged by Articles 315 to 323 of Chapter II of Part XIV of the Constitution. In our view the decisions dealing with service cases relied upon on behalf of the respondent have no application to the present matter and the reference will have to be answered on the merits of the case with reference to the complaint and the respondent's defence."

The position of the SEC is some what similar to the Member of the Public Service Commission. Therefore, such post holders cannot be equated at par to the other Constitutional post holders working under the pleasure of the Governor or the employees working under the pleasure with restriction, under Central Government, State Government or Union Territory.

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[139] (1990) 4 SCC 262

224. On appointment of the SEC, being constitutional post holder, immunity has been given due to the responsibility of higher echelon to hold free and fair elections. In this context, Hon'ble the Supreme Court in the matter of **People's Union for Civil Liberties v. Union of India**[140] observed that democracy and free elections are a part of the basic structure of the Constitution. The relevant portion is extracted as thus :

> "53. 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. Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting."

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[140] (2013) 10 SCC 1

225. The Apex Court in the case of **T.N.Seshan** (supra) has noticed the position of the CEC, so far as superintendence, control and preparation of electoral rolls for and conduct of election is concerned as well as removal from the post and held that the recommendation for such removal must be based on intelligible and cogent considerations, which would have relation to efficient functioning of the Election Commission.

226. In the case of **Pandranki Parvathi** (supra) relied by the respondents, the Division Bench of this Court said that Article 243K of the Constitution and Section 200 of the APPR Act are analogous to Article 324 of the Constitution, which provides that the superintendence, direction and control of elections should be vested in an Election Commission. The relevant observation is in para 25, which is reproduced as under:

> **"25.** Article 243K of the Constitution of India commands that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. The State Legislature in compliance with the mandatory constitutional requirement provide for constitution of Andhra Pradesh Election Commission for Local Bodies for the superintendence, direction and control of the preparation of electoral rolls for, and the

conduct of elections to, all the Panchayat Raj Institutions governed by the Act. Article 243K of the Constitution of India and Section 200 of the Act are analogous to Article 324 of the Constitution of India, which provides that the superintendence, direction and control of elections should be vested in an Election Commission. Section 201 of the Act mandates that all elections to the Panchayat Raj Institutions shall be held under the supervision and control of the Andhra Pradesh Election Commission for Local Bodies and for the said purpose, it shall have power to give such directions as it may deem necessary to the Commissioner, District Collector or any officer or servant of the Government and the Panchayat Raj Institutions so as to ensure efficient conduct of the elections under the Act."

227. In this context, the observations of Hon'ble the Supreme Court in the judgment of **Kishansing Tomar** (supra) in para Nos.23 & 25 are relevant and extracted as thus :

> **"23.** In terms of Article 243-K and Article 243-ZA(1) the same powers are vested in the State Election Commission as the Election Commission of India under Article 324. The words in the former provisions are in pari materia with the latter provision.
>
> **25.** From a reading of the said provisions it is clear that the powers of the State Election Commission in respect of *conduct of elections* is no less than that of the Election Commission of India in their respective

> domains. These powers are, of course, subject to the law made by Parliament or by the State Legislatures, provided the same do not encroach upon the plenary powers of the said Election Commissions."

228. From the above, it is clear that so far as preparation of electoral rolls, superintendence and to conduct the elections, the status of SEC is at par to CEC. Simultaneously, the protection provided to CEC and SEC against their removal is also similar. The removal of SEC can only be possible by way of the proviso to Article 243K(2) of the Constitution, not by way of promulgation of any statute by cut-down the tenure so prescribed for his appointment on the date of holding the office.

229. Now, if we see the language engrafted in Sub-section (5) of Section 200 of the APPR Act, then it made clear the 'State Election Commissioner appointed and holding office shall cease to hold office' may come within the purview of removal of SEC to whom immunity is prescribed under proviso. The said aspect may be understood looking to the meaning whether ceasing to hold office or removal is one and the same or having some different intention. In this regard, as per **Black's Law Dictionary**, the word **'ceased'** means *to stop*; *to become extinct; to pass away; to come to an end*. As per Black's Law Dictionary the word **'removal'** means in a broad sense *'the transfer of a person or thing from one place to another; 'deprivation of office by act of competent superior officer*

acting within the scope of authority'. In the same Dictionary, the word **'terminate'** means *'to put an end to; to make to cease; to end.'* Thus looking to the meaning of the terms 'cease', 'removal' and 'termination', they give the same meaning *'to come to an end' and 'to cease office'.* As per **P.Ramnatha Aiyer**'s Legal Law Lexicon 4th edition expression *'ceased'* means *'discontinue or put an end'.* Justice **C.K.Thakkar's Encyclopaedia** Law Lexicon defines it as *'to put an end', 'to stop', 'to terminate' or 'to discontinue'.* As per **Merrium Webster Dictionary,** the words *'cessation or ceased to hold the office'* is defined as follows:

> "to cause to come to an end especially gradually; no longer continue; to come to an end; to bring an activity or action to an end."

230. The Apex Court in the context of the wordings used in Article 213(2)(a) *'ceased to'* had an occasion in the case of **Krishna Kumar Singh** (supra) to consider the meaning of the word *'cease'* and referred a Division Bench judgment of the this Court in the case of **Mahant Narayana Dessjivaru v. State Of Andhra, Hyderabad**[141] and the Court held as thus:-

> "65. Article 213(2)(*a*) postulates that an Ordinance would cease to operate upon the expiry of a period of six weeks of the reassembly of the legislature. *Oxford English Dictionary* defines the expression

[141] AIR 1959 (AP) 471

"cease" as [*Oxford English Dictionary* (2nd Edn. Clarendon Press), p. 1014] : "to stop, give over, discontinue, desist; to come to the end". *P. Ramanatha Aiyar's The Major Law Lexicon* [*The Major Law Lexicon* (4th Edn., p. 1053)] defines the expression "cease" to mean "discontinue or put an end to". *Justice C.K. Thakker's Encyclopaedic Law Lexicon* [Ashoka Law House, New Delhi (India), p. 879] defines the word "cease" as meaning: "to put an end to; to stop, to terminate or to discontinue". The expression has been defined in similar terms in *Black's Law Dictionary* [10th Edn., p. 268] .

> **66.** In a judgment of a Division Bench of the Andhra Pradesh High Court in *Mahant Narayana Dessjivaru* v. *State of Andhra* [*Mahant Narayana Dessjivaru* v. *State of Andhra*, AIR 1959 AP 471 : 1958 SCC OnLine AP 257] , it was held that once a scheme and a sanad were no longer operative, the rights, if any, accruing therefrom were extinguished. There was no scope for importing any notion of suspension into that expression. A discontinuation took effect "once for all [*Id* at p. 474, para 28]".

231. As already discussed, the meaning of words *'cease to hold the office'* is to stop, to become extinct, to pass away, to come to an end, while *'removal of office'* means deprivation of office by act of superior. The word *'terminate'* indicates to put an end to and to make to cease, and to end. In view of the judgment, the word *'ceased to hold the office'* means *'to remove'*. Therefore, it can

safely be concluded that by promulgation of the impugned Ordinance, from the date of coming into force of the same, *inter alia* stating that the person appointed as SEC shall cease to hold the office, would amount to his removal. We also conclude that the word cease to hold the office is synonym to termination and removal from the office and adding of Sub-section (5) of Section 200 of the APPR Act in the impugned Ordinance is constitutionally impermissible in particular, looking to the immunity specified given by the provision of Article 243K(2) of the Constitution.

232. It is to be noted here all the judgments relied by either side are not related to a post held by a person without any pleasure and having immunity. For the post of SEC doctrine of pleasure does not apply. The judgment of **Aparmita Prasad Singh** (supra) cited is not a precedent as discussed in Question No.1, which can only be a case related to the post. However, the judgments relied upon by the parties may be used to the extent of the expression used therein, and relevant to take a guidance in the case on particular point.

233. In the case of **Akshay Kumar Deb** (supra), the Apex Court was having an occasion to consider the meaning of the word **'cessation'** used in FR.18 in the matter of termination of the services of an employee. However, to understand its meaning, the

Court held that the *'cessation'* means *'removal'*. The relevant paragraphs are reproduced as under:

> "12.The material part of F.R. 18, runs thus:
>
> Unless the Provincial Government, in view of the Special circumstances of the case shall otherwise determine, after five years' continuous absence from duty, elsewhere than on foreign service, in India, whether with or without leave, a Government servant ceases to be in Government employ.
>
> 13. From a reading of F.R. 18 is it discernible regards continuous absence of an employee, whether with or without leave, for a period of five years or more, as conduct which must normally entail; "cessation or termination of his service. Although not in so many words, but by necessary intendment, the Rule regards such conduct of the employee, as a fault or blameworthy behaviour which renders him unfit to be continued in service. In this context, the "cessation" of service pursuant of his Rule Would, in substance and effect, stand on the same footing as 'his removal' from service within the contemplation of Act, 311(2) of the Constitution, particularly when it is against the will of the employee who is willing to serve, or who had never lost the animus to rejoin duty on the expiry of his leave. Another reason for equating 'cessation' of service under this rule with 'removal' within the meaning of Article 311(2), that it proceeds on a ground personal to the employee involved an imputation which may

> conceivably be explained by him in the circumstances of a particular case. Cases are not unknown where the absence of a Government servant, even for prolonged period has been due to circumstances beyond his control. The case of the Japanese soldier who remained out off and stranded in the jungles of a remote Pacific island for three decades after the termination of World War II, is recent instance of this kind."

234. On perusal of the aforesaid, it is clear that while interpreting the word *'cessation'* in F.R.18 of the Assam State, the Court interpreted it as termination and removal within the meaning of Article 311(2) of the Constitution of India. For the purpose of the present case, the word 'cease' would have the same meaning in terms of Article 243K(2) of the Constitution.

235. The judgment of **D.S.Reddy** (supra) relied by the petitioners is relevant on the issue of cease to hold office by an amendment in the statute as in the present case. In the facts of the said case, the issue regarding an amendment by way of declaring Section 5 in the Osmania University Second Amendment Act, 1966 introducing Section 13A in the original Act be declared as unconstitutional and void was brought, in relation to the post of Vice-Chancellor. The post of Vice-Chancellor was on the pleasure of the Governor and its removal was made based on a report of the Committee as specified

by amendment in Section 13A of the Osmania University Act, 1959, the words used therein were as under:

> "The person holding the office of Vice-Chancellor immediately before such appointment shall cease to hold that office".

Looking to the similarity of the words used in the said case and the case at hand, the literal meaning of introducing the said amendment is similar to the amendment in Sub-section (5) of Section 200 of the APPR Act. The Apex Court in the said case has relied upon a judgment of the Supreme Court in the case of **B.Chowtala v. State of Bihar**[142] and also the judgment of **S.R.Tendolkar** (supra). The Court in the said cases have considered that the reasonable classification or differentia affected by the Statute must have a rational relation of the object sought to be achieved by Statute and observed as under:

> "46. It is also essential that the classification or differentia effected by the statute must have a rational relation to the object sought to be achieved by the statute. We have gone through the Statement of Objects and Reasons of the Second Amendment Bill, which became law later, as well as the entire Act itself, as it now stands. In the Statement of Objects and Reasons for the Second Amendment Bill, extracted above, it is seen that except stating a fact

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[142] 1955(1) SCC 1045

that the term of office of the Vice-Chancellor has been reduced to 3 years under Section 13(1) and that Section 13-A was intended to be enacted, no other policy is indicated which will justify the differentiation. The term of office fixing the period of three years for the Vice-Chancellor, has been already effected by the First Amendment Act and, therefore, the differential principle adopted for terminating the services of the appellant by enacting Section 13-A of the Act, cannot be considered to be justified. In other words, the differentia adopted in Section 13-A and directed as against the appellant and the appellant alone cannot be considered to have a rational relation to the object sought to be achieved by the Second Amendment Act."

and in last Para 50 struck down the amendment being violative of Article 14 of the Constitution of India.

236. Following the said judgment in the case of **P.Venugopal** (supra), the removal of the Director of the AIIMS by virtue of an amendment in the proviso altering the age and to continue on the post of Director after his appointment came up for consideration. The Apex Court in the said judgment has considered the judgments of **D.S.Reddy** (supra) as well as **Kailash Chand Mahajan** (supra) which is relied by the counsel for the respondent and has accepted the view taken in the case of **D.S.Reddy** (supra), in paras 37, 38 and 40, which are relevant and reproduced as under:-

"37. Such being our discussion and conclusion, on the constitutionality of the proviso to Section 11(1-A), we must, therefore, come to this conclusion without any hesitation in mind, that the instant case is squarely covered by the principles of law laid down by this Court in the various pronouncements as noted herein above including in the case of D.S.Reddy, Vice Chancellor, Osmania University v. Chancellor.

38. In D.S.Reddy (supra), the facts of that case are somewhat similar to that of the writ petitioner. In that decision, D.S.Reddy was already a Vice- Chancellor for the past seven years and had not challenged the fixation of term from five years to three years. He was aggrieved by the second amendment in the University Act whereby Section 13-A was introduced to make the provision of Section 12(2) providing for inquiry by an Hon. Judge of High Court/Supreme Court and hearing before premature termination of the term of the Vice-Chancellor inapplicable to the incumbent to the office of the Vice-Chancellor on the commencement of the 2nd Amendment. The core contention of D.S.Reddy was that this amendment was only for his removal and therefore was a case of "naked discrimination" as it also deprived the protection of Section 12(2) to him when Section 12(2) was applicable to all other Vice-Chancellors and there being no distinction in this regard between the Vice-Chancellor in office and the Vice-Chancellors to be appointed. In that situation, the plea of the respondent-Government was that the provision similar to Section 13A was also incorporated in two

other enactments relating to Andhra University and Shri Venkateswara and was, therefore, not a one man legislation. It was further contended by the State that it was always open and permissible to the State Legislature to treat the Vice-Chancellor in office as a class in itself and make provisions in that regard. All the contentions on behalf of the State Government were rejected by the Constitution Bench judgment of this Court in the case of D.S.Reddy (supra) and it was held that it was a clear case of "naked discrimination" for removal of one man and by depriving him of the protection under Section 12(2) of the Act without there being any rationality of creating a classification between the Vice-Chancellor in office and the Vice-Chancellor to be appointed in future.

39. . . . . .

40. In view of our discussion made hereinabove and for the reasons aforesaid, we are of the view that this writ petition is covered by the decisions of this Court in the case of D.S.Reddy and L.P.Agarwal and the impugned proviso to Section 11A of the AIIMS Act is, therefore, hit by Article 14 of the Constitution. Accordingly, we hold that the proviso is ultra vires and unconstitutional and accordingly it is struck down. The writ petition under Article 32 of the Constitution is allowed. In view of our order passed in the writ petition, the writ petitioner shall serve the nation for some more period, i.e., upto 2nd of July, 2008. We direct the AIIMS Authorities to restore the writ petitioner in his office as

> Director of AIIMS till his period comes to an end on 2nd of July, 2008. The writ petitioner is also entitled to his pay and other emoluments as he was getting before premature termination of his office from the date of his order of termination. Considering the facts and circumstances of the present case, there will be no order as to costs."

237. However, the Court in **P.Venugopal** (supra) relied the judgment of **D.S.Reddy** (supra) which is rendered by a Constitutional Bench, ignoring the judgment of **Kailash Chand Mahajan** (supra), which was delivered by a Two Judge Bench of the Apex Court.

238. The Division Bench of this Court also had an occasion in **S.Timmaiah** (supra) to consider a similar question in the matter of removal of the Chairman and Members of the Endowment Board by bringing an amendment. This Court relying upon the judgment of **D.S.Reddy** (supra) and **P.Venugopal** (supra) has declared the said amendment as void as per the finding recorded in paras 26 and 27 of the judgment which are reproduced as thus :

> "26. The ratio laid down in these two decisions applies on all fours to the matter on hand. Cutting short the normal tenure which vested in the existing Trust Board members under Section 17(2) of the Act of 1987 without any rational basis, when such guarantee of tenure continues to be available to future Trust Board

members, clearly discriminates against them. In this regard, useful reference may also be made to *CHAIRMAN, RAILWAY BOARD* v. *C.R. RANGADHAMAIAH*, wherein a Constitution Bench was dealing with the connotation of a vested right. Referring to earlier decisions of the Supreme Court, the Bench observed that the expressions vested rights or accrued rights had been used while striking down impugned provisions which were given retrospective operation so as to adversely affect the rights of employees. The Bench further observed that the expressions were used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date, thereby taking away the benefits available under the rule in force at that time, and affirmed that it had been held that such an amendment having retrospective operation and had the effect of taking away a benefit already available to the employee under the existing rule was arbitrary, discriminatory and violative of the rights guaranteed by Articles 14 and 16 of the Constitution. Article 13(2) of the Constitution proscribes the State from making any law which takes away or abridges fundamental rights and renders the law, to the extent of such contravention, void. The impugned Section 163 of the Act of 1987 demonstrably offends the principle of equality enshrined in Article 14 as the existing Trust Board members and Chairpersons were targeted as a single class without there being any reasonable classification based on any intelligible differentia and

without a rational basis or object. The provision therefore falls foul of Article 13(2) of the Constitution.

27. Interestingly, in *M. THIRUPATHI RAO* v. *THE STATE OF TELANGANA*, we had occasion to consider an amendment on similar lines brought by the State of Telangana to the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (vide Telangana Ordinance No. 1 of 2014), whereby existing Market Committees were sought to be disbanded en bloc making way for the State to effect reconstitution. This Court held that the amendment was constitutionally invalid and accordingly struck down the same. For the reasons aforestated, Section 163 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, inserted by way of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Act, 2014 (Act No. 8 of 2014) is declared void."

239. The learned Advocate General and the counsel representing the respondents placed heavy reliance on the judgment of **Kailash Chand Mahajan** (supra). However, the facts and question relevant for consideration in the said case is required to be referred in detail. Mr. Kailash Chand Mahajan, retired Chief Engineer was appointed as a Member of the HP State Electricity Board vide notification dated 24.07.1981 as Chairman for a period of five years. On lapse of the said period and in continuation to the previous notification by a subsequent notification dated 12.05.1986

his appointment was extended for a period of three years, again vide Notification dated 12.06.1989 the said appointment was further extended for a period of three years. After election of the Assembly, a Notification dated 06.03.1990 was issued in supercession of the Notification dated 12.06.1989 withdrawing previous Notification and directing Mr.RSS Chauhan to work as Chairman. It was challenged, however, the relevant facts as referred in Paras 5, 6, 7, 8 and 9 are reproduced:-

> "5. Another notification dated March 6, 1990 was issued directing that Mr R.S.S. Chauhan shall function as Chairman, H.P. State Electricity Board w.e.f. March 7, 1990. At this stage the first respondent preferred a Writ Petition No. 123 of 1990 challenging the validity of the notification dated March 6, 1990, and prayed for certiorari to quash the same. While that writ petition was pending, on March 30, 1990, another notification was issued terminating the appointment of the first respondent as Member of the State Electricity Board.
>
> 6. On March 30, 1990, the High Court while admitting the writ petition (CWP No. 123 of 1990) ordered that no appointment to the post of Chairman of the State Electricity Board will be made till further orders of the court. The matter was heard on May 22, 1990. The learned Advocate General on conclusion of his argument requested the court that the judgment may not be pronounced since he desired to seek

instructions from the Government to reconsider the impugned order in CWP No. 123 of 1990. On June 11, 1990, the learned Advocate General submitted to the court that both the notifications dated March 6, 1990 and March 30, 1990 would be withdrawn. An undertaking to that effect was given. Accordingly the writ petition was disposed of. Consequent to this undertaking, by notification dated June 11, 1990, the Government of Himachal Pradesh withdrew both the notifications dated March 6, 1990 and March 30, 1990. However, the matter did not rest there. On June 11, 1990 a show-cause notice was issued to the first respondent for having abused his position as Chairman, H.P. State Electricity Board and also ex-officio Secretary, M.P.P. & Power. He has also asked to submit his explanation within 21 days as to why action should not be taken under Section 10 of the Electricity (Supply) Act, 1948. Simultaneously, it was also ordered that he shall be placed under suspension with immediate effect by virtue of power under Section 10 of the said Act. Consequent upon the suspension of the first respondent, the notification dated July 16, 1990 came to be issued placing Mr R.S.S. Chauhan, Member (Operations), H.P. State Electricity Board as Chairman with immediate effect until further orders.

7. Being aggrieved by the above show-cause notice and the order of suspension, the first respondent filed CWP No. 303 of 1990 on June 12, 1990. The High Court while admitting the writ petition granted interim stay of the order of suspension.

8. On June 22, 1990 the Chief Secretary of the Government of Himachal Pradesh wrote to the Secretary, Government of India, Ministry of Home Affairs, New Delhi requesting for permission to promulgate Electricity (Supply) (H.P. Amendment) Ordinance, 1990. It was stated in the letter that at present no age limit has been prescribed for holding office of the Member of the State Electricity Board, it was necessary to prescribe an upper age limit. The concept of terminal appointment at which a person should cease to hold judicial offices and civil posts is entrenched in administrative and constitutional systems. Therefore, it was proposed through the ordinance that no person above the age of 65 years could be appointed and continued as Chairman or Member of H.P. State Electricity Board. This provision was not only to apply to future appointments, but also to the existing Chairman and Members, and where the existing incumbent's tenure is curtailed adequate compensation could be provided. No doubt, rules could be framed under Section 78 of the Electricity (Supply) Act, 1948. But those rules cannot have retrospective operations, hence the proposed ordinance.

9. On July 9, 1990 the Government of India replied pointing out the desirability of the State Government examining with reference to the relevant provisions of the Act and the Constitution about the promulgating of the ordinance. The State was also advised to explore the feasibility of amending the rules."

240. Thereafter, the Ordinance was issued specifying the age of retirement which was not a part of it and the same was challenged before the High Court. The Court held that prescribing maximum age by amending the Act as 65 years cannot be said to be arbitrary or irrational, moreover, public interest demands that there ought to be a age of retirement for public service. In the said challenge the question as specified in para 47 came for consideration, those are as under:

> "47. Having regard to the above arguments, the following points arise for our determination:
>
> (*i*) The power of appointment under Section 5 and the scope of Sections 8 and 10 of the Electricity (Supply) Act, 1948.
>
> (*ii*) The effect of amendment under Section 5(6) of the said Act.
>
> (*iii*) The scope of Section 3 of Electricity (Supply) (H.P. Amendment) Act of 1990. Whether it is violative as single person's legislation.
>
> (*iv*) Whether the failure to implead Chauhan would be fatal to the writ petition."

241. The Apex Court in the said case found favour of the State Government in para 102 and observed as under:-

> "102. It has to be carefully noted that this Act was intended to deny the appellant a right to decision by a court of law and that too in a private dispute between the parties. Hence, this ruling again has no application to the facts of the case. As we observed

> in the beginning of the judgment, if the State is well entitled to introduce an age of superannuation (we have referred to *Nagaraja case* [(1985) 1 SCC 523 : AIR 1985 SC 551]), how could that be called discrimination or unreasonable? The resultant conclusion is the amending Act, particularly, Section 3 is not, in any way, arbitrary and, therefore, not violative of Article 14."

242. In the said case, an enactment bringing age of retirement was under challenge, which was found by the Apex Court as not arbitrary or violative of Article 14 of the Constitution. The Court was of the opinion that public interest demand to prescribe an age for retirement when it has been brought and the amendment is not irrational. Under such circumstances, looking to the nature of the dispute, interference was denied.

243. In the said context, it is not out of place to mention the facts of this case, in which **Mr.A** was appointed validly under the provisions of the enactment and the Rules in exercise of the power under Article 243K of the Constitution vide G.O.Ms.No.11, dated 30.01.2016 for a period of five years. Prior to elapse of the said period, on account of non-observance of the directions of the State Government by **Mr.A**, the Council of Ministers have decided to bring the Ordinance during the recess of the sessions of the Assembly and the Council, whereby the pre-qualification has been changed for appointment, which is not their domain and the tenure

has also been introduced contrary to the constitutional spirit and the Report of the Task Force Committee in the name of Electoral Reforms without having any urgency. Simultaneously, with an intent to remove **Mr.A**, on the request made by the Chief Minister, **Mr.B** is appointed, who was a Judge of Madras High Court, retired in the year 2006 and appointed at the age of 77 years after 15 years of retirement, at present, practicing as a Senior Advocate in Supreme Court as per his Bio-data. In the said facts, the judgment of **Kailash Chand Mahajan**(supra) is not relevant.

244. It is not out of place to take a judicial notice of the fact that as of now twenty-two (22) Chief Election Commissioners of India were appointed under Article 324 of the Constitution have attained superannuation since Independence and none of them have worked above the age of 65 years. Therefore, removing of **Mr.A** and appointing **Mr.B** at the age of 77 years, how far, fair and reasonable and falls within the electoral reforms is not appealable to us. On the point of age, in the judgment of **S.R. Balasubramaniyan** (supra), which is a case of age of State Election Commissioner, the Division Bench of Madras High Court said that amendment of age of retirement after appointment was not found permissible. Any of the act of the State must be in consonance to the spirit of the Constitution and the Legislative intent, otherwise such an act cannot be recognized under the law.

245. In the facts of the present case in which **Mr.A** appointed as per Law has been directed to cease the office while the person who is of 77 years of the age has been appointed in an unbecoming manner as specified in the discussion made in Question No.4. In this reference, the issue of Constitutional morality of the bearers of the office is not out of context. The Apex Court in the case of **Manoj Narula** (supra) has discussed this issue. The relevant paragraphs are reproduced as under:

> **"74.** The Constitution of India is a living instrument with capabilities of enormous dynamism. It is a Constitution made for a progressive society. Working of such a Constitution depends upon the prevalent atmosphere and conditions. Dr Ambedkar had, throughout the debate, felt that the Constitution can live and grow on the bedrock of constitutional morality. Speaking on the same, he said:
>
> > "Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic."
>
> **75.** The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner. It actually works at the fulcrum and guides as a laser beam in institution building. The

traditions and conventions have to grow to sustain the value of such a morality. The democratic values survive and become successful where the people at large and the persons in charge of the institution are strictly guided by the constitutional parameters without paving the path of deviancy and reflecting in action the primary concern to maintain institutional integrity and the requisite constitutional restraints. Commitment to the Constitution is a facet of constitutional morality. In this context, the following passage would be apt to be reproduced:

> "If men were angels, no Government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. "

76. Regard being had to the aforesaid concept, it would not be out of place to state that institutional respectability and adoption of precautions for the sustenance of constitutional values would include reverence for the constitutional structure. It is always profitable to remember the famous line of Laurence H. Tribe that a Constitution is "written in blood, rather than ink"."

In the said context we have no hesitation to say that the institutions which are governed by the Constitutional parameters should not act in a manner which would become violative of Rule of Law or reflectable of action in an arbitrary manner. In the facts of the case and the context of the above said judgment, it can be said that the institutions have not maintained the Constitutional morality in place of making comment on the individual act.

246. Learned Advocate General has also placed reliance on the judgment of **A.K.Behl** (supra), *inter-alia* stating that in the said judgment, the case of **Kailash Chand Mahajan** (supra) has been duly relied upon distinguishing the case of **L.P.Agarwal v. Union of India**[143]. After going through the facts of the case of **A.K.Behl** (supra), it is clear that it was not a tenure post under the Rules and continuation in employment over the age of retirement was not found permissible. Therefore, the Court has distinguished the judgment of **L.P.Agarwal** (supra), which do not apply to the facts of the present case.

247. The defence of not specifying the tenure in the proviso does not appear to be correct, because after completion of tenure to which the appointment was made, the SEC cannot be continued and during the tenure for which the appointment was made, if it is required to be cut down for displacing or ceasing to hold the work

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[143](1992) 3 SCC 526

by such SEC, the manner is prescribed in the proviso to Article 243K(2) of the Constitution. In the facts of the case as brought on record, looking to the statement of the Chief Minister and other Ministers of the State, if they want to remove the SEC, it may be after in-house enquiry on a proved misbehaviour or incapacity, otherwise reducing of tenure may not be possible.

248. We have further given our anxious consideration to the fact that after 73rd amendment in the Constitution under Article 243K and 243ZA, the APPR Act has been brought. The framers of the legislation were well aware that they cannot make any provision for removal of the SEC contrary to the procedure as prescribed in Article 243K of the Constitution and proviso thereto. More so, they were aware that for a Constitutional post, there is no necessity to bring the conditions of service and tenure, however, it was left open by them to determine by the Governor and by such intention, skipping the words used in Article 243K(2) of the Constitution *'Subject to the provisions of any law made by the legislature of a State'*, Section 200(3) of the Old APPR Act was opened with the wording *'The conditions of service and tenure of service of the State Election Commissioner'* shall be such as the Governor may by rule determine. Therefore, the framers have intentionally not made any provision in the APPR Act brought after 73rd amendment specifying the conditions of service and tenure and it was left to

the Governor to determine being a Constitutional post. Therefore, the Governor, in exercise of power under Section 200(3) of the APPR Act, framed the Old Rules, 1994 wherein, tenure was prescribed, and which were in vogue since last 26 years. Abruptly the State Legislature in the name of electoral reform got promulgated the impugned Ordinance, cut down the tenure of incumbent SEC, appointed under the Old Rules, 1994, and by virtue of the same, they want to cease him to hold the office. The said recourse, in our considered opinion, is wholly arbitrary, discriminatory and capricious exercise of power contrary to constitutional spirit. Therefore, the argument regarding promulgation of Ordinance for removal of SEC as a part of electoral reforms is not justified, hence rejected.

249. We are also of the considered opinion that the appointment of **Mr.A** was made under Article 243K of the Constitution along with Section 200(3) of the APPR Act. However, on making appointment of a constitutional authority, its removal under the impugned Ordinance ceasing his office, not prescribed in Article 243K of the Constitution is itself illegal. After appointment of the SEC under the Constitution, his removal can only be under the proviso to Article 243K and he cannot be discontinued by virtue of the impugned Ordinance on account of ceasing of the office.

250. Learned counsel for the petitioner submits that looking to the language engrafted in Sub-section (5) of Section 200 of the APPR Act of the impugned Ordinance, it appears that with effect from the date of coming into force of the Ordinance, *'any person'* appointed as SEC and holding office shall cease to hold office. The aforesaid phrase is added, altering pre-eligibility conditions for appointment and arbitrarily reducing the tenure of appointment by using the words `*any person appointed and holding the office shall cease to hold the office'*. Thus, introducing Sub-section (5) in Section 200 of the APPR Act is brought to single out the existing SEC, and may appear to be a single member legislation. The reliance placed by petitioners appears to be derived from the judgment of **P.Venugopal** (supra). In the said case, on single member legislation, Hon'ble the Supreme Court has held thus :

> "36. From the aforesaid discussion, the principle of law stipulated by this Court is that curtailment of the term of five years can only be made for justifiable reasons and compliance with principles of natural justice for premature termination of the term of a Director of AIIMS squarely applied also to the case of the writ petitioner as well and will also apply to any future Director of AIIMS. Thus there was never any permissibility for any artificial and impermissible classification between the writ petitioner on the one hand and any future Director of AIIMS on the other when it relates to the premature termination of the

> term of office of the Director. Such an impermissible overclassification through a one-man legislation clearly falls foul of Article 14 of the Constitution being an apparent case of "naked discrimination" in our democratic civilised society governed by the rule of law and renders the impugned proviso as void ab initio and unconstitutional."

251. Per contra, the learned Advocate General has relied upon the judgment **Shri Ramakrishna Dalmia** (supra) which is based on the judgment of **Budhan Choudhary v. State of Bihar**[144] in which certain principles have been carved out and it is said that the law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others, treating such individual as a class by himself. Further reliance has been placed on a judgment of **S.S.Dhanoa** (supra) in which the issue of abolition of the post of the Election Commission was in question, which is interpreted in the context that after appointment whether abolition of post is permissible as per Article 324(2) of the Constitution or is it only with intent to single out the petitioner. The judgment of **Ishwar Nagar Cooperative Housing Building Society** (supra) has also been cited, in which the issue of bringing a legislation to single out a person was questioned. After going through the aforesaid judgments, there cannot be any doubt that

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[144]AIR 1955 SC 191

in special circumstances or reasons applicable to a single individual, treating him as a class may be brought forward, but it ought to be reflected from the circumstances in which the legislation was brought and to apply to the facts of the case. As referred herein above after appointment of the SEC in 2016 for a tenure of five years and after notifying the election, merely for the reason that the SEC has postponed the elections and the State Government remain unsuccessful in Supreme Court, however, by making a point of not holding the election process as the Government wants amending the statute by way of an Ordinance specifying the pre-eligibility for appointment, **Mr.A** has been removed. In the said context, the judgment of **Shri Ramakrishna Dalmia** (supra) is of no help to the respondents.

252. In the facts and circumstances discussed herein above, we can safely hold that the legislation brought in the present case is only to single out **Mr.A** as SEC and to appoint a person of their choice as offered by the Chief Minister to the Governor, without any basis that too a person who is of 77 years of age and retired 15 years back as a Judge of Madras High Court which is against the Constitutional morality. In such circumstances, in our considered opinion, how far free and fair election can be expected by such person, though it is the essence of the democracy by bringing such legislation is not appealable to us.

Interpretation of Statutes :

253. In the facts of the present case, another relevant aspect of the matter is that the appointment of **Mr.A** as SEC was in the year 2016 for a fixed tenure of five years, which shall come to an end on 31.03.2021. In the meantime, the amendment has been made in a substantive law specifying the eligibility for appointment and tenure. At the time of his appointment as SEC under 243K(1) of the Constitution, the tenure prescribed in the Old Rules, 1994 was five years. However, by the impugned Ordinance and the New Rules, 2020, the said tenure has been reduced to three years extendable further for three years on re-consideration. Simultaneously, on the issue of eligibility for appointment would be as a Judge of High Court in place of the post not less than the rank of Principal Secretary to the Government. Thus, by adding these qualifications, the word *'cessation'* used in the context, have its applicability retrospectively or prospectively is required to be examined.

254. It is a settled law that any amendment to the provision of any statute may not be given retrospective effect and such amendment is deemed to be prospective. The analogy behind was that statute cannot take away the vested right or subsisting right of any person by such amendment. However, the intention of the amending provision and the provision existed already in the statute

may be determinative factor to understand the same. Simultaneously, at the time of interpreting the statute there may be two views, one is *'the law looks forward, not backward'* based on the maxim ***'Lex prospicit non respicit',*** which means *'the laws are generally deemed or presumed not to have retroactive'*; another Maxim is ***'Lex De Futuro, Judex De Praeterito'*** means *'law provides for the future'*. Thus, the law deals substantive right of the parties brought *ex post facto* may be prospective, but in case of procedural law conflicting views may be possible. Another legal maxim `***Nova Constitution Futuris formam imponere debet non praeteritis***,' which means *new law ought to regulate what is to follow, not the past*. The said view has been elaborated in a judgment of **Monnet Ispat and Energy Limited v. Union of India and others**[145]. In the said case, the Apex Court has held that the principle indicator is until and unless there is an express provision in the statute indicating retrospective applicability of the said statute, otherwise it would be prospective.

255. In the judgment of **Garikapati Veerayya v. N.Subbiah Choudhury**[146]**,** in the matter of interpretation of statute, the Apex Court observed as thus:

> **"The golden rule of construction is that, in the absence of anything in the enactment to show that it**

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[145](2012) 11 SCC 1

[146] 1957(1) SCR 488

> is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."

256. The book Principles of Statutory Interpretation (Seventh Edition, 1999) by Justice G.P.Singh has referred the statute of Lord Blanesburg in **Colonial Sugar Refining Company v. Irving**[147] and the observations of Lopes L.J. in **Pulborough Parish School Board Election, Bourke v. Nutt**[148] and noted as follows:

> "In the words of Lord Blanesburg, 'provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment'. 'Every statute, it has been said', observed Lopes, L.J., 'which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect."

257. In the case of **Shyam Sundar v. Ram Kumar**[149]**,** the Apex Court has referred the **Maxwell Interpretation of Statutes** and **Francis Bennion's Statutory Interpretation** and held as under:

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[147] 1905 AC 369

[148] 1894(1) QB 725, p.737

[149] AIR 2001 SC 2472

> "In Maxwell on the Interpretation of Statutes, 12th Edn., the statement if law in this regard is stated thus: "Perhaps no rule of construction is more firmly established than thus – that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. The rule has, in fact, two aspects, for its, "involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary."

258. The Apex Court also in the case of **Hitendra Vishnu Thakur v. State of Maharashtra**[150] laid down certain principles for statutory interpretation, which are as under:

> "(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended

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[150] AIR 1991 SC 2623

meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

259. The petitioners have relied upon the judgments of **Dwarka Prasad** (supra) with respect to Interpretation of Statutes, internal aids, proviso and its scope. The judgment of **Carew and Company Ltd.** (supra) has also been relied upon with respect to liberal approach, legislative intent and interpretation of economic legislation applying Heydon's rule. The judgment of **Dilip Kumar** (supra) has been applied for indicating the basic principles of the statutory interpretation. In view of the judgments relied upon

herein above, there is no need to discuss these judgments elaborately.

260. Learned Advocate General cited the judgment of **Indo Mercantile Bank** (supra) explaining the interpretation of proviso contending that the proviso would fall within the meaning of main enactment and its purpose to be seen in the context of the fundamental rule of construction to which the proviso is added. Relying upon a judgment of **Shiv Dayal Soin** (supra) on the point of express inclusion means implied inclusion, it is said the interpretation of the provisions must be made accordingly on the point of rule of*expressio unius est exclusion alterius*. It is said the rule to which it has been introduced should be given due meaning with other than any public purpose. He further cited the judgment in the case of **Harbhajan Singh** (supra), *inter alia* stating that where basic rule confers a right under the statute putting a bar on appointment, however, it should be read assuming its intention. Reliance has further been placed on a judgment of **Brigadier P.S. Gill** (supra) *inter alia* stating that the legislative intent, object of legislation must be harmoniously construed. Further, in the case of **Shilpa Mittal** (supra) on the aspect of surplus age, the interpretation of the provisions of the Juvenile Justice Act has been brought. After going through it and in view of the discussion made

hereinabove with respect to the cardinal principles of statutory interpretation, all the judgments are of no avail to them.

261. Learned Senior Counsel appearing for **Mr.B** cited the judgment of **Dililp Kumar & Company** (supra), **Ujagar Prints** (supra) and **Kasturi Lal Harlal** (supra) relating to the statutory interpretation of tax matters, which cannot be applicable while interpreting the provisions under the Constitution. He further cited the judgment of **Sagar Pandurang Dhundare** (supra) *inter alia* stating that when literal construction of interpretation of language of the provision is clear and unambiguous, the Court has to give effect to plain meaning. Reliance has further been placed on the judgment of **Delhi Metro Rail Corporation Limited** (supra) *inter alia* stating that proviso must be read for the purpose to which it has been brought and ought to be interpreted in the same way. He further relied upon **Mukund Dewangan** (supra) on the issue that what has not been provided in the statute with a purpose cannot be supplied by the Court. Relying upon a judgment of **Eera** (supra) *interalia* which elucidated literal and legislative intent of rule of interpretation vis-à-vis purposive or object of legislation and rule of interpretation. The judgment of **Ahmedabad Municipal Corporation** (supra) has further been cited to specify the principle of interpretation so summarized and clarified principles of external aid to statutes. Further, relying the judgment of

Sher Singh (supra) on the issue of interpretation of different words employed in the statute with close proximity. Similarly the judgment of **Roxann Sharma** (supra) cited, specifying the basic rule of interpretation. He further relied upon the **Prafull Goradia** (supra) on interpretation and General Clauses Act. After going through the said cases, in view of the judgments referred herein above, the basic principles of the statutory interpretation are clear, therefore, there is no elaborate discussion required of these cases.

262. On perusal of Clauses (1) and (2) of Article 243K of the Constitution, the appointment to the post of SEC of **Mr.A** was made by following the constitutional mandate for a tenure of five years. The said tenure was as per the existing Old Rules of 1994. Thus a right is vested on the SEC to continue for the tenure so fixed or otherwise may be removed following the procedure contemplated in the proviso to Article 243K(2) of the Constitution. Therefore, the SEC was having a vested right to continue upto five years. Bringing a legislation and by using the words 'any person appointed as SEC and holding office as such shall cease to hold office' would affect the subsisting right on the date of bringing of such legislation by altering the terms and conditions prevailing at the time of his appointment.

Applicability of General Clauses Act **:**

263. In view of promulgation of the Ordinance, it is required to be seen what would be the effect of the Notification issued in the context of the provisions of Section 8 of the A.P. General Clauses Act, 1891 (hereinafter referred as *'the APGC Act'*). Learned Senior Counsel for the petitioner, Sri Vedula Venkata Ramana specifically contended that the law which takes away the right that vested on the incumbent in the office cannot be given retrospective effect. Whereas, learned Advocate General representing the State submitted that, when a provision is repealed and re-enacted, Section 8 and Section 18 of the APGC Act, will apply and the amended provisions will govern the service conditions of the incumbent in the office i.e.,**Mr.A**.

264. In view of the contentions, it is appropriate to revert back to the provisions of APGC Act to decide the controversy as to giving retrospective effect to the amended provisions on account of repeal and re-enactment under Sections 8 & 18 of the APGC Act. Section 8 of the APGC Act is in *pari materia* with Section 6 of the General Clauses Act, 1897 (hereinafter referred as *'the Central Act of 1897'*). Similarly, Section 18 of the APGC Act is in *pari materia* to Section 24 of the Central Act of 1897. Hence, it is appropriate to decide the real controversy, based on the law laid down by the various Courts, both under Section 8 of the APGC Act and Section 6

of the Central Act of 1897, coupled with Section 18 of the APGC Act and Section 24 of the Central Act of 1897, since the provisions are identical in all respects.

265. Section 8 of the APGC Act deals with Effect of repealing an Act which is relevant and reproduced as under :

> **"Section 8 : Effect of repealing an Act :-**
>
> Where any Act, to which this Chapter applies, repeals any other enactment, then the repeal shall not:
>
> (a) affect anything done or any offence committed, or any fine or penalty incurred or any proceedings begun before the commencement of the repealing Act; or
>
> (b) revive anything not in force or existing at the time at which the repeal takes effect; or
>
> (c) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or
>
> (d) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
>
> (e) affect any fine, penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

> (f) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such fine, penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed."

266. On analysis of various Clauses (a) to (f) under Section 8 of the APGC Act more particularly, Clause (d), the repealed provision or enactment will not affect any right, privilege, or law acquired or accorded or incurred under any enactment so repealed. Similarly, According to Clause (c), such amendment will not affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed.

267. Section 6 of the Central Act of 1897, is in *pari materia* with Section 8 of the APGC Act. According to it, unless a different intention appears, the repeal shall not revive anything not in force or existing at the time that which the repeal takes place, or affect the previous operation of any enactment so repealed, or anything duly done or suffered thereunder, or affect any right privilege, obligation, liability, penalty, forfeiture or punishment incurred under any enactment so repealed or, affect any investigation, legal

proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid. When a different intention appears in a repealing Act, the consequences mentioned in Sub-clauses (a) to (e) of Section 8 of the APGC Act will not follow. This shows that it is necessary to study the terms of the repealing provisions of the APPR Act by which the previous provision of Section is inserted. The intention expressed in the repealing provision has to be given effect too.

268. In **Mohar Singh** (supra) an issue as to repealing of a statute and interpretation of the effect of repealed statute has come up before the Apex Court, on consideration of the law, the principle underlying behind, repeal and saving has been put forth as under :

> **"6.** Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of repealing a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law [Vide *Craies on Statute Law*, 5th edn, p. 323] . A repeal therefore without any saving clause would destroy any proceeding whether not yet begun or whether pending at the time of the enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right [Vide *Crawford on Statutory Construction*, p. 599-600w] . To obviate such results a practice came into existence in

> England to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment. Later on, to dispense with the necessity of having to insert a saving clause on each occasion, Section 38(2) was inserted in the Interpretation Act of 1889 which provides that a repeal, unless the contrary intention appears, does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the Repealing Act had not been passed. Section 6 of the General Clauses Act, as is well known, is on the same lines as Section 38(2) of the Interpretation Act of England."

269. Considering the legal position above, unless the later enactment which supersedes an earlier one expressly or impliedly puts an end to an earlier state of law, the rights of the party accruing under the superseded enactment cannot be taken away. In this regard, as per the law laid down in the cases of **State of Orissa v. M.A. Tulloch and Co.**[151]and **Dayawati v. Inderjit**[152] are also relevant and on the same issue, which must be followed.

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[151]AIR 1964 SC 1284

[152](1966) 3 SCR 275

270. Section 18 of the APGC Act reads as follows:

> **"Section 18 : References to provisions in Acts repealed and re-enacted:-**
> Where an Act repeals and re-enacts, with or without modification, all or any of the provisions of a former Act, references in any other Act to the provisions so repealed shall be construed as references to the provisions so re-enacted, and if notifications have been published, proclamations or certificates issued, powers conferred, forms prescribed, local limits defined, offices established, orders, rules and appointments made, engagements entered into, licences or permits granted, and other things duly done, under the provisions so repealed, the same shall be deemed, so far as the same are consistent with the provisions so re-enacted, to have been respectively published, issued, conferred, prescribed, defined, established, made, entered into, granted or done under the provisions so re-enacted."

271. The enactment of this clause will obviate the necessity for including in every repealing and re-enacting bill, a transitory provision to keep any orders, warrants, schemes, rules or bye-laws issued under the law which it is proposed to supersede, in force until repealed by fresh instruments duly promulgated under the new law. Section 18 of the APGC Act provides that if an Act is repealed and re-enacted with or without modification, unless it is otherwise expressly provided, any rule, notification, order, form or bye-law made or issued under the repealed Act continue in force and be deemed to have been made or issued under the provision

so enacted unless and until it is superseded by any appointment, notification, rule, form, or bye-law made or issued under the provisions show re-enacted. This kind of provision is important. When the law is repealed and another law in its place is re-enacted, it is difficult, rather impossible, to issue all the notifications under the new Act at once. Therefore, such provision is incorporated to save or preserve the earlier notifications etc., issued under the Repealed Act.

272. Section 24 of the Central Act of 1897 is equivalent to Section 18 of the APGC Act and it accords statutory recognition to the general principles that, if a statute is repealed and re-enacted in the same or substantially the same terms the re-enactment neutralises the previous repeal and the provisions of the repealed Act which are so re-enacted continue in force without interruption. If however, the statute is repealed and re-enacted in somewhat different terms, the amendments and modifications operate as a repeal of the provisions of the repealed Act which are changed by and are repugnant to the repealing Act. The inconsistency which the law contemplates should be such a positive repugnancy between the provisions of the old and new statutes that they cannot be reconciled and made to stand together as was held in **State v. Hankins**[153].

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[153] AIR 1957 Punjab 243

273. In the context of repealing and savings of the Statutes and General Clauses Act, the counsel for the petitioner relied upon the judgment of **Vipulbhai** (supra), in which Hon'ble the Supreme Court held that repeal should be either of the entire enactment or a part and substitution of parts of an enactment is nothing but *pro tanto* to repeal those parts. The Court further observed in para 63 as under:-

> "63. As a logical corollary to the above proposition, no right or liability can be created by a repealing enactment, which is inconsistent with the rights and obligations conferred under the repealed Act unless the repealing enactment makes an express declaration to that effect or adopts some other technique known to law to achieve that purpose. Giving retrospective effect to the repealing enactment is one of the techniques by which the legislature seeks to achieve that purpose."

274. The petitioners also relied on the judgment of Hon'ble the Supreme Court in **Vatika Township** (supra), wherein the Court held that legislations which modify accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation.

275. The learned counsel appearing on behalf of **Mr.B** placed reliance on several judgments in the context of repealing of Statute and retrospective operation of Statutes. In the judgment of **Bansidhar** (supra), Hon'ble the Supreme Court held that a saving provision in a repealing Statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. In **J.K.Jute Mills** (supra) Hon'ble the Supreme Court while dealing with Tax matter observed that in the circumstances of the said case, retrospective operation of Tax Law cannot be held invalid. In **Shree Bhagwati Steel Rolling Mills** (supra), the Apex Court distinguished the terms 'omit', 'amend', 'delete', 'repeal' in the context of new Statute introducing another Statute. In **Bharat Hydro Power** (supra) doctrine of repugnancy was dealt with. In **Kalawati Devi** (supra), which is another Tax matter, meaning of includes and non-applicability of General Clauses Act are discussed. However, in view of the judgments referred and discussed above by this Court, these judgments are of no importance.

276. In the present facts of the case, the amendment to APPR Act by the impugned Ordinance virtually did not repeal any of the clauses of pre-amended Act, but introduced Sub-section (3) and Sub-section (5) in Section 200 of the APPR Act. Sub-section (3) between Sub-section (2) and Sub-section (3) of the old APPR Act,

re-numbering Sub-section (3) of Section 200 of the old APPR Act as Sub-section (4). Sub-section (5) is added as per the impugned Ordinance and it is a clause which terminates the services of incumbent in the office of SEC, ceasing him to hold the office from the date of Ordinance. On account of introduction of Sub-section (3) and Sub-section (5) of Section 200 in the old APPR Act, it does not amount to repeal, but it is an addition to the existing Act. Similarly in Sub-section (2) of Section 200 of the Old APPR Act, the words *'Judge of High Court'* in the place of *'not less in rank than that of Principal Secretary to the Government'* is substituted. At best, the repeal is only to the extent of substitution of the words *'Judge of the High Court'* in the place of *'not less in rank than that of Principal Secretary to the Government'* to appoint such an officer as SEC. Therefore, it is only the repeal and re-enactment by substituting one word and in such case, Section 18 of the APGC Act is not applicable even to the repeal and amended part of Sub-section (2) of Section 200 of the APPR Act, since Section 18 deals with the repeal of entire enactment and re-enactment of another act in the place of repealed Act. Even otherwise, the substituted words are only a qualification for being appointed as SEC. Such clause cannot be given retrospective effect, since officer incumbent in the office was appointed as SEC based on the qualification prescribed for such appointment in the APPR Act. Hence, the amendment will have no effect on the appointment of incumbent

in the office of SEC. The other two provisions, Sub-sections (3) and (5) of Section 200 of the old APPR Act do not fall either under Sections 8 or 18 of the APGC Act, as they are only addition of new clauses. When an appointment was made based on the qualification prescribed for such appointment in the Act, or Rules framed by exercising power under Clause (2) of Article 243K of the Constitution, the subsequent amendment changing the qualification shall not take away the right accrued to the incumbent SEC and such provision cannot be given retrospective effect.

277. In similar situation, where an employee was removed on account of repeal and re-enactment, Section 22 of the Punjab General Clauses Act, 1898, the Division Bench of the Punjab and Haryana High Court in the case of **Jag Dutta v. Smt. Savitri Devi**[154] considered the scope of such Act with reference to amendments, candidly held that where an Act is repealed and replaced by another enactment any notification, rule, bye-law or 'appointment' made under the old Act, may be deemed to continue under the re-enacted law. The Rent Act of 1947, was repealed by Section 21 of the Act of 1949, but the notification there under appointing Rent Control and appellate authorities continued to be in force by virtue of Section 22 of the Punjab General Clauses Act,

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[154] AIR 1977 P&H 68

1898, which is *pari materia* with Section 24 of the General Clauses Act.

278. The learned Advocate General for the State strenuously contended that the case of the officer incumbent in the office would attract Sections 8 and 18 of the APGC Act, drawn attention of this Court to the judgment of **Mohar Singh** (supra) in support of his contention that the present case is governed by the above provisions. In the facts of the judgment, an ordinance (being Ordinance No.VII of 1948) was promulgated by the Governor of East Punjab, under Section 88 of the Government of India Act, 1935, making provisions for the registration of land claims of the East Punjab refugees. On the 17th March, 1948, the respondent Mohar Singh, who purports to be a refugee from West Pakistan, filed a claim in accordance with the provisions of this Ordinance, stating therein, that he had lands measuring 104 kanals situated within the district of Mianwali in West Punjab. On the 1st of April, 1948, this Ordinance was repealed and Act 12 of 1948 was passed by the East Punjab Legislature re-enacting all the provisions of the repealed Ordinance. The claim filed by the respondent was investigated in due course and it was found, after enquiry, that the statement made by him was absolutely false and that as a matter of fact there was no land belonging to him in West Pakistan. Upon this, a prosecution was started against him on the 13th may, 1950

under Section 7 of the Act, which makes it an offence for any person to submit, with regard to his claim under the Act, any information which is false. The accused was tried by S. Jaspal Singh, Magistrate, First Class, Jullandur before whom he confessed his guilt and pleaded for mercy. The trying Magistrate by his order dated the 20th of July, 1951 convicted the respondent under Section 7 of the Act and sentenced him to imprisonment till the rising of the Court and a fine of Rs.120/- in default of which he was to suffer rigorous imprisonment for one month. The matter went upto Supreme Court and the question raised by the Apex Court was as to effect of repeal and re-enactment. But the Apex Court while referring the earlier judgment in **Dhanmal Parshotam Das v. Babu Ram**[155], concluded that whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the APGC Act will follow unless, as the section itself says, different intention appears. In this case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. We cannot therefore subscribe to the broad proposition that Section 18 of the APGC Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 18 would be

[155] ILR 58 All 495

applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the Section. Such compatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. Even after analysis of the law laid down in the judgment of Apex Court with reference to the facts of the present case, we find no force in the argument advanced by learned Advocate General, for the simple reason that, the earlier Act was not repealed and re-enacted, except to the extent stated above.

279. In similar circumstance, with reference to change of service conditions of an employee, in the case of **Prahlad Sharma v. State of U.P**[156], the Apex Court considered the scope of amendment to Section 24(A) of General Service Regulations, 1984 and rules framed thereunder with reference to Rule 24-A which deals with disciplinary action, suspension and subsistence allowance, while referring to the judgments of **Dr. S.L. Aggarwal v. The General Manager, Hindustan Steel Ltd**[157] and **MaharashtraState Co-operative Cotton Growers' Marketing**

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[156] [2004] 2 SCR 594

[157]AIR 1970 SC 1150

Federation Ltd. and Anr. v. Employees' Union and Anr[158], and held as follows:

> "In view of the decision of the Board of Directors and the resolution and later on as a consequence thereof substitution of Rule 24-A in the General Service Regulations of 1984 of the Corporation, it is clear that the rules as applicable to the employees of the U.P. Government, in the matters relating to disciplinary action, suspension or subsistence allowance etc. were made applicable to the employees of the Corporation. It appears that since for the employees of the state government some new rules were promulgated namely, the U.P. Government Servants (Discipline and Appeal) Rules, 1999, a second resolution was passed on 10.7.2001 specifically incorporating those rules for the purposes of disciplinary matters against the employees of the Corporation. In this light of the matter the question of giving retrospective effect to the U.P. Rules of 1999 does not arise. We feel that even if no specific resolution was passed for incorporation of U.P. Rules of 1999 on 7. 10.2001 even then it would not have made any difference since Rule 24-A was substituted in the regulations of 1984 in the year 1991 itself by virtue of which U.P. Rules 1999 would also be applicable without any further resolution as whatever rules as may apply to the employees of the state government in the matters relating to disciplinary action

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[158] 1994 Supp.(3) SCC 385

> etc. would be applicable to the employees of the corporation.
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> In our view, the judgment of the High Court holding that the revisional power as vested in the state government under Rule 13 of the U.P. Rules of 1999 shall be available in respect of the employees of the Corporation is erroneous and not sustainable. The High Court abruptly formed the opinion without examining the question at all."

280. In any view of the matter, on analysis of the law with reference to Section 8 and Section 18 of the APGC Act, the repeal and re-enactment is only to the limited extent of substituting the words *'Judge of the High Court'* in the place of *'not less in rank than that of Principal Secretary to the Government'*. But, the other provisions by way of ordinance are new. Such provisions, more particularly, Sub-sections (3) & (5) of Section 200 of APPR Act of the impugned Ordinance which were introduced for the first time cannot be given retrospective effect, which amended the Act by Ordinance expressly, conferring such power on the State to terminate the SEC from the office and it is nothing but circumventing the provisions of the Constitution of India, which is impermissible under law.

281. Removal of the SEC following the procedure prescribed in the proviso to Sub-section (3) of Section 200 of the Old APPR Act will

sufficiently take long time and to obviate such delay, the State appears to have been exercised power reducing tenure which was not a part of conditions of service and amended the Act by issuing the impugned Ordinance. As discussed in the earlier paragraphs, cessation of office is nothing but termination from the office, which takes away the valuable right accrued on the constitutional authority appointed under Article 243K of the Constitution. Even if a part of repeal to the provisions is re-enacted by substituting the words *'Judge of the High Court'* in the place of *'not less in rank than that of Principal Secretary to the Government'*, that will have no impact, unless such provision is given retrospective effect. But, because of Sub-section (5) of Section 200 of the APPR Act by way of the impugned Ordinance, the incumbent in the office is deemed to have been ceased to hold the office and made certain consequential amendments to the notification governing the service conditions and tenure of the SEC.

282. The proviso of Article 243K(2) of the Constitution confers power to the Governor to determine the conditions of service and tenure of SEC subject to the provisions of any law made by Legislature. In contra distinction to the power as given either to the State Legislature or to the Governor under Article 243K(2) of the Constitution, the proviso confers right to SEC to function uninfluenced by the political parties in the State in discharge of his

Constitutional duties to conduct free and fair elections. Therefore, uninfluenced by the conditions of the service and tenure, whatever it may be, the removal of SEC, shall be in a like manner and on the like grounds as a Judge of the High Court. The manner is prescribed by way of impeachment by Parliament and the grounds are of proved misbehaviour or incapacity. Thus, in this way by proviso, the tenure is protected and by the latter part of the proviso, it is clarified that conditions of service shall not be changed after his appointment to the disadvantage of SEC. The said protection is specified in Article 243K(2) itself by way of proviso, therefore the said proviso would be read to strengthen the Constitutional spirit uninfluenced by any Law.

283. Turning to the facts of the present case, **Mr.A** was appointed as SEC, for tenure of five years from the date of assumption of office, which deemed to have been commenced from 01.04.2016. The five years period expires on 31.03.2021. When once the appointment of SEC in terms of Article 243-K of the Constitution is made, subject to the legislation governing service conditions and tenure of the office of SEC, till completion of tenure, he cannot be removed except as provided under proviso to Sub-section (2) of Section 200 of the APPR Act as amended by the impugned Ordinance or by following the procedure under proviso to Clause (2) of Article 243-K of the Constitution. This protection is in

Constitution to preserve the independence of the SEC to conduct free and fair elections without any influence of the political party either in power or in opposition.

284. The conspectus of the discussion made hereinabove makes it clear that *'cease to hold an office'* is amounting to *'termination and removal'* from the said office. Once, it is governed by a proviso specified in the Constitution, bringing a Law by way of an amendment, specifying the words *'any person appointed as State Election Commissioner and holding office as such shall cease to hold office'* is apparently violative of proviso to Article 243K(2) and it does not qualify the test of Article 14 of the Constitution. Therefore, we hold that the term 'ceased to hold office' in Sub-section (5) of Section 200 of the APPR Actin the impugned Ordinance is having the effect of removal of **Mr.A** as SEC and the said removal is not permissible in view of the immunity prescribed under proviso to Clause (2) of Article 243K of the Constitution. Accordingly, Question No.5 is answered.

<u>Question No.6</u> : ***Whether the appointment of Mr.A made for a tenure of five years as SEC, may confer any vested right to continue him upto such term amidst promulgation of the impugned Ordinance?***

285. As per Clause (2) of Article 243K of the Constitution, the conditions of service and tenure of office of the SEC shall be such

as the Governor may by rule determine, in case law made by the State Legislature is not in existence. Learned Advocate General submits that the proviso consists of two parts viz., first the removal of SEC shall be in the like manner and on the like grounds as a Judge of a High Court, second the conditions of service of the SEC shall not be varied to his disadvantage after his appointment. The conditions of service and tenure are two distinct aspects and the proviso does not deal with the tenure and it only says for the conditions of service, which shall not be varied to his disadvantage after appointment. Therefore, due to promulgation of the impugned Ordinance by the State legislature, amendment in Section 200 of the APPR Act has been brought, directing the SEC, holding the office at that time, to cease to hold such office and it would not cover within the purview of the proviso. Therefore, the proviso of Article 243K(2) of the Constitution is of no help to the petitioners.

286. On the other hand, the learned Counsel representing the petitioners contend that the respondents are clothed with the power to make provisions of any law made by the legislature regarding conditions of service and tenure of office of the SEC, otherwise, it shall be such as the Governor may by rule determine.

287. The terms '*conditions of service*' and '*tenure of office*' referred regarding appointment of SEC indicate that after joining,

what would be the terms of service of the SEC and the tenure to which the SEC shall function. Therefore, the word *'and'* used is only on his appointment regarding conditions of service and the tenure of the office. It is an admitted fact that after 73rd amendment brought on 24.04.1993, the State legislature has not made any law bringing legislation regarding conditions of service and tenure of office. On commencement of the APPR Act, on 22.04.1994, Section 200 was introduced therein, but conditions of service and tenure of office were not prescribed by State legislation, and mentioned in Sub-section (3) that conditions of service and tenure of office of the SEC shall be such as Governor may by rule determine. Those Rules are known as the Andhra Pradesh Panchayat Raj (Salaries and Allowances, Conditions of Service of State Election Commissioner) Rules, 1994, wherein in Clause 2(f), it is specified that words and expressions used but not defined in these rules, shall have to be the same meaning assigned to them in the APPR Act. In second part of Rule 3, it is clarified that the term of the SEC shall be five years from the date of his assumption of the office as Commissioner. Therefore, in the conditions of service, the term of SEC was specified as five (5) years. The legislators or the Governor are well aware that the Rules specifying the conditions of service and tenure, in exercise of power under Sub-section (3) of Section 200 of the APPR Act, are in existence. There was no occasion to them to interpret it differently or making tenure

disjunctive from conditions of service. But, because they want to reduce it due to oblique reasons, an attempt to reduce the tenure, by promulgation of Ordinance, has been made.

288. In the facts of the present case, **Mr.A** was appointed as SEC *vide* G.O.Ms.No.11 dated 30.01.2016 in exercise of the power under Article 243K of the Constitution read with Section 200 of the APPR Act. The said appointment was for a period of five years from the date of assuming of the office. **Mr.A** assumed the office on 01.04.2016; however, the tenure of five years will complete on 31.03.2021. The said appointment was under the existing Rules of 1994, wherein the tenure as prescribed was of five years. Thus, under the law as well as the Constitution, **Mr.A** is having vested right to continue in the office of **SEC** till completion of the tenure so prescribed, or otherwise, he may be removed by following the procedure prescribed under the proviso to Article 243K(2) of the Constitution in the like manner and on the like ground as a Judge of a High Court may be removed as prescribed under proviso (b) to Article 217(1) of the Constitution following the procedure in the manner provided under Clause (4) of Article 124 of the Constitution on the ground of proved misbehaviour or incapacity. The said person shall have an opportunity in the House of Parliament and on having two-third majority, he can be removed by an order of the President. In the case at hand, because the appointment of **Mr.A**

was made by the Governor, he can only be removed by the Governor following the said procedure, for proved misbehaviour and incapacity, otherwise, he is having vested right under the law or by an order of terms of the order of appointment issued by the Governor, determining the tenure under the rule.

289. From the above, it is clear that the tenure of the SEC so prescribed for a period of five year can only be curtailed by way of impeachment, following the procedure as noted above, in case the SEC is required to be removed prior to the completion of tenure so prescribed. Without following the said procedure, passing an order by the Secretary to the Government, in consequence of the impugned Ordinance, directing cessation of the office of **Mr.A** is contrary to the law and such order of the Secretary itself is void *ab initio* and invalidate the action of the State Government.

290. In the said context, it is necessary to understand the meaning of the word *'vested'*. In **Black's Law Dictionary** (6th Edition), the meaning of the word *'vested'* is mentioned as *'fixed', 'accrued', 'settled', 'absolute'* and *'complete'*. In **Webster's Comprehensive Dictionary** (International Edition), it is defined as *'law held by a tenure subject to no contingency', 'complete', 'established by law as a permanent right'* and *'vested interest'*, which may very well be seen in the judgment of Hon'ble the Supreme Court in **Mosammat Bibi Sayeeda v. State of**

Bihar[159]. Further, as per the judgment of the Hon'ble Apex Court in **Howrah Municipal Corporation v. Ganges Rope Co. Ltd.**[160], the word *'vest'* is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word *'vest'* has also acquired a meaning as *'an absolute or indefeasible right'*. It had a *'legitimate'* or *'settled expectation'* to obtain right to enjoy the property etc. Such *'settled expectation'* can be rendered impossible of fulfilment due to change in law by the Legislature. Besides this, such a 'settled expectation' or the so-called 'vested right' cannot be countenanced against public interest and convenience which are sought to be served by amendment in the law. Thus, *'vested right'* is *'a right independent of any contingency'*. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course.

291. In the present case and as per the discussion made hereinabove, it is clear that a *'vested right'* is accrued to **Mr.A** to continue upto five years, which is not against public interest and convenience in fact. Further, by virtue of the judgments of Hon'ble the Supreme Court in **Kishansing Tomar** (supra), **Mohinder Singh Gill** (supra) and **T.N. Seshan** (supra), the SEC has a

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[159] AIR 1996 SC 1936

[160] (2004) 1 SCC 663

indefeasible right to continue for conduct of free and fair elections, which is a duty casted on him, and he can only be removed by way of impeachment as per the procedure as discussed hereinabove. Thus, his removal by an order of Principal Secretary, though he is holding constitutional post, is unconstitutional and illegal.

292. In **Dr. L.P. Agarwal** (supra), a question came up before the Division Bench of Hon'ble the Supreme Court, when a Professor in AIIMS was appointed as a Director in AIIMS for a period of five years, inclusive of probation for one year. He completed his probation and his service has been confirmed by a memorandum. Thereafter, a resolution was passed superannuating him unilaterally. In the facts of the said case, Hon'ble the Supreme Court, at Para 16, held as under:

> "16. We have given our thoughtful consideration to the reasoning and the conclusions reached by the High Court. We are not inclined to agree with the same. Under the Recruitment Rules the post of Director of the AIIMS is a tenure post. The said rules further provide the method of direct recruitment for filling the post. These service conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise. The age of 62 years provided under proviso to Regulation 30(2) of the Regulations only shows that no employee of the AIIMS

can be given extension beyond that age. This has obviously been done for maintaining efficiency in the Institute services. We do not agree that simply because the appointment order of the appellant mentions that "he is appointed for a period of five years or till he attains the age of 62 years", the appointment ceases to be to a tenure-post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. Can such person be retired prematurely curtailing his tenure of five years? Obviously not. The appointment of the appellant was on a five years tenure but it could be curtailed in the event of his attaining the age of 62 years before completing the said tenure. The High Court failed to appreciate the simple alphabet of the service jurisprudence. The High Court's reasoning is against the clear and unambiguous language of the Recruitment Rules. The said rules provide "Tenure for five years inclusive of one year probation" and the post is to be filled "by direct recruitment". Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant. The High Court fell into error in reading "the concept of superannuation" in the said order. Concept of

superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. The appellant could not therefore have been prematurely retired and that too without being put on any notice whatsoever. Under what circumstances can an appointment for a tenure be cut short is not a matter which requires our immediate consideration in this case because the order impugned before the High Court concerned itself only with premature retirement and the High Court also dealt with that aspect of the matter only."

293. Further, in **Tushar Ranjan Mohanty** (supra), the Hon'ble Apex Court declared the amendment with retrospective operation as *ultra vires* as it takes away the vested rights of the petitioners therein and thus, was unreasonable, arbitrary and violative of Articles 14 and 16 of the Constitution. While deciding the said case, the Hon'ble Apex Court placed very heavy reliance on the judgment in **P.D. Aggarwal** (supra), wherein the Apex Court has held that the Government has power to make retrospective amendments to the Rules but if the Rules purport to take away the vested rights and are arbitrary and not reasonable, then such retrospective amendments are subject to judicial scrutiny if they have infringed Articles 14 and 16 of the Constitution. In **J.S. Yadav** (supra), by Amendment Act, 2006, the tenure of the office of the appellant was reduced and a G.O was issued ceasing him to be a Member of

Human Rights Commission and the same was set-aside, declaring that it is arbitrary.

294. Discontinuation of tenure appointed by amending law is nothing but an arbitrary exercise of power. The issue of applicability of the said provision has been considered by this Court in **State of Punjab v. Mohar Singh Pratap Singh**[161]**, M.S. Shivananda v. The Karnataka State Road Transport Corporation**[162], **Commissioner of Income Tax U.P. v. M/s. Shah Sadiq & Sons**[163], and **Vishwant Kumar v. Madan Lal Sharma & Anr**[164]**,** wherein it has been held that the rights accrued under the Act or Ordinance which stood repealed would continue to exist unless it has specifically or by necessary implication been taken away by the repealing Act.

295. Further, the Legislature is competent to unilaterally alter the service conditions of the employee and that can be done with retrospective effect also, but the intention of the Legislature to apply the amended provisions with retrospective effect must be evident from the Amendment Act itself expressly or by necessary implication. The aforesaid power of the Legislature is qualified further that such a unilateral alteration of service conditions should

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[161] AIR 1955 SC 84

[162] AIR 1980 SC 77

[163] AIR 1987 SC 1217

[164] AIR 2004 SC 1887

be in conformity with legal and constitutional provisions as was held in the cases of **Roshan Lal Tandon v. Union of India**[165], **State of Mysore v. Krishna Murthy**[166], **Raj Kumar v. Union of India**[167]; **Ex-Capt. K.C. Arora v. State of Haryana**[168] and **State of Gujarat v. Raman Lal Keshav Lal Soni**[169].

296. As per the discussion made hereinabove, relying upon the judgments of Hon'ble the Supreme Court in **Budhan Choudhary** (supra) and **D.S.Reddy** (supra), the promulgation of the impugned Ordinance does not qualify the test of class legislation as specified in Article 14 of the Constitution of India.

297. In view of the above discussion, the appointment of **Mr.A** as SEC which was for five years cannot be taken away, that too, by an order of the Secretary of the Department without having signature of the Governor on the File, as discussed in Question No.4. Further, it is categorically clear that the power has been exercised with oblique reasons and on extraneous grounds and the exercise of such power is fraud on the Constitution. In that view of the matter, the right accrued to **Mr.A** cannot be taken away by virtue of an illegal promulgation of Ordinance. The discontinuation of **Mr.A** can

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[165] AIR 1967 SC 1889

[166] AIR 1973 SC 1146

[167] AIR 1975 SC 1116

[168] (1984) 3 SCC 281

[169] AIR 1984 SC 161

only be possible by way of removal on the basis of proved misbehaviour and by following the procedure established by law, looking to the immunity so prescribed to **Mr.A**. Therefore, the entire action taken by the State, taking away the vested right of **Mr.A**, is illegal and unconstitutional. Question No.6 is accordingly answered in favour of **Mr.A**.

Question No.7 : ***Whether the petitioners in the PILs and the other writ petitions have locus standi to maintain the petitions challenging the impugned Ordinance and consequential notifications along with the writ petition filed by the aggrieved person?***

298. Learned Counsel representing the respondents have argued with vehemence regarding maintainability of the writ petitions as well as Public Interest Litigations filed challenging the Ordinance and the locus standi to file those petitions, *inter alia* making submissions: **First**, the connected writ petitions regarding the impugned Ordinance and the Rules relating to appointment of SEC is a service matter, therefore, not maintainable; **Second**, the aggrieved person has himself approached this Court, therefore, the connected writ petitions filed by the other petitioners and the Public Interest Litigations are not maintainable; **Third**, filing of number of writ petitions and Public Interest Litigations, without having any locus standi, in particular, when the aggrieved person has

approached the Court, would amount to abuse of process of the Court.

299. The respondents have placed reliance on the judgments of **S.P. Gupta** (supra), **Krishna Swami** (supra), **Jayanthipuram Grampanchayat** (supra), **Malik Brothers** (supra), **Asian Paints India Ltd.** (supra), **Villianur Iyarkkai Padukappu Maiyam** (supra), **State of Uttaranchal vs. Balwant Singh Chaufal** (supra), **Balco Employees Union** (supra), **Kamlesh Jain** (supra) and **Nandjee Singh** (supra). In the counter filed by the respondents, the judgment in the case of **Bandhua Mukti Morcha** (supra) has also been referred, to support their contentions.

300. On the other hand, the Counsel representing the petitioners have argued controverting the contentions of the respondents *inter alia* contending that this is a case in which, in order to protect democracy, free and fair election is a part of basic structure of the Constitution. Any attack on the basic structure of the Constitution is a writ large, in particular when an attempt is made to affect the Rule of Law bringing unconstitutional legislation and attacking upon the rights and powers of the SEC being repository to a post held under Constitution. It is specifically urged that the writ petitions and Public Interest Litigations filed challenging the unconstitutional Ordinance and the Rules and also the consequential notifications

issued in furtherance to those illegal statutes, however a citizen of India is having locus to maintain the writ petitions invoking jurisdiction under Article 226 of the Constitution. Reliance has been placed on the judgments of **Balwant Singh Chaufal** (supra) and **Salil Sabhlok** (supra), wherein the Apex Court has specifically held that challenging the adoptability of the illegal procedure in selection and appointment of Constitutional Post is not a service matter. As the challenge made in the present case contending that the validly appointed SEC under the Constitution cannot be displaced by virtue of the illegal Ordinance, however, the Public Interest Litigation is maintainable. Reliance has also been placed on the judgments of the Hon'ble the Supreme Court in **Dhobei Sahoo** (supra), **Hari Bansh Lal** (supra) and **Guruvayoor Devaswom** (supra).

301. In view of the aforesaid, the core question arises on the issue of maintainability to answer as to whether the petitioners in the PILs and the other writ petitions have locus standi to maintain the petitions challenging the impugned Ordinance and consequential notifications along with the writ petition filed by the aggrieved person.

302. Before adverting the said question, first of all, the judgments cited by the parties are required to be referred. The judgment of

the Apex Court in **S.P. Gupta** (supra), was referred by the petitioners as well as the respondents. In the said judgment, the issue of *Locus Standi and Judicial Review* has been taken into consideration and said that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority, contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest, can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy-body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice. Thereby, the Court has held that the Public Interest litigation is liberalising the rule of locus standi. If there is a wrong, it can be invoked. The Court has further observed as under:

> "18. .....It is also necessary to point out that if no one can have standing to maintain an action for judicial redress in respect of a public wrong or public injury, not only will the cause of legality suffer but the people not having any judicial remedy to redress such public

> wrong or public injury may turn to the street and in that process, the rule of law will be seriously impaired. It is absolutely essential that the rule of law must wean the people away from the lawless street and win them for the court of law."

While dealing with the duty, which is going to a wrong direction causing public injury and public wrong, the Court observed as thus:

> "19. ..... In other words, the duty is one which is not correlative to any individual rights. Now if breach of such public duty were allowed to go unredressed because there is no one who has received a specific legal injury or who was entitled to participate in the proceedings pertaining to the decision relating to such public duty, the failure to perform such public duty would go unchecked and it would promote disrespect for the rule of law. It would also open the door for corruption and inefficiency because there would be no check on exercise of public power except what may be provided by the political machinery, which at best would be able to exercise only a limited control and at worst, might become a participant in misuse or abuse of power. It would also make the new social collective rights and interests created for the benefit of the deprived sections of the community meaningless and ineffectual."

In view of the said observations, the Constitutional Bench has decided the Public Interest Litigation.

303. In the case of **Krishna Swami** (supra) relied on by the respondents, the petition was filed in the nature of Public Interest Litigation against a Judge. During the course of hearing, the question of maintainability of the petition in the absence of the Judge concerned and tenability of the plea of reconsideration of the earlier decision at the instance of the petitioners, who were not parties thereto and are not directly affected thereby, arose for consideration, in which the preliminary objection of not maintainable has been decided. In the present case, the said judgment is not at all applicable as affected person is joined as party and no order passed previously is under challenge. Therefore, it is no way helpful to the State Government.

304. The respondents relied upon the judgments of Single Benches of the erstwhile common High Court of Andhra Pradesh in **Jayanthipuram Grampanchayat** (supra) as well as **Asian Paints** (supra). In **Jayanthipuram Grampanchayat** (supra), for non-payment of salaries, the petition was filed by someone having no personal cause. Similarly, in the case of **Asian Paints** (supra) also, the action taken regarding display boards and advertisements was put into question. Both these cases are not binding and have no application to the facts of the present case. More so, these petitions were not in public interest challenging the Constitutional

validity of any provisions of law. Therefore, these judgments are irrelevantly cited by the State Government.

305. In the case of **Malik Brothers** (supra), Hon'ble the Supreme Court observed that the directions and commands issued in PIL are for betterment of society at large and not for benefiting any individual. Thus, where the Court finds that in the garb of PIL, an individual's interest is being sought to be furthered or protected, the Court is duty-bound not to entertain such a petition. There cannot be any different view in the facts of the present case that the said judgment is also of no application looking to the fact that in the present Public Interest Litigations, an enactment has been brought under challenge on the ground that it does not qualify the test specified under Article 14 of the Constitution and power exercised is fraud on Constitution. Therefore, the objection raised by the respondents on the maintainability of the Public Interest Litigations cannot be accepted.

306. The respondents further relied upon the judgment in **Villianur Iyarkkai Padukappu Maiyam** (supra), in which the Court partly maintained the Public Interest Litigation while partly declining to interfere. The relevant part of the judgment is reproduced as thus:

"114. The question of locus standi in the matter of awarding the contract has been considered by this Court in *BALCO Employees' Union* v. *Union of India* [(2002) 2 SCC 333] . This Court, after review of law on the point, has made following observations in para 88 of the judgment: (SCC p. 381)

> "*88*. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also it is the legal rights which are secured by the courts. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the court."

From the passage quoted above it is clear that the only ground on which a person can maintain a PIL is where there has been an element of violation of Article 21 or human rights or where the litigation has been initiated

for the benefit of the poor and the underprivileged who are unable to come to the court due to some disadvantage.

115. On the facts and in the circumstances of the case, this Court is of the view that the only ground on which the appellants could have maintained a PIL before the High Court was to seek protection of the interest of the people of Pondicherry by safeguarding the environment. This issue was raised by the appellants before the High Court and the High Court has issued directions regarding the same, which are to be found in para 24 of the impugned judgment. After the High Court's directions the element of public interest of the appellants' case no longer survives. The appellants cannot, therefore, proceed to challenge the award of the contract in favour of Respondent 11 on other grounds as this would amount to challenging the policy decision of the Government of Pondicherry through a PIL, which is not permissible. Thus on the ground of locus standi also the appeals should fail."

On perusal of the aforesaid, it is apparent that for violation of Article 21 or Human Rights, the petition was found maintainable, but the Public Interest litigations filed on the instance of the persons who had not participated in the process of tender, cannot be maintained. In view of the judgment of **S.P. Gupta** (supra), the said analogy is wholly justified. But, looking to the facts of the case at hand, the said judgment is also of no avail to the

respondents, because it is not related to any tender process and here, an unconstitutional and illegal Ordinance has been challenged along with consequential Notifications.

307. The judgment in **Balco Employees Union** (supra) has also been filed, in which Hon'ble the Supreme Court observed that financial or economic decisions taken by the Government in exercise of its administrative power cannot be challenged in PIL. Looking to the facts, the said judgment is also of no avail.

308. Lastly, the counsel for the respondents cited the judgment in **Balwant Singh Chaufal** (supra). The said judgment has been relied on by the petitioners also. In the said case, the Court framed guidelines relating to PIL. Those guidelines are reproduced as under:

> "181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:
>
> (1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine

> public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.
>
> (8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

In the said case, the Court declined to interfere because the advocate challenged the appointment of the Advocate General on the ground of crossing 62 years of age. The Court was of the opinion that the said issue has already been decided by the High Courts and the Supreme Court, however, re-agitating the said issue again by the Advocate is unjustified.

309. In view of the foregoing, the Court observed that if the Court is satisfied that substantial public interest is involved before entertaining the petition, Court shall ensure that the PIL is for redressal of genuine public harm or public injury. Otherwise, for personal gain, private motive or oblique motive behind filing the Public Interest Litigation, it should not be entertained. In the said case, it has been further observed that genesis and source of Public Interest Litigation lies in constitutional obligation of the Supreme Court and High Courts to ensure that access to justice becomes

available to all sections of society, including the poor and marginalized, so that fundamental rights become meaningful to them and for this reason, the concept of PIL was developed through judicial creativity and craftsmanship. The Court has also observed that Rule of *locus standi* was diluted and meaning of '*aggrieved person'* was broadened so that public spirited persons/bodies could file PIL even if not personally affected. The Court has further specified that in the first phase of the PIL, the issue of right to life and personal liberty were being entertained by the High Courts; in second phase, Public Interest Litigations related to preservation of ecology and environment and in third phase, the Supreme Court has entertained the PILs relating to purity in public administration and probity in governance. It is observed that after 90s, the Courts passed orders or directions to unearth corruption and maintain probity and morality in governance of the State. Probity in governance is a *sine qua non* for an efficient system of administration and for development of country and an important requirement for ensuring probity in governance absenting corruption. In view of the above discussion, it can safely be concluded that reliance made by the respondents on the said judgment is of no help to them in the facts.

310. In the judgment in **B.P. Singhal** (supra) cited by the petitioners, the issue of maintainability of the Public Interest

Litigation came up for consideration, when the appointment and removal of Governor was questioned. While entertaining the PIL, the Court observed that the petitioner has no locus standi to maintain the petition in regard to the prayers claiming relief for the benefit of the individual Governors. But, with regard to the general question of public importance referred to the Constitution Bench, touching upon the scope of Article 156(1) of the Constitution and the limitations upon the doctrine of pleasure, the petitioner has the necessary locus.

311. In the judgment of **Salil Sabhlok** (supra) Hon'ble the Supreme Court observed as under :

> "46. I, therefore, hold that even though Article 316 does not specify the aforesaid qualities of the Chairman of a Public Service Commission, these qualities are amongst the implied relevant factors which have to be taken into consideration by the Government while determining the competency of the person to be selected and appointed as Chairman of the Public Service Commission under Article 316 of the Constitution. Accordingly, if these relevant factors are not taken into consideration by the State Government while selecting and appointing the Chairman of the Public Service Commission, the Court can hold the selection and appointment as not in accordance with the Constitution. To quote *De Smith's Judicial Review*, 6th Edn.:

> "If the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations required to be taken into account (expressly or impliedly), a court will normally hold that the power has not been validly exercised. (p. 280)
>
> If the relevant factors are not specified (e.g. if the power is merely to grant or refuse a licence, or to attach such conditions as the competent authority thinks fit), it is for the courts to determine whether the permissible considerations are impliedly restricted, and, if so, to what extent. (p. 282)"

In Hochtief Gammon v. State of Orissa [(1975) 2 SCC 649 : 1975 SCC (L&S) 362 : AIR 1975 SC 2226] , A. Alagiriswami writing the judgment for a three-Judge Bench of this Court, explained this limitation on the power of the executive in the following words: (SCC p. 659, para 13)

> "*13.* The executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the executive acts lawfully."

99. While it is difficult to summarise the indicators laid down by this Court, it is possible to say that the two most important requirements are that personally the

Chairperson of the Public Service Commission should be beyond reproach and his or her appointment should inspire confidence among the people in the institution. The first "quality" can be ascertained through a meaningful deliberative process, while the second "quality" can be determined by taking into account the constitutional, functional and institutional requirements necessary for the appointment.

104. While it may be that Mr Dhanda was given a clean chit by the Division Bench when the case was first before it, the fact is that information subsequently came to the notice of the High Court which indicated that Mr Dhanda was not above using his political influence to get his way. That Mr Dhanda came in for an adverse comment in a judicial proceeding was certainly known to him, since he was a party to the case before the Central Administrative Tribunal. But he did not disclose this fact to the Chief Minister. In the deliberative process (or whatever little there was of it) the Chief Minister did not even bother to check whether or not Mr Dhanda was an appropriate person to be appointed as the Chairperson of the Punjab Public Service Commission in the light of the adverse comment. The "thorough and meticulous inquiry and scrutiny" requirement mentioned in Inderpreet Singh Kahlon [(2006) 11 SCC 356 : (2007) 1 SCC (L&S) 444] was not at all carried out."

In the said case, on the issue of maintainability while concurring with the opinion, Hon'ble Justice Madan B. Lokur has observed as under:

> "**60.** Another substantive issue raised is whether the High Court could have entertained a public interest writ petition in respect of a "service matter", namely, the appointment of Mr Harish Rai Dhanda as Chairperson of the Punjab Public Service Commission. In my opinion, the appointment of the Chairperson of the Punjab Public Service Commission is not a "service matter" and so a public interest litigation could have been entertained by the High Court.
>
> **67.** A reading of Article 316 and Article 317 of the Constitution makes it clear that to prevent the person walking on the street from being appointed as the Chairperson of a State Public Service Commission, the Constitution has provided that the appointment is required to be made by the Governor of the State, on advice. Additionally, the Chairperson has security of tenure to the extent that that person cannot be effortlessly removed from office even by the President as long as he or she is not guilty of proven misbehaviour, or is insolvent, or does not take up any employment or is not bodily or mentally infirm. There is, therefore, an in-built constitutional check on the arbitrary appointment of a Chairperson of a State Public Service Commission. The flip side is that if an arbitrary appointment is made, removal of the appointee is a difficult process.

69. In this context, three submissions have been put forward by the learned counsel supporting the appointment of Mr Dhanda. If these submissions are accepted, then one would have to believe that a citizen aggrieved by such an appointment would have no remedy. The first submission is that a writ of quo warranto would not lie since there is no violation of a statute in the appointment—indeed, no statutory or other qualification or eligibility criterion has been laid down for the appointment. Therefore, a petition for a writ of quo warranto would not be maintainable. The second submission is that the appointment to a post is a "service matter". Therefore, a public interest litigation (or a "PIL", for short) would not be maintainable. The third submission is that the remedy in a "service matter" would lie with the Administrative Tribunal, but an application before the Tribunal would not be maintainable since the aggrieved citizen is not a candidate for the post and, therefore, would have no locus standi in the matter. It is necessary to consider the correctness of these submissions and the availability of a remedy, if any, to an aggrieved citizen.

81. Article 319 of the Constitution provides that on ceasing to hold office, the Chairperson of a State Public Service Commission cannot take up any other employment either under the Government of India or under the Government of a State, except as the Chairperson or Member of the Union Public Service Commission or as the Chairperson of any other State Public Service Commission.

82. Among other things, the functions of the State Public Service Commission include, as mentioned in Article 320 of the Constitution, conducting examinations for appointments to the services of the State. The State Public Service Commission may also be consulted by the President or the Governor of the State, subject to regulations that may be made in that behalf, on all matters relating inter alia to methods of recruitment to civil services and for civil posts and on the principles to be followed in making appointments to civil services and posts.

83. Article 322 of the Constitution provides that the expenses of the State Public Service Commission, including salaries, allowances and pensions of its Members shall be charged on the Consolidated Fund of the State. Article 323 of the Constitution requires the Public Service Commission to annually present a report of the work done by it to the Governor of the State.

84. All these are serious constitutional functions and obligations cast on the Chairperson and Members of the Public Service Commission and to equate their appointment with a statutory appointment and slotting their appointment in the category of a "service matter" would be reducing the Constitution into just another statute, which it is not.

87. However, as an aggrieved person he or she does have a public law remedy. But in a service matter the only available remedy is to ask for a writ of quo warranto. This is the opinion expressed by this Court in

several cases. One of the more recent decisions in this context is Hari Bansh Lal [Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771] wherein it was held that: (SCC p. 661, para 15)

> "*15.* ... except for a writ of quo warranto, public interest litigation is not maintainable in service matters."

This view was referred to (and not disagreed with) in Girjesh Shrivastava v. State of M.P. [(2010) 10 SCC 707 : (2011) 1 SCC (L&S) 192] after referring to and relying on Duryodhan Sahu v. Jitendra Kumar Mishra [(1998) 7 SCC 273 : 1998 SCC (L&S) 1802] , B. Srinivasa Reddy [B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn., (2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] , Dattaraj Nathuji Thaware v. State of Maharashtra [(2005) 1 SCC 590] , Ashok Kumar Pandey v. State of W.B. [(2004) 3 SCC 349 : (2011) 1 SCC (Cri) 865] and Hari Bansh Lal [Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771] .

88. The significance of these decisions is that they prohibit a PIL in a service matter, except for the purposes of a writ of quo warranto. However, as I have concluded, the appointment of the Chairperson in a Public Service Commission does not fall in the category of a service matter. Therefore, a PIL for a writ of quo warranto in respect of an appointment to a

> constitutional position would not be barred on the basis of the judgments rendered by this Court and mentioned above."

In the present case also, it is not a service matter because the promulgation of Ordinance relating to removal of the SEC, i.e., holder of constitutional post, is under challenge, therefore, it is maintainable.

312. In the case of **Dhobei Sahoo** (supra), the Apex Court has observed that the basic purpose of issuance of quo warranto in service matters is to confer jurisdiction on the constitutional courts to ensure that public office is not held by a usurper without any legal authority. The judgment of Hon'ble the Supreme Court in **Bandhua Mukti Morcha** (supra) which is prior to 90s, was cited in the counter, and at that time, in the light of the judgment in **Balwant Singh** (supra), it was clear that the issue effecting personal liberty was taken into consideration paramountly and thereafter, in 90s the issue relating to purity of public administration and probity in governance has been taken into consideration and the Court held that the PILs are maintainable in those cases. Thus, the aforesaid judgment is of no help to the respondents.

313. In view of the foregoing legal position in the facts of the case and the objections so raised by the respondents, it is

incumbent on the Court to examine as to whether the cause agitated by **Mr.A** by filing the petition and by other petitioners by way of PILs, would affect any constitutional obligation, morality affecting free and fair election, which is the pillar of democracy as involved and if so, the petitioners, who are either advocate, politician, agriculturist or citizen may come to challenge the Ordinance on the ground of its constitutional validity and such petitions can be maintained.

314. As per the judgment in **T.N. Seshan** (supra), the Apex Court held that democracy is the basic and fundamental structure of the constitution and it is a product of the Rule of Law, and aspires to establish an egalitarian social order. It is not only a political philosophy but also an embodiment of constitutional philosophy. In the case of **People's Union for Civil Liberties** (supra), the Court observed that democracy and free and fair elections are a part of the Basic structure of the Constitution.

315. In the said context, if we see the facts of the present case, **Mr.A** was appointed as the SEC vide G.O.Ms.No.11, dated 30.01.2016 for a period of five years from the date of assumption of office and he had taken charge on 01.04.2016, however, he is supposed to continue upto 31.03.2021. It is not in dispute that the SEC holds a constitutional post and his

appointment was in exercise of the power under Article 243K of the Constitution**.** Promulgation of Ordinance has been made emphasizing the eligibility for appointment and its tenure violating the immunity prescribed in the proviso of Article 243K of the Constitution for removal of SEC. By bringing the impugned Ordinance, the eligibility for appointment has been changed, which is not a domain or in the legislative competence of the State Legislature and the tenure has also been prescribed contrary to the intention of the framers of the Constitution as could be derived from the debates of the Constituent Assembly discussed above, as well the Report of Task Force Committee without any basis. More surprisingly, bringing such legislation and by incorporating Sub-section (5) in Section 200 of the APPR Act, **Mr.A**, who can hold the post of SEC for five (5) years, has been ceased to hold the office. In such a case, challenge to the constitutional validity of the promulgation of the Ordinance and the consequential rules and notifications, is made in the present case. In such circumstances, the plea of maintainability does not lie in the mouth of the State Government or the Election Commission. Such plea can be said to be wholly unwarranted, in particular, when the attack is being made in the facts of the case on the independence of the SEC, who has to conduct free and fair elections of the Panchayats and Municipalities in the State.

The severity of the action of the authorities is that the person

appointed under the Constitution has been removed in consequence of the said legislation by the Secretary of the Department without signature of the Governor on the file, but order is issued in his name. The highly objectionable part in the case is that the appointment of the newly incumbent i.e., **Mr.B** has been made by the Governor in exercise of the power under Section 200 of the APPR Act and not under Article 243K(1) of the Constitution, that too, a person of more than 77 years of age, merely on supply of bio-data by the Chief Minister to the Governor. In such a case, how far free and fair election of the Panchayats and Municipalities can be held in the State. As discussed, **Mr.B** cannot function as SEC for holding the elections of the Municipalities and Municipal Corporations under the APMC Act as well as the GHMC Act, looking to the definition of State Election Commission as specified in those acts. Thus, when such an unconstitutional act is challenged in the writ petitions and PILs, the attempt of the respondents on the ground of maintainability or locus, is frivolous and it is hereby rejected. Question No.7 is answered accordingly.

CONCLUSION :

316. On an earnest consideration of the factual and legal aspects in Question Nos.1 to 7 framed, discussed and answered, the conclusion of this Judgment is as follows:

316.1) The appointment of the State Election Commissioner can be made by the Governor under his discretionary power under Article 243K(1) of the Constitution of India.

316.2) The expression 'conditions of service and tenure of office' in Article 243K(2) of the Constitution do not include 'appointment'. On appointment and holding the post of the State Election Commissioner, the conditions of service and tenure of office may be as per any Law made by the State Legislature or as determined by the Rules made by the Governor.

316.3) The State Government may have power only with respect to make Legislation in terms of 'conditions of service and tenure of office'. For appointment of State Election Commissioner, the State Legislature does not have power to propose or prescribe the pre-eligibility and manner of the appointment by the aid and advice of Council of Ministers to promulgate an Ordinance in this regard.

316.4) The State Election Commissioner appointed in exercise of powers under Section 200 of the A.P.Panchayat Raj Act, 1994 cannot function for superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities and the Municipal Corporations. The appointment must be made by the Governor in exercise of the power under Article 243K of the Constitution of India.

316.5) The State Government is required to re-visit the definitions of Section 2(39) and 2(40) and provisions of Section 200 of the A.P.Panchayat Raj Act, 1994 and to take necessary decision in accordance with the spirit of the Constitution as expeditiously as possible.

316.6) The satisfaction as recorded by the Governor in exercise of the power under Article 213(1) of the Constitution of India in the facts of the present case is not in the existing circumstances which render it necessary for him to take immediate action. The power so exercised is actuated by oblique reasons and on extraneous grounds, without having any material for the satisfaction of the Governor.

316.7) The promulgated Ordinance No.5 of 2020 dated 10.04.2020 is hereby set-aside and as it is actuated by fraud on power and does not qualify the test of rationality and reasonableness specified in Article 14 of the Constitution of India. Consequent thereto, the Andhra Pradesh Panchayat Raj (Salaries and Allowances, Conditions of Service, Tenure of State Election Commissioner) Rules, 2020 notified vide G.O.Ms.No.617 dated 10.04.2020 are also set-aside.

316.8) In as much as the appointment of Dr.N.Ramesh Kumar **(Mr.A)** as State Election Commissioner is made for a tenure of five years vide G.O.Ms.No.11 dated 30.01.2016 from the date of his assumption of office, he is having vested right which cannot be taken away without completion of the tenure for which he was appointed. Sub-section (5) of Section 200 of the A.P.Panchayat Raj Act, 1994 introduced by Ordinance No.5 of 2020 dated 10.04.2020 cannot take away his subsisting right. The cessation to hold the office by Dr.N.Ramesh Kumar **(Mr.A)** as State Election Commissioner as directed by way of Notification vide G.O.Ms.No.618 dated 10.04.2020 is not in accordance with law as the State Election Commissioner can only

be removed by following the procedure as prescribed under proviso to Article 243K(2) of the Constitution of India.

316.9) The petitions filed by the other petitioners and the PILs challenging the Ordinance, the consequential Notifications notifying the New Rules, 2020 are maintainable in view of the discussion made in Question No.7.

317. While allowing W.P.No.8163 of 2020, the promulgated Ordinance No.5 of 2020 dated 10.04.2020 and the consequential Rules i.e., the Andhra Pradesh Panchayat Raj (Salaries and Allowances, Conditions of Service, Tenure of State Election Commissioner) Rules, 2020 notified vide G.O.Ms.No.617 dated 10.04.2020 and the Notification to cease to hold the office of State Election Commissioner by Dr.N.Ramesh Kumar **(Mr.A)** vide G.O.Ms.No.618 dated 10.04.2020 as well as the Notification of appointment of Justice V.Kanagaraj **(Mr.B)** as State Election Commissioner vide G.O.Ms.No.619 dated 11.04.2020 are hereby set-aside.

318. The Respondent-State is directed to restore the position of Dr.N.Ramesh Kumar as State Election Commissioner and allow him to continue in the office until completion of the tenure as notified

vide G.O.Ms.No.11 dated 30.01.2016. He is also entitled for all consequential benefits.

319. As a sequel thereto, all the other writ petitions and public interest litigations of the batch are allowed and shall stand disposed of in the terms indicated above. All the pending miscellaneous petitions shall stand closed. In the facts of the case, there shall be no order as to costs.

J.K. MAHESHWARI, CJ **M. SATYANARAYANA MURTHY, J**

IBL/NN/GM

HIGH COURT OF ANDHRA PRADESH : AMARAVATI

CHIEF JUSTICE J.K. MAHESHWARI
&
JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION Nos.8163, 8164, 8165, 8166, 8167 & 8394 of 2020;
WRIT PETITION (PIL).Nos.89, 90, 94, 95, 97, 98 & 99 of 2020
(Per J.K. Maheshwari, CJ)

Dt: 29.05.2020

IBL/NN/GM