

IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE C. PRAVEEN KUMAR

WRIT APPEAL No.24 of 2021

(Taken up through video conferencing)

The State Election Commission, Vijayawada,
Represented by its Secretary, 1st floor, New HODs
Building, Indira Gandhi Municipal Stadium, MG Road,
Vijayawada 520 010.

.. Appellant

Versus

The State of Andhra Pradesh, rep., by its Principal
Secretary, Panchayat Raj and Rural Development
Department, Velagapudi, Secretariat Buildings,
Amaravati and (four) others.

.. Respondents.

Counsel for the appellant : Mr. B. Adinarayana Rao, Sr. Counsel
assisted by Mr. N. Ashwani Kumar

Counsel for respondent No.1 : Mr. S. Sriram, Advocate General

Counsel for respondent No.2 : Mr. D.V. Sitarama Murthy, Sr. Counsel
assisted by Mr. K. Kiran Kumar

Counsel for respondent Nos.3&4 : Mr. N. Harinath, Assistant Solicitor
General

Dates of hearing : 18.01.2021 & 19.01.2021

Date of judgment : 21.01.2021

J U D G M E N T

(per Arup Kumar Goswami, CJ)

This writ appeal is presented under Clause 15 of the Letters Patent
against an interim order dated 11.01.2021 passed by a learned single Judge
in W.P.No.1158 of 2021.

2. In the aforesaid writ petition, the following prayer was made:

"It is therefore prayed that this Hon'ble Court may be pleased to issue writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in declaring the schedule of elections for the local bodies vide the proceedings No.513/SEC-B2/2020 dt. 08.01.2021, and imposing the model code of conduct and the consequential proceedings banning transfers vide proceedings No.04/SEC-B2/2021 dated 08.01.2021, as arbitrary and illegal vitiated by consideration of material extraneous to record, arbitrary and irrational rejection of the views of the Government and on surmises, conjectures and assumptions, vitiated by malice in law and thus offending Article 14 of the Constitution of India and issue a consequential direction to the respondent No.1 to forbear from proceeding further with the proposed election process to the local bodies, in pursuance of the impugned proceedings dt.08.01.2021 and pass such other order or orders as are deemed fit and proper in the circumstances of the case."

3. A detailed order dated 08.01.2021, impugned in the writ petition, was passed by the State Election Commissioner seeking to justify holding of elections to the Gram Panchayats in view of the request made by the State Government for postponement of the elections. A schedule for holding ordinary elections to the Gram Panchayats in four phases was also published in terms of which Election Notification is to be issued for Phase-I on 23.01.2021, for phase-II on 27.01.2021, for Phase-III on 31.01.2021 and for Phase-IV on 04.02.2021. Conduct of poll, wherever necessary, was

fixed on 05.02.2021, 09.02.2021, 13.02.2021 and 17.02.2021, for Phases I, II, III and IV, respectively. It is stated at the bar that elections to the Gram Panchayats are not contested on party basis.

4. At the very outset, it will be appropriate to extract the order dated 11.01.2021 passed by the learned single Judge, which is as follows:

“Notice before admission.

Sri N. Ashwani Kumar, learned Standing Counsel takes notice for the 1st and 2nd respondents and Sri N. Harinath, learned Assistant Solicitor General of India takes notice for the 3^d and 4th respondents.

Waives further notice and seeks time to file counters.

Heard Sri Sriram, learned Advocate General for the petitioner and Sri N. Ashwani Kumar, learned Standing Counsel and Sri N. Harinath, learned Assistant Solicitor General of India.

Having carefully considered the peculiar facts and circumstances of the case and considering the submissions of the counsel, perused the record, this court prima facie came to the conclusion that the 1st respondent issued the impugned order without preceded by any pragmatic decision, based on the decisional consultation with the state government as per the orders of the Hon'ble Supreme Court passed in Writ Petition (Civil) No.437 of 2020 and orders of this Court in Writ Petition No.22900 of 2020. The 1st respondent failed to consider the inputs supplied by the 1st respondent-government objectively, in its proper perspective. This court, in its considered opinion

found that the impugned decision of the 1st respondent is violative of Article 14 and 21 of the Constitution of India. The 1st respondent decision to conduct elections certainly hampers and create hindrance to mammoth vaccination programme taken up by the Union of India and has to be implemented by the State Government to contain the Covid-19 and its mutation and the interest of public health, the impugned orders are hereby suspended.

Post on 15.02.2021."

5. The aforesaid writ petition was taken up for consideration by the Vacation Court on 11.01.2021. It is pertinent to mention that the High Court of Andhra Pradesh was having Sankranthi vacation and holidays from 08.01.2021 to 17.01.2021. After the interim order was passed by the Vacation Court on 11.01.2021, permission for moving the present writ appeal as a House Motion was sought for and granted and the matter was taken up for consideration on 12.01.2021 and on that day, the Court had passed the following order:

"This writ appeal is being filed challenging the interim order in W.P.No.1158 of 2021 passed by learned Single Judge. This writ appeal is placed before us on being requested for granting house motion. Admittedly, the regular courts are going to function from 18.01.2021 after end of the Sankranthi Vacation, 2021. Therefore, we questioned the learned standing counsel, Sri N.Ashwani Kumar as to whether there will be any prejudice or legal impediment to the appellant if we post the appeal on 18.01.2021 to be taken up before the concerned

bench as per roster. He sought to project few points submitting that the appellant will be prejudiced if the matter is not heard today.

The first point he submitted is that by virtue of the impugned stay order, the electoral rolls cannot be prepared. However, answering on this aspect, learned Advocate General would submit that electoral rolls for the purpose of conducting the subject panchayat elections were already prepared way back in March, 2020 and the revised list will be received by the Chief Electoral Officer of the State Government latest by 15.01.2021, which he will be duly forward to the appellant/State Election Commissioner by 22.01.2021 in the form of both hard copies as well as soft copies. He would further submit that in case the writ appeal is posted to 18.01.2021 before the regular Bench and the stay order is set aside after hearing parties, the respondent Government will not seek for any further time for holding the elections on the ground that electoral list is not prepared.

The second point raised for hearing the appeal is that by virtue of suspending the election schedule, the Model Code of Conduct which came into force w.e.f. 09.01.2021 is also deemed to be suspended and thereby, there is every possibility that the respondent Government may launch certain schemes to woo the electorates. Answering on this aspect, learned Advocate General would submit that since the elections are fought on non-partisan basis, the question of respondent Government undertaking such measures does not arise. Further, as per the order of the Hon'ble Apex Court in State of

Andhra Pradesh v. The Andhra Pradesh State Election Commission (W.P.(Civil) No.437 of 2020), it was made clear that the respondent State Government if wishes to undertake any fresh developmental activities, they shall do so only with the prior permission of the respondent-State Election Commission and therefore, the State is obligated to take the permission of the Election Commissioner in case they propose to launch any new schemes/developmental programmes covertly to woo the public and hence, such an apprehension is preposterous.

Thus, after hearing both the sides as above, we are convinced that posting of the matter to 18.01.2021 before the Regular Bench having the provision as per Roster will not cause any prejudice to either party. Therefore, the Registry is directed to list the writ appeal on 18.01.2021 as a first matter before the Regular Bench having the provision as per Roster.”

6. It is on the basis of the aforesaid order that the matter was listed before this Court on 18.01.2021 and the appeal was heard, as agreed upon by the learned counsel for the parties for final disposal, on 18.01.2021 and 19.01.2021.

7. The term of Gram Panchayats had expired on 01.08.2018. With the expiry of the term, Special Officers were appointed to the Gram Panchayats *vide* G.O.Ms.No.90, Panchayat Raj & Rural Development (Elecs & Rules) Department, dated 01.08.2018 and consequential memo dated 03.08.2018.

8. A writ petition, registered and numbered as W.P.No.32346 of 2018, was filed by the Ex-Sarpanchs of Gram Panchayats calling into question the

aforesaid two orders with a further prayer to direct the respondents therein to forthwith appoint the petitioners as Persons-in-charge of the respective Gram Panchayats, or petitioners and body members as Committee of Persons-in-charge.

9. By judgment and order dated 23.10.2018, the said writ petition was allowed to the extent as indicated therein. At paragraph Nos.105, 106 and 107 in the said order, it was observed as follows:

"105. Therefore, I hold:

(a) that there was inaction of the part of 1st respondent in taking steps well in advance for enumerating the Backward Class population under Section 202-A of Act and making reservations for Backward Classes, Scheduled Castes, Scheduled Tribes and Women for the Wards and Offices of Sarpanchs of Gram Panchayats in the State of Andhra Pradesh under Sec. 9 and 15 of the Act before 01-08-2018, and it is arbitrary, unreasonable and violative of Article 14 and Article 243-E(3)(a) of the Constitution of India;

(b) that the 1st respondent did not extend the required cooperation to the State Election Commission of the State of Andhra Pradesh before 01-08-2018 to complete the elections to the Members and Sarpanchs of the Gram Panchayat in the State of Andhra Pradesh in the manner expected of it;

(c) that the State Election Commission of State of Andhra Pradesh failed to take proper steps to make the 1st respondent commence the process of reservations and failed in its constitutional duty to ensure that elections to Gram Panchayats in the State are held before 01-08-2018;

(d) that the ex-Sarpanchs of the Gram Panchayats in the State of Andhra Pradesh have no right to be appointed as Special Officers or Persons-in-charge till the holding of elections for the Gram Panchayats;

(e) G.O.Ms.Nos.90 Panchayat Raj and Rural Development (Elecs & Rules) Department dt.01-08-2018 and Memo No.6811/DPR&RD/D3/2017 dt.3-8-2018 and all consequent memos/ proceedings issued by 1st respondent or other respondents are violative of Article 14 and Art.243-E(3) (a) of the Constitution of India.

106. Though G.O.Ms.Nos.90 Panchayat Raj and Rural Development (Elecs & Rules) Department dt.01-08-2018 and Memo No.6811/DPR&RD/D3/2017 dt.3-8-2018 and all consequent memos/ proceedings issued by 1st respondent or other respondents are violative of Article 14 and Art.243-E(3) (a) of the Constitution of India, I direct that the Special Officers appointed thereunder shall continue for a period of three (03) months from today, within which time, the State Election Commission of State of Andhra Pradesh, with the complete cooperation of the 1st respondent, shall complete the entire

process of holding elections to the Wards and Offices of the Sarpanchs in the Gram Panchayats in the State of Andhra Pradesh.

107. I further direct that the 1st respondent (a) shall complete the tasks of enumeration of Backward Class population under Section 202-A of Act and that of making reservations for Backward Classes, Scheduled Castes, Scheduled Tribes and Women for the Wards and Offices of Sarpanchs of Gram Panchayats in the State of Andhra Pradesh under Sec. 9 and 15 of the Act as expeditiously as possible and (ii) shall extend full cooperation to the State Election Commission of the State of Andhra Pradesh to enable the latter to conduct elections to the Members and Sarpanchs of Gram Panchayats as directed above."

10. A perusal of the above paragraphs would go to show that the Special Officers appointed would continue for a period of three months and during that period, the State Election Commission, with complete cooperation of the State, would have to complete the entire process of holding elections to the Wards and Offices of the Sarpanchs in the Gram Panchayats in the State of Andhra Pradesh.

11. Despite the above directions, as elections were not held, W.P.(PIL).Nos.141 and 153 of 2019 were filed. Both the aforesaid petitions are still pending.

12. However, subsequently, notifications were issued by the State Election Commission to hold elections for local bodies. But, by a Notification dated 15.03.2020, the election process in respect of Mandal Parishad

Territorial Constituencies (MPTCs), Zilla Parishad Territorial Constituencies (ZPTCs), Municipal Corporations, Municipalities and Nagar Panchayats were stopped forthwith, indicating further that election process of MPTCs, ZPTCs and Urban Local Bodies would be continued after six weeks or after the threat of COVID-19 recedes, whichever is earlier. The schedules already announced for Gram Panchayat elections were kept in abeyance until further orders.

13. The aforesaid Notification was issued by the Commissioner in view of the challenges posed by COVID-19, opining that continuing with the election schedule might be detrimental and harmful to the public health at large.

14. The aforesaid Notification was challenged by the State of Andhra Pradesh by filing a writ petition before the Hon'ble Supreme Court, which was registered as Writ Petition (Civil) No.437 of 2020. By the order dated 18.03.2020, the writ petition was disposed of declining to interfere with the decision of the State Election Commission. However, the Hon'ble Supreme Court directed that there shall be a post-decisional consultation with the State of Andhra Pradesh before the next date is notified by the Election Commission. As the elections were postponed, the Hon'ble Supreme Court directed that the Model Code of Conduct for the elections shall be reimposed four weeks before the notified date of polling. It was also directed that the developmental activities which had already been undertaken shall not be interrupted till the Model Code of Conduct is reimposed. It was further directed that if the State Government wished to undertake any fresh developmental activities, it would do so only with the prior permission of the Election Commission.

15. Subsequently, after consultation with the State Government on 28.10.2020 and also after having consultation with 11 political parties (six political parties did not attend and did not convey their views), a Notification dated 17.11.2020 was issued by the State Election Commission stating that the Commission has decided to hold elections to the Gram Panchayats in the month of February, 2021, and that actual schedule would be finalized with due consultation with the State Government and thereafter only the election schedule would be notified. For reasons of administrative efficacy and convenience, the Government was, however, requested to take necessary preparatory action.

16. The aforesaid Notification dated 17.11.2020 issued by the State Election Commission was put to challenge by the State of Andhra Pradesh by filing a writ petition before this Court, which was registered as W.P.No.22900 of 2020. The writ petition was disposed of by order dated 29.12.2020.

17. Perusal of the said order dated 29.12.2020 would go to show that the principal contention advanced on behalf of the writ petitioner was that the decision taken, vide Notification dated 17.11.2020, to hold the elections in the month of February, 2021, was contrary to the order passed by the Hon'ble Supreme Court in Writ Petition (Civil) No.437 of 2020 dated 18.03.2020, as in terms of the said order, it was incumbent on the part of the State Election Commission to have consulted the State Government before the next date was notified by the Election Commission, but such an exercise of consultation was not undertaken. It was further contended that in view of the decision taken by the Union of India to administer vaccine for Corona virus, the entire State Government machinery would have to be

deployed and it would be difficult for the State Government to deploy its employees for the election process.

18. In the order dated 29.12.2020 passed in W.P.No.22900 of 2020, at paragraph No.8, it was observed as follows:

"Undoubtedly, the entire mankind is passing through the most critical and pathetic period because of Covid-19 pandemic. Having regard to the submissions of the learned Advocate General and the learned Standing Counsel for the respondent, in the interest of larger public and keeping in view the order of the Hon'ble Supreme Court and to have a quietus for the issue in a smooth and amicable manner, this Court deems it appropriate to dispose of the Writ Petition, asking the petitioner-State Government to submit a written version enclosing all relevant material in respect of its pleas and the instructions/guidelines issued by the Union of India pertaining to Covid-19, within a period of 3 days from the date of receipt of a copy of this order, for consideration of the State Election Commission and for taking appropriate action, after giving opportunity to the officials concerned, of the State Government after submission of the said written version. For undertaking the consultation process, it is open for the State Election Commission to fix a venue and time so as to enable the representatives of the State Government, who are not below the rank of Principal Secretary to the Government, to attend the consultation process. In fact, on instructions, the learned Advocate General and the learned Standing Counsel appearing for the respondent expressed their consent for the above said course of action. It is made clear that all the contentions and the pleas raised in this Writ Petition are kept open."

19. Pursuant to the aforesaid direction, the views of the Government on conduct of elections to Panchayat institutions were forwarded by the Principal Secretary to the Government, Panchayat Raj & Rural Development Department, to the Secretary of the State Election Commission, vide letter dated 07.01.2021. The Commissioner had also met with a delegation of the State Government, headed by the Chief Secretary, on 08.01.2021. Thereafter, on the same day, the Election Commissioner issued the order dated 08.01.2021 deciding to hold the elections as noticed supra, commencing from 23.01.2021 and completing the same by 17.02.2021.

20. Mr. B. Adinarayana Rao, learned senior counsel appearing for the appellant, submits that the learned single Judge, in the attending facts and circumstances of the case, was wholly in error in suspending the order dated 08.01.2021 and posting the case again for consideration only on 15.02.2021. He submitted that even without adverting to the order dated 08.01.2021, learned single Judge came to a definite conclusion that the Election Commission failed to consider the inputs supplied by the State Government objectively and that the decision of the Commission is violative of Articles 14 and 21 of the Constitution of India. Learned senior counsel further submitted that the conclusion arrived at by the learned single Judge, without assigning any reasoning, that conduct of election will hamper and create hindrance to vaccination programme, is contrary to constitutional mandate.

He submits that the Commissioner had considered the views of the State Government dispassionately while notifying the Election Schedule and the ultimate decision as to whether it is possible or expedient to hold the elections rests with the Election Commission.

Referring to the impugned order dated 08.01.2021, learned senior counsel has submitted that the said order would itself demonstrate that the stand of the State Government was duly considered. He has submitted that vaccination programme for Corona virus will be an on-going process for a considerable period of time and in that circumstance, it will not be correct to keep the democratic process suspended till the vaccination programme comes to an end. It is contended by him that while the Category-I (Healthcare Personnel) and Category-II (Frontline Personnel) vaccinations in respect of Andhra Pradesh would be about 3.7 and 7 lakhs respectively, the Category-III comprising of adults in Class 50+ age group is about 93.2 lakhs. It is in the backdrop of the aforesaid, though initially the Commission had taken a view that the elections would be conducted in the month of February, 2021, the decision was taken to prepone the elections, so that the Gram Panchayat elections could be completed before launch of Category-III vaccination. It is only after carefully going through the pros and cons that the decision was taken by the Commission to hold the elections for the Gram Panchayats as indicated in the schedule, commencing from 23.01.2021.

Learned senior counsel has drawn the attention of this Court to a judgment of a Division Bench of the High Court of Karnataka in the case of ***K.C. Kondaiah and others v. State of Karnataka and others***¹, wherein a challenge made to the order passed by the State Election Commission to temporarily postpone the elections to all Gram Panchayats in the State owing to the situation created by the spread of COVID-19, was upheld by rejecting the contention of the State Election Commission and the Election Commission was directed to finalize the schedule of elections of

¹ MANU/KA/4030/2020

Gram Panchayats within three weeks from the date of the judgment.

Reliance was also placed upon the decision of a Division Bench of the High Court of Patna in the case of ***Badri Narayan Singh and others v. The Ministry of Home Affairs, Government of India, and others***² to contend that the High Court must be reluctant in interfering with the election process as it would result in postponing the elections.

Attention is also drawn to a judgment of the Division Bench of the High Court of Judicature for Rajasthan, Bench at Jaipur, in the case of ***Satish Kumar Sharma v. State of Rajasthan and others***³, whereby the extension sought for by the State of Rajasthan to extend the period for holding the elections of Municipal Corporations at Jaipur, Jodhpur and Kota, till the end of March, 2021, on the ground of COVID-19 pandemic, was rejected. Learned senior counsel has submitted that the aforesaid order was put to challenge by the State of Rajasthan before the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No.21246 of 2020 and the Hon'ble Supreme Court, by order dated 08.10.2020, while agreeing with the order passed by the High Court, directed the State Election Commission to notify the election programme in respect of subject Municipal Corporations within one week.

Reliance was also placed upon a Division Bench judgment of the High Court of Kerala in the case of ***P.C. George v. State of Kerala and another***⁴, wherein the High Court rejected the challenge made against the decision dated 28.10.2020 taken by the Kerala State Election Commission to conduct elections to local bodies for the year 2020 in the midst of COVID-19 pandemic, and to the legislative assembly scheduled to be

² MANU/BH/0534/2020

³ Dt: 29.09.2020 in D.B. Writ Miscellaneous Application No.129/2020

⁴ Dt. 05.11.2020 in W.P.(C).No.23341 of 2020(S)

conducted within four months thereafter. Learned senior counsel for the appellant has also submitted that though Special Leave to Appeal before the Hon'ble Supreme Court in Petition for Special Leave to Appeal (C) No.13605 of 2020 was filed, the said Special Leave Petition was withdrawn on 07.12.2020 in order to pursue the remedy before the High Court relating to option of postal ballots being made available to senior citizens and COVID-19 suspects/affected persons.

Further, relying upon the judgment passed by the Hon'ble Supreme Court in the case of ***Election Commission of India v. State of Haryana***⁵, learned senior counsel submits that the High Court should be reluctant to take any step which will result in the postponement of the elections and that the Election Commission is the ultimate authority to take a decision regarding holding of elections.

Placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***A.K.M. Hassan Uzzaman and others v. Union of India and others***⁶, learned senior counsel submits that there is always a presumption of existence of *bonafides* in the discharge of constitutional and statutory functions and until that presumption is displaced, public authorities cannot be prevented on preconceived notions from discharging functions which are entrusted to them.

21. Mr. D.V. Sitarama Murthy, learned Senior Counsel appearing for respondent No.2 i.e., the Commissioner of the State Election Commission, who is arrayed by name, by drawing the attention of the Court to the pleadings in the Writ Petition, while supporting the arguments advanced by Mr. B. Adinarayana Rao, submits that the allegations that he had a

⁵ 1984 (Supp) SCC 104

⁶ (1982) 2 SCC 218

pre-determined bent of mind to conduct elections and that the consultative process undertaken by him was a mere formality and that his conduct was lacking in *bonafides*, are made without any basis whatsoever. It is submitted that Respondent No.2 has nothing to gain by conducting the elections and he was only discharging his constitutional obligation to hold election, which was long overdue. It is submitted that plea of *malafide*, as raised in the petition, has no legs to stand. He refers to the decision of the Hon'ble Supreme Court in ***Indian Railway Construction Co. Ltd. v. Ajay Kumar***⁷, with particular reference to paragraph 23.

22. Mr. S. Sriram, learned Advocate General, appearing for the writ petitioner/State of Andhra Pradesh, at the outset, submits that the Writ Appeal is not maintainable under Clause 15 of the Letters Patent, as the order impugned in this appeal is not a judgment, against which only a Writ Appeal lies. In support of the aforesaid contention, the learned counsel refers to a decision of the Hon'ble Supreme Court in the case of ***Midnapore Peoples' Coop. Bank Limited and others v. Chunilal Nanda and others***⁸.

Relying upon the judgment in the case of ***Mr. Mohammed Azharuddin v. Dr. G. Vivekananda and others***⁹, with particular reference to paragraphs 34 and 45, he contends that the learned Single Judge having exercised his discretion to pass an interim order in a judicious manner in the attending facts and circumstances of the case, the appellate Court ought not to interfere with such exercise of discretion and substitute its opinion. He has contended that the appellate court, as a general rule, ought not to interfere with the exercise of discretion by the learned Single

⁷ (2003) 4 SCC 579

⁸ (2006) 5 SCC 399

⁹ (2018) 4 ALT 226 (DB)

Judge at an interim stage, unless such exercise of discretion is found to be palpably incorrect or untenable or if the view taken by the learned Single Judge is not a possible view. He has also referred to the case of ***Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others***¹⁰, with particular reference to paragraph 39, the case of ***Election Commission of India Through Secretary v. Ashok Kumar and others***¹¹, with particular reference to paragraph 32 and the case of ***Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad and others***¹².

Learned Advocate General drew our attention to a letter dated 28.10.2020 addressed by the State Election Commissioner to the Home Secretary, Government of India, to contend that he had unwarrantedly attributed motive to the State Government ruled by the YSR Congress party that it was determined not to hold elections in his tenure, which is till March 2021, and this is what was upper most in his mind while issuing the order dated 08.01.2021. Learned Advocate General referred to another letter dated 28.10.2020 issued by the State Election Commissioner to the Hon'ble Governor, Andhra Pradesh, wherein he once again reiterated the same insinuation that the State Government was not intending to conduct elections as he would be strict in holding free and fair elections, as if the State Government is not interested in ensuring a free and fair election.

Learned Advocate General further submits that in the Notification dated 15.03.2020, by which election was stopped and which was the subject matter in W.P.(C).No.437 of 2020 before the Hon'ble Supreme Court, stoppage of election was solely on account of COVID-19 pandemic

¹⁰ (1978) 1 SCC 405

¹¹ (2000) 8 SCC 216

¹² (2006) 8 SCC 352

and not on any other ground, but after the judgment of the Hon'ble Supreme Court on 18.03.2020, letters were written by him on the very same day i.e., on 18.03.2020, alleging un-precedented violence during conduct of polls and levelled baseless charges against the State Government. It is submitted that the State Government delegation was met by the Commission on 08.01.2021 and on that very day itself, schedule of election was notified, which clearly demonstrates that the Commissioner had already fixed the election schedule and the exercise was a mere window dressing. He strenuously urges that the views expressed by the State Government in view of the logistical demands necessitated by the massive vaccination programme, were not duly considered. He has submitted that it is not the case of the State Government that the election should be indefinitely postponed, but what is requested is that the election be deferred till the first phase of vaccination programme is completed. He vehemently argues that the Commissioner wants to anyhow hold the election during his tenure at the cost of larger public interest and public health, being unmindful of vaccination programme, which according to the Union of India, is to be conducted on an election mode.

23. Mr. N. Harinath, learned Assistant Solicitor General appearing for the Union of India, submits that if vaccination programme and the conduct of elections can go together, the Union of India will have no objection.

24. In reply, Mr. B. Adinarayana Rao, learned senior counsel for the appellant, submits that having regard to the prayer made in the writ petition, which was for a direction to the State Election Commission to forbear from proceeding further with the proposed election process, the interim order so passed, in effect, has resulted in giving final relief to the

writ petitioner without any adjudication and has affected vital and valuable rights of the appellant, besides working serious injustice to the appellant. He submits that in that view of the matter, the interim order is akin to an order which has finally decided an issue which materially and directly affects the final decision in the main case and, therefore, the order is a judgment within the meaning of Clause 15 of the Letters Patent. He further submits that the submission advanced by the learned Advocate General that the vaccination process will be similar to the election process has to be understood in the sense that the vaccination process, like an election process, will also reach out to the population even in the remotest corners of the country.

25. We have considered the submissions of the learned counsel appearing for the parties and have perused the materials on record.

26. At this juncture, it would be appropriate to consider the question as to whether the present writ appeal against the interim order is maintainable or not.

27. At paragraphs 15 and 16 of ***Midnapore Peoples' Coop. Bank Ltd.*** (supra), the Hon'ble Supreme Court laid down as follows:

"15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.

(iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

16. *The term "judgment" occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, "judgments" for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not "judgments" for the purpose of filing appeals provided under the Letters Patent."*

28. In ***Shah Babulal Khimji v. Jayaben D. Kania***¹³, which was referred to in ***Midnapore Peoples' Coop. Bank Ltd.*** (supra), the Hon'ble Supreme Court, at paragraph 115, observed that every interlocutory order cannot be regarded as judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.

¹³ (1981) 4 SCC 8

29. In ***Central Mine Planning and Design Institute Ltd. vs. Union of India***¹⁴, which was noted in ***Midnapore Peoples' Coop. Bank Ltd.*** (supra), Clause 10 of the Letters Patent of Patna High Court was considered. In the aforesaid case, an award of the Industrial Disputes Tribunal directing reinstatement and partial payment of back wages was challenged in a writ petition. The workmen had claimed interim relief under Section 17-B of the Industrial Disputes Act, 1947. The learned Single Judge directed the employer to pay full wages to the workmen during the pendency of the writ petition. This order being challenged in a Letters Patent appeal, it was held by the Division Bench that the appeal was not maintainable as the order directing payment by the Single Judge was not a judgment. However, the Hon'ble Supreme Court held that an interlocutory order passed in a writ proceeding directing payment under Section 17-B of the Industrial Disputes Act, 1947 was a final determination affecting vital and valuable rights and obligations of parties and therefore, would fall under the category of intermediary or interlocutory judgment against which Letters Patent appeal would lie.

30. We are in agreement with the submission of the learned senior counsel for the appellant that the interim order is not a routine order passed in the writ petition to facilitate the progress of the case till its culmination in the final decision and that it has the effect of granting final relief as prayed for in the writ petition without the matter being tested on merits and without determining the rights and obligations of the parties. The interim order has also affected vital and valuable right of the State Election Commission to carry out the constitutional requirement of holding

¹⁴ (2001) 2 SCC 588

election to the local panchayats. In that view of the matter, we are of the considered opinion that the interim order passed by the learned single Judge falls within the meaning of the word "judgment" and, therefore, this appeal is maintainable.

31. In paragraph 23 of the decision in **Ajay Kumar** (supra), the Hon'ble Supreme Court, in the context of the allegations regarding bad faith, an abuse or a misuse of its powers by the authority, stated as follows:

"Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fide in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See S. Pratap Singh v. The State of Punjab, [1964] 4 SCR 733). It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are

often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility. As noted by this Court in R.P. Royappa v. State of Tamil Nadu and Anr., AIR (1974) SC 555, Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.”

32. By the order dated 08.01.2021, the State Election Commission had decided to fulfil its obligation to hold election, which is overdue by almost 2½ years. Thus, the Commissioner was acting on the legitimate exercise of power that he has. It is not explained to us how in pursuing a legitimate exercise, the Commissioner had been acting *malafide* in the sense of pursuing an illegitimate aim. In any event, the Court would be slow to draw adverse inference unless material of high order of credibility is placed before the Court regarding *malafide*, more so, when imputations are attributed to holder of an office discharging high responsibility such as the Commissioner of the State Election Commission.

33. The materials on record, including the letters referred to by the learned Advocate General, show that the Commissioner, State Election Commission, had imputed motives to the State Government in the matter of holding of election, that too, in a somewhat intemperate language, which is best avoidable. Only because of the fact that the Commissioner had articulated that the State Government was not willing to have the election conducted during his tenure and that a senior political functionary of the ruling party was canvassing that elections would be held in the month of April or May, it cannot be readily accepted, as argued by the learned

Advocate General, that just to make sure that election is held during his tenure and thus, to prove a point, the election is announced by him, unmindful of the ground realities.

34. However, it will be necessary to consider as to whether the views put forward by the State Government was appropriately considered by the State Election Commission.

35. The fact that elections to Panchayats, Municipalities and even Legislative Assembly elections had been conducted in the height of COVID-19 pandemic, is not in dispute. As noticed earlier, the Hon'ble Supreme Court, in the case of **Satish Kumar Sharma** (supra), had, by an order dated 08.10.2020, directed the Election Commission of the State of Rajasthan to notify the election programme in respect of subject Municipal Corporations within one week.

36. With regard to the vaccination programme, it is stated in the letter dated 07.01.2021 issued by the Principal Secretary to the Government, PR & RD Department, that the entire Government machinery will be working full time in vaccinating and as such, overlapping of election work and vaccination work cannot be ruled out and the State machinery will be put to enormous strain to perform the twin roles at the same time. It is stated that the healthcare workers in the State of Andhra Pradesh in public and private facilities would be around 3.7 lakhs; frontline workers, such as police force etc., would be numbering about 7 lakhs and persons more than 50 years of age would be approximately 93,23,958. It is also stated that 40,410 vaccination points have to be set up to vaccinate the entire population of the State of Andhra Pradesh.

37. Learned Advocate General, during the course of proceedings on 18.01.2021, on instructions, has submitted that 680 vaccination centres have been set up and since commencement of the vaccination programme, 45,000 healthcare workers have been vaccinated.

38. The Commission addressed the issue of vaccination programme in the following manner:

"20. The gist of the issues at the stake are as below in brief:

Vaccination drive is on the anvil.

GOI have brought about capacity building in case of cold chain management and training of personnel.

While there is clarity regarding Category-I & II vaccinations, Category-III vaccination programme is yet to be spelt out by GOI.

Two vaccines i.e., "Covishield" and ICMR sponsored "Covaxin" have been accorded approval by the Indian regulator for emergency use.

The initial vaccination drive would cover Category-I (1 Crore) and Category-II (2 crores) as was already indicated (P.I.B. press release). A.P's corresponding numbers are 3.7 & 7 lakhs for Category-I & II vaccinations which is easily manageable without casting a shadow on the election process.

Category-III, the largest group covers 27 crore adults in 50+ age group (PIBs note) of which AP's target group is 93.2 lakhs.

GOI as per reports cited, envisages to complete the first phase of vaccination probably by September, 2021 !

On its commencement, vaccination programme will be a continuous process. Once Category-III vaccination is launched in a full fledged manner, logistical challenges can't be ruled out which may persist till September, 2021 and beyond.

After completion of phase-I, the next phase of vaccination would be citizens below 50 years of age, who also can't be left uncovered. Vaccination programmes are designed with saturation as objective and herd immunity as its goal.

Hence it is reasonable to presume that vaccination programme will extend well beyond September, 2021 into the year 2022 as perceived by public health specialists.

In this unfolding scenario, a question logically arises whether the elections are to be put on hold and democratic processes suspended till the vaccination programme attains the stated goals perhaps somewhere towards the end of 2022!

The constitutional provisions & the catena of legal precedents do not support such indefinite and indeterminate postponement. This is made clear by the 5 Bench Judgment of the Hon'ble Supreme Court of India in Appeal (Civil)5756 of 2005, dt:19.10.2006 in Kishansing Tomar vs. Municipal Corporation of City of Ahmedabad.

In line with this, there were innumerable judgments pronounced that elections can't be put on hold indefinitely. It is

to note that in the backdrop of "Covid" scenario, in case of appeals made; the Supreme Court had reiterated the earlier dictum. (In case of Rajasthan in SLP (Civil) Diary No.21246 of 2020, dt:08.10.2020 and in case of Kerala wherein the petitioner has withdrawn the appeal) and the local body elections have been since held. In light of the above, the postponement request of State Government would be wholly untenable!

USA for instance amidst raging pandemic, had held Presidential elections as well as elections to the Congress and the Senate. Postponement of elections was never considered.

Right to choose their representatives is a fundamental right of the citizen, which can't be suspended longer than absolutely needed. This is borne out by judicial pronouncements and also in consonance with the present national mainstream thinking.

Past experience indicates grass roots leadership played a vital role in contributing to the success of people centric programmes. Vaccination fundamentally is a people centric programme.

Several needless apprehensions and phobias understandably may persist in the minds of uninformed public, which have to be overcome for the success of vaccination programme. While public authorities could be effective upto a point, the local leadership has a vital role to play to allay the unfounded fears if any.

In the absence of local body elections & a grass roots leadership to emerge, a big vacuum will surface which can't be bridged.

21. The Commission however happily perceives a window of opportunity to harmonise the twin objectives of local body elections and vaccination programme.

22. The roll out schedule of Category-III can't be predicted as of now. Taking due note of the above, the Commission is in favour of completing Gram Panchayat elections before the Category-III launch. Category-I & II vaccinations will not affect the local body elections in any case.

23. Logically the present logic of State Government for postponement of elections and accompanying circumstances will hold good for a longer postponement till 2022 as well. Such inordinate postponement will therefore be unconscionable as well as unwise considering democratic processes confer appreciating advantages apart from being absolutely mandatory!

24. The Commission having carefully weighed in the pros and cons, is in favour of adopting a pragmatic schedule. The Commission originally wanted to schedule the elections around 2/3rd Weeks of February, 2021. This would have extended the election process well into the month of March, 2021.

25. This was necessitated considering the Commission has opted for a 4 stage Gram Panchayat elections keeping in view the Covid safety protocols. The Commission consulted other

State Commissions who have recently held elections, and is well advised to have a spread out schedule to ensure public safety.

26. The Commission has therefore decided to advance the election schedule which will now commence on 23.01.2021 and will be completed by 17.02.2021. This schedule is not expected to interfere by and large with the Category-III vaccination programme. A revised schedule (enclosed) is now notified in due reference to the suggestions made by the State Government, which fully addresses the valid concerns raised. The election code of conduct will come into vogue with effect from 09.01.2021 in terms of the Hon'ble Supreme Court's Order in WP (Civil) No.437 of 2020 dt. 18.03.2020 & shall be enforced by the State Government & the State's functionaries."

39. A perusal of the above would go to show that the Commissioner addressed the issue of vaccination programme as raised by the State Government. The Commissioner may not have agreed with the views expressed by the State Government in respect of holding of elections. But, as the consultation did take place, it cannot be said, as held by the learned single Judge, albeit *prima facie*, that the impugned order dated 08.01.2021 was not passed in consultation with the State Government in terms of the order of the Hon'ble Supreme Court passed in W.P.(C).No.437 of 2020 and the order of this Court in W.P.No.22900 of 2020. The learned single Judge did not assign any reasoning as to in which respects the Commission failed to consider the inputs supplied by the State Government objectively. No *prima facie* reasoning has also been assigned as to how the decision of the State Election Commission to conduct election hampers and creates hindrance in the vaccination process. It was the considered decision of the

Commission that the objectives of the local body elections and vaccination programme could be harmonised and that Category-I and Category-II vaccinations will not affect the local body elections in any case and it is on the aforesaid premise, the Commission favoured completing the Gram Panchayat Elections before launch of Category-III vaccination which would account for more than 93.00 lakhs of people.

40. It will be appropriate at this stage to extract paragraph 32 of **Ashok Kumar** (supra):

"For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:-

1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with

particulars and precision and supporting the same by necessary material."

41. A perusal of the above would go to show, amongst others, that the Court must guard against any attempt at retarding, interdicting, protracting or stalling of the election proceedings.

42. In ***Kishansing Tomar*** (supra), the Hon'ble Supreme Court, in the context of the Municipalities, observed that the provision contained in Article 243-U was inserted to see that there should not be delay in the constitution of new municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provision has been suitably added to the Constitution. In that circumstance, the Hon'ble Supreme Court emphasised that it is necessary for all the State Governments to recognize the significance of the State Election Commission, which is a constitutional body, and that they shall abide by the directions of the Commission in the same manner in which they follow the directions of the Election Commission of India during the elections for Parliament and State Legislatures. It was also observed that in the domain of elections to the Panchayats and the Municipal Bodies under Part IX and Part IX-A for the conduct of the elections to these bodies, they enjoy the same status as the Election Commission of India. It was reiterated that the words "*superintendence, direction and control*" as well as "*conduct of elections*" have been held to be in the "*broadest of terms*". The Hon'ble Supreme Court laid down that 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 and the State Election Commissions are to function independent of

the State Governments concerned in the matter of their power of superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections to the Panchayats and Municipalities. At paragraph 21, it is observed as under:

"21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the Municipality, but they are exceptional circumstances and under no circumstance the Election Commission would be justified in delaying the process of election after consulting the State Govt. and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the Municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the Municipality is mandatory in nature and has to be followed in all respects. It is only when the Municipality is dissolved for any other reason and the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the Municipality for such period."

43. To recapitulate, as held in ***Election Commission of India*** (supra), the ultimate decision as to whether it is possible and expedient to hold the elections at any given point of time must rest with the Election Commission. In ***Mohinder Singh Gill*** (supra), the Hon'ble Supreme Court had reiterated that discretion vested in a high functionary may be reasonably

trusted to be used properly, not perversely. If it is misused, certainly the Court has the power to strike down the act.

44. It would also be appropriate, at this stage, to take note of paragraphs 27 and 28 of ***Kishansing Tomar*** (supra):

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

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

to the State Election Commission to enable the latter to fulfil the constitutional mandate.”

45. Having regard to the facts and circumstances of the case as discussed above and in view of the law as it stands today, we are of the considered opinion that present was not a case warranting suspension of the order dated 08.01.2021, which has the effect of postponing the election process. Taking that view, we set aside the interim order passed by the learned single Judge.

46. The Writ Appeal is allowed. No costs. Pending miscellaneous applications, if any, shall stand closed.

47. Before parting with the records, we would like to impress upon the parties to the proceedings that both election and vaccination programmes being of vital importance for the people, the parties will make all endeavour to ensure that both the programmes are conducted smoothly and successfully.

ARUP KUMAR GOSWAMI, CJ

C. PRAVEEN KUMAR, J

IBL/NN/GM

**HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE C. PRAVEEN KUMAR**

WRIT APPEAL No.24 of 2021

(Per Arup Kumar Goswami, CJ)

Dt: 21.01.2021

IBL/NN/GM